

Supplemental Deed – Evans & Partners Global Flagship Fund

Dated

2020

Walsh & Company Investments Limited (ACN 152 367 649) in its capacity
as responsible entity of the Evans & Partners Global Flagship Fund
(“**Responsible Entity**”)

King & Wood Mallesons

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Supplemental Deed – Evans & Partners Global Flagship Fund

Details

Responsible Entity	Name	Walsh & Company Investments Limited in its capacity as responsible entity of the Evans & Partners Global Flagship Fund
	ACN	152 367 649
	Address	Level 15, 100 Pacific Highway North Sydney NSW 2060

Recitals	A	The Trust is governed by the Constitution. The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
	B	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution: (a) by special resolution of the members of the scheme; or (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
	C	Under clause 22.1 of the Constitution, the Constitution may be amended by special resolution of Members, or by deed executed by the Responsible Entity if the Responsible Entity reasonably considers the amendments will not adversely affect the rights of Members.
	D	On [<i>insert date</i>] 2020, the Members approved by special resolution the amendments to the Constitution set out in the schedule to this deed.
	E	The Responsible Entity now wishes to, by this deed, give effect to the amendments described in Recital D.

Governing law	New South Wales
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Date of deed	See Signing page
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Supplemental Deed – Evans & Partners Global Flagship Fund

General terms

1 Interpretation

1.1 Definitions

In this deed, these words have the following meanings and any other words and phrases have the meaning given to them in the Constitution unless the contrary intention appears.

Constitution means the document dated 22 June 2018 under which the Trust is governed, as amended from time to time.

Corporations Act means the Corporations Act 2001 (Cth).

Effective Date means the date on which this deed is lodged with the Australian Securities and Investments Commission under section 601GC(2) of the Corporations Act.

Member has the same meaning given under the Constitution.

Trust means the registered managed investment scheme currently named Evans & Partners Global Flagship Fund (ARSN 158 717 072).

1.2 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

1.3 Headings

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

2 Modification of the Constitution

The Constitution is modified with effect from the Effective Date by:

- (a) inserting the words which are underlined; and
 - (b) deleting the text that is shown as crossed out,
- in the copy of the Constitution at Schedule 1 to this deed.

3 No redeclaration etc

The Responsible Entity declares that it is not, by this deed:

- (a) redeclaring, resettling or terminating the Trust;
- (b) declaring any trust; or

(c) causing the transfer, vesting or accruing of property in any person.

4 Governing law

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

EXECUTED as a deed

Supplemental Deed – Evans & Partners Global Flagship Fund

Signing page

DATED: _____

Executed as a deed

EXECUTED by **WALSH & COMPANY**)
INVESTMENTS LIMITED in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

.....)
Signature of director)

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

.....)
Signature of director/company)
secretary*)
*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))
*delete whichever is not applicable)

Supplemental Deed – Evans & Partners Global Flagship Fund

Schedule 1 – Amended Constitution

Constitution of the Evans & Partners Global Flagship Fund

Consolidated as at 22 June 2018

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Constitution of the Evans & Partners Global Flagship Fund

Dated:

22 June 2018

This Constitution ~~Pool~~ is declared by **Walsh & Company Investments Limited** (ACN 152 367 649) of 100 Pacific Hwy, North Sydney (**Responsible Entity**) to be the Constitution of the **Evans & Partners Global Flagship Fund**.

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

Accounting Principles means the accounting standards and generally accepted accounting principles in Australia.

[Additional Fund Administration Services](#) means the actions and activities in connection with the management and administration of the Trust which are described in Schedule 2.

Additional Tax means the amount of any additional Tax withheld, paid, payable or otherwise imposed as a consequence of the particular characteristics of a Member or a group of Members and is the amount withheld, paid, payable or otherwise imposed as a direct result of those particular characteristics to the extent that it exceeds the amount that would be withheld, paid, payable or otherwise imposed if the Member or the group of Members had the same relevant characteristics as the majority of Members.

[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 Trust to be treated as a separate AMIT for the purpose 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 Trust is an AMIT.

[AMIT Regime](#) means the regime for the taxation of AMITs.

[AMMA Statement](#) has the meaning given to that phrase in section 276-460 of the Tax Act.

Application Price means the Unit price calculated in accordance with Clause 5.

[AQUA Rules](#) means the rules governing the operation of ASX's AQUA market as set out in Schedule 10A to the ASX Operating Rules and any related procedures and rules which govern the Quotation and transfer of financial products on the AQUA platform of ASX.

