

# Adelaide Managed Funds

ASX Release

11 March 2009

## ADELAIDE MANAGED FUNDS ASSET BACKED YIELD TRUST UPDATED CONSTITUTION

In preparation for the upcoming Scheme Meeting (likely to be held in late April 2009), following is a Supplemental Deed Poll and updated version of the Constitution of the Adelaide Managed Funds Asset Backed Yield Trust.

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Adelaide Managed Funds  
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Chief Investment Officer  
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### About Adelaide Managed Funds

Adelaide Managed Funds, a wholly owned subsidiary of Bendigo and Adelaide Bank, is the responsible entity of the Adelaide Managed Funds Asset Backed Yield Trust.

For further information about Adelaide Managed Funds and the AYT, please visit:  
[www.adelaidemanagedfunds.com.au](http://www.adelaidemanagedfunds.com.au)

MALLESONS STEPHEN JAQUES

# Supplemental Deed Poll - Adelaide Managed Funds Asset Backed Yield Trust

Dated

Adelaide Managed Funds Limited (ABN 81 062 274 533) ("Manager")

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# **Supplemental Deed Poll - Adelaide Managed Funds Asset Backed Yield Trust**

## **Contents**

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>2</b>
<b>1 Interpretation</b>	<b>2</b>
1.1 Definitions	2
1.2 Interpretation	2
1.3 Deed supplemental to Constitution	2
1.4 Headings	2
<b>2 Modifications to the Constitution</b>	<b>2</b>
<b>3 No redeclaration etc</b>	<b>2</b>
<b>4 Benefit of this Supplemental Deed Poll</b>	<b>3</b>
<b>5 Governing law</b>	<b>3</b>
<b>Schedule 1 - Amendments</b>	<b>4</b>
<b>Signing page</b>	<b>6</b>

# Supplemental Deed Poll - Adelaide Managed Funds Asset Backed Yield Trust

## Details

Parties	Manager, as described above	
	Name	<b>Adelaide Managed Funds Limited</b>
	ABN	81 062 274 533
	Address	Level 5, 169 Pirie Street Adelaide SA 5001
	Capacity	Responsible entity of the Fund
<b>Recitals</b>	<b>A</b>	The Adelaide Managed Funds Asset Backed Yield Trust (“ <b>Fund</b> ”) is a registered managed investment scheme under the <i>Corporations Act 2001</i> (Cth) (“ <b>Act</b> ”) and the Manager is the responsible entity of the Fund.
	<b>B</b>	The Fund is governed by the constitution of the Fund dated 25 May 2006, as amended (“ <b>Constitution</b> ”). Clause 30.1 of the Constitution permits the Manager to amend the Constitution by deed subject to the requirements of the Act.
	<b>C</b>	Section 601GC(1)(b) of the Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution by the responsible entity if it reasonably considers the change will not adversely affect members’ rights.
	<b>D</b>	The Manager wishes to modify the Constitution as set out in this deed poll in order to correct some numbering and clause cross-referencing errors.
	<b>E</b>	The Manager is of the view that the amendments are administrative in nature and reasonably considers that the modifications to the Constitution contained in this deed poll will not adversely affect the rights of Members.
<b>Governing law</b>	New South Wales	
<b>Date of agreement</b>	See Signing page	

# Supplemental Deed Poll - Adelaide Managed Funds Asset Backed Yield Trust

## General terms

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### 1 Interpretation

#### 1.1 Definitions

In this deed poll, these words and phrases have the following meanings unless the contrary intention appears:

**Constitution** means the deed dated 25 May 2006 under which the Fund is governed as amended from time to time (including by a Supplemental Deed Poll dated 18 July 2006).

**Effective Date** means the date that a copy of this deed poll is lodged with the Australian Securities and Investments Commission.

**Fund** means the registered managed investment scheme currently named Adelaide Managed Funds Asset Backed Yield Trust (ARSN 120 038 002).

#### 1.2 Interpretation

- (a) Terms used in this deed poll but not defined have the same meanings given to them in the Constitution.
- (b) Clauses 36.1 and 36.2 of the Constitution apply to this deed poll as if they are set out in this deed poll.

#### 1.3 Deed supplemental to Constitution

This deed poll is supplemental to the Constitution.

#### 1.4 Headings

Headings are inserted for convenience only and do not affect the interpretation of this deed poll.

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### 2 Modifications to the Constitution

The Constitution is modified on and from the Effective Date in the manner set out in Schedule 1 of this deed poll.

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### 3 No redeclaration etc

The Manager declares that it is not, by this deed poll:

- (a) redeclaring or resettling the Fund declared under the Constitution; or
- (b) causing the transfer, vesting or accruing of property in any person.

---

#### **4 Benefit of this Supplemental Deed Poll**

This deed poll is made by the Manager with the intent that the benefit of this deed poll shall enure to the benefit of Members jointly and severally.

---

#### **5 Governing law**

This deed poll is governed by the laws in force in the place specified in the Details. Each person affected by it must submit to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.

**EXECUTED** as a deed poll.

# Supplemental Deed Poll - Adelaide Managed Funds Asset Backed Yield Trust

## Schedule 1 - Amendments

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### 1 Clause renumbering and cross references

Except as specified in paragraphs 2 and 3 below, all clause numbering within the Constitution (including, for the avoidance of doubt, all clause cross-references within each clause in the Constitution) are to be amended by subtracting 6 from the current number of the clause, as illustrated by the following examples:

- (a) Clause 7.1 becomes clause 1.1;
- (b) Clause 11.10(a)(i) becomes clause 5.10(a)(i); and
- (c) Clause 35.3(a) becomes clause 29.3(a).

---

### 2 Other specific cross-reference amendments

The following clause cross-references are to be amended as set out below:

- (a) in current clause 11.8, delete the reference to “clause 0” and replace it with a reference to “clause 5.7”; and
- (b) in the definition of “Specified Time” in current clause 36.1, delete the reference to “clause 0” and replace it with “clause 5.7”.

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### 3 No amendment

No amendment is to be made to the following existing clause references:

Current clause number	References that are to remain unchanged
Clause 11.11(a)	The reference to “clause 6.1(g)”
Clause 12.1(h)	The reference to “clause 21.3A(a)”
Clause 12.2	The reference to “clause 6.1(g)”
Clause 12.4(b)(i)	The reference to “clause 6.1(g)”
Clause 12.6(b)	The reference to “paragraph 6.6(a)”
Footnote 9 (being a footnote to current clause 13.4)	The reference to “clause 26”
16.4(a)	The reference to “paragraph 10.4(b)”

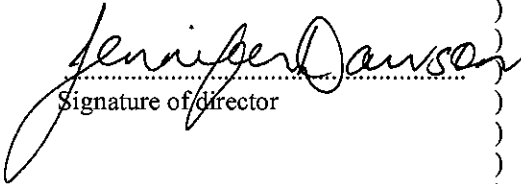
17.2(a)	The reference to "clause 11.1"
17.2(b)	The reference to "clause 11.1"
17.4	The reference to "clause 11.3"
17.11	The reference to "clause 6.7 or 6.8"
Footnote 32 (being a footnote to current clause 21.2)	The reference to "clause 16.3(c)"
Footnote 35 (being a footnote to current clause 22.3)	The reference to "clause 16.3(c)"
Clause 21.3A	The number of this clause
Clause 21.3A(a)(i)	The reference to "21.3A(b)(i) or (iii)"
Clause 21.3A(c)	The reference to "clause 6.1(h)"
Clause 21.3A(e)	The reference to "clause 21.3A(f)"
Clause 21.3A(e)(i)	The reference to "clause 21.3A"
Clause 21.3A(f)	The reference to "clause 21.3A(a) and (b)"
Clause 36.1 - the definition of "Application Price"	The reference to "clause 6"
Clause 36.1 - the definition of "Distributable Income"	The reference to "clause 11.2"
Clause 36.1 - the definition of "Income Entitlement"	The reference to "clause 11.5"
Clause 36.1 - the definition of "Performance Fee"	The reference to "clause 21.3A"
Finding list	All clause references in the Finding List at the back of the Constitution
Footnote 37 (being a footnote to the current clause 23.6)	The reference to "clause 27"



**Supplemental Deed Poll - Adelaide Managed  
Funds Asset Backed Yield Trust**  
Signing page

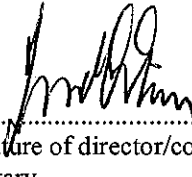
DATED: 10<sup>th</sup> MARCH 2009

EXECUTED by ADELAIDE  
MANAGED FUNDS LIMITED in  
its capacity as responsible entity of  
the Adelaide Managed Funds Asset  
Backed Yield Trust in accordance  
with section 127(1) of the  
Corporations Act 2001 (Cwlth) by  
authority of its directors:

  
.....  
Signature of director

JENNIFER LYNN DAWSON

.....  
Name of director (block letters)

  
.....  
Signature of director/company  
secretary

DAVID ANDREW OATAWAY

.....  
Name of director/company secretary  
(block letters)

# Constitution of the Adelaide Managed Funds Asset Backed Yield Trust

Adelaide Managed Funds Limited (ACN 062 274 533) ("Manager")

Consolidated Constitution at 11 March 2009

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# Constitution of the Adelaide Managed Funds Asset Backed Yield Trust

## Contents

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>2</b>
<b>1 Name of Fund</b>	<b>2</b>
1.1 Name	2
1.2 Change of Manager	2
<b>2 Assets held on trust</b>	<b>2</b>
2.1 Fund	2
2.2 Holding property separately	2
2.3 Mixing when not registered	2
<b>3 Units</b>	<b>3</b>
3.1 Nature of Units	3
3.2 Interest in Assets	3
3.3 Rights attaching to Units and Options	3
3.4 Fractions of Units	3
3.5 Treatment of fractions	3
3.6 Consolidation and division of Units and Options	3
3.7 Transfer of Units and Options	3
3.8 Restricted Securities	3
3.9 Form of transfer	4
3.10 When transfer is effective	4
3.11 Manager may refuse	4
3.12 Transfer of Relevant Securities if Officially Quoted	4
3.13 Manager may request holding lock or refuse to register transfer	4
3.14 Manager must request holding lock or refuse to register transfer	4
3.15 Notice of holding locks and refusal to register transfer	5
3.16 Joint tenancy	5
3.17 Death, legal disability of Member	5
3.18 Rights of person entitled on transmission	5
<b>4 Options</b>	<b>5</b>
4.1 Options	5
4.2 Entitlement of Options	6
4.3 Terms of Options	6
4.4 Exercise of Options	6
4.5 Lapse of Options	7
<b>5 Partly Paid Units</b>	<b>7</b>
5.1 Instalments	7
5.2 Terms of Partly Paid Units	7
5.3 Variation of terms	7
5.4 Interest on instalments	7

5.5	On termination	8
5.6	Notice	8
5.7	Failure to pay instalments	8
5.8	Forfeiture	9
5.9	Record of forfeiture	9
5.10	Sale of forfeited Units	9
5.11	Price for forfeited Unit	9
5.12	Rights and obligations of former holder	10
5.13	Evidence of forfeiture	10
5.14	Transfer of forfeited Unit	10
5.15	Entitlement to distributions	10
5.16	Joint holders	11
5.17	Underwritten offer of Partly Paid Units	11
<b>6</b>	<b>Application Price for Units</b>	<b>12</b>
6.1	Application Price	12
6.2	Time for calculation	12
6.3	Rounding	13
6.4	Pro rata rights issues	13
6.5	Terms of pro rata issues	13
6.6	Placements and security purchase plan	14
6.7	Reinvestment while Officially Quoted	14
6.8	Reinvestment while not Officially Quoted	14
<b>7</b>	<b>Application procedure</b>	<b>14</b>
7.1	Application form	14
7.2	Payment	14
7.3	Manager may reject	15
7.4	Minimum amounts	15
7.5	Issue date	15
7.6	Deemed application if reinvestment applies	15
7.7	Uncleared funds	16
7.8	Register	16
<b>8</b>	<b>Redemption Price of Units</b>	<b>16</b>
8.1	Redemption Price	16
8.2	Time for calculation	16
8.3	Rounding	16
<b>9</b>	<b>Redemption procedures</b>	<b>16</b>
9.1	While Officially Quoted	16
9.2	Request for redemption	17
9.3	Request may not be withdrawn	17
9.4	When Fund is Liquid	17
9.5	Manager may redeem	17
9.6	Delayed redemption	17
9.7	Minimum redemption	17
9.8	Payment from the Assets	18
9.9	Minimum holding	18
9.10	Increased minimum	18
9.11	When Fund is not Liquid	18
9.12	Manager not obliged	18
9.13	Treatment of request	18
9.14	Sums owed to Manager	18

