



“Bringing Exchange Traded Commodities to the World’s Stock Exchanges”

## ETFS Metal Securities Australia Limited

ACN 101 465 383

Prospectus for the issue of

### Metal Securities

comprising:

<u>Class of Security</u>	<u>ASX Code</u>
ETFS Physical Gold	GOLD
ETFS Physical Silver	ETPMAG
ETFS Physical Platinum	ETPMPT
ETFS Physical Palladium	ETPMPD
ETFS Physical PM Basket	ETPMPM

This Prospectus is a rollover prospectus and was initially issued on 8 December 2008 and subsequently re-issued on 23 December 2009.

ETFS Metal Securities Australia Limited (the “Issuer” or the “Company”) is issuing five separate types of Metal Security, being four classes of security which are designed to track the price of individual precious metals (gold, silver, platinum and palladium) and one designed to track the price of a basket of those metals. The Metal Securities are intended to provide investors with a return equivalent to movements in the spot price less the daily Management Fee.

Each Metal Security is backed by physical metal held in custody by HSBC Bank USA, N.A. itself or through sub-custodians pursuant to Custody Agreements between HSBC Bank USA, N.A., the Issuer and the Trustee. All metal will be held in allocated form (other than amounts which may be held on a temporary basis in unallocated form to effect creations and redemptions or any residual portion that is too small to make up a whole bar) as Good Delivery bars. The metal will be held and settled in accordance with the standards set down by the LBMA (for gold and silver) and the LPPM (for platinum and palladium). Payments for creations and redemptions generally will be in unallocated form, loco London for gold and silver and loco Zurich for platinum and palladium.

The Issuer is a special purpose entity administered by ETFS Management Company (Jersey) Limited and owned by ETF Securities Limited which owns and administers a number of similar products in Europe, with total assets of over US\$25 billion as at the date of this Prospectus.

In order to provide liquidity and ensure minimal tracking error, Metal Securities can be applied for or redeemed at any time by Authorised Participants who are expected to make a market in the securities. It is expected that all other investors will buy and sell Metal Securities through trading on the ASX (although all investors will have the right to redeem their securities directly with the Issuer).

**Dated: 14 January 2011**

## **IMPORTANT INFORMATION**

### **Information and Representations**

This Prospectus has been prepared by ETFS Metal Securities Australia Limited (the "Issuer" or the "Company"), the issuer of the Metal Securities. Potential investors should note that no person is authorised by the Company to give any information to investors or to make any representation on behalf of the Company not contained in this Prospectus. The expiry date of this Prospectus is 13 months after the date of this Prospectus. No securities will be allotted or issued on the basis of this Prospectus later than 13 months after the date of this Prospectus. Metal Securities are being offered for subscription only to Authorised Participants (as defined in the Glossary in Section 11). All other Investors may purchase Metal Securities on the Australian Securities Exchange. As Metal Securities are issued pursuant to an arrangement between the Issuer and Authorised Participants (who are holders of an AFS Licence), the Issuer is exempt from the requirement to hold an AFS License under s. 911A(2)(b) of the Corporations Act 2001 (Cth). The Company reserves the right to vary the dates and terms of this offer without notifying the recipient of this Prospectus or any Authorised Participants.

### **Prospectus Lodged with ASIC**

This Prospectus has been lodged with the Australian Securities and Investments Commission ("ASIC") on 14 January 2011. ASIC takes no responsibility as to the contents of this Prospectus.

### **The Quotation on ASX**

Metal Securities are presently quoted on the Australian Securities Exchange ("ASX"). The fact that the ASX has quoted or may quote any of the Metal Securities of ETFS Metal Securities Australia Limited is not to be taken in any way as an indication of the merits of ETFS Metal Securities Australia Limited or the quoted Metal Securities. The ASX takes no responsibility for the contents of this document, makes no representations as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon any part of the contents of this document.

### **Investment Decisions**

It is impossible in a document of this type to take into account the investment objectives, financial situation and particular needs of each potential investor. Accordingly, nothing in this Prospectus is a recommendation by the Company, the Trustee, HSBC Bank USA, National Association ("HSBC Bank USA, N.A.") or any other person concerning investments in shares or any other security. Potential investors should not rely on this Prospectus as the sole basis for any investment decision in relation to shares or any other security and should seek independent professional investment and taxation advice before making a decision whether to invest in the Metal Securities. Prospective investors should read the entire Prospectus before making any decisions to invest in the Metal Securities. If prospective investors have any doubt as to their course of action they should consult their stockbroker, solicitor, accountant or other professional adviser.

### **Jurisdiction**

The offers made in this Prospectus are, subject to the terms described in this Prospectus, available to persons receiving an electronic Prospectus within Australia. The distribution of this Prospectus in jurisdictions outside Australia may be restricted by law and therefore persons into whose possession this Prospectus comes should seek advice on and observe any such restrictions. Failure to comply with relevant restrictions may violate those laws. This Prospectus is not an offer or invitation in relation to shares in any place in which, or to any person to whom, it would not be lawful to make such an offer or invitation. No action has been taken to register or qualify the offers under this Prospectus or otherwise permit a public offer of the Metal Securities in any jurisdiction outside Australia. The Metal Securities have not been and will not be registered under the US Securities Act of 1933 and may not be offered or sold in the United States or to, or for the account or benefit of, a US person (as defined in Regulation S under the Securities Act) except in a transaction exempt from the registration requirements of the Securities Act and applicable US state securities laws.

### **Further Information**

Investors who are seeking advice on the offer or who have questions in relation to this Prospectus are to contact their broker, accountant or other professional advisor.

### **Defined Terms**

Certain terms used in this Prospectus are defined in the Glossary in Section 11. This Prospectus should be read in conjunction with these defined terms.

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# 1 DETAILS OF THE OFFER

## 1.1 Overview of the Offer

ETFS Metal Securities Australia Limited (the "Issuer" or the "Company") is offering for subscription five different classes of securities, being ETFS Physical Gold securities, ETFS Physical Silver securities, ETFS Physical Platinum securities, ETFS Physical Palladium securities and ETFS Physical PM Basket securities (each a "Metal Security" and together the "Metal Securities"). The Metal Securities have been designed to enable investors to gain exposure to a return from investing in physical Bullion (being any or all of gold, silver, platinum and palladium) without the necessity of trading and storing physical Bullion. The Metal Securities also enable investors to buy and sell that interest through the trading of the Metal Securities on the ASX.

## 1.2 Continuous Offer Notice

The Offer (being the invitation made to the public under this Prospectus) is a continuous offer made during the term of this Prospectus. There is no minimum subscription condition that must be fulfilled before the securities offered will be issued.

As a disclosing entity, the Issuer is subject to regular reporting and disclosure obligations. Copies of documents lodged with ASIC in relation to the Issuer may be obtained from, or inspected at, an ASIC office.

People have the right to obtain a copy of the following documents during the application period for the Prospectus:

- the annual financial report most recently lodged with ASIC by the Issuer (if any);
- any half-year financial report lodged with ASIC by the Issuer after lodgement of that annual financial report and before lodgement of this Prospectus with ASIC; and
- any continuous disclosure notices given by the Issuer after the lodgement of that annual financial report and before lodgement of the copy of this Prospectus with ASIC.

Such information may be obtained from, or inspected at, an ASIC office and shall also be available for download free of charge from the Issuer's website at [www.etfsecurities.com](http://www.etfsecurities.com). Upon request, the Issuer shall also make a copy of the documents available free of charge to anyone who asks during the application period for the Prospectus.

## 1.3 Applications

Only persons who are Authorised Participants may apply for new Metal Securities - all other persons must buy Metal Securities through trading on the ASX. An Authorised Participant is any bank, securities house or other market professional which holds an AFS Licence and which has been approved by the Issuer.

A valid Application received by the Registrar by 4.30 p.m. AEST (day T) will generally enable the Applicant to receive the new Metal Securities in their CHESS account three ASX Business Days later (T+3), provided the Applicant has deposited the Bullion into the Unallocated Account (before day T+3).

A Metal Security will only be issued upon receipt of a valid Application Form and after the Bullion has been transferred into one or more of the Metals Accounts.

*Further details are set out in Section 2.4 (Applications).*

## 1.4 Use of Application Amounts

The Bullion subscribed by, or purchased on behalf of, applicants for a Metal Security will be deposited into one or more of the Metal Accounts in the name of the Trustee and held upon the Separate Trust for the Holder. An Application Fee of A\$1,000 will be payable for each Application and that fee will be used to pay costs and expenses related to the issue of the Metal Security.

## 1.5 ASX Quotation

The Metal Securities are presently quoted on the ASX. The ASX takes no responsibility for the contents of this Prospectus.

ASX quotation of the Metal Securities will be pursuant to the AQUA Rules. The Issuer and its ordinary shares will not be listed on the ASX pursuant to the ASX Listing Rules. The Metal Securities are quoted under the AQUA Rules because the value (or price) of the Metal Securities is dependent upon the performance of the underlying Bullion rather than the financial performance of the Issuer itself. Accordingly, a great deal of the disclosure, corporate governance and corporate control rules in the ASX Market Rules for the shares of listed companies do not apply to the Metal Securities.

More information about the AQUA Rules is available from the ASX's website: [www.asx.com.au](http://www.asx.com.au) and, in particular, the ASX brochure available at [www.asx.com.au/about/pdf/aqua\\_overview.pdf](http://www.asx.com.au/about/pdf/aqua_overview.pdf).

## 1.6 CHESS

The Company participates in the Clearing House Electronic Sub register System ("CHESS"). The Company will not issue certificates for Metal Securities to Authorised Participants who are issued Metal Securities. The Registrar, on behalf of the Company, will provide each Holder with an uncertificated securities holding statement which will set out the Metal Securities issued to the Holder. If applicable, the holding statement will inform each Holder of their "Holder Identification Number" and the "Sponsoring Issuer Number" as used by CHESS.

## 1.7 Register

Link Market Services Limited will maintain a register of the Metal Securities in Sydney.

## 1.8 Transaction Documents

The documents which, in addition to this Prospectus, set out the terms and conditions relating to the Metal Securities and the holding of the Bullion comprise:

- the Constitution;
- the Trust Deed;
- the Custodian Agreements;
- the Service Agreement; and
- the Metal Sale Counterparty Agreement.

*Details are set out in Section 6 (Constitution), Section 7 (Trust Deed) and Section 8 (Summary of Other Transaction Documents).*

## 1.9 Investment Considerations

Past performance is not an indication of expected performance and the investment performance of Metal Securities could be volatile. An investment in Metal Securities involves a significant degree of risk. The following are just some of the risk factors which should be carefully considered by prospective investors before deciding whether to invest in Metal Securities:

- Bullion prices, and therefore the value of Metal Securities, may fluctuate widely in both US dollars and Australian dollars.
- Bullion markets have the potential to suffer from market disruption or volatility caused by shortages of physical Bullion.
- At any time, the price at which the Metal Securities trade on the ASX may show some "tracking error", due to the prices and/or spreads quoted by market-makers, and thus may not reflect accurately the price of Bullion represented by such Metal Securities.
- Access to the vault premises of the Custodian or a Zurich Sub-Custodian could be restricted by natural events, such as flooding, or human actions, such as a terrorist attack. The Custodian has no obligation to insure the Bullion held in the Metal Accounts against loss, theft or damage and neither the Issuer nor the Trustee intends to insure against such risks. Accordingly, there is a risk that some or all of the Bullion could be lost, stolen or damaged and the Issuer would not be able to satisfy its obligations in respect of the Metal Securities. However, the Custodian has agreed in the Custodian Agreements that it (or one of its affiliates) shall make such insurance arrangements as it considers appropriate in connection with its obligations set out therein.
- Any Bullion held in the Unallocated Account will be an unsecured credit risk against the Custodian.

- There are certain circumstances in which an early redemption of Metal Securities may be imposed on investors, which may result in an investment in Metal Securities being redeemed earlier than desired.

*Further details are set out in Section 5 (Risk Factors).*

## 2 DESCRIPTION OF A METAL SECURITY

*Metal Securities, which comprise a Metal Share and a Metal Entitlement, are constituted by the Constitution of the Issuer, the Trust Deed and by the terms, provisions and statements contained in this Prospectus. A description of some of the key provisions of these documents is set out in this Section 2 and further details are set out in Section 6 (Constitution) and Section 7 (Trust Deed). These are important documents and they should all be read by investors when making an assessment of whether to buy Metal Securities.*

### 2.1 Components of a Metal Security

A Metal Security is comprised of a Metal Share of nominal value plus a Beneficial Interest in the relevant amount of Bullion (the Metal Entitlement), which Bullion is held in a Separate Trust for each Holder.

A Metal Share is a redeemable preference share with a nominal value of 1/1000<sup>th</sup> of 1 cent which carries with it a right to the Metal Entitlement applicable to that class of share. Although a Metal Share in itself has no economic value, it exists in order to provide a class of “share” which is tradeable on the ASX.

The economic value of each Metal Security lies in the Metal Entitlement which is carried around with each Metal Share. Whenever there is a transfer in ownership of a Metal Share, there is a corresponding transfer in the ownership of the Metal Entitlement applicable to that Metal Share.

Pursuant to the Trust Deed, a Separate Trust is established for each Holder of a Metal Share and the Metal Entitlement is held by the Trustee on trust for each such Holder. Each Holder will therefore hold:

- a Metal Share issued by the Company; and
- a beneficial interest in a Separate Trust that owns the relevant amount of Bullion (being the Metal Entitlement).

### 2.2 Metal Entitlement

There will be a separate Metal Entitlement for each class of Metal Security, which as at 6 January 2011 was:

<b>Class of Security</b>	<b>Metal Entitlement (6 January 2011)</b>
ETFS Physical Gold	0.097331328 fine troy oz
ETFS Physical Silver	0.990157383 troy oz
ETFS Physical Platinum	0.099015733 troy oz
ETFS Physical Palladium	0.099015733 troy oz
ETFS Physical PM Basket	0.039679583 fine troy oz gold, 1.188204849 troy oz silver, 0.009901739 troy oz platinum and 0.019803384 troy oz palladium

The ETFS Physical Gold securities (previously called Gold Bullion Securities) started in early 2003 with an initial Metal Entitlement of 0.10 fine troy ounces. The ETFS Physical Silver securities started on 1 January 2009 with an initial Metal Entitlement of 1.00 troy ounces. The ETFS Physical Platinum securities started on 1 January 2009 with an initial Metal Entitlement of 0.10 troy ounces. The ETFS Physical Palladium securities started on 1 January 2009 with an initial Metal Entitlement of 0.10 troy ounces. The ETFS Physical PM Basket securities started on 1 January 2009 with an initial Metal Entitlement of 0.04 fine troy ounces of gold, 1.20 troy ounces of silver, 0.01 troy ounces of platinum and 0.02 troy ounces of palladium.

The Metal Entitlement on all Metal Securities will be reduced daily by the Management Fee Rate shown in the table below. Whenever new securities are issued or existing securities redeemed, this will be done at the then prevailing Metal Entitlement, thereby ensuring that all securities of the same class have the same Metal Entitlement and are fully fungible.



The Management Fee Rate for each class of Metal Security will be:

Security	Management Fee Rate
ETFS Physical Gold	40 basis points per annum
ETFS Physical Silver	49 basis points per annum
ETFS Physical Platinum	49 basis points per annum
ETFS Physical Palladium	49 basis points per annum
ETFS Physical PM Basket	40 basis points per annum on the gold component and 49 basis points per annum on all other components

The Management Fee will reduce the Metal Entitlement each day using the following formula:

$$ME_{(i,t)} = ME_{(i,t-1)} \times (1 - MF_{(i,t)})^{1/N} ;$$

where:

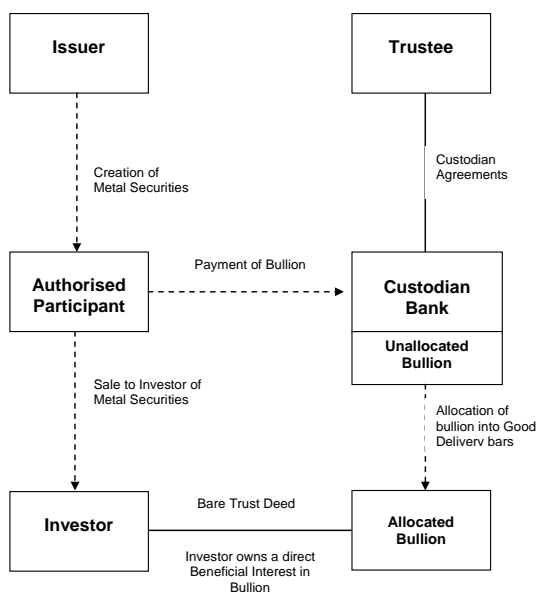
- i refers to the relevant class of Metal Security;
- t refers to the applicable day (with t-1 being the previous day);
- $ME_{(i,t)}$  is the Metal Entitlement for Metal Securities of class i for day t;
- $MF_{(i,t)}$  is the per annum Management Fee Rate applicable on day t, expressed as a decimal (so that 49 basis points per annum is expressed as 0.0049);
- N is 365 (or 366 in a leap year).

The Metal Entitlement for each class of Metal Security will be calculated daily by the Issuer, to nine places of decimals with 0.000000005 troy ounces (or fine troy ounces in the case of gold) rounded upwards, and will be published on the parent company's website [www.etfsecurities.com](http://www.etfsecurities.com) and will also be available through the ASX electronic news announcement system.

The Management Fee may be varied by the Issuer at any time, but in the case of an increase, such variation may only be made after giving 30 days' prior notice to all Holders (to be released through the CAP).

### 2.3 Structure of Metal Securities

The following diagram shows the key aspects of the structure of a Metal Security. The diagram shows the movements of metal and securities for an Application; the same flows occur in the opposite direction for a Redemption.



As shown in the diagram:

- new securities can be created by an Authorised Participant depositing metal with the Custodian;
- the metal is deposited in unallocated form and, at that stage, such Authorised Participant has a credit risk against the Custodian;
- the metal is then allocated (set aside as separately identifiable Good Delivery bars) and, at this point, such Authorised Participant does not have a credit risk against the Custodian and the metal is owned beneficially by Holders of Metal Securities;
- Investors buy (and generally sell) Metal Securities through Authorised Participants (market makers);
- each Separate Trust is a bare trust so the Holder is absolutely entitled to the allocated Bullion; and
- each time a Holder transfers a Metal Share to a new holder, the beneficial interest in the Bullion automatically transfers to the new holder.

The Custodian Bank is currently HSBC Bank USA, N.A., which company has acted as the Custodian ever since the ETFS Physical Gold securities were first listed on the ASX.

*Further details on how the metal is held are set out in Section 4 (The Metal) and Section 8.1 (Summary of the Custodian Agreements).*

The Trustee is Gold Bullion Nominees Pty Ltd – a special purpose company established to facilitate the offer of Metal Securities.

## **2.4 Applications and Redemptions**

### **2.4.1 Business Days**

Application Forms and Redemption Notices may only be lodged on a day which is both an ASX Business Day and a London Business Day. The date on which Metal Securities are issued or cancelled is referred to as the Settlement Date. Due to the time difference between Australia and London, payment for Applications must be made prior to the Settlement Date. Payments for Redemptions will be on the Settlement Date. Payments of Bullion can only be made if it is a “value date” in the Relevant Market. If the Settlement Date would otherwise be a day which is not a “value date” in the Relevant Market, the Settlement Date will be postponed to the next day which is such a “value date” and the Management Fee will accrue to such date.

### **2.4.2 Applications**

Metal Securities may be created at any time during the term of this Prospectus. There is no maximum or minimum number of Metal Securities that may be applied for. Only Authorised Participants may lodge an Application Form.