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 release from certain provisions of the Corporations Act [including any class order relief available to the Responsible Entity, the Trust or Members.](#)

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

[Associate](#) means in relation to a person (the first person) means a person who is:

- (a) an associate of the first person within the meaning of section 11 of the Corporations Act; or
- (b) a 'related party' of the first person within the meaning of section 228 of the Corporations Act (after modification in accordance with section 601LA of the Corporations Act).

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

ASX Operating Rules means the ASX operating rules (including the AQUA Rules), as amended or replaced from time to time.

ASX Rules means the ASX Operating Rules (including the AQUA Rules), the Listing Rules, Settlement Rules and Clearing Rules of ASX, each as applicable, and each as amended or replaced from time to time.

ASX Settlement Operating Rules means the settlement rules operated by ASX Settlement Pty Limited (ACN 008 504 532).

Bid Consideration has the meaning given in Clause 5.7(a).

Business Day means a day other than Saturday or a Sunday on which banks are open for general banking business in Sydney and if Units are Quoted, has the meaning given to that term in ~~which is a business day for the purposes of~~ the Listing Rules.

CHES means ASX's Clearing House Electronic Subregister System, and a reference to CHES includes a reference to any replacement system that performs the same clearing and settlement function for a Securities Exchange which is operated by distributed ledger technology or otherwise.

Chi-X means Chi-X Australia Pty Ltd ACN 129 584 667 or the market operated by it as the context requires.

Chi-X Operating Rules means the Chi-X operating rules, as amended from time to time.

Class means a class of Units.

Clearing Rules means the operating rules, procedures, practices, directions, decisions and requirements of ASX Clear Pty Ltd ABN 48 001 314 503, or a body which replaces it or performs its functions in relation to the financial markets operated by the relevant Securities Exchange.

Complaint has the meaning given under clause 24.1(b).

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

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

Costs include costs, charges, fees, expenses, commissions, Liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments.

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

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.

Delegate means a person appointed, engaged or otherwise contracted by the Responsible Entity as contemplated by clause 19.7A(f)

[Determined Member Component](#) has the meaning given to that phrase in section 276-205 of the Tax Act.

[Determined Trust Component](#) has the meaning given to that phrase in section 276-255 of the Tax Act.

Distribution Calculation Date means the last day of each Tax Year or each Interim Distribution Period.

Distribution Period means:

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

Entry Fee means an entry fee of 5% of the Application Price for Units (or lesser amount as the Responsible Entity may in its absolute and unfettered discretion determines in accordance with Clause 19.6).

[Escrow Period](#) has the same meaning as in the Listing Rules.

[Excess Acquired Units](#) has the meaning given in clause 29.7 (as inserted by Schedule 1).

[Excess Sold Units](#) has the meaning given in clause 29.5 (as inserted by Schedule 1).

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

[Income Component](#) has the meaning given in Clause 26.7(a)(i).

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 10.5.

Interim Distribution Period means any period determined by the Responsible Entity so long as the period commences and ends during the same Tax Year (but does not end on the last day of that Tax Year).

Liabilities means all present liabilities of the Trust including any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Trust in accordance with the Accounting Principles but excludes all liabilities owed to the holders of Units in their capacity as the holders of Units.

Liquid [means, in relation a trust or asset, a trust or asset which is liquid for the purposes of Part 5C.6 of ~~means has the same meaning as in~~ the Corporations Act.](#)

Listed means admitted to the official list of a [Securities Exchange](#)~~Prescribed Financial Market~~ whether or not quotation of the Units is deferred, suspended or subjected to a trading halt, [and Listing has a corresponding meaning.](#)

Listing Rules means the listing rules of the ~~Prescribed Financial Market~~[Securities Exchange](#) on which the Units are Listed.

[Market Operator](#) means ASX or Chi-X, or any other entity that operates a Securities Exchange on which Units are traded, as relevant.

Market Price of a Unit on a Business Day means:

- (a) the weighted average price per Unit in that Class for sales of that Class on the ~~Prescribed Financial Market Securities Exchange~~ on which Units are Listed (excluding any special crossings) for each of the last 5 Trading Days in which Units were traded, within the period of 20 Trading Days immediately prior to the Relevant Business Day, adjusted to take into account any ex-entitlement dates that occurred during this period; or
- (b) if Units in that Class:
- (i) have not been traded for at least 5 out of 20 consecutive Trading Days before the Relevant Business Day; or
 - (ii) in the Responsible Entity's opinion, a determination under paragraph (a)~~(a)~~ would not provide a fair reflection of the current market value of the Unit,

the price per Unit that an independent expert determines to be the market price of the Unit on the Relevant Business Day.

