

Constitution of the Fort Street Real Estate Capital Fund II
Consolidated to 21 December 2020

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Constitution of the Fort Street Real Estate Capital Fund II

Dated:

This Deed Poll is declared by **Walsh & Company Investments Limited** (ACN 152 367 649) of Level 7, 100 Pacific Highway, North Sydney NSW 2060 (**Responsible Entity**) to be the Constitution of the **Fort Street Real Estate Capital Fund II**.

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

2020 Restructure means the arrangement described in clause 35.2 pursuant to which all of the Restructure Units are Stapled to units in Fund I and Fund III.

Accept means:

- (a) in respect of an application for Units, the doing of any act by the Responsible Entity or its agent that constitutes an acceptance of the application or evidence that the application has been accepted, including recording a determination or notifying the applicant that the application is accepted, or recording in the Register the issue of Units in response to the application; and
- (b) in respect of a request for redemption of Units by a Member, the doing of any act by the Responsible Entity or its agent that constitutes an acceptance of the request or evidence that the request has been accepted, including notifying the Member or recording a determination that the request will be met in whole or in part, recording the redemption of Units in the Register or paying the redemption proceeds to or at the direction of the Member or former Member,

and **Acceptance** has a corresponding meaning.

AFS Licence means an Australian financial services licence issued by ASIC.

AMIT means a trust which is an attribution managed investment trust under section 276-10 of the Tax Act.

AMIT Class Election means an election by the Responsible Entity for each Class of Units in the Fund to be treated as a separate AMIT for the purposes of the AMIT Regime, as provided for under section 276-20 of the Tax Act.

AMIT Income Year means a year of income for the purposes of the Tax Act that the Fund is an AMIT.

AMIT Regime means the regime for the taxation of AMITs.

AMMA Statement has the meaning given to that phrase in the Tax Act.

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

Application Price Allocation has the meaning given in clause 8.10(a).

Applications Account means an account in which the Responsible Entity or, if permitted, its agent holds money on trust for applicants for Units in accordance with section 1017E of the Corporations Act or otherwise.

ASIC means the Australian Securities and Investments Commission or any regulatory body which

replaces it or performs its functions.

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

Assets means all the property, rights and income of the Fund, but not application money or property in respect of which Units have not yet been issued.¹

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

Attached Security means a financial product of a Stapled Entity which is from time to time Stapled or to be Stapled to a Unit.

Auditor means the auditor from time to time appointed by the Responsible Entity to audit the Fund.

Books Closing Date has the meaning given in clause 14.22.

Business Day means while Units are not Officially Quoted, a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday or public holiday in that place) or, while Units are Officially Quoted, a day which is a Trading Day for the purposes of the Listing Rules.

Capital Reallocation Amount has the meaning given in clause 4.7(a).

Capital Reallocation Issue means an issue of Units in the circumstances contemplated in clause 4.6.

Capital Reallocation Units has the meaning given in clause 4.6(a).

CCIV Proposal means a proposal that would result in Members acquiring shares in a corporate collective investment vehicle as defined in the Corporations Act.

Class means a class of Units.

Complaint² means an expression of dissatisfaction made to the Responsible Entity, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

Compliance Committee Member means a member of a compliance committee established by the Responsible Entity in connection with the Fund.

Consolidation or Division Proposal means a proposal to consolidate, divide or convert Relevant Securities in a ratio determined by the Responsible Entity, including rounding of the number of Relevant Securities as the Responsible Entity determines.

Corporations Act means the *Corporations Act 2001* (Cth), and a reference to the Corporations Act or a provision of it includes as modified by applicable ASIC Relief.

CS Facility has the same meaning as clearing and settlement facility in the Corporations Act.³

CS Facility Operator means the operator of the CS Facility.

Custodian means a person holding or appointed to hold Assets as custodian for the Responsible Entity.

Designated Foreign Investor means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with clause 13.4.

Designated Foreign Investor Cash-Out has the meaning given in clause 13.4(d).

¹See clause 9.5 for the time at which Units are issued, and clause 11.15 for the time when Units are redeemed.

²This definition is sourced from ASIC Regulatory Guide 165 and Australian Standard AS ISO 10002 - 2006.

³See section 768A. Unless otherwise specified, all section references are to the Corporations Act.

Determined Member Component has the meaning given to that phrase in the Tax Act.

Determined Trust Component has the meaning given to that phrase in the Tax Act.

Direct Vote means a notice of a Member's vote delivered to the Responsible Entity by post, fax, electronic or other means approved by the Responsible Entity and otherwise in accordance with this Constitution and regulations, rules and procedures made by the Responsible Entity in accordance with clause 20.24(b).

Distributable Amount has the meaning given in clause 14.22.

Distributable Income for a period is the amount determined by the Responsible Entity under clause 14.2.

Distribution Calculation Date means the last day of each Financial Year and any other days as the Responsible Entity designates.

Distribution Period means:

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

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

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

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

Financial Instrument means an interest, right or instrument relating to the Fund (including a derivative, debenture, convertible note or other instrument of a debt, equity, quasi-debt, quasi-equity or hybrid nature) other than a Unit or Option.

Financial Instrument Holder means the person Registered in the Register as the holder of a Financial Instrument (including persons registered jointly) or, if no such register is kept, the holder of a Financial Instrument.

Financial Year means:

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

but the application of this definition for the purposes of calculating distributions from the Fund and preparing the income tax return for the Fund does not affect the Responsible Entity's determination as to the financial year of the Fund for the purposes of preparing accounts and lodging returns required for registered schemes under the Corporations Act.

Financial Year Termination Date means:

- (a) 30 June or, if the Fund is granted any other substituted accounting period by the Commissioner of Taxation for the purposes of the Tax Act, the last date of that substituted accounting period; and
- (b) if applicable, the day on which the Fund becomes a "subsidiary member" of a "consolidated group" (as these terms are defined in the Tax Act); and
- (c) if applicable, the day on which the Fund ceases to be a "subsidiary member" of a "consolidated group" (as these terms are defined in the Tax Act).

Foreign Investor means a Member whose address on the Register is in a jurisdiction other than Australia or New Zealand or who holds Units, Options or Financial Instruments on behalf of a person outside Australia or New Zealand.

Fund means the trust constituted under or governed by this constitution.

Fund I means Fort Street Real Estate Capital Fund I (ARSN 163 688 346).

Fund I RE means Walsh & Company Investments Limited (ACN 152 367 649).

Fund III means Fort Street Real Estate Capital Fund III (ARSN 605 335 957).

Fund III RE means Walsh & Company Investments Limited (ACN 152 367 649).

Gross Value of the Assets means the aggregate value of the Assets (calculated in accordance with clause 12), but without deducting any liabilities such as debt funding.

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

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Income Component has the meaning given in clause 11.18(a)(i).

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 14.5.

Initial Liquidity Date has the meaning given in clause 11.19(b).

Initial Public Offer means:

- (a) an initial public offer of Units for the purpose of raising substantial capital; or
- (b) a sell down of a substantial portion of the Units by the Members; or
- (c) any other arrangement which has substantially the same economic effect,

in each case for the purpose of seeking Listing and Official Quotation of the Units.

Investment Management Agreement means an agreement that may be entered into between the Responsible Entity as trustee or responsible entity of the Fund and the Manager relating to management services provided by the Manager for the benefit of the Fund.

Liabilities means all present liabilities of the Fund including:

- (a) any provision taken into account in determining the liabilities of the Fund; and
- (b) proceeds of redemption which have not yet been paid,

but not liabilities:

- (c) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued;⁴ or

⁴See clause 9.5 for the time at which Units are issued.

- (d) to Members, arising by virtue of the right of Members to request redemption of their Units (where the Units have not yet been redeemed) or to participate in the distribution of the Assets on winding up of the Fund.

Liquid has the same meaning as in the Corporations Act.⁵

Liquidity Date has the meaning given in clause 11.19(d).

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

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

Manager means any entity nominated by the Responsible Entity to provide management services for the Fund.

Market Price of a Unit on a particular day is:

- (a) the weighted average of the VWAP for the Unit for each of the 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day);
- (b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market, provided that the Auditor has provided written certification that the bookbuild was conducted in accordance with normal market standards; or
- (c) if:
 - (i) in the case of paragraph (a), Units have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or
 - (ii) in the case of paragraphs (a) or (b), in the Responsible Entity's opinion, a determination under paragraph (a) or (b) of this definition (as relevant) would not provide a fair reflection of the market value of the Unit having regard to the nature of the proposed offer of Units and the circumstances in which the proposed offer is made,

the price per Unit determined by an adviser who:

- (i) is independent of the Responsible Entity; and
- (ii) has relevant market experience in determining the issue price of securities in circumstances similar to those in which the determination of the Market Price of a Unit is being made,

to be the fair market price of the Unit, having regard to:

- (i) the nature of the proposed offer of Units for which purpose the Market Price of a Unit is being calculated;
- (ii) the circumstances in which the proposed offer of Units will be made; and
- (iii) the interests of Members generally, including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

Market Value of an Asset means:

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

⁵Refer to Part 5C.6 of the Corporations Act.

- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Responsible Entity, unless:
 - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
 - (ii) the Responsible Entity reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by a Valuer at the expense of the Fund;
- (c) in the case of an Asset that is an interest in a fund that is not listed or quoted for dealing on any financial market:
 - (i) the redemption price of the interest as last quoted by the manager, trustee or responsible entity of the fund; plus
 - (ii) any income entitlements accrued at that date as last advised by the manager, trustee or responsible entity. Where the fund is operated by the Responsible Entity or a related body corporate of the Responsible Entity, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the fund;
- (d) in the case of an Asset that is a real estate asset, the latest independent valuation of the real estate asset or, for a real estate asset not yet revalued since its acquisition, the real estate asset's purchase price (including acquisition costs, the total costs of subsequent additions and costs to date for development in progress, where applicable); and
- (e) in the case of any other Asset, the value of the Asset determined in accordance with relevant accounting standards or, if the Responsible Entity is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer at the expense of the Fund.

Member means a person Registered as the holder of a Unit that has not been redeemed⁶ (including persons jointly Registered) or otherwise stated to be a Member in accordance with clause 9.5 or any other provision of this constitution.

Member Component has the meaning given to that phrase in the Tax Act.

Member Objection Choice means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under sub-section 276-205(5) of the Tax Act.

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

Net Asset Value Per Unit means the amount calculated by dividing the Net Asset Value by the number of Units on issue.

Non-AMIT Income Year means a Financial Year which is not an AMIT Income Year.

Offer Document means a product disclosure statement or other offering document pursuant to which Units are offered for subscription.

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

Officially Quoted means admitted to quotation by ASX under the Listing Rules including, if

⁶See clause 11.15 for the time at which Units are redeemed.

quotation is suspended for a continuous period not exceeding 60 days, the period of suspension⁷ and **Official Quotation** has a corresponding meaning.

Operating Rules means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended from time to time (whether in respect of the Fund or generally).⁸

Option means an option on any terms granted under this constitution to subscribe for unissued Units.

Option Holder means a person Registered as the holder of an option (including persons jointly Registered).

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

Over has the meaning given to that term in the Tax Act.

Realisation Transaction means a transaction which enables all Members to realise all or a substantial portion of their investment in the Fund, including:

- (a) an Initial Public Offer;
- (b) a sell down of a substantial portion of the Units where all Members have the opportunity to participate in the sell down;
- (c) a sale of substantial Assets where all Members 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 in paragraph (a), (b) or (c).

Record Date means in relation to a Distribution Period:

- (a) if the Distribution Period ends on the last day of a Financial Year, the last day of the Financial Year; and
- (b) in all other circumstances, the date determined by the Responsible Entity as the record date for that Distribution Period.

Redemption Payments has the meaning given in clause 11.18(a)(i).

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

Register means the register of Members and, if relevant, Option Holders, Financial Instrument Holders and Stapled Security Holders that the Responsible Entity keeps or causes to be kept.

Registered means recorded in the Register and **Registration** has a corresponding meaning.

Registered Scheme means a managed investment scheme registered with ASIC under Chapter 5C of the Corporations Act.

Registrar means the body responsible for keeping the Register.

Relevant Security means a Unit, an Option, a Financial Instrument or a Stapled Security as appropriate.

Relevant Security Holder means a Member, an Option Holder, Financial Instrument Holder or Stapled Security Holder as appropriate.

Reorganisation Proposal means:

- (a) any Realisation Transaction;

⁷Securities will continue to be Officially Quoted by ASX, even if they are also traded on another market eg Chi-X.

⁸See footnote 3.

- (b) a Consolidation or Division Proposal;
- (c) a CCIV Proposal;
- (d) a Top Hat Proposal;
- (e) a Spin-Off Proposal;
- (f) an Exchange Proposal; or

any other proposal to reorganise or restructure the capital of the Fund which has substantially the same economic effect as one or more of (a) to (f) above.

Resolution means:

- (a) a resolution passed at a meeting of Members (or if applicable at a meeting of Members holding Units of a Class, or a meeting of Option Holders or Financial Instrument Holders):
 - (i) on a show of hands, by the required majority of Members (or if applicable the Class, or Option Holders or Financial Instrument Holders) present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members (or if applicable the Class, or Option Holders or Financial Instrument Holders) present in person or by proxy or by Direct Vote (if a determination has been made by the Responsible Entity in accordance with clause 20.24(a)) and voting on the poll; or
- (b) unless the law requires otherwise, a resolution in writing signed by Members holding the required majority of the Units in the Fund (or if applicable in the Class, or Option Holders or Financial Instrument Holders).

Except where this constitution or any applicable law provides otherwise, the "required majority" is a simple majority of 50% of votes validly cast.⁹

Responsible Entity means:

- (a) unless paragraph (b) applies, the person named in the Details as the first Responsible Entity of the Fund (and any successor for the time being as responsible entity of the Fund); and
- (b) while the Fund is a Registered Scheme, the company which is registered with ASIC as the responsible entity for the Fund under the Corporations Act.

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

Restructure Date means 23 December 2020, or such other date as the Responsible Entity determines.

Restructure Meeting means a meeting of the Members to consider and vote on the Restructure Resolutions.

Restructure Member means a person registered in the Register as a holder of one or more Restructure Units on the Restructure Record Date.

Restructure Record Date means 7:00pm (Sydney time) on 22 December 2020 or such later date as the Responsible Entity may notify the Members in writing.

Restructure Resolutions means the following resolutions of Members:

- (a) an Ordinary Resolution to approve the 2020 Restructure; and

⁹Circumstances where a special resolution is required while the Fund is a Registered Scheme include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity, see sections 601FL and 601NB.

- (b) a Special Resolution for the purposes of section 601GC(1) of the Corporations Act to approve the amendment to this constitution in respect of the 2020 Restructure.

Restructure Unit means a Unit on issue as at the Restructure Record Date.

Retail Client has the same meaning as in the Corporations Act.¹⁰

Sale Consideration means the average price at which Units, Options, Financial Instruments or other securities or financial products are sold by the Sale Nominee, multiplied by the number of Units, Options, Financial Instruments or other securities or financial products sold by the Sale Nominee in respect of the relevant Designated Foreign Investor (net of expenses, if any).

Sale Nominee means a person appointed by the Issuer to carry out the role described in clause 13.4.

Security means any right or interest in a managed investment scheme, unit, share, note, debenture or any right or interest or option to acquire a share, note or debenture, and includes a Unit, Option or Financial Instrument.

Security Interest means any interest granted by a Member to a third party in respect of the Member's Units.

Security Interest Holder means a person whose Security Interest in Units is noted on the Register in accordance with a notice referred to in clause 33.2(a).

Special Resolution has the same meaning as in the Corporations Act.

Spin-Off Proposal means a distribution of cash, or a distribution of other Assets under clause 15.5, to all Members (other than Designated Foreign Investors) which may include the compulsory application of the value of that distribution towards the subscription for, or transfer of, securities or financial products.

Stapled Entity means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units and, where the context requires, includes the trustee or responsible entity of the relevant trust or managed investment scheme even if shares in the trustee or responsible entity are not Stapled to Units.

Stapled Entity Capital Reallocation Amount has the meaning given in clause 4.7(b).

Stapled Security means a Unit (if applicable, of a Class) and each Attached Security which are Stapled together and Registered in the name of a Member.

Stapled Security Holder means a person Registered as the holder of a Stapled Security (including persons registered jointly).

Stapling means the linking together of the rights and obligations which attach to Securities to form a Stapled Security so that the Unit (of a Class, if applicable) and the Attached Security or Attached Securities may only be dealt with together and **Stapled** has a corresponding meaning.

Stapling Date means the date determined by the Responsible Entity to be the first day on which all Units on issue in the Fund, or a Class of Units, are Stapled to an Attached Security or Attached Securities.

Stapling Provision means a provision of this constitution relating or referring to or connected with Stapling.

Suspension has the meaning given in clause 34.5.

Tax means all taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties

¹⁰See sections 761A, 761G and 761GA.

and interest in connection with them.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) or both as the context requires.

Top Entity means a trust, company, partnership or other entity wherever incorporated or otherwise located which it is proposed will acquire all of the Units.

