

HYBRID INCOME FUND CONSTITUTION

Consolidated Constitution of the Hybrid Income Fund established by deed poll 20 April 2022 and incorporating amendments made by supplemental deed dated 1 July 2024



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1. CONSTITUTION OF THE TRUST

1.1. CONSTITUTION BINDING ON THE PARTIES

This Constitution operates as a deed and is binding on:—

- (a) all Unitholders (as they are constituted from time-to-time)
- (b) all Option holders (as they are constituted from time-to-time), and
- (c) the Trustee.

1.2. BENEFITS AND OBLIGATIONS

This Constitution is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided to every Holder.

2. TRUST

2.1. APPOINTMENT OF TRUSTEE

The Trustee agrees to act as trustee of the Trust.

2.2. DECLARATION OF TRUST

- (a) The Trustee holds the Assets on trust for the Unitholders on the terms contained in this Constitution.
- (b) The Trust commences on the date the initial Units are issued. The Trust is a single trust and the creation and issue of Units of different Classes is not intended to create separate trusts or sub-trusts.

2.3. NAME OF THE TRUST

- (a) The Trust will be known as the Hybrid Income Fund. However, the Trustee may designate another name at any time in its complete discretion.
- (b) If the Trustee resigns or is removed as the trustee, the replacement Trustee must change the name of the Trust to a name that does not imply any association with the former Trustee or its related bodies corporate or its businesses, unless (at the time of its removal) the former Trustee consents in writing.

2.4. TERM OF THE TRUST

The Trust will end on the earlier of:—

- (a) the date specified by the Trustee as the date of termination of the Trust in a notice given to Unitholders, and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution, in accordance with the Act or in accordance with the law.

2.5. PERPETUITY PERIOD AND RESTRICTION ON ISSUE AND REDEMPTION OF UNITS

- (a) The Perpetuity Period for the Trust expires on the Vesting Day. Despite any other provision of this Constitution, no Units may be issued or redeemed after the day immediately prior to the last day of the Perpetuity Period, if that issue or redemption would cause a contravention of the rule against perpetuities or remoteness of vesting or any other rule of law or equity.
- (b) The specification of a Perpetuity Period in this clause does not require that the Trust terminate on expiration of that period.

2.6. NO MERGER

For the avoidance of any doubt, if the Trustee (in its capacity as trustee of any other trust or trusts) is, or becomes, a Unitholder, or the sole Unitholder, then the estates or interests held by the Trustee in the Assets will not merge and the trust created under this Constitution will not cease to exist. The Trustee may be the trustee of the Trust and also at the same time a Unitholder, or the sole Unitholder, of the Trust, in a different capacity.

2.7. RELATIONSHIP OF AGENCY OR PARTNERSHIP EXCLUDED

Any relationship of agency, or of a partnership, between the Trustee in that capacity and any Unitholder is expressly excluded.

3. UNITS

3.1. DIVISION OF BENEFICIAL INTEREST

The beneficial interest in the Assets as a whole will be divided into Units.

3.2. INTEREST IN ASSETS

Unless the Terms of Issue of a Class otherwise provide, every Unit confers an equal and undivided interest in the Assets as a whole, subject to the Liabilities, but no Unit confers an interest in a particular part of the Trust or in any particular Asset. A Unitholder's interest in the trust fund is the Unitholder's Proportional Interest and is a vested and indefeasible interest.

3.3. RIGHTS ATTACHING TO UNITS

- (a) Subject to any special rights or obligations conferred upon Units pursuant to their Terms of Issue, Units will be held upon and subject to the provisions contained in this Constitution.
- (b) To the extent the Terms of Issue relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out in this Constitution.

3.4. CONSOLIDATION, DIVISION AND ISSUE OF UNITS

- (a) Subject to the Act and the Operating Rules (while the Trust is Listed or Units are Quoted), the Trustee may, at any time, determine to consolidate, divide or issue Units and create and issue Units of different Classes.
- (b) The Trustee may make the issue of Units in different Classes subject to the rights, obligations and restrictions specified in their Terms of Issue. For example, the Terms of Issue may:—

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

The rights of Unitholders are subject to the rights, obligations and restrictions established by the Terms of Issue of each Class. To the extent the rights, obligations and restrictions relate to matters prescribed by section 601GA of the Act, those rights, obligations and restrictions will be set out on in this Constitution.

3.5. FRACTIONS OF UNITS

- (a) Fractions of a Unit may be issued by the Trustee.
- (b) Subject to the Terms of Issue, if fractions of a Unit are issued, then the provisions in this Constitution which relate to Units and Unitholders apply in the proportion which the fraction bears to the Unit.

3.6. CREATE OPTIONS

- (a) The Trustee may create and issue Options to subscribe for Units, on any terms and conditions it determines appropriate.
- (b) On the exercise of an Option, the Option holder is entitled to subscribe for and be allotted Units in accordance with the terms and conditions of the Option.

4. CLASSES OF UNITS

4.1. POWER TO ISSUE AND ALLOCATE

- (a) The Trustee may:
 - (i) issue different Classes of Units and may determine the initial Application Price, rights, restrictions and obligations that will attach to the Units within each Class
 - (ii) alter the Class of a Unit by converting the entire Class of Units into another Class or by re-classifying or re-allocating particular Units to another Class, and
 - (iii) vary or cancel all or any rights and privileges attached to any Class (unless otherwise provided by the terms of issue of the Units of that Class),

provided such action will not adversely affect a Unitholder's rights to income and capital of the Trust.

- (b) The rights conferred on the Unitholders of any Class will not, unless otherwise expressly provided by the terms of issue of the Units of that Class, be deemed to be varied by the creation or issue of further Units ranking equally in respect of those rights.
- (c) The Trustee must enter the terms of any rights or obligations of each Class in the Register.
- (d) At the time the Trustee first issues Units in a particular Class:
 - (i) It must determine whether Assets or Liabilities will be referable to a particular Class (**Referable**), and if it so determines will establish a separate sub-account for that particular Class (**Pool**) which will have the following characteristics:—

- (A) Separate Pools must be established for each Class, and no more than one Pool may be Referable to a particular Class.
- (B) Assets, Liabilities, Expenses, Income and Distributable Income or Dividend Amounts of the Trust Referable to a particular Class must be allocated to the appropriate Pool in a manner that is consistent with the Terms of Issue and unless the Terms of Issue provide otherwise will be allocated as follows:—
 - (I) Where attributable to more than one Class, between the Classes on a basis which the Trustee considers to be fair having regard to the interests of all Unitholders and the Pool Referable to the relevant Class.
 - (II) Where it is not attributable to any Class or the Class to which it was attributable is no longer on issue, between all Classes on a pro rata basis, provided the Trustee considers the allocation to be fair having regard to the interests of all Unitholders and the Pool Referable to the relevant Classes.
 - (III) Any reallocation of Assets or Liabilities between Pools must be done on a fair and reasonable basis for holders of the class of Units Referable to those Pools.
- (C) Investment Amounts Referable to a particular Class must be accounted for in the Pool Referable to that Class.
- (D) Pools may be established pending the issue of Units in a Class, or the acquisition of Assets for that proposed Class.
- (ii) The decision of the Trustee in respect of the allocation of Assets, Liabilities, Expenses, Income and Distributable Income or Dividend Amount among Classes or to a particular Pool is final and binding on all Unitholders.
- (iii) In making any determination under this clause, the Trustee is exercising an administrative power only and nothing contained in this clause is intended to give the Trustee an unfettered discretion. The Trustee in making any determination or exercising any discretion must act honestly and according to law.
- (iv) Clause 4 does not confer on the Unitholder a beneficial interest in a particular Asset. The outcome of clause 4 is to assist in a calculation of the Application Price and the Withdrawal Price for each Class and the quantum of income and capital distributions that can be distributed to Unitholders.
- (v) More than one Unitholder may hold a Class of Units referable to a Class Asset (or Class Assets).
- (e) Unless an Asset or Liability is made Referable to a Class pursuant to clause 4, the Asset will be Referable to all Classes on issue in a manner that is reasonable and is consistent with the Terms of Issue of each Class.
- (f) The proportion of each variable properly referable to a Class under this Constitution is, where the variable relates:
 - (i) only to a particular Class, solely referable to that Class, and

- (ii) to more than one Class, apportioned between those Classes in the same proportions as the aggregate value of Units on issue in each Class as at the most recent Valuation Time bears to the aggregate value of Units in all Classes on issue at that Valuation Time, to which the variable relates.

4.2. NO POWER TO RECLASSIFY OR APPOINT

Notwithstanding any term or condition to the contrary herein, the Trustee does not have a power to:

- (a) power to reclassify existing Units so that they do not all have equal rights to receive the income and capital of the Trust applicable to that Class of Unit.
- (b) appoint a Unitholder's interest in the income or capital of the trust to another Unitholder.
- (c) settle or appoint any part of the corpus of the Trust to a new trust with different beneficiaries.

5. APPLICATION PRICE FOR UNITS

5.1. ISSUE OF UNITS

- (a) Subject to the other provisions of this clause 5 and the Terms of Issue, the Application Price of a single Unit in a Class is the price calculated as follows:—

- (i) the Application Price per Unit shall be for \$1.00 per Unit if issued in the First Pricing Period, or
- (ii) where paragraph (i) does not apply, the Application Price per Unit shall be an amount calculated in accordance with the following formula:—

$$\frac{\text{Net Asset Value} + \text{Adjustments} + \text{Total Unpaid Amount} + \text{Transaction Costs}}{\text{Units in Issue}}$$

- (b) Notwithstanding any other provision of this Constitution, the Trustee may set the Application Price at an Application Price different from that determined in accordance with clause 5.1(a), in relation to some Units, a Class or all Units, to the extent it is permitted to do so under the terms of any ASIC Relief (and subject to the terms of that ASIC Relief). In particular the Trustee may (subject to the terms of the ASIC Relief) exercise discretion in determining:—
 - (i) any matter affecting the value of any factor included in the calculation of the Application Price, and
 - (ii) any matter which is an aspect of the method of calculating the Application Price.
- (c) For the purpose of clause 5.1(a), each of the variables used in the calculation is that proportion of those variables that the Trustee determines is properly Referable to the Class to which the Unit being priced belongs. However, in making any such determination, any discretion which the Trustee has under this sub-clause is an administrative power only and is not intended to give the Trustee an unfettered discretion. The Trustee in exercising such discretion must act honestly and according to law.

5.2. APPLICATION PRICE ON EXERCISE OF OPTION

Subject to the Act and the conditions of any ASIC Relief, the exercise price for Units to be issued in a Class on the exercise of an Option, unless the terms and conditions of the Option determined by the Trustee provide otherwise, will be the Application Price for Units in that Class determined on the Business Day immediately preceding the date the Options are offered.

5.3. TIME TO CALCULATE APPLICATION PRICE

Subject to clauses 5.4 and 5.5, the time at which the Trustee must calculate the Application Price is the next Relevant Valuation Time after the later of the following to occur:—

- (a) The time the Trustee receives the relevant application for Units.
- (b) The time the Trustee receives the relevant Application Money or the property against which Units are to be issued.

5.4. TIME TO CALCULATE APPLICATION PRICE—FIXED CAPITAL RAISINGS

The Trustee may calculate the Application Price at any Relevant Valuation Time the Trustee determines in the case of offers made for a predetermined fixed number of Units or for the purpose of raising a predetermined fixed amount of money.

5.5. UNITS ISSUED AGAINST UNCLEARED FUNDS OR PROMISES TO PAY

- (a) For the purposes of this clause 5, the Trustee may (but is not obliged to) treat receipt of a cheque or other promise or direction to pay, including without limitation a promissory note, uncleared cheque or bill of exchange or anything similar or analogous to the foregoing, as a receipt of Application Money.
- (b) If Units are issued against Application Money provided other than in cleared funds, or in consideration of a transfer of property, or asset, then:—
 - (i) such Units are (at the election of the Trustee) void if the funds are not subsequently cleared or paid, the property does not vest in the Trustee, or the property or asset is not transferred free from encumbrance, within 10 Business Days after the Units are issued (or such longer period as the Trustee determines), and
 - (ii) subject to this Constitution, the Trustee may determine in its absolute discretion that all voting rights, entitlements to the distribution of income and other rights in connection with such Units are suspended until reinstated by the Trustee.

5.6. NET ASSET VALUE

- (a) The Trustee may determine the Net Asset Value at a Valuation Time in accordance with clause 12. Nothing in this clause 5 requires the Trustee to determine the Net Asset Value more often than at a Valuation Time.
- (b) The Trustee may in its discretion postpone, delay or change any Valuation Time (including any Relevant Valuation Time).

5.7. SATISFACTION OF APPLICATION MONEY

The payment of Application Money may be satisfied in such a manner as the Trustee determines, including by payment of cash or by transfer to the Trustee of investments acceptable to the Trustee, or by a combination of these methods.

5.8. RIGHTS OF UNITHOLDERS

Each Unitholder agrees not to:—

- (a) interfere with any rights or powers of the Trustee under this Constitution
- (b) purport to exercise a right in respect of an Asset or claim any interest in an Asset (including without limitation lodging a caveat affecting an Asset), or
- (c) require an Asset to be transferred to the Unitholder (or any other person).

6. APPLICATION FOR UNITS

6.1. FORM OF APPLICATION

An application for Units must be in any form the Trustee may, for the time being, require or approve, subject to the Act (including any ASIC relief) and, while the Trust is Listed or Units are Quoted, the relevant procedures set out in the Operating Rules.

6.2. APPLICATION PAYMENT

- (a) Each Applicant must, at the time of making an application for Units or at such later time as the Trustee allows, pay to the Trustee (or its agent) their Investment Amount.
- (b) If the application for Units arises as part of a reinvestment under clause 15, then the Investment Amount is deemed to be paid to and received by the Trustee on the day the distribution is applied in payment for the Units.

6.3. HOLDING AND DEALING WITH THE INVESTMENT AMOUNT

- (a) The Investment Amount must be held by the Trustee (or its agent) on trust for the Applicants.
- (b) Each Applicant authorises the Trustee to deduct from the Investment Amount any amount disclosed in the Disclosure Document as an amount that will be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.

6.4. INTEREST ON INVESTMENT AMOUNT

Unless the Trustee decides otherwise, interest earned on Investment Amount will be retained by the Trustee and will not form part of the Assets, and for the avoidance of doubt, any interest earned on Investment Amount is not available to a particular Applicant nor is it attributable to a particular Applicant.

6.5. TRUSTEE MAY REFUSE APPLICATION

- (a) The Trustee may, in its absolute discretion, accept or refuse any application for Units in whole or in part, and it is not bound to give any reasons for such refusal.

- (b) If any application for Units is refused, then:—
 - (i) the Trustee must refund to the Applicant any money paid by that Applicant, and
 - (ii) unless the Trustee determines otherwise, no interest shall be paid to the Applicant and any interest earned on the Applicant’s Application Money may be retained by the Trustee or form part of the Assets at the Trustee’s election.

6.6. INVESTMENT OF THE APPLICATION MONEY

The Application Money may, pending its application in accordance with the terms of this Constitution, be invested by the Trustee in investments authorised by the law relating to the investment of trust funds.

6.7. MINIMUM APPLICATION

The Trustee may set minimum application amounts or minimum Unit holdings for the Trust (including in respect of a Class), and alter those amounts at any time.

6.8. DATE UNITS ISSUED

- (a) Units are taken to be issued on the date the Trustee records them in the Register having accepted the relevant application for Units and the Investment Amount required to be paid by the Applicant for the Units in that Class has been paid in accordance with clause 6.2. The date recorded in the Register must be no later than the date the Units were actually issued.
- (b) However, Units issued on a reinvestment pursuant to clause 15 are taken to be issued under an application which is deemed to have been received on the first Business Day after the day the distribution is deemed to be applied in payment for the Units.
- (c) While the Trust is Listed or Units are Quoted, Units are created and issued in a manner consistent with and required by the Operating Rules or the Settlement Rules.

6.9. NUMBER OF UNITS ISSUED

- (a) Except in relation to Partly Paid Units, the number of Units issued to an Applicant is calculated as follows:—

$$\frac{\text{Application Money received}}{\text{Application Price of a Unit}}$$

- (b) In relation to Partly Paid Units, the number of Partly Paid Units issued will be determined in accordance with the formula in clause 6.9(a) assuming the Application Price per Unit was due and paid in full on the date of issue.
- (c) At the Trustee’s discretion, it may also regard as Application Money any input tax credit (or part of it) received by the Trust in respect of the application.

6.10. UNIT CERTIFICATES

The Trustee is not required to issue or provide certificates for Unit holdings.

6.11. UNITHOLDER IDENTIFICATION REQUIREMENTS

- (a) Without affecting clause 6.1, the Trustee may require any Applicant to provide to the Trustee information on or documentation to evidence the identity, residency and nationality of that Applicant (or of any person or entity with an interest in the Applicant), or any other matter the Trustee determines at its discretion, in such form as required by the Trustee in its absolute discretion.
- (b) Without affecting clause 6.8, if the Applicant fails or refuses to provide the evidence required by the Trustee under clause 6.11(a), or the evidence provided is not satisfactory to the Trustee, then:—
 - (i) the Trustee may delay the acceptance or processing of any application for Units or it may refuse any application for Units, in its absolute discretion, and
 - (ii) subject to this Constitution, if the application for Units has already been accepted or processed, the Trustee may determine in its absolute discretion that all voting rights, entitlements to the distribution of income and other rights in connection with such Units are suspended until reinstated by the Trustee.
- (c) The Trustee may in its absolute discretion cancel the Units which were issued, in which case the issue of Units will be deemed to be void, if, after Units have been issued to a Unitholder, it comes to the Trustee's attention that the Unitholder (or any person or entity with an interest in the Unitholder):—
 - (i) is a different person or entity from the person or entity originally represented to the Trustee, or
 - (ii) there is a defect or omission in the information provided under clause 6.11(a).
- (d) Nothing in this clause 6.11 is intended to, nor should it be taken to, impose any additional or greater obligations on the Trustee than any obligations already imposed on the Trustee pursuant to any law, including any law relating to the control or identification of money laundering or terrorism financing or tax compliance. This clause 6.11 is intended to give the Trustee the power to require information from Applicants and the power to cancel Units issued, but (subject to the law) it does not oblige the Trustee to do so.

7. PARTLY PAID UNITS

7.1. PAYMENT OF APPLICATION PRICE BY INSTALMENTS

The Application Price for Units may be payable by instalments as set out in this clause 7.

7.2. DETERMINATION OF AMOUNT AND TIMING OF INSTALMENTS

The Trustee may determine at any time that Units that are to be offered for sale or subscription are to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Trustee determines or, if the Trustee so determines, by a single instalment payable at such time as the Trustee determines.

7.3. VARIATION OR WAIVER OF TERMS AND CONDITIONS

Subject to any applicable statutory duty requiring the Trustee to treat Unitholders 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 7.2, those terms and

conditions may be varied or compliance therewith waived only with the consent of the Trustee. The Trustee may not waive an instalment which is due and payable.

7.4. NOTICE OF INSTALMENTS

The Trustee must give Unitholders at least one Business Days' notice of the time and date each instalment is due to be paid (the first notice). The obligation of the Unitholder to pay the instalment is not affected in any way by the Trustee's failure to send the first notice or the Unitholder's failure to receive the first notice.