9.15	Transfer of Assets	19
9.16	When Units are redeemed	19
9.17	Buy-back of Units	19
<b>10</b>	<b>Valuation of assets and accounts, audit and reports</b>	<b>19</b>
10.1	Periodic valuations	19
10.2	Net Asset Value	19
10.3	Valuation methods	19
10.4	Market Value	19
10.5	Accounts, audit and reports	20
<b>11</b>	<b>Income and distributions to Members</b>	<b>20</b>
11.1	Standing principles for determining income	20
11.2	Determination of Distributable Income	20
11.3	Present entitlement to Income	20
11.4	Indefeasibility	21
11.5	Income Entitlement	21
11.6	Satisfaction of present entitlement to Income	22
11.7	Payment of Income Entitlement	22
11.8	Specification of types of income and capital	22
11.9	Classification as income or capital	22
11.10	Other distributions	22
11.11	Reinvestment	22
11.12	Procedure for reinvestment	22
11.13	Position on transfer of Units	23
11.14	Partly Paid Units	23
<b>12</b>	<b>Payments</b>	<b>23</b>
12.1	Payment method	23
12.2	Cheques	23
12.3	Electronic transfers	24
12.4	Rounding	24
12.5	Joint Members	24
12.6	Deduction of Tax or amounts owing	24
<b>13</b>	<b>Powers of the Manager</b>	<b>24</b>
13.1	General powers	24
13.2	Contracting powers	24
13.3	Investment powers	24
13.4	Power of delegation	24
13.5	Terms of delegation	25
13.6	Delegate may be an associate	25
13.7	Exercise of discretion	25
13.8	Underwriting	25
13.9	Listing of the Trust	25
<b>14</b>	<b>Retirement of Manager</b>	<b>25</b>
14.1	Voluntary retirement	25
14.2	While not a Registered Scheme	25
14.3	Compulsory retirement	25
14.4	While not a Registered Scheme	26
14.5	New Manager	26
14.6	Release	26
14.7	Retirement benefit	26

<b>15</b>	<b>Notices to Members and Option Holders</b>	<b>26</b>
15.1	How notice may be given	26
15.2	Cheques	26
15.3	Joint Members	27
15.4	When notice received	27
<b>16</b>	<b>Notices to the Manager</b>	<b>27</b>
16.1	Form of notice	27
16.2	When notice received	27
16.3	Signature	27
<b>17</b>	<b>Meetings of Members</b>	<b>27</b>
17.1	Convening of meetings	27
17.2	Members' request for meeting - not Registered Scheme	27
17.3	Members' request for meeting - Registered Scheme	28
17.4	Notice period	28
17.5	Notice while Registered Scheme	28
17.6	Manager may determine	28
17.7	Quorum	28
17.8	No quorum	28
17.9	Chairman	29
17.10	Conduct of meeting	29
17.11	Adjournment	29
17.12	Proxies and voting	29
17.13	Validity of proxy	29
17.14	Demand for a poll	29
17.15	Resolutions binding	29
17.16	Objection at meeting	29
17.17	Non-receipt	29
17.18	Option Holders	29
<b>18</b>	<b>Rights and liabilities of Manager</b>	<b>30</b>
18.1	Holding Units	30
18.2	Other capacities	30
18.3	Manager may rely	30
<b>19</b>	<b>Limitation of liability and indemnity in favour of Manager</b>	<b>31</b>
19.1	Limitation on Manager's liability to Members	31
19.2	Liability to Members while Fund is not a Registered Scheme	31
19.3	Liability limited to Assets	31
19.4	Indemnity in favour of Manager	31
19.5	Liability for agents	31
19.6	Indemnity continues	31
19.7	Right of indemnity not affected by unrelated breach	31
<b>20</b>	<b>Liability of Members</b>	<b>32</b>
20.1	Liability limited	32
20.2	Member need not indemnify	32
20.3	Tax or User Pays Fees	32
20.4	Joint Members	32
20.5	Recourse	32
20.6	Restrictions on Members	32

<b>21</b>	<b>Remuneration and expenses of Manager</b>	<b>32</b>
21.1	Fees payable from the Assets	32
21.2	Fees subject to Corporations Act	33
21.3	Management fee	33
21.3A	Performance Fee	33
21.4	User Pays Fees	35
21.5	User Pays Fees - specific types	35
21.6	Fee offset	35
21.7	Waiver of fees	36
21.8	Expenses	36
21.9	GST	38
21.10	Input tax credits	39
21.11	GST and expenses	39
<b>22</b>	<b>Duration of the Fund</b>	<b>39</b>
22.1	Initial settlement	39
22.2	Termination	39
22.3	Change in taxation	40
22.4	Restriction on issue and redemption of Units	40
<b>23</b>	<b>Procedure on termination</b>	<b>40</b>
23.1	Realisation of Assets	40
23.2	Audit of winding up	40
23.3	Distribution following termination	40
23.4	Provisions continue to apply	41
<b>24</b>	<b>Amendments to this constitution</b>	<b>41</b>
24.1	Manager may amend	41
24.2	While not a Registered Scheme	42
24.3	Statutory requirements	42
24.4	Termination	42
24.5	Listing Rules	42
24.6	Application of Listing Rules to constitution	43
<b>25</b>	<b>Compliance committee</b>	<b>43</b>
<b>26</b>	<b>Complaints</b>	<b>43</b>
<b>27</b>	<b>Restricted Securities</b>	<b>44</b>
27.1	Application of this clause	44
27.2	Restriction on distributions and voting rights	44
<b>28</b>	<b>Small holdings</b>	<b>44</b>
28.1	Application of this clause	44
28.2	Manager's right to sell Small Holdings	44
28.3	Divestment Notice	44
28.4	Relevant Period	45
28.5	Limitation on Manager 's right to sell	45
28.6	Manager can sell Relevant Units	45
28.7	No obligation to sell	45
28.8	Manager as Member's attorney	46
28.9	Conclusive evidence	46
28.10	Registering the purchaser	46

28.11	Payment of proceeds	46
28.12	Costs	47
28.13	Remedy limited to damages	47
28.14	Distributions and voting suspended	47
28.15	12 month limit	47
28.16	Effect of takeover bid	47
<b>29</b>	<b>Security Interests</b>	<b>47</b>
29.1	Manager may determine	47
29.2	Clause may cease to apply	47
29.3	Form of notice	48
29.4	Entry of Security Interests on the Register	48
29.5	Manager not bound	48
29.6	Removal of Security Interests from the Register	48
29.7	Rights attaching to Units in respect of which a Security Interest is recorded	48
<b>30</b>	<b>Interpretation</b>	<b>49</b>
30.1	Definitions	49
30.2	Interpretation	55
30.3	Other documents	56
30.4	Constitution legally binding	56
30.5	Severance	56
30.6	Governing law	56
30.7	Other obligations excluded	56
	<b>Signing page</b>	<b>58</b>
	<b>Finding list</b>	<b>59</b>



# Constitution of the Adelaide Managed Funds Asset Backed Yield Trust Details

**Interpretation** – definitions are at the end of the General terms

<b>Parties</b>	<b>Manager</b>	
<b>Manager</b>	Name	<b>Adelaide Managed Funds Limited</b>
	ACN	062 274 533
	Address	Level 5 169 Pirie Street Adelaide SA 5001
<b>Governing law</b>	New South Wales	
<b>Date of deed</b>	See Signing page	

# Constitution of the Adelaide Managed Funds Asset Backed Yield Trust

## General terms

<sup>1</sup>This deed poll is declared by Adelaide Managed Funds Limited (ACN 062 274 533) to be the constitution of the Adelaide Managed Funds Asset Backed Yield Trust.

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## **1 Name of Fund**

### **1.1 Name**

The Fund is called the Adelaide Managed Funds Asset Backed Yield Trust or by such other name as the Manager determines from time to time<sup>2</sup>.

### **1.2 Change of Manager**

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

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## **2 Assets held on trust**

### **2.1 Fund**

The Manager declares that it will hold the Assets upon trust for the Members and act in the interests of the Members on and subject to the terms and conditions of this constitution<sup>3</sup>.

### **2.2 Holding property separately**

While the Fund is a Registered Scheme, any Assets held by the Manager as responsible entity of the Fund must be clearly identified as property of the Fund and held separately from the assets of the Manager and any other managed investment scheme if and to the extent that the Corporations Act so requires<sup>4</sup>.

### **2.3 Mixing when not registered**

While the Fund is not a Registered Scheme, the Manager may mix the Assets with property and rights of any other person or Fund.

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<sup>2</sup> See Corporations Regulation 5C.1.02.

<sup>3</sup> See section 601FC(2) of the Corporations Act.

<sup>4</sup> See section 601FC(1)(i).

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## **3 Units**

### **3.1 Nature of Units**

The beneficial interest in the Fund is divided into Units.

### **3.2 Interest in Assets**

Subject to any rights, obligations or restrictions attaching to any particular Unit, each Fully Paid Unit confers an equal undivided interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset. Unless this constitution states otherwise, a Partly Paid Unit confers an interest of the same nature less the amount remaining to be paid up on the Unit.

### **3.3 Rights attaching to Units and Options**

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit. An Option Holder holds an Option subject to the terms and conditions attaching to that Option.

### **3.4 Fractions of Units**

Fractions of a Unit (calculated to 2 decimal places) may be issued by the Manager but, while the Units are Officially Quoted, fractions of a Unit may not be issued.

### **3.5 Treatment of fractions**

The provisions of this constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.

### **3.6 Consolidation and division of Units and Options**

Units and Options may be consolidated or divided as determined by the Manager<sup>5</sup>.

### **3.7 Transfer of Units and Options**

Subject to clauses 3.8 and 3.11, Members may transfer Units and, subject to their terms and conditions, Options.

### **3.8 Restricted Securities**

- (a) While Units are Officially Quoted and the Listing Rules so require, a Member may not transfer Restricted Securities during the applicable escrow period.
- (b) During a breach of the Listing Rules relating to Restricted Securities, or a breach of a Restriction Agreement, the holder of the Restricted Securities is not entitled to any distribution or voting rights in respect of the Restricted Securities.

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<sup>5</sup> Refer Listing Rules, Chapter 7 - reorganisations of capital.

### **3.9 Form of transfer**

Subject to the rules applicable while the Fund is admitted to an uncertificated trading system, transfers must be in a form approved by the Manager and, if the Manager requires, be presented for Registration duly stamped.

### **3.10 When transfer is effective**

A transfer is not effective until Registered.

### **3.11 Manager may refuse**

If the Relevant Securities are not Officially Quoted, the Manager may refuse to record any transfer in the Register without giving any reason for the refusal and, while Units are Officially Quoted, must refuse to record a transfer in the Register which would be in breach of clause 3.8.

### **3.12 Transfer of Relevant Securities if Officially Quoted**

If the Relevant Securities are Officially Quoted, Relevant Securities may be transferred in any manner permitted by the Operating Rules of a CS Facility. Before Registration of any such transfer, the Manager may require that it be provided with any documents that the rules of the uncertificated system require, or permit the Manager to require, for authorisation of the Registration. This clause 3.12 prevails over any other provision of this constitution that may be inconsistent with it but it does not permit the Manager to refuse to register a proper transfer in accordance with the Operating Rules of a CS Facility.

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

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

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

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

The Manager must:

- (a) request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of Relevant Securities from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or
- (b) refuse to register any transfer of Relevant Securities to which paragraph (a) does not apply,

if the Corporations Act or Listing Rules require the Trust to do so or the transfer is in breach of clause 3.8.