Top Hat Proposal means a proposal that each Member (other than Designated Foreign investors) should exchange their Units (including by way of transfer or redemption) for the issue or transfer of Top Entity Securities.

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

Transaction Costs means an amount determined by the Responsible Entity as appropriate to factor into the Application Price to avoid an adverse impact on other Members holding Units arising from transaction expenses which would be incurred if an acquisition of Assets was carried out because of the issue of Units. Unless the Responsible Entity otherwise determines (for example, in a case where part or all of an application involves a transfer of property to or from the Fund), the amount is the Responsible Entity's estimate of the total transaction costs of acquiring all of the Fund's existing assets adjusted if appropriate for any effect of assets being held through subsidiaries of the Fund or other investment vehicles. In the case of the issue of Units on reinvestment of distributions, transaction costs are zero.

Trust Component has the meaning given to that phrase in the Tax Act.

Under has the meaning given to that term in the Tax Act.

Unit means a unit in the Fund.

Unstapled or **Unstapling** in relation to a Unit means not or no longer being Stapled to an Attached Security.

Unstapling Date has the meaning given in clause 34.6(c).

Unstapling Event has the meaning given in clause 34.6(a).

User Pays Fees means any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Fund in respect of a Member; or
- (b) anything a Member asks the Responsible Entity to do or omit to do, which the Responsible Entity considers should be borne by that Member.

Valuation Time means a time at which the Responsible Entity calculates Net Asset Value.

Valuer means an independent qualified valuer appointed by the Responsible Entity.

VWAP in respect of a Unit for a Trading Day, means the volume weighted average of the Unit prices for that Trading Day for all sales of Units recorded on ASX for the day. The Responsible Entity may include, or may substitute, in VWAP calculations trading on another other financial market on which trading in Units is permitted. The Responsible Entity may exclude sales that occur otherwise than in the ordinary course of trading on ASX or other financial market (such as special crossings, crossings prior to the commencement of normal trading, crossings during the closing phase and the afterhours adjust phase, overseas sales, sales pursuant to the exercise of options over Units and overnight crossings) and any other sales which the Responsible Entity reasonably considers may not be fairly reflective of natural supply and demand.

Wind Up Resolution has the meaning given in clause 11.19(d).

1.2 Interpretation

The cover page, contents, headings, footnotes, and finding lists are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this constitution and any schedule:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document (including this constitution) includes any variation or replacement of it;
- (c) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (d) a reference to a **"person"** includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or other entity or organisation;
- (e) a reference to a time of day is a reference to Sydney time;
- (f) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (g) a reference to **"law"** includes common law, principles of equity and legislation (including regulations);
- (h) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (i) a reference to **"regulations"** includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (j) a term which has a defined meaning in the Corporations Act has the same meaning when used in this constitution;
- (k) provisions which are expressed to be "subject to the Corporations Act" are only subject to the provisions of that act while the Fund is a Registered Scheme;
- (l) a reference to **"amend"** includes vary, delete or replace;
- (m) a reference to a year (other than a Financial Year), half-year, quarter or month means a calendar year, calendar half-year, calendar quarter or calendar month respectively; and
- (n) a reference to **"present"** in the context of a person being present at a meeting includes participating using technology approved by the Responsible Entity for the purposes of the meeting.

1.3 Other documents

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

1.4 Constitution legally binding¹¹

This constitution binds the Responsible Entity, each present and future Member or other Relevant Security Holder and any person claiming through any of them in accordance with its terms as if they were a party to this constitution. A Unit is issued subject to and on the basis that the Member is taken to have notice of and be bound by all the provisions of this constitution.

¹¹Refer to section 601GB.

1.5 Benefit and entitlement

This document is executed as a deed poll. Each Member has the benefit of and is entitled to enforce this constitution even though they are not a party to it (and even if they were not in existence at the time of execution and delivery of this constitution).

1.6 Corporations Act prevails to the extent of inconsistency

Despite anything in this constitution, while the Fund is a Registered Scheme, to the extent that a clause of this constitution is inconsistent with a provision of the Corporations Act applicable to registered managed investment schemes, the clause is of no effect to the extent of the inconsistency, but not otherwise.¹²

1.7 Other restrictions and obligations excluded

To the maximum extent permitted by law, all restrictions on the exercise of the Responsible Entity's powers or obligations which might otherwise be implied or imposed by law are excluded. This includes any restriction or obligation of the Responsible Entity in its capacity as trustee of the Fund arising under any legislation other than the Corporations Act.

1.8 Severance

This constitution is to be read on the basis that any term which:

- (a) is illegal, void or unenforceable at law; or
- (b) contravenes a requirement of a law or imposes an obligation or liability or confers a right, power or remedy prohibited by law,

is omitted or varied to the extent necessary to comply with that law.

1.9 Governing law

This constitution is governed by the law in force in the place set out in the Details.

2 Name of Fund

2.1 Name

The Fund is called the Fort Street Real Estate Capital Fund II or any other name as the Responsible Entity determines from time to time.¹³

2.2 Change of Responsible Entity

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

3 Assets held on trust

- (a) The Responsible Entity must hold the Assets on trust for Members.
- (b) The Assets vest in the Responsible Entity, but must be clearly identified as property of the Fund and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.
- (c) The Responsible Entity declares that it will act in the interests of the Members on and subject to the terms of this constitution.¹⁴

¹²ASIC RG 134.213.

¹³See Corporations Regulation 5C.1.02.

¹⁴See section 601FC(2).

4 Units

4.1 Nature of Units

- (a) The beneficial interest in the Fund is divided into Units.
- (b) Subject to the rights conferred on particular Classes, each Unit confers an equal undivided interest. Apart from any differences as to income entitlement arising from the time when a Unit is issued, all Units in a Class confer an equal undivided interest as the other Units in that Class irrespective of the Application Price paid to the Responsible Entity for those Units.
- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- (d) The Responsible Entity has a discretion to issue Units with any preferred, deferred or other special rights, obligations or restrictions whether in relation to distributions, voting, return of capital, withdrawal, payment of calls or otherwise that the Responsible Entity determines.
- (e) The Responsible Entity may convert any Units from one Class to another Class or reclassify Units from one Class to another.
- (f) The Responsible Entity must enter on the Register the class or terms of issue of Units held by a Member.
- (g) A Member may not:
 - (i) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Responsible Entity;
 - (ii) claim or exercise any right in respect of any asset of the Fund or lodge any caveat or other notice affecting any asset of the Fund; or
 - (iii) require that any asset of the Fund be transferred to a Member.
- (h) Members may not give any directions to the Responsible Entity (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Responsible Entity to do or omit to do anything which may result in:
 - (i) the Fund ceasing to comply with the Listing Rules (if applicable) or the Responsible Entity acting inconsistently with this Constitution; or
 - (ii) the exercise of any discretion expressly conferred on the Responsible Entity by this Constitution or the determination of any matter which under this Constitution requires the agreement of the Responsible Entity.

4.2 Fractions of Units

- (a) Fractions of a Unit (calculated to 2 decimal places) may be issued by the Responsible Entity but, while the Units are Officially Quoted, fractions of a Unit may not be issued.
- (b) If any fractions of Units are on issue at a time when the Fund is to be Listed, the Responsible Entity may cancel the fractions with effect from the date of Listing.
- (c) While Units are Officially Quoted, where any calculation or action performed under this constitution or the terms of a withdrawal offer would result in the issue or redemption of a fraction of a Unit or would otherwise result in fractions of Units being on issue, the number of Units is, subject to this constitution, to be rounded down to the nearest whole Unit.

- (d) Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Fund.

4.3 Treatment of fractions

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

4.4 Income entitlement of Units

The Responsible Entity may issue Units or Classes of Units on terms that the Units:

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

4.5 Consolidation and Division of Units

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

4.6 Capital Reallocation Issue

- (a) The Responsible Entity may at any time issue Units ("**Capital Reallocation Units**") in either of the following circumstances:
 - (i) a Stapled Entity applies for Capital Reallocation Units as agent for all Stapled Security Holders and compulsorily applies a distribution of capital paid out of the Stapled Entity towards the application moneys for those Capital Reallocation Units; or
 - (ii) a Stapled Entity applies for Capital Reallocation Units out of a distribution of capital paid out of the Stapled Entity and the Responsible Entity is satisfied that immediately following the issue of such Capital Reallocation Units, those Capital Reallocation Units will be distributed pro rata to Stapled Security Holders.
- (b) The Responsible Entity must immediately consolidate the Capital Reallocation Units issued under paragraph (a) with all other Units then on issue in the Fund so that the total number of Units on issue after the consolidation is equal to the total number of Units on issue before the issue of the Capital Reallocation Units taking place.
- (c) Capital Reallocation Units issued under this clause will be issued at an Application Price equal to the amount calculated by dividing the total amount received in relation to the application made under paragraph (a) by the number of Units on issue at the Valuation Time.

4.7 Capital Reallocations

- (a) If the Responsible Entity makes a distribution of capital of the Fund to Members in accordance with this constitution (the "**Capital Reallocation Amount**") then:
 - (i) each Member is taken to have directed the Responsible Entity to pay the Capital Reallocation Amount to the Stapled Entity on those terms;
 - (ii) the Responsible Entity must pay the Capital Reallocation Amount to or for the benefit of the Stapled Entity on those terms; and
 - (iii) each Member irrevocably appoints the Responsible Entity as its attorney and agent to do all things the Responsible Entity considers necessary to give effect to the capital reallocation.
- (b) If a Stapled Entity makes a distribution of capital of the Stapled Entity to holders of Attached Securities in that Stapled Entity on terms that the whole or any part of the amount to be distributed in respect of each Attached Security in the Stapled Entity (the "**Stapled Entity Capital Reallocation Amount**") is to be paid by the Stapled Entity to or for the benefit of the Fund by way of additional capital payment in respect of the Unit to which that Attached Security is Stapled then that holder of Attached Securities, as a holder of a Unit:
 - (i) is taken to have directed the Responsible Entity to accept the Stapled Entity Capital Reallocation Amount on those terms; and
 - (ii) appoints the Responsible Entity as its attorney and agent to do all things the Responsible Entity considers necessary to give effect to the receipt of the Stapled Entity Capital Reallocation Amount by the Responsible Entity,and the Responsible Entity will receive the Stapled Entity Capital Reallocation Amount as an additional capital payment in respect of the Unit to which that Attached Security is Stapled.
- (c) Any reallocation of capital or additional capital payment in accordance with this clause 4.7 will not constitute a reorganisation of Units for the purposes of paragraph (v) of clause 34.4 and will not affect the Stapling of any Unit to an Attached Security.
- (d) Subject to the terms of issue of the Class, this clause may be applied to a Class of Members as if that Class was the only class of Units on issue.

5 Options

5.1 Options

Subject to clause 5.2, the Responsible Entity may create and issue Options on such terms and to any persons as the Responsible Entity determines provided that the Responsible Entity may not attach rights, obligations or restrictions to Options to the extent that section 601GA of the Corporations Act requires those matters to be set out in this constitution. An Option does not confer any interest in or any rights to participate in the income or capital of the Fund. An Option Holder holds an Option subject to the terms attaching to that Option. Options may be issued with Units or separately. A person becomes an Option Holder when their holding of Options is entered in the Register of Option Holders.

An offer of Options may be renounced in favour of another person unless it is expressed as non-renounceable. The terms of issue may allow the Responsible Entity to buy back the Options.

5.2 Terms of Options while a Registered Scheme

Subject to the Corporations Act (including the conditions of any applicable ASIC Relief) and the Listing Rules, while the Fund is a Registered Scheme, the Responsible Entity may issue Options:

- (a) at an application price (which may be nil) determined by the Responsible Entity if permissible under the Corporations Act or, if that determination may not be made, at a nil Application Price; and
- (b) on the basis that the Application Price for a Unit to be issued on exercise of the Option is a price determined by the Responsible Entity:
 - (i) while the Units are Officially Quoted, in accordance with the terms of ASIC Relief¹⁵ for a rights issue or a placement of Units (as applicable), or under clause 8.1(e); and
 - (ii) while the Units are not Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 8.1(f) or 8.1(g).

5.3 Other jurisdictions

If the Fund is a Registered Scheme and the Responsible Entity is making an offer of Options to Members which complies with the principles set out in clause 8.4, the Responsible Entity is not required to offer Options to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.

5.4 Exercise of Options

- (a) To exercise an Option, the Option Holder must give notice to the Responsible Entity in accordance with the terms of the Option, together with payment of the exercise price. The Option Holder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.
- (b) While Stapling applies in respect of Units (if applicable, of a Class), an Option to acquire those Units may only be exercised if, at the same time the Units are acquired pursuant to the Option, the same person acquires the same number of Attached Securities.

5.5 Lapse of Options

An Option lapses on the earliest of:

- (a) the date stipulated in the terms of issue of the Option; or
- (b) the termination of the Fund; or
- (c) the winding up of the Fund,

and the liability of the Responsible Entity ceases in respect of the Option.

6 Financial Instruments

6.1 Issue of Financial Instruments

Subject to the Corporations Act, the Responsible Entity may issue Financial Instruments:

- (a) at an application price (which may be nil) determined by the Responsible Entity if permissible under the Corporations Act or, if such determination may not be made, at an application price of \$1.60 per Financial Instrument; and

¹⁵See ASIC Class Order [CO 13/655] notional section 601GAD (3)(b).

- (b) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the Responsible Entity determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act.

6.2 Rights of Financial Instrument Holders

- (a) A Financial Instrument Holder holds a Financial Instrument subject to the terms attaching to that Financial Instrument. Subject to those terms and the Corporations Act:
 - (i) a Financial Instrument will not confer any interest in, or any right to participate in, the income or capital of the Fund and does not entitle the Financial Instrument Holder to any other rights of a Member; and
 - (ii) a Financial Instrument Holder who is not a Member may, with the Responsible Entity's consent, attend any meeting of Members but is not entitled to receive notice of or speak or vote at the meeting.
- (b) While Stapling applies in respect of Units (if applicable, of a Class), any other right to acquire Units under the terms of a Financial Instrument may only be exercised if, at the same time the Units are acquired under the terms of the Financial Instrument, the same person acquires an equal number of Attached Securities.

7 Transfer, transmission and joint holders

7.1 Transfer of Relevant Securities

Relevant Securities may be transferred subject to their terms, this clause 7 and clause 31.

7.2 Transfer if not Officially Quoted

If Relevant Securities are not Officially Quoted, transfers must be:

- (a) in a form approved by the Responsible Entity;
- (b) accompanied by any evidence the Responsible Entity reasonably requires to show the right of the transferor to make the transfer; and
- (c) if the Responsible Entity requires, be presented for Registration duly stamped.

If Relevant Securities are not Officially Quoted, the Responsible Entity may refuse to record any transfer in the Register without giving any reason for the refusal.

7.3 Transfer if Officially Quoted

- (a) Subject to this constitution and the Listing Rules, if a Relevant Security is Officially Quoted, it is transferable:
 - (i) as provided by the Operating Rules of a CS Facility if applicable;¹⁶ or
 - (ii) by any other method of transfer which is required or permitted by the Corporations Act, ASX or ASIC.
- (b) If a duly completed instrument of transfer:
 - (i) is used to transfer a Relevant Security in accordance with paragraph (b); and

¹⁶Part 7.11 Div 4 of the Corporations Act. Chi-X's market licence permits settlements by any CS Facility licensee approved for the purpose.

- (ii) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Responsible Entity properly requires to show the right of the transferor to make the transfer,

the Responsible Entity must, subject to the Responsible Entity's powers, register the transferee as the Relevant Security Holder.

7.4 When transfer is effective

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

7.5 Responsible Entity may request holding lock or refuse to register transfer¹⁷

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

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

7.6 Responsible Entity must request holding lock or refuse to register transfer

The Responsible Entity must:

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

if the Corporations Act or Listing Rules require the Responsible Entity to do so or the transfer is in breach of clause 31.

7.7 Notice of holding locks and refusal to register transfer

If, in the exercise of its rights under clauses 7.5 or 7.6, the Responsible Entity requests the application of a holding lock to prevent a transfer of Relevant Securities or refuses to Register a transfer of Relevant Securities, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

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

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

7.8 Joint tenancy

Persons Registered jointly as a Relevant Security Holder hold as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

¹⁷Listing Rule 8.10 restricts the Responsible Entity's ability to prevent proper transfers, but allows for a holding lock in certain specified circumstances.

7.9 Transmission on death¹⁸

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

7.10 Information given by personal representative¹⁹

If the personal representative gives the Responsible Entity the information it reasonably requires to establish the representative's entitlement to be registered as a holder of the Relevant Securities:

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

On receiving an election under paragraph (a)(i), the Responsible Entity must register the personal representative as the holder of the Relevant Securities.