7.5. INTEREST ON INSTALMENTS AND COSTS

If a Unitholder does not pay an instalment on a Partly Paid Unit by the due time and date:—

- (a) then interest is payable by the Unitholder on the amount due, calculated in accordance with clause 29.6(a), and
- (b) the Trustee may charge the Unitholder any costs it or the Trust incurs as a result of the failure to pay an instalment.

7.6. FAILURE TO PAY INSTALMENTS

- (a) If a Unitholder does not pay any instalment due on a Partly Paid Unit on or by the day specified for payment, then the Trustee may serve a notice on the Unitholder (the second notice).
- (b) If a notice is served pursuant to clause 7.6(a), then it must contain the following:—
 - (i) The total amount due to be paid at the date of the notice, including the unpaid instalment, any interest owing at that date and any costs the Trustee is seeking to recover.
 - (ii) The time and day by which payment must be made. This date must not be less than three Business Days from the date of the notice.
 - (iii) If payment of the amount set out in the notice is not made by the due date specified in the notice, then the Partly Paid Units in respect of which the notice has been issued (**Defaulting Units**) are liable to be forfeited. The Trustee may also specify that interest will continue to accrue and further costs are likely to be incurred.
- (c) Failure by the Trustee to comply with clause 7.6(b) or non-receipt of the second notice does not affect the obligation of the Unitholder to pay the instalment plus interest and costs.

7.7. CONSEQUENCES OF NON-COMPLIANCE

If the requirements of any notice issued under clause 7.6 are not complied with, then:—

- (a) the Unitholder grants the Trustee an irrevocable power of attorney to execute a transfer of the Unitholder's Units and do all things reasonably required to give effect to a transfer (if required),
- (b) the Trustee may determine in its absolute discretion, that any Partly Paid Unit in respect of which the notice has been given may at any time after the date specified in the notice

for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be forfeited, and

- (c) subject to the Act and this Constitution, all voting rights, entitlements to the distribution of income and other rights in connection with any Partly Paid Unit in respect of which the notice has been given are suspended until reinstated by the Trustee.

7.8. DISPOSAL OF DEFAULTING UNITS

- (a) Subject to the Act, a Defaulting Unit may be sold or otherwise disposed of as a Fully Paid Unit, either:—
 - (i) at a price that is no less than a price calculated in accordance with clause 5, or
 - (ii) in accordance with any applicable ASIC Relief in relation to the sale of forfeited Units if the Trustee complies with the conditions of the relief.
- (b) The Trustee and each director of the Trustee are hereby irrevocably appointed as attorney.
- (c) The Trustee is not liable to a Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (d) At any time before a sale or disposition the Partly Paid Unit may cease to be a Defaulting Unit upon such terms as the Trustee thinks fit.

7.9. HOLDER OF DEFAULTING UNITS

The holder of Partly Paid Units which are Defaulting Units ceases to be a Unitholder in respect of the Defaulting Units but remains liable to pay to the Trustee all money which at the date the Partly Paid Units became Defaulting Units was payable by the former Unitholder to the Trustee in respect of the Defaulting Units (including interest owing under clause 7.5 and expenses) but the former Unitholder's liability ceases if and when the Trustee receives payment in full of all such money.

7.10. EVIDENCE OF DEFAULT

A statement signed by an authorised representative of the Trustee that a Partly Paid Unit is a Defaulting Unit on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Defaulting Units.

7.11. CONSIDERATION FOR DEFAULTING UNITS

Where a Partly Paid Unit is a Defaulting Units, the following applies:—

- (a) The Trustee may receive the consideration, if any, given for a Defaulting Unit on the sale or disposal.
- (b) The Trustee must:—
 - (i) execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of (and the former Unitholder grants the Trustee an irrevocable power of attorney to execute that transfer and do all things reasonably required to give effect to the transaction) and
 - (ii) register that person as the holder of that Unit.

- (c) The person who becomes the registered holder is not obliged to ensure that any part of the money which the person has paid for the Unit is paid to the former holder of the Unit. Further, 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.

7.12. DEDUCTIONS FROM CONSIDERATION FOR DEFAULTING UNITS

Where Defaulting Units are sold or disposed of for cash, the Trustee must deduct from the amount of the consideration the amount of the instalment owing at the date the Units became Defaulting Units (including any interest payable and any expenses incurred on the sale or disposal of the Unit and any expenses associated with the sale of the Defaulting Units or any proceedings brought against the Unitholder to recover the instalment or any part owing). The Trustee may retain in the Assets of the Class in which the Unit became a Defaulting Unit the amounts so deducted, but the balance remaining (if any) must be paid to the Unitholder whose Units became Defaulting Units.

7.13. 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.

7.14. RIGHTS AND OBLIGATIONS ATTACHING TO A PARTLY PAID UNIT ARE PROPORTIONATE

Subject to the Act and the provisions of this Constitution, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which that Unit is paid up.

7.15. TERMINATION OF A CLASS OR WINDING UP OF THE TRUST

Despite anything in this Constitution or in any offer of Partly Paid Units, the whole of the Unpaid Amount is payable immediately:—

- (a) upon termination of the Class to which the Partly Paid Unit belongs, or
- (b) upon commencement of the winding up of the Trust.

8. WITHDRAWAL PRICE

8.1. WITHDRAWAL PRICE

- (a) Subject to the Terms of Issue, a Unit in a Class may only be redeemed at a Withdrawal Price calculated as follows:—

$$\frac{\text{Net Asset Value} + \text{Adjustments} + \text{Total Unpaid Amount} - \text{Transaction Costs}}{\text{Units in Issue}}$$

- (b) For the purposes of the calculation in clause 8.1(a) the following applies:—
- (i) The Trustee may (subject to the terms of any ASIC Relief and any applicable laws and if the Units are Quoted, subject to the Operating Rules) exercise discretion in determining:—
- (A) any matter affecting the value of any factor included in the calculation of the Withdrawal Price, and

- (B) any matter which is an aspect of the method of calculating the Withdrawal Price.
- (ii) Each of the variables used in the calculation of Withdrawal Price are that proportion of those variables the Trustee determines is properly Referable to the Class to which the Unit being priced belongs.
- (iii) In making any determination or exercising any discretion under this clause the Trustee is only exercising an administrative power and does not have an unfettered discretion. The Trustee in exercising any discretion must act honestly and according to law.

8.2. TIME TO CALCULATE WITHDRAWAL PRICE

Subject to clause 9, the Withdrawal Price must be calculated:—

- (a) while the Trust is Liquid, at the next Relevant Valuation Time after the withdrawal request is accepted or approved by the Trustee, or
- (b) while the Trust is not Liquid, at the time the withdrawal offer closes or at such other time specified by the Trustee in the withdrawal offer.

9. WITHDRAWAL PROCEDURES

9.1. RIGHT TO WITHDRAW

A Unitholder's right to withdraw from the Trust is governed by the remainder of this clause 9, the terms of which have effect on and from such registration (except as expressly provided).

9.2. REQUESTS FOR WITHDRAWAL

- (a) A Unitholder may make a request for the withdrawal of some or all of their Units:—
 - (i) if the Trust is Liquid, by providing notice to the Trustee in writing and the Trustee may give effect to that request in its sole discretion and at the time and in the manner set out in this clause 9, or
 - (ii) if the Trust is not Liquid, in response to a withdrawal offer made by the Trustee and in accordance with the Act.
- (b) For the avoidance of doubt, subject to this clause 9:—
 - (i) the Trustee may nominate any or each Business Day as a Relevant Valuation Time and redemption date, and
 - (ii) a Unitholder may request the Trustee to redeem their Units without any prior notice.

9.3. COMPULSORY WITHDRAWAL

Subject to the Act (including any ASIC relief) and, while the Trust is Listed, the Operating Rules, the Trustee may redeem the Units of any Unitholder without the need for a withdrawal request in any of the following circumstances:—

- (a) The Trust is not a Registered Scheme.

- (b) The redemption is permitted under the Terms of Issue which apply to those Units.
- (c) The redemption is permitted under this Constitution.
- (d) The Trust has failed or is likely to fail to meet any criteria which must be met so as to ensure the Trustee or the Unitholders (considered as a whole) are not subject to adverse Tax consequences as determined from time-to-time by the Trustee.
- (e) The redemption is required by operation of:—
 - (i) legislation where the mechanism for redemption is contained in that legislation
 - (ii) a provision in this Constitution which has been included in mandatory compliance with Australian legislation
 - (iii) the order of a court of competent jurisdiction, or
 - (iv) a lien, the exercise of which results in a redemption.
- (f) The Unitholder holds less than any minimum Unit holding amount set by the Trustee.
- (g) In the opinion of the Trustee, the continued holding of Units by a Unitholder would be contrary to an applicable law.
- (h) The Trustee determines, in its absolute discretion, the continued holding of Units by a Unitholder would be to the material disadvantage of the Trust, Unitholders of a Class or to the interests of Unitholders as a whole.

9.4. SUSPENSION OF WITHDRAWALS

- (a) The Trustee need not give effect to a withdrawal request or it may suspend withdrawals for a period of time:—
 - (i) where the withdrawal request is received between the date the Trust is terminated and the date the Trust is wound up
 - (ii) if it is not in the best interests of Unitholders for withdrawals to be made
 - (iii) in relation to withdrawals from a particular Class, if it is not in the best interests of Unitholders in the Class for withdrawals to be made
 - (iv) if it would prejudice the Trust's ability to obtain or maintain concessional treatment under stamp duty legislation or would prejudice the Trust's or the Trustee's compliance with any applicable law, or the taxation or stamp duty status of the Trust
 - (v) it is, for any reason, impracticable for it to calculate the Net Asset Value, the Application Price or the Withdrawal Price, including because of closure of a securities or other exchange or trading restrictions on a securities or other exchange, or because of the existence of an emergency or other similar state affairs or because of an event outside of the reasonable control of the Trustee, or because of the requirements of any law
 - (vi) there would be insufficient cash retained in the Assets after complying with a withdrawal request to meet other Liabilities and in the Trustee's opinion it is not

- in the interests of Unitholders for any Assets to be sold in order to satisfy a withdrawal request
- (vii) if it is not able to realise the relevant Assets at an appropriate price or on adequate terms or otherwise due to one or more circumstances outside of the control of the Trustee needed to satisfy the withdrawal requests within the time required
 - (viii) Quotation of Units is suspended, halted or revoked, or the approval of the Trustee as an AQUA Product Issuer is suspended or revoked
 - (ix) the Trustee reasonably estimates that it must sell five percent or more (by value) of all Assets to meet current unsatisfied withdrawal requests
 - (x) it is otherwise legally permitted, or
 - (xi) there have been, or the Trustee anticipates there will be, withdrawal requests which involve realising a significant amount of the Assets and the Trustee considers that if those withdrawal requests are all satisfied immediately, then Unitholders who continue to hold Units may bear stamp duty or a disproportionate burden of capital gains tax or other expenses, or the meeting of those withdrawal requests would otherwise be to the disadvantage of existing Unitholders, including (but not limited to) a material diminution in the value of the Assets.
- (b) In cases where withdrawals are suspended for a period of time the Trustee may extend the period for so long as the circumstances which caused the suspension continues to apply.
 - (c) A withdrawal request lodged during any period of suspension is taken to be received on the first Business Date immediately after the suspension period ends.

9.5. PROVISIONS THAT APPLY WHEN THE TRUST IS LIQUID AND NOT LIQUID

MONEY OWED

- (a) If a Unitholder owes any money to the Trust or the Trustee (including any Unpaid Amount of any Partly Paid Units held by the Unitholder), then the Trustee may deduct the money owing from the proceeds of a withdrawal which are otherwise due to the Unitholder.

TRANSFER OF ASSETS TO SATISFY WITHDRAWAL OR DISTRIBUTION

- (b) The Trustee may, at its discretion, transfer Assets to a Unitholder rather than pay cash, in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution.
- (c) These Assets together with any cash paid must be of equal value to the total amount due to the Unitholder pursuant to the redemption request, withdrawal offer or distribution (based on a valuation prepared in accordance with clause 12).
- (d) If the Trustee requires, then the costs involved in the transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

MINIMUM APPLICATION AMOUNT

- (e) The Trustee need not give effect to withdrawal requests (whether or not made in response to a withdrawal offer) in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding.

MINIMUM UNIT HOLDING

- (f) If complying with a withdrawal request (whether or not made in response to a withdrawal offer) would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as relating to the remaining balance of the Unitholder's holding.

WITHDRAWAL REQUEST CANNOT BE WITHDRAWN

- (g) Subject to the Act and, while the Trust is Listed or Units are Quoted, the Operating Rules, a withdrawal request (whether or not made in response to a withdrawal offer) cannot be withdrawn by a Unitholder, unless the Trustee otherwise agrees.

SATISFACTION OF WITHDRAWAL BY SALE OF UNITS

- (h) The Trustee may, at its discretion, purchase or arrange for another person to purchase all or some of the Units the subject of a withdrawal request (whether or not made in response to a withdrawal offer) at a price per Unit no less than the Withdrawal Price which would otherwise have been paid under clause 8.1. In such case, the withdrawal request is deemed satisfied upon:—
 - (i) the transfer of the Units the subject of the withdrawal request being recorded in the Register, and
 - (ii) if the transfer is for less than all of the Units the subject of the withdrawal request, then upon payment of the Withdrawal Price in respect of the remaining Units.

WITHDRAWAL ON LEGAL DISABILITY

- (i) If a person suffers a Legal Disability, the Trustee may at the request of the Legal Personal Representative withdraw the Relevant Units at the prevailing Withdrawal Price unless the Trustee acting reasonably considers that such withdrawal would adversely affect the remaining Unitholders.
- (j) Where the Trustee determines to withdraw the Relevant Units, such Units will automatically convert to a separate class of Unit designated by reference to the person who suffered the Legal Disability. Such Units will continue to rank equally with all Units other than in respect of the operation of this clause.

9.6. PROVISIONS WHICH APPLY WHEN THE TRUST IS LIQUID

- (a) The Trustee must determine whether it will give effect to a withdrawal request within 45 days of receipt of the request. If the Trustee gives effect to a withdrawal request, then the Trustee must satisfy the withdrawal request within 21 days from the date on which it determines to give effect to the request:—
 - (i) by making the requisite payment from the Assets or by transferring Assets in accordance with clause 9.3

- (ii) subject to the Act, by purchasing the number (or value) of Units referred to in the withdrawal request, or
 - (iii) partially in the manner described in clause 9.6(a)(i) and partially in the manner described in clause 9.6(a)(ii).
- (b) The Trustee need not give effect to withdrawal requests in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amount as determined by the Trustee from time-to-time. However, the withdrawal request can be less if it relates to the remaining balance of the Unitholder's holding.
 - (c) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
 - (d) If complying with a withdrawal request would result in the Unitholder holding Units with an aggregate Withdrawal Price of less than the current minimum holding amount set by the Trustee, then the Trustee may treat the withdrawal request as also relating to the remaining balance of the Unitholder's holding.
 - (e) The Trustee may redeem some or all of the Units which are the subject of the request.
 - (f) The Trustee may specify a limit on the level of Assets that will be made available to meet withdrawal requests received during a particular period or prior to a nominated date or time. If the proceeds required to meet withdrawal requests exceed the amount available to meet those requests, then the requests will be processed on a pro rata basis in accordance with the formula set out in section 601KD of the Act (as if the Trust was not Liquid). The Trustee may, but is not obliged to, process any remaining portion of the withdrawal requests during or after the next relevant period or after the next relevant nominated date or time (as may be applicable).
 - (g) The Trustee may reject a withdrawal request received during the following periods:—
 - (i) the period where the ASX Settlement Period for the withdrawal of Units would occur in the Financial Year immediately after the Financial Year during which the withdrawal request was received, and
 - (ii) the period commencing on the close of trading on the Market Operator Business Day before the date at which Units are officially quoted on an ex-entitlement basis to the close of trading on the last Market Operator Business Day of the relevant distribution period.

9.7. PROVISIONS WHICH APPLY WHEN THE TRUST IS NOT LIQUID

- (a) When the Trust is not Liquid, a Unitholder has no ability to withdraw from the Trust unless there is a withdrawal offer currently open for acceptance by Unitholders, which complies with the Act and if Units are Quoted, the Operating Rules.
- (b) The Trustee may make separate withdrawal offers in respect of different Classes or a withdrawal offer only in respect of a particular Class.
- (c) Subject to the Act, the Trustee may determine the terms of a withdrawal offer in its absolute discretion.
- (d) The withdrawal offer may be made by giving a copy to all Unitholders to whom the withdrawal offer is available.
- (e) The Trustee is not at any time obliged to make a withdrawal offer.

- (f) The Trustee is not obliged to pay any part of the Withdrawal Price out of its own funds.
- (g) If the Trustee receives a withdrawal request before it makes a withdrawal offer, then it may treat the request as an acceptance of the offer effective as at the time the offer is made.
- (h) Subject to the Act, the Trustee may cancel any withdrawal offer it has made at any time before the withdrawal offer closes by giving notice of the cancellation to all Unitholders to whom the withdrawal offer was made. The withdrawal offer will be automatically cancelled as at the time of the Trustee's decision. Any withdrawal request made in response to a withdrawal offer cancelled by the Trustee which has not been satisfied at the time of the Trustee's decision to cancel the withdrawal offer will be taken to be withdrawn at that time.

10. REGISTER

10.1. TRUSTEE MUST MAINTAIN THE REGISTER

- (a) The Trustee must keep and maintain or cause to be kept and maintained an up-to-date Register in which details of Unitholders are recorded. The Register will be in a form and contain particulars as determined by the Trustee, however following registration of the Trust as a managed investment scheme, the Register must be kept in accordance with the Act or any declaration, exemption or ruling granted under the Act and the Operating Rules (while the Trust is Listed or Units are Quoted). The Register may include other particulars, as the Trustee may from time-to-time consider appropriate.
- (b) Subject to the Act, the Trustee may also keep a register of Optionholders.

10.2. REMOVING INFORMATION FROM THE REGISTER

Information relating to a Holder (or any part of it) may be removed from the Register at any time after the first day of the Financial Year occurring seven years after the Financial Year in which the Holder ceased to be the holder of Units or Options as the context requires.

10.3. REGISTER IS EVIDENCE OF WHO ARE HOLDERS

Except in the case of manifest error, the Trustee may treat a registered Holder as the legal owner of Units or Options as the context requires registered in the Holder's name on the Register. The Trustee is not required to recognise any beneficial interest held in any Unit or Option as the context requires.

10.4. CHANGE OF DETAILS

A Holder must notify the Trustee of any change of name or address as soon as reasonably practicable after the change occurs. The Trustee must update the Register accordingly.

10.5. LIMIT TO NUMBER OF REGISTERED HOLDERS

Where more than two persons claim an interest in a Unit or an Option, the Trustee is not required to register more than two persons as holders of any one Unit or Option as the context requires.

10.6. USE OF INFORMATION

If a Holder inspects or is given a copy of the Register, then they will be taken to have agreed not to use any information obtained from the Register (or part thereof) for any purpose or disclose any such information to any person, in each case except to the extent that the information consists

of particulars of the unitholding of that Holder. A Holder's obligation under this clause survives the transfer of all or any part of their Units or Options as the context requires.