Payment for new Metal Securities must be made by the Authorised Participant depositing in the Unallocated Account by close of business London time on the day prior to the Settlement Date an amount of Bullion equal to the aggregate Metal Entitlement of the Metal Securities applied for (such deposit also constituting payment of the nominal value of the Metal Shares which carry such Metal Entitlement), calculated as at the Settlement Date (rounded up to the nearest 0.001 troy ounce, or fine troy ounce in the case of gold).

An Application received by the Registrar by 4.30 p.m. AEST (day T) will generally enable the Applicant to receive the new Metal Securities in their CHES account three ASX Business Days later (T+3), provided the Applicant has deposited the Bullion into the Unallocated Account (before day T+3).

Deposits should be made as unallocated Bullion loco London (in the case of gold and silver) and loco Zurich (in the case of platinum and palladium). New Metal Securities will only be issued after the Bullion is deposited in the Unallocated Account. Once in the Unallocated Account, the Custodian will then allocate all the Bullion (other than an amount less than one Good Delivery bar) by transferring such Bullion to the Allocated Account; allocation is generally expected to be completed the same day (although in exceptional circumstances platinum and palladium may take a day or two longer to allocate).

### **2.4.3 Redemptions**

A Holder may, at any time, by lodging a valid Redemption Notice with the Registrar, require the redemption of all or any of its Metal Securities. A Holder may elect payment on Redemption to be in metal (the Metal Delivery Method) or cash (the Metal Sale Method) but may only elect the former if they have an unallocated metal account

with a bullion dealer in London, who is a member of the LBMA or LPPM, to which such metal is to be transferred. Redemptions will be effected on the Settlement Date or such later date as requested by the Holder.

A Holder who is not an Authorised Participant may only require the redemption of any or all of its Metal Securities if they lodge a valid Redemption Notice and deliver the Metal Securities being redeemed to the Issuer by depositing them into an appropriate CHES account in the name of the Issuer or the Registrar and giving correct delivery free of payment instructions in CHES (or otherwise deliver such Metal Securities to the Issuer by agreement with the Issuer). Redemption Notices will not be treated as having been lodged until the Metal Securities have been so delivered to the Issuer.

Redemptions using the Metal Delivery Method shall be made by the Custodian, on approval of the Trustee, by withdrawing Bullion from the Metal Accounts in an amount equal to the aggregate Metal Entitlement of the Metal Securities being redeemed, calculated as at the Settlement Date (rounded down to the nearest 0.001 troy ounce, or fine troy ounce in the case of gold), and delivering the same to the unallocated metal account of the redeeming Holder. To the extent required, Bullion will be de-allocated from the Allocated Account to the Unallocated Account before being transferred to the Holder's account on the Settlement Date and such transfer shall settle the Delivery Obligations in respect of such Metal Security (including the redemption of the Metal Share). For platinum and palladium, the Custodian will only be able to effect the transfer after the Bullion has been credited to the Custodian's account with its Zurich clearing bank and this may take a day or two longer to occur. If so, the Settlement Date will be postponed to such later date. A Holder who is an Authorised Participant must deposit the Metal Securities being Redeemed with the Registrar by not later than 4.00 p.m. AEST on the Settlement Date and payment for redemption will only be made after the Registrar has confirmed to the Custodian receipt of the Metal Securities. Redemption Notices lodged with the Registrar by 4.30 p.m. AEST (day T) with the Metal Securities deposited by 4.00 p.m. AEST on the Settlement Date (that is, by T+3) will generally enable an Authorised Participant to receive their Bullion the same day during London business hours. Redemption Notices lodged after 4.30 p.m. (AEST time) on a Business Day will be treated as having been lodged on the next Business Day.

Redemptions using the Metal Sale Method will follow the same procedures as the Metal Delivery Method except that the Trustee will sell Bullion to the Metal Sale Counterparty pursuant to the Metal Sale Counterparty Agreement in an amount equal to the aggregate Metal Entitlement of the Metal Securities being redeemed, calculated as at the Settlement Date (rounded down to the nearest 0.001 troy ounce, or fine troy ounce in the case of gold). The Bullion will be sold in US dollars at the Fixing Price for such type of Bullion on the Redemption Notice Date. Once the proceeds are received, they will be paid in US dollars (or in Australian dollars if through CHES), less any Redemption Fee, on the Settlement Date, that is, on a T+3 basis.

Neither the Trustee nor the Issuer shall be responsible or liable for any failure by the Custodian (or the Metal Sale Counterparty) to effect a payment of Bullion (or dollars) in accordance with the instructions of the Trustee and/or the Issuer. However, in the event of such failure, the Trustee shall to the extent practicable assign to the redeeming Holder its claims in relation to such Bullion (or dollars) in satisfaction of all claims of such Holder in respect of the Metal Securities to be redeemed and the Holder shall have no further claims against the Issuer or the Trustee.

## **2.5 Authorised Participants**

Only Authorised Participants may deal with the Company in applying for Metal Securities - all other persons must buy Metal Securities through trading on the ASX. It is generally expected that only Authorised Participants will redeem Metal Securities and that other persons will realise their investment by trading on the ASX rather than redeeming directly with the Issuer.

A person can only be an Authorised Participant if: (a) it is a bank, securities house or other market professional approved by the Company (in its absolute discretion); and (b) it is an authorised person, being a person who holds an AFS Licence as authorised by ASIC for the purposes of the Corporations Act. An Authorised Participant must also have been approved by the Company and may be subject to certain terms dealing with, amongst other things, the rights and obligations of the Authorised Participant in relation to applying for and redeeming Metal Securities. The names of all Authorised Participants at any time will be published on the website of the Company's parent company at [www.etfsecurities.com](http://www.etfsecurities.com).

The Company will use its reasonable endeavours to ensure that at all times there are at least two Authorised Participants.

## 2.6 Trading Metal Securities on the ASX

The application and redemption processes described above are intended to ensure that Metal Securities will have sufficient liquidity and that the price at which they trade on the ASX will track the relevant Bullion price. Further, the parent company of the Issuer intends to have agreements with one or more market-makers requiring them to continually make a market on the ASX in all of the Metal Securities.

The market value of the Metal Securities trading on the ASX may be affected by:

- the price of the underlying Bullion for the class of Metal Security, expressed in Australian dollar terms;
- the bid/offer spread on the ASX for Metal Securities, which may be impacted by the bid/offer spreads in the underlying Bullion markets and the A\$/US\$ foreign exchange market;
- the Management Fee Rate;
- the Application Fee and Redemption Fee payable on Metal Securities;
- the volatility and liquidity of the Metal Securities in trading; and
- the degree of comfort investors have with all the contractual arrangements underlying the Metal Securities.

## 2.7 Rights of Metal Security Holders

Holders of Metal Securities have the right to:

- redeem Metal Securities;
- vote on any proposal that affects rights attached to a Metal Security (except the issue of new Metal Securities or the redemption of Metal Securities on issue); and
- vote on any proposal to wind up the Company and vote during the winding up of the Company.

Holders of Metal Securities have no other rights and in particular are not entitled to:

- any right to the payment of any dividends;
- any rights of participation in any surplus assets and profits of the Company;
- priority of payment of capital in relation to other classes of shares, except on the winding up of the Company.

Holders of Metal Securities do not have any direct rights against the Custodian and must rely on the Trustee to enforce the obligations of the Custodian under the Custodian Agreements.

## **3 THE METAL**

### **3.1 Where is the Metal?**

All gold and silver will be held by the Custodian at its London vault premises. Platinum and palladium will be held by the Custodian at its London vault premises or by Zurich Sub-Custodians at their Zurich vault premises. Bullion may be held elsewhere by the Custodian or a Sub-Custodian on a temporary basis prior to Bullion being transported to such vault premises or as part of a creation or redemption process. The Custodian will be responsible for the transportation, handling and any costs associated with moving Bullion to or from its London vault premises and between any vaults of sub-custodians.

As at the date of this Prospectus the Sub-Custodians directly appointed by the Custodian are the Bank of England (with respect to gold only), The Bank of Nova Scotia (ScotiaMocatta), Deutsche Bank AG, JPMorgan Chase Bank, N.A., UBS AG, Barclays Bank PLC, Johnson Matthey plc (with respect to silver only), Brink's Global Services Inc. and ViaMat International.

All Bullion for the Metal Securities will be held in allocated form pursuant to the terms of the Custodian Agreements except that some Bullion may be held in unallocated form on a short term basis when Bullion is in the process of being allocated or de-allocated in connection with creations and redemptions of Metal Securities or any residual portion that is too small to make up a whole Good Delivery bar.

Bullion held in allocated form is not a credit risk against the Custodian but represents direct ownership of the metal, whereas Bullion held in unallocated form is an unsecured credit risk against the Custodian.

*See Sections 3.5.4 and 3.5.5 for the meaning of allocated and unallocated Bullion.*

### **3.2 Storage and Insurance of Metal**

The Custodian (or one of its affiliates) has, pursuant to the Custodian Agreements, agreed to make such insurance arrangements from time to time in connection with its custodial obligations with respect to Bullion held in allocated form as it considers appropriate. The Custodian has no specific obligation to insure such Bullion against loss, theft or damage and the Issuer does not intend to insure against such risks. In addition, the Trustee is not responsible for ensuring that adequate insurance arrangements have been made, or for insuring the Bullion held in the Metal Accounts, and shall not be required to make any enquiry regarding such matters.

The Custodian will be responsible for the safekeeping of the Bullion held in the Metal Accounts. The primary business activity of the Custodian in respect of its role to the Issuer and the Trustee is to act as custodian of Bullion. The Custodian will maintain custody of the assets on both a book-entry or unallocated basis and an allocated basis.

The Custodian Agreements contain provisions limiting the liability of the Custodian and an indemnity in favour of the Custodian which are restricted to exclude matters arising by reason of loss or damage arising as a result of fraud, negligence or material breach by the Custodian in the performance of its duties. The Custodian may make use of sub-custodians and depositories in the exercise of its functions.

The Custodian will charge a fee for its services under the Custodian Agreements (which is payable by the parent company of the Issuer and not by the Issuer) at an annual rate of 10 basis points on the first 1m oz and 6 basis points thereafter for gold, 10 basis points for silver and 14 basis points for platinum and palladium, in each case based on the aggregate US dollar value of Bullion held in the Allocated Account (with no minimum fee), calculated daily and payable monthly or quarterly in arrear (as determined by the Custodian).

The Custodian Agreements each have a fixed term up to and including 31 March 2011 (but may be terminated earlier in certain circumstances) and will continue until such date unless either the Issuer or Custodian gives notice in accordance with the terms of the agreements. The Issuer and the Trustee may elect to extend the Custodian Agreements or enter into new custodian agreements with the Custodian or an alternative custodian from 1 April 2011. The Issuer will use reasonable endeavours to negotiate any extension or alternative custodian agreements on substantially similar terms as the Custodian Agreements. Upon entry into any new custodian agreements or extension or renewal of the existing Custodian Agreements, the Issuer will publish details of the new arrangements on its website at [www.etfsecurities.com](http://www.etfsecurities.com)

*See Section 8.1 for more details on the Custodian Agreements.*

### **3.3 Details of the Custodian**

HSBC Bank USA, National Association is a wholly owned subsidiary of HSBC Holdings plc which acts through its London branch at 8 Canada Square, London E14 5HQ and provides custody and transfer facilities from time to time pursuant to the Custodian Agreements.

The Custodian is a corporation organised under the laws of New York and is subject to supervision by the Office of the Comptroller of Currency, the Federal Reserve Bank of New York, the Federal Deposit Insurance Corporation. In addition to supervision and examination by the US federal authorities, HSBC Bank USA, N.A.'s London office is regulated by the United Kingdom Financial Services Authority (the "FSA"). HSBC Bank USA, N.A. is the principal subsidiary of HSBC USA Inc. which had total assets of US\$186.441 billion as at 30 June 2010.

The Custodian is regulated by the FSA, but the custodial services provided by the Custodian and any Sub-Custodian under the Custodian Agreements are presently not a regulated activity subject to the supervision and rules of the FSA.

The Custodian and any of its affiliates may from time to time purchase or sell Metal Securities for their own account, as agent for their customers and for accounts over which they exercise investment discretion.

The Custodian does not warrant the contents of this Prospectus, nor is it involved in the management, administration or net asset value calculation of the Metal Securities.

### **3.4 Value Added Tax**

Silver, platinum and palladium are subject to UK value added tax ("VAT") of 20 per cent. when imported into the United Kingdom (except those arrivals from within the EU which are not subject to such import VAT). The VAT can be reclaimed as long as the importer is a member of the LBMA (in the case of silver) and the LPPM (in the case of platinum and palladium) and the metals are kept within the London "black box" clearing system. Investment gold is zero rated.

The Custodian is a member of both the LBMA and the LPPM and thus any VAT charged to the Custodian under the Programme is reclaimable. The processes designed by the Custodian for the benefit of the Issuer means that Metal Securities should not accrue any future irrecoverable VAT charges, although if the rules for VAT or importation were changed, it is possible that Metal Securities could be liable for irrecoverable VAT when the Bullion is imported into the UK. However, under current rules, if upon redemption the Holder requires physical delivery outside of the "black box" system then they will be liable for VAT.

In respect of metals coming in from outside the EU, they can be brought straight into the bonded warehouse which will mean that as they are not in free circulation no import VAT charge arises. They can be traded whilst remaining in bond, without a VAT charge arising. Storage charges for metals in bond do not attract a VAT charge, whereas storage charges for metals that are outside the bond but fall within the reliefs of the London "black box" clearing system are subject to VAT.

Pursuant to the Custodian Agreements, the Custodian (and not the Issuer or Trustee) is liable for any VAT.

### **3.5 The London and Zurich Bullion Markets**

#### **3.5.1 The LBMA and LPPM**

Clearing in the physical precious metals market is primarily centred in London for silver and gold and in Zurich and London for platinum and palladium. There are two trade associations which act as the coordinator for activities conducted in these markets - the London Bullion Market Association (LBMA) and the London Platinum and Palladium Market (LPPM). The roles of both these associations include maintaining a "Good Delivery" list and ensuring that the physical bars meet the minimum standard of quality, coordinating market clearing and vaulting, promoting good trading practices and developing standard documentation.

### 3.5.2 Good Delivery

“Good Delivery” is the list of specifications to which a bar/ingot must adhere to be accepted for trading physical metal in the London precious metal markets. The standards required for gold and silver bars to be included in the “Good Delivery Lists” are set out in “The Good Delivery Rules for Gold and Silver Bars” published by the LBMA. The standards required for platinum and palladium ingots to be included in the “London/Zurich Good Delivery List” are set out on the LPPM website.

A summary of these appear in the table below:

	Gold	Silver	Platinum	Palladium
Form	bar	bar	Plate or ingot	Plate or ingot
Minimum fineness/purity	99.5%	99.9%	99.95%	99.95%
Weight	350oz to 430oz	750oz to 1,100oz	1kg to 6kg (32 to 192 oz)	1kg to 6kg (32 to 192 oz)
Measure	fine troy oz	troy oz	troy oz	troy oz

The actual quantity of pure gold in a bar is expressed to three decimal places and is calculated by multiplying the gross weight (in ounces, to three decimal places) by the fineness (in per cent., to two decimal places). For example, a gold bar with a gross weight of 404.075 troy ounces and a fineness of 99.58 per cent. would be recorded as having a fine gold content of 402.377 fine troy ounces (there is no rounding up unless the fourth decimal is a nine).

Even though a variety of smaller and exact weight bars are available in the market, the Issuer will only issue securities which are backed by Good Delivery bars.

### 3.5.3 Location

Gold and silver traded in the London market is generally on a loco London basis, meaning the metal is physically held in vaults in London or is transferred into accounts established in London. The basis for settlement and delivery of a loco London spot trade is payment (generally in US dollars) two business days after the trade date against delivery. Delivery of the metal can either be by physical delivery or through the clearing systems to an unallocated account.

Trading of platinum and palladium is similar to that of gold and silver except that the metals are usually traded in both Zurich and London and on a loco Zurich basis.

### 3.5.4 Allocated Accounts

An allocated account is an account held with a dealer in a customer’s name evidencing that uniquely identifiable bars of metal have been “allocated” to the customer and are segregated from other metal held in the vault of that dealer. The client has the beneficial title to this metal with the dealer holding it as custodian.

### 3.5.5 Unallocated Accounts

Most metal traded in the London and Zurich markets is traded and settled in unallocated form. Bullion held in this form does not entitle the holder to specific bars of metal but gives the holder a right to require the delivery of certain amounts of metal. Subject to the terms of a client’s account agreement, a client may make exchanges between allocated and unallocated accounts (provided the client has a sufficient balance).

### 3.5.6 Trading Unit

The trading unit for gold is one fine troy ounce (“fine” meaning pure metal, i.e. the actual gold content based on 100 per cent. purity) and for silver, platinum and palladium is troy ounces (since the word “fine” is not used, the weight is irrespective of purity). The conversion factors between troy ounces and metric used by the Associations are: one troy ounce equals 31.1034768 grams and one kilogram equals 32.1507465 troy ounces.

### 3.5.7 The Fixing Price

The London market provides a unique metal fixing service whereby the Fixing Price represents the matching of orders from customers throughout the world. The fixings in each of the Relevant Markets takes place by

telephone on every day on which members are open for dealing in London. The Fixing Price should be the price at which all buying and selling orders declared by members at the fixing can be matched and it is the responsibility of the Chairman of the fixing to determine when this occurs.

There are five gold fixing members - all of whom are market making members of the LBMA. They are the Bank of Nova Scotia (ScotiaMocatta), Barclays Bank Plc, Deutsche Bank AG, HSBC Bank USA, N.A. and Société Générale. Three market making members of the LBMA conduct the silver fixing meeting under the chairmanship of The Bank of Nova Scotia (ScotiaMocatta). The other two members of the silver fixing are Deutsche Bank AG and HSBC Bank USA, N.A. There are four members of the LPPM who together make the price fixings in platinum and palladium. These are J. Aron & Company, a division of Goldman Sachs International, Engelhard Metals Limited, HSBC Bank USA, N.A. London Branch and Standard Bank London Limited.

The fixings make it possible for any interested party, be they supplier, customer, dealer or investor, to trade at the price at which every current interest is satisfied. The Fixing Prices are fully transparent benchmarks and are widely accepted as the basis for pricing spot transactions as well as a variety of other transactions. A Fixing Price is determined twice a day, at the following London times:

	<b>Gold</b>	<b>Silver</b>	<b>Platinum</b>	<b>Palladium</b>
Fixing times (approximate)	10.30	12.00	09.45	09.45
	15.00		14.00	14.00

### **3.5.8 Vaulting and Clearing**

Certain members of the Relevant Associations offer clearing services. They may use their own vaults for storage of physical metal and/or have the use of storage facilities under security with another company. The present Custodian is a member of both associations. The Company believes that presently the Custodian and its affiliated entities are one of the largest precious metal clearers in the market. The clearing members of both associations use a daily clearing system whereby those members utilise the unallocated metal they maintain between each other for the settlement of all mutual trades and third party transfers. This system is designed to avoid the security risks and costs involved in the physical movement of the metals.

### **3.5.9 Documentation**

The Relevant Associations have developed and introduced a number of standard agreements which cover the terms and conditions for operating allocated and unallocated accounts and for dealing in spot metal transactions. In all dealings in metal the Company, to the extent possible, will use the standard clearing documentation, amended as required by the Trustee.