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

If, in the exercise of its rights under clause 3.13 and 3.14, the Manager requests application of a holding lock to prevent a transfer of Relevant Securities or refuses to Register a transfer of Relevant Securities, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

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

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

### **3.16 Joint tenancy**

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

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

If a Member dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to Units or Options Registered in the Member's name.

### **3.18 Rights of person entitled on transmission**

A person who becomes entitled to a Unit or an Option because of the death, bankruptcy, insanity or other disability of a Member or Option Holder is entitled to receive and may give a discharge for all money payable in respect of the Unit or Option but is not entitled to receive notices of or to attend or vote at any meetings of Members or Option Holders until that person is Registered as the holder of the Unit or Option.

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## **4 Options**

### **4.1 Options**

The Manager may create and issue Options on such terms and conditions as the Manager determines and offer them for subscription to such persons and on such terms as the Manager may determine but, while the Fund is a Registered Scheme, Options may be issued only to Members who:

- (a) have received an offer to subscribe for a specified number of Options and a specified number of Units; or
- (b) were Members on a date determined by the Manager which may not be more than 30 days before the date of the offer.

## **4.2 Entitlement of Options**

An offer made under clause 4.1(a):

- (a) must be expressed as a proportion of the number of Units held by the Member on the date determined by the Manager, with Partly Paid Units regarded as a fraction of a Unit, calculated by dividing the instalments paid or due but unpaid by the Application Price of the Unit. The Manager may ignore fractions and adjust an entitlement as follows:
  - (i) if the last number of the entitlement is 5 or more, by rounding it up to the nearest multiple of 10; or
  - (ii) if the last number of the entitlement is less than 5, by rounding it down to the nearest multiple of 10;
- (b) may be renounced in favour of another person unless the offer is expressed as non-renounceable.

## **4.3 Terms of Options**

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

- (a) for consideration or no consideration;
- (b) while the Fund is a Registered Scheme, pursuant to pari passu offers to all existing Members on the basis that the exercise price for a Unit to be issued on exercise of the Option is the price determined by the Manager provided that the exercise price is not less than the price that would otherwise apply under this constitution if the Unit was issued on the date of issue of the Option by a percentage not exceeding 20%; and
- (c) conferring on the Option Holder such other entitlement under this constitution as the Manager determines,

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

Subject to the Listing Rules while the Units are Officially Quoted and the conditions of any applicable ASIC relief, if the Manager is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Manager is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia and such other jurisdiction (if any) as the Manager may determine.

## **4.4 Exercise of Options**

On exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of Units as the terms and conditions of issue of the Option contemplate, provided that the Option Holder has given notice to the

Manager in accordance with the terms upon which the Option was granted together with payment in full of the exercise price.

#### **4.5 Lapse of Options**

An Option lapses on the termination or winding up of the Fund, in which case the liability of the Manager ceases in respect of the Option.

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### **5 Partly Paid Units**

#### **5.1 Instalments**

The Application Price of Units may be payable by instalments as set out in clauses 5.2 to 5.6.

#### **5.2 Terms of Partly Paid Units**

The Manager may determine at any time that Units to be offered for subscription or sale are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Manager determines or, if the Manager so determines, by a single instalment payable at such time as the Manager determines. The Manager may, as a term of issue, require that the unpaid Application Price bears interest until paid, calculated at a fixed or variable rate. All the terms and conditions of such an offer must be set out in the product disclosure statement or other document offering the Units for subscription or sale.

#### **5.3 Variation of terms**

Subject to any applicable statutory duty requiring the Manager to treat Members of the same class equally and those of different classes fairly, where Units are offered for sale or subscription on terms and conditions determined and set out in accordance with clause 5.2, those terms and conditions may be varied or compliance waived only with the consent of the Manager. The variation or waiver must not take effect while the offer under the product disclosure statement or other document pursuant to which the Units were offered for subscription or sale is open.

#### **5.4 Interest on instalments**

- (a) If a Member does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the Manager determines not exceeding the Bank Bill Rate plus 4% per annum. Interest is calculated daily and payable monthly in arrears. The Manager may waive payment of that interest in whole or part.
- (b) The Manager may revoke or postpone the payment of an instalment.
- (c) Subject to the Listing Rules, an instalment will be deemed to be due on the date determined by the Manager.
- (d) Subject to the Listing Rules, the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that

an instalment is due to, a Member, will not invalidate the instalment being due.

- (e) Subject to the Corporations Act and the Listing Rules, the Manager may extinguish in full or in part any liability of Members in respect of any moneys unpaid on Members' Units.
- (f) Subject to the Listing Rules, any instalment which, by the terms of issue of the Unit, becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue will be deemed to be an instalment which the Manager has given Members notice of in accordance with clause 5.6. In the case of non-payment, all the provisions of this constitution as to payment of interest, forfeiture or otherwise shall apply as if such notice had been given.

## **5.5 On termination**

Despite anything in this constitution or in the terms of any offer of Partly Paid Units, the whole of the unpaid Application Price of each Partly Paid Unit is payable by the Member to the Manager immediately on termination or winding up of the Fund.

## **5.6 Notice**

- (a) The Manager must give Members at least 30 Business Days' notice (but not more than 40 Business Days' notice) of the time and date each instalment is due to be paid (the "**First Notice**").
- (b) If the Trust is Listed:
  - (i) the First Notice must contain such other information as is required by the Listing Rules (or ASX under the Listing Rules); and
  - (ii) at least 4 Business Days before the date each instalment is due to be paid, the Manager must send a second notice to all new Members and those Members whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

## **5.7 Failure to pay instalments**

If a Member fails to pay in full any instalment due on any Partly Paid Unit or Units on or by the day specified for payment, the Manager must serve a notice on that Member not later than 14 days after the due date requiring payment of so much of the instalment as is unpaid and any interest calculated from the due date until payment of the instalment at a fair market rate as determined by the Manager or in the absence of any determination, the Bank Bill Rate plus 4% per annum. The notice must specify a further time and day (not earlier than 7 days from the date of service of the notice) on or by which the payment as required by the notice is to be made. The notice must also state that in the event of non-payment on or by that specified time and day ("**Specified Time**"), the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited.



## **5.8 Forfeiture**

If the requirements of any notices issued under clauses 5.6 and 5.7 are not complied with by the Specified Time, a Partly Paid Unit in respect of which the notice has been given and not complied with may be forfeited to the Manager if the Manager so determines, and all voting rights and entitlements to the distribution of income in connection with the Partly Paid Unit in respect of which notice has been given are suspended until reinstated by the Manager.

At any time before sale or disposition of a forfeited Unit by the Manager, the forfeiture may be cancelled if the holder of the forfeited Unit pays the Manager the full amount of the instalment due together with any other amounts in respect of the forfeiture including interest.

## **5.9 Record of forfeiture**

The Manager may make any entry in the Register required to reflect any forfeiture under clause 5.8.

## **5.10 Sale of forfeited Units**

- (a) Partly Paid Units which are subject to forfeiture under clause 5.8 will be sold by the Manager and the Manager must apply the proceeds as follows:
  - (i) in payment of the amount outstanding against the Partly Paid Units (and any accrued interest if applicable) after deducting the costs of sale including, without limitation, any brokerage and duties; and
  - (ii) in payment of the balance (if any) to the Member.
- (b) If the proceeds of sale of the forfeited Partly Paid Units are less than the amount outstanding in relation to the unpaid amount on the Partly Paid Units, the Member remains liable for the balance owing on the Partly Paid Units (and any accrued interest), unless otherwise determined in the absolute discretion of the Manager to waive any shortfall.

## **5.11 Price for forfeited Unit**

A Unit forfeited under clause 5.8 may be sold or otherwise disposed of as a Fully Paid Unit:

- (a) while the Fund is a Registered Scheme, at a price that is no less than a price calculated in accordance with clause 6.1(g); or
- (b) while the Units are Officially Quoted, at a price determined by the Manager where the sale of the forfeited Unit is in accordance with section 254Q of the Corporations Act other than subsections 254Q(1), (10) and (13) as if the Units were shares, the scheme was the company and the responsible entity was the directors of the company; or

- (c) while the Fund is a Registered Scheme, in accordance with any applicable ASIC relief in relation to the sale of forfeited units, if the Manager complies with the conditions of the relief; or
- (d) subject to the Corporations Act and while Units are Officially Quoted, on the ASX; or
- (e) while the Fund is not a Registered Scheme, at any price the Manager can obtain.

The Manager is not liable to a Member for any loss suffered by the Member as a result of the sale.

## **5.12 Rights and obligations of former holder**

The holder of Partly Paid Units which have been forfeited under the provisions of this clause 5 ceases to be a Member in respect of the forfeited Units (and has no claims or demands against the Manager or the Fund in respect of the forfeited Units) but remains liable to pay to the Manager all moneys which at the date of forfeiture were payable by the Member to the Manager in respect of the forfeited Units (including costs associated with the forfeiture and all proceedings instituted against the Member to recover the amount due and interest up to the date of actual payment). The former holder's liability ceases if and when the Manager receives payment in full of all such money and, if applicable, interest in respect of the forfeited Units.

## **5.13 Evidence of forfeiture**

A statement signed by a duly authorised officer of the Manager that a Partly Paid Unit have been duly forfeited on a stated date is conclusive evidence of the facts stated as against all persons claiming to be entitled to the forfeited Units.

## **5.14 Transfer of forfeited Unit**

Where a Partly Paid Unit is forfeited the Manager may (subject to clause 5.10) receive the consideration, if any, given for a forfeited Unit on its sale or disposal, and the Manager may execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of. That person must then be registered as the holder of that Unit and is not obliged to ensure that any part of the money which they have paid for the Unit is paid to the former holder of the Unit. That person's title to that Unit is not affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

## **5.15 Entitlement to distributions**

Income and distributions of capital in accordance with clause 11 to which the holder of a forfeited Unit has become entitled and which have not been paid prior to forfeiture under this clause 5 must be paid to the holder of the forfeited Unit as if it formed part of the proceeds of sale or disposal of the forfeited Unit.

## 5.16 Joint holders

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

## 5.17 Underwritten offer of Partly Paid Units

(a) Where:

- (i) the Manager has appointed an underwriter to underwrite the payment of any instalment due on any Partly Paid Units;
- (ii) in discharging its obligations, the underwriter has purchased Units as contemplated by the relevant underwriting agreement at a price greater than the Average Market Price for Units in respect of which the relevant instalment has been paid; and
- (iii) under the terms of the agreement with the underwriter, the Manager must pay the underwriter the difference between the price paid by the underwriter for the Units and the Average Market Price,

then the Former Member whose Units have been forfeited and sold is liable to pay to the Manager, in respect of those forfeited Units, and may be sued for:

- (iv) all money payable by the Manager to the underwriter as contemplated by paragraph (iii), pro rated (if necessary) according to the number of forfeited Units of the Former Member;
- (v) interest; and
- (vi) all costs and expenses incurred by the Manager in procuring payment from the Former Member.

For the purpose of this clause 5.17, the “**Average Market Price**” of a Fully Paid Unit is the weighted average Market Price for the Units over the 10 Trading Days immediately preceding the date of acquisition by the underwriter or, if there is no such price, then the last sale price of the Unit on ASX prior to that date.

- (b) Where it is liable to the underwriter as contemplated by clause 5.17(a), the Manager may assign its rights of action under clause 5.17(a) against the Former Member to the underwriter in satisfaction of its liability to the underwriter.

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## 6 Application Price for Units<sup>6</sup>

### 6.1 Application Price

Subject to clause 22.1, a Unit must only be issued at an Application Price calculated as follows:

- (a) in the case of Units offered pursuant to the First Offer Document at a price of \$2.00 per Unit;
- (b) in the case of a proportionate offer (including a rights issue), in accordance with clause 6.4;
- (c) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 6.6;
- (d) in the case of reinvestment of income, in accordance with clauses 6.7 or 6.8;
- (e) in the case of Units issued pursuant to the exercise of an Option, in accordance with clause 4.3;
- (f) subject to paragraphs (a), (b), (c), (d) and (e) in all other cases while Units are Officially Quoted, the weighted average Market Price of Units during the 10 Business Days immediately prior to the date on which or as at which the Application Price is to be calculated; and
- (g) while Units are not Officially Quoted, in accordance with the following formula:

Net Asset Value + Transaction Costs

number of Fully Paid Units in issue + Paid-up Proportion;

- (h) in the case of Units issued to the Manager in satisfaction of its entitlement to Performance Fees for a Half Year the result of the calculation of “V<sub>2</sub>” under clause 21.3A(a) used to calculate the Performance Fee for the relevant Half Year,

and the Application Price may be payable either in full on application or by such instalments as the Manager determines in accordance with clause 5.