10.7. HOLDING STATEMENTS

Subject to the Act, while the Trust is admitted to an uncertificated trading system, a holding statement in accordance with the requirements of the Operating Rules may be issued to evidence the holding of Units.

11. INTERESTS OF HOLDERS

11.1. JOINT HOLDERS

Where more than one person is registered as the Holder of any Unit or Option, then these Holders hold them as joint tenants. Joint Holders shall be liable jointly and severally in respect of all amounts payable (including Tax) in respect of the Unit or Option.

11.2. DEATH OR LEGAL DISABILITY OF UNITHOLDER

- (a) Upon the death or Legal Disability of a sole Unitholder, the Legal Personal Representative will be the only person recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.
- (b) Upon the death or Legal Disability of any one of the joint holders of Units, the survivor or survivors will be the only persons recognised by the Trustee as having any title to or interest in the relevant Unitholder's Units.

11.3. RESTRICTIONS ON HOLDERS

A Holder has no right or entitlement to, and must not:—

- (a) interfere with any rights, powers, authorities or discretions of the Trustee under this Constitution
- (b) exercise a right, power or privilege in respect of the Assets or lodge a caveat or other notice affecting or encumbering the Assets or otherwise claim any interest in the Assets
- (c) require any Assets to be transferred to that Holder, or
- (d) give any directions to the Trustee if it would require the Trustee to do or omit to do anything which may result in the exercise of any discretion expressly conferred on the Trustee by this Constitution or the determination of any matter which requires the approval of the Trustee under this Constitution.

12. VALUATION OF ASSETS

12.1. PERIODIC VALUATIONS

The Trustee may cause an Asset to be valued at any time, including more than once on each day, however (if applicable) the Trustee must do so as and when required by the Act (as varied by any ASIC Relief) and the Operating Rules (while the Trust is Listed or Units are Quoted).

12.2. NET ASSET VALUE

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

12.3. VALUATION METHODOLOGY

- (a) Subject to the Act, the valuation methods and policies applied to valuing the Assets must be consistent with ordinary commercial practices for valuing assets of the relevant kind and be in accordance with all relevant Accounting Standards. All valuations used must be reasonably current.
- (b) Subject to the Act, the Trustee may make and act upon estimates of the value of any Assets or of the amount of any Liabilities where actual valuations or authenticated figures are not available and the Trustee considers there will be no significant detriment to any Unitholder. The Trustee's power to make and act upon such estimates is conditional upon the estimates being reasonably current and being consistent with ordinary commercial practices for valuing assets of the relevant kind and be in accordance with all relevant Accounting Standards.

12.4. TRUSTEE NOT AN EXPERT

The Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.

12.5. FINANCIAL REPORTS AND TAX RETURNS

12.6. ACCOUNTS, AUDIT AND OTHER REPORTS

- (a) While the Trust is a Registered Scheme, the Trustee must comply with the requirements of Chapter 2M of the Act, to the extent applicable to the Trust.
- (b) In addition to any of the Trustee's obligations under clause 12.6(a), the Trustee:—
 - (i) must keep, or cause to be kept, proper books of account in relation to each Class, and
 - (ii) may prepare a separate financial statement for each Class and determine the distinct tax implications relating to each Class.

12.7. TAX RETURNS

- (a) The Trustee will lodge for each Financial Year such tax returns on behalf of the Trust as may be required by the Tax Act.
- (b) The Trustee will for each Financial Year forward to each Unitholder a statement of the necessary details to assist the Unitholder in completing the relevant part of the Unitholder's tax return for the Financial Year. The Trustee will do this as soon as practicable after the end of the Financial Year, but by no later than four months after the last day of the Financial Year.

13. FEES AND EXPENSES

13.1. TRUSTEE FEE

- (a) The Trustee is entitled to a trustee fee of up to 2.00% per annum of the gross value of the Assets (including the gross value of the assets of any Sub Entities, adjusted, if relevant, based on the proportional direct or indirect ownership of the Trust in the Sub Entity), subject to a minimum fee of \$5,000 per month.

- (b) The minimum fee in clause 13.1(a) is subject to an annual increase on 1 July each year from the commencement of the Trust by the greater of:—
 - (i) the relevant fee after being Indexed, or
 - (ii) the relevant fee multiplied by three percent.
- (c) This fee is accrued daily and is payable monthly in arrears out of the Assets from the date the first Unit is issued pursuant to the first Disclosure Document to the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Time.
- (d) For the avoidance of doubt, the amount of the trustee fee payable under this clause 13.1 is subject to any relevant disclosure to Unitholders in a Disclosure Document, but the fee payable will not exceed the fee prescribed in clause 13.1(a).

13.2. CUSTODY FEE

- (a) If the Trustee performs the custodial function for the Trust, then it will be entitled to a custody fee of up to 1% per annum of the gross value of the Assets (including the gross value of the assets of any Sub Entities, adjusted, if relevant, based on the proportional direct or indirect ownership of the Trust in the Sub Entity), subject to a minimum fee of \$2,000 per month.
- (b) The minimum fee in clause 13.2(a) is subject to an annual increase on 1 July each year from the commencement of the Trust by the greater of:—
 - (i) the relevant fee after being Indexed, or
 - (ii) the relevant fee multiplied by three percent.
- (c) This fee is accrued daily and is payable monthly in arrears out of the Assets until the date of the final distribution following a winding up of the Trust in accordance with this Constitution. The value of the Assets will be determined as at the most recent Valuation Time.
- (d) For the avoidance of doubt, the amount of the custody fee payable under this clause 13.2 is subject to any relevant disclosure to Unitholders in a Disclosure Document, but the fee payable will not exceed the fee prescribed in clause 13.2(a).

13.3. WAIVER AND DEFERRAL OF FEES AND EXPENSES

The Trustee may at any time and for any period:—

- (a) accept lower fees and expenses than it is entitled to receive under this Constitution
- (b) defer payment of any fees and expenses it is entitled to receive under this Constitution, or
- (c) waive entirely its entitlement to receive any fees and expenses under this Constitution.

13.4. FEES CAN BE APPLIED TO ACQUIRE UNITS

Subject to the Act, where an amount of money is payable from the Assets to the Trustee by way of any fee or in reimbursement of any cost, charge or expense, then the Trustee may, in its own

capacity, elect to apply that amount to subscribe for Units, at an Application Price calculated in accordance with this Constitution.

13.5. EXPENSES

- (a) All Expenses properly incurred in connection with the establishment, administration, management and winding up of the Trust by the Trustee, in relation to the proper performance of its duties under this Constitution, will be paid out of the Assets. If the Trustee pays such Expenses, then the Trustee will, in addition to the remuneration payable to it, be indemnified and will be entitled to be reimbursed out of the Assets in respect of such Expenses, together with any GST payable in respect of those Expenses.
- (b) Without limiting clause 13.5(a), this includes Expenses connected with the following:—
 - (i) The identification, acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
 - (ii) Calculating the Application Price, Withdrawal Price, Distributable Income, Dividend Amount and Distributable Proportion plus undertaking any financial modelling or fee or other calculations in relation to the Trust.
 - (iii) The proposed acquisition, custody, management, maintenance, improvement, transfer, financing, disposal of or dealing with the Assets or Liabilities.
 - (iv) Raising funds either in the form of debt or equity, including commission, brokerage, underwriting fees and expenses.
 - (v) The appointment of any professional adviser, consultant, contractor, agent, broker, underwriter or delegate by the Trustee, including a custodian or investment manager.
 - (vi) The administration or management of the Trust or its Assets and Liabilities.
 - (vii) Bank charges on the operation of bank accounts.
 - (viii) Borrowing money, raising finance or granting security over the Assets.
 - (ix) Tax payable by or on account of the Unitholders or Trustee in respect of the Trust, but not Tax of the Trustee on income it earns as trustee of the Trust or in any other capacity.
 - (x) Fees and charges of any regulatory or statutory authority.
 - (xi) Convening and holding meetings of Unitholders, including all costs incurred by the Trustee or any consultants engaged by the Trustee in the preparation for any such meeting.
 - (xii) Printing and postage of cheques, making electronic payments, accounts, distribution statements, notices and other documents posted to some or all Unitholders in accordance with the provisions of this Constitution, including all stationery related to these matters.
 - (xiii) Preparation and distribution of any report or document required by the Act to be prepared in respect of the Trust, or prepared by the Trustee in good faith in respect of the Trust.

- (xiv) Keeping and maintaining of the accounting records and registers of the Trust.
- (xv) Retirement and the appointment of a substitute trustee or any custodian.
- (xvi) The initiation, conduct and settlement of any court proceedings (including through alternative dispute resolution):—
 - (A) to enforce any provisions of this Constitution, or
 - (B) in relation to the Trust or any of its Assets or Liabilities.
- (xvii) Preparation and lodgement of returns under the Act, Tax Act or any other laws for the Trust, including the auditing of accounts or the compliance plan (if required).
- (xviii) Acquiring, establishing, maintaining, leasing, licensing and developing computer software systems required for the administration of the Trust.
- (xix) Reasonable travelling and accommodation expenses of the Trustee.
- (xx) Preparation, execution and stamping of this Constitution, any related compliance plan or any supplemental deeds or plans.
- (xxi) Conversions, rearrangements or reorganisations which are associated with complying with any new law or ASIC policy.
- (xxii) The establishment, management and maintenance of any:—
 - (A) listing on any exchange or secondary market of the Trust or any Units, and
 - (B) any rating of the Trust, a Class or any Units.
- (xxiii) The performance of the functions and duties of the Trustee under the Constitution.
- (xxiv) Costs, charges and expenses related to any variation of the Trustee’s Australian financial services licence to the extent it reasonably relates to the Trust.
- (xxv)
 - (A) any compliance committee to the extent it reasonably relates to the Trust, Constitution or the compliance plan for the Trust, including the appropriate portion of the compliance committee’s remuneration, independent legal, accounting or other professional advice required by that committee, and fees paid in respect of insurance premiums (and excess) for those members
 - (B) if there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses of the board of the Trustee associated with carrying out the functions which would otherwise be carried out by a compliance committee, including (if relevant) any fees paid to, or insurance premiums in respect of, external directors appointed to satisfy the requirements of the Act, and

- (C) any variation of the Trustee's Australian financial services licence to the extent it reasonably relates to the Trust.
- (xxvi) Establishing the Trust and including the preparation, due diligence, registration, promotion and distribution of Disclosure Documents and the preparation, registration, distribution, due diligence and promotion of the Trust.
- (xxvii) Complying with any laws or rules in relation to the prevention or detection of money laundering activities or terrorism financing activities.
- (xxviii) Complying with any laws (including laws of a foreign jurisdiction) relating to tax administration or tax information collection (including the Foreign Account Tax Compliance Act).
- (xxix) Foreign exchange hedging transactions whether speculative or hedging.
- (xxx) Amounts payable to the Investment Manager, administrators, advisers, agents, brokers, contractors, custodians, asset managers, underwriters or other persons engaged by the Trustee under this Constitution (including legal costs on a full indemnity basis), which may include a related body corporate or an Associate of the Trustee or Investment Manager.
- (xxxi) Entering the Trust in a survey.
- (xxxii) Fees payable to a ratings organisation.
- (xxxiii) Dealing with applications and redemptions of Units or other interests, in determining the Application Price and Withdrawal Price.
- (c) No person will be ineligible or disqualified for payment under this clause because they are related to, or are Associates of, the Trustee or the directors of the Trustee.
- (d) The Trustee may pay its reimbursement out of the Assets in priority to any claim by Unitholders.

13.6. PERFORMANCE OF DUTIES

- (a) Despite anything else in this Constitution, while the Trust is a Registered Scheme (and in accordance with subsection 601GA(2) of the Act), the rights of the Trustee to be paid fees out of the Assets or to be indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties under this Constitution or the Act are available only in relation to the proper performance of those duties.
- (b) The lack of entitlement to any payment pursuant to clause 13.6(a) only applies to that part of the payment which relates to the specific lack of proper performance on a given matter. Nothing in this clause 13.6 means the Trustee is not entitled to be paid fees and costs for work performed properly and in accordance with its duties.

13.7. GOODS AND SERVICES TAX

If any supply made by the Trustee under this Constitution or any variation to it is a taxable supply for the purposes of the GST Act, then the following will apply:—

- (a) In addition to any amount or consideration expressed as payable to the Trustee elsewhere in this Constitution, but subject to issuing a valid tax invoice, the Trustee will be entitled to recover from the party to whom the supply has been made an additional amount on

account of GST. This additional amount must be equal to the amount of the Trustee's GST remittance liability in respect of each supply and will be recoverable at the same time as the amount of consideration is payable for each supply.

- (b) The Trustee and the Unitholders acknowledge and agree each supply made by the Trustee under this Constitution is made:—
 - (i) on a progressive or periodic basis
 - (ii) such that the consideration is to be provided on a progressive or periodic basis, and
 - (iii) such that each progressive or periodic component of the supply is to be treated as a separate supply.
- (c) If the Trustee is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, then the Trustee is entitled to recover from the Assets by way of reimbursement an additional amount equivalent to the amount of such input tax credit.

13.8. FEES OR AMOUNTS PAYABLE BY TRUST OR SUB ENTITIES

Notwithstanding any other provision of this Constitution, fees payable under this Constitution, and costs, charges and expenses payable or to be reimbursed under this Constitution, may be charged to or reimbursed from the Trust or to or from any Sub Entity, as determined by the Trustee. In addition, services to be provided may be provided by an Associate of the Trustee who may charge the fees set out directly to the Trust or to any Sub Entity as determined by the Trustee.

14. DISTRIBUTIONS FROM THE TRUST

14.1. TRUSTEE WILL COLLECT IN ALL MONEY

- (a) The Trustee must collect or cause to be collected all amounts generated from the Assets and all other money, rights and property which are paid, due or receivable in respect of the Trust.
- (b) Where there is more than one Class on issue, subject to the Act, the Trustee must allocate any income, Expense and Liabilities to Classes in accordance with clause 4.

14.2. DETERMINATION OF INCOME AND RESERVES

- (a) The Trustee must determine before the end of the relevant Financial Year the classification of an item as being Income or capital and the extent to which the income of the Trust is to be adjusted by allocating such amount as it considers proper in accordance with generally accepted accounting principles to a provision or any reserve account for the purpose of meeting anticipated expenses or obligations of the Trust.
- (b) If any question arises as to whether (or as to the extent to which) distributions to those entitled to receive them are of capital or Income or whether a particular expense is chargeable against capital or Income or whether reserves or provisions need to be made, then the question will be resolved by the Trustee. However the exercise of such power is an administrative power only and is not an unfettered discretion. The Trustee must in exercising this power act honestly and according to law.

- (c) The Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of Income received or receivable in a Distribution Period may be treated as having been received in a different Distribution Period and an Expense paid or payable in a Distribution Period may be treated as having been paid in a different Distribution Period.

14.3. DISTRIBUTIONS

- (a) The following apply, except in any income year in which the Trust is taxed as a Corporate Tax Entity (refer to clause 14.9):—
- (b) Before and after termination of the Trust, the Trustee at any time may elect that, for a Distribution Period, an amount (capital or income) be distributed from the Trust to Unitholders. A distribution made by the Trustee to a Unitholder will be taken to be a distribution of Distributable Income of a Distribution Period to the extent the Trustee determines the distribution constitutes a distribution of Distributable Income of that Distribution Period.
- (c) Except as otherwise provided by this Constitution, the distribution (whether of Distributable Income or otherwise) Referable to a Class for each Distribution Period must be distributed to Unitholders in that class pro rata to the number of Units they hold in that class at the end of the Distribution Period (refer at clause 14.4).

14.4. DISTRIBUTABLE INCOME ENTITLEMENT CALCULATION

- (a) Subject to the rights and obligations attaching to any Units, the Distributable Income to which each Unitholder is entitled for a Distribution Period is calculated as (subject to any payments or adjustments required as a result of clause 14.28):—

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

Where:—

- A = The number of Units in the relevant Class held by the Unitholder at the close of business on the last day of the Distribution Period.
- B = The Distributable Income which is the Trustee's calculation of the distributable income of the Trust for the Distribution Period allocated to the relevant Class (as determined by the Trustee pursuant to clause 14.5 and 14.28 for the Distribution Period.
- C = The number of Units in the relevant Class held by all Unitholders in the relevant Class at the close of business on the last day of the Distribution Period.

14.5. UNITHOLDERS PRESENTLY ENTITLED TO DISTRIBUTABLE INCOME

The following apply, except in any income year in which the Trust is taxed as a Corporate Tax Entity:—

- (a) Each Unitholder on the Register at midnight on the last day of each Financial Year, has at that time a vested and indefeasible interest in and is presently entitled to, a share of the Distributable Income for that Financial Year not previously distributed in any prior Distribution Period for each Unit held by that Unitholder in the proportion set out in clause 14.3(c).

- (b) To the extent that Distributable Income for that Financial Year has not been distributed on or before the end of the Financial Year an amount equal to the shortfall must be distributed by the Trustee to each entitled Unitholder as soon as reasonably practicable after the end of the Financial Year.

14.6. SPECIAL DISTRIBUTION AMOUNTS

- (a) The Trustee may, at any time, determine to advance, pay or apply an amount of Income or capital of the Trust in circumstances where the amount is not to be treated as a Distributable Income (in this clause "**Special Distribution Amount**").
- (b) Where the Trustee determines under clause 14.6(a) that there is a Special Distribution Amount at a particular time, then this Constitution is to be applied in a manner as though the Special Distribution Amount at that particular time were a Distributable Income for a Distribution Period.

14.7. CHANGES IN THE LAW

If the law changes in respect of Taxes so that the Trust or the Trustee becomes subject to Taxes on Income and gains derived by the Trust even where all available Income is distributed to Unitholders, or regardless of the present entitlement of the Unitholders, then the Trustee:—

- (a) does not have to make distributions in accordance with this clause 14, and
- (b) at its discretion, may choose when to make distributions of profits, Income, capital or any taxation or imputation credits that have become available in relation to the Trust.

14.8. INCOME CATEGORIES

The Trustee may keep accounts of different categories and sources of Income and allocate the Income from any category or source to any Unitholder.

14.9. TIME FOR DISTRIBUTION OF DISTRIBUTABLE INCOME

The Distributable Income for a Distribution Period must be paid by the Trustee to those entitled to receive them within three months after the Distribution Calculation Date. The present entitlement of a Unitholder to all of the Distributable Income payable to them from the Trust is satisfied by the payment of distributions to a Unitholder in respect of the Financial Year.

14.10. TRUST TAXED LIKE A COMPANY

Where in any income year the Trust is taxed as a Corporate Tax Entity, the following apply:—

- (a) Each Holder registered at midnight on the last day of each Distribution Period does not have a vested and indefeasible interest in a share of the Distributable Income for that Distribution Period.
- (b) The Trustee may, at its discretion, choose to make distributions of after tax profits, Income or capital provided that all Distributable Income is distributed at the final termination of the Trust.
- (c) If the Trustee considers the Trust is to be subject to tax on a similar basis as a company in respect of a Financial Year, then this clause 14.10(c) applies in respect of that Financial Year and as soon as practicable after the end of each Distribution Period in the Financial Year, the Trustee must determine:—

- (i) if there is to be any Dividend Amount for each Class for the Distribution Period, and
 - (ii) if so, then the amount of the Dividend Amount for each Class and the amount of any franking credits (if any) to be attached to the Dividend Amount for each Class.
- (d) The Trustee may determine the extent to which the Dividend Amount for a Class (if any) comprises profits, retained profits, capital, returned capital or Income of a particular character.
- (e) In respect of a Distribution Period the Trustee may, in its discretion from time-to-time, determine to pay Unitholders holding Units in a Class on any date determined by the Trustee a Dividend Entitlement for each Class held, calculated as follows:—

$$\left(\frac{A}{B}\right) \times C$$

Where:—

A = The aggregate of the Paid-up Amount of each relevant Unit holding of the Unitholder in the Class as at the end of the Distribution Period.