## **4 THE BUSINESS OF ETFS METAL SECURITIES AUSTRALIA LIMITED**

### **4.1 Background and Corporate Structure**

The Company was founded in September 2002 and on 28 March 2003 it was admitted to the official list of the ASX and the ETFS Physical Gold securities (then known as Gold Bullion Securities) commenced trading that day. That listing of a gold-backed product on a stock exchange was a world first and precipitated the creation of similar exchange traded gold products around the world, which, as at 6 January 2011, in aggregate now hold some 69 million ounces of physical gold, worth almost US\$97 billion.

The Company is administered by ETFS Management Company (Jersey) Limited and is a wholly owned subsidiary of ETF Securities Limited. The management team and controlling shareholders who founded the Company are the same persons who now run and own the parent company. ETFSL is based in Jersey and has 133 exchange traded commodities listed on the London Stock Exchange and other exchanges in Europe, with total assets under management of over US\$25 billion as at the date of this Prospectus.

The Company has three directors and two of them, being the Chairman and Dr Vince FitzGerald, have been directors since the Company was founded. The other director, Greg Burgess, has been part of the management team since the Company was founded.

The Trustee has to date been a special purpose proprietary company entity, with the same ownership and directors as the Company.

### **4.2 Description of the Company's Business**

Pursuant to the Service Agreement, the Administrator is responsible for supplying all administration services and covering all administrative costs of the Company. These costs will include:

- management and administration services;
- directors fees and insurance;
- shareholder information costs;
- ASX and ASIC reporting and compliance costs;
- ASX fees and share registry costs;
- storage and insurance costs for the Bullion; and
- any promotion costs and other fees and expenses relating to activities which the Administrator decides to undertake from time to time.

In return, the Administrator will receive the Management Fee (as set out in section 2.2 above) plus any Application Fees and Redemption Fees (as set out in section 4.3 below) generated from the issue and redemption of Metal Securities.

The above arrangements mean that the net operating income or loss of the Company is generally nil. Financial statements of the Company as at 31 December 2009 have been lodged with ASIC and can be obtained from, or inspected at, an ASIC office. They can also be downloaded free of charge from the Company's website at [www.etfsecurities.com](http://www.etfsecurities.com).

### **4.3 Application and Redemption Fees**

Application Fees and Redemption Fees will only be payable on Application for and Redemption of Metal Securities and not by investors who buy and sell such on the secondary market, including the ASX.

The Company will charge a fee of A\$1,000 for each Application and Redemption, regardless of the number of Metal Securities to be issued or redeemed.

In the event of a compulsory redemption or where a Holder lodges a Redemption Notice when there are no Authorised Participants, the Issuer will reduce the Redemption Fee to an amount equal to the Issuer's cost in satisfying such Redemption Notice (but not exceeding A\$1,000) and that amount will be charged by the Issuer by way of a deduction from the redemption proceeds due to such Holder.

The Issuer may vary the Application Fees and Redemption Fees at any time after giving 30 days' written notice to Authorised Participants and through the CAP.

#### **4.4 Directors Profiles**

The Directors of the Company at the date of this Prospectus are as follows:

##### ***Graham Tuckwell – Chairman***

Mr Tuckwell is the founder and chairman of ETF Securities Limited, the Issuer, the Administrator and of six other companies issuing exchange-traded commodities: Gold Bullion Securities Limited in Jersey, ETFS Metal Securities Limited, ETFS Oil Securities Limited, ETFS Commodity Securities Limited, ETFS Foreign Exchange Limited and ETFS Industrial Metal Securities Limited. He is also a director of ETFS Fund Company public limited company and of its manager ETFS Management Company Limited in Ireland as well as the President and Chief Executive Officer of ETF Securities USA LLC. Assets under management in those companies are in excess of US\$25 billion as at the date of this Prospectus. Previously, Mr Tuckwell was the founder and managing director of Investor Resources Limited, a boutique corporate advisory firm which specialised in providing financial, technical and strategic advice to the resources industry. He has more than 20 years of corporate and investment banking experience. Prior to the above activities, Mr Tuckwell was Head of Mining Asia/Pacific at Salomon Brothers, Group Executive Director at Normandy Mining responsible for Strategy and Acquisitions and Head of Mergers and Acquisitions at Credit Suisse First Boston in Australia. He holds a Bachelor of Economics (Honours) and a Bachelor of Laws degree from the Australian National University.

##### ***Dr Vince FitzGerald – Non-Executive Director***

Dr FitzGerald is Chairman of The Allen Consulting Group Pty Ltd, an Australian consulting company in economics, public policy and economic and financial regulation. He has been a director of that company since 1989, soon after its foundation. Prior to that time, he was a senior government official in Canberra, his career involving assignments in the Treasury, Prime Minister and Cabinet, Finance (Deputy Secretary), Trade (Secretary) and Employment, Education and Training (Secretary). He is a well known expert on the superannuation industry in Australia, and is a superannuation fund trustee. During the 10 years to 2004, Dr FitzGerald was a director of ING Australia Holdings Ltd and its subsidiaries, and was Chairman of its Audit and Risk Management Committees. He chairs the Risk Management and Audit Committee of the ETF Securities group of companies and is a director of ETF Securities Limited. He holds a Bachelor of Economics (First class Honours in Econometrics) from the University of Queensland and a PhD in Economics from Harvard University.

##### ***Greg Burgess – Non-Executive Director and Company Secretary***

Mr. Burgess is a qualified accountant and has been involved with the business of ETF Securities Limited since its establishment and was previously a non-executive director of various subsidiaries of ETF Securities Limited. Previously, from August 2002 until June 2006, Mr Burgess worked for Investor Resources Limited providing financial and corporate governance consultancy services to Investor Resources Limited and related companies. Mr Burgess has also acted as chief financial officer of Wizard Information Services Pty Limited, held senior positions within the Australian Department of Finance and has been the internal auditor at Normandy Mining Limited. He holds a Bachelor of Arts (Accountancy) from the University of Canberra and is a Fellow of CPA Australia.

## **5 RISK FACTORS**

### **5.1 Bullion Prices**

Bullion prices generally may fluctuate widely and may be affected by numerous factors, including but not limited to:

- global or regional political, economic or financial events and situations, particularly war, terrorism, expropriation and other activities which might lead to disruptions to supply from countries that are major Bullion producers;
- global metal supply and demand, which is influenced by such factors as exploration success, mine production and net forward selling activities by metal producers, jewellery demand, investment demand and industrial demand, net of any recycling;
- financial activities including investment trading, hedging or other activities conducted by large trading houses, producers, users, hedge funds, commodities funds, governments or other speculators which could impact global supply or demand; and
- financial market factors such as investors' expectations with respect to the future rates of inflation, movements in world equity, financial and property markets, interest rates and currency exchange rates, particularly the strength of and confidence in the US dollar.

Bullion prices are generally quoted in US dollars and the price of Metal Securities will be quoted on the ASX in Australian dollars. To the extent that a Holder values Metal Securities in another currency, that value will be affected by changes in the exchange rate between the US dollar and that other currency.

### **5.2 Shortage of Physical Bullion**

Bullion markets, particularly in platinum and palladium, have the potential to suffer from market disruption or volatility caused by shortages of physical Bullion. Such events could result in a spike in Bullion prices. Price spiking can also result in volatile forward rates and lease rates which could result in the bid-offer spread on any stock exchange or market where Metal Securities are traded to widen, reflecting short-term forward rates in the relevant Bullion.

### **5.3 Tracking Error and Liquidity**

At any time, the price at which Metal Securities trade on the ASX may not reflect accurately the price of Bullion represented by such Metal Securities. The application and redemption procedures for Metal Securities and the role of certain Authorised Participants as market-makers are intended to minimise this potential difference or "tracking error". However, the market price of Metal Securities will be a function of supply and demand amongst investors wishing to buy and sell Metal Securities and the bid-offer spread that market-makers are willing to quote for Metal Securities.

With respect to market bid prices, it is expected that investors will usually rely on Authorised Participants to provide investors with better pricing than they can obtain (net of Redemption Fees) if dealing direct with the Company on Redemptions. With respect to market offer prices, if new demand for Metal Securities exceeds the availability of the physical Bullion required to create such new Metal Securities then the issue of new Metal Securities will be restricted and therefore Metal Securities may trade at a premium. Investors who pay a premium risk losing the premium if demand for Metal Securities abates or when new Metal Securities are issued.

Some of the Metal Securities are relatively new securities and have limited trading records. There can be no assurance as to the depth of the secondary market (if any) in Metal Securities, which could affect their liquidity and market price.

### **5.4 Custody and Insurance**

Gold and silver will be held by the Custodian at its London vault premises or temporarily in the vaults of a Sub-Custodian appointed by the Custodian or by a delegate of a Sub-Custodian. Platinum and palladium will be held by the Custodian at its London vault premises or, in the case of some or all of the platinum and palladium, by one or more Zurich Sub-Custodians at their vault premises. Access to such Bullion could be restricted by natural events, such as flooding, or human actions, such as terrorist attack.

The Custodian may make such insurance arrangements in connection with its custodial obligations with respect to Bullion in allocated form as it considers fit. The Custodian has no obligation to insure such Bullion against loss, theft or damage and the Issuer does not intend to insure against such risks. In addition, the Trustee is not responsible for ensuring that adequate insurance arrangements have been made, or for insuring the Bullion held in the Metal Accounts, and shall not be required to make any enquiry regarding such matters.

Accordingly, there is a risk that some or all of the Bullion could be lost, stolen or damaged and the Issuer would not be able to satisfy its obligations in respect of the Metal Securities.

The Custodian Agreements provide that the Custodian has no responsibility for any action of any Sub-Custodians, other than the Zurich Sub-Custodians. The Trustee has no direct relationship with any of the Sub-Custodians other than the Zurich Sub-Custodians. The Trustee's relationship with the Zurich Sub-Custodians is limited to its receipt of confirmation from the Zurich Sub-Custodians that Bullion will be allocated. Accordingly, the Trustee has no rights to direct any Sub-Custodian or any Zurich Sub-Custodian. Its only rights are, in certain circumstances, to direct the Custodian.

The Custodian is regulated by the United Kingdom Financial Services Authority ("FSA"), but the custodial services provided by the Custodian and any sub-custodian under the Custodian Agreements are presently not a regulated activity subject to the supervision and rules of the FSA.

## **5.5 Only Authorised Participants May Apply for or Redeem Metal Securities**

Only Authorised Participants may deal with the Company in applying for Metal Securities - all other persons must buy Metal Securities through trading on the ASX. It is generally expected that only Authorised Participants will redeem Metal Securities and that other persons will realise their investment by trading on the ASX rather than redeeming directly with the Issuer. The Company has agreed to use reasonable endeavours to ensure that at all times there are at least two Authorised Participants. There can, however, be no assurance that there will at all times be an Authorised Participant to deal with the Company in applying for or redeeming Metal Securities.

## **5.6 Early Redemption of Metal Securities**

The Company may, at any time, upon not less than 30 days' notice by an announcement through the CAP to the Holders, redeem all Metal Securities of a particular type.

The Custodian has only agreed to act as Custodian to the Issuer until 31 March 2011. If the Custodian does not agree to act as Custodian beyond such date (or terminates the agreements earlier in certain circumstances - see paragraph 8.1.11 (*Termination*) of Section 8.1 (*Summary of the Custodian Agreement*), then unless the Issuer is able to find a suitable replacement Custodian, the Issuer will elect to redeem the outstanding Metal Securities. In addition the Metal Sale Counterparty Agreement will terminate automatically if the Unallocated Account Agreement is terminated. In the event that no replacement Metal Sale Counterparty Agreement is entered into, the Issuer will elect to redeem the outstanding Metal Securities.

Consequently, an investment in Metal Securities may be redeemed earlier than desired by a Holder.

## **5.7 Performance by the Company and Parties to Material Contracts**

The value of a Metal Security depends on the ability of the Company to perform its obligations under the Trust Deed and the Constitution as well as the ability of various persons to perform their obligations under the material contracts summarised in Section 8 (*Details of the Offer*) of this Prospectus. These obligations are unsecured contractual obligations of the Company or other third parties which will rank equally with other unsecured contractual obligations of these parties other than liabilities mandatorily preferred by law. In particular, any Bullion held in the Unallocated Account will be an unsecured credit risk against the Custodian. Investors must make their own assessment of the ability of the Company and any person involved in performing an obligation under the Transaction Documents in meeting their obligations concerning the Metal Securities.

## **5.8 General Market Risk**

General movements in local and international markets and factors that affect the investment climate and investor sentiment could all affect the level of trading and, therefore, the market price of Metal Securities. These risks are generally applicable to any investment in quoted securities. Investors should be aware that Metal Securities can go down in price as well as up and investors may lose the value of all or part of their investment.

## **5.9 Limited Recourse**

Upon redemption by an Authorised Participant, the Holder only has recourse to:

- the nominal value of the redeemable preference share which is payable by the Issuer; and
- an entitlement to receive delivery of an amount of Bullion equal to the Metal Entitlement from the Trustee pursuant to the Separate Trust over that Bullion.

Should there be insufficient Bullion in the Separate Trust, the Holder will have no recourse to any other assets of the Trustee or the Issuer (except to the extent that the shortfall is due to fraud, wilful default or negligence). If the Custodian should fail to deliver the Bullion from the relevant account, the Trustee may transfer its rights against the Custodian to the Holder in settlement of its obligation to deliver the physical Bullion.

## **5.10 No Representation**

None of the Issuer, the Trustee, any Authorised Participants, or the Custodian makes any representations as to: the suitability of any Metal Securities for any particular investor; the appropriate accounting treatment or possible tax consequences of an investment in any Metal Securities; or the expected performance of any Metal Securities, either in absolute terms or relative to competing investments.

## 6 CONSTITUTION

The terms applicable to the Metal Shares are set out in Annexure 1 to the Constitution, a copy of which is reproduced in full below.

### Annexure 1

#### Additional Terms applicable to Metal Shares

##### A1 The nature of Metal Shares - redeemable preference shares

Metal Shares are preference Shares which are liable to be redeemed by the Company. The terms upon which and the manner in which any redemption is to be effected must be in accordance with this Constitution or as otherwise specified in the conditions of issue of the Metal Share as set out in a Prospectus and the Trust Deed.

##### A2 The issue of various classes of Metal Shares

A Metal Share will relate to an entitlement to the following Beneficial Interest:

- (a) for a Gold Share, one tenth (1/10) of one fine troy ounce of gold;
- (b) for a Silver Share, one troy ounce of silver;
- (c) for a Platinum Share, one tenth (1/10) of one troy ounce of platinum;
- (d) for a Palladium Share, one tenth (1/10) of one troy ounce of palladium; and
- (e) for a Basket Share, four hundredths (4/100) of one fine troy ounce of gold, one hundred and twenty hundredths (120/100) of one troy ounces of silver, one hundredth (1/100) of one troy ounce of platinum and two hundredths (2/100) of one troy ounce of palladium,

(as determined in accordance with the rules of the Relevant Association) unless the terms of issue in the Prospectus provide otherwise.

##### A3 Rights attaching to Metal Shares

All Metal Shares issued by the Company confer on the holders of those Shares the right to vote in each of the following circumstances only and in no others:

- (a) on a Resolution to approve the terms of a buy-back agreement for those Shares;
- (b) on a proposal that affects or amends the rights attached to the Metal Share (other than the issue by the Company of additional Metal Shares, a capital reduction or the redemption of the Metal Shares);
- (c) on a proposal to wind up the Company; and
- (d) during the winding up of the Company.

##### A4 Rights which do not attach to Metal Shares

Metal Shares issued by the Company do not confer on the Holder:

- (a) any right to the payment of any dividends;
- (b) any rights of participation in surplus assets and profits of the Company; or
- (c) priority of payment of capital or dividends in relation to other Shares, except on the winding up of the Company.

##### A5 Obligations of Metal Shareholders

- (a) The Holder of a Metal Share is bound by the terms and conditions set out in this Constitution, any Prospectus issued in relation to the Metal Shares and the Trust Deed.
- (b) The Holder of a Metal Share must ensure that any change to its Registered Address details are immediately notified to the Company for recording in the Register.

## **A6 Redemption of Metal Shares**

- (a) Metal Shares will be redeemed by the Company on the Delivery Date if the Metal Delivery Method applies or on the Redemption Date if the Metal Sale Method applies after the receipt of a valid Redemption Notice for those specific Metal Shares. The Metal Shares may be redeemed earlier than indicated in the Prospectus in accordance with the Trust Deed, or otherwise in accordance with this Constitution.
- (b) If the Company determines to compulsorily redeem a Metal Security in accordance with clause 10.2 of the Trust Deed, the Metal Share comprised in that Metal Security will be redeemed on the date determined in accordance with that clause.
- (c) Subject to clause A15 each Metal Share will be redeemed by the Company paying to the Holder 1/1000th of one cent (0.001 cent) for each Metal Share held by the Holder.

## **A7 The Redemption Notice**

- (a) A Holder may lodge a Redemption Notice with the Company, electing which Delivery Method is to apply in accordance with the Trust Deed.
- (b) Upon receipt of a valid Redemption Notice, the Company will ensure that all things necessary to deal with the Bullion in accordance with Redemption Instructions occur.
- (c) When the Company has fulfilled all its Delivery Obligations, the Company will have discharged all of its obligations to the Holder and the Holder will cease to have any rights or interest in the Company (other than those rights which survive termination if any). The Company's obligations will be discharged upon taking the last action necessary to fulfil its obligations, irrespective of whether the Holder actually receives the Bullion or the Sale Proceeds.
- (d) If an invalid Redemption Notice is received by the Company, the Company may notify the Holder of the invalid Redemption Notice and the reasons for its invalidity so that the Holder may immediately correct the invalidity.
- (e) If the Company acts in good faith and without default or negligence in endeavouring to perform its obligations under this Constitution, it is not responsible or liable to the Holders for any loss suffered in respect of the Bullion including any loss suffered by the Holder upon the Company arranging for the Bullion to be delivered in accordance with the Redemption Instructions.

## **A8 Valid Redemption Notice**

A Redemption Notice is valid only if it is valid in accordance with the terms of the Trust Deed and the Prospectus relating to the issue.

## **A9 [deleted]**

## **A10 Consequences of redemption**

On the Delivery Date if the Metal Delivery Method applies or the Redemption Date if the Metal Sale Method applies, the Company will redeem each Metal Share and the following will occur:

- (a) the Company will, subject to the other provisions in this Constitution, instruct the Trustee to transfer the Bullion to the Holder free and clear of any security interest or third party interest;
- (b) subject to clause A15, the Company will pay the Holder a redemption amount of 1/1000th of one cent (0.001 cent) per Metal Share redeemed on the Redemption Date;
- (c) the Holder's rights and interests in the Metal Share redeemed cease to have effect; and
- (d) the Metal Share will be cancelled by the Company.

## **A11 Risks and Expenses**

On the legal interest in the Bullion transferring to the Holder on the Delivery Date or the Redemption Date, all title to the Bullion and all risks in and relating to the Bullion pass to the Holder. If the Holder elected the Metal Delivery Method, the Holder becomes immediately responsible for all matters relating to the delivery or on-going storage of the Bullion and for the costs, expenses and liabilities in relation to the Bullion. If the Holder

elected the Metal Sale Method, the Holder becomes responsible and liable for the costs associated with sale of the Bullion in accordance with the Metal Sale Method.