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;
- (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 Trust;
- (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, the redemption price of the interest as last quoted by the manager, trustee or responsible entity of the fund plus 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 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 Trust.

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

Member Component has the meaning given to that phrase in section 276-210 of 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 8 less the Liabilities.

Net Class Value means at any time, that portion of the Net Asset Value that is properly attributable to a particular Class.

Offer has the meaning given in Clause 5.7(c).

Officially Quoted means quoted ~~on the official list of~~ for trading as a security of a Listed entity on a Securities Exchange ~~Prescribed Financial Market~~ including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

Operating Rules means the operating rules of the Market Operator, including the ASX Operating Rules or the Chi-X Operating Rules, as relevant.

Ordinary Unit means a Unit with the rights attached thereto as provided in this Constitution including rights to both income and capital of the Trust.

Over has the meaning given to that term in section 276-345 of the Tax Act.

~~Prescribed Financial Market has the same meaning as in the Corporations Act.~~ **Prescribed Time** means 2.00 pm on a Business Day, or one or more other times determined by the Responsible Entity for the purposes of applications for Units, issue of Units or withdrawal requests.

Quoted means Officially Quoted or otherwise quoted for trading on a Securities Exchange, including where authorisation for trading is suspended, and Quotation has the corresponding meaning.

Register means ~~the~~:

- (a) in respect of a class of Units which is not Quoted, a register of Members kept by or on behalf of the Responsible Entity for the purposes of ~~under~~ the Corporations Act; and-
- (b) in respect of a class of Units of which is Quoted, the record of Members in a CHESSE sub register or an issuer-sponsored sub register.

Registered means recorded in the Register.

Registered Scheme means a trust which is registered with ASIC as a managed investment scheme under the Corporations Act.

~~Registration~~ **Registrar** means ~~recording in the Register~~ the body responsible for keeping the Register.

Regulatory Requirement has the meaning given to that term in clause 1.4(c)(ii) of this Constitution.

Relevant Business Day means either:

- (a) the date Units are offered;
- (b) the last date on which applications for Units can be received by the Responsible Entity;
- (c) the date Units are allotted; or
- (d) the date Units are issued,

determined by the Responsible Entity at its sole discretion.

Required Part has the meaning given to that term in clause 1.4(c)(ii) of this Constitution.

Required Provisions has the meaning given to that term in clause 1.4(c)(i) of this Constitution.

Resolution means:

- (a) a resolution passed at a meeting of Members (or at a meeting of members holding Units of a Class) in the Trust:
 - (i) on a show of hands, by the required majority of Members (or Members of the Class) 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 [\(or Members of the Class\)](#) present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust [\(or in the Class\)](#).

Except where this Constitution or any applicable law provides otherwise, the "required majority" is a simple majority [of votes validly cast](#).

Responsible Entity means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the Responsible Entity of the Trust, with the first Responsible Entity being Walsh & Company Investments Limited.

[Responsible Entity Personnel](#) means at any time, officers and employees of the Responsible Entity at that time and persons who, although not officers or employees of the Responsible Entity, operate under the direction or control of the Responsible Entity in their day-to-day activities at that time, including persons seconded to the Responsible Entity who are Associates of the Responsible Entity or officers or employees of Associates of the Responsible Entity

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

[Securities Exchange](#) means, as the context requires, ASX or Chi-X, and includes any other 'Prescribed Financial Market' (as that term is defined in the Corporations Act) on which Units are Quoted.

[Settlement Rules](#) means the operating rules, procedures, practices, directions, decisions and requirements of ASX Settlement Pty Ltd ABN 49 008 504 532, or a body which replaces it or performs its functions in relation to the financial markets operated by the relevant Securities Exchange.

[Special Resolution](#) means a Resolution passed by a majority of 75% of votes cast by Members entitled to vote, or if the context requires, Members of a Class.

Tax means all kinds of taxes, duties, imposts, deductions and charges imposed by a government including GST or any amount recovered from the Responsible Entity by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Responsible Entity on account of GST, together with interest and penalties.

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

Tax Year means:

- (a) for the first tax year, the period from the establishment of the Trust to the date elected by the Responsible Entity in accordance with applicable laws;
- (b) for the last tax year, the period from the first day of the tax year in which the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on the date elected by the Responsible Entity from time to time.