B = The Total Paid-up Amount for that Class held by all Unitholders at the end of the Distribution Period.

C = The Dividend Amount (if any) for the Distribution Period Referable to that Class.

- (f) Dividend Entitlements (if any) must be paid to Unitholders at a time determined by the Trustee after any Dividend Amount is determined.

14.11. NON-AMIT

The above clauses 14.1 to 14.9 (inclusive) apply for each Distribution Period where the Trust or a Class of Units is not an AMIT.

14.12. ADDITIONAL OBLIGATIONS IF TRUST IS AN AMIT

- (a) This clause 14.12 and clauses 14.12 to 14.25 (inclusive) apply only if the Trust is an AMIT in any Financial Year.
- (b) Where the Trust has more than one Class of Unit and the Trustee has made a choice that each Class will be treated as a separate AMIT for the purposes of the AMIT laws and clauses 14.12 to 14.25 (inclusive) must be applied as relevant and accordingly.

14.13. AMIT ELECTION

- (a) The Trustee may elect that the AMIT laws apply to the Trust in respect of a Distribution Period.
- (b) An election made pursuant to clause 14.13(a):—
- (i) is not revocable in a subsequent Distribution Period once made, and
 - (ii) must be notified to Unitholders in a timely manner.

14.14. FIXED TRUST

For the purposes of the Tax Act, at any time at which the Trust is an AMIT, the Trust is a fixed trust for the relevant Distribution Period.

14.15. INDEFEASIBILITY

For the purposes of the Tax Act, at any time at which the Trust is an AMIT, the nature of the interest that Unitholders have in the Income and capital of the Trust through the Distribution Period is indefeasible.

14.16. CALCULATION

For the purposes of AMIT, the Trustee must, consistent with the Tax Act, work out the total net amount of all the characters of the Trust for income tax purposes at the Trust level (Attribution Amount). The net amounts so determined are called the Trust Components (refer to clause 14.19).

14.17. CRYSTALLISATION

When the Trustee prepares a document that meets certain requirements of the AMIT laws, it crystallises these calculations into the determined trust components (refer to clause 14.19).

14.18. TAX LOSS

In circumstances where deductions exceed total assessable income, the Trust makes a tax loss and the trust component of each assessable income character for the Distribution Period is nil.

14.19. AMIT FAIR AND REASONABLE

The amounts of a character attributed to one Unitholder must be fair and reasonable. However, the Trustee may allocate a capital gain to a redeeming Unitholder in accordance with the Tax Act.

14.20. TRUST COMPONENTS

- (a) For each Financial Year, the Trustee must determine the Trust Component of each Amount of a Particular Character in accordance with the AMIT laws and clause 14.20(c)(i).
- (b) Where the Trust has more than one class of Unit and the Trustee has made a choice that each Class will be treated as a separate AMIT, then:—
 - (i) the Trustee must determine the Trust Component of each Amount of a Particular Character separately for each of the separate AMITs referred to in clause 14.12(b), and
 - (ii) a reference to Trust in clause 14.20(c)(i) is a reference to each such separate AMIT.
- (c) For each Financial Year, the Trustee must determine the Trust's Trust Component of each Amount of a Particular Character as follows:—
 - (i) Determine the total Amounts of Particular Characters of Assessable Income, Exempt Income, Non-assessable, Non-exempt Income and Tax Offsets for the Trust.
 - (ii) Apply any Unders, Overs and Trust Component Deficits of the Trust to the amounts in clause 14.20(b)(i) in accordance with AMIT laws.

- (d) The Trustee must record the Trust's Trust Components determined under 14.20(b) in a document that meets the requirements of the AMIT laws.

14.21. AMIT DETERMINED MEMBER COMPONENTS

- (a) For each Financial Year, the Trustee must determine each Unitholder's Member Component for each Amount of a Particular Character in accordance with the AMIT laws and the following apply:—
- (i) The Trustee must, for income tax purposes, attribute amounts relating to the Trust of a particular character to the Unitholders in the Trust for each Distribution Period.
 - (ii) When the Trustee prepares an AMMA Statement, it crystallises these calculations into the determined Member Components.
 - (iii) If a Unitholder challenges the Trustee's determinations as the AMIT laws contemplate, then the Trustee must manage that in a way consistent with the AMIT laws. Such Unitholder shall indemnify the Trustee against all costs and liabilities incurred by the Trustee as a result of the objection or proposed objection.
- (b) Where the Trust has more than one Class of Unit and the Trustee has made a choice that each class will be treated as a separate AMIT, then the Trustee must determine each Unitholder's Member Component for each Amount of a Particular Character separately for each of the separate AMITs referred to in clause 14.12(b), and a reference to Trust in clause 14.21(d) is a reference to each such separate AMIT.
- (c) Where the Trust has more than one Class of Unit and clause 14.20(b) does not apply, then the Trustee must determine the Distributable Income properly referable to each Class separately and a reference to Trust in clause 14.20(b) is a reference to each such separate Class.
- (d) Unless the Trustee determines otherwise (and any such other determination must be in accordance with the AMIT laws), each Unitholder's Member Component for an Amount of a Particular Character for each Financial Year for the Trust is to be determined in accordance with the following method:—

Step 1: For each Distribution Period during the Financial Year, calculate each Unitholder's Member Component for an Amount of a Particular Character for the Trust for that Distribution Period in accordance with the following formula:—

$$MC = TC \times \left(\frac{MD}{DA} \right)$$

where:—

MC = the Member Component for an Amount of a Particular Character for the Trust for the Distribution Period.

TC = the Trust Component for that Amount of a Particular Character for the Trust calculated for that Distribution Period as if it was a Financial Year.

MD = the entitlement of the Unitholder (including a withdrawing Unitholder) to the Distributable Income of the Trust for that Distribution Period.

DA = the Distributable Income of the Trust for that Distribution Period.

Step 2: For each Unitholder, add up the MCs calculated under Step 1 for an Amount of a Particular Character for of the Trust all of the Distribution Periods during the Financial Year (**Total MCs**).

Step 3: If the sum of all the Unitholders' Total MCs for an Amount of a Particular Character for the Trust determined under Step 2 exceeds the Trust Component for the relevant Amount of a Particular Character for the Trust for the Financial Year, each Unitholder's Total MC for an Amount of a Particular Character determined under Step 2 is proportionately reduced such that the sum of all the Unitholders' Total MCs for an Amount of a Particular Character for the Trust is equal to the Trust Component for the relevant Amount of a Particular Character for the Trust for that Financial Year (**Adjusted Total MC**).

A Unitholder's Adjusted Total MC for an Amount of a Particular Character for the Financial Year is the Unitholder's Member Component for an Amount of a Particular Character for the Financial Year.

14.22. AMIT UNDERS AND OVERS

If the Trustee in a particular Distribution Period (a Discovery Year) becomes aware of an Under or an Over in respect of a determined trust amount for the purposes of the AMIT laws, then it may, in accordance with the AMIT laws:—

- (a) issue amended AMMA Statements for the year of income for the Trust to which the Under or Over relates, or
- (b) treat the amount as an Under or Over of a particular character for the Trust and adjust the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount.

The choice made by the Trustee in clause 14.21(a) may result in greater Amounts of a Particular Character relating to the assessable income or lesser Amounts of a Particular Character relating to tax offsets being attributed to a Unitholder or to a unitholder in an earlier income year than if the Trustee did not make a choice under clause 14.21(a)(i) or 14.21(a)(ii) or made a different choice. For the avoidance of doubt, in accordance with AMIT laws, account to the ATO form the assets of the Trust for any necessary payments arising from adjustments made under this clause.

14.23. SEPARATE AMITS FOR EACH CLASS

- (a) Subject to the AMIT laws, the Trustee may determine that each Class of Units is to be treated as a separate AMIT.
- (b) If the Trustee determines that each Class of Units is to be treated as a separate AMIT, then it must do the following:—
 - (i) As part of the process of identifying the initial tax position of each Class, allocate tax items being carried forward at the whole of trust level (such as tax losses and net capital losses) across the Classes (and this must be done in a fair and reasonable manner).
 - (ii) Calculate the taxable income for each Distribution Period separately for each Class.
 - (iii) On an ongoing basis, work out determined Trust Components for each Class as if it was a separate AMIT and allocate them amongst any Classes on a fair and reasonable basis.

- (iv) To the extent that assets or expenditure relate solely to a particular Class, identify the assessable income and deductions by reference to the assets supporting that Class (including recognising for tax purposes the transactions and events supporting those assets (including intra entity dealings within the actual managed investment trust involving deemed separate AMITs) as though the Class was in fact a separate entity).
- (v) Apply the Unders and Overs provisions of the AMIT laws to each Class.

14.24. CEASING TO BE AN AMIT

- (a) If the following apply, then the Trustee must act in accordance with clause 14.24(a)(ii):—
 - (i) The Trust was an AMIT for a Distribution Period
 - (ii) The Trust was not an AMIT for a later Distribution Period (the Discovery Year), and
 - (iii) The Trust has an Under or Over of a character in the Discovery Year for an earlier Distribution Period when the Trust was an AMIT.
- (b) If the criteria in clause 14.23(a) apply, then the Trustee must, in accordance with the AMIT laws:—
 - (i) work out the extent to which the Under or Over increases or decreases the amount of the AMIT's Trust Component of that character for the Discovery Year
 - (ii) make the appropriate adjustments for the Discovery Year, and
 - (iii) account to the ATO from the assets of the Trust for any necessary payments (excluding any penalties payable).

14.25. COMPLIANCE AND NOTIFICATION

- (a) The Trustee must comply, and must ensure the AMIT complies, with any obligations imposed under the Tax Act in respect of AMITs.
- (b) The Trustee must notify each of the Unitholders if the Trust commences or ceases to be an AMIT as soon as reasonably practicable after the Trustee becomes aware of such commencement or cessation.

14.26. CLASSES

- (a) The quantum of the Distributable Income allocated to a Class is to be based on the Assets Referable to the Class and any other provisions and requirements of this clause 14.
- (b) If there is more than one Class:—
 - (i) the Trustee may determine that any part of the capital, Distributable Income or Dividend Amount is properly Referable to a Class (Class Capital or Income)
 - (ii) the decision of the Trustee with respect to the allocation of capital, Distributable Income or Dividend Amount among the relevant Class is final and binding on all Unitholders, and

- (iii) the provisions of this clause will apply with any necessary modifications to each Class and the Class Capital or Income allocated to a Class.
- (c) In calculating the Class Capital or Income the Trustee must take into account any fees charged by the Trustee in respect of the Class.
- (d) In making any determination under this clause, the Trustee shall be taken to exercising an administrative power only and does not have an unfettered discretion. The Trustee must act honestly and in accordance with the law.

14.27. OTHER DISTRIBUTIONS

Subject to the rights and obligations attaching to any Class, the Trustee may at any time distribute any amount of capital or Income attributable to Unitholder or a class of Unitholders:—

- (a) pro rata according to the number of Units in a particular Class or a series held as at a time decided by the Trustee (for example, to avoid the Trustee (as trustee) becoming assessable to pay Taxes), or
- (b) on such other basis as the Trustee decides (for example, the Trustee may distribute realised gains to Unitholders who are withdrawing in priority to Unitholders who are not).

14.28. PREPARATION OF ACCOUNTS

Notwithstanding that the Distributable Income of the Trust may be calculated in accordance with clause 14.3 and clause 14.4, the accounts of the Trust may be prepared in accordance with applicable Accounting Standards and generally accepted accounting principles. The preparation of the accounts in this manner is not to be regarded as a determination of the method for calculating the Distributable Income pursuant to clauses 14.3 and 14.4. Without limiting clause 14.2, the Trustee 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.

14.29. RIGHTS IN RESPECT OF PARTLY PAID UNITS

- (a) The rights of a Unitholder to receive distributions in respect of Partly Paid Units they hold are as determined by the Trustee and provided in the Terms of Issue of the relevant Units. The Trustee may determine any one of the following applies:—
 - (i) A Unit which is a Partly Paid Unit for any part of a Distribution Period participates in the Distributable Income for that Distribution Period, subject to the Terms of Issue of the Unit according to:—
 - (A) the proportion or different proportions of the Application Price paid upon the Unit, and
 - (B) 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 Assets, then that Unit may be eligible for increased participation in the Distributable Income at a date determined by the Trustee, but at the latest from the first day of the month immediately following the date set for payment of the instalment.

- (ii) A Unit which is a Partly Paid Unit participates in the Distributable Income as if it were fully paid.

- (iii) A Unit which is a Partly Paid Unit participates in the Distributable Income as the terms of its issue provide.
- (b) However, if the Trustee does not make such a determination, then clause 14.29(a)(i) will apply.

14.30. INITIAL DISTRIBUTION ENTITLEMENTS

For the removal of doubt and despite anything in this clause 14, the Trustee may in its discretion issue Units on terms that such Units:—

- (a) participate fully for the Distributable Income or Dividend Amount in respect of the Distribution Period in which they are issued
- (b) do not entitle the Unitholder to participate in the Distributable Income or Dividend Amount in respect of the Distribution Period in which they are issued
- (c) participate for the Distributable Income or Dividend Amount in respect of the Distribution Period in which they are issued on a pro rata basis in accordance with the number of days the Units were held, or
- (d) receive a fixed distribution rate entitlement, out of the Distributable Income, either for the full Distribution Period in which they are issued or on a pro rata basis in accordance with the number of days the Units were held.

15. DISTRIBUTION REINVESTMENT

15.1. REINVESTMENT

The Trustee may permit Unitholders to reinvest some or all of the Distributable Income payable to them by acquiring Units in the same Class as the Units to which the Distributable Income relates and the amount of the Distributable Income payable to them must be applied on behalf of the Unitholder to acquire those additional Units at the Application Price determined in accordance with clause 5.

15.2. COMPULSORY REINVESTMENT

The Trustee may require Unitholders, or Unitholders of a particular Class or Classes, to reinvest some or all of the Distributable Income payable to them and, if so, those Unitholders are deemed, for the purposes of any relevant ASIC Relief, to have elected to reinvest some or all of the Distributable Income payable to them.

15.3. NOTICE TO UNITHOLDERS

If the Trustee permits reinvestment of distributions for a Class, then it must notify Unitholders in that Class of that fact, together with the terms on which the reinvestment may be made. This notification may be made by giving a notice to Unitholders or by publication of the fact and terms. Subject to clause 15.1, the Trustee may amend the terms of reinvestment or suspend reinvestments at its discretion. For the avoidance of doubt, any amendment or suspension may also be communicated by giving a notice to Unitholders or by publishing it.

16. DEDUCTIONS FROM DISTRIBUTIONS

16.1. DEDUCTION OF TAXES AND OTHER AMOUNTS

- (a) The Trustee may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any of the following which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Trustee considers should be deducted:—
- (i) any amount of Tax (or an estimate of it), including in respect of any amount attributed to a Unitholder under the AMIT laws, or
 - (ii) any other amount owed by the Unitholder to the Trustee or any other person.
- (b) The Trustee may recover from a Unitholder as a debt an amount that the Trustee has paid as Tax (including a withholding tax) on behalf of, attributable to or in respect of a Unitholder (including in respect of a distribution or an amount attributed to a Unitholder under the Tax Act).
- (c) The Trustee may set off all amounts that the Trustee may recover from a Unitholder pursuant to this clause 16 against any debts due by the Trustee to that Unitholder including any distribution payable to the Unitholder or amounts payable to the Unitholder on redemption.

16.2. PAYMENT OF TAXES

- (a) The Trustee may pay on behalf of a person (including amounts paid or attributed in respect of a person that result from the operation of the AMIT Rules) who is or has been a Unitholder any of the following which the Trustee is required or authorised to pay by law or by this Constitution or which the Trustee considers should be paid:—
- (i) any amount of Tax (or an estimate of it), including in respect of any amount attributed to a Unitholder under the AMIT laws, or
 - (ii) any other amount owed by the Unitholder to the Trustee or any other person.
- (b) Any amount paid by the Trustee on behalf of a Unitholder pursuant to this clause 16.2 shall be a debt due and owing to the Trustee by the Unitholder on whose behalf the amount was paid.

16.3. INDEMNITY

The Trustee is indemnified from the Assets in respect of any Tax paid by the Trustee from its own funds in order to pay Tax incurred on behalf of any Unitholders or in relation to any Unitholders. This indemnity applies even though the Tax may not have been paid in respect of each Unitholder, but only one or more Unitholders.

17. TRANSFER OF UNITHOLDER'S UNITS

17.1. PROCEDURE

The provisions in this clause apply in respect of a transfer of Units subject to the Act, the Settlement Rules, the Operating Rules and the terms of any ASIC Relief (each as applicable) .

17.2. RIGHT TO TRANSFER UNITS

A Unitholder may transfer its Units only in accordance with this clause 17.

17.3. FORM OF TRANSFER

- (a) If the Units are not Quoted, transfers must be effected:
 - (i) by instruments of transfer that are:
 - (A) in a form approved by the Trustee
 - (B) if necessary, presented for registration duly stamped
 - (C) accompanied by any evidence reasonably required by the Trustee to show the right of the transferor to make the transfer, and
 - (ii) in a manner prescribed by the Trustee.
- (b) If the Units are Quoted:
 - (i) Units may be transferred in any manner prescribed by the Trustee subject to this Constitution, the Act, the Operating Rules, the Settlement Rules and CHES (as applicable).
 - (ii) An instrument of transfer of Units must be accompanied by:
 - (A) such evidence (if any) as the Trustee, CHES, or the Market Operator requires to prove the transferor's title or right to transfer the Units, and
 - (B) if necessary, presented for registration duly stamped.

17.4. HOLDING LOCK

While the Trust is Listed or Units are Quoted and subject to the Operating Rules, the Trustee may request a Holding Lock be applied to any Units where:—

- (a) the Trustee has a lien on the Units the subject of the transfer
- (b) the Trustee is served with a court order that restricts a Unitholder's capacity to transfer the Unit
- (c) registration of the transfer may break an Australian law and the Market Operator has agreed in writing to the application of a Holding Lock (which must not breach the Settlement Rules) or that the Trustee may refuse to register a transfer
- (d) if the transfer is paper-based, either a law related to stamp duty prohibits the Trustee from registering it or the Trustee is otherwise allowed to refuse to register it under the Operating Rules
- (e) the transfer does not comply with the terms of any employee incentive scheme of the Trust
- (f) if the transfer is paper-based, registration of the transfer will create a new holding which at the time the transfer is lodged is less than a 'marketable parcel' as defined in the Operating Rules

- (g) the relevant Unitholder has agreed in writing to the application of a Holding Lock (which must not breach the Settlement Rules) or that the Trustee may refuse to register a transfer, or
- (h) it is otherwise permitted under the Operating Rules, and the Trustee must do so if the Operating Rules require, but must tell the Unitholder or their broker as the Act or the Operating Rules require.