### 6.2 Time for calculation

Each of the variables in clause 6.1(g) must be determined as at the next Valuation Time after:

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

whichever happens later.

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<sup>6</sup> Required to be included by Section 601GA(1)(a)

### **6.3 Rounding**

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

### **6.4 Pro rata rights issues**

The Manager may (subject to the terms of any applicable ASIC relief) offer Units for subscription at a price determined by the Manager to those persons who were Members on a date determined by the Manager not being more than 30 days immediately prior to the date of the offer, provided that:

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
- (b) either:
  - (i) where Units are not Officially Quoted, the Application Price is not less than 50% of the price calculated in accordance with clause 6.1(g); or
  - (ii) where Units are Officially Quoted, the Application Price is not less than 50% of the Market Price of Units as at the date not more than 5 Business Days prior to the date on which the product disclosure statement under which the offer is made is lodged with ASIC,

but, subject to the Listing Rules and any applicable ASIC relief, the Manager is not required to offer Units under this clause to persons whose address on the Register is in a place other than Australia<sup>7</sup> and such other jurisdiction (if any) as the Manager may determine.

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

- (a) Any offer made under clause 6.4 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Manager under clause 6.4, provided that the Manager may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Manager must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under clause 6.4 which are not subscribed for within the period for acceptance set by the Manager may be offered for subscription by the Manager to any person. The Application Price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.

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<sup>7</sup> Assumes the Manager is able to comply with the conditions in Listing Rule 7.7.1.

- (c) If an underwriter has underwritten any offer for subscription of Units under clause 6.4, such underwriter may take up any Units not subscribed for by Members.

## **6.6 Placements and security purchase plan**

While Units are Officially Quoted and not suspended from quotation, the Manager may at any time issue Units to any person other than the Manager or its associates by way of a placement or under a security purchase plan:

- (a) at the weighted average Market Price during the 10 Business Days immediately prior to the date on which the Units are offered; or
- (b) at a price and on terms determined by the Manager, provided that the Manager complies with the Listing Rules applicable to the issue and the conditions of any applicable ASIC relief, and the price represents a discount of not more than 20% from the price that would otherwise apply under paragraph 6.6(a).

## **6.7 Reinvestment while Officially Quoted**

While Units are Officially Quoted, the Application Price payable for each additional Unit on reinvestment of distributions (if any) is the average VWAP for a Unit over the first 10 Trading Days following the Trading Day after the Distribution Calculation Date for the distribution for the relevant Distribution Period (unless the Manager believes that this calculation does not provide a fair reflection of the market price of the Units during this period in which event the market price used in the calculation of the Application Price of each additional Unit will be as determined by an expert whose identity and instructions will be determined by the Manager) less such discount, if any, not exceeding 10% as the Manager may determine.

## **6.8 Reinvestment while not Officially Quoted**

While Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment is the Application Price on the first Business Day after the end of the Distribution Period to which the distribution relates.

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# **7 Application procedure**

## **7.1 Application form**

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

## **7.2 Payment**

Payment in respect of an application in a form acceptable to the Manager, or a transfer of property of a kind acceptable to the Manager and able to be vested in the Manager or a custodian appointed by it (accompanied by a recent valuation of the property, if the Manager requires), must:

- (a) accompany the application;

- (b) be received by or made available to the Manager or the custodian within such period before or after the Manager receives the application form as the Manager determines from time to time or as the terms of issue of the relevant Option or Partly Paid Unit contemplate; or
- (c) comprise a reinvestment of distribution in accordance with clause 11.11.

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

### **7.3 Manager may reject**

The Manager may reject an application in whole or in part without giving any reason for the rejection<sup>8</sup>.

### **7.4 Minimum amounts**

The Manager may set a minimum application amount and a minimum holding for the Fund and alter or waive those amounts at any time<sup>9</sup>.

### **7.5 Issue date**

Units are taken to be issued when:

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

whichever happens later.

### **7.6 Deemed application if reinvestment applies**

If reinvestment of distributions under clause 11.11 applies, the Manager is deemed to have received and accepted an application to reinvest the distribution in Units, after the deduction of:

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

which the Manager is required or authorised to deduct in respect of that distribution by law or by this constitution or which the Manager considers should be deducted, on the date upon which the distribution is to be paid.

<sup>8</sup> Refer Listing Rule 10.11 - restriction on issue of Units to related parties.

<sup>9</sup> While Units are Officially Quoted, see clause 26 regarding the sale of small holdings.

## **7.7 Uncleared funds**

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

## **7.8 Register**

Subject to the Corporations Act, a single register may be kept in which details of the holders of Units are recorded.

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# **8 Redemption Price of Units<sup>10</sup>**

## **8.1 Redemption Price**

A Unit must only be redeemed at a Redemption Price calculated as:

$$\frac{\text{Net Asset Value} - \text{Transaction Costs}}{\text{number of Fully Paid Units in issue} + \text{Paid-up Proportion}}$$

less any amount unpaid on the Unit.

## **8.2 Time for calculation**

Each of the variables in clause 8.1 must be determined:

- (a) while the Fund is a Registered Scheme and is Liquid, and at all times when the Fund is not a Registered Scheme, as at the close of business on the day before the payment of the Redemption Price; or
- (b) while the Fund is a Registered Scheme and is not Liquid, at the time the withdrawal offer closes.

## **8.3 Rounding**

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

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# **9 Redemption procedures<sup>11</sup>**

## **9.1 While Officially Quoted**

While Units are Officially Quoted, despite anything in this clause 9 the Manager is not under any obligation to allow a Member to redeem Units<sup>12</sup>.

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<sup>10</sup> Required to be included by Section 601GA(4) if a right of redemption is to be offered.

<sup>11</sup> While the Fund is a Registered Scheme, these procedures must be fair to all Members: Section 601GA(4)

<sup>12</sup> Refer Listing Rule 1.1 condition 5.



## **9.2 Request for redemption**

A Member may make a request for the redemption of some or all of their Units in any manner approved by the Manager. The Manager is not obliged to satisfy any such request.

## **9.3 Request may not be withdrawn**

A Member may not withdraw a redemption request unless the Manager agrees.

## **9.4 When Fund is Liquid<sup>13</sup>**

Clauses 9.5 to 9.10 apply only while the Fund is Liquid<sup>14</sup>.

## **9.5 Manager may redeem**

Subject to the Corporations Act and the Listing Rules (if the Listing Rules apply) the Manager may decide to satisfy a redemption request, in whole or in part. If the Manager determines to satisfy a redemption request in respect of a Unit, it must pay from the Assets the Redemption Price of that Unit calculated in accordance with clause 8.

The payment must be made within 60 days of the date the decision to satisfy the request is made, or such longer period as allowed by clause 9.6.

If the Manager decides not to satisfy some or all of the redemption request, it must notify the Member of its decision within 30 days of receipt of the request. The day of receipt of the redemption request is:

- (a) the day of actual receipt if the redemption request is received before 3.00pm on a Business Day; or
- (b) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00pm on a Business Day.

## **9.6 Delayed redemption**

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

## **9.7 Minimum redemption**

The Manager need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Manager from time to time unless the redemption request relates to the balance of the Member's holding.

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<sup>13</sup> Required to be included by Section 601GA(4)(b)

<sup>14</sup> For definition of a liquid scheme see Section 601KA

## **9.8 Payment from the Assets**

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

## **9.9 Minimum holding**

If compliance with a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum holding amount, the Manager may treat the redemption request as relating to the balance of the Member's holding.

## **9.10 Increased minimum**

If the Manager increases the minimum holding amount, the Manager may, after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the then current minimum holding amount, redeem that Member's holding without the need for a redemption request.

## **9.11 When Fund is not Liquid<sup>15</sup>**

While the Fund is not Liquid<sup>16</sup>, a Member may withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Manager in accordance with the provisions of the Corporations Act regulating offers of that kind<sup>17</sup>. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Fund.

## **9.12 Manager not obliged**

The Manager is not at any time obliged to make a withdrawal offer. If it does, it may do so by:

- (a) publishing it by any means (for example in a newspaper or on the internet); or
- (b) giving a copy to all Members.

## **9.13 Treatment of request**

If the Manager receives a redemption request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

## **9.14 Sums owed to Manager**

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

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<sup>15</sup> Required to be included by Section 601GA(4)(c) if Members are to have right to withdraw

<sup>16</sup> For definition of a liquid scheme see Section 601KA(1)

<sup>17</sup> Refer sections 601KB to 601KE

### **9.15 Transfer of Assets**

The Manager may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution. These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Manager requires, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

### **9.16 When Units are redeemed**

Units redeemed under this clause 9 are taken to be redeemed at the time as at which the applicable Redemption Price is calculated, and from that time until payment, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Fund in respect of the redemption proceeds.

### **9.17 Buy-back of Units<sup>18</sup>**

While the Trust is Listed, the Manager may, subject to and in accordance with the Corporations Act (including the conditions of any applicable ASIC Relief) and any requirements under the Listing Rules, purchase Units and cause the Units to be cancelled. No Redemption Price is payable upon cancellation of the Units.

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## **10 Valuation of assets and accounts, audit and reports**

### **10.1 Periodic valuations**

The Manager may cause an Asset to be valued at any time and, if the Fund is a Registered Scheme, must do so as and when required by the Corporations Act.<sup>19</sup>

### **10.2 Net Asset Value**

The Manager may determine Net Asset Value at any time, including more than once on each day.

### **10.3 Valuation methods**

While the Fund is not a Registered Scheme, the Manager may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Manager determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value.

### **10.4 Market Value**

While the Fund is a Registered Scheme:

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<sup>18</sup> See Listing Rule 7.36

<sup>19</sup> See section 601FC(j) for Manager's obligations concerning valuation

- (a) Subject to paragraph 10.4(b), the value of an Asset for the purpose of calculating Net Asset Value will be its Market Value<sup>20</sup>.
- (b) If ASIC grants relief from the requirements of the Corporations Act to allow the Manager to determine in its discretion whether an item should be recognised and the amount attributable to that particular item for the purpose of calculating Net Asset Value, then the Manager may, subject to the conditions of the relief (if any) make those determinations.

## **10.5 Accounts, audit and reports**

While the Fund is not a Registered Scheme, the Manager must comply with the requirements of Chapter 2M of the Corporations Act, in so far as they are relevant to the Fund, as if the Fund were a Registered Scheme, except in relation to lodging documents with ASIC.

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## **11 Income and distributions to Members<sup>21</sup>**

### **11.1 Standing principles for determining income**

The Manager must determine the income of the Fund for each Financial Year (“**Distributable Income**”). The Manager may do this by way of a standing determination of principles for calculating the Distributable Income and may change the principles from time to time.

### **11.2 Determination of Distributable Income**

The Manager must determine the Distributable Income for each Distribution Period as being:

- (a) if the Manager has determined standing principles under clause 11.1 which are applicable to the Distribution Period, income calculated by applying those principles in respect of the Distribution Period; and
- (b) if there are no standing principles which are applicable to the Distribution Period under clause 11.1, income according to ordinary concepts.

For the avoidance of doubt, income of the Fund according to ordinary concepts is income determined on a net basis, taking into account items of income and outgoings.

### **11.3 Present entitlement to Income**

A Member or Former Member of the Fund is presently entitled to the Distributable Income of the Fund for a Financial Year in the proportion that the sum of the Income Entitlements for that Member or Former Member for

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<sup>20</sup> ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

<sup>21</sup> Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

the Financial Year bears to the sum of the Income Entitlements for all Members and Former Members for the Financial Year.

#### **11.4 Indefeasibility**

Notwithstanding any other provision of this constitution, a person cannot be defeated of any share of the Distributable Income to which the person is entitled under clause 11.3.