Trading Day means [a Business Day when it is possible to trade on a Securities Exchange on which the Units are Quoted](#). ~~those Business Days on which buying and selling occurs through the stock exchange automated trading system used by the Prescribed Financial Market on which the Units are Listed.~~

Transaction Costs means the Responsible Entity's estimate of the total costs of acquiring the Assets for the purposes of determining an Application Price and the total costs of disposing of the Assets for the purposes of determining a Withdrawal Price, provided that, subject to the Corporations Act, the Responsible Entity may in connection with any application for Units deem these costs to be a lesser sum or zero.

Transmission Event means:

- (a) for a Member who is an individual:
 - (i) that Member's death;
 - (ii) that Member's bankruptcy; or
 - (iii) that Member becoming of unsound mind or a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health; and
- (b) for a Member who is a body corporate, the dissolution of that Member or the succession by another body corporate to the assets and liabilities of the Member.

~~**Transaction Costs** means the Responsible Entity's estimate of the total costs of acquiring the Assets for the purposes of determining an Application Price and the total costs of disposing of the Assets for the purposes of determining a Withdrawal Price, provided that, subject to the Corporations Act, the Responsible Entity may in connection with any application for Units deem these costs to be a lesser sum or zero.~~

Trust means the trust constituted under or governed by this Constitution.

Trust Component has the meaning given to that phrase in section 276-260 of the Tax Act.

Under has the meaning given to that term in section 276-345 of the Tax Act.

Unit means an undivided share in the beneficial interest in the Trust as provided in this Constitution.

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

Withdrawal Offer means an offer made by the Responsible Entity in accordance with Section 601KB of the Corporations Act.

Withdrawal Price in relation to a Unit means the price calculated under Clause 27.

1.2. Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act, [the Listing Rules or the Operating Rules](#) are used with their defined meaning;
- (b) the singular includes the plural and vice versa;
- (c) amend includes delete or replace;
- (d) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution;
- [\(e\)](#) a reference to any provision being subject to the Corporations Act only operates if the Corporations Act applies to affect that provision;
- [\(f\)](#) a reference to ASIC Relief or any other ASIC instrument includes any amendment or replacement of it;

- ~~(e)~~(g) [the word “law” includes common law, principles of equity and legislation and a reference to legislation includes regulations modified by applicable instruments under them and any variation or replacement of any of them;](#)
- ~~(f)~~(h) words importing a gender include any gender;
- ~~(g)~~(i) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- ~~(h)~~(j) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any ~~G~~overnmental ~~A~~gency;
- (k) a reference to anything (including, without limitation, any right) includes a part of that thing;
- ~~(i)~~(l) [the word “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.](#)
- ~~(j)~~(m) a reference to a Part, Clause, Party, Annexure, Exhibit or Schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any Annexure, Exhibit or Schedule;
- ~~(k)~~(n) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- ~~(l)~~(o) a reference to a document, [including a document setting out any rules or requirements of a Securities Exchange](#), includes all amendments or supplements to, or replacements or novations of, that document;
- ~~(m)~~(p) a reference to a party to a document includes that party’s successors and permitted assigns;
- ~~(n)~~(q) a reference to an agreement other than this Constitution includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- ~~(o)~~(r) a reference to an asset includes all property of any nature, including, without limitation, a business, and all rights, revenues and benefits;
- ~~(p)~~(s) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind; and
- ~~(q)~~(t) amounts of money are expressed in Australian dollars unless otherwise expressly stated.

1.3. Inclusive expressions

Specifying anything in this Constitution after the words **include** or **for example** or similar expressions does not limit what else is included unless there is express wording to the contrary.

1.4. ~~General compliance provision~~ [Corporations Act and ASIC Relief](#)

- (a) A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Constitution.
- ~~(b)~~(c) 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 relating to the issue price of Units on which the Responsible Entity has determined it wishes to rely or which is expressly](#)

applicable to the Trust 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) if any part of this Constitution (a “Required Part”) is included to comply with the requirements of the Corporations Act or ASIC (“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.

The Members:

- (iii) authorise the Responsible Entity to make the amendments referred to in this Clause 1.4(c) in a deed and, if required, to lodge it with ASIC; and
- (iv) 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.

Subject to the Corporations Act, the provisions of this Clause 1.4(c) apply with any necessary adaptations in the case of any requirements under the rules of a Securities Exchange on which the Units are Quoted which are required to be included or reflected in this Constitution for the Responsible Entity to comply with those rules or for the Units to be or remain Quoted on the relevant Securities Exchange.