17.5. EFFECT OF REGISTRATION

- (a) The transferee in respect of a transfer of Units is deemed to have agreed:
 - (i) to accept the Units transferred to it subject to the terms and conditions on which the transferor held them immediately before execution of the instrument of transfer, and
 - (ii) to be bound by this Constitution.
- (b) The transferor Unitholder remains the owner of the Unitholder's Units until the name of the transferee is entered in the Register.

17.6. TRUSTEE'S DISCRETION TO ENTER TRANSFER

- (a) Subject to this Constitution, the Trustee may, in its absolute discretion, refuse to register any transfer of Units, without giving any reason for the refusal.
- (b) Without limiting clause 17.6(a), the Trustee:—
 - (i) May refuse to Register a transfer of Units if it would:
 - (A) result in either the transferor or transferee holding less than the Minimum Holding specified at the time, or
 - (B) be in breach of the rules and policies adopted by the Trustee from time to time for the recognition of Security Interest Rules, or
 - (C) while the Trust is Listed or the Units are Quoted, the Operating Rules, and
 - (ii) Is not required to give effect to any transaction, transfer or dealing at the request of, or for the benefit of, a Unitholder, including registering a transfer, unless the Unitholder has paid to the Trustee's satisfaction all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage and other charges which may have become or may be payable in respect of the transaction, transfer or dealing.
- (c) If the Units are Quoted, the Trustee must refuse to register a transfer if the Operating Rules require the Trustee to do so.
- (d) While any Units in a Class participate in CHES, the Trustee must not, except as permitted by the Operating Rules or the Settlement Rules:—
 - (i) prevent, delay or interfere with a proper transfer in accordance with the Settlement Rules, or
 - (ii) the registration of a paper-based transfer (which satisfies the requirements of clause 17.3).

17.7. OPTIONS

This clause applies to transfers of Options, subject to any necessary modifications.

18. TRUSTEE'S POWERS AND DUTIES

18.1. GENERAL POWERS

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

18.2. SPECIFIC POWERS

Without limiting clause 18.1, the Trustee's powers include the power to do the following:—

- (a) Acquire and invest in any property (whether real or personal) or assets, located in any jurisdiction, and including investments that may be (or may be considered to be) speculative or hazardous. For the avoidance of doubt this may include the acquisition of any contractual or other rights and the provision of debt with or without security.
- (b) Develop, improve or otherwise deal with any Assets (including where the trustee disposes of an interest in an Asset, entering into a co-ownership arrangement in respect of that Asset), including to alter, subdivide or develop the Asset.
- (c) Dispose of or otherwise deal with the Assets including to exercise, enforce, dispose or otherwise deal with any property or right in connection with those Assets.
- (d) Manage and administer the Assets and Liabilities.
- (e) Open, close and operate bank accounts.
- (f) Provide or deal with financial accommodation or lend all or any money at any time forming part of the Assets to any person with or without the security, including the following:—
 - (i) Provide financial accommodation where the amount of any advance or accommodation is in excess to the value of the secured property.
 - (ii) Purchase or otherwise acquire any loan from any person including a loan which is in default or otherwise in arrears.
 - (iii) Sell or otherwise dispose of any loan to any person, including a loan which is in default or otherwise in arrears.
 - (iv) Exercise any right, power or discretion as lender in relation to any financial accommodation made from the Assets.
- (g) Accept and deal with any security provided by any borrower or other security provider in respect of any financial accommodation provided under clause 18.2(f) including do everything which, in the Trustee's reasonable opinion, is necessary or expedient to do the following:—
 - (i) Complete and execute any mortgage document or any other security document, including any document relating to the priority of a security held on behalf of the Trust.

- (ii) Complete any mortgage document and any other security document on behalf of a borrower in connection with a Mortgage.
- (iii) Enable the exercise of any right, power or discretion as mortgagee in relation to any Mortgage including:—
 - (A) exercising a power of sale pursuant any Mortgage or the enactment of a State or Territory or the Commonwealth of Australia
 - (B) in respect of any property offered as security executing any contract for sale, transfer, lease or easement document required to register any dealings in the property, and
 - (C) taking any action to complete the sale of such property offered as security under a Mortgage and the subject of the exercise of any power of sale.
- (iv) Enable any security held on behalf of the Trust to be exercised, enforced, discharged, assigned or otherwise dealt with by the Trustee.
- (v) Enable a Mortgage (and any security held on behalf of the Trust) to be assigned, discharged or otherwise dealt with by the Trustee at the end of the term of the Trust.
- (h) Borrow or raise money (including but not limited to the issue of notes and other debt products, which may under their terms of issue be convertible or partially convertible to Units on such terms as the Trustee determines).
- (i) Enter into derivatives and foreign exchange contracts whether to hedge exposures or as a speculative transaction and whether under an ISDA master agreement or otherwise (including but not limited to interest rate swaps, caps and collars, forward rate agreements and foreign exchange contracts) and incur all other types of obligations and liabilities in respect of those transactions.
- (j) Grant security in any form in respect of any obligation of the Trust or any other person or Trust which may include but is not limited to:—
 - (i) giving a guarantee and giving an indemnity for the payment of money or the performance of any agreement, contract, obligation or undertaking by any person or body corporate (including the Trustee in its personal capacity or as trustee or responsible entity of any other trust), and
 - (ii) securing any liability in respect of the including a liability arising from any guarantee or indemnity by charging or mortgaging the whole or any part of the Assets.
- (k) Without limiting the generality of clause 18.2(j), guarantee, indemnify or become surety with or without security and with or without remuneration for the due payment of money or debts of any Unitholder and to guarantee, indemnify or become surety with or without security for the due performance of any contract, agreement, covenant or obligation of any Unitholder.
- (l) Enter into contracts for the sale of Securities notwithstanding that the Trust does not, at the time of making the contract, own sufficient quantities of those Securities to satisfy the contract as long as the Trustee is satisfied that, before completion of the contract,

the Trust will be able to acquire sufficient quantities of those Securities to satisfy the contract, whether borrowing or otherwise.

- (m) To enter into Securities lending arrangements similar to or as defined in section 26BC of the Income Tax Assessment Act 1936 (Cth) and to borrow and or lend Securities under that arrangement including in respect of arrangement contemplated by clause 18.2(l).
- (n) With respect to any company in which the Trustee holds any Securities, to exercise the following powers in addition to powers conferred by law:—
 - (i) To pay calls on Securities or permit Securities to be forfeited and sold.
 - (ii) To purchase Securities and take up Securities of a new issue.
 - (iii) To attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee.
 - (iv) To sell Securities at a price and upon terms as the Trustee may decide.
 - (v) To assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or modifying any rights, privileges or interests in relation to Securities.
 - (vi) To agree to any scheme or arrangement for the increase or reduction of the value or amounts of any Securities or of the capital of any company in which any Securities form part of the Trust or by which any Securities are substituted or given in exchange, either wholly or partly for other Securities, whether in the same company or not, and for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the Securities and to pay out of the Assets any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any Securities as if the Trustee owned them beneficially.
 - (vii) To agree in respect of a winding up with the liquidator of the company or any member or creditor of the company, or in a voluntary administration, as the Trustee thinks fit.
- (o) Act as underwriter for the offer of any securities or other interests in the Trust.
- (p) Carry on anywhere in the world and either alone or in partnership any trade or business whatsoever and to discontinue the same from time to time.
- (q) Hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release, or discharge or otherwise deal with any real or personal property
- (r) Enter into any option agreement relating to any Asset, Security or real property, lending or financing facility, agreement or transaction.
- (s) If Units have been issued but the Trustee subsequently determines these Units are void pursuant to clause 5.5(b)(i) or cancels these Units pursuant to clause 6.11(c) make all necessary and appropriate adjustments to the Net Asset Value, the Application Price and Withdrawal Price.

- (t) Appropriate any Asset of the Trust in specie at its market value in partial or whole satisfaction of any Unitholder's entitlement to receipt of the whole or any part of the capital or income of the Trust without the consent of such Unitholder.
- (u) Act as trustee of sub-trusts.
- (v) In its absolute discretion, vary, transpose, postpone or otherwise deal with all or any of the investments of the Trust for or into others of any nature hereby authorised.
- (w) Subject to the Trustee acting honestly and according to law, determine whether receipts and outgoings are of a capital or income nature and generally to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the trusts and powers of this Constitution and all parties shall be bound by the determination of the Trustee so made.
- (x) Notwithstanding any rule of law or equity to the contrary, enter into contracts with itself in its personal capacity to provide services to the Trust on such terms as it thinks fit.
- (y) Pay out of the Trust or the income thereof all costs, charges and expenses incidental to the management of the Trust or to the exercise of any power, authority or discretion herein contained or in carrying out or performing the trusts hereof which the Trustee may at any time incur including all income tax or other taxes payable in respect of the Trust, costs in any way connected with the preparation and execution of these presents and all moneys which the Trustee may be required to pay as settlement, probate, estate, gift, stamp or revenue duties including stamp, gift or settlement duties payable in respect of the Trust or on these presents.
- (z) Exercise or concur in exercising all the foregoing powers and discretions contained in this Constitution or otherwise by law conferred notwithstanding that the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole trustee of the Trust.
- (aa) Apply for the Trust to be Listed, and for Units and Options to be Quoted.

18.3. DISCRETION TO EXERCISE POWERS

Subject to the law, the Trustee may determine whether to exercise and, if so, the manner, mode and time of exercise of its duties, powers and discretions in its absolute discretion.

18.4. DELEGATION

- (a) Without limiting clause 18.1, the Trustee's powers include the power to authorise any person to act as its agent or delegate:—
 - (i) to perform any act or exercise any power or discretion within the Trustee's power
 - (ii) to hold title to any Asset, and
 - (iii) to appoint in turn its own agent or delegate.
- (b) If the Trustee does appoint an agent or delegate, then:—
 - (i) it may do so on terms the Trustee thinks fit

- (ii) the agent or delegate may be an Associate of the Trustee, and
 - (iii) it may execute any powers of attorney or other instruments necessary to effectuate such purpose.
- (c) Subject to its obligations at law, the Trustee may waive or excuse on any terms as it thinks fit any breach by any agent or delegate of their obligations to the Trustee in connection with the Trust.

18.5. INTERESTED DEALINGS BY TRUSTEE

- (a) Subject to the Act, the Trustee may:—
- (i) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity) or a Unitholder, including any contract or transaction involving the sale of property by the Trust or the purchase of property by the Trust
 - (ii) either itself or through a related body corporate (together **Evolution**), receive a fee or other benefit from the bank with which the Trust's bank account is held (**Evolution Payment**)
 - (iii) act in the same or similar capacity in relation to any other managed investment scheme
 - (iv) hold Units in, or other securities issued by, the Trust in any capacity
 - (v) hold or deal in or have any other interest in an Asset, or
 - (vi) act in any capacity as a representative, delegate or agent of a Unitholder.
- (b) For the purposes of this clause, the Trustee includes an officer, employee, shareholder or Associate of the Trustee.
- (c) Where the Trustee acts in accordance with clause 18.5(a):—
- (i) it may retain and need not account for any benefit derived by it, and
 - (ii) it will not be in breach of any fiduciary obligations owed to the Unitholders provided it has acted in good faith.
- (d) Subject to the Act, where the Trustee acquires Units (on its own account or in some other capacity):—
- (i) the Trustee may be registered as a Unitholder in respect of the Units
 - (ii) the Units acquired by the Trustee are not cancelled or redeemed by reason of their acquisition by the Trustee or the registration of the Trustee as a Unitholder in respect of them and the Trustee may dispose of the Units to other Unitholders or to third parties, and
 - (iii) Units held by the Trustee confer on the Trustee all of the benefits and rights of any other Unitholder under this Constitution and the law.
- (e) Without limiting the other provisions of this clause 18.5, it is acknowledged that the Evolution Payment is in addition to the interest that the Trust would be entitled to receive

under normal banking arrangements and will be calculated in the manner agreed between Evolution and the bank from time to time. It will be paid directly to Evolution by the bank and is not paid from the Assets nor is it an expense or liability of the Trust. It is not part of the Assets.

18.6. RETIREMENT BENEFIT

- (a) The Trustee is entitled, subject to any approval required by law, to agree with an incoming trustee to be remunerated by, or to receive a benefit from, the incoming trustee in relation to:—
- (i) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating to the Unitholders the incoming trustee as its replacement, or
 - (ii) its retirement as Trustee.
- (b) The Trustee is not required to account to Unitholders for such remuneration or benefit.

18.7. INVESTMENT POWERS

To the full extent that they may be excluded by this Constitution, the duties imposed by subsections 14A(1) and (2) of the *Trustee Act 1925* (NSW) or corresponding legislation of any other State or Territory do not apply to the exercise by the Trustee of its investment powers and including investments that may be (or may be considered to be) speculative or hazardous. For the avoidance of doubt this may include the acquisition of any contractual or other rights and the provision of debt with or without security.

18.8. POWER TO LIST AND ENTER INTO REORGANISATION PROPOSALS

- (a) Without limiting clause 18.1, the Trustee may, in its absolute discretion,
- (i) apply for the Trust to be Listed, and for Units and Options to be Quoted.
 - (ii) enter into:—
 - (A) a Realisation Transaction
 - (B) a Conversion Proposal
 - (C) a Stapling Proposal
 - (D) a Top Hat Proposal
 - (E) an Exchange Proposal, or
 - (F) any other Reorganisation Proposal
- (b) It is a term of issue of each Unit that the Unit may be Quoted or subject to a Reorganisation Proposal as provided in this clause 18.8. Each Unitholder by subscribing for or taking a transfer of, or otherwise acquiring a Unit is taken to have consented to these Quotation and Reorganisation Proposals.

18.9. PARTLY PAID UNITS

If any Unit is a Partly Paid Unit at the time of a Reorganisation Proposal, then the Unpaid Amount and any instalment payable will be amended in the same ratio.

18.10. POWER TO GIVE EFFECT TO REORGANISATION PROPOSALS

The Trustee has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Listing, Quotation and/or Reorganisation Proposal.

18.11. SPECIFIC POWERS

Without limiting clause 18.10, to give effect to a Listing or Reorganisation Proposal the Trustee has power to:—

- (a) make distributions and other payments out of the Assets and (subject to the Act) to redeem Units, and to apply the payment or redemption proceeds on behalf of Unitholders
- (b) apply for or purchase fully paid securities on behalf of the Unitholder and to consent on behalf of Unitholders to become a unitholder of a company or other body
- (c) issue Units
- (d) transfer Assets,
- (e) pay all associated costs out of the Assets, and
- (f) execute all documents and do all things which it considers are necessary, desirable or reasonably incidental to give effect to the relevant proposal.

18.12. APPOINTMENT OF TRUSTEE AS AGENT AND ATTORNEY

Without limiting clause 18.10, to give effect to a Listing or Reorganisation Proposal the Trustee is irrevocably appointed the agent and attorney of each Unitholder to:—

- (a) apply any proceeds referred to in clause 18.11(a) on behalf of the Unitholder
- (b) execute any withdrawal request on behalf of the Unitholder, or any application for, or transfer of, any securities in favour of the Unitholder
- (c) execute a transfer of Assets to a Unitholder, and
- (d) execute all documents and do all things (including giving all consents) which the Trustee reasonably considers are necessary or desirable to give effect to the relevant transaction or proposal.

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

18.13. LIABILITY OF TRUSTEE

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

19. WINDING UP OF THE TRUST

19.1. EVENTS WHICH CAUSE A WINDING UP

- (a) The Trustee must wind up the Trust or cause the Trust to be wound up in any one of the following circumstances:— The Trust comes to the end of its term as set out in this Constitution.
- (b) If the Trust is a Registered Scheme, then where:—
 - (i) a court orders the Trust be wound up pursuant to section 601ND of the Act
 - (ii) the Trust's purpose has been accomplished or cannot be accomplished and the Trustee uses the mechanism provided for in section 601NC of the Act, or
 - (iii) any of the circumstances set out in section 601NE of the Act apply such that the Trustee is required to wind up the Trust.

19.2. TERMINATION OF A CLASS

- (a) The Trustee may terminate and wind up a Class if the Trustee issues a notice to Unitholders in the Class notifying Unitholders in that Class of the date of termination.
- (b) The provisions of clauses 19.3 to 19.4 apply to the winding up of a Class with such modification as necessary, as determined by the Trustee, to reflect their application to a Class rather than the Trust.

19.3. PROCESS OF WINDING UP

- (a) Unless otherwise required by the Act, the Trustee is responsible for the winding up of the Trust. Winding up must be consistent with the Operating Rules (while the Trust is Listed or Units are Quoted).
- (b) The Trustee must identify the Assets immediately prior to commencing winding up and all Liabilities (whether actual, contingent or prospective) immediately prior to commencing winding up, of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust.
- (c) Subject to clause 19.3(g), the Trustee must convert the Assets to money, deduct all proper costs and Liabilities of or in connection with the Trust, including those anticipated in connection with the winding up of the Trust and then divide the balance amongst the Unitholders in each Class in proportion to the number of Units held by them at the date of the distribution in accordance with the following formula:—

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

Where:—

A = the amount remaining in the Trust after deduction of the costs referred to in this clause 19.3(c)

B = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any)

C = the aggregate of the number of Units held by the Unitholder as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units

D = the aggregate of the total number of Units in issue as at the commencement of winding up, including both Fully Paid Units and Partly Paid Units, and

E = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Unitholder (if any) as at the commencement of winding up.

- (d) If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder in accordance with the formula in clause 19.3(c) results in a negative dollar amount, then that Unitholder must pay to the Trustee 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 Trust.
- (e) The Trustee may make interim distributions of Income or capital during the winding up process as it sees fit, including making distributions to the holders of certain Classes in preference to the holders of other Classes, as required by the Terms of Issue of each Class. If any such Terms of Issue do not provide any preference, then any interim distributions will be paid to all Unitholders in proportion to the number of Units held.
- (f) The Trustee must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Unitholders to do so, then the Trustee may postpone any part of the winding up for such time as it thinks desirable.
- (g) Despite clause 19.3(c), the Trustee may, at its discretion instead of or in addition to converting Assets to money, distribute Assets in specie in satisfaction of a whole or part of the beneficial interest of each Unitholder in the Trust. The Trustee must ensure the Assets are valued in accordance with clause 12.3 before distributing any Assets in specie in accordance with this clause 19.3(g).
- (h) The cost of winding up the Trust will be paid out of the Assets.

19.4. TRUSTEE MAY WITHHOLD PROCEEDS OF REALISATION

The Trustee may retain money from the proceeds of realisation of the Assets:—

- (a) to meet future payment obligations which the Trustee reasonably believes will fall due after a distribution is made to Unitholders pursuant to this Constitution, and
- (b) to pay its own remuneration and expenses for work to be done following the realisation of the Assets.

19.5. AUDITOR'S CERTIFICATE

Where the Trust is a Registered Scheme, once the Trustee believes the winding up is complete, the Trustee must engage an Auditor to conduct an independent audit of the final accounts of the Trust. The Trustee must send a copy of any report made by the Auditor to the Unitholders within 30 days after the Trustee receives the report from the Auditor.

19.6. CANCELLATION OF UNITS

Unless the Trustee determines otherwise, Units in respect of which a final distribution is made are cancelled from the date of that distribution.