#### **11.5 Income Entitlement**

The Income Entitlement of a Member for a Distribution Period is an amount calculated by the Manager as follows:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than the last day of a Financial Year, an amount calculated as follows:

$$A = \left[ \frac{BxD}{C} \right]$$

where:

- A is the Income Entitlement;
- B is the number of Units held by the Member at the end of the Distribution Period;
- C is the number of Units held by all Members at the end of the Distribution Period;
- D is an estimate of the Distributable Income for the Distribution Period calculated as if the Distribution Period were a Financial Year, or such lesser amount as determined by the Manager; and

- (b) in respect of a Distribution Period ending on the last day of a Financial Year, an amount calculated as follows:

$$A = \left[ \frac{BxD}{C} \right]$$

where:

- A is the Income Entitlement;
- B is the number of Units held by the Member at the end of the Distribution Period;
- C is the number of Units held by all Members at the end of the Distribution Period;
- D is the amount (if any) by which the Distributable Income for the Financial Year exceeds the aggregate of the amounts

calculated for the purposes of variable D in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year.

#### **11.6 Satisfaction of present entitlement to Income**

The present entitlement of a Member or Former Member to Distributable Income of the Fund for the Financial Year is satisfied by the distribution to the Member or Former Member of the Income Entitlement of the Member in respect of the Financial Year.

#### **11.7 Payment of Income Entitlement**

The Manager must satisfy the Income Entitlements of a Member for a Distribution Period by a distribution in cash to the Member of the Member's Income Entitlement for the Distribution Period within 60 days after the end of the period to which it relates or, if the audit (if any) for that period has not been completed, as soon as possible after its completion.

#### **11.8 Specification of types of income and capital**

The Manager may keep separate accounts of different categories or sources of income, capital, deductions or credits for tax purposes. The Manager may specify for a distribution the extent to which, allowing for reasonable approximation, the Income Entitlement of a Member or Former Member participating in the distribution consists of or is taken to consist of various types of income or capital comprised in it.

#### **11.9 Classification as income or capital**

The Manager may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

#### **11.10 Other distributions**

The Manager may at any time distribute any amount of capital or income to Members pro rata according to the number of Units held as at a time decided by the Manager. The distribution may be in cash or by way of additional Units.

#### **11.11 Reinvestment**

The Manager may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units in which case either clause 6.7 or 6.8 will apply as applicable.

#### **11.12 Procedure for reinvestment**

If the Manager decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

### **11.13 Position on transfer of Units**

Distributable Income to which a Member is presently entitled but which has not yet been paid when a transfer or transmission of Units is Registered remains credited to the transferor.

### **11.14 Partly Paid Units**

The rights of a Member to receive distributions of income in respect of Partly Paid Units they hold are as determined by the Manager and provided in the terms of issue of the relevant Units. The Manager may determine that either:

- (a) a Unit which is a Partly Paid Unit participates in the distribution of income as if it were a Fully Paid Unit; or
- (b) a Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the distribution of income for that Distribution Period, subject to the terms of issue of the Unit, according to:
  - (i) the proportion or different proportions of the Application Price paid up on the Unit; and
  - (ii) the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up.

For the purposes of these calculations, if an instalment of the Application Price of a Partly Paid Unit is paid into the Fund, that Unit may be eligible for increased participation in income at a date determined by the Manager but at the latest from the first day of the month immediately following the date set for payment of the instalment; or

- (c) a Unit which is a Partly Paid Unit participates in the distribution of income as the terms of its issue provide;

but if the Manager does not make such a determination, paragraph (a) will apply.

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## **12 Payments**

### **12.1 Payment method**

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

### **12.2 Cheques**

Cheques issued by the Manager that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.

### **12.3 Electronic transfers**

Where the Manager attempts to make a payment by electronic transfer of funds to a Member and the transfer is unsuccessful on 3 occasions, the money may be held by the Manager for the Member or paid by the Manager in accordance with the legislation relating to unclaimed moneys.

### **12.4 Rounding**

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

### **12.5 Joint Members**

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

### **12.6 Deduction of Tax or amounts owing**

The Manager may deduct from any amount to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) or any other amount owed by the Member to the Manager or any other person which the Manager is required or authorised to deduct by law or by this constitution or which the Manager considers should be deducted.

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## **13 Powers of the Manager**

### **13.1 General powers**

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

### **13.2 Contracting powers<sup>22</sup>**

Without limiting clause 13.1, the Manager in its capacity as trustee of the Fund has power to borrow and raise money (whether or not on security) and to incur all types of obligations and liabilities, including the giving of guarantees and indemnities.

### **13.3 Investment powers**

Without limiting clause 13.1 but subject to clause 11.2, the Manager may in its capacity as trustee of the Fund invest in, dispose of or otherwise deal with property and rights in its absolute discretion.<sup>23</sup>

### **13.4 Power of delegation<sup>24</sup>**

The Manager may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset,

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<sup>22</sup> Required to be included by Section 601GA(3)

<sup>23</sup> Subject to Section 601FC(4)

<sup>24</sup> See also Section 601FB.



perform any act or exercise any discretion within the Manager's power, including the power to appoint in turn its own agent or delegate.

### **13.5 Terms of delegation**

The Manager may include provisions in the authorisation to protect and assist those dealing with the agent or delegate as the Manager thinks fit.

### **13.6 Delegate may be an associate**

The agent or delegate may be an associate of the Manager.<sup>25</sup>

### **13.7 Exercise of discretion**

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

### **13.8 Underwriting**

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

### **13.9 Listing of the Trust**

The Manager may apply for the Trust to be Listed and Units to be Officially Quoted, and for this purpose the Manager is authorised on its own behalf and on behalf of each Member to do all things necessary to effect a Listing.

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## **14 Retirement of Manager<sup>26</sup>**

### **14.1 Voluntary retirement**

While the Fund is a Registered Scheme, the Manager may retire as the responsible entity of the Fund as permitted by law<sup>27</sup>.

### **14.2 While not a Registered Scheme**

While the Fund is not a Registered Scheme, the Manager may retire on not less than 1 month's notice to Members (or such shorter period as they agree). On retirement, the Manager may appoint in writing another person to be the Manager.

### **14.3 Compulsory retirement**

While the Fund is a Registered Scheme, the Manager must retire as the responsible entity of the Fund when required by law<sup>28</sup>.

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<sup>25</sup> Subject to Part 5C.7

<sup>26</sup> Refer to Listing rule 3.16.2(a)

<sup>27</sup> See Section 601FL. The change does not take effect until ASIC alters its records: Section 601FJ

#### **14.4 While not a Registered Scheme**

While the Fund is not a Registered Scheme, the Manager must retire from the office it holds under this constitution if required by law. On retirement, the Manager may appoint in writing another person to be the Manager.

#### **14.5 New Manager**

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

#### **14.6 Release**

When it retires or is removed, the Manager is released from all obligations in relation to the Fund arising after the time it retires or is removed.<sup>29</sup>

#### **14.7 Retirement benefit**

Subject to the Corporations Act<sup>30</sup>, the Manager is entitled to agree with the incoming manager to be remunerated by, or to receive a benefit from, the incoming manager in relation to:

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

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

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### **15 Notices to Members and Option Holders<sup>31</sup>**

#### **15.1 How notice may be given**

Subject to the Corporations Act if the Corporations Act applies, a notice or other communication required to be given to a Member or Option Holder in connection with the Fund must be given in writing (which includes a fax or email) or in such other manner as the Manager determines, and be delivered or sent to the Member or Option Holder at the Member's or Option Holder's physical or electronic address last advised to the Manager for delivery of notices.

#### **15.2 Cheques**

A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member<sup>32</sup>.

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<sup>28</sup> See Section 601FM and 601FA.

<sup>29</sup> See section 601FR for the Manager's obligation to transfer records, etc. Section 601FS restricts this release.

<sup>30</sup> See sections 601FC(1)(c) and 601FD(1)(c).

<sup>31</sup> While Units are Officially Quoted, notices to Members must be copied to ASX - refer Listing Rule 3.17.

### **15.3 Joint Members**

In the case of joint Members or joint Option Holders, the physical or electronic address of the Member or Option Holder means the physical or electronic address of the Member or Option Holder first named in the Register.

### **15.4 When notice received**

A notice, cheque or other communication sent by post to a Member or Option Holder is taken to be received on the Business Day after it is posted, a fax or email is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine and an email is taken to be received 1 hour after it is sent if the sender has not received a notice of non-delivery. Proof of actual receipt is not required. Subject to the Corporations Act<sup>33</sup> if the Corporations Act applies, the Manager may determine<sup>34</sup> the time at which other forms of communication will be taken to be received.

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## **16 Notices to the Manager**

### **16.1 Form of notice**

A notice required under this constitution to be given to the Manager must be given in writing (which includes a fax but not email), or in such other manner as the Manager determines.

### **16.2 When notice received**

A notice to the Manager is effective only at the time of receipt.

### **16.3 Signature**

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member or Option Holder<sup>35</sup> unless the Manager dispenses with this requirement.

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## **17 Meetings of Members**

### **17.1 Convening of meetings**

The Manager may at any time convene a meeting of Members or Option Holders, and must do so if required by the Corporations Act.<sup>36</sup>

### **17.2 Members' request for meeting - not Registered Scheme**

While the Fund is not a Registered Scheme:

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<sup>32</sup> See Clause 16.3(c)

<sup>33</sup> See Section 601FC(1)(d)

<sup>34</sup> See Section 252G(4)

<sup>35</sup> See Clause 16.3(c)

<sup>36</sup> Refer Part 2G.4

- (a) the Manager must call and arrange to hold a meeting of Members to consider and vote on a proposed Resolution on the request of Members with at least 20% of the votes that may be cast on the Resolution; and
- (b) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in sub-paragraph (a) as if the Fund were a Registered Scheme.

### **17.3 Members' request for meeting - Registered Scheme**

While the Fund is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

### **17.4 Notice period**

While the Fund is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Members, or such shorter notice as they agree.

### **17.5 Notice while Registered Scheme**

While the Fund is a Registered Scheme, the requirements for notice of meetings of Members are governed by the Corporations Act.

### **17.6 Manager may determine**

Subject to this clause 17, the Corporations Act (if the Corporations Act applies)<sup>37</sup> and the Listing Rules while the Listing Rules apply, the Manager may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted<sup>38</sup>.

### **17.7 Quorum**

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

### **17.8 No quorum**

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to such place and time as the Manager decides.

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

<sup>37</sup> Refer Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 27 - restricted securities

<sup>38</sup> Refer Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

### **17.9 Chairman**

Subject to the Corporations Act<sup>39</sup> if the Corporations Act applies, the Manager may appoint a person to chair a meeting of Members.

### **17.10 Conduct of meeting**

The decision of the chairman on any matter relating to the conduct of the meeting is final.

### **17.11 Adjournment**

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

### **17.12 Proxies and voting**

Subject to clauses 17.13 and 17.14, the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Fund<sup>40</sup>.

### **17.13 Validity of proxy**

The Manager may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act<sup>41</sup>.

### **17.14 Demand for a poll**

A poll may be demanded by the chairman, or by Members present in person or by proxy together holding at least 5% of Units.

### **17.15 Resolutions binding**

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

### **17.16 Objection at meeting**

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

### **17.17 Non-receipt**

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

### **17.18 Option Holders**

The provisions of this clause relating to meetings of Members also apply to meetings of Option Holders with any necessary modifications.

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<sup>39</sup> Refer Part 2G.4 and Section 601FC(1)

<sup>40</sup> This provision is included for completeness - while the Fund is a Registered Scheme the law operates of its own force.

<sup>41</sup> Section 252Y(1) specifies the information which is normally to be included in an appointment of proxy.

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## **18 Rights and liabilities of Manager**

### **18.1 Holding Units**

The Manager and its associates may hold Units in the Fund, or interests in any related Fund or company, in any capacity<sup>42</sup>.