- ~~(e)~~(d) This Clause 1.4 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

1.5. Application of Corporations Act, Listing Rules and Operating Rules

- (a) In T~~his Constitution is to be interpreted subject to:~~
- (i) except as otherwise provided in a particular clause or by law, a requirement of the Corporations Act only applies while the Trust is a Registered Scheme;
- (ii) a requirement of the Listing Rules only applies; while the Trust is Listed; and
- (iii) a requirement of the ASX Settlement Operating Rules only applies when the Units are Quoted;~~while the Units are CHESS Approved Securities.~~
- (b) Despite anything to the contrary in this Clause 1.5, this Clause 1.5 has effect subject to Clause 1.4.
- (c) While the Trust is Listed:
- (i) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
- (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (iii) 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);
- (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (v) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and

- (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (d) While ~~the Trust is~~ Units in a Class are Listed/Quoted, the Responsible Entity and each Member must comply with the obligations imposed on ~~it-them~~ under the ~~Listing Rules and the ASX Settlement Operating R~~ules of each relevant Securities Market that are applicable to them in respect of that Class. This obligation does not detract from or alter the power of the Responsible Entity to cause the Trust to cease to be Listed or the Units to be Quoted.
- (e) Unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or ~~the other applicable ASX Settlement Operating R~~ules of a Securities Market has the same meaning as in that provision.
- (f) In accordance with ~~ASIC Class Order 98/1808 or its equivalent~~any ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of Clause 1.4(c) ~~1.5(e)~~ that is covered by such relief instrument is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act. Changes in the text of the Constitution to which this Clause 1.5(f) applies are made pursuant to the power in Clause 22.1 but in respect of such changes the requirements of Clause 22.1 are to be read subject to this Clause 1.5(f).

1.6. Additional Listing Rule requirements

At all times while the Trust is Listed:

- (a) the Responsible Entity must not remove or change a Member's right to vote except if:
 - (i) an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Constitution;
 - (ii) the Member became the holder of that Unit after the time determined under the Corporations Regulations 2001 (Cth) as the "specified time" for deciding who held the Unit for the purpose of the meeting;
 - (iii) the right is removed or changed under Australian legislation or under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iv) the right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules or the operator of the ~~Prescribed Financial Market~~ Securities Exchange on which the Units are Listed has approved as appropriate and equitable; or
 - (v) the right is removed or changed under a court order;
- (b) a Member must not be divested of that Unit except in any of the following cases:
 - (i) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or (if required) is approved by the operator of the ~~Prescribed Financial Market~~ Securities Exchange on which the Units are Listed as appropriate and equitable;
 - (ii) the divestment is under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iii) the divestment is under a provision in this Constitution that is permitted by the Listing Rules or (if required) the operator of the ~~Prescribed Financial Market~~ Securities Exchange on which the Units are Listed has approved as appropriate and equitable; or
 - (iv) the divestment is under a court order;

- (c) the Responsible Entity must not divest a Member of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASX Settlement Operating Rules. Without limitation to Clause ~~4.5~~1.5, at all times that the Trust is Listed, the Responsible Entity must comply with ASX Settlement Operating Rule 8.13.

1.7. 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.

2. Name of Trust

2.1. Name of Trust

The Trust is called Evans & Partners Global Flagship Fund or by such other name as the Responsible Entity determines from time to time.

3. Assets held on trust

3.1. 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 Trust 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. [Subject to the law, the Responsible Entity may have Assets held by a Custodian.](#)

4. Units

4.1. Nature of Units

- (a) The beneficial interest in the Trust 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.
- [\(c\) 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 may, subject to the Corporations Act and the Operating Rules, issue Units of a single Class or different Classes, with different rights, obligations and restrictions as specified in their terms of issue. All Units in a Class rank equally \(irrespective of the Application Price paid to the Responsible Entity for those Units\). A separate Class does not constitute a separate trust.](#)
- [\(e\) If a Class is created under this clause 4.1 and Units in the Class have at any time:](#)
- [\(i\) fees referable to that Class different to the fees referable to another Class; or](#)
- [\(ii\) a type or particular expense or tax or a proportion of such an expense or tax that will be referable to that Class,](#)
- [the Responsible Entity must](#)
- [\(iii\) calculate each Member's Income Distribution or other distribution under clause 10.18 by first calculating for each Class of Units held by the Member that proportion of the variables in clause 10.5 that the Responsible Entity determines is properly referable to the Class and the Units held by the Member and then aggregating those amounts; and](#)

- (iv) determine the proportion of net proceeds of realisation under clause 21.3 that is properly referable to each Class and each proportion referable to each Class must be distributed pro rata to Members according to the number of Units in that Class they hold.
- (f) Nothing in this clause 4.1 permits the Responsible Entity to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Corporations Act requires those matters to be set out in this Constitution.
- (g) The Responsible Entity in making any determination of variables properly referable to a Class under this Constitution must ensure that:
 - (i) any variable which relates only to a particular Class, and does not relate to other Classes, is solely referable to the Class to which it relates; and
 - (ii) any variable which relates to more than one Class is apportioned between those Classes in the same proportions as the aggregate value of Units on issue in each Class as at the most recent Valuation Time bears to the aggregate value of Units in all Classes to which the variable relates on issue at that Valuation Time.