19.7. PROVISIONS CONTINUE TO APPLY

- (a) Subject to the Act and this Constitution, the provisions of this Constitution continue to apply from the date of commencement of wind up of the Trust until:—
 - (i) the date of final distribution under clause 19.3, or
 - (ii) such later date as the Trustee may determine.
- (b) During the period referred to in clause 19.7(a), the Trustee must not accept any applications for Units from a person who is not an existing Unitholder and the Trustee is under no obligation to consider or process withdrawal requests received after the date of commencement of wind up of the Trust.

20. UNVESTED INTERESTS

- (a) To the extent that any interest or interests in any or all of the Assets or other property or rights which form part of the Trust have not vested at the end of the Perpetuity Period, then that interest or those interests will, at the end of the Perpetuity Period, vest in the Unitholders in proportion to their Unit holdings in the Trust.
- (b) Nothing in this clause 20 is to be taken to affect whether or not any interests in the Assets or any other property or rights which form part of the Trust have vested or may vest prior to the end of the Perpetuity Period.

21. INDEMNITY AND LIABILITY

21.1. LIABILITY OF THE TRUSTEE

The Trustee, except to the extent the law imposes liability:—

- (a) is not liable for any loss suffered by Unitholders in respect of the Trust, whether in contract, tort or otherwise, and
- (b) is not liable to any person who is not a Unitholder (including in relation to any contracts or other arrangements entered into in respect of the Trust) to any extent beyond the Assets.

21.2. INDEMNITY FROM THE TRUST

- (a) In addition to any indemnity allowed by law, the Trustee has a right of indemnity out of the Assets in respect of:—
 - (i) any liability incurred by the Trustee in the proper performance of its duties in respect of the Trust
 - (ii) all fees payable to and costs recoverable by the Trustee under this Constitution, and
 - (iii) any Taxes, or liabilities for the payment of any Taxes, imposed upon the Trustee in relation to the Trust.
- (b) For the avoidance of doubt, and without limiting clause 21.2(a), the Trustee is indemnified out of the Assets for any liability that:—
 - (i) is incurred by the Trustee in relation to the proper performance of its duties, and

- (ii) either:—
 - (A) is an Attribution Income Tax Liability of the Trustee, or
 - (B) results from a Unitholder or former Unitholder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unitholder or former Unitholder that results from an attribution by the Trustee under section 276-210 of the Tax Act to the interests held by the Unitholder or former Unitholder.
- (c) However, this indemnity does not apply with respect to a liability to the extent that, in respect of that liability, the Trustee has acted negligently, fraudulently or with wilful default.

21.3. PAYMENT OF TAXES

- (a) Subject to the Act, the Trustee is not liable to account to any Unitholder for any payments made by the Trustee (or at its direction) in good faith to any duly authorised fiscal authority of the Commonwealth or any State or Territory, or any foreign government or authority, for Tax or other charges.
- (b) The Trustee is not obliged (or liable) to account to, or pay to, or allocate to, any Unitholder any amount in relation to any Tax-related benefit or credit attributable to (or alleged to be attributable to) the Unitholder, or earned or accrued or made available because of the Unitholder.

21.4. RELIANCE ON OTHERS

The Trustee may take and may act upon the following, and if the Trustee does so, then it will not be liable for anything done, suffered or admitted by and in good faith and reliance upon anything listed below:—

- (a) Opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Constitution or any other document or generally in conjunction with the Trust.
- (b) Advice, opinions, statements or information from any bankers, accountants, auditors, valuers or other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted.
- (c) Any document which the Trustee believes in good faith to be the original or a copy of an appointment by a Unitholder of a person to act as their agent for any purpose connected with the Trust.
- (d) Any document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely.

21.5. TRUSTEE NOT LIABLE FOR GOOD FAITH ERROR

If for any reason beyond the control of the Trustee it becomes impossible or impractical to carry out the provisions of this Constitution, then subject to the Act, the Trustee is not under any liability for anything done by it in good faith.

21.6. LIMITATION OF LIABILITY OF UNITHOLDERS

The liability of Unitholders is limited to their Units and the Assets. Neither the Trustee, nor any creditor or agent of the Trustee, has any claim of any nature against any Unitholder for any liabilities incurred with those parties in the management of the Trust, except as provided for in this Constitution or where there is a separate agreement with a Unitholder.

21.7. INDEMNITY UNAFFECTED BY UNRELATED BREACH OF TRUST

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

22. MEETINGS OF UNITHOLDERS

22.1. TRUSTEE CALLING OR POSTPONING A UNITHOLDERS' MEETING

The Trustee may call a meeting of the Unitholders at any time, and must do so if required by the Act. The Trustee may also, in its discretion and at any time, postpone any meeting of Unitholders, at any time prior to the commencement of the meeting.

22.2. UNITHOLDERS CALLING A UNITHOLDERS' MEETING

- (a) While the Trust is not a Registered Scheme:—
 - (i) the Trustee must call and arrange to hold a meeting of Unitholders to consider and vote on a proposed resolution on the request of Unitholders with at least 15 percent of the votes that may be cast on the resolution, and
 - (ii) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Act apply to the calling of a meeting referred to in clause 22.2(a)(i) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Act apply to determine the circumstances, if any, in which a meeting must be convened on the request of Unitholders.

22.3. NOTICE

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

22.4. TRUSTEE MAY DETERMINE

Subject to this clause 22 and the Act (if the Act applies), the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

22.5. QUORUM

- (a) The quorum for a meeting is two Unitholders present in person or by proxy. However, if there is only one Unitholder in the Trust who may vote, then that one Unitholder

constitutes a quorum. If one or more Unitholders is excluded from voting on any resolution proposed at the meeting then they may still be counted towards the quorum.

- (b) In determining whether a quorum is present, each individual attending as a proxy or body corporate representative is to be counted separately. However, if a Unitholder has appointed more than one proxy or representative, then these proxies or representatives only count as one person.
- (c) If a meeting of Unitholders does not have a quorum present within 30 minutes after the scheduled time for the start of the meeting, then:—
 - (i) if the meeting was convened on the requisition of Unitholders, it is dissolved, or
 - (ii) if the meeting was convened by the Trustee, it is adjourned to the date, time and place the Trustee specifies. If the Trustee does not specify one or more of those things, then the meeting is adjourned to:—
 - (A) if the date is not specified:—the same day in the next week
 - (B) if the time is not specified:—the same time, and
 - (C) if the place is not specified:—the same place.
- (d) If the meeting is adjourned pursuant to clause 22.5(c)(ii), then the Unitholders present in person or by proxy constitute a quorum.

22.6. CHAIRING MEETINGS OF UNITHOLDERS

- (a) The Trustee may appoint a person to chair a meeting unless the Act otherwise requires.
- (b) The decision of the chairperson on any matter relating to the conduct of the meeting is final.

22.7. PROXIES

- (a) The Trustee may determine whether an appointment of a proxy remains valid even if the content of the appointment does not meet the requirements of the Act.
- (b) For an appointment of a proxy for a meeting of Unitholders to be effective, the appointment must be received by the Trustee at least 48 hours before the meeting, unless a shorter time is agreed to by the Trustee.

22.8. ADJOURNMENT

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

22.9. DEMAND FOR A POLL

A poll may be demanded by the chairperson, or by Unitholders present in person or by proxy holding five percent of Units.

22.10. VOTING

- (a) On a show of hands at a meeting of Unitholders of a Class, each Unitholder has one vote.

- (b) On a poll at a meeting of Unitholders of a Class, each Unitholder has one vote for each dollar of their Paid-Up Amount of that Class.

22.11. DIRECT VOTING

- (a) The Trustee may determine that a Unitholder who is entitled to attend and vote on a resolution is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Trustee by post or other electronic means approved by the Trustee. The Trustee may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.
- (b) A direct vote on a resolution at a meeting in respect of a Unit cast in accordance with clause 22.11(a) is of no effect and will be disregarded:
 - (i) If, at the time of the resolution, the person who cast the direct vote:
 - (A) is not entitled to vote on the resolution in respect of the Unit, or
 - (B) would not be entitled to vote on the resolution in respect of the Unit if the person were present at the meeting at which the resolution is considered.
 - (ii) If, had the vote been cast in person at the meeting at which the resolution is considered:
 - (A) the vote would not be valid, or
 - (B) the Trustee would be obliged to disregard the vote;
 - (iii) Subject to any rules prescribed by the Trustee, if the person who cast the direct vote is present in person at the meeting at the time the resolution is considered, and
 - (iv) If the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Trustee under clause 22.11(a).
- (c) Subject to any rules prescribed by the Trustee, if the Trustee receives a valid direct vote on a resolution in accordance with this clause 22.11 and, prior to, after or at the same time as receipt of the direct vote, the Trustee receives an instrument appointing a proxy, attorney or representative to vote on behalf of the same Unitholder on that resolution, the Trustee may regard the direct vote as effective in respect of that resolution and disregard any vote cast by the proxy, attorney or representative on the resolution at the meeting.

22.12. RESOLUTIONS BINDING

A resolution binds all Unitholders, whether or not they were present at the meeting.

22.13. OBJECTION AT MEETING

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

22.14. NON-RECEIPT

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

22.15. OPTIONHOLDERS AND CLASSES

The provisions of this clause 22 relating to meetings of Unitholders also apply (with any necessary modifications) to meetings of Option holders or only of holders of a Class to be called, adjourned and held (including voting).

22.16. VOTING WHEN NOT A REGISTERED SCHEME

Notwithstanding any other provision in this Constitution, while the Trust is not a Registered Scheme, any decision or matter which may otherwise be required to be decided at a meeting of Unitholders or any resolution which would otherwise be required to be passed at a meeting of Unitholders, may be decided or passed by the following means:—

- (a) The Trustee sending a document to all Unitholders stating the decision to be made or the resolution to be passed.
- (b) The required number of Unitholders signing the document provided by the Trustee recording the making of the decision or passing of the resolution.

22.17. OTHER DECISIONS

Subject to the Act (but without affecting clause 22.16), if there is a decision to be made by Unitholders which is not under the Act required to be made by the passing of a resolution at a meeting of Unitholders, then that decision may be made by means of the required number of Unitholders signing a document recording the making of the decision.

23. RETIREMENT OR REMOVAL OF TRUSTEE

23.1. SITUATION IF TRUST IS A REGISTERED SCHEME

If the Trust is a Registered Scheme, then the remainder of this clause 23 does not apply and instead the provisions of the Act regulating the retirement or removal of the Trustee will apply.

23.2. RETIREMENT OF THE TRUSTEE

If the Trustee wishes to retire as trustee of the Trust, then it may do so and appoint a replacement trustee.

23.3. REMOVAL OF THE TRUSTEE BY UNITHOLDERS

If the Unitholders want to remove the Trustee, then they must call a Unitholders' meeting in accordance with clause 22.2 to consider and vote on:—

- (a) an Extraordinary Resolution that the current Trustee should be removed, and
- (b) an Extraordinary Resolution choosing a replacement trustee.

23.4. EFFECT OF CHANGE OF TRUSTEE

- (a) This clause 23.4 applies if the Trustee resigns as trustee of the Trust or if the Trustee is removed as trustee of the Trust. Any new trustee of the Trust is deemed to agree to this

clause 23.4 and is deemed to covenant in favour of each of the following that it is bound by and will comply with this clause 23.4 (each of whom may rely on and enforce such covenant even if they are not parties to this Constitution):—

- (i) The Trustee.
 - (ii) The Unitholders.
 - (iii) A party to a document, agreement or deed to which clause 23.4(d) applies.
- (b) All of the rights, obligations and liabilities of the Trustee in relation to the Trust automatically become rights, obligations and liabilities of the new trustee of the Trust.
- (c) Despite clause 23.4(b), the following rights and liabilities remain rights and liabilities of the Trustee:—
- (i) Any right of the Trustee to be paid fees for the performance of its functions before it ceased to be the trustee.
 - (ii) Any right of the Trustee to be indemnified for expenses it incurred before it ceased to be the trustee.
 - (iii) Any right, obligation or liability that the Trustee had as a Unitholder.
 - (iv) Any liability for which the Trustee could not have been indemnified out of the Assets if it had remained the Trust's trustee.
- (d) Each of the following documents, agreements and deeds have effect as if the new trustee (and not the Trustee) were a party to it, were referred to in it or had or might have acquired or incurred the right, obligation or liability under it:—
- (i) A document, agreement or deed in relation to the Trust to which the Trustee is a party, in which a reference is made to the Trustee, or under which the Trustee has acquired or incurred a right, obligation or liability, or might have acquired or incurred a right, obligation or liability if it had remained the trustee, and
 - (ii) that is capable of having effect after the change of trustee.
- (e) Clause 23.4(d) does not apply to a right, obligation or liability that remains a right, obligation or liability of the Trustee because of clause 23.4(c).
- (f) Despite any other provision of this Constitution, no part of this clause 23.4 may be deleted or amended (or its effect or operation negated), without the prior written consent of the Trustee.

24. COMPLIANCE PLAN AND COMPLIANCE COMMITTEE

24.1. COMPLIANCE PLAN

- (a) While the Trust is a Registered Scheme, the Trustee must have a compliance plan for the Trust which is lodged with ASIC.
- (b) The compliance plan will deal with the measures the Trustee will adopt to comply with the Act and this Constitution.

- (c) Subject to the Act and the approval of ASIC (if required), the compliance plan may be amended by the Trustee from time-to-time as it sees fit.

24.2. COMPLIANCE COMMITTEE

- (a) This clause applies if a compliance committee is appointed in respect of the Trust.
- (b) If any compliance committee member incurs a liability in that capacity in good faith, then the compliance committee member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Act.

25. COMPLAINTS HANDLING

25.1. COMPLAINTS HANDLING WHILE THE TRUST IS A REGISTERED SCHEME

- (a) This clause 24 applies only while the Trust is a Registered Scheme.
- (b) For the purposes of this clause 24, “complaint” means an expression of dissatisfaction made to the Trustee or Investment Manager related to its products or services, the Trust, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

25.2. DEALING WITH COMPLAINTS

- (a) While the Trust is a Registered Scheme, in dealing with Unitholder complaints the Trustee must comply with the dispute resolution requirements of section 912A(2) of the Act for both Retail Clients and Wholesale Clients.
- (b) The Trustee’s obligations under clause 25.2(a) in respect to Wholesale Clients excludes all requirements relating to external dispute resolution arising under section 912A of the Act.

26. CHANGING THIS CONSTITUTION

26.1. POWER TO AMEND

The Constitution may be modified, or repealed and replaced with a new constitution:—

- (a) by Special Resolution of the Unitholders, or
- (b) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unitholders’ rights.

26.2. LODGEMENT OF AMENDMENT

If the Trust is a Registered Scheme, then the Trustee must lodge with ASIC a copy of the modification or the new constitution. The modification, or repeal and replacement, cannot take effect until the copy has been lodged.

27. STATUTORY REQUIREMENTS

27.1. THE ACT AND ASIC RELIEF

- (a) If the Act requires that this Constitution contain certain provisions, or if any ASIC Relief on which the Trustee has determined it wishes to rely or which is expressly applicable to the Trust requires or allows provisions to a certain effect to be contained in this

Constitution in order for the ASIC Relief to apply (**Required Provisions**), then to the extent the Act allows, this Constitution is automatically amended so that the Required Provisions are included and the Required Provisions prevail over any other provisions of this Constitution to the extent of any inconsistency.

- (b) If any part of this Constitution (a **Required Part**) is included to comply with the requirements of the Act or ASIC (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, then, to the extent the Act allows, this Constitution is automatically amended so that the Required Part is deleted or amended to reflect the altered Regulatory Requirement.
- (c) The Unitholders:—
 - (i) authorise the Trustee to make the amendments referred to in this clause 27.1 in a deed made for that purpose and, if required, to lodge it with ASIC, and
 - (ii) agree that, subject to the Act, their rights under this Constitution do not include or extend to any right that would be adversely affected by the operation of this clause 27.1.
- (d) Where this clause 27.1 operates to automatically amend this Constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

27.2. APPLICATION OF ACT

- (a) In this Constitution, except as otherwise provided in a particular clause or by law, a requirement of the Act only applies while the Trust is a Registered Scheme.
- (b) If there is an inconsistency between the Act and this Constitution, then the Act prevails.

27.3. ASIC CLASS ORDERS

- (a) In accordance with any relevant ASIC Relief from subsections 601GC(1) and 601GC(2) of the Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 27.1 that is covered by such ASIC Relief is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Act.
- (b) Changes in the text of the Constitution to which this clause 27.3 applies are made pursuant to the power in clause 26 but in respect of such changes, the requirements of clause 26 are to be read subject to this clause 27.3.

27.4. NOTICES AND REPORTS

27.5. FORM OF NOTICE

Any notice, document or other communication required to be given to the Trustee or Unitholders is deemed to have been duly given if given in writing by letter, electronic mail or other method as the Trustee determines.

27.6. UNITHOLDER ELECTION TO RECEIVE REPORTS AND NOTICES ELECTRONICALLY

- (a) While the Trust is a Registered Scheme, each Unitholder agrees and nominates for the purposes of the Act to receive all communications in respect of the Trust, including financial reports and notices of meeting, electronically.

- (b) Unitholders may change their nomination from time to time by written notice to the Trustee.

27.7. ADDRESS FOR SERVICE

- (a) The address for the Trustee is the address in the Disclosure Document.
- (b) The addresses for Unitholders will be either the physical address or electronic address as they appear in the Register.

27.8. DEEMED DATE OF RECEIPT

- (a) A notice, report or communication given to the Trustee is effective when it is received by the Trustee.
- (b) A notice given to the Unitholders if sent by post or by email is taken to be received on the Business Day after it is posted.
- (c) Subject to the Act, the Trustee may determine the time in which other forms of communication may be taken to be received. For any communications sent to Unitholders, proof of receipt is not required.

27.9. NOTICE TO JOINT UNITHOLDERS

In the case of joint Unitholders, the physical or electronic address of the Unitholder means the physical or electronic address of the Unitholder first named in the Register.

28. WHILE THE TRUST IS LISTED OR UNITS ARE QUOTED

28.1. APPLICATION OF THE OPERATING RULES

- (a) While the Trust is Listed or Units are Quoted, the Trustee must comply with the Operating Rules in relation to the issue and despatch of holding statements, the transfer and transmission of Units and the establishment and maintenance of a register of Unitholders.
- (b) While the Trust is Listed or Units are Quoted:—
 - (i) notwithstanding anything contained in this Constitution, if the Operating Rules prohibit an act being done, the act shall not be done
 - (ii) nothing contained in this Constitution prevents an act being done that the Operating Rules requires to be done
 - (iii) if the Operating 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)
 - (iv) if the Operating Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision
 - (v) if the Operating Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision, and
 - (vi) if any provision of this Constitution is or becomes inconsistent with the Operating Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

- (c) In accordance with *ASIC Corporations (Chapter 5C – Miscellaneous Provisions) Instrument 2017/125* or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 28.1(b) is not a modification of, or the repeal or replacement of the Constitution for the purposes of sections 601GC(1) and (2) of the Act.