### **18.2 Other capacities**

Subject to the Corporations Act<sup>43</sup> if the Corporations Act applies, the Manager (or its associates) may:

- (a) deal with itself (as trustee of the Fund or in another capacity) or an associate of any of them or with any Member, including to redeem Units it has acquired as a result of forfeiture and vesting under clause 5.8;
- (b) be interested in any contract or transaction with itself (as trustee of the Fund or in another capacity), or an associate of any of them or with any Member and retain for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) act in the same or a similar capacity in relation to any other managed investment scheme.

### **18.3 Manager may rely**

The Manager may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Manager, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Manager who are in each case believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Manager believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Manager in connection with the Fund upon which it is reasonable for the Manager to rely;

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

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<sup>42</sup> See Section 601FG, Section 253E and Part 5C.7

<sup>43</sup> Refer Part 5C.7, and see also Listing Rule 10.1

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## **19 Limitation of liability and indemnity in favour of Manager**

### **19.1 Limitation on Manager's liability to Members**

While the Fund is a Registered Scheme, the Manager is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Fund except to the extent that the Corporations Act imposes such liability.

### **19.2 Liability to Members while Fund is not a Registered Scheme**

While the Fund is not a Registered Scheme, if the Manager acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Fund.

### **19.3 Liability limited to Assets**

Subject to the Corporations Act if the Corporations Act applies, the liability of the Manager to any person other than a Member in respect of the Fund including any contracts entered into as trustee of the Fund or in relation to any Assets is limited to the Manager's ability to be indemnified from the Assets.

### **19.4 Indemnity in favour of Manager**

The Manager is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Fund<sup>44</sup>.

### **19.5 Liability for agents**

To the extent permitted by the Corporations Act<sup>45</sup> (if the Corporations Act applies, and otherwise without limitation), the indemnity under clause 19.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Manager.

### **19.6 Indemnity continues**

The indemnity in clause 19.4 is in addition to any indemnity allowed by law. It continues to apply after the Manager retires or is removed as trustee of the Fund.

### **19.7 Right of indemnity not affected by unrelated breach**

Where a Liability is incurred pursuant to a proper exercise of the Manager's powers under this constitution or at law, the Manager may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor or the Manager (in its capacity as trustee or responsible entity of the Fund), despite any loss the Fund may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Manager or by any person or entity acting on behalf of the Manager.

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<sup>44</sup> See Section 601GA(2)

<sup>45</sup> See Sections 601FB(2) and 601GA(2)

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## **20 Liability of Members**

### **20.1 Liability limited**

Subject to clauses 20.3 or 20.5, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

### **20.2 Member need not indemnify**

A Member need not indemnify the Manager if there is a deficiency in the Assets or meet the claim of any creditor of the Manager in respect of the Fund.

### **20.3 Tax or User Pays Fees**

The Manager is entitled to be indemnified by a Member or Former Member to the extent that the Manager incurs any liability:

- (a) for Tax or User Pays Fees as a result of the Member's or Former Member's action or inaction; or
- (b) as a result of an act or omission requested by the Member or Former Member.

### **20.4 Joint Members**

Joint Members are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 20.3 applies.

### **20.5 Recourse**

In the absence of separate agreement with a Member, the recourse of the Manager or any creditor, and any person claiming through them, is limited to the Assets.

### **20.6 Restrictions on Members**

A Member:

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

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## **21 Remuneration and expenses of Manager**

### **21.1 Fees payable from the Assets**

The fees in clauses 21.3 to 21.5 are payable to the Manager out of the Assets.



## 21.2 Fees subject to Corporations Act

While the Fund is a Registered Scheme, the fees in clauses 21.3 to 21.5 may only be paid to the Manager to the extent not prohibited by the Corporations Act<sup>46</sup>.

## 21.3 Management fee

The Manager is entitled to a management fee of 5% per annum of the Gross Value of the Assets calculated as at the end of each Quarter. This amount is payable within 7 days of the end of the Quarter, first out of income of the Fund and then out of capital.

### 21.3A Performance Fee

Subject to the Corporations Act, the Manager is entitled to be paid a Performance Fee from the Assets as follows:

(a) the Manager must make the following calculations for each Half Year:

(i) Total Unitholder Return (**TUR**)

$$\text{TUR} = U(V_2 - V_1) + D - I - \text{AD}$$

where:

TUR is the Total Unitholder Return;

$V_1$  is the average of VWAP for the ten Trading Days immediately preceding the commencement of the Half Year (or in the case of calculating  $V_1$ , for the first Half Year ending on 31 December 2006, the First Instalment Price of a Partly Paid Unit under the First Offer Document);

$V_2$  is the average of VWAP for the last ten Trading Days in the Half Year;

U is the number of Units on issue at commencement of the Half Year;

D is the aggregate of all distributions to which holders of Units in the Half Year are entitled;

AD is the Accumulated Deficit, expressed as a positive figure, calculated according to 21.3A(b)(i) or (iii). The Accumulated Deficit for the first Half Year is nil; and

I is the aggregate amount of all instalments called and payable on Partly Paid Units in the Half Year.

(ii) Percentage Return (**PR**)

<sup>46</sup> See section 601GA(2) of the Corporations Act.

$$PR = \frac{TUR}{V_1 \times U} \times 100$$

(iii) Benchmark Return (**BR**)

$$BR = \text{Average BBSW} + 4.25 \times \left( \frac{n}{365} \right)$$

n is the number of days in the Half Year

**BBSW** is the average mid rate for 30 day bills for a day as displayed on the "BBSW" page of the Australian Financial Markets Association website. However, if the average mid rate is not displayed by 10.30am on that day, or if it is displayed but there is an obvious error in that rate, BBSW means the rate set by the Manager in good faith at approximately 10.30am on that day, having regard, to the extent possible, to the mid rate of the rates otherwise bid and offered for bills of that tenor at or around that time.

**Average BBSW** is the sum of BBSW calculated for each day in the Half Year, divided by n.

(b) the Manager must calculate the Performance Fee payable or any Accumulated Deficit as follows:

- (i) if the calculation of TUR is negative, then no Performance Fee is payable and the Accumulated Deficit to be used in calculating the Performance Fee for the next Half Year is calculated as follows:

$$AD = TUR \text{ (expressed as a positive number)} + (V_1 \times U \times \frac{BR}{100})$$

- (ii) if the calculation of TUR is positive and the PR is greater than BR, then a Performance Fee is payable for the Half Year as follows:

$$PF = V_1 \times \frac{PR - BR}{100} \times 0.2 \times U ;$$

- (iii) if the calculation of TUR is positive and the PR is equal to or less than BR, then no Performance Fee is payable and the Accumulated Deficit for the next Half Year is calculated as follows:

$$AD = V_1 \times \frac{BR - PR}{100} \times U ;$$

- (c) where the Manager is entitled to be paid a Performance Fee for a Half Year that amount may be deducted from the Assets and paid to the Manager at any time on or after the end of that Half Year as determined by the Manager. The Manager may, subject to the Listing Rules, apply the amount of Performance Fee to which it is entitled as the Application Price for Units (in accordance with clause 6.1(h)) and issue Units to itself in satisfaction of its entitlement to payment of the Performance Fee;
- (d) the Manager is entitled to receive from the Assets interest, compounded and calculated daily on any unpaid Performance Fee from the first day of the Half Year following the Half Year for which the Performance Fee was calculated until paid, at the Interest Rate;
- (e) the Manager may waive its entitlement to be paid a Performance Fee for a Half Year, in which case, subject to clause 21.3A(f):
  - (i) the calculations in this clause 21.3A must still be undertaken to calculate the new Accumulated Deficit (if any); and
  - (ii) the amount of Performance Fee waived is to be applied to reduce the Accumulated Deficit so calculated for that Half Year;
- (f) if the Manager waives its entitlement to a Performance Fee for the Half Years prior to the Half Year commencing on 1 July 2007, in making the calculations under clause 21.3A(a) and (b) for the Half Year commencing on 1 July 2007, the value of AD is zero (no Accumulated Deficit is to be applied).

#### **21.4 User Pays Fees**

Subject to the Corporations Act, the Manager is entitled to charge User Pays Fees directly to a Member in an amount which, where relevant, shall not exceed 150% of any fees paid by the Manager to any third party, including a banker, for the purpose of facilitating any transaction giving rise to a User Pays Fee. The Manager may deduct these fees from the income attributed to the Member or from the amount paid on redeeming Units held by the Member.

#### **21.5 User Pays Fees - specific types**

Without limiting clause 21.4 and subject to the Corporations Act the Manager is entitled to charge Members a report replacement fee of \$50 for each additional copy of a statement or report in connection with the Fund that a Member requests.

The Manager may deduct this fee from the income attributed to the Member or from the amount paid on redeeming Units held by the Member.

#### **21.6 Fee offset**

If the Manager or a Related Body Corporate of the Manager receives in a given period management fees (whether base fees or performance fees) under a Management Services Agreement in relation to Assets, then the fees to

which the Manager would otherwise be entitled under clause 21.3 will be reduced for that period by an amount equal to the fees received under those other agreements.

## **21.7 Waiver of fees**

The Manager may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. The Manager may do so in relation to Members generally or, if and to the extent permitted by the Corporations Act (including the conditions of relief granted by ASIC), based on bands, tiers or other criteria nominated in the relief instrument or by the Manager. Where payment is deferred, the fee accrues daily until paid.

## **21.8 Expenses**

All expenses incurred by the Manager in connection with the Fund are payable or reimburseable out of the Assets<sup>47</sup>, but while the Fund is a Registered Scheme such reimbursement or payment is only available in relation to the proper performance of the Manager's duties as responsible entity of the Fund<sup>48</sup> and is reimburseable or payable out of the Assets (or the assets of the sub Fund as the case may be) to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- (a) this constitution and the formation of the Fund and registration of the Fund as a Registered Scheme;
- (b) the preparation, review, distribution and promotion of any product disclosure statement, prospectus or offering memorandum in respect of Units and other promotion of the Fund;
- (c) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the investigation, negotiation, acquisition (including any due diligence costs and costs associated with the establishment of an entity to hold property), development, registration, custody, holding, management, supervision, repair, maintenance, insurance, valuation, sale of or other dealing with any asset in which the Fund has or is proposed to have a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (f) the services of asset managers, property managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any property in which the Fund has a direct or indirect interest, which may include an associate of the Manager;

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<sup>47</sup> Refer section 601GA(2)

<sup>48</sup> Refer Section 601GA(2)(b)

- (g) the administration or management of the Fund or its Assets and Liabilities including expenses in connection with the Register or the valuation of any Asset or the Fund as a whole;
- (h) borrowing arrangements on behalf of the Fund or guarantees in connection with the Fund, including hedging costs;
- (i) underwriting of any subscription or purchase of Units including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Manager of its obligations, representations or warranties under any such underwriting agreement;
- (j) convening and holding meetings of Members and the implementation of any Resolutions and communications with Members;
- (k) Tax, including any amount charged by a supplier of goods or services, or both, to the Manager by way of or as a reimbursement for GST;
- (l) financial institution fees;
- (m) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Manager;
- (n) the Management Services Agreement, including remuneration and expenses payable under that agreement by the Manager in its capacity as responsible entity of the Fund;
- (o) accounting and preparation and audit of the taxation returns, accounting records and accounts of the Fund;
- (p) termination of the Fund and the retirement or removal of the Manager and the appointment of a replacement;
- (q) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Manager, except to the extent that the Manager is found by a court to be in breach of Fund or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph (q) must be repaid;
- (r) all damages, expenses, payments, legal and other costs and disbursements incurred by the Manager in relation to or in connection with any claim, dispute or litigation (**Claim**) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Fund including any project document in connection with the investment and any offering document or borrowing document in connection with the Fund except where the Claim arises out of the fraud or wilful default of the Manager;

- (s) the compliance committee established by the Manager in connection with the Fund (if any), including any fees paid to, or insurance premiums<sup>43</sup> in respect of, compliance committee members;
- (t) while there is no compliance committee, any costs and expenses associated with the board of directors of the Manager carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (u) the related party transaction committee and the investment committee established by the Manager in connection with the Fund (if any), including any fees paid to, or insurance premiums in respect of, related party transaction committee and investment committee members;
- (v) the preparation, implementation, amendment and audit of the compliance plan;
- (w) the appointment of any compliance officer to undertake compliance work for the Fund;
- (x) the preparation of reports including compliance reports;
- (y) fees payable to any audit committee, investment committee or related party transactions committee for the Fund appointed in accordance with any corporate governance guidelines or other policy of the Manager adopted from time to time;
- (z) the promotion of the Fund generally;
- (aa) recording, responding to and dealing with any complaints from Members in connection with the Fund, and membership of an external dispute resolution facility;
- (bb) complying with any law, and any request or requirement of ASIC or ASX; and
- (cc) the admission of the Fund to any stock exchange, the Official Quotation of Units and compliance with the rules of such an exchange.