## **A12 Delivery of the Bullion**

- (a) The Metal Delivery Method will apply where the Holder has elected for the Metal Delivery Method to apply by returning a completed valid Redemption Notice which specifies the Metal Delivery Method.
- (b) The Metal Sale Method will apply if:
  - (i) the Holder fails to send a valid Redemption Notice specifying the Metal Delivery Method by 5.00pm five Business Days prior to a Compulsory Redemption Date;
  - (ii) if the Metal Delivery Method is elected but through no fault of the Trustee or Company the Bullion is not successfully delivered and is not claimed by the Holder within one calendar month of attempted delivery being made; or
  - (iii) the Holder has elected the Metal Sale Method on its Redemption Notice.

## **A13 Metal Delivery Method**

- (a) If the Metal Delivery Method applies the Company will arrange for delivery of the Bullion to the Holder in unallocated form only and otherwise in accordance with the Redemption Instructions and the Prospectus.
- (b) From the Delivery Date, all title to the Bullion and all risks in and relating to the Bullion pass to the Holder. The Company is not responsible or liable for any loss or damage whatsoever that occurs to the Bullion after the Delivery Date.
- (c) The Company's Delivery Obligations will be satisfied by transferring Bullion to and notifying the Holder of the account details of the Bullion delivery.

## **A14 Metal Sale Method**

- (a) If the Metal Sale Method applies as a result of clause A12(b)(i) or (ii) then the Company may, in its absolute discretion, store the Bullion for up to 12 months from the Redemption Date before selling. In this event, the Holder may claim any Bullion stored and request physical delivery or transfer of the Bullion after payment of all of the Company's costs and expenses.
- (b) If the Metal Sale Method is applicable, the Company undertakes to arrange for the sale of the Bullion on the spot market at the Fixing Price.
- (c) If the Metal Sale Method applies:
  - (i) The Company is irrevocably authorised to accept physical delivery of the Bullion for and on behalf of the Holder from the Trust;
  - (ii) the Holder irrevocably authorises the Company to sell the Bullion on the spot market at the Fixing Price, and the Holder irrevocably directs and authorises the Company or any of its nominees to take all action necessary or desirable to effect the sale by the Company of the Bullion;
  - (iii) the Company will pay the Sale Proceeds as soon as reasonably practicable to the Holder as instructed by the Holder in the Redemption Notice;
  - (iv) the Holder acknowledges and agrees that:
    - (A) the Company agrees to sell the Bullion on behalf of the Holder, as agent for the Holder and the Trustee, on a best efforts basis in the spot market at the Fixing Price;
    - (B) the Holder agrees to accept the price obtained by the Company in accordance with the Prospectus and this Constitution and to sell its Bullion at this price;



- (C) the Company makes no representations or warranties as to the price at which the Company will be able to sell the Bullion or the amount of the Sale Proceeds; and
- (D) to the maximum extent permitted by law, the Company is not responsible or liable for any loss, costs or expense incurred by the Holder as a result of the Company selling the Holder's Bullion on behalf of the Holder, except to the extent that such loss, cost or expense arises as a result of the Company's negligence, default, fraud or dishonesty; and
- (v) when the Company pays the Sale Proceeds to the Holder in accordance with this clause, the Company will have discharged all of its obligations to the Holder and the Holder will cease to have any rights or interest in the Metal Share, the Company or the Trust (other than those rights that survive termination of membership if any).

## **A15 Set Off Rights**

- (a) All monetary obligations imposed on a Holder under this Constitution are:
  - (i) absolute;
  - (ii) free of any right to counterclaim or set off; and
  - (iii) may only be satisfied once the payment has cleared.
- (b) The Company may:
  - (i) set off any amount payable to the Company, the Trust or one of their agents or contractors by a Holder against any amount payable by the Company, the Trust or one of their agents or contractors to the Holder; and
  - (ii) withhold any amount payable by the Company, the Trust or one of their agents or contractors to a Holder in satisfaction of any amount payable to the Company, the Trust or one of their agents or contractors by the Holder.

## **A16 The Metal Delivery and Custody Undertaking**

The Company undertakes to the Holder that:

- (a) the Custody Bank will be an LBMA member clearing bank which uses its own vaults for storage of Bullion or has dedicated storage facilities with another party.
- (b) the Company will arrange for the custody of the Bullion with the Custodian Bank on behalf of the Holder from the time that the Bullion is delivered to the Company (or the Trust) in accordance with the rules and conventions of the Relevant Market up to the Delivery Date. The custody arrangements will be in accordance with standards required by the Relevant Market (disclosed in the Prospectus) from time to time; and
- (d) unless otherwise agreed in writing by the Company, if an Applicant wishes to apply for Metal Shares by transferring Bullion to the Trust in accordance with the Prospectus, the Applicant must arrange for delivery of the Bullion to the Trustee's account at the Custodian Bank loco London (in the case of gold and silver) and loco Zurich (in the case of platinum and palladium).

## **A17 Metal Delivery Representations**

The Company represents and warrants to the Holder as a continuing representation and warranty that:

- (i) the Bullion delivered to the Holder in accordance with the Metal Delivery Method or sold on behalf of the Holder in accordance with the Metal Sale Method is and will be of the quality as represented by the Company in the Prospectus; and
- (ii) the Bullion will be stored in accordance with the standards set out in the Prospectus.

## **A18 Insurance**

The Company undertakes to the Holder that it will retain a Custodian that, as part of the services provided, will organise insurance of the Gold.

## **A19 Appointment of Agents and Contractors**

The Company, may in its absolute discretion, discharge any of its obligations (including without limitation, the delivery of the Bullion) or satisfy or discharge any of its undertakings by engaging agents and/or contractors to perform the obligations or undertakings of the Company or carry out any relevant function of the Company on its behalf.

## **A20 Application by Delivery of Bullion**

When a person or entity subscribes for a Metal Share under a Prospectus, the person or entity must deliver an amount of Bullion equal to the relevant Metal Entitlement to the Unallocated Account of the Trustee with the Custodian which will be held on trust for the benefit of the Holder under the Trust. The nominal value of the Metal Share will be deducted from the Application Fee and will become part of the capital of the Company.

## **A21 Reduction of Capital**

Without limiting clause 11.2 of this Constitution, the Company may reduce its capital to:

- (a) pay any amount to any person or entity, including any Related Body Corporate on account of or as payment for any storage, registry, insurance costs and other expenses of whatever nature relating to the Bullion or any fees whatsoever relating to the Metal Shares; and
- (b) pay any amount to any person or entity, including any Related Body Corporate to otherwise discharge the Company's obligations under the Metal Delivery and Custody Undertakings.

## **A22 Unclaimed Monies or Bullion**

If the Holder :

- (a) fails to take delivery of the Bullion as nominated on the Redemption Notice; or
- (b) fails to accept the Sale Proceeds;

by the day which is 12 months after the Delivery Date then the Bullion or the Sale Proceeds, as the case may be, becomes the sole property of the Company. The Bullion, if not already sold in accordance with clause A14, may be sold by the Company and any Sale Proceeds may be used by the Company to pay for any costs accrued by the Company in relation to the Bullion for the 12 month period and the balance will be used to pay for or reduce any future costs involved in the issue of further Metal Shares or otherwise as determined by the Company.

## **A23 Dealing with Metal Shares**

- (a) A Holder may Deal with its Metal Share and Beneficial Interest only in accordance with this Constitution.
- (b) When a Holder Deals with a Metal Share in any way, then as a result of this provision and without the need for any additional writing or action, an equivalent Dealing between the same parties shall occur in respect of the corresponding Beneficial Interest of the Holder. When a Holder Deals with a Beneficial Interest in any way, then as a result of this provision and without the need for any additional writing or action, an equivalent Dealing between the same parties shall occur in respect of the corresponding Metal Share of the Holder. For example, when an existing Holder (the "old holder") transfers a Metal Share to another person (the "new holder"):
  - (i) all the rights and obligations that attach to that Metal Share, as well as the Beneficial Interest are transferred from the old holder to the new holder;
  - (ii) the old holder will be removed from the Register and the new holder will be added to the Register; and
  - (iii) the old holder ceases to have any rights in relation to the Metal Shares, the Trust or the Company.

If any Holder purports to Deal with a Metal Share without an equivalent Dealing in the corresponding Beneficial Interest or if any Holder purports to Deal with a Beneficial Interest without an equivalent Dealing in the corresponding Metal Share or if any Holder purports to contract out of this clause in any way, the legal and equitable interests in the affected Metal Share and the Beneficial Interest will immediately transfer to the Trustee to hold for the benefit of the largest holder of ordinary shares in the Company at the time of the transfer.

- (c) When an existing Holder deals with a Metal Share in a manner that does not involve the transfer of legal ownership of the Metal Share the Registrar has no duty to record the dealing on the Register.
- (d) The Metal Shares are transferable in accordance with the ASX Rules and ACH Clearing Rules.
- (e) The Metal Shares are CHESS Approved Securities. Certificates will not be issued to Holders.
- (f) The interest in the Bullion, corresponding to a particular Metal Share, will pass to a new Holder upon registration of a transfer of the Metal Share in the Register.

#### **A24 Indemnity, Exclusion and Limitation of Liability**

- (a) The Company, its Related Bodies Corporate, their respective employees, officers, agents and all contractors and sub-contractors (the "Released Parties") shall not be liable for any claim, loss, damage, liability, obligation, suit, proceedings, action, costs or expenses (whether arising at law, in equity or under statute) including, without limitation, indirect or consequential loss and/or loss of profit ("Claims") arising out of, in connection with or in any way related to Metal Shares including matters that are standard exclusions from any insurance coverage obtained by the Company or provided by the Custodian from time to time.
- (b) The Holder releases the Released Parties from, and indemnifies the Released Parties in respect of, all such Claims.

## 7 TRUST DEED

The operative provisions of the Trust Deed are set out in full below, except for the Definitions and Interpretation provision in section 1 of the Trust Deed. Defined terms used in the Trust Deed are set out in the Glossary in Section 11 of this Prospectus.

The Trust Deed was amended and restated on 22 December 2009 in order to clarify the arrangements applicable to Applicants with respect to the application and redemption of Metal Securities.

These changes were made pursuant to the provisions of clause 17.3(a)(i) of the Trust Deed and did not require a meeting of Holders of existing securities.

### Extract from Trust Deed

#### 2. ACQUISITION OF BULLION

- (a) The Issuer or its agent may accept the transfer of Subscription Metal by an Applicant for or on behalf of the Trustee as consideration for the issue of a Metal Security.
- (b) A transfer of Subscription Metal by an Applicant to the Trustee must be conducted and will only be accepted in accordance with the terms of the Prospectus and the Transaction Documents.

#### 3. THE METAL SECURITIES

##### 3.1 Applicant becoming a Holder

- (a) The Applicant becomes a Holder on the date the Registrar registers the Applicant as a holder of a Metal Security.
- (b) On the transfer of any Subscription Metal by an Applicant, the Trustee will hold that Subscription Metal or any substituted asset as bare Trustee for the Applicant. The Issuer will ensure the Trustee is informed of an acceptance of an Application. Upon receiving that notice the Trustee will then continue to hold the Beneficial Interest in the Subscription Metal or any substituted asset, and subsequently the Bullion, as bare Trustee for the Holder. The Applicant will be absolutely entitled to the Subscription Metal or any substituted asset and once the Applicant becomes a Holder, as Holder it will be absolutely entitled to the Bullion.

##### 3.2 Dealing with Metal Securities

- (a) An Applicant or Holder may Deal with its Beneficial Interest only in accordance with this Trust Deed, prospectus for the Metal Shares and the Constitution.
- (b) When a Holder Deals with a Metal Share in any way, then as a result of this provision and without the need for any additional writing or action, an equivalent Dealing between the same parties shall occur in respect of the corresponding Beneficial Interest of the Holder. When a Holder Deals with a Beneficial Interest in any way, then as a result of this provision and without the need for any additional writing or action, an equivalent Dealing between the same parties shall occur in respect of the corresponding Metal Share of the Holder. For example, when an existing Holder (the "**old holder**") transfers a Metal Share to another person (the "**new holder**"):
  - (i) all the rights and obligations that attach to that Metal Share, as well as the Beneficial Interest are transferred from the old holder to the new holder;
  - (ii) the old holder will be removed from the Register and the new holder will be added to the Register; and
  - (iii) the old holder ceases to have any rights in relation to the Metal Shares, the Trust or the Issuer.

If any Holder purports to Deal with a Metal Share without an equivalent Dealing in the corresponding Beneficial Interest or if any Holder purports to Deal with a Beneficial Interest without an equivalent Dealing in the corresponding Metal Share or if any Holder purports to contract out of this clause in any way the legal and equitable interests in the affected Metal Share and the Beneficial Interest will

immediately transfer to the Trustee to hold for the benefit of the largest holder of ordinary shares in the Issuer at the time of the transfer.

- (c) When an existing Holder deals with a Beneficial Interest in a manner that does not involve the transfer of ownership of the Beneficial Interest the Registrar has no duty to record the dealing on the Register.
- (d) The Metal Securities are transferable in accordance with the ASX Rules and ACH Clearing Rules.
- (e) The Metal Securities are CHESSE Approved Securities. Certificates will not be issued to Holders.
- (f) The Beneficial Interest in the Bullion, corresponding to a particular Metal Security, will pass to a new Holder upon registration of a transfer of the Metal Share in the Share Register as set out in clause 9.

## **4. INSTRUCTIONS**

### **4.1 Trustee's Instructions**

- (a) Each Holder and Applicant authorises the Issuer to instruct the Trustee to act on all matters relating to the amount paid by the Applicant for the Bullion or any substituted asset or the Bullion, provided those instructions are in accordance with the terms of the Transaction Documents to which the Issuer is a party.
- (b) Each Holder and Applicant authorises the Trustee to accept the Issuer's instructions in accordance with clause 4.1(a) and authorises the Trustee to request that the Issuer, or a third party, as agent, carry out the Trustee's duties on its behalf.

## **5. SEPARATE TRUSTS**

- (a) A Separate Trust is established in respect of:
  - (i) the Subscription Metal or any substituted asset whose Beneficial Interest is held by an Applicant; and
  - (ii) the Bullion whose Beneficial Interest is held by a Holder
- (b) The Trustee is the trustee of each Separate Trust. The initial Trustee is appointed the first Trustee of each Separate Trust.

## **6. STATUS OF METAL SECURITIES**

The parties acknowledge that the Metal Securities and any interests related to them are not interests in a managed investment scheme for the purposes of the *Corporations Act*.

## **7. AGGREGATION**

The Trustee, the Issuer and the Registrar must keep separate, and not pool, the interests or the property of the Separate Trusts and the Bullion, but each may administer the Separate Trusts, and each Holder and Applicant acknowledges, that:

- (a) all Subscription Metal held for a particular Applicant from time to time may be aggregated;
- (b) all Bullion held for a particular Holder from time to time may be aggregated;
- (c) all Beneficial Interests held by a particular Applicant or Holder from time to time may be aggregated by the Registrar;
- (d) the legal interest in all trust assets including Bullion is held by the Trustee (or a nominee permitted under this Trust Deed) ;
- (e) any money received by the Trustee in respect of the Separate Trusts may be deposited in the same bank account; and
- (f) accounting, taxation and other records or returns may be prepared on a consolidated basis in accordance with this Trust Deed.

## **8. APPLICANT'S AND HOLDERS' RIGHTS AND LIABILITIES**

- (a) Each Applicant or Holder is bound by the terms of this Trust Deed and is entitled to the benefit of the terms of this Trust Deed.
- (b) Subject to this Trust Deed, an Applicant or Holder does not indemnify the Trustee or any creditor of the Trustee in respect of any liabilities of the Trustee arising from:

- (i) any of the Separate Trusts; or
- (ii) the exercise of the Trustee's rights under this Trust Deed; or
- (iii) the discharge of the Trustee's duties under this Trust Deed.

## **9. BENEFICIAL INTEREST**

- 9.1 A Holder of a Metal Security will immediately acquire a Beneficial Interest in the Bullion:
- (a) at the time the Trustee takes delivery of the Bullion if the Metal Security is acquired by the Holder as a consequence of a new issue of Metal Securities; or
  - (b) on becoming registered as a Holder of a Metal Share if the Holder acquired the Metal Share in the secondary market.
- 9.2 An Applicant will retain a Beneficial Interest in the Subscription Metal or any substituted asset at the time the Applicant transfers the Subscription Metal as consideration for a Metal Security.
- 9.3 A Holder will be absolutely entitled to the Bullion that corresponds to the Metal Share at all times and an Applicant will be absolutely entitled to the Subscription Metal or any substituted asset.
- 9.4 Upon the transfer of a Metal Share from the transferor Holder to the transferee Holder, the Beneficial Interest in the Bullion will automatically transfer to the transferee Holder upon the transferee Holder becoming registered as the Holder of the Metal Share without any further action being required. The Issuer will ensure that an appropriate entry is recorded in the Share Register and the Register.

## **10. REDEMPTION OF THE METAL SECURITIES**

### **10.1 Redemption**

- (a) Holders may at any time redeem all or part of their holding of Metal Securities by lodging with the Issuer or its agent a Redemption Notice in the form prescribed by the Issuer and in accordance with this 10.1.
- (b) A Redemption Notice:
  - (i) must contain an election by the Holder as to:
    - (A) the class of Metal Security the Holder wishes to redeem;
    - (B) the number of Metal Securities the Holder wishes to redeem, which must not be less than the Minimum Redemption Amount; and
    - (C) the Delivery Method applicable to those Metal Securities;
  - (ii) must specify an intended Delivery Date or Redemption Date (as applicable) in respect of the Metal Securities specified in the Redemption Notice, which shall not be earlier than three Business Days after the Redemption Notice Date;
  - (iii) must be lodged with the Issuer before 5.00pm on a Redemption Date;
  - (iv) if the Holder elects the Metal Delivery Method, must nominate appropriate custodial arrangements loco London (in the case of gold and silver) and loco Zurich (in the case of platinum and palladium); and
  - (v) is irrevocable once it has been given to the Issuer.
- (c) Redemption Notices lodged with the Issuer after 5.00pm on a Business Day or lodged with the Issuer on a day which is not a Business Day will be deemed to be lodged on the following Business Day.
- (d) Upon receipt of a valid Redemption Notice, the Issuer will instruct the Trustee to do all things necessary to deal with the Bullion in accordance with the Redemption Instructions and in accordance with Annexure 1 of the Constitution.
- (e) If the Holder elects the Metal Delivery Method, clause A13 of the Constitution will apply.
- (f) If the Holder elects the Metal Sale Method, then clause A15 of the Constitution will apply.
- (g) When the Trustee has fulfilled all its instructions under this clause 10, the Trustee will have discharged all of its obligations to the Holder and the Holder will cease to have any rights or interests in the Beneficial Interest or the Metal Trust (other than those rights which survive termination if any). The

Trustee's obligations will be discharged upon taking the last action necessary to fulfil its instructions, irrespective of whether the Holder actually receives the Bullion or the Sale Proceeds.

- (h) After receipt of a valid Redemption Notice in accordance with clause 10.3, on either the Delivery Date if the Metal Delivery Method applies or the Redemption Date if the Metal Sale Method applies the following shall occur:
- (i) the legal title to the Bullion automatically passes to the Holder and the Holder's Beneficial Interest merges with the legal interest
  - (ii) the Metal Share shall be redeemed in accordance with the terms of the Constitution; and
  - (iii) the Separate Trust is dissolved.
- (i) The Holder must pay to the Issuer a redemption fee in accordance with Prospectus relating to the Metal Securities.

#### 10.2 **Compulsory Redemption**

- (a) The Issuer (for and on behalf of the Trustee) may in its absolute discretion decide to redeem all or part of the Metal Securities in accordance with this clause 10 and will be entitled to determine the Redemption Date for the purposes of this clause 10 and the Trust Deed in general and which shall be not less than 30 days following notice of early redemption by the Issuer to each holder.
- (b) If practicable, the Issuer will provide the Holder with a notice of an early redemption under clause 10.4(a) requesting the Holder to provide a valid Redemption Notice within such time as the Issuer in its discretion may specify. However, the Issuer is under no obligation to do so.