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

7.11 Death of joint owner²⁰

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

7.12 Transmission on bankruptcy²¹

- (a) If a person entitled to Relevant Securities because of the bankruptcy of a holder of Relevant Securities gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Relevant Securities, the person may:
 - (i) by giving a written and signed notice to the Responsible Entity, elect to be registered as the holder of the Relevant Securities; or
 - (ii) by giving a completed transfer form to the Responsible Entity, transfer the Relevant Securities to another person.
- (b) On receiving an election under paragraph (a)(i), the Responsible Entity must register the person as the holder of the Relevant Securities.
- (c) A transfer under paragraph (a)(ii) is subject to the clauses that apply to transfers generally.
- (d) This clause has effect subject to the *Bankruptcy Act 1966* (Cth).

¹⁸This reflects sections 1071A and 1072A(1).

¹⁹This reflects sections 1071A and 1072A(2)-(4).

²⁰This reflects sections 1071A and 1072A(5).

²¹This reflects sections 1071A and 1072B.

7.13 Transmission on mental incapacity²²

- (a) If a person entitled to Relevant Securities because of the mental incapacity of a holder of Relevant Securities gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Relevant Securities:
 - (i) the person may:
 - (A) by giving a written and signed notice to the Responsible Entity, elect to be registered as the holder of the Relevant Securities; or
 - (B) by giving a completed transfer form to the Responsible Entity, transfer the Relevant Securities to another person; and
 - (ii) the person is entitled, whether or not registered as the holder of the Relevant Securities, to the same rights as the previous holder.
- (b) On receiving an election under paragraph (a)(i)(A), the Responsible Entity must register the person as the holder of the Relevant Securities.
- (c) A transfer under paragraph (a)(i)(B) is subject to the clauses that apply to transfers generally.

7.14 Transfer of Stapled Securities

- (a) A transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 7, the transfer relates to or is accompanied by a transfer of the same number of each Attached Security from the same transferor in favour of the same transferee.
- (b) A transfer of a Unit which is not accompanied by a transfer of the same number of each Attached Security will be taken to authorise the Responsible Entity as agent and duly authorised attorney for the transferor to effect a transfer of the same number of each Attached Security from the same transferor to the same transferee.
- (c) A transfer of any Attached Security to which a Unit is Stapled which is not accompanied by a transfer of the Unit will be taken to authorise the Responsible Entity as agent and duly authorised attorney for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Unit is Stapled to the same transferee.

8 Application Price for Units

8.1 Application Price

Subject to clause 25.1, the application price for a Unit must be calculated as follows:

- (a) in the case of a proportionate offer (including a rights issue), in accordance with clause 8.4;
- (b) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 8.7;
- (c) in the case of reinvestment of distributions, in accordance with clauses 8.8 and 8.9;
- (d) in the case of Units issued pursuant to the exercise of an Option, in accordance with clause 5;

²²This reflects sections 1071A and 1072D of the Corporations Act.

- (e) subject to paragraphs (a) to (d). in all other cases while Units are Officially Quoted, the Market Price of Units immediately before the date on which or as at which the application price is to be calculated;
- (f) while Units are not Officially Quoted, in accordance with the following formula:

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

- (g) the Responsible Entity may determine a different Application Price for issues of Units whether by way of issue, placement, proportionate offer, rights issue, reinvestment of distributions or a purchase plan to the extent it is permitted to do so or is not prohibited or prevented from doing so under the provisions of the Corporations Act and any applicable ASIC Relief.²³

8.2 Time for calculation

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

- (a) the Responsible Entity receives the application for Units; or
- (b) the Responsible Entity receives the application money (even if paid or to be paid into the Applications Account) or the property against which Units are to be issued is vested in the Responsible Entity,

whichever happens later.

8.3 Rounding

Subject to the Listing Rules, the application price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more than 1% of the application price. Any excess application money or property which results from rounding becomes an Asset.²⁴

8.4 Pro rata rights issues

Subject to the terms of any applicable ASIC Relief and the Listing Rules (while the Listing Rules apply), the Responsible Entity may offer Units for subscription at a price determined by the Responsible Entity to those persons who were Members on a date determined by the Responsible Entity:

- (a) provided that, subject to paragraph (b) of this clause 8.4, all Members are offered Units in proportion to the value of the Member's Units (or, where the offer is made only to Members who hold Units in a Class, to the value of the Member's units in that Class) at the relevant date; and
- (b) the Responsible Entity may exclude a Member from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief,²⁵

whether or not the right of entitlement is renounceable.

8.5 Other jurisdictions

If the Fund is a Registered Scheme and the Responsible Entity is making an offer of Units to Members which complies with the principles set out in clause 8.4, the Responsible Entity is not required to offer Units to persons whose address on the Register is outside Australia and New

²³ ASIC Class Order [CO 13/655] sets out the limited circumstances in which the Responsible Entity will be able to determine a different Application Price under this clause 8.1(g).

²⁴ See notional section 601GAB in ASIC Corporations (Managed investment product consideration) Instrument 2015/847.

²⁵ See ASIC Class Order [CO 13/656] (Exemption – Equality of treatment).

Zealand in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.²⁶

8.6 Terms of pro rata issues

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

8.7 Placements and security purchase plan while Listed

While Units in a Class are Officially Quoted and not suspended from quotation, the Responsible Entity may at any time issue Units in that Class by way of a placement or under a security purchase plan:

- (a) at the Market Price of Units during the 10 Trading Days immediately before the date on which the Units are offered; or
- (b) at a price and on terms determined by the Responsible Entity, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.²⁷

8.8 Reinvestment while Listed

- (a) If reinvestment of distributions payable to a Member under clause 14.19 applies while the Units are Officially Quoted, subject to the Listing Rules, and to the extent it is permitted to do so or is not prohibited or prevented from doing so under the provisions of the Corporations Act and any applicable ASIC Relief, the Responsible Entity may issue Units on the basis that the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the application price by the date at which units are to be issued upon reinvestment, the price will be the average of the VWAP for Units for each of the 10 Trading Days from and including the Trading Day after the Record Date for the relevant Distribution Period less any predetermined discount, provided that if the Units do not trade on a minimum of 5 Trading Days during the 10 Trading Day period, the most recently announced Net Asset Value Per Unit available at 7pm on the last Trading Day of the 10 Trading Day period less any predetermined discount.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

²⁶The clause assumes the Responsible Entity is able to comply with the conditions in Listing Rule 7.7.1.

²⁷See ASIC Class Orders [CO 13/655] and [CO 09/425].

8.9 Reinvestment while not Listed

While Units are not Officially Quoted, to the extent it is permitted to do so or is not prohibited or prevented from doing so under the provisions of the Corporations Act and any applicable ASIC Relief, the Responsible Entity may issue Units on the basis that the application price payable for each additional Unit on reinvestment of distributions payable to a Member under clause 14.19 is the price determined by the Responsible Entity. If the Responsible Entity has not determined the application price by the date at which Units are to be issued upon reinvestment, the application price will be as calculated under clause 8.1(f) on the first Business Day after the end of the Distribution Period to which the distribution relates.

8.10 Apportionment of Application Price while Stapling applies

- (a) If a Unit is to be issued as part of a Stapled Security the Responsible Entity must determine what part of the total issue price of a Stapled Security is to represent the Application Price of a Unit for the purposes of this constitution (the "**Application Price Allocation**") in accordance with paragraph (b).
- (b) Unless otherwise agreed between the Responsible Entity and the other Stapled Entities, the Application Price Allocation is to be in the ratio that the amount of the net assets of each of the Fund and each Stapled Entity bears to the amount of the aggregate net assets of the Fund and each Stapled Entity. However, subject to clauses 8.1 and 4.6, the aggregate of the Application Price of that Unit and the issue price of the Attached Security or Attached Securities to which that Unit will be Stapled must equal:
 - (i) while Units are Officially Quoted, the Market Price of a Stapled Security at the relevant time; and
 - (ii) while Units are not Officially Quoted, the sum of the Application Price per Unit and the application price of each other Attached Security which is a component of the Stapled Security (in each case calculated on a notional basis solely for the purpose of determining the application price of the Stapled Security, and not for the purpose of issuing a Unit or an Attached Security at that price).

8.11 Reinvestment while Stapling applies

While Stapling applies:

- (a) no reinvestment may occur unless, contemporaneously with the reinvestment in additional Units, the Member subscribes for or purchases an additional number of Attached Securities which, when issued or acquired, are Stapled to the additional Units;
- (b) the Responsible Entity may pay the subscription and purchase price for those Attached Securities out of a distribution available for reinvestment under clause 16.7;
- (c) if the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction may be paid to the Member or held for future reinvestment in the Fund and the Stapled Entity in such proportions as the Responsible Entity and the Stapled Entity may determine; and
- (d) whenever under this constitution or by law money is held on behalf of a Member for future reinvestment, the money so held may be aggregated and, on each occasion on which the aggregated amount equals the Application Price of a Unit, the amount will be applied to purchase a new Unit for issue to the Member (as part of a Stapled Security only).

9 Application procedure

9.1 Application form

- (a) An applicant for Relevant Securities must complete a form approved by the Responsible Entity if the Responsible Entity requires. The form may be transmitted electronically if approved by the Responsible Entity.
- (b) While Stapling applies in respect of Units (where applicable, of a Class), an applicant for those Units must, at the same time, apply for an identical number of Attached Securities.

9.2 Payment

- (a) Payment in respect of an application in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a Custodian appointed by it, must:
 - (i) accompany the application;
 - (ii) be received by or made available to the Responsible Entity or the Custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time or as the terms of issue of the relevant Option or Unit contemplate; or
 - (iii) comprise a reinvestment of distribution in accordance with clauses 14.15 to 14.21.
- (b) If the Responsible Entity accepts a transfer of property other than cash:
 - (i) the value attributed to the property must be equivalent to a price at which the Responsible Entity could properly buy the property and, if the Responsible Entity requires the applicant must provide a recent valuation of the property;²⁸ and
 - (ii) any additional costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factor in the Application Price for the Units must be paid by the applicant either directly or by deducting the costs from the value of the property before the number of Units to be issued is calculated.

9.3 Responsible Entity may reject

- (a) The Responsible Entity may reject an application in whole or in part without giving any reason for the rejection.²⁹
- (b) While Stapling applies, the Responsible Entity must reject an application for Units of a Class which are Stapled (including an application reliant on the exercise of an Option or a realisation under the terms of a Financial Instrument) if the applicant does not also apply for an identical number of Attached Securities and if an identical number of Attached Securities will not be issued to the applicant at the same time as the Units.

9.4 Minimum amounts

Subject to clause 32, the Responsible Entity may set a minimum application amount and a minimum holding for the Fund and alter or waive those amounts at any time.³⁰

²⁸ASIC RG 134.42.

²⁹Refer to Listing Rule 10.11 - restriction on issue of Units to related parties.

³⁰While Units are Officially Quoted, see clause 32 regarding the sale of small holdings.

9.5 Issue date

- (a) Except in the case of a reinvestment of distribution in accordance with this constitution, Units are taken to be issued at the time which is the earlier of:
 - (i) the time the issue of Units is recorded in the Register; and
 - (ii) the later of the time when:
 - (A) the Responsible Entity Accepts the application for Units; and
 - (B) the Responsible Entity or its agent receives the application money (even if paid into the Applications Account or received in the form of a cheque) or the property against which Units are to be issued is vested in the Responsible Entity.
- (b) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued at the time required under clause 14.21.
- (c) At the time when Units are taken to be issued under paragraph (a)(ii) or (b):
 - (i) the applicant becomes a Member in respect of the Units, which are taken to be issued³¹ even though the number of Units may not yet have been ascertained and the issue has not yet been entered in the Register; and
 - (ii) the applicant becomes entitled to be recorded in the Register as the holder of those Units as soon as it is reasonably practicable for the Responsible Entity or its agent to make the entry.

9.6 Uncleared funds

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

10 Redemption Price of Units³²

10.1 Redemption Price

Subject to clauses 11.16 and 11.17, the redemption price for a Unit must be calculated as follows:

$$\frac{97\% \times \text{Net Asset Value}}{\text{number of Units in issue}}$$

10.2 Time for calculation

Each of the variables in clause 10.1 must be determined:

- (a) while the Fund is a Registered Scheme and is Liquid, and at all times when the Fund is not a Registered Scheme, as at the next Valuation Time after the redemption request has been, or is taken to have been, received and Accepted by the Responsible Entity; or
- (b) while the Fund is a Registered Scheme and is not Liquid, as at the last Valuation Time before the withdrawal offer is made.

For the purposes of this calculation, if at the relevant Valuation Time Units have been issued under clause 9.5 but the Application Price of those Units has not yet been ascertained, the application money or property relating to those Units and the number of Units are to be excluded from the calculation.

³¹For the purposes of section 761E(2).

³²Required to be included by section 601GA(4) if a right of redemption is to be offered and necessary in practice for any power to redeem.

10.3 Rounding

Subject to the Listing Rules, the Redemption Price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset of the Fund.³³

11 Redemption procedures³⁴

11.1 While the Fund is Listed

While the Fund is Listed:

- (a) clauses 11.10 to 11.13 apply only to the extent provided for in clause 11.17;
- (b) clauses 11.9, and 11.14 to 11.16 apply; and
- (c) clauses 11.2 to 11.8 do not apply.³⁵

11.2 Request for redemption

A Member may make a request for the redemption of some or all of their Units by giving the Responsible Entity notice in writing³⁶ of the request, specifying the number or value of Units to be redeemed and sufficient details to identify the Member, or by completing an electronic or digital form of redemption request or otherwise meeting the requirements of a personal or verbal redemption request process as determined by the Responsible Entity. The Responsible Entity is not obliged to satisfy any such request.

11.3 Request may not be withdrawn

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

11.4 When Fund is Liquid³⁷ or not a Registered Scheme

Clauses 11.5, 11.7 and 11.8 apply only while:

- (a) the Fund is Liquid³⁸; or
- (b) the Fund is not a Registered Scheme.

11.5 Responsible Entity may redeem

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may decide to Accept a request from a Member to redeem some or all of their Units, in whole or in part. The Responsible Entity is not required to Accept any such request.
- (b) If the Responsible Entity determines to Accept a redemption request in respect of a Unit, it must pay from the Assets to the Member or former Member the Redemption Price of that Unit calculated in accordance with clause 10. The payment must be made within 21 days of the date on which the Unit is redeemed under clause 11.15, or such longer period as allowed by clause 11.6.
- (c) If the Responsible Entity decides not to Accept some or all of the redemption request, it must notify the Member of its decision within 30 days of receipt of the request or such longer period as allowed by clause 11.6.

³³See notional section 601GAC in ASIC Corporations (Managed investment product consideration) Instrument 2015/847.

³⁴While the Fund is a Registered Scheme, these procedures must be fair to all Members: section 601GA(4).

³⁵Refer to Listing Rule 1.1 condition 5.

³⁶See clause 18.

³⁷Required to be included by section 601GA(4)(b).

³⁸For a definition of a liquid Fund see section 601KA.

- (d) If the Responsible Entity does not decide whether to Accept the redemption request by the day which is 30 days after receipt of the request or the last day of such longer period as allowed by clause 11.6, on that day the Responsible Entity it is taken to have decided not to Accept the request, the request lapses and the Responsible Entity must notify the Member of its decision as soon as possible and in any event within a further 10 days following the deemed decision.
- (e) The day of receipt of the redemption request is:
 - (i) the day of actual receipt if the redemption request is received before 3.00pm on a Business Day; or
 - (ii) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00pm on a Business Day.
- (f) Notwithstanding clauses 11.5(a) to 11.5(e), but subject to the Corporations Act and the Listing Rules, the Responsible Entity may do anything necessary or desirable to give effect to the automatic redemption of the Initial Units under clause 25.1 without the need to comply with any of the provisions of this clause 11.

11.6 Delayed payment

- (a) Subject to paragraph 11.6(b), the Responsible Entity may at any time suspend consideration of redemption requests, or defer its obligation to pay the Redemption Price in respect of a redemption request it has Accepted, if it is not possible or not in the best interests of Members (and former Members who have not yet received the Redemption Price for their Units) at the time the circumstances arise, for it to process redemption requests or make the payment (as applicable) due to one or more circumstances which are in the nature of extreme market events outside its control such as restricted, suspended or permanent cessation of trading or extreme price fluctuation or uncertainty in the market for an Asset not able to be reasonably anticipated at the relevant time, and the period allowed under clause 11.5 for consideration of the redemption request or payment of the Redemption Price may be extended by the number of days during which such circumstances apply. The time by reference to which the ability to reasonably anticipate an event for the purposes of this clause 11.6(a) is to be determined is, in the case of consideration of a redemption request, the time the Responsible Entity considers the request, and in the case of a request which the Responsible Entity has Accepted, the date of Acceptance.
- (b) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Responsible Entity must pay the redemption proceeds to the withdrawing Member or former Member within 21 days of the date on which the withdrawal offer closes.³⁹

11.7 Minimum holding

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

11.8 Increased minimum

If the Responsible Entity increases the minimum holding amount, the Responsible Entity may, after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price

³⁹Section 601KD.

less than the then current minimum holding amount, redeem that Member's holding without the need for a redemption request.