Subject to the Corporations Act if the Corporations Act applies, the persons to whom expenses are paid or reimbursed under this clause may include related parties of the Manager.

## 21.9 GST

Except where stated otherwise, all amounts in this constitution do not include any amount payable on account of GST. If the Manager is or becomes liable to pay GST in respect of any supply under or in connection with this constitution then, in addition to any fee or other amount or consideration

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<sup>43</sup> See Section 601JG

payable to the Manager in respect of the supply, the Manager is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. In relation to fees that are expressed as GST inclusive in this constitution, this clause applies only to the extent to which there has been an increase in the rate of GST whereby the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure and multiplying it by the prevailing rate of GST.

#### **21.10 Input tax credits**

In the event that the Manager is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Manager by any person, or payable by the Manager by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Manager is entitled to recover from the Fund by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Manager to the Fund treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

#### **21.11 GST and expenses**

Where an expense covered by clause 21.8 is paid from the Assets to the Manager, the payment shall comprise part of the consideration for a supply by the Manager to the Fund treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Manager's right of indemnity from the Assets for other purposes of this constitution and the Corporations Act.

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### **22 Duration of the Fund**

#### **22.1 Initial settlement**

The Fund commences when the Manager's nominee subscribes \$200 for Units in the Fund. The Manager's nominee must be issued with 100 Fully Paid Units in return for that payment. The beneficial interest in the Fund as constituted by the settlement of the sum of \$200 must be divided into 100 Units issued at \$2.00 each.

#### **22.2 Termination**

The Fund terminates on the earliest of:

- (a) while the Fund is a Registered Scheme, a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
- (b) a date determined by the Manager under clause 24.4;

- (c) while the Fund is not a Registered Scheme, a date determined by the Manager and specified in a notice to Members sent at least 1 month before the proposed termination, unless all Members consent to shorter notice; and
- (d) the date on which the Fund terminates in accordance with any other provision of this constitution, or by law.<sup>49</sup>

### **22.3 Change in taxation**

If at any time legislation is enacted the result of which is that the Manager is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Fund other than income not distributed to Members, the Manager may call a meeting of the Members to consider winding up the Fund and if by special resolution the meeting so decides, the Manager may wind up the Fund.

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

Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Fund commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity. This restriction does not require that the Trust terminate on the expiration of that period, but requires that the Trust be fully vested by the end of that period.

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## **23 Procedure on termination**

### **23.1 Realisation of Assets**

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

### **23.2 Audit of winding up**

If, at the time it is to be wound up, the Fund is a Registered Scheme and to the extent that ASIC policy so requires, the Manager must arrange for independent review or audit of the final accounts of the Fund by a registered company auditor.

### **23.3 Distribution following termination**

The net proceeds of realisation, after making allowance for all Liabilities of the Fund (actual and anticipated) including income entitlements of Members and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Members in accordance with the following formula for the amount a particular Member is to receive:

$$\frac{(A + X) \times B}{C} - Y$$

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<sup>49</sup> See Part 5C.9 on winding up



Where:

- A = the amount remaining in the Fund after deduction of the Liabilities and expenses referred to in this clause 23.3;
- B = the aggregate of the number of Units held by the Member as at termination, including both Fully Paid Units and Partly Paid Units; and
- C = the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid Units;
- X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any) and interest (if applicable); and
- Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination and interest (if applicable).

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this clause 23.3 results in a negative dollar amount, then that Member must pay to the Manager within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Fund.

The Manager may distribute proceeds of realisation in instalments.

#### **23.4 Provisions continue to apply**

Subject to the Corporations Act (if the Corporations Act applies) and this constitution, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 23.3, but during that period the Manager may not accept any applications for Units from a person who is not an existing Member and the Manager is under no obligation to process redemption requests received after the date of termination.

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## **24 Amendments to this constitution**

### **24.1 Manager may amend**

While the Fund is a Registered Scheme, this constitution may be amended, subject to any applicable requirements under the Corporations Act<sup>50</sup>:

- (a) by Resolution<sup>51</sup>; or
- (b) by deed executed by the Manager.

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<sup>50</sup> See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with ASIC

<sup>51</sup> The required majority for such a resolution under section 601GC(1)(a) is 75%.

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

#### **24.2 While not a Registered Scheme**

While the Fund is not a Registered Scheme, the Manager may by deed amend this constitution.

#### **24.3 Statutory requirements**

While the Fund is a Registered Scheme, if:

- (a) the Corporations Act; or
- (b) a condition of any relief from the provisions of the Corporations Act granted by ASIC on which the Manager has determined it wishes to rely or which is expressly applicable to the Fund and the Manager

requires that this constitution contain certain provisions (including a requirement that provisions be included for the relief to operate in relation to the Fund and the Manager), then those provisions are deemed to be incorporated into this constitution at all times at which they are so required to be included and prevail over any other provisions of this constitution to the extent of any inconsistency. Clause 24.1 does not apply to provisions deemed by this clause 24.3 to be incorporated in the constitution.

#### **24.4 Termination**

If the Manager is of the opinion that as a result of clause 24.3 the Assets of the Fund or any part of it are to be invested or deposited otherwise than freely in accordance with the discretions given to the Manager by this constitution or if as a result of any law it appears to the Manager to be in the interest of the Members so to do, the Manager may terminate the Fund.

#### **24.5 Listing Rules<sup>52</sup>**

While the Fund is admitted to the official list of the ASX, the following applies.

- (a) Notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this constitution prevents an act being done that the Listing Rules require to be done.
- (c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision.

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<sup>52</sup> See ASX Listing Rules Appendix 15A

- (e) If the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is deemed not to contain that provision.
- (f) If any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is deemed not to contain that provision to the extent of the inconsistency.

## **24.6 Application of Listing Rules to constitution**

In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Fund, a change in the text of this constitution because of the operation of clause 24.5 is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act.

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## **25 Compliance committee**

While the Fund is a Registered Scheme, and a compliance committee is acting in that capacity for the Fund, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act<sup>53</sup>.

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## **26 Complaints**

While the Fund is a Registered Scheme, if and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Manager a complaint (whether it be written or verbal) alleging that the Member has been adversely affected by the Manager's conduct in its management or administration of the Fund, the Manager:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Manager as appropriate to handle complaints;
- (c) where the complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the complaint by endeavouring to correct the error;
- (d) may in its discretion give any of the following remedies to the complainant:
  - (i) information and explanation regarding the circumstances giving rise to the complaint;
  - (ii) an apology; or

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<sup>53</sup> See section 601JF

- (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Manager of the complaint:
  - (i) the determination in relation to the complaint;
  - (ii) the remedies (if any) available to the Member; and
  - (iii) information regarding any further avenue for complaint.

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## **27 Restricted Securities**

### **27.1 Application of this clause**

Clause 27.2 only operates:

- (a) while Units are Officially Quoted and the Listing Rules require this constitution to contain a provision to the effect of clause 27.2; and
- (b) to the extent that it is not inconsistent with the Corporations Act.

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

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

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## **28 Small holdings**

### **28.1 Application of this clause**

This clause 28 applies while the Units are Officially Quoted.

### **28.2 Manager's right to sell Small Holdings**

Subject to the provisions of this clause 28, the Manager may in its discretion from time to time sell or redeem any Units held by a Member that is a Small Holder without request by the Small Holder.

### **28.3 Divestment Notice**

If the Manager determines that a Member is a Small Holder the Manager may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder, the number of Units making up and the market value of the Small Holding and the date on which the market value was determined;
- (b) that, unless the Small Holder tells the Manager that the Small Holder wishes to retain the Units making up the Small Holding before the

Relevant Period lapses, the Manager intends to sell the Relevant Units in accordance with this clause after the end of the Relevant Period specified in the Divestment Notice;

- (c) after the end of the Relevant Period, if the Small Holder has not informed the Manager that it wishes to retain the Units making up the Small Holding, the Manager may for the purpose of selling the Relevant Units that are in a CS Facility holding initiate a holding adjustment to move those Units from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with those Operating Rules.

#### **28.4 Relevant Period**

The Relevant Period must be at least six weeks from the date the Divestment Notice was given.

#### **28.5 Limitation on Manager 's right to sell**

The Manager will not sell or redeem the relevant Units:

- (a) before the expiry of 6 weeks from the date of the notice given under clause 28.3; or
- (b) if, within the 6 weeks allowed by clause 28.4:
  - (i) the Small Holder advises the Manager that the Small Holder wishes to retain the Units making up the Small Holding; or
  - (ii) the market value of the Small Holding held by the Small Holder increases to at least a marketable parcel as provided in the Listing Rules.

#### **28.6 Manager can sell Relevant Units**

At the end of the Relevant Period, if the Small Holder has not advised the Manager that the Small Holder wishes to retain the Units making up the Small Holding, the Manager is entitled to sell on-market or in any other way determined by the Manager the Relevant Units of a Member who is a Small Holder.

#### **28.7 No obligation to sell**

The Manager is not bound to sell any Relevant Units which it is entitled to sell under this clause 28 but unless the Relevant Units are sold within 10 weeks after the end of the Relevant Period the Manager's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

## **28.8 Manager as Member's attorney**

To effect the sale and transfer by the Manager of Relevant Units of a Member, the Member appoints the Manager and each Director and Secretary of the Manager jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Manager considers necessary, desirable or reasonably incidental or appropriate to effect the sale or transfer of the Relevant Units and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Units from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deeds, instruments or other documents to the purchaser.

## **28.9 Conclusive evidence**

A statement in writing by or on behalf of the Manager under this clause 28 is binding on and conclusive against (in the absence of manifest error) a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 28 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.

## **28.10 Registering the purchaser**

The Manager must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Manager under this clause 28.

## **28.11 Payment of proceeds**

Subject to clause 28.12, where:

- (a) Relevant Units of a Member are sold or redeemed by the Manager on behalf of the Member under this clause; and
- (b) the certificate for the Relevant Units (unless the Manager is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the Manager,

the Manager must, within 60 days of the completion of the sale or redemption, send the net proceeds of sale or redemption (at the Redemption Price per Unit specified in clause 8.1) to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this clause is at the risk of the Member to whom it is sent.

## **28.12 Costs**

The Trust or the purchaser of the Units making up the Small Holding must pay the costs of the sale or redemption as the Manager decides.

## **28.13 Remedy limited to damages**

The remedy of a Member to whom this clause applies, in respect of the sale of the Relevant Units of that Member is expressly limited to a right of action in damages against the Manager to the exclusion of any other right, remedy or relief against any other person.

## **28.14 Distributions and voting suspended**

Unless the Manager determines otherwise, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a Small Holder. Any distributions that would, but for this clause 28.14, have been paid to that Member must be held by the Manager and paid to that Member within 60 days after the earlier of the date the Relevant Units of that Member are transferred and the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.

## **28.15 12 month limit**

If it is a requirement of the Listing Rules, the Manager must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 28.16).

## **28.16 Effect of takeover bid**

From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Manager's powers under this clause to sell relevant Units of a Member cease. After the close of the offers under the takeover bid, the Manager may give a Divestment Notice to a Member who is a Small Holder, despite clause 28.15 and the fact that it may be less than 12 months since the Manager gave a Divestment Notice to that Member.

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# **29 Security Interests**

## **29.1 Manager may determine**

The Manager may from time to time determine that this clause 29 will apply to the Fund.

## **29.2 Clause may cease to apply**

The Manager may determine that this clause 29 will cease to apply to the Fund. If it does so:

- (a) this clause 29 will continue to apply to all Security Interests noted on the Register at the time of that determination; and

- (b) the Manager must not accept any further notices under clause 29.3 after the time of that determination.