28.2. PARTICIPATION IN CHESS

- (a) While the Trust is Listed or Units Quoted, the Trustee may at any time resolve that the Trust will participate in CHESS.
- (b) While the Trust is granted participation in the CHESS:—
- (i) The Trust must comply with the Settlement Rules (and any relevant Operating Rules) if any of its Units are CHESS approved securities. In particular, the Trust must comply with the requirements of the Settlement Rules (and any relevant Operating Rules) regarding the maintenance of registers, the issuing of holding statements, and transfers and transmissions, in relation to its CHESS approved securities.
 - (ii) If the Trust's Units are CHESS approved securities, in addition to the CHESS sub-register, the Trustee must provide for an issuer sponsored sub-register, or a certificated sub-register, or both as the Operating Rules require.
 - (iii) The Trustee must not in any way prevent, delay or interfere with the generation of a proper transfer in accordance with the Settlement Rules or the registration of a paper-based transfer in registrable form (which satisfies the requirement of clause 17), except as permitted by clause 17.4, the Operating Rules or the Settlement Rules.

28.3. SUSPENSION OF QUOTATION

Without limiting any provisions of this Constitution, the Trustee at any time may suspend the issue or redemption of Units in the Trust or the payment of the proceeds of redemptions, for up to 28 days, if Quotation of Units is suspended, halted or revoked, or the approval of the Trustee as an AQUA Product Issuer is suspended or revoked.

28.4. TRANSACTING IN UNITS ON-MARKET

For so long as the Trust is Listed or Units are Quoted and subject to the Operating Rules:—

- (a) Unitholders have the right to dispose of their investment in Units in the Trust where they contract to sell their Units on-market, and
- (b) Unitholders also have the right to acquire Units in the Trust where they contract to acquire Units on-market.

28.5. TRUSTEE MAY SELL ON-MARKET

- (a) While the Trust is Listed or Units are Quoted and subject to the Operating Rules, the Trustee may:—
- (i) offer and/or agree to sell Units on-market, and
 - (ii) issue Units to itself as determined by the Trustee for the purposes of fulfilling the sale of Units on-market in accordance with clause 28.5(a)(i).

- (b) Where the Trustee sells Units on-market as specified in clause 28.5(a), the Trustee will honour any contract to sell Units it enters into in accordance with any applicable settlement procedures under the Settlement Rules and the Operating Rules.
- (c) The price at which the Trustee offers and/or agrees to sell Units on-market in accordance with clause 28.5(a), is at the absolute discretion of the Trustee subject to its obligations under the Act and the Operating Rules.
- (d) Any offers for the sale of Units the Trustee places on-market will be subject to:—
 - (i) the Listing Rules (where applicable) and Operating Rules, and
 - (ii) interventions by the Market Operator, including for example, suspensions and trading halts.
- (e) Where possible the Trustee offers and/or agrees to sell Units on-market pursuant to clause 28.5(a), it has a presently exercisable and unconditional power and right to issue to itself, and vest title in, the corresponding number of Units and take any other action necessary so that it has the absolute ability to issue to itself, and best title in, the corresponding number of Units.
- (f) Without limiting clause 28.5(a), any Units that the Trustee has sold on-market (other than Units sold on-market during that Business Day in respect of which the Trustee has previously issued and/or vested title in pursuant to clause 28.5(a) in excess of Units acquired on market by the Trustee (on a particular Business Day) will be issued by the Trustee to itself as soon as reasonably practicable for the purposes of enabling the Trustee to fulfil its obligations under settlement of the sale of those Units.

28.6. WITHDRAWAL VIA ON-MARKET DISPOSAL

- (a) Without limiting Unitholders ability to withdraw Units in accordance with clause 9, while the Trust is Listed or Units are Quoted and subject to the Operating Rules, Unitholders have a right to withdraw their investment in Units in the Trust where they contract to sell their Units on-market to the Trustee.
- (b) Where the Trustee acquires Units on-market to facilitate a Unitholder's withdrawal as specified in clause 28.6(a), the Trustee will honour any contract to buy Units it enters into in accordance with any applicable settlement procedures under the Listing Rules, Settlement Rules and Operating Rules.
- (c) Subject to the Act and the Operating Rules, the price at which the Trustee transacts on-market in accordance with clause 28.6(a) will be based on the prevailing market bid price at the time of executing the transaction.
- (d) Any bids for the Units the Trustee places on-market will be subject to:—
 - (i) the Listing Rules (where applicable), the Operating Rules, and
 - (ii) interventions by the Market Operator, including for example, suspensions and trading halts.
- (e) Any Units that the Trustee has acquired on-market in excess of Units sold on-market by the Trustee (in a particular Business Day) will be cancelled by the Trustee as soon as reasonably practicable upon settlement of those Units.

- (f) Subject to the Operating Rules and Act, the Trustee will make a market and provide liquidity in respect of the Units for so long as the Trustee is required to do so under the Operating Rules. The Trustee may make a market and provide liquidity in respect of the Units thereafter, but it is not obliged to do so.
- (g) Redemption proceeds must be dealt with, held and, where relevant, returned as the Act and the Operating Rules (while the Trust is Listed or Units are Quoted) require.

28.7. BUY-BACK OF UNITS

- (a) The Trustee may, but is under no obligation to, offer to buy-back Units in a particular Class in accordance with the Act (including any ASIC Relief).
- (b) The consideration paid for a buy back of Units in a particular Class may include specific assets, including financial products of the Trust or of any other corporation, trust or entity.
- (c) The Trustee may elect that Units so acquired may be retained as Assets, sold or redeemed.

28.8. SMALL HOLDINGS

- (a) Subject to clauses 28.8(b) to 28.8(e) and the Act (as modified by any ASIC Relief), while the Trust is Listed, the Trustee may, in its discretion, from time to time sell or redeem any Units held by a Unitholder which comprise less than a marketable parcel as provided in the Operating Rules without request by the Unitholder.
- (b) The Trustee may only sell or redeem Units on one occasion in any 12 month period. The Trustee must notify the Unitholder of its intention to sell or redeem Units under clause 28.8.
- (c) The Trustee will not sell or redeem the relevant Units:—
 - (i) before the expiry of six weeks from the date of the notice given under clauses 28.8(b), or
 - (ii) if, within the six weeks allowed under clause 28.8(c)(i), the Unitholder advises the Trustee that the Unitholder wishes to retain the Units.
- (d) The Trustee or the purchaser of the Units must pay the costs of the sale as the Trustee decides. The proceeds of the sale or redemption will not be sent until the Trustee has received the certificate (if any) relating to the Units, or is satisfied that it has been lost or destroyed. In accordance with clause 16.1, the Trustee is authorised to make deductions from payments as a result of the sale.
- (e) The Trustee is entitled to execute on behalf of a Unitholder any transfer of Units under this clause 28.8.

29. GENERAL PROVISIONS

29.1. PAYMENTS

Any money payable by the Trustee to an Applicant or Unitholder under the provisions of this Constitution may be paid by:—

- (a) cheque and sent by post to the address shown in the Register, or

- (b) electronic funds transfer facility provided by a financial institution nominated by the Applicant or Unitholder in writing to the Trustee.

29.2. DISCHARGE OF TRUSTEE

The Trustee will receive a good discharge on:—

- (a) payment of every cheque if duly presented and paid, or
- (b) in the case of money credited to any account with a financial institution, the receipt by the financial institution of the amount paid.

29.3. RETENTION OF DOCUMENTS

Application forms and instruments of transfer and transmission must be retained by the Trustee either in their original form, electronically or by a like process and be available for inspection by or on behalf of the Auditor or the auditor of the compliance plan (if one has been appointed) at any time during normal business hours. However, on the expiration of seven years from the date of each document in question, or the date upon which the Unitholder's Unit holding terminates, whichever is the later, the document may, in the absolute discretion of the Trustee, be destroyed.

29.4. RELATIONSHIP BETWEEN TRUSTEE AND UNITHOLDERS

Each and every Unitholder and the Trustee agree:—

- (a) their rights, duties and obligations and liabilities in relation to both the Trust and this Constitution are in every case several and not joint or joint and several
- (b) their respective relationships are ones of parties to the Constitution only and limited to carrying out the Trust and nothing in the Constitution constitutes any of them as a partner of the other
- (c) no Unitholder has authority to act for, or to create or assume any responsibility or obligation on behalf of another Unitholder, and
- (d) except as otherwise specifically provided in this Constitution, no Unitholder may act as agent or have authority to act on behalf of another Unitholder.

29.5. ROUNDING

- (a) If any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, then that fraction may be rounded down or up to such number of decimal places as the Trustee determines.
- (b) If there is any excess application or other money or property which results from rounding, then it becomes an Asset.
- (c) The Application Price or Withdrawal Price of a Unit may be rounded as the Trustee determines. The amount of rounding must not be more than one percent of the Application Price or Withdrawal Price.

29.6. INTEREST PAYABLE

- (a) The Trustee may charge interest on any amount of money owed to the Trust or to the Trustee on its own account by any Unitholder. Interest is calculated daily on the amount outstanding from the date on which the payment was due to be made to the date it is

actually paid to the Trustee, and interest is payable monthly. The rate of interest will be the BBSW plus 500 basis points. The Trustee may waive payment of that interest in whole or in part.

- (b) Any interest received forms part of the Assets, except where the money is owed to the Trustee on its own account, in which case the interest may be paid to the Trustee.

29.7. NON-PAYMENT OF MONEY

If a Unitholder does not pay an amount of money owing to the Trustee or the Trust under this Constitution, then the Trustee is entitled to be indemnified out of the Assets. In addition, the Trustee may do either of the following (subject to the application of clause 7 in relation to any failure to pay an instalment or instalments with respect to Partly Paid Units):—

- (a) The Trustee may deduct money from distributions which would otherwise be paid to the Unitholder who owes the Trustee money until such time as interest and the amount which the Trustee is entitled to be paid has been paid to the Trustee.
- (b) Send a notice to the relevant Unitholder demanding the amount for which the Trustee is entitled to be indemnified (plus interest if applicable) to be paid on or before a specified date (not earlier than seven days after the date of service of the notice). The notice must specify that in the event of the payment not being made, the Unitholder's Units will be liable to be sold or redeemed to recover the unpaid amount.

29.8. SALE OR REDEMPTION OF UNITHOLDER'S UNITS TO PAY DEBT OWING BY UNITHOLDER

- (a) For notices sent under clause 29.7(b), if the money is not paid within the specified time, then subject to the Act the Trustee may do either of the following:—
 - (i) Sell (as agent for the Unitholder) the Units held by the relevant Unitholder at whatever price the Trustee determines and the Trustee is authorised by the relevant Unitholder to take steps and sign documents in the name of that Unitholder as may be necessary for the sale and transfer of the Units belonging to the relevant Unitholder, and to account to the Unitholder for proceeds after deducting all reasonable expenses in relation to the sale.
 - (ii) Redeem the Unitholder's Units.
- (b) The proceeds of the sale or redemption of the Units will be applied (as agent for the Unitholder) first on account of the amounts in respect of which the notice was sent under clause 29.7(b) and secondly in payment of the balance (if any) remaining to the relevant Unitholder.

29.9. TRUSTEE MAY REQUIRE INFORMATION FROM UNITHOLDERS

- (a) Any Unitholder who is asked by the Trustee to supply certain information in respect of their Units must do so within 14 days of service of a notice from the Trustee.
- (b) If any particular information given to the Trustee under clause 29.9(a) ceases to be correct for any reason, then it is the duty of the Unitholder who gave that information to give notice to the Trustee of the fact that such particular information is no longer correct and to give the updated and corrected information.
- (c) If any Unitholder fails to provide information required by clauses 29.9(a) or 29.9(b), then the Trustee will be entitled to make such assumptions as it thinks fit as to the information

sought and the relevant Unitholder will have no claim against the Trustee or the Trust for any loss suffered as a result of the assumption being incorrect.

- (d) Any Unitholder who supplies incorrect information under clauses 29.9(a) or 29.9(b) indemnifies the Trustee for any expense, liability, loss or damage incurred due to the incorrect information.

29.10. DUTIES OR LIKE IMPOSTS PAYABLE BY UNITHOLDER

- (a) Without limiting the other provisions of this Constitution, where any duty or stamp duty is payable on or in relation to any issue, redemption or transfer of Units, then the Unitholder acquiring the Units, or the Unitholder whose Units are redeemed (as the case may be), must pay the duty and indemnifies the Trustee in relation to the amount of the duty and in relation to any associated statutory penalties or interest.
- (b) Clauses 29.6, 29.7 and 29.8 apply in relation to any amounts payable by a Unitholder under clause 29.10(a).

29.11. SEVERABILITY

Where any provision of this Constitution is void, illegal, or unenforceable so much of it as is necessary to render it valid, legal and enforceable is taken to be severed without affecting the remaining provisions of this Constitution which remain in full force and effect.

29.12. SCHEDULES

Schedule 1 and Schedule 2 to this Constitution are operative parts of the Constitution.

29.13. APPLICABLE LAW

This Constitution is governed by and to be interpreted in accordance with the laws of New South Wales. The parties to this Constitution agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

SCHEDULE 1:– DICTIONARY

Accounting Standards		Has the meaning given to this term in section 9 of the Act as they apply for a reporting entity and any other generally accepted accounting principles and practices in Australia (to the extent they are not inconsistent with the accounting standards), unless otherwise determined by the Trustee.
Acquisition Costs Adjustment		Such adjustment (if any) as determined by the Trustee in its discretion, on account of the unamortised amount of any Trust Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.
Act		The <i>Corporations Act 2001</i> (Cth) for the time being in force, together with the regulations.
Adjustments		The sum of any Acquisition Costs Adjustments and Indirect Acquisition Costs Adjustments.
AMIT or Attribution Managed Investment Trust		Has the meaning given to that term in section 276-10 of the Tax Act.
AMMA Statement		Has the meaning given to this term in section 276-460 of the Tax Act.
Amount of a Particular Character		Each of the amounts determined after the application of clause 14.20(b)(ii).
Applicant		A person who has applied to become a Unitholder in the Trust by making an application but who is not yet a Unitholder.
Application Money		Any form of valuable consideration received by the Trustee for a Unit, but excluding any amount the Trustee and the Applicant agree is to be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units.
Application Price		The price at which Units are issued, as determined in accordance with this Constitution.
AQUA Product		Has the meaning given in the Operating Rules and AQUA Products is to be construed accordingly.
AQUA Product Issuer		Has the meaning given in the Operating Rules.

AQUA Rules	Means:— (a) Schedule 10A of the Operating Rules and Procedures (b) such other listing rules that govern the Quotation of AQUA Products, and (c) such other rules that govern the transfer of AQUA Products, as amended from time to time.
ASIC	The Australian Securities and Investments Commission.
Assessable Income	Has the meaning given to that term in section 995-1(1) of the Tax Act.
Assets	This includes all property, rights and income or capital of the Trust and any accretions to the property, rights and income or capital of the Trust and any provisions the Trustee considers should be taken into account in determining Assets, but excludes:— (a) Application Money or property paid in respect of which Units have not been issued (b) proceeds from withdrawals which have not yet been paid, and (c) any Distributable Income awaiting payment to Unitholders. Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to “Assets” means that portion of the Assets the Trustee considers are properly Referable to each Class.
Associate	An associate as defined in any of the sections in Division 2 of Part 1.2 of the Act.
ASX	ASX Limited (ACN 008 624 691) or the market operated by it as the context requires.
ASX Clear	ASX Clear Pty Limited ABN 48 001 314 503.
ASX Clear Operating Rules	The operating rules of ASX Clear, as amended or replaced from time to time, except to the extent of an express waiver by ASX Clear.
ASX Operating Rules	The ASX Operating Rules administered by ASX in respect of the market operated by ASX, as amended or replaced from time to time.
ASX Settlement	Means ASX Settlement Pty Ltd (ACN 008 504 532).
ASX Settlement Period	Means the relevant trade date plus the specified number of Business Days in which an ASX traded or Chi-X traded (as applicable) product must be settled.

Attribution Amount	For a Distribution Period, any amount attributed to a Holder for the purposes of Division 276 of the Tax Act (calculated by the Trustee), and may include or be adjusted by:— <ul style="list-style-type: none"> (a) components of Assessable Income character (b) components of Tax Offset character (c) components of Exempt Income character (d) components of Non-assessable, Non-exempt Income (e) any amount the Trustee determines to be fair and reasonable, and (f) Unders or Overs.
Attribution Income Tax Liability	An income tax liability of a person under the Tax Act that results from the Trust being operated as a MIT.
Auditor	An individual, firm or company appointed by the Trustee as auditor of the Trust. However, the auditor appointed must be qualified and registered under the Act to act as auditor of a company or Registered Scheme.
BBSW	For a Distribution Period, means the average mid-rate for bills of a term of 90 days which average mid-rate is displayed on Reuters page BBSW (or any page which replaces that page) on the first Business Day of the Distribution Period. The BBSW is expressed in basis points.
Business Day	Any day other than a Saturday, Sunday or public holiday in Sydney, New South Wales but, if the Units are Quoted, has the meaning given to that term in the Operating Rules.
CHESS	Has the meaning given in the Settlement Rules and includes any clearing and settlement facility in Australia that is a successor to CHESS.
Chi-X	Means Chi-X Australia Pty Ltd (ACN 129 584 667).
Chi-X Rules	Operating Means the Chi-X Operating Rules, as amended from time to time.
Class	A class of Unit in the Trust.
Constitution	This document (including its schedules) as it may from time-to-time be amended and in force.
Conversion Proposal	A proposal to covert Units in a Class:— <ul style="list-style-type: none"> (a) to Units in another Class in a ratio determined by the Trustee, and where a conversion would result in a fraction of one Unit, then the Trustee may determine to issue fractions of a Unit or round the fraction down or up to a whole Unit or such number of decimal places as the Trustee determines, or (b) to another type of interest in the Trust, such as a debt interest.
Corporate Tax Entity	Has the meaning given to that term in section 960-115 of the Tax Act.

Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 14.10.
Disclosure Document	A document by which Units are offered for subscription (including an information memorandum, product disclosure statement or terms of issue), and it includes any supplementary or replacement document issued in respect of the disclosure document.
Distributable Income	<p>Unless the Trustee determines otherwise, Distributable Income means:—</p> <ul style="list-style-type: none"> (a) the Net Income of the Trust, reduced by any amount which would be included in the assessable income of the Trust, plus (b) any further amounts determined by the Trustee from time to time to be distributed to Unitholders, which are not included in the Net Income of the Trust but are included in the other Income of the Trust, plus (c) any amount of capital of the Trust, determined by the Trustee from time to time to be distributed to Unitholders. <p>The Trustee must determine the Distributable Income of the Trust for each Distribution Period in accordance with this Trust Deed.</p> <p>The Trustee must determine the distribution policy of the Trust and inform Holders of any changes in a timely manner (refer to clause 14.3).</p>
Distribution Calculation Date	The last day of each Financial Year and such other days as designated by the Trustee.
Distribution Period	<ul style="list-style-type: none"> (a) For the first distribution period of a Class, the period from the commencement of the Class to the next Distribution Calculation Date. (b) For the last distribution period of a Class, the period from the day after the preceding Distribution Calculation Date to the date of final distribution on winding up of the Trust or of a Class. (c) In all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.
Dividend Amount	The amount, if any, determined by the Trustee in accordance with clause 14.10.
Dividend Entitlement	Amounts determined under clause 14.10.
Discovery Year	Has the meaning given to this term in the Tax Act.
Exempt Income	Has the meaning given to that term in section 995-1(1) of the Tax Act.