11.9 Payment from the Assets

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

11.10 While Fund is not Liquid⁴⁰

While the Fund is not Liquid,⁴¹ a Member may withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind.⁴² While the Fund is a Registered Scheme and is not Liquid, if there is no withdrawal offer currently open for acceptance by Members, a Member has no right to request withdrawal from the Fund.

11.11 Responsible Entity not obliged

Subject to clause 11.19, the Responsible Entity is not at any time obliged to make a withdrawal offer. If it does, it may do so by sending a copy of the offer to all Members, or making a copy of the offer available by electronic means and giving notice to Members that it is available.

11.12 Cancellation of withdrawal offer

Subject to clause 11.19, the Responsible Entity may cancel a withdrawal offer at any time. If it does, it may do so by sending a notice that the offer is cancelled to all Members, or making the notice available by electronic means and giving notice to Members that it is available.

The cancellation of a withdrawal offer by the Responsible Entity does not affect the rights of Members or former Members whose acceptance of the offer has been received by the Responsible Entity in accordance with clause 19 after the offer period has opened but before the date on which the offer is cancelled to withdraw from the Fund in accordance with the terms of the withdrawal offer.

11.13 Treatment of request

If the Responsible Entity receives a redemption request, and the Fund subsequently ceases to be Liquid before that request has been Accepted or rejected, the request lapses.

11.14 Sums owed to Responsible Entity

The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member or former Members whose Units have been redeemed. While the Fund is Liquid or not a Registered Scheme, the Responsible Entity may redeem without a redemption request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

11.15 When Units are redeemed

Units are taken to be redeemed:

- (a) where the redemption is to occur in response to a redemption request from a Member, at the time at which the Responsible Entity has:
 - (i) received and Accepted the redemption request in respect of the Units; and

⁴⁰Required to be included by section 601GA(4)(c) if Members are to have the right to withdraw while the Fund is a Registered Scheme. This clause can also apply while the Fund is not a Registered Scheme - see also clause 11.4.

⁴¹For a definition of a liquid Fund see section 601KA(1).

⁴²Refer to sections 601KB to 601KE.

- (ii) calculated the Redemption Price of the Units;⁴³ or
- (b) if paragraph (a) does not apply, at the time at which the Redemption Price is known and the redemption is recorded in the Register,

and from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Fund in respect of the redemption proceeds.

If Units are redeemed at the time referred to in paragraph (a), the Responsible Entity must as soon as is reasonably practicable arrange for the redemption of the Units to be recorded in the Register.

11.16 Buy backs

While the Units are Officially Quoted, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, purchase Units on ASX or any other financial market on which the trading of Units is permitted, and also off-market, and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units.

11.17 While Officially Quoted

While the Units are Officially Quoted, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 11.10, in which case clauses 11.10 to 11.13 apply in relation to the withdrawal offer, and the Redemption Price is to be calculated in accordance with clause 10.2(b).

11.18 Distribution to Members on a Redemption

- (a) If, during a Distribution Period, the Responsible Entity Accepts a redemption request from a Member which is in respect of 5% or more of the Units on issue or such other amount as may be determined by the Responsible Entity and notified to Members from time to time ("**Large Redemption Request**") then the Responsible Entity must determine at or before the end of the relevant Distribution Period:
 - (i) what amount ("**Income Component**") of the payment in satisfaction of the Large Redemption Request ("**Redemption Payment**") in respect of the Units represents a distribution of the Distributable Income for that Financial Year; and
 - (ii) whether the Income Component of the Redemption Payment will comprise a distribution of Distributable Income for the Financial Year of any particular character for tax purposes.
- (b) Where the Responsible Entity makes a determination under clause 11.18(a) in respect of a Redemption Payment to a Member or former Member, the Responsible Entity must make the determination by reference to:
 - (i) that component of the Distributable Income of the Fund for the Financial Year to date that has not been distributed (at the time the Redemption Price in respect of the Large Redemption Request is determined under clause 11.18(a)) that the Responsible Entity determines is referable to:
 - (A) capital gains; or
 - (B) amounts which reflect gains (which are not capital gains) on the disposal or realisation of Assets; and

⁴³ASIC RG 134.167.

- (ii) the increase in the component of the Distributable Income of the Fund referred to in clause 11.18(b)(i)(A) as a result of the Responsible Entity realising sufficient Assets to satisfy the Large Redemption Request; and
- (iii) the number of Units specified in the Large Redemption Request and the number of Units on issue at the time the Large Redemption Request is made.

11.19 Liquidity Review

- (a) This clause 11.19 applies solely where the Fund is not Liquid and Units are not Officially Quoted.
- (b) The Responsible Entity must, on a date in October 2023, convene a meeting to give the Members the opportunity to pass an Ordinary Resolution approving the winding up of the Fund (a "**Wind Up Resolution**") (the "**Initial Liquidity Date**").
- (c) If the Members:
 - (i) do not pass the Wind Up Resolution, the Responsible Entity must make a withdrawal offer to all Members in accordance with clause 11.10 within six months of the Initial Liquidity Date; or
 - (ii) pass the Wind Up Resolution, the Responsible Entity must terminate the Fund and distribute the net proceeds on realisation to the Members within two years of the Initial Liquidity Date.
- (d) The Responsible Entity must, on or within 30 Business Days before or after each five year anniversary of the Initial Liquidity Date (each, a "**Liquidity Date**"), convene a meeting to give the Members the opportunity to pass a Wind Up Resolution.
- (e) If the Members:
 - (i) do not pass the Wind Up Resolution, the Responsible Entity must make a withdrawal offer to all Members in accordance with clause 11.10 within six months of the Liquidity Date; or
 - (ii) pass the Wind Up Resolution, the Responsible Entity must terminate the Fund and distribute the net proceeds on realisation to the Members within two years of the Liquidity Date.

12 Valuation of assets and accounts, audit and reports

12.1 Periodic valuations

The Responsible Entity may cause an Asset to be valued at any time and, if the Fund is a Registered Scheme, must do so as and when required by the Corporations Act.⁴⁴

12.2 Net Asset Value

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

12.3 Valuation methods

The Responsible Entity may determine the value of an Asset, and determine valuation methods and policies for each category of Asset and change them from time to time. While the Fund is a Registered Scheme, the Responsible Entity's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used

⁴⁴See section 601FC(j) for Responsible Entity's obligations concerning valuation.

to calculate the Application Price or Redemption Price of a Unit, the value must be reasonably current⁴⁵. In the absence of any other determination by the Responsible Entity, the value of an Asset will be its Market Value.

12.4 Currency conversion

Where it is necessary for the purposes of a valuation to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank or an independent pricing provider (such as Reuters) nominated by the Responsible Entity. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency, and the value must be reasonably current at the time the Redemption Price is calculated.⁴⁶

12.5 Accounts, audit and reports

While the Fund is not a Registered Scheme, the Responsible Entity must keep or cause to be kept proper books of account which correctly record and explain the transactions and financial position of the Fund and may, but need not, have those records audited.

13 Reorganisation Proposals

13.1 Power to enter into Reorganisation Proposals

Without limiting any other provision of this constitution, the Responsible Entity may determine to carry out and give effect to:

- (a) without reference to or approval from Members, a Consolidation or Division Proposal or, to the extent and in the manner permitted by the Corporations Act, a CCIV Proposal; or
- (b) any other Reorganisation Proposal not referred to in clause 13.1(a) (including a Spin-Off Proposal, a Realisation Transaction, a Top Hat Proposal or an Exchange Proposal), which is in each case approved by Ordinary Resolution.

Unless the Responsible Entity agrees otherwise, it is a term of issue of each Unit, Option or Financial Instrument that the Unit, Option or Financial Instrument may be subject to a Reorganisation Proposal as provided in this clause 13.1. Each Member, by subscribing for or taking a transfer of, or otherwise acquiring a Unit, Option or Financial Instrument, is taken to have consented to these Reorganisation Proposals.

13.2 Power to give effect to Reorganisation Proposals

If the Responsible Entity determines to carry out a Reorganisation Proposal in accordance with clause 13.1, then the Responsible Entity has power to do all things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the relevant proposal, including to:

- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
- (b) apply for or purchase fully paid Securities on behalf of the Members and to consent on behalf of Members to become a member of a company, trust or other body;
- (c) issue Units;

⁴⁵ASIC RG 134.110 provides guidance on the meaning of "reasonably current".

⁴⁶ASIC RG 134.108.

- (d) transfer Assets;
- (e) if Units or other Securities are to be transferred as part of a Reorganisation Proposal, to give on behalf of Members a warranty as to good and unencumbered title to the Units or Securities to be transferred, and other warranties customary in a transfer of Securities; and
- (f) execute all documents and do all things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

13.3 Appointment of Responsible Entity as agent and attorney

To give effect to a Reorganisation Proposal the Responsible Entity is irrevocably appointed the agent and attorney of each Member, to do all things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal, including to:

- (a) apply any proceeds referred to in clause 13.2(a) on behalf of the Member;
- (b) execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any Securities or financial products in favour of the Member;
- (c) execute a transfer of Units, Options or Financial Instruments held by or on behalf of the Member;
- (d) execute a transfer of Assets to a Member; and
- (e) execute documents and give consents, including a consent to become a member of a company or other entity.

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

13.4 Foreign Investors

- (a) This clause 13.4 applies where a Reorganisation Proposal involves the offer, issue or transfer of Units, Options, Financial Instruments or other financial products to Foreign Investors.
- (b) Subject to the Listing Rules⁴⁷ and the Corporations Act as modified by any applicable ASIC Relief⁴⁸, the Responsible Entity may determine that a Foreign Investor is a Designated Foreign Investor with respect to a Reorganisation Proposal where the Responsible Entity reasonably determines that it will not offer, issue or transfer Units, Options, Financial Instruments or other financial products to that Foreign Investor, having regard to:
 - (i) the number of Foreign Investors in the jurisdiction of that Foreign Investor;
 - (ii) the number and value of Units, Options, Financial Instruments or other financial products that may be offered, issued or transferred to Foreign Investors in the foreign jurisdiction; and
 - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the offer, issue or transfer in the foreign jurisdiction.

⁴⁷See in particular Listing Rule 7.7

⁴⁸ASIC Class Order [CO 13/656] – transaction-specific relief may also be required in the case of some Reorganisation Proposals.

- (c) If the Responsible Entity makes a determination in accordance with clause 13.4(b), despite anything to the contrary in this constitution:
 - (i) the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to a Designated Foreign Investor Cash-Out; and
 - (ii) any Investor who is or becomes a Designated Foreign Investor is taken to consent to the Designated Foreign Investor Cash-Out and directs the Responsible Entity to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Designated Foreign Investor Cash-Out (including to act as the Member's agent and attorney), including to:
 - (iii) transfer or issue, or arrange for the transfer or issue of Units, Options, Financial Instruments or other financial products held by the Member or which would have been received by the Member under the Reorganisation Proposal to a Sale Nominee;
 - (iv) arrange for a Sale Nominee to participate in a Reorganisation Proposal in respect of Units, Options, Financial Instruments or other financial products received under clause 13.4(c)(iii);
 - (v) arrange for a Sale Nominee to sell the Units, Options, Financial Instruments or financial products that are issued or transferred in respect of the Member's existing investment; and
 - (vi) arrange for the payment of the Sale Consideration to the Designated Foreign Investor.
- (d) A **"Designated Foreign Investor Cash-Out"** means that Members who are Designated Foreign Investors will:
 - (i) not be the holder of any newly acquired Securities or financial products as a result of implementation of a Reorganisation Proposal; and
 - (ii) receive an amount of cash:
 - (A) realised by selling Units, Options, Financial Instruments or other Securities or financial products held by that Member or to which the Member would have been entitled if it had participated in the Reorganisation Proposal; or
 - (B) otherwise determined by the Responsible Entity to be equivalent to the value of Units, Options, Financial Instruments or other Securities or financial products to which the Member would have been entitled if it had participated in the Reorganisation Proposal.
- (e) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under this clause 13.4 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of this clause 13.4 to be met.

13.5 Liability of Responsible Entity

The Responsible Entity has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act

(including the execution of a document) pursuant to or in connection with the implementation of a Reorganisation Proposal.

13.6 Paramourncy of provision

The provisions of this clause 13 prevail over other provisions of this constitution (except clause 34) in the case of any inconsistency to the extent provided in clause 28.5.

14 Income and distributions to Members⁴⁹

14.1 Standing principles for determining Distributable Income

The Responsible Entity may determine standing principles for calculating and distributing the Distributable Income for any Financial Year or Distribution Period and may change the principles from time to time.

14.2 Standing principles for periods where Fund is an AMIT

For any Financial Year for the Fund that is an AMIT Income Year, unless the Responsible Entity determines otherwise under clause 14.1, the standing principles for determining the Distributable Income for the Financial Year and any Distribution Period will be that the Distributable Income will be the amount determined by the Responsible Entity as being the aggregate of:

- (a) the amount determined by the Responsible Entity to be the aggregate of all Trust Components for the Fund for the period that have an assessable income character, determined as if the period is a year of income for the purposes of the Tax Act and excluding any amounts of a tax offset character; and
- (b) any additional amount that the Responsible Entity considers appropriate for distribution in relation to the Fund for the relevant period, including:
 - (i) amounts referable to the discount capital gains concession; and
 - (ii) any other Trust Components that have the character of exempt income or non-assessable non-exempt income.

The standing principles made by the Responsible Entity under this clause 14.2 may be changed or revoked at any time in accordance with clause 14.1.

14.3 Determination of Distributable Income

The Responsible Entity must determine the Distributable Income for each Distribution Period. In the case of any Distribution Period which does not end at the end of a Financial Year this determination of the Distributable Income for that Distribution Period may be an estimate. The Distributable Income is to be:

- (a) if the Responsible Entity has determined standing principles under clause 14.1 (including pursuant to clause 14.2) which are applicable to the Financial Year or Distribution Period, the amount calculated by applying those principles in respect of the Financial Year or Distribution Period; and
- (b) if there are no standing principles which are applicable to the Financial Year or Distribution Period under clause 14.1:
 - (i) for a Financial Year, the aggregate of the amount which the Trustee determines to be the "net income of the trust estate" for the Fund for the purposes of section 95 of the Tax Act for the Financial Year determined disregarding:

⁴⁹Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

- (A) any amounts that the Trustee determines represent either franking credits or foreign tax offsets; and
- (B) any reduction in the net capital gain for the Fund for the Financial Year which the Trustee determines arises as a result of the discount capital gains concession; and
- (ii) for a Distribution Period, the amount which the Trustee determines to be the Distributable Income for the Distribution Period, determined as if the Distribution Period is a Financial Year and a year of income for the purposes of the Tax Act.

14.4 Accounting standards

The preparation of the accounts of the Fund in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 14.2.

14.5 Power to accumulate or defer amounts

- (a) The Responsible Entity may, in respect of a Distribution Period in a Financial Year for the Fund that is an AMIT Income Year for the Fund, determine prior to the end of that Distribution Period that all or part of the Distributable Income of the Fund for the period from the commencement of the Financial Year until the end of the Distribution Period that has not already been distributed to Members under clauses 11.18, 14.6 or 14.24(b) will:
 - (i) be accumulated; or
 - (ii) not be distributed in respect of the Distribution Period and will be distributed to Members of the Fund later in the Financial Year.
- (b) The effect of the Responsible Entity exercising its power to accumulate or carry forward an amount pursuant to clause 14.5(a) is, in accordance with clause 14.6 to:
 - (i) exclude the relevant amount from the Income Distributions for Members of the Fund for:
 - (A) the Distribution Period; and
 - (B) in the case of an accumulation pursuant to clause 14.5(a)(i), all future Distribution Periods; and
 - (ii) in the case of amounts which are carried forward for distribution later in the Financial Year under clause 14.5(a)(ii), include the relevant amount in the Income Distributions for a subsequent Distribution Period in the Financial Year unless the Responsible Entity determines to distribute the relevant amount earlier under clause 14.24(b).
- (c) For the purposes of 14.15, amounts accumulated under clause 14.5(a)(i) are to be treated for the purposes of the AMIT Regime as having been accumulated for the benefit of the Members at the time specified by the Responsible Entity. This time must be on or after the time the Responsible Entity determines to accumulate the relevant amount, but at or before the end of the relevant Financial Year.
- (d) Amounts which are:
 - (i) accumulated pursuant to clause 14.5(a)(i); or
 - (ii) carried forward for distribution later in the Financial Year pursuant to clause 14.5(a)(ii), but only until the time at which the amount is distributed under clauses 14.6 or 14.24(b),

continue to form part of the Assets and no Member has any particular right to or interest in those amounts.