In this clause 4.1(g), the value of a Unit in a Class is the mid-point between the applicable Application Price and Withdrawal Price for Units in that Class at the most recent Valuation Time.

- ~~(e)~~(h) The Responsible Entity may determine to seek admission to trading for Units of a Class on a financial market including the AQUA platform of ASX or Chi-X. If the Responsible Entity makes that determination, subject to the Corporations Act, the provisions of Schedule 1 will apply to the Responsible Entity and Members in respect of that Class and prevail over the other provisions of this Constitution to the extent of any inconsistency.
- ~~(d)~~(i) 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)~~(j) Subject to paragraph 4.1(k), The Responsible Entity may convert any Units from one eClass to another class or reclassify Units from one eClass to another. Without limiting Clause 10.6, a redesignation must not result in any defeasance of a Member's existing entitlement to income or capital of the Trust. If the fees under clause 19 applicable to the new Class into which the Units are to be redesignated are higher than the fees for the old Class, the Responsible Entity may not exercise this power without first giving the Member 30 days' notice of the proposed change and details of the higher fees.
- (k) The Responsible Entity may not redesignate Units in a Class which is traded on a financial market to be in a Class which is not traded without approval by Special Resolution of Members of the traded Class.
- (l) Units are not of a different class to other Units solely because some are recorded on a CHES sub register and others are on an issuer-sponsored sub register.
- (m) The rights attaching to Units in a Class cannot be cancelled, varied or adversely affected without a Special Resolution of Members or a Special Resolution of Members of the Class affected.
- ~~(f)~~(n) The Responsible Entity must enter on the Register the class or terms of issue of Units held by a Member. While Units are Quoted, Units in that Class that are to be recorded on the CHES sub register are created and issued in the manner and at the time CHES or the Operating Rules, Clearing Rules or Settlement Rules contemplate.
- ~~(g)~~(o) 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 Trust or lodge any caveat or other notice affecting any asset of the Trust; or
- (iii) require that any asset of the Trust be transferred to a Member.

~~(H)~~(p) 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 Trust 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.

~~(ii)~~(q) Each Unit held by a Member is subject to a condition that the Member must have provided, or will promptly provide on request to the Responsible Entity or its authorised agent, such information as the Responsible Entity may reasonably require for the Responsible Entity to meet its obligations under anti-money laundering or counter-terrorism financing laws.

4.2. Fractions of Units

(a) Fractions of a Unit may be issued by the Responsible Entity but, while the Units are Quoted, fractions of a Unit may not be issued.

~~(a)~~(b) If any fractions of Units are on issue at a time when the Trust is to be Listed or Units are to be Quoted, the Responsible Entity may cancel the fractions with effect from the date of Listing or Quotation.

~~(b)~~(c) Where any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit or would otherwise result in fractions of Units being on issue, that fraction may be rounded down or up to such number of decimal places as the Responsible Entity determines.

~~(c)~~(d) The provisions of the Constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.

~~(d)~~(e) Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

4.3. 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, subject to rounding up or down to the nearest whole Unit under clause 4.2; and
- (ii) in accordance with this Constitution, the Listing Rules (if applicable) and applicable law.

4.4. Joint Tenancy

Where two or more persons are ~~R~~Registered as the holders of a Unit or ("**joint holders**") they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit as joint tenants, on the following conditions:

- (a) except where otherwise required under ~~ASX Settlement~~the Operating Rules at all times while the Trust is Listed, the Responsible Entity is not bound to register more than three persons as the joint holders of the Unit;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Responsible Entity will recognise as having any title to the Unit, but the Responsible Entity may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Responsible Entity in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, payments or other communications from the Responsible Entity, and any notice, payment or other communication given to that person is deemed to be given to all the joint holders.

4.5. Death, Legal Disability of Member

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

4.6. Benefits and obligations of Members

Except where expressly provided in this Constitution to the contrary, all benefits and obligations in this Constitution apply for the benefit of and bind each Member to the extent provided in this Constitution.