### **29.3 Form of notice**

The Manager may from time to time determine the form of notice which:

- (a) a Member or their duly appointed agent must give in order for a Security Interest to be noted on the Register; and
- (b) a Security Interest Holder must give in order for a Security Interest to be removed from the Register.

### **29.4 Entry of Security Interests on the Register**

If a Member or their duly appointed agent gives the Manager a notice of the kind referred to in clause 29.3(a), the Manager must cause a note of the Security Interest Holder's interest to be recorded in the Register in respect of the relevant Units.

### **29.5 Manager not bound**

The Manager is not taken to be bound by, or obliged to enquire into, the terms of any Security Interest of which it has notice.

### **29.6 Removal of Security Interests from the Register**

If the interest of a Security Interest Holder is noted on the Register in respect of a Unit, the Manager may not give effect to a transfer or redemption of the Unit without the written permission of the Security Interest Holder.

### **29.7 Rights attaching to Units in respect of which a Security Interest is recorded**

Subject to the Corporations Act, while a Security Interest remains entered on the Register:

- (a) if the Manager receives a direction (in such form as the Manager determines) signed by the Member or their duly appointed agent to the effect that it must pay to the Security Interest Holder any or all distributions, whether on winding up or otherwise and whether of capital or income, which would in the absence of such direction have been made or paid to the relevant Member, the Manager may act on that direction until it is revoked by the Member or their duly appointed agent with the written consent of the Security Interest Holder;
- (b) when acting in good faith, the Manager is not liable either to the Member or to the Security Interest Holder if a payment made to the Member or Security Interest Holder is not in accordance with the preceding paragraph (a);
- (c) the Manager may provide to the Security Interest Holder any notice or information which would normally be provided to the Member; and



- (d) if the Manager becomes aware that a dispute has arisen between a Member and a Security Interest Holder as to any right to a payment relating to Units in respect of which the Security Interest is noted on the Register, the Manager may at its option:
- (i) pay the disputed amount to the Security Interest Holder; or
  - (ii) pay the disputed amount into any court in which proceedings in relation to the dispute are to be conducted;
- and the Manager will not be liable either to the Member or the Security Interest Holder for any consequences of so doing.

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## 30 Interpretation

### 30.1 Definitions

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

**Adelaide Bank:** Adelaide Bank Limited ACN 061 461 550.

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

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

**Assets:** all the property, rights and income of the Fund, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid, any amount in the Distribution Account or uncalled amounts on Partly Paid Units.

**ASTC Settlement Rules:** the operating rules of the settlement facility provided by ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

**ASX:** Australian Stock Exchange Limited.

**Average Market Price:** has the meaning given in clause 5.17.

**Bank Bill Rate:** for a day which is a Business Day, is the rate expressed as a percentage per annum:

- (a) appearing on the Reuters screen “BBSW” page (or any page which replaces that page) at or about 10.00am (Sydney time) on that day as being the average mid rate (rounded to four decimal places, the number 5 being rounded upwards) for a bill of exchange having a tenor equal to 90 days; or
- (b) if that rate is no longer available, a rate specified by a bank selected by the Manager as being a reasonable equivalent for that rate.

**Business Day:** while Units are not Officially Quoted, a day other than a Saturday or Sunday on which banks are open for general banking business in

Sydney and Adelaide or, while Units are Officially Quoted, a day which is a Trading Day for the purposes of the Listing Rules.

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

**Corporations Act:** the *Corporations Act 2001* (Cwlth).

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

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

**Distributable Income:** the amount determined under clause 11.2.

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

Distribution Period:

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

**Divestment Notice:** a notice given under clause 28.3.

**Financial Year:**

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

**Financial Year Termination Date:**

- (a) 30 June; and
- (b) the day on which the Fund becomes a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act); and

- (c) the day on which the Fund ceases to be a “subsidiary unit holder” of a “consolidated group” or “consolidatable group” (as defined in the Tax Act).

**First Offer Document:** the first product disclosure statement or other offering document pursuant to which are offered for subscription.

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

**Fully Paid Unit:** a Unit on which the Application Price has been fully paid.

**Gross Value:** when referring to an asset or assets, means the value of the asset or assets without deducting related liabilities such as debt funding.

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

**GST Act:** *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

**Half Year:** a period of 6 months ending on 30 June or 31 December. The first Half Year is the period from the date on which Units are first Officially Quoted to 31 December 2006.

**Income Entitlement:** in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 11.5.

**Interest Rate:** means the rate per annum which is the aggregate of the Bank Bill Rate and 2%.

**Issuer Sponsored Holding:** has the same meaning as in the ASTC Settlement Rules.

**Liabilities:** all present liabilities of the Fund including any provision taken into account in accordance with generally accepted accounting principles in determining the liabilities of the Fund, but not liabilities:

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

**Liquid:** has the same meaning as in the Corporations Act<sup>54</sup>.

**Listed:**

- (a) in the case of the Trust, the Trust being listed on the ASX; and
- (b) in the case of the Units, the Units being Officially Quoted,

and **Listing** has a corresponding meaning.

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<sup>54</sup> Refer Part 5C.6

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

**Management Services Agreement:** an agreement between the Manager and Adelaide Bank whereby Adelaide Bank agrees to provide general management and investment services to the Fund.

**Manager:**

- (a) while the Fund is not a Registered Scheme, Adelaide Managed Funds Limited ACN 062 274 533; and
- (b) while the Fund is a Registered Scheme, the company which is registered with ASIC as the responsible entity for the Fund under the Corporations Act.

**Market Price:** of a Unit in respect of any Business Day while the Units are Officially Quoted means:

- (a) the last sale price per Unit recorded on the ASX on that Business Day (whether or not a sale was recorded on that Business Day); or
- (b) if the Manager believes that the calculation in paragraph (a) does not provide a fair reflection of the market price of a Unit on that Business Day, the mid-point of the bid and offer prices per Unit recorded on the ASX at the close of trading on that Business Day (whether or not a sale is recorded on that Business Day); or
- (c) if the Manager does not believe that the calculation in paragraph (a) or (b) provides a fair reflection of the market price of a Unit on that Business Day, the price determined by an independent expert whose identity and instructions are to be determined by the Manager.

**Market Value** of an Asset at a particular time means:

- (c) in the case of an Asset that is cash or a deposit with an Australian ADI, at face value plus any accrued interest;
- (d) in the case of an Asset that is a financial product traded on a financial market, the latest bid price on that market that is readily available to the Manager, unless the Manager reasonably believes that the bid price does not represent the true value of the Asset, in which case paragraph (d) will apply;
- (e) in the case of an Asset that is an interest in a managed investment scheme that is not listed or quoted for dealing on any financial market, the redemption price of the interest as quoted by the manager, trustee or responsible entity of the scheme on such date plus any income entitlements accrued at that date as advised by the manager, trustee or responsible entity or, if information about the redemption price and accumulated income entitlements is not available for that date, the most recent prior date for which that information is available. Where the scheme is operated by the Manager or a Related

Body Corporate of the Manager, the redemption price of the interest (excluding any allowance for Transaction Costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the scheme; and

- (f) in the case of any other Asset, the value of the Asset determined in accordance with generally accepted accounting principles or, if the Manager is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer approved by the Manager at the expense of the Fund.

**Member:** a person Registered as the holder of a Unit that has not been redeemed (including persons jointly Registered).

**Net Asset Value:** the value of the Assets calculated in accordance with clause 9.17 less the Liabilities.

**Official List:** the Official List of ASX as defined in the Listing Rules.

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

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

**Option:** an option granted under this constitution to subscribe for unissued Units.

**Option Holder:** the person Registered in the register of option holders or, if no such register is kept, the holder of an Option.

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

**Partly Paid Unit:** a Unit on which the Application Price has not been paid in full.

**Performance Fee:** a performance fee calculated in accordance with clause 21.3A.

**Quarter:** a period of three months ending on 31 March, 30 June, 30 September or 31 December.

**Redemption Price:** the Unit price calculated in accordance with clause 8.

**Register:** the register of Members that the Manager keeps or causes to be kept.

**Registered:** recorded in the Register.

**Registrar:** the body responsible for keeping the Register.

**Related Body Corporate:** has the same meaning as in the Corporations Act.

**Relevant Period:** the period specified in a Divestment Notice under clauses 28.3 and 28.4.

**Relevant Securities:** Units or Options.

**Registered Scheme:** a Fund which is registered with ASIC as a managed investment scheme under Chapter 5C of the Corporations Act.

**Registration:** recording in the Register.

**Resolution:**

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

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority<sup>55</sup>.

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

**Restriction Agreement:** a restriction agreement within the meaning and for the purposes of the Listing Rules.

**Security Interest:** any interest granted by a Member to a third party in respect of the Member’s Units.

**Security Interest Holder:** a person whose Security Interest in Units is noted on the Register in accordance with a notice referred to in clause 29.3(a).

**Small Holder:** a Member who is a holder or a joint holder of a Small Holding.

**Small Holding:** a holding of Units created by the transfer of a parcel of Units the aggregate market value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Units as provided under the Listing Rules.

**Specified Time:** has the meaning set out in clause 5.7.

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<sup>55</sup> Circumstances where a special resolution is required include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity see sections 601FL and 601NB.

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

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

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

**Transaction Costs:**

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

**Fund:** the Fund constituted under or governed by this constitution.

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

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

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

which the Manager considers should be borne by that Member.

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

**Valuer:** an independent qualified valuer appointed by the Manager.

**VWAP:** in respect of a Unit for a Trading Day, the value weighted average of the Unit prices for that Trading Day for all sales of Units recorded on ASX for the day, but excluding sales that occur otherwise than in the ordinary course of trading on ASX, such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the after hours adjust phase, and any overseas sales or sales pursuant to the exercise of options over Units, any overnight crossings and any other sales which the Manager reasonably considers may not be fairly reflective of natural supply and demand.

## **30.2 Interpretation**

Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;

- (c) the singular includes the plural and vice versa;
- (d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution;
- (h) a reference to a year (other than a Financial Year) quarter or month means a calendar year, calendar half-year calendar quarter or calendar month respectively;
- (i) a reference to a monetary amount means an amount in the lawful currency of Australia unless otherwise specified; and
- (j) any schedule to this constitution is an operative part of it.

### **30.3 Other documents**

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

### **30.4 Constitution legally binding<sup>56</sup>**

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

### **30.5 Severance**

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

### **30.6 Governing law**

This constitution is governed by the law in force in New South Wales.

### **30.7 Other obligations excluded**

Except as required by the Corporations Act (if the Corporations Act applies) all restrictions on the exercise of the Manager’s powers or obligations of the Manager which might otherwise be implied or imposed by law or equity are

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<sup>56</sup> Refer Section 601GB



expressly excluded to the extent permitted by law, including without limitation any such restriction or obligation of the Manager in its capacity as trustee of the Fund arising under any statute.

**EXECUTED** as a deed

## Signing page

**EXECUTED** by **ADELAIDE** )  
**MANAGED FUNDS LIMITED** )  
**ACN 062 274 533** in accordance with )  
section 127(1) of the Corporations )  
Act 2001 (Cwlth) by authority of its )  
directors: )

Name of director (block letters)

\*delete whichever is not applicable

\*delete whichever is not applicable

# Constitution of the Adelaide Managed Funds Asset Backed Yield Trust

## Finding list

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

Corporations Act	Constitution
601GA	
(1)(a)	6.1 - 6.9
(1)(b)	13.1 - 13.3, 13.9
(1)(c)	26
(1)(d)	23
(2)	19.4 - 19.7, 21.1 - 21.11
(3)	13.2, 13.3
(4)(a)	9.2 - 9.15, but not a right while listed (9.1)
(4)(b)	9.4 - 9.11, 9.15, 8.1 - 8.3
(4)(c)	9.12 - 9.15, 8.1 - 8.3
601GB	30.4

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

Listing Rules	Constitution
1.1, condition 2	24.5, 24.6
1.1, condition 5	9.1
Chapter 7	4, 5
8.10	?
15.12.1	3.8
15.12.2	3.11
15.12.3	27
15.13	28

15.14	N/A
18.6	24.6
Appendix 6A	5.6