14.6 Income Distributions

Subject to clauses 4.4, 14.13 and 14.26, Income Distributions in respect of a Member means an amount calculated by the Responsible Entity as follows:

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

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

where:

- A** is the number of Units held by the Member at the end of the Distribution Period;
- B** is the number of Units held by all Members at the end of the Distribution Period;
- C** is the Distributable Income for the Distribution Period excluding:
- (A) the Income Component of any Redemption Payment made to any Member pursuant to clause 11.18 during that Distribution Period;
 - (B) any amounts paid pursuant to clause 14.24(b) during that Distribution Period; and
 - (C) any amounts which the Responsible Entity has determined to accumulate or carry forward for the Distribution period under clause 14.5(a),
- and including any amounts which the Responsible Entity has determined to carry forward for a previous Distribution Period in the Financial Year, and which the Responsible Entity determines has not previously been distributed in the Financial Year as an Income Distribution or under clause 14.24(b) and is appropriate to distribute for the Distribution Period; and

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

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

where:

- A** is the number of Units held by the Member at the end of the Distribution Period;
- B** is the number of Units held by all Members at the end of the Distribution Period; and
- C** is any amount by which the Distributable Income for the Financial Year exceeds the aggregate of:
- (A) the Distributable Income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year;
 - (B) the Income Component of any Redemption Payment made to any Member in the Financial Year pursuant to clause 11.18; and
 - (C) any amounts paid pursuant to clause 14.24(b) during the Financial Year; and

- (D) any amounts which the Responsible Entity has determined to accumulate for a Distribution Period in the Financial Year under clause 14.5(a)(i).

14.7 Present entitlement

Subject to clause 4.4, a person who at any time during the Financial Year is or has been a Member is presently entitled on the last day of the Financial Year to:

- (a) if the Financial Year is not an AMIT Income Year, the Distributable Income of the Fund for the Financial Year; and
- (b) if the Financial Year is an AMIT Income Year, the Distributable Income of the Fund for the Financial Year excluding any amounts accumulated pursuant to clause 14.5(a)(i),

in the proportion that the (i) Income Distributions calculated in respect of the Member or former Member in respect of the Financial Year under clause 14.6 and (ii) any payments made to that Member or former Member in respect of that Financial Year under clause 14.24(b) and (iii) the Income Component of any Redemption Payment made to the Member in the Financial Year pursuant to clause 11.18 bear to the sum of (i) all Income Distributions calculated under clause 14.6 and (ii) all payments made under clause 14.24(b) and (iii) all of the Income Components of any Redemption Payments made to persons who are or have been Members at any time during the Financial Year.

14.8 Indefeasibility

Despite any other provision of this constitution, a person cannot be defeated of any share of the Distributable Income to which the person is entitled under clause 14.6 and 14.7.

14.9 Distribution of income

Subject to any deductions made under clause 14.12 and subject to clause 14.1, the Responsible Entity must distribute to each person the person's entitlement to Distributable Income for a Distribution Period. That distribution must occur within three months after the Distribution Calculation Date for the Distribution Period.

14.10 Separate accounts

The Responsible Entity may keep separate accounts of different categories or sources (or both) of income or gains, or deductions, losses or credits for tax purposes, and if such accounts are kept, they must be kept in accordance with the requirements of the Tax Act. The Responsible Entity may allocate income or gains from a particular category or source (or both) to particular Members or Members of a Class, provided that the allocation is not inconsistent with the entitlements of Members to Distributable Income under clauses 14.6 or 14.24(b) or the Responsible Entity's obligation to attribute amounts to Members under clause 14.15. For a Financial Year for the Fund which is not an AMIT Income Year, if such allocation is made on any basis other than pro rata with all other Members, the Responsible Entity must notify the Member.

14.11 Position on transfer of Units

A person who is or was a Member as at a Distribution Calculation Date remains entitled to their share (if any) of the Distributable Income under clause 14.6 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

14.12 Deductions from Distributable Income

The Responsible Entity may deduct from any entitlement of a person to a share of Distributable Income any amount which the Responsible Entity is required or authorised to deduct under clause 15.7 and all amounts deducted must be applied in reimbursing the Fund for any

corresponding amount paid, distributed or reimbursed out of the Fund or reimbursing the Responsible Entity for the payment of the Tax to the person or authority entitled to it.

14.13 Fractions

If the share of Distributable Income for a Member determined under clause 14.5 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated and the fraction of the cent becomes an Asset.

14.14 Classification of items

Without limiting clauses 14.1 to 14.3, the Responsible Entity must determine:

- (a) the classification of any item as being on income or capital account;
- (b) the extent to which reserves or provisions need to be made; and
- (c) whether any item of income should be recognised as it is received or as it accrues (but not yet received); and
- (d) the character for tax purposes of any Distributable Income which the Responsible Entity chooses to accumulate or carry forward for distribution pursuant to clause 14.5(a).

14.15 Attribution under AMIT Regime – basis for attribution

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Financial Year, attribute all of the Determined Trust Components of the Fund, or each Class in the Fund where there is an AMIT Class Election in force for the Fund, for the Financial Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under clause 14.15(a) in accordance with the Tax Act and the following principles:
 - (i) the amount of each Member's Determined Member Components of a particular character is so much of the Fund's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this constitution; and
 - (ii) if there is more than one Class on issue in the Fund and the Responsible Entity has made an AMIT Class Election for the Fund, each Class will be treated as a separate AMIT for the purposes of the attribution under clause 14.15(a).
- (c) Subject to clause 14.16, but without limiting clause 14.15(b), following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Fund, all of the Determined Trust Components of the Fund or relevant Class (where there is an AMIT Class Election in effect for the Fund) for the Financial Year that are reflected in:
 - (i) any Income Distributions that the Member or former Member has become entitled to at the end of each Distribution Period in the Financial Year under clause 14.6;
 - (ii) any Income Component distributed to the Member or the former Member under clause 11.18;
 - (iii) any distributions of Distributable Income that the Member or former Member has become entitled to during the Financial Year under clause 14.24(b); and
 - (iv) any Income Distributions that would arise for the Member or former Member at a time specified in clause 14.5(c) ("**Relevant Time**") under clause 14.6 if the Relevant Time was the end of a Distribution Period and variable "C" in the

formula set out in clause 14.6 for the Distribution Period was the amount accumulated under clause 14.5(a)(i).

- (d) The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed for the Fund as an Income Distribution under clause 14.6 or under clause 14.24(b) are referable to Determined Trust Components of the Fund or the relevant Class (where there is an AMIT Class Election in effect in relation to the Fund) for the Financial Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under clause 14.15(a).

14.16 Attribution under AMIT Regime – AMIT Class Election

Where there is an AMIT Class Election in effect, then without limiting clause 14.15:

- (a) in calculating the Determined Trust Components of each Class for the Fund, the Responsible Entity must only include in the Determined Trust Components of a Class the Determined Trust Components of the Fund that are referable to the Class, in accordance with the methodology used to determine the Income Distributions of Members of the Class, having regard to clause 14.26; and
- (b) the Responsible Entity must only attribute Determined Trust Components of a particular Class to Members or former Members of that Class (and not any other Class).

14.17 Attribution under AMIT Regime – Member objections

If the Fund is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Fund or a Class (where the Responsible Entity has made an AMIT Class Election for the Fund) to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

- (a) the Member or former Member must:
 - (i) provide the Responsible Entity with a copy of the objection notice including the basis for objection, within the time the Member is required to do so under the Tax Act for the objection to be effective;
 - (ii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Member's or former Member's objection or proposed objection;
 - (iii) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection. This paragraph (iii) does not limit the Responsible Entity's other rights to indemnification under this constitution;
- (b) the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members or former Members of the Fund to be protected, including in dealings with the Commissioner of Taxation; and
- (c) the Responsible Entity may amend its attribution of Determined Trust Components to Members or former Members based on the Responsible Entity's determination of what attribution is appropriate, and take such actions as the Responsible Entity determines are necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Members or former Members.

14.18 AMIT Regime Unders/Overs

For any Financial Year that is an AMIT Income Year, the Responsible Entity may determine how any Unders or Overs that arise for the Fund are to be dealt with in accordance with the AMIT Regime. The Responsible Entity is not liable to any Member or former Member with respect to how it addresses any Unders or Overs, provided that the Responsible Entity addresses the Unders or Overs in accordance with the AMIT Regime, and irrespective of whether the choices made result in an attribution outcome for a Member or former Member that is different from the attribution outcome if the Responsible Entity had not made the choice, or had made the choice differently.

14.19 Availability of reinvestment

The Responsible Entity may decide whether to permit the Members to reinvest some or all of any distribution.

14.20 Terms of reinvestment

If the Responsible Entity decides to permit reinvestment of some or all of the distribution, it must notify Members of the procedure and terms for reinvestment and any change in the procedure or terms.

14.21 Issue date

If reinvestment applies to the share of Distributable Income on any Unit held by a Member at the end of a Distribution Period or any part of that share, the Responsible Entity is taken to have received and Accepted an application to reinvest that share of Distributable Income on the day that the distribution is made under clause 14.9. The new Units are issued at the time of that Acceptance.

14.22 Fund taxed as company⁵⁰

If the Fund is to be taxed as if it were a company, whether because it is or becomes a public trading trust for the purposes of Division 6C of Part III of the Tax Act or otherwise, the following provisions of this clause 14.22 apply and clauses 14.1 to 14.13 do not apply. If this clause 14.22 applies:

- (a) as soon as practicable after the end of the Financial Year the Responsible Entity must determine the income of the Fund in respect of the Financial Year, for each of taxation purposes and accounting purposes (which may be different amounts);
- (b) the Responsible Entity must provide for, and pay from the Assets of the Fund when appropriate, all taxation attributable to the income of the Fund;
- (c) the Members will not have a present entitlement at the end of a Distribution Period to the net income of the Fund;
- (d) the Responsible Entity may from time to time, including during the Financial Year, determine to pay distributions in respect of the Financial Year (each a "**Distributable Amount**") to the Members on the Register on any date determined by the Responsible Entity ("**Books Closing Date**");
- (e) in respect of a Distributable Amount being paid to Members under this clause 14.22:
 - (i) the Responsible Entity may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and

⁵⁰It is suggested that this clause be excluded unless needed for the particular fund, as it may run the risk of the Fund not being a fixed trust for tax purposes.

- (ii) the Responsible Entity must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies; and
- (f) subject to any rights attaching to any Unit, a Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

- A** = the aggregate of the number of Units held by the Member at the Books Closing Date;
- B** = the aggregate of the number of Units in issue at the Books Closing Date; and
- C** = the Distributable Amount.

14.23 Liability

To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 14 or under the AMIT Regime in respect of an AMIT Income Year, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

14.24 Other distributions

The Responsible Entity may at any time:

- (a) distribute any amount of capital to Members pro rata according to the number of Units they hold as at a time decided by the Responsible Entity; or.
- (b) distribute any amount of income to Members pro rata according to the number of Units they hold as at a time decided by the Responsible Entity.

The distribution may be in cash or by way of additional Units or a transfer of Assets under clause 15.5. The distribution must be paid as soon as is reasonably practicable.

14.25 Member may direct

The Responsible Entity may act on a direction given by a Member in such form as the Responsible Entity requires to pay to a third party nominated in the direction all or part of the Member's entitlement to distributions of income and capital under this clause 14 or under clause 26 on winding up.

14.26 Classes

The rights of a Member under this clause 14 are subject to the rights, obligations and restrictions attaching to any particular Unit or the Class of Units which they hold.

14.27 Former Members

For the purposes of clauses 14.15 to 14.18, and notwithstanding clause 1.1, references to a "Member" or "Members" (other than in this clause 14.27) are taken to include former Members who were Members of the Fund during the relevant AMIT Income Year or, as appropriate, during an earlier AMIT Income Year. This clause 14.27 does not affect the interpretation of any clause of this constitution other than clauses 14.15 to 14.18.

15 Payments

15.1 Payment method

Money payable by the Responsible Entity to a Relevant Security Holder may be paid in any manner the Responsible Entity decides.

15.2 Cheques

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

15.3 Electronic transfers

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

15.4 Rounding

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

15.5 Transfer of Assets

The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, in payment of a distribution of income or capital, amounts owing under a buyback or as part of the winding up of the Fund or any other amounts owing to the Member in respect of the Fund, either:

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

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions). If paragraph (a) of this clause 15.5 applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

For the purposes of this clause 15.5, the Responsible Entity will be taken to have transferred Assets to a Member or former Member where the Responsible Entity has done everything reasonably necessary on its part to convey the Assets to the Member or former Member and where the Assets to be transferred include Securities in a company or other entity, each Member will be taken to have consented to become a member of the relevant company or other entity.

15.6 Joint Relevant Security Holders

A payment to any one of joint Relevant Security Holders will discharge the Responsible Entity in respect of the payment.

15.7 Deduction of Tax or amounts owing

The Responsible Entity may deduct from any amount to be paid to a Relevant Security Holder, or received from a Relevant Security Holder, any amount of Tax (or an estimate of it) or any other amount owed by the Relevant Security Holder to the Responsible Entity or any other person

which the Responsible Entity is required or authorised to deduct by law or by this constitution or which the Responsible Entity considers should be deducted, including under clauses 14.17(a)(iii), 23.3 or 23.4.

16 Powers of the Responsible Entity

16.1 General powers

- (a) Subject to this constitution, the Responsible Entity has all the legal capacity and powers both inside and outside Australia in respect of the Fund that it is possible under the law to confer on a trustee and as though the Responsible Entity were an individual who is the absolute owner of the Assets acting in their personal capacity.
- (b) Except as provided in clause 13, the Responsible Entity is not, and nothing in this constitution entitles the Responsible Entity to act as, the agent of any Member or Members. This is so despite any directions or instructions the Member or Members may give or may be entitled to give to the Responsible Entity.

16.2 Contracting and borrowing powers⁵¹

Without limiting clause 16.1, the Responsible Entity in its capacity as trustee of the Fund has power to enter into any form of contract and to incur all types of obligations and liabilities including:

- (a) to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities) including to issue Financial Instruments;
- (b) to grant all types of security (whether for the obligations of the Responsible Entity or another person);
- (c) to grant guarantees and indemnities; and
- (d) to enter into derivatives.

16.3 Investment and lending powers

Without limiting clause 16.1, the Responsible Entity may in its capacity as trustee of the Fund invest in, dispose of or otherwise deal with property and rights in its absolute discretion. This includes the power to:

- (a) invest the whole or part of the Assets in a single type of asset, or in trusts managed or controlled by the Responsible Entity or its related body corporate, or such other investments as the Responsible Entity determines; and
- (b) lend money and on-lend or provide financial accommodation to any person.

16.4 Power of delegation⁵²

The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.

⁵¹Required to be included by Section 601GA(3).

⁵²See also Section 601FB.

16.5 Terms of delegation

The Responsible Entity may include provisions in the authorisation to protect and assist those dealing with the agent or delegate and to limit the Responsible Entity's liability, as the Responsible Entity thinks fit.

16.6 Delegate may be an associate

The agent or delegate may be an associate of the Responsible Entity.⁵³

16.7 Exercise of discretion

Subject to this constitution, the Responsible Entity may in its absolute discretion decide how, when and how often to exercise its powers.

16.8 Underwriting

Subject to the Corporations Act, the Responsible Entity may enter into an agreement with a person (including an associate of the Responsible Entity) to underwrite the subscription or purchase of Units, Options or Financial Instruments or to manage the offer of Units, Options or Financial Instruments on such terms as the Responsible Entity determines. Unless the agreement expressly states otherwise, the underwriter or offer manager will not be an agent or delegate of the Responsible Entity.

16.9 Rights and powers in relation to the AMIT Regime

- (a) Without limiting clause 16.1, the Responsible Entity has, in addition to its other rights and powers provided for under this constitution and at law:
 - (i) the power to make an election to determine that the Fund is an AMIT;
 - (ii) the power to make an AMIT Class Election; and
 - (iii) all of the powers and rights which are necessary for or desirable, and may take any steps necessary to enable the Fund to be able to be operated as an AMIT, including:
 - (A) being eligible to apply the AMIT Regime;
 - (B) complying with the requirements of the AMIT Regime;
 - (C) being properly administered and operated under the AMIT Regime; and
 - (D) maintaining equity between the Members as a result of the operation of the AMIT Regime.
- (b) If the Fund is not an AMIT for a Financial Year but the Responsible Entity purports to exercise a power in the reasonable belief that the Fund will or will not be an AMIT for the Financial Year, then the following provisions apply in respect of the exercise of the relevant power:
 - (i) the exercise of the powers by the Responsible Entity will, to the maximum extent possible be treated as a proper exercise of the Responsible Entity's powers under this constitution and the Corporations Act (if applicable) and otherwise at law and binding on Members; and
 - (ii) to the extent that any of these powers depends, for its operation, on the Fund being or not being an AMIT for the Financial Year, the Fund will be treated as if it were or were not (respectively) an AMIT for the purposes of that power.

⁵³Subject to Part 5C.7.

- (c) In circumstances where the Fund is not or ceases to be a Registered Scheme, the Responsible Entity must only exercise the powers and discretions set out in this constitution in an AMIT Income Year in such a way to ensure that the rights of each Member under this constitution are clearly defined for the purposes of the AMIT Regime.

16.10 Listing

For the avoidance of doubt, and without limiting clause 16, the Responsible Entity's powers include the power to apply for listing of the Fund, and quotation of the Units (and, while Stapling applies, quotation of Stapled Securities), Options or Financial Instruments (or any other financial product), on any securities exchange, including the ASX, and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Relevant Security Holder as the Relevant Security Holder's agent or attorney to do all things necessary to effect a listing and quotation.