Exchange Proposal	A proposal whereby a written offer to transfer or redeem some or all of their Units is made to Unitholders or to specific Unitholders in consideration of any or all of:— <ul style="list-style-type: none"> (a) the issue or transfer of units in another, or interests of whatever nature in or in relation to another entity (b) a cash payment, and (c) a transfer of Assets.
Expenses	Includes any expenses, costs, charges, fees, commissions, brokerage, any Tax, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them. Examples of Expenses include those listed in clause 13.5.
Extraordinary Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 50 percent of the total votes that may be cast by Unitholders entitled to vote on the resolution (including Unitholders who are not present in person or by proxy).
Financial Year	The 12 month period commencing on 1 July and ending on the following 30 June, except that:— <ul style="list-style-type: none"> (a) the first Financial Year commenced on the date the Trust was established and ended on the following 30 June, and (b) the final Financial Year ends on the date on which the Assets of the Trust are fully distributed to Holders on or after the Termination Date and commences on the immediately preceding 1 July.
First Pricing Period	The period determined by the Trustee.
Fully Paid Unit	A Unit on which the Application Price has been paid (or deemed to have been paid if the context requires) in full.
GST	A tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Constitution.
GST Act	A New Tax System (Goods & Services Tax) Act 1999.
Holder	A Unitholder or an Optionholder, as the context requires.
Holding Lock	Means, as defined by the Market Operator from time to time, a facility that prevents securities from being deducted from, or entered into, a holding pursuant to a transfer or conversion.

Income	Means:— (a) all receipts or amounts which are, or would be recognised as, income by the application of generally accepted accounting principles, and any other receipts or amounts which the Trustee determines to be income (whether or not those receipts or amounts are, or would be recognised as, income by the application of generally accepted accounting principles).
Index Number	Means:— (a) the Consumer Price Index (All Groups) for the city of Sydney, published from time-to-time in the Australian Statistician's Summary of Australian Statistics. If the Australian Statistician updates the reference base of the Consumer Price Index (All Groups) for the city of Sydney, a conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Statistician, or (b) if the Consumer Price Index (All Groups) is discontinued or suspended, then a replacement index determined by the Trustee which reflects fluctuations in the cost of living in the city of Sydney.
Indexed	Means adjusted on 1 July, by the aggregate percentage change in the Index Number for the previous four quarters most recently published prior to 1 July in the relevant year. However, if the Index Number is negative, then the aggregate percentage change in the Index Number will be zero.
Indirect Acquisition Costs Adjustment	Such adjustment (if any) as determined by the Trustee in its discretion, on account of the unamortised amount of any Sub Entity Establishment and Acquisition Expenses as the Trustee determines appropriate. The Trustee may if it considers appropriate determine that the Indirect Acquisition Costs Adjustment for any one or more purposes in this Constitution to be a lesser sum or zero.
Investment Amount	The total amount paid or provided by or on behalf of an Applicant to the Trustee as part of the Applicant's application to become a Holder in the Trust (prior to the deduction of any amount disclosed in the Disclosure Document as an amount that will be paid by the Trustee on behalf of the Applicant on account of commissions, service fees or other fees associated with the acquisition of Units).
Investment Manager	The investment manager of the Trust appointed by the Trustee from time to time.
Legal Disability	The death, bankruptcy, insolvency, mental incapacity or other legal disability of a person.
Legal Personal Representative	Means:— (a) an executor or administrator of the estate of a deceased Applicant or Holder

- (b) the trustee of the estate of an Applicant or Holder who is bankrupt or insolvent or under a legal disability or who is mentally incapacitated
- (c) a person who holds a suitable power of attorney granted by an Applicant or Holder, or
- (d) a person who holds Relevant Units as trustee, custodian or nominee for a beneficiary nominated by a Unitholder which suffers a Legal Disability.

Liabilities	<p>All liabilities of the Trust, including any contingent liabilities, anticipated liabilities or provisions the Trustee considers should be taken into account in determining liabilities. To the extent the Accounting Standards require any amounts representing Unitholders' funds to be classified as a liability, then for the purposes of calculating Net Asset Value for the Trust, the Unitholders' funds are not to be treated as a liability.</p> <p>Where there is more than one Class on issue, and the Net Asset Value Referable to a particular Class is being calculated, a reference to "Liabilities" means that portion of the Liabilities the Trustee considers are properly Referable to each Class.</p>
Liquid	Has the same meaning as in section 601KA of the Act.
Listed	<p>Means:—</p> <ul style="list-style-type: none"> (a) in the case of the Trust, the Trust being listed on ASX, and (b) in the case of Units, those financial products or any of them being Quoted, <p>and Listing has a corresponding meaning.</p>
Listing Rules	Means the listing rules of the ASX and any other rules of the ASX which are applied while the Trust is admitted to the official list of the ASX or the Units are Quoted (as the case may be), each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.
Managed Investment Trust	Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).
Market Integrity Rules	The ASIC Market Integrity Rules (Securities Markets) 2017 (Cth), as amended or replaced from time to time, except to the extent of any exemption or modification granted by ASIC and available to the Trust or the Trustee.
Market Operator	The ASX or Chi-X and, without limitation, any other entity that operates a financial market on which Units are traded.
Market Participant	Has the meaning given to it in the ASX Operating Rules from time to time, being a market participant which has trading permission in respect of one or more relevant products.
Member Component	Has the meaning given to this term in section 276-210 of the Tax Act.

MIT Includes a Trust that is (at any time during a Financial Year) any one or more of the following: an AMIT, a Managed Investment Trust, or a Withholding MIT.

Mortgage Means:—

- (a) any instrument registered or registrable as a legal mortgage in respect of land and improvements, securing a secondary obligation of any person to pay any sum or sums
- (b) any security (whether by way of mortgage or otherwise) over real property that secures repayment of a loan, financial liability or any other obligation
- (c) the purchase of any mortgage security complying with the requirements of paragraph (a) or (b) of this definition where a valuation of the mortgage security and where the right, title and interest of the mortgagee in the loan, the security and any insurance contracts or policies relating to the secured property are assigned or transferred by the mortgagee to the Trustee, and
- (d) (any instrument or documents of title held under a mortgage that comes within the meaning of a mortgage asset under ASIC policy, class order relief, the Act or the Trustee’s Australian financial services licence.

Net Asset Value The total value of the Assets calculated in accordance with clause 12, less the Liabilities, adjusted for such provisions and incremental or decremental adjustments as the Trustee determines are appropriate.

However, for the purpose of calculating the Application Price or Withdrawal Price in relation to Units in a Class other than Ordinary Units, the Trustee may (where permitted under the Terms of Issue) exercise discretions and decide on matters that may affect the determination of the Net Asset Value figure which may result in an amount which is either lower than the current Net Asset Value (a discount to Net Asset Value) or higher than the current Net Asset Value (a premium to Net Asset Value), provided that in doing so, the Trustee (where the Trust is a Registered Scheme) complies with the conditions of any applicable ASIC Relief which allows the Trustee to exercise such a discretion.

Net Income Means, for a Financial Year, the net income for the Trust for the purpose of section 95 of the *Tax Act* (calculated by the Trustee) less amounts attributable to:—

- (a) imputation credits
- (b) foreign tax credits
- (c) other notional or deemed amounts, and
- (d) any other amount that has not been received and is not available for distribution,

determined as if the Distribution Period is a year of income, less amounts that are not cash amounts. If this definition is repealed or replaced, any concept enacted to replace this definition replaces this term.

Non-assessable, Non-exempt Income	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Operating Rules	Means the operating rules of the Market Operator from time to time and shall include, without limitation and as the context requires, the AQUA Rules or the Chi-X Operating Rules.
Option	An option to subscribe for a Unit.
Optionholder	A person registered as the holder of an Option (including persons jointly registered).
Ordinary Units	Units issued by the Trustee in the Class known as Ordinary Units, which have and are subject to all of the rights, obligations and restrictions set out in this Constitution, but subject always to the rights, obligations and restrictions attaching to any other Class of Units issued by the Trustee from time to time, as set out in the Terms of Issue of that other Class.
Over	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Paid-up Amount	In relation to a Unit means the number obtained by applying the following formula:— $\text{Paid-up Amount} = \frac{\text{PA}}{\text{AP}}$ <p>Where:—</p> <p>(a) PA means the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) as at the date of calculation, and</p> <p>(b) AP means the Application Price of the Unit.</p>
Partly Paid Unit	A Unit on which the Application Price has not been paid in full.
Perpetuity Period	The period specified in clause 2.5.
Qualified Valuer	Any person appointed by the Trustee and being independent of the Trustee as being competent to make the required valuation, recommendation or report to the Trustee having regard in giving such approval to the particular type or types of investment the subject of the valuation, recommendation or report and to the nature of the security held or to be held by the Trustee or any custodian as its agent (if applicable).
Quoted	Means officially quoted on ASX and Quotation has a corresponding meaning.

Realisation Transaction	A transaction which enables all Unitholders to realise all or more than 50 percent of their investment in the Trust, including:— <ul style="list-style-type: none"> (a) an initial public offer (b) a sell down of more than 50 percent of the units where all Unitholders have the opportunity to participate in the sell down (c) a sale of substantial Assets where all Unitholders have an opportunity to have their Units redeemed or transferred, or (d) any other arrangement which has substantially the same economic effect as a transaction referred to paragraph (a), (b) or (c).
Referable	Has the meaning given to it in clause 4.1(d).
Register	The register of Holders required to be kept according to clause 10.
Registered Scheme	A managed investment scheme registered under the Act.
Relevant Units	The Units held by, for the account of, or on behalf of the person as at the time they suffered a Legal Disability.
Relevant Valuation Time	The Valuation Time, determined by the Trustee, which is applicable to the calculation of the Application Price for an offer or issue of Units (even if the offer or issue occurs during a period when the Application Price is fixed), or the Withdrawal Price for a redemption of Units.
Reorganisation Proposal	Means:— <ul style="list-style-type: none"> (a) any Realisation Transaction (b) a Conversion Proposal (c) a Stapling Proposal (d) a Top Hat Proposal (e) an Exchange Proposal, or (f) any other proposal to reorganise or restructure the capital of the Trust in any way.
Retail Client	A Unitholder who is a “retail client” within the meaning of section 761G of the Act.
Securities	Any shares, stocks, debentures, bonds, convertible notes or other securities or any interests in any managed investment schemes and includes any option over a Security.
Settlement Rules	Has the meaning given in the ASX Settlement Operating Rules.
Special Distribution Amount	Has the meaning given to it in clause 14.6.

Special Resolution	A resolution of which notice has been given in accordance with this Constitution (and if the Trust is a Registered Scheme, then the Act) and that has been passed by at least 75 percent of the votes cast by Unitholders entitled to vote on the resolution.
Stapling	The linking together of all of the rights and obligations which attach to a Stapled Security.
Stapling Proposal	A proposal to cause the Stapling of any other securities or financial products to the Units.
Sub Entity	A trust, company or other entity which was established by or is managed by or controlled by the Trustee or by an Associate or related body corporate of the Trustee and in which the Trust has a direct or indirect interest, or a trust, company or other entity of which the Trustee (in its capacity as trustee of the Trust) is a unitholder, shareholder or beneficiary.
Sub Entity Establishment and Acquisition Expenses	<p>At any time, an amount (if any) determined by the Trustee, as the total of:—</p> <ul style="list-style-type: none"> (a) the Expenses associated with the establishment of any Sub Entity and the raising of capital for any Sub Entity, and (b) Expenses associated with the acquisition of any asset or assets by any Sub Entity, <p>or, if the Trustee considers appropriate, any portion of such amount, which may be zero.</p>
Tax	<p>This term includes, but is not limited to:—</p> <p>stamp duty, excise and penalties relating to these amounts which are imposed on the Trustee in respect of any Assets or Liabilities or the Trust itself</p> <p>taxes, excises and duties and penalties relating to these items imposed as a result of any payment made to or by the Trustee under this Constitution</p> <p>taxes imposed or assessed upon:—</p> <ul style="list-style-type: none"> any Application Money or property the Assets, any Dividend Amount, distributions of Income to Unitholders, capital gains, profits or any other amounts in respect of the Assets or the Trust itself, or the Trustee in respect of its capacity as trustee of the Trust <p>imposts, financial institutions duties, debits tax, withholding tax, land tax or other property taxes charged by any proper authority in any jurisdiction in Australia in respect of any matter in relation to the Trust, and</p> <p>every kind of tax, excise, duty, rate, levy, deduction and charge including any GST.</p>

Tax Act	The Income Tax Assessment Act 1936 (Cth), Income Tax Assessment Act 1997 (Cth), Income Tax (Transitional Provisions) Assessment Act 1997 (Cth), Tax Administration Act 1953 (Cth) or any or all of the foregoing, as appropriate.
Tax Offset	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Terms of Issue	The terms on which a Class is issued under this Constitution, as determined by the Trustee from time to time.
Top Hat Proposal	A proposal that each Unitholder should exchange their Units for an equivalent value of units in the Top Trust.
Top Trust	A trust of which the Trustee is also the trustee, and of which the only assets will, following the implementation of the Top Hat Proposal, be all of the Units on issue at that time.
Total Paid-up Amount	The aggregate Paid-up Amount of all Units in Issue.
Total Unpaid Amount	The total Unpaid Amount of all Units in Issue (if any).
Transaction Costs	<p>When calculating the Application Price, an amount equal to an estimate by the Trustee of:—</p> <ul style="list-style-type: none"> (a) the total Expenses the Trust would incur to acquire afresh the Assets (b) if appropriate, the total Expenses the Trust will incur to acquire any proposed Assets, or (c) if appropriate, having regard to the actual Expenses which would be incurred because of the issue of Units (including in relation to Units issued by way of distribution reinvestment), a portion of the total Expenses, which may be zero. <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>When calculating the Withdrawal Price, an amount equal to an estimate by the Trustee of:—</p> <ul style="list-style-type: none"> (a) the total Expenses the Trustee would incur wind to up the Trust and sell the Assets (including provision for any performance fees (if any) not yet paid to the Trustee), or (b) if appropriate, having regard to the actual Expenses which would be incurred because of any withdrawals, a portion of the total Expenses, which may be zero. <p>If the Trustee makes no estimate, then the Transaction Costs are zero.</p> <p>For the avoidance of doubt, the Trustee may take account of any policy it has established regarding the amortisation of Trust establishment, Trust winding up and Asset acquisition and disposal costs in estimating the total Expenses, relevant to Transaction Costs. However, the Trust must not include any amounts already taken into account in calculating the Net Asset Value.</p>

Trust	The trust constituted by this Constitution.
Trust Component	Has the meaning given to this term in section 276-260 of the Tax Act.
Trust Component Deficit	Has the meaning given to that term in subsection 995-1(1) of the Tax Act.
Trust Establishment and Acquisition Expenses	<p>At any time, an amount (if any) determined by the Trustee, as the total of:—</p> <ul style="list-style-type: none"> (a) the Expenses associated with the establishment of the Trust and the raising of capital for the Trust, and (b) the Expenses associated with the acquisition of any Asset or Assets, <p>or, if the Trustee considers appropriate, any portion of such amount, which may be zero.</p>
Trust Income	In respect of a Financial Year or a Distribution Period will be equal to the Net Income of the Trust.
Trustee	Includes the Trustee for the time being and any other trustee appointed on the retirement or removal of the Trustee.
Trustee Act	<p>Any statute of a State or Territory relating to the law of trustees including without limitation:—</p> <ul style="list-style-type: none"> (a) the NSW Trustee Act, 1925 (b) the ACT Trustee Act, 1925 (c) the Qld Trusts Act, 1973 (d) the Vic Trustee Act, 1958 (e) the Tas Trustee Act, 1898 (f) the SA Trustee Act, 1936 (g) the NT Trustee Act, and (h) the WA Trustees Act, 1962.
Under	Has the meaning given to this term in section 276-345 of the Tax Act.
Unit	An undivided interest in the Trust as provided in this document.
Unitholder	A person who holds one or more Units or who otherwise holds an “interest” (within the meaning of the Act) in the Trust.
Unitholder’s Proportional Interest	The fraction where the numerator is the number of Units of a particular Class held by the Unitholder and the denominator is the total number of Units in that Class issued in the Trust.
Units on Issue	The number of Units that have been issued less the number that have been redeemed.

Unpaid Amount The amount unpaid on a Partly Paid Unit, calculated in accordance with the following formula:—

$$\text{Unpaid Amount} = \text{AP} - \text{PA}$$

Where:—

- (a) AP means the Application Price of the Partly Paid Unit, and
- (b) PA means the amount the Unitholder has paid in relation to the Partly Paid Unit.

Valuation Time The time at which the Trustee calculates the Net Asset Value.

Vesting Day The day which is the later of:—

- (a) the day immediately prior to the 80th anniversary of the date of commencement of the Trust, or
- (b) any later day permitted by law which does not contravene the rule against perpetuities or remoteness of vesting or any legislation relating to or affecting the operation of that rule.

Wholesale Client A Unitholder who is a “wholesale client” within the meaning of section 761G of the Act by virtue of section 761G(7)(a) or section 761G(7)(c) applying to the financial product or financial service provided to the person.

Withdrawal Price The price at which a Unit is redeemed and calculated in accordance with clause 8.1.

Withholding MIT Has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).

SCHEDULE 2:—RULES FOR INTERPRETATION

In this Constitution unless the context indicates a contrary intention:—

- (a) words denoting any gender include both genders
- (b) words importing the singular include the plural and vice versa
- (c) references to any legislation includes any legislation which amends or replaces that legislation and any subordinate legislation
- (d) a reference to a clause, paragraph or schedule is to a clause or paragraph of, or schedule to, the Constitution and a reference to this Constitution includes any schedule
- (e) a person includes their executors, administrators, successors, substitutes (*for example, persons taking by novation*) and assigns
- (f) a person includes companies and corporations and vice versa
- (g) except in the dictionary, headings do not affect the interpretation of this Constitution
- (h) general words must not be given a restrictive meaning, by reason of the fact they are followed by particular examples intended to be embraced by the general words (in this regard, the word “including” is not a word of limitation)

- (i) words in italics provide an explanation or example of the intended operation of the particular clause in question and may be used to resolve any dispute about that clause
- (j) amounts of money are expressed in AUD unless otherwise expressly stated
- (k) a reference to a document includes any variation, novation or replacement of it
- (l) a reference to any thing includes the whole or each part of it
- (m) words defined in the Act have the same meaning when used in this Constitution except where the context otherwise requires
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, then the obligation must be performed or the event must occur on or by the next Business Day
- (o) where time is to be calculated by reference to a day or event, then that day or event is excluded
- (p) the defined terms in Schedule 1 have the meaning given to them in that schedule except where the context otherwise requires
- (q) every provision in this Constitution is expressed to apply:—
 - (i) while the Trust is Listed or Units are Quoted, subject to the Operating Rules (in respect of Quoted Units only), and
 - (ii) while the Trust is a registered scheme, subject to the Act
- (r) where a rule in this constitution is stated to apply subject to the Operating Rules, while the Trust is Listed or Units are Quoted, it applies in respect of a Class of Units, only while the Units in that Class are Quoted
- (s) while the Trust is Listed or Units are Quoted, the Trust may have a Class of Units that are not Quoted, and this constitution applies to each relevant Class separately and independently, subject to the Act, the Listing Rules and the Operating Rules (as applicable) being complied with.