4.7. No further liability

- (a) This Clause 4.7 is subject to any separate agreement between a Member and the Responsible Entity.
- (b) The liability of each Member in its capacity as such is limited to its investment in the Trust.
- (c) A Member is not required to indemnify the Responsible Entity or a creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Trust.
- (d) The recourse of the Responsible Entity and any creditor of the Responsible Entity is limited to the assets of the Trust.
- (e) Nothing in or under this Constitution makes the Responsible Entity an agent of a Member, nor does it create any relationship other than that of beneficiary and trustee.

~~4.8. Class rights~~

~~The rights attaching to Units in a class of Units cannot be cancelled, varied or adversely affected without a special resolution of Members and a special resolution of Members of the class affected.~~

5. Application Price for Units

5.1. Application Price

- (a) The Application Price for the Units issued under the first product disclosure statement prepared for the Trust will be **\$1.60** per Unit.

- (b) After the issue of Units under the first product disclosure statement referred to in [Clause 5.1\(a\)](#)~~5.1(a)~~ above, where the Units are not Officially Quoted the Application Price will be equal to:

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

[For the purposes of the formula in this paragraph 5.1\(b\), "Net Asset Value" and "Transaction Costs" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Units for which the Application Price is being calculated belongs in accordance with clause 4.1\(g\), and the "number of Units on issue" is the number of Units of that Class as recorded in the Register.](#)

- (c) After the issue of Units under the first product disclosure statement referred to in 5.1(a)~~5.1(a)~~ above, where the Units are Officially Quoted, [subject to this Clause 5.1](#), the Application Price will be the Market Price.
- (d) Notwithstanding 5.1(a)~~5.1(a)~~-(b) [and](#) (c), the Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by ASIC Relief (and subject to the terms of that ASIC Relief) and, if the Units are Officially Quoted, the Listing Rules without limiting the foregoing, the following apply to the extent they reflect the requirements of ASIC Relief:
- (i) in the case of a proportionate offer (including a rights issue), Clause 5.5;
 - (ii) in the case of an issue of Units as consideration for an off-market bid, Clause 5.7;
 - (iii) in the case of a placement of Units ~~or pursuant to an interest purchase~~[under a security purchase](#) plan ~~which complies with ASIC Class Order CO 09/425~~ while Units are Officially Quoted, Clause 5.8; and
 - (iv) in the case of reinvestment of income, Clause 5.9 [or](#) 5.10.

5.2. Variables

Each of the variables in Clause 5.1(b) 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,

whichever happens later.

5.3. [Time of receipt](#)

[Unless the Responsible Entity determines otherwise, for the purposes of clause 5.2 the time of receipt of an application or money or property is taken to be:](#)

- (a) [immediately before the Prescribed Time for the Business Day of receipt, if the application, money or property \(as applicable\) is received before the Prescribed Time on that Business Day; and](#)
- (b) [immediately before the Prescribed Time on the next following Business Day if the application, money or property \(as applicable\) is received on a day which is not a Business Day or is received on or after the Prescribed Time on a Business Day.](#)

5.3-5.4. Rounding

Subject to the Listing or the Operating Rules as relevant, ~~T~~he Application Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Application Price. Any excess application money or property which results from rounding becomes an ~~Asset of the Trust~~.

5.4-5.5. Pro rata rights issues

The Responsible Entity may (subject to the terms of any applicable ASIC Relief instrument) and the Listing Rules (while the Listing Rules apply) 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 ~~not being more than 20 Business Days immediately prior to the date of the offer~~, provided that:

- (a) all Members are offered Units at the same Application Price on a pro rata basis (whether or not the right of entitlement is renounceable); and
- (b) either:
 - (i) where Units are not Officially Quoted, the Application Price is not less than 50% of the price calculated in accordance with Clause 5.1(b)~~5.1(b)~~ as at the date of offer; or
 - (ii) where Units are Officially Quoted, the Application Price is not less than 50% of the Market Price as at the date not more than 10 Business Days prior to the date of the offer document under which the offer is made,

but, subject to the Listing Rules and any applicable ASIC Relief, the Responsible Entity is not required to offer Units under this Clause 5.5 to persons whose address on the Register is in a place other than Australia.

5.5-5.6. Terms of pro rata issues

- (a) Any offer made under Clause 5.5 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Responsible Entity under Clause 5.5, provided that 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 5.5 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, provided that the Application Price payable in relation to such further offer is the same price at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under Clause 5.5, such underwriter may take up any Units not subscribed for by Members.