#### 10.3 **Valid Redemption Notice**

- (a) A Redemption Notice is valid only if:
- (i) the Redemption Notice specifies all of the information required under clause 10.1(b) of this Deed; and
  - (ii) the Holder has nominated one Delivery Method only for each Metal Security; and
  - (iii) the Redemption Notice is given by the person who, to the knowledge, or in the reasonable opinion of the Issuer, was registered as the Holder of that Metal Security at 5.00pm on the Redemption Date. Every other Redemption Notice given in respect of that Metal Security is invalid; and
  - (iv) the Holder has provided sufficient cleared funds for payment of all costs, expenses and Transfer Taxes (if any) payable by the Trustee associated with Completion; and
  - (v) the Holder has agreed that the Issuer may disclose information provided by the Holder within the Redemption Notice (where the consent requested from the Holder and form of the disclosure required shall comply with the requirements of the *Privacy Amendment (Private Sector) Act 2000*) to any third party specified on the Redemption Notice as being a party that shall be responsible for effecting delivery or storage of the Bullion; and
  - (vi) the Redemption Notice is not given or received during a period when the Metal Securities are suspended from trading or quotation, and where the Metal Securities subsequently recommence trading or quotation. In such circumstances if a Holder wishes to redeem a Metal Security at the end of the suspension the Holder must send in a new Redemption Notice; and
  - (vii) the Holder lodges the Redemption Notice with the Issuer by 5.00 pm on the Redemption Date.
- (b) The Issuer may in its absolute discretion determine whether a Redemption Notice is valid. The Issuer will promptly notify the Holder that a Redemption Notice is invalid.

#### 10.4 **Failure to provide Redemption Notice following Notice of Compulsory Redemption**

- (a) If, following notice by the Issuer of compulsory redemption of Metal Securities a Holder fails to lodge a valid Redemption Notice specifying the Metal Delivery Method by 5.00pm five Business Days prior to the Compulsory Redemption Date, or if the Issuer determines that it is not practicable to provide the Holder with notice of the early redemption, then on the Delivery Date:
- (i) the legal title to the Bullion automatically passes to the Holder and the Holder's Beneficial Interest merges with the legal interest; and
  - (ii) the Metal Share shall be redeemed in accordance with the terms of the Constitution; and

- (iii) the Separate Trust is dissolved; and
  - (iv) the Holder is deemed to have elected the Metal Sale Method and instructed the Trustee, as its agent, to sell its Bullion. The Holder authorises the Issuer to instruct the Trustee in relation to sale of the Bullion in accordance with clause A14 of the Constitution.
- (b) All Sale Proceeds of the Bullion will be sent to the Holder's Registered Address, in accordance with clause A14 of the Constitution.

#### 10.5 Sale of Bullion

- (a) If the Metal Sale Method applies in accordance with clause A14 of the Constitution, then the Holder instructs or is deemed to instruct the Trustee, as its agent, to arrange for the sale of the Bullion in accordance with clause A14 of the Constitution and irrevocably authorises the Trustee to appoint the Issuer its agent and to act in accordance with the Issuer's instructions.
- (b) The Trustee makes no representation or warranty as to the price at which the Bullion will be sold or the amount of the Sale Proceeds.
- (c) Unless agreed otherwise, the Holder agrees to accept the price negotiated or by the Issuer and to sell its Bullion at this price.
- (d) The Holder indemnifies the Trustee (and its agent) from any cost, expense, loss or liability incurred by the Trustee in relation to the sale of the Bullion in accordance with the Metal Sale Method.
- (e) The Trustee is not liable for any cost, expense, loss or liability incurred by the Holder in relation to the sale of the Bullion in accordance with the Metal Sale Method.

### 11. RISK AND EXPENSES

The legal interest in the Bullion transfers to the Holder on the Delivery Date if the Metal Delivery Method Applies or on the Redemption Date if the Metal Sale Method applies, and all title to the Bullion and all risks in and relating to the Bullion pass to the Holder. If the Holder elected the Metal Delivery Method, then the Holder becomes immediately responsible for all matters relating to the transfer, delivery, custody or on-going storage of the Bullion and for all costs, expenses and liabilities in relation to the Bullion. If the Holder elected the Metal Sale Method, the Holder becomes responsible and liable for all the costs associated with sale of the Bullion in accordance with the Metal Sale Method.

### 12. SET OFF RIGHTS

- (a) All monetary obligations imposed on a Holder or Applicant under this Trust Deed are:
  - (i) absolute; and
  - (ii) free of any right to counterclaim or set off, and
  - (iii) may only be satisfied once the payment has cleared.
- (b) The Trustee may, and on instruction from the Issuer must :
  - (i) set off any amount payable to the Trustee, the Issuer or any of their agents by a Holder or Applicant against any amount payable by the Trustee or the Issuer to the Holder or Applicant; and
  - (ii) withhold any amount payable by the Trustee, the Issuer or any of their agents to a Holder or Applicant in satisfaction of any amount payable to the Trustee, the Issuer or any of their agents by the Holder or Applicant.

### 13. NO DISPOSAL

The Trustee must not dispose of the trust assets including Bullion for the duration of a Separate Trust except if there is a change of Trustee in accordance with this Deed.

### 14. HOLDER'S OR APPLICANT'S SOLE RESPONSIBILITY FOR INVESTMENT

Each Holder or Applicant is solely responsible for making its own enquiries and decisions in respect of:

- (a) whether or not to invest or deal in Metal Securities; and
- (b) the Issuer.



## **15. DURATION OF THE SEPARATE TRUSTS**

### **15.1 Commencement**

Each Separate Trust begins on the Commencement Date for such Separate Trust.

### **15.2 Termination**

A Separate Trust terminates on the earlier of:

- (a) in the case of a Separate Trust for an Applicant, upon the Applicant becoming a Holder in respect of the relevant Metal Securities;
- (b) in the case of a Separate Trust for a Holder, the actual delivery of Bullion by either Metal Sale Method or Metal Delivery Method; or
- (c) in either case, by operation of law.

### **15.3 Early Termination in relation to the Issuer**

- (a) If an Insolvency Event occurs in relation to the Issuer, then all Metal Securities are suspended and cease trading or quotation on ASX and Holders may not transfer their Metal Securities off-market during the period of suspension.
- (b) If the Issuer can remedy the Insolvency Event within a reasonable time frame, the Holder may, upon notice received from the Trustee and/or Issuer, recommence trading or quotation in their Metal Securities.
- (c) If the Insolvency Event cannot be remedied in accordance with sub clause 15.3(b), then with effect from the Insolvency Date:
  - (i) the Applicant's or Holder's Beneficial Interest in the trust assets is deemed to have merged with the legal interest in the trust assets including Bullion and the legal title passed to the Applicant or Holder; and
  - (ii) the Metal Share shall be redeemed in accordance with the terms of the Constitution; and
  - (iii) the Separate Trust is dissolved.
- (d) Where the Insolvency Event cannot be remedied, an Insolvency Event Redemption Notice will be immediately forwarded to each Holder specifying the date by which the Insolvency Event Redemption Notice must be lodged with the Issuer.
- (e) Upon receipt of a valid Insolvency Event Redemption Notice the Trustee will act in accordance with clauses 10.1(d), 10.1(e) and 10.1(f) as if a valid Redemption Notice had been lodged.
- (f) If the Holder fails to return the Insolvency Event Redemption Notice by the specified date, the Holder is deemed to have elected the Metal Sale Method and instructed the Trustee, as its agent, to sell its Bullion, and clause 10.5 will apply.
- (g) If a Termination Event occurs, then the Issuer may, in its absolute discretion, treat the Termination Event as an Insolvency Event and this clause 15.3 will apply. If a Termination Event occurs, the Holder irrevocably authorises the Issuer to instruct the Trustee to treat the Termination Event as an Insolvency Event and irrevocably authorises the Trustee to act in accordance with the Issuer's instructions.

## **16. THE TRUSTEE**

### **16.1 Trustee's Powers**

The Trustee has no powers, duties, rights or discretions under the Separate Trust other than those expressly set out in this Trust Deed. The Trustee undertakes that it will exercise its powers under this Trust Deed in good faith on the direction of the Issuer. The Trustee holds the trust assets, without any interest in them, other than that existing by reason of the office and legal title as Trustee, and without any duties to perform except as directed by the Applicant or Holder.

### **16.2 Trustee's Sale or Custody Powers**

In exercising any power of sale or custody under this Trust Deed:

- (a) where the Holder fails to lodge a Redemption Notice prior to or on the Compulsory Redemption Date, in respect of a compulsory redemption under clause 10.4 the Trustee may act as agent and arrange for the sale or custody of the relevant Bullion;
- (b) the Trustee is not obligated to insure, or arrange for insurance, of the Bullion;
- (c) the Trustee will hold any Sale Proceeds on trust for the Applicant or Holder of the Beneficial Interest;
- (d) the Trustee is under no liability to an Applicant or Holder and an Applicant or Holder is not entitled to bring any action against the Trustee in connection with the price received by the Trustee on the sale by the Trustee of the trust assets including Bullion or the cost payable for custody or purchase of the Bullion;
- (e) neither the Trustee nor the Issuer will be liable to an Applicant or Holder and an Applicant or Holder is not entitled to bring an action against the Trustee or the Issuer in connection with the purchase, sale of, or custody of, the trust assets including Bullion as contemplated by this clause, including any loss or damage caused as a result of any failure to obtain insurance.

### 16.3 Delegation

- (a) The Trustee may authorise any person(s) to act as its delegate (in the case of a joint appointment, jointly and severally) to hold title to trust assets including Bullion, perform any act or obligation or exercise any discretion within the Trustee's power. The delegate may be the Issuer, an Associate of the Issuer, the Trustee or the Registrar.
- (b) The authorisation may be in such form as the Trustee determines.
- (c) Subject to clause 16.13, the Trustee remains liable for the acts or omissions of a delegate except the Trustee will not be liable in respect of:
  - (i) the holding of property or receipt or payment of money through a recognised settlement system or clearing system; or
  - (ii) a delegate whose acts or omissions are not reasonably capable of supervision by the Trustee.

### 16.4 Indemnity

Subject to clause 16.23, the Metal Trust indemnifies the Trustee for any liability incurred by the Trustee in performing or exercising any of its powers or duties in relation to any Separate Trust. This indemnity is in addition to any indemnity allowed by law, but does not extend to liabilities arising from a breach of trust, negligence or fraud of the Trustee.

The Trustee must not act or fail to act if by doing so it will knowingly incur any material liability in the proper performance by the Trustee of its obligations under this Trust Deed for which it is indemnified except if the Trustee is expressly indemnified for that liability under this Trust Deed.

### 16.5 Retirement

The Trustee must retire as the trustee of each Separate Trust when required to retire by the operation of law. The Trustee may retire by giving 3 months' notice to the Issuer, Applicant and the Holder.

### 16.6 Voting Rights

The Trustee will not have power and is not required to exercise any voting rights in relation to the Metal Securities.

### 16.7 Removal

The Trustee may only be removed:

- (a) by written direction from the Issuer, giving not less than 30 Business Days notice to the Trustee, or such shorter time as the Trustee and the Issuer may agree;
- (b) in accordance with any relevant legislation and regulations; or
- (c) by order of the court.

A Holder or Applicant has no right to request, or commence proceedings for, the removal of the Trustee, in the absence of fraud, dishonesty or gross negligence.

#### 16.8 **New Trustee**

If the Trustee retires or is removed, the Issuer may appoint a replacement trustee by deed. The appointment is not complete until the new Trustee executes a deed by which it covenants to be bound by the same terms as this Trust Deed.

#### 16.9 **Release**

When it retires or is removed as Trustee of each Separate Trust, the Trustee is released from all obligations in relation to each Separate Trust arising from the time it retires or is removed, except that the Trustee is still obliged:

- (a) to vest the trust assets including Bullion of each Separate Trust in the new Trustee (subject to the satisfaction of all liabilities owed to the Trustee on its own account under this Trust Deed or for which the Trustee may be personally liable or for which there has been provision satisfactory to the Trustee);
- (b) deliver all books and records relating to each Separate Trust to the new Trustee; and
- (c) this Trust Deed continues in effect in respect of anything done or omitted to be done by the retiring Trustee when it was Trustee.

The retiring Trustee retains the rights and remedies available to it under this Trust Deed or at law in relation to the performance and exercise of its powers, duties and functions while Trustee.

#### 16.10 **No Guarantee**

None of the Issuer and its Associates guarantee that the Trustee will perform or otherwise comply with its obligations under this Trust Deed. Nothing in this Trust Deed constitutes a guarantee by the Issuer or its Associates of those obligations.

#### 16.11 **Knowledge of the Trustee**

- (a) The Trustee will only be considered to have knowledge, awareness or notice of a thing or grounds to believe anything by virtue of its officers having actual knowledge, actual awareness or actual notice of that thing or grounds to believe that thing.
- (b) The Trustee undertakes to immediately notify the Issuer of any information relating to the trust assets including Bullion of which the Trustee becomes aware which is price sensitive or otherwise relevant to the Issuer complying with its continuous disclosure obligations under the ASX Rules.

#### 16.12 **Rights and Liabilities Of Trustee**

*(Holder of Trust):* The Trustee must not be an Applicant or Holder at any time.

*(Other capacities):* Nothing in this Trust Deed restricts the Trustee or its associates from:

- (a) dealing with each other, the Issuer, any Separate Trust, Applicant or any Holder;
- (b) being interested in any contract or transaction with each other or the Issuer or any Applicant or Holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction;
- (c) acting in the same or a similar capacity in relation to any other scheme; or
- (d) selling Bullion to the Issuer,

subject to the Trustee acting at all times with good faith towards an Applicant or Holder.

Nothing in this Trust Deed restricts the Issuer or its associates or nominees acquiring the trust assets including Bullion from the Trustee or elsewhere.

#### 16.13 **Limitation on liability**

- (a) The Trustee does not have any obligations or duties in respect of the Separate Trusts, the Metal Securities, the trust assets including Bullion or anything in relation to them except as expressly set out in this Trust Deed.
- (b) If the Trustee acts in good faith and without default or negligence in endeavouring to perform its obligations under this Trust Deed, it is not responsible to Applicants or Holders for any loss suffered in respect of the relevant Separate Trust including any loss suffered by the Applicant or Holder upon

delivery of the trust assets including Bullion and in case of a breach of an obligation imposed on the Trustee under this Trust Deed.

- (c) The liability of the Trustee in relation to each Separate Trust is in any case limited to the trust assets including Bullion of the Separate Trust.
- (d) The Trustee is not liable for the acts or omissions of any brokers or other agents whose acts or omissions are not reasonably capable of supervision by the Trustee.
- (e) The Trustee is not responsible for the performance by the Issuer, the Registrar or the Custodian of their respective obligations under this Trust Deed or the Transaction Documents.
- (f) The Trustee is not liable for the acts or omissions of the Issuer, the Registrar or the Custodian (including any of their agents), including for any breach of this Trust Deed to the extent caused by such act or omission.
- (g) The Trustee is not liable for the acts or omissions of any storage providers or other service providers who store, hold or transfer the trust assets including Bullion for all, or part, of the Trust's duration.

#### **16.14 Trustee's reliance**

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of each of the Separate Trusts or any other matter in connection with the Separate Trusts;
- (b) the advice, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Trustee;
- (c) advice, statements, notices or information from the Issuer, the Registrar or the Custodian in respect of all matters arising under this Trust Deed;
- (d) any other opinion, advice, statement or information provided to the Trustee in respect of the Separate Trusts, however it is given to the Trustee, unless the Trustee has reasonable grounds to believe that the document is not genuine or correct; and
- (e) the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, documents, statements, notices or information, including in respect of payments and dealings with cases of Bullion required by this Trust Deed. If the Trustee requests any advice, information, notices or statement from any person under this clause, the Trustee has no liability in connection with any delay in the exercise or performance of the relevant powers or duties the subject of the relevant advice, information, notice or statements.

#### **16.15 Exercise of discretion**

- (a) The Trustee need not act except when required to do so by this Trust Deed.
- (b) The Trustee need not consult with the Applicants or Holders before acting, giving any consent, approval or agreement or making any determination under this Trust Deed except if this Trust Deed expressly provides otherwise.

#### **16.16 Directions of the Court**

The Trustee may apply to a court for directions as to any matter arising in connection with performance of its obligations including the exercise of the powers and functions of the Trustee under this Trust Deed. The Trustee is not liable to any person for any delay arising as a result of that application.

#### **16.17 No Responsibility for Trust Deed**

The Trustee has no responsibility for the form or contents of this Trust Deed or any disclosure document issued in relation to the Metal Securities and accordingly has no liability as a result of or in connection with:

- (a) any inadequacy, invalidity or unenforceability of any provision of this Trust Deed; or
- (b) any statement in, omission from or publication of any such disclosure document.

#### **16.18 Further Obligations**

Notwithstanding any other provision of this Trust Deed:

- (a) the Trustee is not required to do or to omit to do anything or to incur any liability unless the Trustee's liability is limited in a manner satisfactory to the Trustee;
- (b) the Trustee will not be under any obligation to advance or to use its own funds for the payment of any costs, expenses or liabilities;
- (c) the Trustee is not required to keep itself generally informed as to the circumstances or activities of the Registrar, the Issuer, the Custodian or any other person in relation to the trust assets including Bullion, including their compliance with their obligations in connection with this Trust Deed, the Metal Securities, trust assets including the Bullion or the Register; and
- (d) a liability or obligation of the Trustee arising under this Trust Deed is strictly limited to the extent to which (and can be enforced against the Trustee only to the extent to which) the liability or obligation can lawfully be satisfied in accordance with this Trust Deed out of the trust assets including Bullion of a Separate Trust.

#### 16.19 Satisfaction of Liabilities of each Separate Trust

Liabilities of or referable to each Separate Trust are to be satisfied from the trust assets including Bullion of that Separate Trust. In particular, but without limitation to the foregoing, the Trustee may satisfy any fee or liability of a Holder which is described in a Prospectus as payable from the sale of the Bullion in a Separate Trust and the Trustee has power to sell Bullion for such purposes.

#### 16.20 Appointments

- (a) The Trustee may for the purpose of exercising any of its rights or discharging any of its obligations appoint (and remove) Officers or any Associate or engage agents or sub-contractors or experts on such terms, including remuneration, as the Trustee thinks fit.
- (b) The Trustee may appoint a Custodian to be the registered holder of the trust assets including Bullion held under this Trust Deed but so that:
  - (i) the Custodian is a bare trustee for the Trustee with no power to deal in the trust assets including Bullion except as directed by the Trustee or the Issuer;
  - (ii) the Custodian may be an Associate of the Trustee; and
  - (iii) the registered holdings of trust assets including Bullion of the Custodian are deemed for the purposes of this Trust Deed to be a registered holding of the Trustee.

#### 16.21 Obligations are Several

The obligations of the Issuer, the Trustee and the Registrar under this Trust Deed are several only and not joint.

#### 16.22 Providing Information

The Trustee must, to the extent permitted by law, on request, provide to the Issuer information concerning the trust assets including Bullion. The Trustee does not have to inquire as to the purpose of the Issuer for requesting the information except to the extent required by law.

The Trustee is not obliged to disclose any information relating to the Issuer or its Associates, whether to the Applicant, Holder or any other person. Disclosure is in any case not required if in the opinion of the Trustee disclosure would or might breach a law or duty of confidence or other fiduciary duty.