17 Retirement of Responsible Entity⁵⁴

17.1 While a Registered Scheme

While the Fund is a Registered Scheme, the Responsible Entity:

- (a) may retire as the responsible entity of the Fund as permitted by law;⁵⁵ and
- (b) must retire as the responsible entity of the Fund when required by law.

Subject to the Corporations Act, the Responsible Entity may appoint in writing, or propose the appointment of, another person to be the Responsible Entity.

17.2 While not a Registered Scheme

While the Fund is not a Registered Scheme, the Responsible Entity:

- (a) may retire as the trustee of the Fund on not less than 1 month's notice to Members (or any shorter period as they agree); and
- (b) must retire as the trustee of the Fund if required by law or by all Members.

On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.⁵⁶

17.3 New Responsible Entity

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

17.4 Release

When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.⁵⁷

18 Notices to Relevant Security Holders⁵⁸

18.1 Notice

Subject to the Corporations Act, a notice or other communication required to be given to a Relevant Security Holder in connection with the Fund must be given in writing (including by fax or

⁵⁴Refer to Listing rule 3.16.2(a).

⁵⁵See section 601FL. The change does not take effect until the ASIC alters its records: section 601FJ.

⁵⁶See section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

⁵⁷See section 601FR for the Responsible Entity's obligation to transfer records, etc. Section 601FS restricts this release.

⁵⁸While Units are Officially Quoted, notices to Members must be copied to ASX - refer to Listing Rule 3.17.

email) or in such other manner as the Responsible Entity determines, and be delivered or sent to the Relevant Security Holder at their physical or electronic address last advised to the Responsible Entity for delivery of notices.

18.2 Cheques

A cheque payable to a Relevant Security Holder may be posted to their physical address or handed to them or a person authorised in writing by them.⁵⁹

18.3 Joint Relevant Security Holders

In the case of joint Relevant Security Holders, their physical or electronic address means the physical or electronic address of the Relevant Security Holder first named in the Register.

18.4 When notice received

Subject to the Corporations Act,⁶⁰ a notice or other communication sent to a Relevant Security Holder:

- (a) by post is taken to be received on the Business Day after it is posted;
- (b) by fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine; and
- (c) by email is taken to be received 1 hour after it is sent if the sender has not received a notice of non-delivery.

A cheque is taken to be received on the Business Day after it is posted. Proof of actual receipt is not required. The Responsible Entity may determine⁶¹ the time at which other forms of communication will be taken to be received.

19 Notices to the Responsible Entity

19.1 Form of notice

A notice required under this constitution to be given to the Responsible Entity must be given in writing (including by fax), or in such other manner as the Responsible Entity determines.

19.2 When notice received

A notice to the Responsible Entity is effective only at the time of receipt in legible form.

19.3 Signature

The notice must bear the actual, facsimile or electronic signature of the Relevant Security Holder or their duly authorised officer or representative,⁶² unless the Responsible Entity dispenses with this requirement.

20 Meetings of Members

20.1 Convening of meetings

The Responsible Entity may at any time convene a meeting of Members, and must do so if required by the Corporations Act.⁶³

⁵⁹See clause 21.3(c).

⁶⁰See section 601FC(1)(d).

⁶¹See section 252G(4).

⁶²See clause 21.3(c).

⁶³Refer to Part 2G.4.

20.2 Members' request for meeting - not Registered Scheme

While the Fund is not a Registered Scheme:

- (a) the Responsible Entity must call and arrange to hold a meeting of Members to consider and vote on a proposed Resolution on the request of Members with at least 15% of the votes that may be cast on the resolution; and
- (b) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in sub-paragraph (a) as if the Fund were a Registered Scheme.

20.3 Members' request for meeting - Registered Scheme

While the Fund is a Registered Scheme, the provisions of the Corporations Act⁶⁴ apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

20.4 Notice period

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

20.5 Notice while Registered Scheme

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

20.6 Responsible Entity may determine

Subject to this clause 20, the Corporations Act⁶⁵ and the Listing Rules, the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted including a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.⁶⁶

20.7 Quorum

- (a) Subject to clause 20.7(c), the quorum for a meeting of Members is at least 3 Members present in person or by proxy.
- (b) If one or more of those Members is excluded from voting on any Resolution proposed at the meeting they may still be counted towards the quorum.
- (c) If the Fund has only one Member, that one Member may appoint two proxies⁶⁷ each to exercise a proportion of the Member's votes at the meeting, and those 2 proxies will constitute a quorum.
- (d) A Member placing a Direct Vote under clause 20.24(a) is not taken into account in determining whether or not there is a quorum at a meeting of Members.

20.8 No quorum

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

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

⁶⁴Section 252B.

⁶⁵Refer to Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 31 - Restricted securities.

⁶⁶Refer to Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

⁶⁷Section 252V(3) allows 2 proxies.

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

20.9 Chairman

Subject to the Corporations Act,⁶⁸ the Responsible Entity may appoint a person to chair a meeting of Members.

20.10 Conduct of meeting

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

20.11 Adjournment

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

20.12 Postponement or cancellation

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

20.13 Voting - not a Registered Scheme

- (a) While the Fund is not a Registered Scheme, voting is by a show of hands, unless a poll is duly demanded or the Resolution proposed is required by this constitution or by law to be decided by a percentage of all Units.
- (b) Subject to any regulations, rules and procedures prescribed by the Responsible Entity pursuant to clause 20.24(b):
 - (i) on a show of hands, each Member present in person or by proxy has one vote and a Direct Vote is not counted; and
 - (ii) on a poll, each Member present in person, by proxy or who has duly lodged a valid Direct Vote in respect of the relevant Resolution (if a determination has been made by the Responsible Entity in accordance with clause 20.24(a)), has one vote for each Unit held.
- (c) In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees.

20.14 Voting - Registered Scheme

While the Fund is a Registered Scheme, subject to clauses 20.17, 20.25 and 20.27 and any rules prescribed by the Responsible Entity pursuant to clause 20.24(b), the provisions of the Corporations Act governing voting for meetings of members of Registered Schemes apply to the Fund.

20.15 Proxies

Subject to clause 20.16, the provisions of the Corporations Act governing proxies for meetings of members of Registered Schemes apply to the Fund.⁶⁹

20.16 Validity of proxy

The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.⁷⁰

⁶⁸Refer to Part 2G.4, in particular section 252S.

⁶⁹This provision is included for completeness - while the Fund is a Registered Scheme the law operates of its own force.

⁷⁰Section 252Y(1) specifies the information which is normally to be included in an appointment of a proxy.

20.17 Demand for a poll

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

20.18 Resolutions binding

A Resolution by:

- (a) Members binds all Members; or
- (b) Members of a Class, binds all Members of that Class,

whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

20.19 Objection at meeting

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

20.20 Non-receipt

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

20.21 Option Holders and Financial Instrument Holders

Clauses 20.1 to 20.20 apply to meetings of Option Holders and Financial Instrument Holders with any necessary modifications.

20.22 Class meetings

Subject to the Corporations Act, the provisions of this constitution relating to meetings of Members apply so far as they are capable of application to a meeting of a Class of Members.

20.23 Meetings while Stapling applies

While Stapling applies:

- (a) representatives of the Stapled Entities may attend and speak at any meeting and may invite any other person to attend and speak; and
- (b) to the extent permitted by law, meetings may be held in conjunction with meetings of the holders of the Attached Securities and the Responsible Entity may make such rules for the conduct of these meetings as the Responsible Entity determines.

20.24 Direct voting

- (a) The Responsible Entity may determine that at any meeting of Members or at any meeting of Members holding Units of a Class, a Member who is entitled to attend and vote on a Resolution at that meeting is entitled to a Direct Vote in respect of that Resolution.
- (b) The Responsible Entity may, subject to this Constitution, prescribe regulations, rules and procedures in relation to the giving of Direct Votes (including specifying the form, method and timing of giving a Direct Vote at or for the purposes of a meeting in order for the vote to be valid) and for revoking a Direct Vote. Without limitation, such regulations, rules and procedures may permit a Member to give a Direct Vote prior to the relevant meeting. The Responsible Entity must specify in the notice of meeting, or in any document accompanying the notice of meeting or otherwise made available to Members for the purpose of the meeting, the form, method and timing of giving a Direct Vote in order for the Direct Vote to be valid.

20.25 Form of Direct Votes

- (a) If sent by post or fax, a Direct Vote must be signed by the Member or properly authorised attorney or, if the Member is a company, either under seal or by a duly authorised officer or attorney.
- (b) If sent or lodged electronically, a Direct Vote is taken to have been signed if it has been signed or authorised by the Member in the manner approved by the Responsible Entity or specified in the notice of meeting.
- (c) Subject to the Corporations Act, the Responsible Entity may determine the time it must receive at its registered office or at such other electronic address or by such other electronic means specified for that purpose in the notice of meeting:
 - (i) the Direct Vote; and
 - (ii) if relevant, any authority or power under which the Direct Vote was signed or a certified copy of that power or authority if not already lodged with the Responsible Entity.
- (d) A notice of voting intention is valid if it contains the following information:
 - (i) the Member's name and address or any applicable identifying notations approved by the Responsible Entity or specified in the notice of meeting; and
 - (ii) the Member's voting intention on any or all of the Resolutions to be put before the meeting, in respect of which meeting a determination has been made by the Responsible Entity in accordance with clause 20.24(a).

20.26 Treatment of Direct Votes

- (a) A Direct Vote on a Resolution at a meeting in respect of a Unit cast in accordance with clause 20.24(a) is of no effect and will be disregarded if:
 - (i) at the time of the Resolution, the person who cast the Direct Vote would not be entitled to vote on the Resolution in respect of the Unit;
 - (ii) at the time of the Resolution, the person who cast the Direct Vote 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;
 - (iii) had the vote been cast in person at the meeting at which the Resolution is considered the vote would not be valid; or
 - (iv) had the vote been cast in person at the meeting at which the Resolution is considered the Responsible Entity would be obliged to disregard the vote.
- (b) A Direct Vote on a Resolution at a meeting in respect of a Unit cast in accordance with clause 20.24(a) is valid and will not be revoked if a Member who cast the Direct Vote attends the meeting, unless the Member instructs the Responsible Entity (or at the Responsible Entity's instruction, the Trust's securities registry) prior to the meeting that the Member wishes to vote in person on any or all of the Resolutions to be put before the meeting, in which case the Direct Vote by the Member is revoked.
- (c) A Direct Vote on a Resolution at a meeting in respect of a Unit cast in accordance with clause 20.24(a) is valid and will not be revoked even if prior to the vote being counted:
 - (i) the Member becomes of unsound mind or dies;
 - (ii) subject to clause 20.26(b), the Member wishes to change their vote; or

- (iii) where the Direct Vote is given on behalf of the Member by an attorney, the appointment of the attorney or the authority under which the appointment was made is revoked,

in each case, if no notice in writing of the relevant event has been received by the Responsible Entity at its registered office at least 48 hours (or any shorter period as the Responsible Entity may permit or specified by the Corporations Act) before the commencement of the meeting or adjourned meeting to which the Direct Vote relates.

20.27 Multiple votes

- (a) A Direct Vote by a Member is automatically revoked if:
 - (i) the Responsible Entity receives a further valid Direct Vote from the Member; or
 - (ii) after the Direct Vote is received, the Responsible Entity receives a valid proxy appointment in respect of that Member for the relevant meeting.
- (b) A Direct Vote by a Member revokes the authority of a previously provided proxy appointment, power of attorney or other relevant instrument of appointment in respect of that Member for the relevant meeting.

21 Rights and liabilities of Responsible Entity

21.1 Holding Units

The Responsible Entity and its associates may hold Units in the Fund, or interests in any trust or company which is an associate of any of them, in any capacity.⁷¹

21.2 Other capacities

Subject to the Corporations Act,⁷² the Responsible Entity (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Fund or in another capacity), its associates or with any Member, including to engage any of its associates to provide services to the Responsible Entity;
- (b) be interested in any contract or transaction with itself (as trustee of the Fund or in another capacity), its associates or with any Member or any other person; and
- (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust,

and retain for its own benefit any profits or benefits derived from any of these acts, dealings, relationships, capacities, contracts or transactions.

21.3 Responsible Entity may rely

The Responsible Entity may take and may act on:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Responsible Entity, in relation to applicable law or the interpretation of this constitution or any other document or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are believed by the

⁷¹See section 601FG, section 253E and Part 5C.7.

⁷²Refer to Part 5C.7, and see also Listing Rule 10.1.

Responsible Entity in good faith to be expert in relation to the matters on which they are consulted;

- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Relevant Security Holder of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Responsible Entity in connection with the Fund on which it is reasonable for the Responsible Entity to rely,

and the Responsible Entity will not be liable for anything done or omitted by it in good faith in reliance on any opinion, advice, statement, information or document.

22 Limitation of liability and indemnity in favour of Responsible Entity

22.1 Limitation on Responsible Entity's liability

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

22.2 Liability while Fund is not a Registered Scheme

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

22.3 Liability limited to Assets

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

22.4 Indemnity in favour of Responsible Entity

The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in relation to the proper performance of its duties, whether incurred by exercise of its powers under this constitution or by any other act, omission or circumstance.⁷³

22.5 Liability for agents

To the extent permitted by the Corporations Act,⁷⁴ and otherwise without limitation, the indemnity under clause 22.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.

22.6 Indemnity continues

The indemnity in clause 22.4 is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as trustee of the Fund.

22.7 Right of indemnity not affected by unrelated breach

Where a Liability is incurred by the Responsible Entity in relation to the proper performance of its duties, whether incurred by exercise of its powers under this constitution or by any other act, omission or circumstance, the Responsible Entity may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor or the Responsible

⁷³See section 601GA(2).

⁷⁴See sections 601FB(2) and 601GA(2).

Entity (in its capacity as trustee or responsible entity of the Fund), despite any loss the Fund may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Responsible Entity or by any person or entity acting on behalf of the Responsible Entity.

22.8 Limitation of liability for AMIT Regime powers

Without limiting any other provision of this clause 22, to the maximum extent permitted by law but subject to the Corporations Act while the Fund is a Registered Scheme, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage:

- (a) as a result of the exercise of any discretion or power under clauses 14.15 to 14.18 and 16.9 or under the AMIT Regime;
- (b) in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax; or
- (c) as a result of any act, matter or thing done or omitted to be done by a Member or former Member in relation to an objection to the basis of attribution of the Trust Components under the AMIT Regime, including by the Member or former Member making a Member Objection Choice.

23 Liability of Relevant Security Holders

23.1 Liability limited

Subject to clauses 23.3 and 23.6, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

23.2 Member need not indemnify

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

23.3 Tax or User Pays Fees

The Responsible Entity is entitled to be indemnified by a present or former Relevant Security Holder to the extent that the Responsible Entity incurs any liability for Tax or User Pays Fees as a result of:

- (a) that person's action or inaction; or
- (b) an act or omission requested by that person ; or
- (c) any other matter arising in connection with Relevant Securities held by that person,

but, in the absence of a separate agreement with the Relevant Security Holder, is not otherwise entitled to be indemnified by them.

23.4 AMIT indemnity

Without limiting clause 14.17(a)(iii) or 23.3, the Responsible Entity is entitled to be indemnified by a Member or former Member for:

- (a) any Tax (or an estimate of it) payable by the Responsible Entity under or in connection with the AMIT Regime and which the Responsible Entity determines is properly referable to the Member or former Member; and

- (b) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member or former Member under clause 22.4 in the circumstances contemplated in clause 23.4(a).

23.5 Joint Relevant Security Holders

Joint Relevant Security Holders are jointly and severally liable in respect of all payments, including payments of Tax and User Pays Fees to which clause 23.3 applies.

23.6 Recourse

In the absence of separate agreement with a Relevant Security Holder, the recourse of the Responsible Entity or any creditor, and any person claiming through them, is limited to the Assets.

23.7 Restrictions

a Relevant Security Holder:

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

24 Remuneration and expenses of Responsible Entity

24.1 Fees payable from the Assets

The Management Fee is payable to the Responsible Entity out of the Assets.

24.2 Fees subject to Corporations Act

While the Fund is a Registered Scheme, the Management Fee may only be paid to the Responsible Entity to the extent they are payable in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Fund.⁷⁵

24.3 Management fee

- (a) The Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each month a monthly management fee ("**Management Fee**") equivalent to 0.24% per annum of the sum of the Gross Value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee, in respect of the operation and administration of the Fund for that prior month.
- (b) In relation to the month in which the Fund is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month.
- (c) Where the Management Fee was not paid for a particular month or part month or not in full, the Management Fee payable in a subsequent month will be the aggregate of the Management Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid, with the final payment to be prorated if such payment is for a period less than a full month.
- (d) The Management Fee is payable first out of income of the Fund and then out of capital.

⁷⁵See section 601GA(2) and ASIC RG 134.122.