#### 16.23 Funding Of Trustee

The Trustee will have no right of recourse:

- (a) to recover any of its outgoings under this Trust Deed in relation to a Separate Trust; or
- (b) in respect of any claim, loss or liability which may arise from its actions or omissions as the Trustee of a Separate Trust; or
- (c) in respect of any right of indemnity in relation to a Separate Trust which it might have under this Trust Deed or at law; or
- (d) against the trust assets including Bullion which correspond to that Separate Trust,

except that the Trustee will have a right of recourse which the Trustee has against the property of a Separate Trust, as set out in those specific provisions of this Trust Deed which authorise the Trustee to recoup from the trust fund of a Separate Trust.

#### **16.24 Trustee not required to act**

The Trustee is not required to act in any court proceedings, arbitration or other dispute concerning the Separate Trust including proceedings by the Applicant or Holder or a third party against the Trustee in the absence of the Trustee being indemnified for all costs, fees, expenses and liabilities reasonably and properly incurred by the Trustee in relation to such action.

#### **16.25 Recourse to Separate Trusts**

The Trustee may have recourse to the Separate Trusts for any remuneration or reimbursement or indemnity permitted under this Trust Deed only if the Trustee is expressly authorised to deduct costs and fees from the proceeds of any payment received by the Trustee from the Issuer or any third party on the sale or disposal of the trust assets including Bullion. The Trustee has no right of recourse against any Subscription Metal or the physical Bullion, only against proceeds from any sale of the Bullion.

#### **16.26 Transfer Taxes**

- (a) Neither the Issuer nor the Trustee are liable for any Transfer Tax or other charge arising from the ownership, transfer or redemption of a Metal Share.
- (b) Holders must pay all Transfer Tax payable by the Trustee in connection with the ownership, transfer and completion of a Metal Share.
- (c) Each Holder acknowledges that it is their own responsibility to ensure that the correct tax treatment, including declaration of income and payment of Tax, is applied in relation to the Holder's Metal Securities and the Bullion.

#### **16.27 Failure to Pay**

- (a) If the Holder fails to pay any Transfer Taxes within the required period, then the Issuer must pay the amount of the Transfer Taxes on behalf of the Trustee and the Holder. That amount and any related costs or expenses, including reasonable interest, is recoverable by the Issuer from the person who is registered as the Holder as a debt due.
- (b) Nothing in this clause obliges a Holder to pay stamp duty in respect of a transfer of Metal Securities only because notice of the transfer has been given to the Trustee by a person other than the Holder.

#### **16.28 Stamp Duty**

The Holder will be responsible for paying all stamp duties assessed in respect of the Separate Trusts or the Bullion to which the Metal Securities of that Holder relate.

#### **16.29 Statements, Accounts And Audit**

##### *Obligation of Trustee*

- (a) To the extent required by Law, the Trustee must prepare and lodge consolidated accounts and financial and taxation returns and must ensure compliance with applicable audit requirements in respect of the Separate Trusts and the performance by the Trustee of its functions under this Trust Deed.

##### *Exemption*

- (b) The Trustee is empowered to apply for any waiver, modification or exemption which will or may have the effect of reducing the extent of its obligations under clause 16.29 and to give undertakings and to perform any conditions associated with any such application or any such modification or exemption.

##### *Engage Accountants*

- (c) In order to perform its obligations under clause 16.29(a) and (b), the Trustee may engage an Accountant or an agent. The Trustee has no liability to the Issuer or to any Applicant or Holder in respect of any document prepared, action taken, or record made by the Trustee in the performance of the obligations imposed upon it by clause 16.29 if the same was prepared by or upon the advice of an Accountant or Accountants engaged pursuant to this clause 16.29.

##### *No obligation to provide financial information*

- (d) Subject to the ASX Rules and contrary provisions of this Trust Deed, the Trustee has no obligation whatever to provide or to procure the Registrar to provide information to Applicants or Holders about the Separate Trusts or the Bullion.
- (e) In particular, the Trustee has no obligation to provide Applicants or Holders with any financial accounts, financial reports or financial statements for the Separate Trusts.
- (f) The Trustee is not obliged in any event to make available or to forward its own financial accounts, reports or statements to any Applicant or Holder.

*Audits of Compliance*

- (g) The Issuer must at its own expense cause an audit of compliance with the ASX Rules to be undertaken annually by a registered company auditor appointed by the Issuer and will cause the audit report concerned to be lodged with the ASX as soon as it is available.

**16.30 Register**

- (a) The Trustee must maintain a register of Beneficial Interests which meets the requirements of the *Corporations Act*, the ASX Rules and the ACH Clearing Rules.
- (b) Except as otherwise provided in this Trust Deed, the Trustee must recognise the Applicant or Holder from time to time as the absolute owner of the Beneficial Interest and all persons must act accordingly.
- (c) The details of Holder's Beneficial Interest on the Register maintained by the Trustee will be identical to the Share Register maintained by the Issuer.

**17. GENERAL PROVISIONS**

**17.1 Notices**

- (a) Except as otherwise provided by this Trust Deed, a notice required or permitted to be given to an Applicant or Holder under this Trust Deed must be in writing and is to be treated as being given if:
  - (i) left at the Registered Address of the Applicant or Holder;
  - (ii) sent by pre-paid mail to the Registered Address of the Applicant or Holder;
  - (iii) sent by facsimile transmission to the Applicant's or Holder's facsimile number; or
  - (iv) in the event of time constraints, by such other method as approved by the ASX.

*Notice by advertisement*

- (b) Any notice which is required or allowed by a court of competent jurisdiction to be given to an Applicant or Holder by advertisement will, unless otherwise stipulated or required by law or by a court in Australia or in any relevant foreign jurisdiction, be sufficiently advertised if advertised once in a daily newspaper circulating in the States and Territories of Australia.

*Notices by Applicants and Holders*

- (c) All notices required or permitted to be given by Applicants or Holders to the Issuer, Trustee or Registrar under this Trust Deed or otherwise in respect of Metal Securities must be in writing and are treated as being duly given upon being actually received by the Issuer, the Trustee, or the Registrar at its principal office or such other address as it may by notice to the Applicant or Holder specify.

**17.2 Payment To Applicants or Holders**

*Methods of payment*

- (a) Any money payable to an Applicant or Holder may be paid in a manner as determined by the Trustee acting on the Issuer's instructions.

*Receipt*

- (b) The receipt of the Applicant or Holder in respect of the trust assets including Bullion and any money payable in respect of it is a good discharge to the Trustee.

*Unclaimed Money*

- (c) Any payments made to Applicants or Holders but remaining unclaimed for twelve months after the date of payment will, subject to applicable laws, be paid to the Issuer to be used to reduce future costs of issue and the relevant Applicant or Holder has no claim, whether against the Issuer, the Trustee, the Registrar or otherwise, to any amount paid to the Issuer under this clause.

### 17.3 Amendments To Trust Deed

*Trustee may amend*

- (a) The Trustee may by supplemental deed amend this Trust Deed if one or more of the following applies:
- (i) in the reasonable opinion of the Trustee the amendment is necessary or desirable to and which, in the reasonable opinion of the Trustee, is not materially prejudicial to the rights of Applicants or Holders;
  - (ii) the terms of the amendment are authorised by a resolution of the Holders passed in accordance with this Trust Deed;
  - (iii) the terms of the amendment are necessary or desirable in the reasonable opinion of the Trustee to comply with any statutory or other requirement of law (including as modified or applied in any respect to the Metal Securities) or any requirement of the ASX or to rectify any inconsistency, technical defect, manifest error or ambiguity in the terms of this Trust Deed; and
  - (iv) the terms of the amendment are necessary or desirable in the reasonable opinion of the Trustee for Metal Securities provided that the amendment does not affect the rights of current Holders of Metal Securities.

*Resolution of Holders*

- (b) The Trustee must notify all Holders in writing of a proposed amendment in accordance with clause 17.3(a)(ii).
- (c) Holders may return ballot papers to the Trustee by no later than 20 Business Days after the date of the notice. Each Holder is entitled to one vote for each Metal Share held.
- (d) A resolution is duly passed if 75% or more of the votes cast are in favour of the amendment.
- (e) The Trustee or its associates must not vote unless they are voting as trustee or nominee for a person who is not an associate.
- (f) An amendment must be notified to the ASX, if it concerns Metal Securities which are listed, traded or quoted on the ASX.
- (g) An amendment shall be subject to and in accordance with any applicable ASX Rules, including any requirement that ASX consent to the proposed amendment.

### 17.4 Obligation Of Holders To Provide Information

An Applicant or Holder will provide such information as the Trustee may request or as required by law.

### 17.5 Waiver

The failure, delay, relaxation or indulgence on the part of the Issuer or the Trustee in exercising any power or right conferred upon the Issuer or the Trustee under this Trust Deed does not operate as a waiver of that power or right nor does any single exercise of any power or right preclude any other or further exercise of it or the exercise of any other power or right under this Trust Deed.

### 17.6 Governing Law

This Deed is governed by the laws of Victoria.

### 17.7 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.



## **8 SUMMARY OF OTHER TRANSACTION DOCUMENTS**

### **8.1 Summary of the Custodian Agreements**

The Custodian Agreements are the Allocated Account Agreement between the Issuer, the Trustee and HSBC Bank USA, N.A. and the Unallocated Account Agreement between the same parties. The Allocated Account and the Unallocated Account (the "Metal Accounts") have been established pursuant to the terms of the Custodian Agreements.

The Custodian Agreements were amended and restated on 2 December 2008 in order to provide for the additional classes of Metal Security now being offered, to reflect the change in Trustee and to incorporate changes required by the Custodian to reflect changes in their operating procedures and their standard terms of business. In particular, the insurance obligations of the Custodian have been changed by deleting an obligation of the Custodian to pay Holders the amount of the deductible in relation to any insurance claim. As the allocated Bullion is beneficially owned by the Holder, only the actual insurance proceeds will belong to the Holder.

The Custodian Agreements are important documents and should be read by investors when making an assessment of whether to apply for Metal Securities. Accordingly, certain key provisions of the Custodian Agreement are summarised below. This summary is not intended to set out in detail all the provisions of the Custodian Agreements. Certain capitalised terms used in this summary have defined meanings in the Custodian Agreement that are not always repeated or paraphrased in this summary or this Prospectus

#### **Potential for Custodian Agreements and Custodian to Change on or about 1 April 2011**

The Custodian Agreements each have a fixed term up to and including 31 March 2011. The Issuer and the Trustee may elect to extend the Custodian Agreements or enter into new custodian agreements with the Custodian or an alternative custodian from 1 April 2011. The Issuer will use reasonable endeavours to negotiate any extension or alternative custodian agreements on substantially similar terms as the Custodian Agreements. Upon entry into any new custodian agreements or extension or renewal of the existing Custodian Agreements, the Issuer will publish details of the new arrangements on its website at [www.etfsecurities.com](http://www.etfsecurities.com)

#### **8.1.1 Metal Accounts**

The Custodian will open and maintain the Metal Accounts in the name of the Trustee, in its capacity as trustee for the Holders. The Metal Accounts shall evidence and record the withdrawals of Bullion from and deposits of Bullion to that account. The Metal Accounts will be denominated in respect of platinum, palladium and silver in troy ounces and in respect of gold fine troy ounces.

The Custodian will provide reports by fax or by e-mail (at the option of the Trustee) to the Trustee by the close of each Business Day (only if there have been any changes). The Custodian retains the right to reverse recording errors with retrospective effect.

#### **8.1.2 Deposits**

Deposits may only be made into the Metal Accounts either by Authorised Participants on Application or by transfers between the accounts when effecting creations or redemptions of Metal Securities. Notice of an intended deposit by an Authorised Participant into the Unallocated Account must be given by the Issuer to the Custodian no later than 3:00 p.m. (London time) one Business day prior to the date when such Bullion is to be deposited into such account.

The Custodian is required to use its commercially reasonable endeavours to complete the transfer of Metal from the Unallocated Account to the Allocated Account on the day of receipt in the Unallocated Account, provided notice of the Application was given to the Custodian one Business Day before the Bullion is to be deposited into the Unallocated Account.

#### **8.1.3 Withdrawals**

Withdrawals are only permitted from the Metal Accounts to effect redemptions, to pay Management Fees or (if the Custodian changes) to move Bullion to the replacement custodian.

The Custodian may amend the procedure for withdrawing Bullion from the Metal Accounts or impose additional procedures as it considers appropriate in certain circumstances.

Once a withdrawal of Bullion from the Allocated Account is requested, such Bullion must be de-allocated for purposes of crediting it to an Unallocated Account.

#### **8.1.4 Instructions**

The Issuer, the Trustee and the Custodian have agreed that only the Trustee shall have the right to give instructions to the Custodian for withdrawal of Bullion from the Metal Accounts, whether by way of de-allocation or by way of collection or delivery, credit or debit.

If, in the Custodian's opinion, any instructions are unclear or ambiguous, the Custodian shall use reasonable endeavours (taking into account any relevant time constraints) to obtain clarification of those instructions from the Trustee (but not from the Issuer) and, failing that, the Custodian may in its absolute discretion and without any liability on its part, act upon what the Custodian believes in good faith such instructions to be or refuse to take any action or execute such instructions until any ambiguity or conflict has been resolved to the Custodian's satisfaction.

#### **8.1.5 Confidentiality**

Neither party is permitted to disclose information acquired under the agreement without the consent of the other party. However, certain disclosures are permitted if required by (amongst other things) laws, by another company in the same group or any sub-custodian rules of the LBMA (in respect of gold and silver) or the rules of the LPPM (in respect of platinum and palladium) or if requested by a government agency, or if required by a party's auditors, legal advisers.

#### **8.1.6 Custody Services**

The Custodian is appointed as the custodian of the Bullion credited to the Metal Accounts in accordance with the Custodian Agreements. The Custodian will segregate Bullion credited to the Allocated Account from any other Bullion which it owns or holds for others by entering appropriate entries in its books and records, and will require any sub-custodians it appoints to so segregate such Bullion. The Custodian will identify in its books the Trustee (in its capacity as trustee for the Holders) as the owner of the Bullion credited to the Metal Accounts. The Custodian agrees to use commercially reasonable efforts promptly to transport any Bullion held for the Issuer by or for a Sub-Custodian to the Custodian's London vault premises or the Zurich Sub-Custodian's Zurich vault premises at its own cost and risk.

#### **8.1.7 Sub-Custodians**

The Custodian may appoint Sub-Custodians to perform any of its duties under the agreement including the custody and safekeeping of Bullion. It is required to use reasonable care in the appointment of any Sub-Custodian but is not liable for any act or omission, or for the solvency, of any Sub-Custodian unless the appointment of that Sub-Custodian was made by it negligently or in bad faith.

The Custodian may appoint Sub-Custodians solely for the temporary custody and safekeeping of Bullion until transported to the relevant vault premises. The Allocated Account Agreement requires the Custodian to use reasonable care in the selection of those Sub-Custodians and provides that it shall not be liable for any act or omission, or for the solvency, of any Sub-Custodian it appoints unless the appointment of that Sub-Custodian was made by it negligently or in bad faith. The only Sub-Custodians which the Custodian has currently appointed to perform such duties will be those custodians which are members of the Relevant Association, namely, in addition to the Custodian, the Bank of England (with respect to gold only), The Bank of Nova Scotia (ScotiaMocatta), Deutsche Bank AG, JPMorgan Chase Bank, N.A., UBS AG, Barclays Bank PLC, Johnson Matthey plc (with respect to silver only), Brink's Global Services Inc. and ViaMat International.

The Custodian may employ Zurich Sub-Custodians for the custody and safekeeping of platinum and palladium in their Zurich vault premises. The Custodian will use reasonable care in selecting any Zurich Sub-Custodian. As of the date of the Allocated Account Agreement, the Zurich Sub-Custodians that the Custodian uses are Brink's Global Services Inc. and ViaMat International. Nothing in the clause described in this paragraph limits the Custodian's liability with respect to platinum or palladium held by a Zurich Sub-Custodian. In addition to the requirements referred to at Section 8.1.6 (*Custody Services*) above, the Custodian must require any Zurich Sub-Custodian to segregate the Bullion held by it for the Issuer from any platinum or palladium which it holds for the Custodian and any other customers of the Custodian by making appropriate entries in its books and records. The

Custodian must give to the Zurich Sub-Custodian notice in the form specified in the Allocated Account Agreement and ensure that the Zurich Sub-Custodian delivers to the Trustee (with a copy to the Issuer) an acknowledgement and undertaking to segregate all Bullion held by it for the Issuer from any platinum or palladium which it owns or holds for others and to segregate the Bullion held by it for the Issuer from any platinum or palladium which it holds for the Custodian and any other customers of the Custodian, and in each case undertaking to make appropriate entries in its books and records.

### **8.1.8 Fees and Expenses**

The Custodian has agreed to charge a fee for its services under the Custodian Agreements at a rate of:

- 0.10 per cent per annum on the first 1 million fine troy ounces and 0.06 per cent per annum on any additional amounts, in relation to gold;
- 0.10 per cent per annum in relation to silver; and
- 0.14 per cent per annum in relation to platinum and palladium,

in each case based on the aggregate US dollar value of Bullion held in the Allocated Account (with no minimum fee), calculated daily and payable monthly in arrears. These fees will be paid by ETFSL.

In addition, ETFSL will pay on demand all costs, charges and expenses (including any relevant taxes excluding VAT, duties and legal fees but excluding fees for storage and insurance of Bullion and any fees and expenses of sub-custodians, which are covered by the fee above) incurred by the Custodian in connection with the performance of its duties and obligations under the Custodian Agreements or otherwise in connection with the Bullion credited to the Metal Accounts.

### **8.1.9 Value Added Tax**

All sums payable to the Custodian under the Custodian Agreements shall be deemed to be inclusive of VAT.

### **8.1.10 Scope of Responsibility**

#### **General**

The Custodian will use reasonable care in the performance of its duties under the Custodian Agreements and will only be responsible for any loss or damage suffered as a direct result of any negligence, fraud or wilful default by it in the performance of its duties, and in which case its liability will not exceed the market value of Bullion lost or damaged at the time that such negligence, fraud or wilful default is discovered by the Custodian.

The Custodian is under no duty or obligation to make or take, or require any Sub-Custodian it appoints to make or take, any special arrangements or precautions beyond those required by any applicable rules of the Relevant Association, the Bank of England or any other applicable regulatory authority or as specifically set out in the relevant agreement.

#### **Insurance**

The Custodian will maintain such insurance in connection with its custodial obligations under the Custodian Agreements as it considers appropriate, and it shall be responsible for all costs, fees and expenses in relation thereto.

#### **Force majeure**

The Custodian (or an affiliate) shall not be liable for any delay in performance, or for the non-performance of any of its obligations under the Custodian Agreements by reason of any cause beyond the Custodian's reasonable control. This includes any act of God or war or terrorism or any breakdown, malfunction or failure of transmission, communication or computer facilities, industrial action, acts and regulations of any governmental or supra national bodies or authorities or regulatory or self-regulatory organisation, for any reason, to perform its obligations.

#### **Indemnity**

The Issuer shall indemnify the Custodian against all costs and expenses, damages, liabilities and losses (other than VAT) which it may suffer or incur, directly or indirectly in connection with the Custodian Agreements except to the extent that such sums are due directly to the Custodian's negligence, wilful default or fraud.