24.4 Deferral and waiver of fees

The Responsible Entity may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period and may also charge variable fees:

- (a) while the Fund is a Registered Scheme, in relation to any Class or Members generally, if and to the extent permitted by the Corporations Act (including the conditions of any applicable ASIC Relief), based on bands, tiers or other criteria nominated in the relief instrument or by the Responsible Entity; or
- (b) while the Fund is not a Registered Scheme, in relation to any Member.

If payment is deferred, the relevant fee accrues until paid.

24.5 Expenses

All expenses incurred by the Responsible Entity in connection with the Fund are payable or reimburseable out of the Assets or out of the assets of a controlled sub trust of the Fund, but while the Fund is a Registered Scheme reimbursement or payment is only available in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Fund⁷⁶ and is reimburseable out of the Assets (or the assets of the sub trust as the case may be) to the extent that reimbursement is not prohibited or prevented by the Corporations Act.

This includes the expenses connected with the following:

- (a) this constitution, the formation of the Fund and any investment vehicle in which the Fund expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
- (b) registration of the Fund as a Registered Scheme;
- (c) the preparation, review, distribution and promotion of any product disclosure statement, offering memorandum or other disclosure document in respect of Relevant Securities or other promotion of the Fund;
- (d) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
- (e) any proposed acquisition, disposal or other dealing with any investment;
- (f) borrowing arrangements and raising money on behalf of the Fund or guarantees in connection with the Fund, including hedging costs, and costs relating to interest rate swaps or any gearing facility;
- (g) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management, supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Fund has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (h) the services of asset managers, property managers, development managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any real property in which the Fund has a direct or indirect interest, which may include an associate of the Responsible Entity;
- (i) the Investment Management Agreement including base management or performance fees and expenses payable to the Manager;

⁷⁶Refer to section 601GA(2)(b).

- (j) rates, development, repair, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants, costs of leasing (including marketing) and leasing incentives in relation to any real property in which the Fund has a direct or indirect interest;
- (k) travel and accommodation expenses of directors and employees of the Responsible Entity in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed Asset;
- (l) the administration or management of the Fund or its Assets and Liabilities, including expenses in connection with maintaining the Register and dealings with Relevant Securities;
- (m) costs of the admission of the Fund to the Official List and compliance with the Listing Rules;
- (n) underwriting or managing any subscription or purchase of Relevant Securities, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under such agreement;
- (o) convening and holding meetings of Relevant Security Holders, the implementation of any Resolutions and communications with Relevant Security Holders;
- (p) Tax (including any amount charged by a person making a supply to the Responsible Entity by way of or as a reimbursement for GST), costs incurred in the implementation and application of the AMIT Regime, and financial institution fees;
- (q) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (r) accounting and compliance with taxation laws and procedures (whether internal expenses of the Responsible Entity or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Fund;
- (s) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (t) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph must be repaid;
- (u) all damages, expenses, payments, legal and other costs and disbursements incurred by the Responsible Entity in relation to or in connection with any claim, dispute or litigation ("**Claim**") arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Fund including any project document in connection with the investment and any offering document or borrowing document in connection with the Fund except where the Claim arises out of the fraud or wilful default of the Responsible Entity;

- (v) any compliance committee established by the Responsible Entity in connection with the Fund, including any fees paid to or insurance premiums⁷⁷ in respect of Compliance Committee Members;
- (w) while the Fund is a Registered Scheme and there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (x) fees payable to any audit committee for the Fund appointed in accordance with ASX corporate governance guidelines or otherwise;
- (y) the preparation, implementation, amendment and audit of the compliance plan;
- (z) the cost of handling complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution scheme;
- (aa) the cost of the Responsible Entity employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Fund;
- (bb) complying with any law, and any request or requirement of ASIC or ASX; and
- (cc) in connection with any CCIV Proposal, Top Hat Proposal, Exchange Proposal or any other Reorganisation Proposal.

In this clause 24, "expenses" includes amounts paid by the Responsible Entity to related bodies corporate for services where the expenses would have been reimburseable had they been incurred by the Responsible Entity. Where Stapling applies, without limiting clause 24.5, the Responsible Entity may pay or reimburse expenses that are incurred by or in connection with Stapled Entities or are incurred by the Responsible Entity jointly with Stapled Entities.

24.6 GST

Except where stated otherwise, all amounts in this constitution do not include any amount payable on account of GST. If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this constitution then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount on account of GST. This amount is to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST.

In relation to fees that are expressed as GST inclusive in this constitution, this clause applies only to the extent to which there has been an increase in the rate of GST so that the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure and multiplying it by the prevailing rate of GST.

24.7 Input tax credits

If the Responsible Entity is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Responsible Entity is entitled to recover from the Fund by way of reimbursement an additional amount equivalent to the amount of the input tax.

⁷⁷See section 601JG.

24.8 Amendment of certain provisions is contemplated

Without limiting clause 27, the Responsible Entity has power to amend any part of this clause 24 with the effect of increasing or decreasing any amount of fees due to it, or introducing new types of fees, or to otherwise amend, delete or replace any of the provisions of this clause 24 if:

- (a) while the Fund is a Registered Scheme, the Responsible Entity complies with any applicable requirements of the Corporations Act relating to:
 - (i) amending the constitution of a Registered Scheme,⁷⁸ and
 - (ii) increasing fees or charges in relation to a Registered Scheme;⁷⁹ or
- (b) while the Fund is not a Registered Scheme, the Responsible Entity obtains the written consent of the sole Member or, if there is more than one Member, gives at least 5 Business Days' prior notice to Members of the amendment or complies with clause 27.2.

24.9 Issue of Units in payment of fees, expenses or other debts

- (a) The Responsible Entity may issue Units in such Class determined by the Responsible Entity to any person (including an associated entity of the Responsible Entity) instead of cash in payment of any fees, expenses or other debts owed to that person.
- (b) The Responsible Entity may elect to be issued Units in such Class determined by the Responsible Entity instead of cash in payment of any of its fees or payment or reimbursement of its expenses under this constitution.

25 Duration of the Fund

25.1 Initial settlement

The Fund commences when an initial person nominated by the Responsible Entity subscribes at least \$1.60 for an ordinary Unit in the Fund. The Responsible Entity's nominee must be issued with one (1) ordinary Unit in return for each \$1.60 of that payment.

25.2 Termination

The Fund terminates on the earliest of:

- (a) while the Fund is a Registered Scheme;
 - (i) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
 - (ii) a date determined by the Responsible Entity and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
- (b) while the Fund is not a Registered Scheme, a date determined by the Responsible Entity and specified in a notice to Members sent at least 1 month before the proposed termination, unless all Members consent to shorter notice; and
- (c) the date on which the Fund terminates in accordance with clause 25.3, clause 11.19, any other provision of this constitution, or by law.⁸⁰

25.3 Change in taxation

If at any time legislation is enacted the result of which is that the Responsible Entity is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on

⁷⁸Section 601GC.

⁷⁹Section 1017B(4).

⁸⁰See Part 5C.9 on winding up.

the income of the Fund other than income not distributed to Members, the Responsible Entity may call a meeting of the Members to consider winding up the Fund and if by special resolution the meeting so decides, the Responsible Entity may wind up the Fund.

25.4 Restriction on issue and redemption of Units

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

26 Procedure on termination

26.1 Realisation of Assets and payment of expenses

Following termination, the Responsible Entity must:

- (a) realise the Assets except to the extent it determines to distribute Assets to Members in accordance with clause 15.5 pro rata according to their holding of Units as part of winding up of the Fund; and
- (b) make payments (or set aside estimated amounts) from the Assets to pay the Fund's expenses and liabilities, and the costs or anticipated costs of winding up the Fund. These amounts will reduce the proceeds of winding up that a Member may otherwise receive, but a Member is not required to pay any of these amounts from their own funds.⁸¹

To the extent that realisation of Assets is required, this must be completed in (i) 180 days if practical and in any event as soon as possible after that; or (ii) two years after the Initial Liquidity Date or Liquidity Date (as applicable) if clause 11.19(c)(ii) or 11.19(e)(ii) applies. The Responsible Entity may, however, postpone realisation of the Assets or any Asset if the Responsible Entity reasonably considers it would be in the best interests of Members to do so and the Responsible Entity is not responsible for any consequent loss or damage attributable to that postponement.

26.2 Auditor and liquidator

- (a) If, at the time it is to be wound up, the Fund is a Registered Scheme, the Responsible Entity must arrange for an independent audit of the final accounts of the Fund by a registered company auditor.⁸²
- (b) If the Fund is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Responsible Entity to meet Liabilities from the Assets as and when they fall due, the Responsible Entity may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the powers of the Responsible Entity under this constitution as necessary to facilitate the winding up.⁸³

26.3 Distribution following termination

Subject to clause 15.5, the net proceeds of realisation, after making allowance for all Liabilities of the Fund (actual and anticipated) including entitlements of Members to a share of Distributable Income, meeting the expenses (including anticipated expenses) of the termination, and taking into account Assets which are to be distributed pro rata to Members as part of the winding up, must be distributed to Members in accordance with the following formula for the amount a particular Member is to receive:

⁸¹ASIC RG 134.192.

⁸²ASIC RG 134.200, 134.201.

⁸³ASIC RG 134.198.

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

Where:

- A** = the amount remaining in the Fund after deduction of the Liabilities and expenses referred to in this clause 26.3;
- B** = the aggregate of the number of Units held by the Member as at termination; and
- C** = the aggregate of the total number of Units in issue as at termination.

The Responsible Entity may distribute any Assets and the net proceeds of realisation in instalments.

26.4 Provisions continue to apply

Subject to the Corporations Act and this constitution, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 26.3, but during that period the Responsible Entity may not:

- (a) accept any applications for Units from a person who is not an existing Member and the Responsible Entity is under no obligation to consider or process redemption requests received after the date of termination; or
- (b) accumulate an amount under clause 14.5(a)(i) for the last Distribution Period of the Fund.

26.5 Notice to Stapled Entities

Where Stapling applies, the Responsible Entity must notify each Stapled Entity of the termination of the Fund at the same time as Members are notified. If a Stapled Entity is terminated or wound up under its constitution or by law, then the provisions of this constitution relating to Stapling will cease to apply to that Stapled Entity.

27 Amendments to this constitution

27.1 Responsible Entity may amend

Subject to the Corporations Act,⁸⁴ while the Fund is a Registered Scheme, this constitution may be amended:

- (a) by Resolution;⁸⁵ or
- (b) by deed executed by the Responsible Entity.

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

27.2 While not a Registered Scheme

While clause 27.1 does not apply, the Responsible Entity may by deed amend this constitution.

27.3 Attribution Managed Investment Trust

Without limiting the Responsible Entity's powers in clauses 27.1 or 27.2, but subject to the Corporations Act, the Responsible Entity may make any change to this constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

⁸⁴See section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with ASIC.

⁸⁵The required majority under section 601GC(1)(a) is 75%.

- (a) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Fund;
- (b) facilitate compliance with the terms of the AMIT Regime in relation to the Fund, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the Responsible Entity or Members;
- (c) facilitate the proper administration and operation of the Fund under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Members that arise under the AMIT Regime; or
- (d) comply with the conditions of any ASIC Relief issued in relation to the AMIT Regime, or facilitate operation of the Fund in reliance on such relief.

28 Regulatory provisions and paramouncy

28.1 Listing Rules⁸⁶

While the Fund is included in the Official List:

- (a) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act will not be done;
- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is taken to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains the provision, this constitution is taken not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.

28.2 Corporations Act and ASIC Relief

- (a) If:
 - (i) the Corporations Act requires that this constitution contain certain provisions, or if ASIC Class Order [CO 13/655] (or any other ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Fund and the Responsible Entity) requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("**Required Provisions**"); or
 - (ii) any part of this constitution (a "**Required Part**") is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX ("**Regulatory Requirement**") and that Regulatory Requirement ceases or changes,
- then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

⁸⁶See ASX Listing Rules Appendix 15A.

- (b) The Members:
 - (i) authorise the Responsible Entity to make the amendments referred to in this clause 28.2 in a deed and, if required, to lodge it with ASIC; and
 - (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

28.3 Application of Corporations Act and Listing Rules

In this constitution:

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

28.4 ASIC Class Orders

In accordance with ASIC Class Order [CO 98/1808]⁸⁷ or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Fund, a change in the text of this constitution because of the operation of clause 28.2 that is covered by the relief instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act⁸⁸. Changes in the text of the constitution to which this clause 28.4 applies are made pursuant to the power in clause 27.1 but in respect of those changes the requirements of clause 27.1 are to be read subject to this clause 28.4.

28.5 Paramountcy of provisions

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

- (a) first, clauses 28.1 and 28.2 and provisions taken to be included or amended under them; and
- (b) then, the Reorganisation Proposals set out in clauses 13.1 to 13.4.

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

29 Compliance committee

While the Fund is a Registered Scheme, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.⁸⁹

30 Complaints

While the Fund is a Registered Scheme, if a Member or former Member submits to the Responsible Entity a Complaint in relation to the Fund, the Responsible Entity:

- (a) must, if the Member or former Member is a Retail Client, comply with the requirements of section 912A(2) of the Corporations Act applicable to the Complaint;⁹⁰ and

⁸⁷This Class Order permits a constitution to include a provision to the effect of Appendix 15A of the Listing Rules, such as clause 28.1 of this constitution. This is sometimes known as the 'listing rules compliance clause'.

⁸⁸This sentence reflects the wording used in ASIC Class Order [CO 98/1808].

⁸⁹See section 601JF.

⁹⁰See ASIC RG 134.135.

- (b) in respect of a Complaint from a Member or former Member who is not a Retail Client:⁹¹
 - (i) must acknowledge receipt of the Complaint as soon as possible and in any event within 14 days from receipt;⁹²
 - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
 - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the Complaint by endeavouring to correct the error;
 - (iv) may give any of the following remedies to the complainant:
 - (A) information and explanation regarding the circumstances giving rise to the Complaint;
 - (B) an apology; or
 - (C) compensation for loss incurred by the Member as a direct result of any breach; and
 - (v) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the Complaint:
 - (A) the determination in relation to the Complaint;
 - (B) any remedies available to the Member; and
 - (C) information regarding any further avenue for Complaint.
- (c) For the purposes of this clause 30, a reference to a Member includes any person who has an "interest" in the Fund as that term is defined in section 9 of the Corporations Act, and any person whose Units have been redeemed under clause 11.15 but who has not yet been paid the Redemption Price of the Units.

31 Restricted Securities

31.1 Disposal of Restricted Securities⁹³

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

31.2 Restriction on distributions and voting rights

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

32 Small holdings

32.1 Application of this clause

This clause 32 applies while the Units are Officially Quoted.

⁹¹The Responsible Entity may treat retail and wholesale clients differently for this purpose – see RG 134.145 and [CO 13/656].

⁹²Australian compliance standard AS ISO 10002 - 2006 was adopted in ASIC RG 165 (for financial services licensees). It states that the provider should "aim" to respond to complaints immediately. The Responsible Entity may wish to include this in their complaints handling policy.

⁹³Listing Rule 15.12 requires a listed entity's constitution to provide for each of the matters set out in clause 31.

32.2 Responsible Entity may sell or redeem

Subject to the provisions of this clause 32, the Responsible Entity may sell or redeem any Units held by a Member without request by the Member where the Units comprise less than a marketable parcel as provided in the Listing Rules. The Responsible Entity may only sell or redeem Units on one occasion in any 12 month period. Subject to clause 32.6, if the Units are redeemed, the Redemption Price must be the amount calculated under clause 10.1.

32.3 Responsible Entity must notify

The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this clause 32, and give the Member at least 6 weeks from the date of the notice in which to notify the Responsible Entity that the Member wishes to retain the Units.

32.4 Timing

The Responsible Entity will not sell or redeem the relevant Units:

- (a) before the expiry of 6 weeks from the date of the notice given by the Responsible Entity under clause 32.3; or
- (b) if, within the 6 weeks allowed by clause 32.4(a):
 - (i) the Member notifies the Responsible Entity that the Member wishes to retain the Units; or
 - (ii) the market value of the Units held by the Member increases to at least a marketable parcel as provided in the Listing Rules.

32.5 Takeover

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

32.6 Costs of sale

The Responsible Entity or the purchaser of the Units must pay the costs of the sale or redemption as the Responsible Entity decides.

32.7 Certificate

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

32.8 Responsible Entity as Member's attorney

To effect the sale or redemption of Units under this clause 32, the Member appoints the Responsible Entity as the Member's attorney to do all acts and things and execute all documents which the Responsible Entity considers necessary, desirable or reasonably incidental or appropriate to effect the sale or redemption of the Units.

33 Security interests

33.1 Responsible Entity determines when clause applies

The Responsible Entity may determine when this clause 33 applies to the Fund and when it ceases to apply. If the Responsible Entity determines that it ceases to apply:

- (a) this clause 33 continues to apply to all Security Interests noted on the Register at the time of that determination; and

- (b) the Responsible Entity must not accept any further notices under clause 33.2 after the time of that determination.