### **8.1.11 Termination**

The Trustee and the Custodian may each terminate any Custodian Agreement by giving not less than 90 days' written notice, provided that no Custodian Agreement may be terminated prior to 31 March 2011 unless any of the following circumstances occur, in which case the terminating party must provide the other party with not less than 90 days' written notice of termination (or as soon as practicable in the case of unlawfulness):

- the Custodian ceases to offer the services contemplated by the relevant Custodian Agreement to its clients or proposes to withdraw from the Bullion (as defined in the Custodian Agreements) business;
- it becomes unlawful for the Custodian to be a party to the relevant Custodian Agreement or to offer its services on the terms contemplated by such agreement or it becomes unlawful for the Trustee or the Issuer to receive such services or be a party to such agreement;
- there is any event which, in the Custodian's sole view, indicates the Issuer's insolvency or impending insolvency; or
- there is any event which, in the Issuer's sole view, indicates the Custodian's insolvency or impending insolvency.

### **Redelivery Arrangements**

If arrangements have not been made for the redelivery of the Bullion held in the Metal Accounts within six months of the termination date specified in the termination notice, the Custodian will be entitled to sell such Bullion and account to the Trustee for the proceeds after deducting any amounts due to the Custodian under the Custodian Agreements. Termination shall not affect rights and obligations then outstanding under the Custodian Agreements which shall continue to be governed by the Custodian Agreements until all obligations have been fully performed.

### **8.1.12 Governing Law, Jurisdiction and Arbitration**

Each Custodian Agreement is governed by, and will be construed in accordance with, English law and the Issuer agrees that the English courts are to have jurisdiction to settle any disputes or claims which may arise out of or in connection with any Custodian Agreement.

## **8.2 Metal Sale Counterparty Agreement**

The Metal Sale Counterparty Agreement will be used when a redemption is to be effected using the Metal Sale Method. Appointing the Custodian as the Metal Sale Counterparty reduces exposures and delays that might otherwise arise in transfers of Bullion from the Custodian to another counterparty when using the Metal Sale Method.

The Metal Sale Counterparty Agreement was made on 2 December 2008 between the Issuer, the Trustee and HSBC Bank USA, N.A. The Metal Sale Counterparty agrees, at the request of the Trustee, to purchase such amount of Bullion as the Trustee may specify on any Business Day at the Fixing Price in US dollars on that Business Day for standard settlement in the Relevant Market and to pay an amount equal to the product of such Fixing Price and the amount of Bullion so specified by the Trustee to such account or accounts of the Trustee for value on the standard Settlement Date. The Metal Sale Counterparty Agreement will terminate automatically if the Unallocated Account Agreement is terminated.

As noted above the Custodian Agreements each have a fixed term up to and including 31 March 2011. The Issuer and the Trustee may elect to extend the Custodian Agreements or enter into new custodian agreements with the Custodian or an alternative custodian from 1 April 2011. If the Custodian Agreements are terminated, the current Metal Sale Counterparty Agreement will also terminate. The Issuer will use reasonable endeavours to negotiate any extension or alternative metal sale counterparty agreement on substantially similar terms as the Metal Sale Counterparty Agreement. Upon entry into any new metal sale counterparty agreement or extension of the existing Metal Sale Counterparty Agreement the Issuer will publish details of the new arrangements on its website at [www.etfsecurities.com](http://www.etfsecurities.com)

## **8.3 Summary of Service Agreement**

The Service Agreement is the Deed Poll entitled "Administration Services Deed Poll" made on 31 December 2010 by the Administrator for the benefit of Holders. It sets out terms on which the Administrator undertakes to provide or procure services to the Holders and to the Company in connection with the Metal Securities and replaces a deed on similar terms with ETFSL, the previous administrator of the Company.

The Service Agreement is an important document and should be read by investors when making an assessment of whether to apply for Metal Securities. Accordingly, certain key provisions of the Service Agreement are summarised below. This summary is not intended to set out in detail all the provisions of the Service Agreement. Certain capitalised terms used in this summary have defined meanings in the Service Agreement that are not always repeated or paraphrased in this summary or this Prospectus. A number of defined terms are repeated or paraphrased in the Glossary in Section 11 of this Prospectus.

### **8.3.1 Administration Services**

In consideration of the fees payable to it in accordance with this Prospectus, the Administrator undertakes to provide services to Holders and to the Company, for the benefit of Holders (as appropriate), including but not limited to:

- the issue, registration, redemption and quotation on the ASX of the Metal Securities;
- the issue, provision and disposal of each Holder's beneficial interest in Bullion (including the custody and delivery of Bullion);
- the keeping, auditing and lodgement of the accounts of the Company;
- the insurance and regulatory compliance of the Company (including payment of fees to, and liaison with the ASX, ASIC and other regulatory bodies);
- the corporate governance of the Company (including the appointment and payment of directors) and provision of company secretarial services for the Company;
- answering enquiries from Holders; and
- all contractual negotiations and arrangements with third parties on behalf of the Company and legal services for the Company.

### **8.3.2 Performance**

The Administrator is required to act in good faith and without gross negligence, fraud or wilful default in carrying out its obligations under the Service Agreement.

### **8.3.3 Termination**

The Service Agreement may be terminated by the Administrator on 30 days' written notice to the Holders or if an Insolvency Event occurs.

### **8.3.4 The Administrator Not a Fiduciary**

The Administrator has no fiduciary duties to any Holder.

## **8.4 Summary of Authorised Participants Agreements**

The Company intends to encourage a number of market participants to sign up as Authorised Participants from time to time.

The current Authorised Participants, who have been approved by the Company, are listed on the Issuer's website at [www.etfsecurities.com](http://www.etfsecurities.com). The terms in relation to each Authorised Participant may be amended from time to time and may include commitments for an Authorised Participant to:

- make markets on varying terms;
- maintain particular maximum spreads and minimum lot sizes;
- maintain an AFS Licence;
- comply with ASX Rules, the Law and applicable legislation and regulations; and
- satisfy the Issuer's Anti-Money Laundering and Counter-Terrorism Financing program which the Issuer has in place from time to time.

## 9 SUMMARY OF TAX CONSIDERATIONS

### 9.1 Introduction

This summary explores the Australian income tax, stamp duty and GST considerations relevant for an investor in Metal Securities.

The following discussion is based upon the Australian law and administrative practice in effect as at the date of this Prospectus. Investors should be aware that the ultimate interpretation of taxation law rests with the Courts and that the law, and the way the Commissioner of Taxation ("Commissioner") administers the law, may change at any time.

This statement is provided only for the benefit of the Company and is necessarily general in nature and does not take into account the specific taxation circumstances of each individual investor. Investors should seek independent professional advice in relation to their own particular circumstances before making any investment decision.

This summary only deals with the Australian tax considerations of potential investors and does not deal with tax consequences in relation to other jurisdictions. The summary assumes that there is no compulsory redemption of an investor's Metal Securities.

### 9.2 A Metal Security

An investor's holding of a Metal Security involves the holding of two separate assets, namely:

- a share in the capital of the Company ("Metal Share"); and
- a beneficial interest in the Bullion ("Metal Entitlement").

As a consequence any dealing by an investor in a Metal Security will involve a dealing in both the Metal Share and the Bullion. An investor is required to separately assess the tax consequences of dealing in each asset.

### 9.3 Sale of Metal Securities

Where an investor disposes of their Metal Security, the income tax consequences vary depending on whether:

- the investor holds the Metal Security on capital account or on revenue account; and
- the investor is an Australian resident for tax purposes.

#### **Investor is an Australian resident and holds Metal Security on capital account**

Where an Australian resident investor holds their Metal Security on capital account then any capital gain made on the disposal of the Metal Share and the Bullion comprising the Metal Security will be assessable to the investor.

The investor will make a capital gain on the disposal of the Metal Share or the Bullion where the capital proceeds received by the investor exceeds their cost base in these assets. If the capital proceeds received by an investor are less than the investor's reduced cost base in these assets, then the investor will make a capital loss. Capital losses can be offset against taxable capital gains made by an investor but not against other types of income.

The cost base that an investor has in a Metal Share or the Bullion comprising a Metal Security is, broadly, the sum of the following as allocated between the Metal Share and the Bullion on a reasonable basis:

- the amount the investor paid to acquire the Metal Security;
- incidental costs of acquisition and disposal (e.g. professional advisory fees, the costs of transfer such as brokerage fees and stamp duty if any); and
- the costs of ownership of the Metal Security (e.g. interest incurred by an investor as a result of borrowing funds to acquire the Metal Security where the interest is not otherwise allowable as a tax deduction).

The reduced cost base of a Metal Share or the Bullion comprising a Metal Security includes 1 and 2 but not 3 of the matters listed immediately above.

As the investor subscribes for a Metal Security with Bullion, the Application Fee will factor into the cost base of the Metal Share only, since the investor does not acquire further Bullion under the subscription. The cost base that such an investor has in their Bullion component of a Metal Security will be the cost base that they had in the Bullion prior to transferring the legal title to the Bullion to the Trustee, since the investor continues to have beneficial ownership of the Bullion.

The cost base that an investor has in the Bullion comprising a Metal Security should include the Management Fee as a cost of ownership of the Bullion. The Management Fee does not factor into an investor's cost base in their Metal Share as it is a fee related to the ownership of the Bullion.

Given that a Metal Share provides an investor with no right to dividends or surplus on the winding up of the Company, it is likely that a reasonable apportionment of the above aggregate amount would result in an investor's cost base and reduced cost base in a Metal Share being nominal, being 1/1000<sup>th</sup> of 1 cent, and the bulk of the above aggregate sum being allocated to the Bullion.

The capital proceeds which an investor receives will cover the sales proceeds or other property the investor receives or is entitled to receive as a result of selling the Metal Security. Technically, the capital proceeds received by an investor on the disposal of a Metal Security should be apportioned between the Metal Share and the Bullion on a reasonable basis. However, given the rights attaching to the Metal Share it is reasonable to assume that the capital proceeds received in relation to the Metal Share would be a nominal 1/1000<sup>th</sup> of a cent and the bulk of the capital proceeds are received in relation to the Bullion. Practically, this apportionment means that an investor's sale of a Metal Share will not trigger a material capital gains tax ("CGT") liability for the investor and any material CGT consequences arising from the sale of a Metal Security will broadly come from the disposal of the Bullion component.

If an investor is an individual, trust or complying superannuation entity or a life insurance company which holds their Metal Security as a complying superannuation/FHSA asset, then they may be able to claim the benefit of the CGT discount. A corporate investor cannot claim the benefit of the CGT discount.

Broadly, the CGT discount exempts a portion of the net assessable capital gain from taxable income. For investors who are individuals or trusts this portion is 50%. For investors who are complying superannuation entities or life insurance companies who hold their Metal Security as a complying superannuation/FHSA asset, the portion is 33.33%.

The mechanics under which the CGT discount concession operates ensures that any available capital losses incurred by the investor are offset against the capital gain before the remaining assessable net capital gain is discounted in the hands of the investor. Capital losses can only be offset against gains assessable under the CGT provisions.

#### **Investor is a non-resident and holds Metal Security on capital account**

If an investor is a non-resident and holds their Metal Security on capital account then a disposal of the Metal Share and the Bullion comprising the Metal Security should not trigger an Australian CGT liability for most investors. As discussed above the sale of the Metal Share component of a Metal Security is unlikely to result in a material CGT liability for an investor. Moreover, as the investor is a non-resident they will only be subject to CGT on the disposal of the Metal Share or the Bullion component of a Metal Security if these assets represent taxable Australian property. As a general rule, the Bullion does not represent taxable Australian property. As a general rule, the Metal Share will not represent taxable Australian property if at the time of its sale, more than 50% (by market value) of the Company's assets do not comprise taxable Australian real property. The one qualification to this general rule is where the investor is investing in the course of carrying on business through an Australian permanent establishment. If this is the case, the Bullion and Metal Share would be taxable Australian property.

#### **Investor holds Metal Security on revenue account**

If an Australian resident investor acquires a Metal Security in the course of carrying on a business of dealing in securities or if the investor acquires the Metal Security as part of a profit making scheme, then any gain made on the sale of the Metal Security will be assessable to the investor as ordinary income. Any loss made on the sale

will be trapped in the trust established for the investor and cannot be distributed to the investor. However, where the investor is a dealer in securities then they will still be able to deduct an amount equivalent to this loss, as the investor will have lost an equivalent amount on its trading stock (that is, its beneficial interest in the Bullion will have decreased in value).

Where an investor is not a resident of Australia, then any revenue gain made on the sale of their Metal Securities will only be subject to Australian income tax if it is considered to have an Australian source. The issue of source is a question of fact, of which the place where the contract to sell the Metal Securities is concluded will be a relevant factor. If the investor is a resident of a jurisdiction which has entered a double tax treaty with Australia then they may not be subject to tax on gain where its derivation is not attributable to any permanent establishment that they have in Australia. Where this is the case then the business profits article of the relevant double tax treaty will prevent Australia from taxing the gain.

## **9.4 Foreign Exchange Gains/Losses**

Division 775 of the *Income Tax Assessment Act 1997* provides rules on the recognition, timing and measurement of foreign exchange gains and losses. Subject to a number of exceptions and elections, foreign exchange gains and losses are generally assessed to a taxpayer on revenue account.

The purchase and sale of the Bullion component of a Metal Security may involve the purchase and sale of foreign currency. As a consequence an investor or the Trustee on an investor's behalf may derive foreign exchange gains and losses. Generally, an investor will be assessable on foreign exchange gains made by either the investor or the Trustee on their behalf under Division 775. Foreign exchange losses made by the Trustee cannot be passed down to an investor but instead are trapped in the trust of which an investor is a beneficiary.

## **9.5 Management Fee**

The Management Fee will accrue daily (and be retained until the end of each month when the Bullion will be sold) and reduce the per share entitlement to the Bullion at the end of each day. The sale proceeds will be paid by the Trustee to the Company pursuant to the Service Agreement. Accordingly, every month the investor will be considered to have sold part of their Bullion.

Broadly, the above discussion of the income tax and CGT consequences for an investor disposing of the Bullion component of their Metal Securities will apply equally here. The cost base/cost that an investor had in their Bullion component prior to this sale will be apportioned between the Bullion which is sold under the Management Fee and the Bullion which the investor continues to hold.

The payment to the Administrator is paid by the Trustee on the direction of an investor as a fee for services provided by the Administrator to the Company and on provided by the Company to the investor. As noted above the Management Fee will be included in an investor's cost base in the Bullion component of their Metal Securities as a cost of ownership of the Bullion. It does not, however, factor into an investor's reduced cost base in the Bullion component. Accordingly, whilst the Management Fee may reduce any capital gain made by an investor on the disposal of the Bullion it will not increase any capital loss made.

If an investor holds a Metal Security in the course of carrying on a business of dealing in securities then the Management Fee will be deductible as an ordinary expense.

## **9.6 Redemption of a Metal Security**

An investor who takes delivery of the Bullion on redemption will not be taxed until the Bullion is actually sold.

If an investor requests that the Trustee sell the Bullion on their behalf, then the above discussion in relation to the income tax and CGT consequences of selling the Bullion component will apply equally here to the investor. Where the investor holds their Metal Security on capital account then the Redemption Fee paid will be included in their cost base in the Bullion component. If an investor is a dealer in securities then they will be able to deduct the Redemption Fee paid as an ordinary business expense. Where an investor held their Metal Securities as part of a profit making scheme then the Redemption Fee will be a cost subtracted from the sale proceeds they receive, in order to determine the revenue profit assessable to the investor.

The cancellation of the investor's Metal Shares should not trigger a material CGT or income tax liability for the investor since they will be redeemed at a nominal 1/1000<sup>th</sup> of 1 cent per Metal Share.



## **9.7 Gearing**

Where an investor holds their investment in a Metal Security on capital account, then they will not be able to deduct any interest or borrowing costs which they may incur so as to invest in a Metal Security. This is because an investor will not be deriving any periodic income from the Metal Security but rather will only make a capital gain from their ownership of the Metal Security.

If an investor acquires a Metal Security as part of their business of dealing in securities then they may deduct interest and borrowing expenses incurred on borrowings used to acquire the Metal Security. This is because the borrowings were used for the purpose of producing assessable income or in carrying on business for that purpose. Interest expenses are generally deductible in the income year when incurred. Other borrowing expenses are generally deductible over the lesser of 5 years or the life of the loan.

There are various exceptions to the general rule that interest and borrowing expenses are deductible when borrowings are used for the purpose of producing assessable income or in the course of carrying on a business for that purpose. If an investor borrows to invest, the investor should seek their own advice on these matters.

## **9.8 TFN withholding**

An investor need not quote a Tax File Number ("TFN") to the Trustee when acquiring Metal Securities. However, if a TFN is not quoted, or no appropriate TFN exemption information is provided then there may be an issue as to whether the Trustee is required to withhold tax from any income distributions made to an investor at the highest individual marginal tax rate plus the Medicare levy (currently 46.5%). An investor who invests in Metal Securities in the course of carrying on an enterprise, may quote their Australian Business Number instead to avoid this withholding tax. If this withholding tax applies it is noted that it is merely a collection mechanism and an investor may claim a credit in their annual income tax return in respect of the tax withheld.

## **10 ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING ACT 2007**

Enacted by the Australian Government in December 2006, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (AML/CTF Act) regulates financial services and transactions in a way that is designed to detect and prevent money laundering and terrorism financing. The AML/CTF Act is regulated by the Australian Transaction Reports and Analysis Centre (AUSTRAC). Under the AML/CTF Act, the Issuer (or its agent) is required:

- to verify the identity of Approved Participants before issuing securities to the Approved Participant, and to re-identify the Approved Participant if it considers it necessary to do so; and
- to keep a record of any identification documentation for 7 years.

### **Identification of Authorised Participants**

By lodging an Application Form, each Authorised Participant confirms that it is a reporting entity under the AML/CTF Act and undertakes to provide the Issuer with evidence of identity required by the Issuer pursuant to the AML/CTF Act at any time upon request. No application will be accepted by the Issuer unless such evidence of the Authorised Participant's identity satisfactory to the Issuer and its agents has been provided.

### **Transaction Freezes**

Transactions may be delayed, blocked, frozen or refused where the Issuer has reasonable grounds to believe that the transaction breaches Australian law or sanctions or the law or sanctions of any other country. Where transactions are delayed, blocked, frozen or refused the Issuer is not liable for any loss you suffer (including consequential loss) as a result of its compliance with the AML/CTF Act.

### **Reporting Obligations to AUSTRAC**

The Issuer has certain reporting obligations pursuant to the AML/CTF Act. The legislation prevents the Issuer from informing you that any such reporting has taken place. Where legally obliged to do so, the Issuer and its agents may disclose the information gathered to regulatory and/or law enforcement agencies, including AUSTRAC and to other bodies, if required by law.