33.2 Form of notice

The Responsible Entity may determine the form of notice which:

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

33.3 Entry of Security Interests on the Register

If a Member or their duly appointed agent gives the Responsible Entity a notice as referred to in clause 33.2(a), the Responsible Entity must cause a note of the Security Interest Holder's interest to be recorded in the Register in respect of the relevant Units.

33.4 Responsible Entity not bound

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

33.5 Removal of Security Interests from the Register

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

33.6 Rights attaching to Units in respect of which a Security Interest is recorded

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

- (a) if the Responsible Entity receives a direction (in such form as the Responsible Entity determines) signed by the Member or their duly appointed agent to the effect that it must pay to the Security Interest Holder any distributions, whether on winding up or otherwise and whether of capital or income, which would, in the absence of such direction have been made or paid to the relevant Member, the Responsible Entity may act on that direction until it is revoked by the Member or their duly appointed agent with the written consent of the Security Interest Holder;
- (b) when acting in good faith, the Responsible Entity is not liable either to the Member or to the Security Interest Holder if a payment made to the Member or Security Interest Holder is not in accordance with clause 33.6(a);
- (c) the Responsible Entity may provide to the Security Interest Holder any notice or information which would normally be provided to the Member; and
- (d) if the Responsible Entity becomes aware that a dispute has arisen between a Member and a Security Interest Holder as to any right to a payment relating to Units in respect of which the Security Interest is noted on the Register, the Responsible Entity may either:
 - (i) pay the disputed amount to the Security Interest Holder; or
 - (ii) pay the disputed amount into any court in which proceedings in relation to the dispute are to be conducted,

and the Responsible Entity will not be liable either to the Member or the Security Interest Holder for any consequences of so doing.

34 Stapling

34.1 Power to Staple

- (a) In addition to any power the Responsible Entity has under clause 16, the Responsible Entity may, subject to the Corporations Act and this clause 34, cause the Stapling of any financial product to any Unit and may cause the Stapling of further financial products to Units whether those financial products are a different class of financial products of a Stapled Entity from those Stapled at the time or financial products of an entity that is not a Stapled Entity.
- (b) Any Stapling referred to in paragraph (a) takes effect from the Stapling Date. The Stapling Provisions take effect on and from the Stapling Date.
- (c) Without limiting clause 16, the Responsible Entity has the power and is authorised to execute all documents and do all things that it considers to be necessary, desirable or reasonably incidental to give effect to the Stapling of any other financial product or financial products to the Units, including consolidating or dividing the Units, without needing further authority or approval of Members.
- (d) The Responsible Entity is irrevocably appointed as the agent and attorney of each Member to execute all documents or do all things which it reasonably considers are necessary or desirable to be done on behalf of Members to give effect to the Stapling, including:
 - (i) making distributions to or on behalf of a Member;
 - (ii) applying for or purchasing Securities on behalf of a Member where those Securities are (or intended to become) Attached Securities;
 - (iii) agreeing to become a member of the company, managed investment scheme or other entity issuing Securities that are (or are intended to become) Attached Securities and consenting to the entry of the name of the Member in the register of members of the entity issuing Securities that are (or are intended to be) Attached Securities; and
 - (iv) so far as permitted by law, supplying any such entity (or their advisers or service providers) with information, notices and elections relating to that Member.
- (e) Subject to their terms of issue, the Responsible Entity is authorised to change the terms of any Option or Financial Instrument to facilitate and take account of Stapling.

34.2 Paramourcy of Stapling Provisions

The Stapling Provisions prevail over all other provisions of this constitution including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Listing Rules or any other law. Any clause of this constitution which is inconsistent with this clause 34 does not operate to the extent of any inconsistency.

34.3 Operation of Stapling Provisions

Clauses 34.4 to 34.8 apply only, and for so long as, a Unit is a component of a Stapled Security.

34.4 Units to be Stapled

- (a) The number of issued Units which are Stapled at any time must equal the number of issued Attached Securities.
- (b) From the Stapling Date and before the Unstapling Date, the Responsible Entity must not issue Units unless satisfied that each of those Units will be Stapled to the same number

of each Attached Security to form a Stapled Security or that those Units will be issued as part of a Capital Reallocation Issue.

- (c) Subject to clause 34.5, the Corporations Act, the Listing Rules and any other applicable law, from the Stapling Date and before the Unstapling Date, the Responsible Entity and the Members must not do anything nor refrain from doing anything if to do so or refrain from doing so would result in any Unit no longer being a component of a Stapled Security (or have the same practical effect). In particular:
- (i) the Responsible Entity must not offer a Unit for subscription or sale (including by way of offering Options or other convertible securities) unless an offer is made at the same time and to the same person for the same number of each Attached Security for issue or sale;
 - (ii) any offer of a Unit for subscription or sale must require the offeree to subscribe for or buy the same number of each Attached Security;
 - (iii) a Member must not sell a Unit to any person unless the same number of each Attached Security is also sold to the same person at the same time;
 - (iv) the Responsible Entity must not issue or sell a Unit to any person unless the same number of each Attached Security is also issued or sold to the same person at the same time;
 - (v) the Responsible Entity must not reorganise, redeem or cancel any Units unless at the same time there is a corresponding reorganisation, redemption or cancellation of all Attached Securities;
 - (vi) the Responsible Entity must not make a call on any amount unpaid on a Unit unless a call is also made on the Attached Security;
 - (vii) the Responsible Entity must not cancel a Member's Unit unless the Attached Security is also cancelled, redeemed or forfeited; and
 - (viii) the Responsible Entity must not register the transmission or transfer of Units unless the same number of each Attached Security is also transmitted or transferred (as the case may be),

but nothing in this clause 34.4 prevents the Responsible Entity from issuing Units as part of a Capital Reallocation Issue.

34.5 Temporary Suspension of Stapling

- (a) The Responsible Entity may determine that Stapling is to be temporarily suspended (a "**Suspension**"). When doing so, the Responsible Entity must also determine the period of the Suspension. The Responsible Entity must procure that the Units and Attached Securities are treated as Unstapled during the Suspension. However, clauses 34.6(b) and 34.6(c) will not apply during the Suspension.
- (b) The Responsible Entity must as soon as possible notify Members of the Suspension, including how long it will last.

34.6 Unstapling

- (a) Once the Units are Stapled to the Attached Securities, subject to clause 34.5, Stapling will continue for so long as the Units are on issue, unless:
 - (i) Members determine otherwise by special resolution;
 - (ii) Stapling becomes unlawful;

- (iii) any of the Stapled Entities becomes insolvent or commences winding up or terminates and the Responsible Entity determines that Stapling should cease; or
 - (iv) the Responsible Entity determines that Stapling is materially adverse to the interests of Members,
- (each an "**Unstapling Event**").
- (b) From the date of an Unstapling Event, the Responsible Entity must do all things reasonably necessary to procure that the Attached Securities are Unstapled.
 - (c) As soon as possible after the date of the Unstapling Event, the Responsible Entity must determine a date from which the Stapling Provisions in this constitution will no longer apply (the "**Unstapling Date**").
 - (d) Nothing in this clause 34.6 prevents the Responsible Entity from subsequently determining that the Stapling Provisions should again apply.

34.7 Consistency with Stapled Entity constitution

The Responsible Entity must use all reasonable endeavours to procure that the Stapled Securities are dealt with under this constitution in a manner consistent with the provisions relating to the Attached Securities in the constitutions of the Stapled Entities.

34.8 Responsible Entity's duties

The Responsible Entity is entitled to have regard to the fact that the Fund is operating with the Stapled Entities as part of a stapled group with common members and with the intention that the economic and other interests of the Fund and the Stapled Entities are aligned. Accordingly, in exercising any power or discretion or in fulfilling any of its obligations the Responsible Entity may, except to the extent prohibited by law or the Listing Rules, have regard to the interests of Members as holders of other Attached Securities and their interest in Stapled Securities as a whole and not only as Members.

34.9 Allocations

The Responsible Entity may agree with the Stapled Entities between them which member of the stapled group will:

- (a) acquire property or undertake activities;
- (b) make investments or derive income; and
- (c) incur Liabilities and expenses.

These allocations may be agreed on an individual basis or by reference to criteria or categories and may extend to entities owned or controlled by the Responsible Entity or Stapled Entities.

35 2020 Restructure

35.1 Power to implement 2020 Restructure

- (a) Each Restructure Member and the Responsible Entity must do all things and execute all deeds, instruments, transfers or other documents as the Responsible Entity considers are necessary or desirable to give full effect to the terms of the 2020 Restructure and the transactions contemplated by it.
- (b) Without limiting the Responsible Entity's other powers under this clause 35, the Responsible Entity has power to do all things that it considers necessary or desirable to give effect to the 2020 Restructure.

- (c) Subject to the Corporations Act, the Responsible Entity, the Fund I RE, the Fund III RE, and any of their respective directors, officers, employees or associates may do any act, matter or thing described in or contemplated by this clause 35 even if they have an interest (financial or otherwise) in the outcome.
- (d) This clause 35:
 - (i) binds the Responsible Entity and all of the Members from time to time (including those who do not attend the Restructure Meeting, those who do not vote at the Restructure Meeting and those who vote against the Restructure Resolutions; and
 - (ii) to the extent of any inconsistency and to the extent permitted by law, overrides the other provisions of this constitution (excluding clause 3).

35.2 Implementation of 2020 Restructure

On the Restructure Date, the Responsible Entity shall implement the following steps in the order set out below, such that each step is only taken after the immediately preceding step is complete:

- (a) **(consolidation)** the Responsible Entity will consolidate, divide or convert (as applicable) the Units on issue, so that the Net Asset Value Per Unit of each Restructure Unit is equal to the net asset value per unit of each of Fund I and Fund III;
- (b) **(promissory notes)** the Responsible Entity will:
 - (i) issue a promissory note with a face value of \$0.34172 to Fund I in consideration for a promissory note of equal value issued to the Responsible Entity by the Fund I RE; and
 - (ii) issue a promissory note with a face value of \$0.34172 to Fund III in consideration for a promissory note of equal value issued to the Responsible Entity by the Fund III RE;
- (c) **(capital distributions)** the Responsible Entity will distribute (by way of a capital distribution) an amount equal to the face value of the promissory notes issued to the Fund under clause 35.2(b) to the Restructure Members (in accordance with clause 34.1(d)(i));
- (d) **(application)** the Responsible Entity will, in its capacity as agent for its Restructure Members:
 - (i) apply for units in Fund I and Fund III on behalf of the Restructure Members and indorse the promissory notes issued by the Fund I RE and the Fund III RE under clause 35.2(b) to the Fund I RE and the Fund III RE to satisfy the application price for these units (in accordance with clause 35.6);
 - (ii) agree to become a member of Fund I and Fund III and consent to the entry of the name of each Restructure Member in the register of members of each of Fund I and Fund III (in accordance with clause 35.6); and
 - (iii) so far as is permitted by law, provide the Fund I RE and the Fund III RE with such information, notices and elections relating to each Restructure Member as may be necessary or desirable (in accordance with clause 35.6); and
- (e) **(issues)** the Responsible Entity will, following receipt of an application for units by the members of Fund I and Fund III, respectively, and the indorsement in its favour of the promissory notes issued to the Fund I RE and the Fund III RE, respectively:
 - (i) issue the Units applied by members of Fund I and Fund III, respectively;

- (ii) update the Register to record that issue of Units applied for by members of Fund I and Fund III, respectively; and
- (iii) cancel the promissory notes issued by the Responsible Entity to the Fund I RE and the Fund III RE, respectively, under clause 35.2(b); and
- (f) **(stapling)** the Responsible Entity will Staple each Unit to one unit in each of Fund I and Fund III to form a Stapled Security by executing a stapling deed.

35.3 Confirmation of Stapled Security holdings

The Restructure Members acknowledge and agree that, within 5 Business Days after the Restructure Date, the Responsible Entity and each of the Fund I RE and the Fund III RE will jointly despatch, or procure the despatch of, holding statements to each Stapled Security Holder.

35.4 Dealings in Units

- (a) For the purpose of establishing the persons who are Restructure Members and the number of Units held by them, the Responsible Entity will only recognise dealings in Units if registrable transfers or transmission applications in respect of those dealings are received by the Registrar by the Business Day before the Restructure Record Date (in which case the Responsible Entity must register such transfer or transmission applications before the Restructure Record Date.
- (b) Immediately after the registration of registrable transfers or transmission applications of the kind referred to in clause 35.4(a), the Registrar will solely determine the persons who are Restructure Members and the number of Restructure Units held by them.
- (c) No Restructure Member (or any person purporting to claim through them) may deal with the Restructure Units in any way during the period on and from the Business Day before the Restructure Record Date to the Business Day immediately after the Restructure Date, and any attempt to do so will have no effect.
- (d) From the Restructure Record Date, all certificates and holding statements (as applicable) for Restructure Units issued on or before the Restructure Record Date will cease to have any effect as evidence of title.

35.5 Covenants by Restructure Members

Each Restructure Member:

- (a) acknowledges that this clause 35 binds all of the Members from time to time (including those who do not attend the Restructure Meeting, do not vote at the Restructure Meeting or vote against the Restructure Resolutions) without the need for any further act by that Restructure Member;
- (b) irrevocably agrees to become a member Fund I and Fund III in accordance with the terms of the 2020 Restructure;
- (c) agrees to the modification or variation (if any) of the rights attaching to their Restructure Units arising from this clause 35;
- (d) irrevocably consents to the Responsible Entity, the Fund I RE, the Fund III RE doing all things and executing all deeds, instruments, application forms or other documents as may be necessary or desirable to give full effect to the terms of the 2020 Restructure and the transactions contemplated by it; and
- (e) without limiting any other provision of this clause 35, agrees to provide to the Responsible Entity with such information as the Responsible Entity may reasonably require to comply

with any law in respect of the 2020 Restructure and the transactions contemplated by this clause 35, including information required to meet obligations under any applicable law.

35.6 Appointment of Responsible Entity as attorney and as agent for implementation of 2020 Restructure

Each Restructure Member, without the need for any further act by that Restructure Member, irrevocably appoints the Responsible Entity as that Restructure Member's attorney and agent for the purposes of doing all things and executing all deeds, instruments, application forms or other documents as may be necessary or desirable to give full effect to the terms of the 2020 Restructure and the transactions contemplated by it, including:

- (a) executing any form of application (including necessary consent) required for the units in Fund I and Fund III to be issued to that Restructure Member in accordance with the 2020 Restructure;
- (b) communicating the Restructure Member's instructions and notifications under clause 35.7,

and the Responsible Entity accepts such appointment. The Responsible Entity, as attorney and as agent of each Restructure Member, may sub-delegate its functions, authorities or powers under this clause 35.6 to all or any of its directors and officers (jointly, severally, or jointly and severally). Each Restructure Member indemnifies the Responsible Entity and each of its directors and officers against all losses, liabilities, charges, costs and expenses arising from the exercise of powers under this clause 35.6.

35.7 Binding instructions or notifications

Any binding instruction or notification between a Restructure Member and the Responsible Entity relating to Restructure Units as at the Restructure Record Date (including, without limitation, any instructions relating to payment of distributions or to communications from the Responsible Entity) will, from the Restructure Record Date, be deemed to be a similarly binding instruction or notification to, and accepted by, each of the Fund I RE and the Fund III RE in respect of units in Fund I and Fund III issued to the Restructure Member pursuant to the 2020 Restructure, until that instruction or notification is revoked or amended in writing addressed to the Registrar.

35.8 Limitation of liability

Without limiting clause 22, subject to the Corporations Act, the Responsible Entity will not have any liability of any nature whatsoever to Members, beyond the extent to which the Responsible Entity is actually indemnified out of the Assets, arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document), matter or thing pursuant to or in connection with the implementation of the 2020 Restructure.

35.9 Responsible Entity's expenses

Without limiting clause 24.5, all expenses incurred by the Responsible Entity in relation to the 2020 Restructure are payable or reimbursable out of the Assets to the extent that such payment or reimbursement is not prohibited by the Corporations Act.

EXECUTED as a deed poll

SIGNED by

Walsh & Company Investments Limited

in accordance with section 127 of the
Corporations Act:

Director

Director

Name (please print)

Name (please print)

Finding list - Corporations Act

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

Corporations Act	Constitution
601GA	
(1)(a)	8.1, 8.9
(1)(b)	16.1, 16.3
(1)(c)	30
(1)(d)	26
(2)	22.4 – 22.7, 24.1 – 24.9
(3)	16.2
(4)(a)	11.2, 11.8, but not a right while listed (11.1)
(4)(b)	11.4, 11.8, 11.14, 10.1 – 10.3
(4)(c)	11.10, 11.14, 11.17, 10.1 – 10.3
601GB	1.4

Finding list - Listing Rules

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

Listing Rules	Constitution
1.1, condition 2	28.1, 28.5
1.1, condition 5	11.1, 11.10 – 11.13, 11.16 – 11.17
15.12.1	31
15.12.2	31
15.12.3	31
15.13	32
15.14	N/A