## 11 GLOSSARY

In this Offering Circular, unless the context requires otherwise:

**"Accountant"** means any member of the Australian Society of Certified Practising Accountants or member of The Institute of Chartered Accountants in Australia;

**"ACH"** means Australian Clearing House Pty Limited ABN 48 001 314 503;

**"ACH Clearing Rules"** means the rules of the ACH as amended or varied from time to time;

**"Administrator"** means ETFS Management Company (Jersey) Limited;

**"AFS Licence"** means an Australian Financial Services Licence issued by ASIC;

**"Allocated Account"** means the unallocated Bullion account number 18702 opened in the name of the Trustee with the Custodian pursuant to the Allocated Account Agreement;

**"Allocated Account Agreement"** means the amended and restated Allocated Account Agreement dated 2 December 2008 between the Issuer, the Trustee and the Custodian;

**"Applicant"** means the person making an Application;

**"Application"** means an offer by a person to the Issuer to subscribe for Metal Securities, being an offer on terms referred to in an Application Form and the Prospectus;

**"Application Form"** means the form prescribed from time to time by the Company upon which an Application for new Metal Securities must be made;

**"Application Fee"** means the application fee described in Section 4.3 of this Prospectus;

**"ASIC"** means the Australian Securities and Investments Commission;

**"Associate"** has the meaning ascribed by section 11 of the *Corporations Act*;

**"ASX"** means the Australian Securities Exchange or ASX Limited ABN 96 008 624 691;

**"ASX Business Day"** means a day on which the ASX is open for business in Sydney;

**"ASX Rules"** means the listing rules and the market rules of the ASX as amended or varied from time to time which are applicable to the Metal Securities from time to time;

**"Authorised Participant"** has the meaning given in Section 2.5 of this Prospectus;

**"Beneficial Interest"** means the beneficial interest which an investor acquires in the Bullion upon registration as a Holder of a Metal Share or any substituted asset as adjusted in accordance with this Trust Deed;

**"Business Day"** means:

- (a) in relation to any or all of the ETFS Physical Platinum securities, ETFS Physical Palladium securities and ETFS Physical PM Basket securities (and any other Metal Security comprised, inter alia, of platinum or palladium), a day which is both a London Business Day and a Zurich Business Day; and
- (b) in relation to ETFS Physical Silver securities and ETFS Physical Gold securities (and any Metal Security comprised only of silver and gold), a London Business Day;

**"Bullion"** means at any time in respect of each Metal Share the gold, silver, platinum and/or palladium to which that class of Metal Share relates;

**"CAP"** means the Company Announcements Platform of the ASX;

**"CHES"** means the Clearing House Electronic Sub register System established and operated in accordance with the ACH Clearing Rules;

**"CHES Approved Securities"** means securities approved by ACH to participate in CHES in accordance with the ACH Clearing Rules;

**"Commencement Date"** means in relation to a Separate Trust, the date on which the first Holder's name is added to the Register;

**"Company"** and **"Issuer"** means EFTS Metal Securities Australia Limited ACN 101 465 383;

**"Completion"** means the act of lodging a valid Redemption Notice in accordance with clause 10 of the Trust Deed;

**"Compulsory Redemption Date"** means the date notified by the Company to the Holders as the date on which all or part of the Metal Securities will be compulsorily redeemed by the Company;

**"Constitution"** means the constitution of the Company, as amended from time to time;

**"Controller"** has the same meaning as defined in section 9 of the Corporations Act;

**"Corporations Act"** and **"Corporations Regulations"** have the same meanings respectively given to them in the Corporations Act 2001 (Commonwealth) as amended or varied for time to time;

**"Custodian"** and **"Custodian Bank"** means the entity that provides custody and transfer facilities for the Bullion from time to time, as at the date of this Prospectus being HSBC Bank USA, National Association ("HSBC Bank USA, N.A.");

**"Custodian Agreements"** mean the Allocated Account Agreement and the Unallocated Account Agreement

**"Delivery Date"** means the date which is:

- (a) the Compulsory Redemption Date; or
  - (b) the date specified in the Redemption Notice by the Holder,
- whichever is the later;

**"Delivery Method"** means either the Metal Delivery Method or the Metal Sale Method as specified by the Holder in a Redemption Notice;

**"Delivery Obligations"** means the obligation of the Company, on behalf of the Trust, to deliver the Bullion to the Holder in accordance with the terms of the Constitution;

**"Directors"** means the directors of the Company from time to time;

**"ETFSL"** means ETF Securities Limited, a company incorporated in Jersey, registered number 88370;

**"Fixing Price"** means in relation to each type of Metal, on any day on which the Relevant Market is open for business, the price determined by the first fixing process of the day under the rules and procedures of the Relevant Association;

**"Good Delivery"** means the standards required by the Relevant Association for Bullion bars, as set out in Section 3.5.2 of this Prospectus;

**"Holder"** means the person whose name is for the time being entered in the Share Register and the Register as the holder of a Metal Share and the holder of a Beneficial Interest, respectively;

**"Insolvency Date"** means the date on which the first Insolvency Event, in relation to the Issuer occurs;

**"Insolvency Event"** means, for the Issuer, the happening of one or more of the following events:

- (a) except for the purpose of a solvent reconstruction or amalgamation:
  - (i) process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is frivolous, bona fide contested, withdrawn, struck out or dismissed within 21 days of it being filed; or

- (ii) an order is made that it be wound up or that a Controller be appointed to it or any of its assets; or
- (iii) a resolution that it be wound up is passed or proposed;
- (b) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (c) an administrator is appointed to it or a resolution that an administrator be appointed to it is passed;
- (d) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (e) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is effected;
- (f) any action is taken by the Australian Securities and Investments Commission with a view to its deregistration or its dissolution, or an application is made to the Australian Securities and Investments Commission that any such action be taken unless such action is frivolous or bona fide contested;
- (g) it is insolvent as disclosed in its Accounts or otherwise, states that it is unable to pay its debts or it is presumed to be insolvent under any applicable law;
- (h) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
- (i) any event or circumstance set out in section 461 of the Corporations Act occurs in relation to it; or
- (j) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (i) inclusive happens to it under the law of any jurisdiction;

**"Insolvency Event Redemption Notice"** means a compulsory Redemption Notice forwarded to Holders if an Insolvency Event occurs and cannot be remedied;

**"Law"** means the Corporations Act 2001;

**"LBMA"** means the London Bullion Market Association ([www.lbma.org.uk](http://www.lbma.org.uk));

**"Fixing Price"** means in relation to each type of Bullion on any day on which the Relevant Market is open for business, the price determined for the first fixing process of the day under the rules and procedures of the Relevant Association;

**"London Business Day"** means a day (other than a Saturday or a Sunday or a public holiday in England) on which commercial banks generally and the London Bullion market are open for the transaction of business in London;

**"LPPM"** means The London Platinum and Palladium Market ([www.lppm.org.uk](http://www.lppm.org.uk));

**"Management Fee"** means the amount of Bullion which may be debited from the Metal Accounts (at the end of each month and paid to the Administrator), which shall be calculated as the Management Fee Rate times the Bullion held for all outstanding Metal Securities on each day during that month;

**"Management Fee Rate"** means, in respect of each class of Metal Security, the rate per annum specified in Section 2.2 of this Prospectus;

**"Metal Accounts"** means the Unallocated Account and the Allocated Account;

**"Metal Delivery Method"** means the method used by the Company to discharge its Delivery Obligations as set out in the Constitution;

**"Metal Entitlement"** means the relevant amount of Bullion to which a Holder of a Metal Share is entitled on each day, calculated in accordance with Section 2.2 of this Prospectus;

**"Metal Sale Counterparty"** means HSBC Bank USA, N.A.;

**"Metal Sale Counterparty Agreement"** means the Metal Sale Counterparty Agreement dated 3 December 2008 between the Issuer, the Trustee and HSBC Bank USA, N.A.;

**"Metal Sale Method"** means the method used by the Company to discharge its Delivery Obligations as set out in the Constitution;

**“Metal Security”** means a Metal Share and entitlement to the corresponding Beneficial Interest;

**“Metal Shares”** are redeemable preference shares which have the rights set out in the Constitution, issued by the Company in accordance with the Constitution or a Special Resolution of the Company. There are five classes of Metal Shares, being Gold Shares, Silver Shares, Platinum Shares, Palladium Shares and Basket Shares ;

**“Metal Trust”** or **“Trust”** means each Separate Trust over the Bullion of each Holder;

**“Minimum Redemption Amount”** means the minimum number of Metal Securities which may be redeemed by a Holder as specified by the Issuer from time to time (at present there is no minimum);

**“Prospectus”** means any offer document issued by the Company from time to time in relation to the issue of Metal Securities by the Company;

**“Redemption Date”** means the date which is:

- (a) the Compulsory Redemption Date; or
  - (b) the date specified in the Redemption Notice by the Holder,
- whichever is the later;

**“Redemption Fee”** means the redemption fee described in Section 4.3 of this Prospectus;

**“Redemption Instructions”** means the instructions provided by the Holder to the Company and the Trust which in the Company’s reasonable opinion are sufficient to allow the Company to effect the delivery or sale of the Bullion in accordance with the Constitution and the Prospectus relating to the relevant Metal Securities. The Redemption Instructions must include as a minimum, the name, HIN/SRN for the Metal Securities, contact telephone number and payment details of the recipient if the Bullion is to be sold, and delivery and custodial arrangements loco London only (in the case of gold and silver) and loco Zurich only (in the case of platinum and palladium) if the Bullion is to be delivered;

**“Redemption Notice”** means a written notice in the form approved by the Trustee and Issuer from time to time to be lodged by the Holder with the Issuer which instructs the Trustee how to deal with the Bullion and confirms redemption of the Metal Share;

**“Redemption Notice Date”** means the date on which a valid Redemption Notice is lodged or deemed to be lodged with the Issuer under the Trust Deed and the Constitution;

**“Register”** means the register or registers and any sub-registers of Holders of Beneficial Interests kept and maintained by the Registrar and the register or registers and any sub-register of Holders to be kept pursuant to the Law and the ASX Rules;

**“Registered Address”** means in relation to a Holder, whether or not there is one or more than one Holder registered in respect of that Metal Share, the last single address recorded in the Share Register in respect of that Metal Share;

**“Registrar”** means any person the Issuer may appoint from time to time to maintain the Register and the Share Register;

**“Related Body Corporate”** has the same meaning given to the term **“related body corporate”** in the Law;

**“Released Parties”** means the Company, its Related Bodies Corporate, their respective employees, officers, agents and all contractors and sub-contractors;

**“Relevant Association”** means (a) in respect of gold and silver, the LBMA or its successors and (b) in respect of platinum and palladium, the LPPM or its successors;

**“Relevant Market”** means (a) in respect of gold and silver, the over-the-counter market in gold and silver co-ordinated by the LBMA and (b) in respect of platinum and palladium, the over-the-counter market in platinum and palladium co-ordinated by the LPPM;

**"Sale Costs"** means all of the costs of arranging the sale of a Holder's Bullion determined by the Company. The costs of the sale include any costs and expenses incurred by the Company (or its agents) whatsoever which in the Company's opinion relates to the arranging and completion of the sale;

**"Sale Proceeds"** means the actual amount for which the Bullion is sold on behalf of the Holder less the Sale Costs, storage costs, insurance costs and any applicable Transfer Taxes;

**"Settlement Date"** means:

(a) in relation to any Application, the day three ASX Business Days after the Application; and

(b) in relation to any Redemption, the day three ASX Business Days after the applicable Redemption Notice Date, provided that if the Relevant Association determines that such day is not a "value date" in the Relevant Market, it shall be the next "value date" as specified by the Relevant Association;

**"Separate Trust"** means each of the trusts constituted under the Trust Deed;

**"Service Provider"** means the Custodian and any agent or contractor of ASX or the Issuer who provides delivery services, storage or insurance services in connection with the Bullion;

**"Service Agreement"** means the deed poll entitled "Administration Services Deed Poll" made by the Administrator for the benefit of Holders dated 31 December 2010;

**"Share Register"** means the register maintained by the Issuer in respect of the Metal Shares;

**"Subscription Metal"** the gold, silver, platinum and/or palladium that an Applicant delivers as payment for a Metal Security;

**"Termination Event"** means if a contract that either:

(a) the Issuer or the Trustee has with a Service Provider; or

(b) a Service Provider has entered into or arranged in accordance with its obligations to either the Issuer or the Trustee,

is terminated for whatever reason and a replacement contract on similar commercial terms cannot be negotiated or executed;

**"Transaction Documents"** means the Trust Deed, Prospectus, the Constitution of the Issuer and any other document identified as a transaction document for the purposes of the Trust Deed or a Prospectus;

**"Transfer Tax"** means any tax, income tax, capital gains tax, goods and services tax, withholding tax, stamp, financial institutions, registration and other duties, bank accounts debits tax, import/export tax or tariff and other related taxes, levies, imposts, deductions, interest, penalties and charges imposed or levied by a Government or Government agency;

**"Trust Deed"** means the deed entitled "Bare Trust Deed" of the Metal Trust dated 14 February 2003 and amended and restated on 3 December 2008; and

**"Trustee"** means the trustee for the time being of the Metal Trust (which at the date of this Prospectus is Gold Bullion Nominees Pty Ltd), appointed as such by the Trust Deed and includes any subsequent Trustee or any nominee, custodian, delegate or agent of the Trustee as the context requires.

**"Unallocated Account"** means the unallocated Bullion account number 18702 opened in the name of the Trustee with the Custodian pursuant to the Unallocated Account Agreement;

**"Unallocated Account Agreement"** means the amended and restated Allocated Account Agreement dated 2 December 2008 between the Issuer, the Trustee and the Custodian;

**"Zurich Business Day"** means a day (other than a Saturday or a Sunday or a public holiday in Zurich) on which commercial banks and the Zurich Bullion market are generally open for business in Zurich;

**"Zurich Sub-Custodian"** means any firm selected by the Custodian to hold platinum or palladium on behalf of the Custodian in the firm's Zurich vault premises on a segregated basis, appointed pursuant to the Allocated Account Agreement and whose appointment has been approved by the Trustee and the Company, currently being Brink's Global Services Inc. and ViaMat International.

References in this document to a particular time are, unless otherwise stated, references to Australian Eastern Standard Time (AEST).

## **12 DISCLOSURES**

### **Consents**

#### **Baker & McKenzie**

Baker & McKenzie, Solicitors, is aware that ETFS Metal Securities Australia Limited wishes to offer Metal Securities for subscription. Baker & McKenzie has consented to ETFS Metal Securities Australia Limited using the name of Baker & McKenzie in the form and context in which it is included in this Prospectus. Baker & McKenzie has not withdrawn this consent before the document is lodged with ASIC.

Baker & McKenzie has not caused or authorised the issue of the Prospectus and take no responsibility as to the contents of the Prospectus.

#### **Deloitte Touche Tohmatsu**

Deloitte Touche Tohmatsu, Auditors, has given its consent to be named as the Auditor of the Company in the form and context in which its name appears in this Prospectus. Deloitte Touche Tohmatsu has not withdrawn this consent before the document is lodged with ASIC.

Deloitte Touche Tohmatsu has not caused or authorised the issue of the Prospectus and take no responsibility as to the contents of the Prospectus.

#### **HSBC Bank USA, N.A. and Link Market Services Limited**

Neither HSBC Bank USA, N.A. nor Link Market Services Limited has caused or authorised the issue of this Prospectus and has not made any statement that is included in this Prospectus or any statement on which a statement made in this Prospectus is based. HSBC Bank USA, N.A. and Link Market Services Limited take no responsibility for, and are not liable as to the contents of the Prospectus. In particular, the Company notes that:

- HSBC Bank USA, N.A. will at all times treat the Trustee as its sole client and accepts no duty, obligation or liability towards any Authorised Participants, Holder or other third party; and
- none of Link Market Services Limited, HSBC Bank USA, N.A. nor any other member of the HSBC group of companies guarantees the performance of the Company, the Trustee or the Metal Securities.

### **Responsibility Statement**

ETFs Metal Securities Australia Limited is the issuer of this Prospectus and is solely responsible for its contents.

### **Litigation**

The Company is not and has not been involved in any legal or arbitration proceedings since its date of incorporation. Nor, so far as the Directors are aware, are any such proceedings pending or threatened against the Company.

### **Expenses of the Issue**

The expenses of issue were paid by ETF Securities Limited. These expenses included:

- Creation of the Prospectus documentation;
- Lodgement fees with ASIC;
- ASX fees;
- Registry maintenance;
- Legal Fees;
- CHESS fees; and
- Marketing.



## **Expert's and Advisers' Interests**

Except as set out in this paragraph, no expert and no firm in which an expert is a partner, has any interest that exists when this Prospectus is lodged with the ASIC, nor has had such an interest that existed within 2 years before lodgement of this Prospectus for registration in connection with the formation or promotion of the Company and no amounts, whether in cash or shares or otherwise has been paid or agreed to be paid to any expert or to any firm in which such expert is a partner for services rendered by the expert or the firm in connection with the promotion or formation of the Company.

## **Director's Interests**

Except as set out below, no Director or proposed Director of the Company and no firm in which a Director or proposed Director of the Company is a partner, has any interest that existed when this Prospectus is lodged with the ASIC, nor has had such an interest that existed within 2 years before lodgement of this Prospectus for registration, in the promotion of or in any property proposed to be acquired by the Company in connection with the formation or promotion of the Company and no amount, whether in cash or shares or otherwise, has been paid or agreed to be paid to any Director or proposed Director or to any firm in which such Director or proposed Director is a partner to induce the Director or proposed Director to become, or to qualify the Director or proposed Director as, a Director or otherwise for services rendered by the Director or proposed Director or by the firm in connection with the promotion or formation of the Company:

- No director of the Company currently draws a salary from the Company. However, the salary of the directors of the Company may be varied from time to time as determined by the Board of Directors;
- Mr Graham Tuckwell and Dr Vince FitzGerald are officers of ETFSL and the Administrator and may receive fees for their services to ETFSL and the Administrator from time to time;
- the Directors may hold other property whether in their own right or non-beneficially, in which the Company may have an interest from time to time;
- the Constitution of the Company contains indemnities in favour of the Directors within the limits prescribed by the Corporations Act 2001; and
- Associates (including Directors) of the Company may hold the Metal Securities and from time to time buy and sell these.

## **Material Contracts**

The Company has entered into the following contracts which in the opinion of the Directors may be material to the issue of this Prospectus:

- Trust Deed;
- Custodian Agreements; and
- Metal Sale Counterparty Agreement.

## **PRIVACY**

The Administrator respects the privacy of investors. Although the Issuer only accepts applications for the issue of new Metal Securities from Authorised Participants, if you purchase Metal Securities your name may be placed on the Register and your personal information may be used to manage the Register and disclosed under the Corporations Act. Please note that personal information may be provided to service providers, but only under strict privacy controls. For more information on our privacy policy, or to see what information we have concerning you, please contact us.

## **EXECUTION**

This Prospectus is signed by or on behalf of all of the Directors of the Company.

Each director of ETFS Metal Securities Australia Limited has given his consent to the lodgement of this disclosure document in accordance with the Corporations Act 2001.

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**Executed for and on behalf of Graham Tuckwell, (Director) by William Reeves Fuggle (partner Baker & McKenzie) under Power of Attorney dated 12 January 2011**

## CORPORATE DIRECTORY

### REGISTERED OFFICE OF THE COMPANY

Level 27, AMP Centre  
50 Bridge Street  
Sydney NSW 2000

### DIRECTORS

Mr Graham Tuckwell  
Dr Vince FitzGerald  
Mr Greg Burgess

### SECRETARY

Mr Greg Burgess

### ADMINISTRATOR

ETFS Management Company (Jersey) Limited  
Ordnance House  
31 Pier Road  
St Helier  
Jersey JE4 8PW  
Channel Islands

### CUSTODIAN

HSBC Bank USA, N.A., London Branch  
8 Canada Square  
Canary Wharf  
London E14 5HQ  
United Kingdom

### REGISTRAR

Link Market Services Limited  
Level 12, 680 George Street  
Sydney NSW 2000

### PARENT

ETF Securities Limited  
31 Pier Road  
St Helier  
Jersey JE4 8PW  
Channel Islands

### TRUSTEE

Gold Bullion Nominees Pty Limited  
Level 27, AMP Centre  
50 Bridge Street  
Sydney NSW 2000

### LEGAL ADVISERS

Baker & McKenzie  
Level 27, AMP Centre  
50 Bridge Street  
Sydney NSW 2000

### AUDITORS

Deloitte Touche Tohmatsu  
180 Lonsdale Street  
Melbourne VIC 3000