5.6-5.7. Issue of Units as Bid Consideration

- (a) The Responsible Entity may issue Units as consideration, or part of the consideration, to acquire securities or financial products of a target entity under an off-market bid made in accordance with Chapter 6 of the Corporations Act (**Bid Consideration**).
- (b) The Responsible Entity may issue a Unit which is, or forms part of, the Bid Consideration at an Application Price which is equal to the Market Price of Units immediately prior to the date on which or as at which the public announcement of the off-market bid, or any revised off-market bid, for securities or financial products of the target entity is first made by the Responsible Entity or by an ~~a~~Associate of the Responsible Entity in relation to the off-market bid.

- (c) If the Responsible Entity accepts the transfer of securities or financial products of the target entity, which are the subject of an acceptance of an offer under the off-market bid (**Offer**), then such transfer shall be taken to be in satisfaction of the obligation to make payment or transfer property for either:
- (i) the application price for Units, in the event that only Units comprise the Bid Consideration; or
 - (ii) the application price for Units, after deducting the value of the other consideration under the Offer which has been accepted, where the Bid Consideration comprises Units and other consideration.

5.7-5.8. Placements and security purchase plan while Listed

- (a) Subject to Clauses 5.8(b)~~5.7(b)~~ and 5.8(c), while Units are Officially Quoted, and not suspended from quotation, the Responsible Entity may at any time issue Units to any person by way of a placement or under a security interest purchase plan:
- (i) ~~(that being an interest purchase plan that accords with ASIC Class Order CO-09/425)~~ at the Market Price of Units during the 10 Trading Days immediately before the date on which the Units are offered; or
 - ~~(a)(ii)~~ at a price and on terms determined by the Responsible Entity, provided that the Responsible Entity complies with as otherwise permitted by the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.
- (b) In the case of an issue to any underwriter or sub-underwriter of a distribution reinvestment plan or any persons nominated by them at a price per Unit equal to the price at which Units are issued pursuant to that distribution reinvestment plan in accordance with Clause 5.9 or 5.10.
- (c) The Responsible Entity must comply with the Listing Rules applicable to the issue and any applicable ASIC Relief.

5.8-5.9. Reinvestment while Listed

- (a) If reinvestment of distributions payable to a Member under Clause 10.20 applies while the Units are Officially Quoted, subject to the Listing Rules, 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 volume weighted average of trading prices for Units over the 10 Trading Days from and including the third Trading Day after the record date for the relevant Distribution Period.
- (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.
- ~~(a) If reinvestment of distributions payable to a Member under Clause 10.11 applies while the Units are Officially Quoted, subject to the Listing Rules, 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 is the simple average of the daily weighted average traded price of Units on each of the 10 Business Days from and including the second Business Day after the Distribution Calculation Date for the relevant distribution.~~

~~While Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment of Distributions is the Application Price calculated by reference to~~

~~Clause 5.1(b) on the first Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the distribution relates.~~

5.10. Reinvestment while not Listed

While Units are not Officially Quoted, 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 10.20 is the price determined by the Responsible Entity to the extent it is permitted to do so or is not prohibited from doing so under the provisions of the Corporations Act. 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 5.1(b) on the first Business Day after the end of the Distribution Period to which the distribution relates.

~~(b)~~

6. Application Procedure

6.1. Application Form

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

6.2. Payment

- (a) Payment 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 ~~e~~Custodian appointed by it (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
- (i) accompany the application;
 - (ii) be received by or made available to the Responsible Entity or Custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
 - (iii) comprise a reinvestment of distribution in accordance with Clauses 10.20 and 10.21
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.
- (c) Application ~~m~~Monies for Units issued under a product disclosure statement must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:
- (i) the minimum subscription, if any (to be specified in the product disclosure statement) has been reached and the Responsible Entity decides to proceed to allotment of Units; or
 - (ii) the date by which the aApplication ~~m~~Monies would need to be repaid under the Corporations Act.

Until the Responsible Entity decides to proceed to the issue of Units in accordance with this Clause 6, it holds such aApplication ~~m~~Monies upon bare trust for the applicant ~~and the Responsible Entity must comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. Where Application Monies are repayable under section 723(3) or 724 of the Corporations Act, no interest is payable on that money.~~

6.3. Responsible Entity May Reject

The Responsible Entity may reject an application in whole or in part and, subject to the Listing Rules, need not give any reason for the rejection.

6.4. Minimum Amounts

The Responsible Entity may set a minimum application amount and a minimum holding for the Trust and alter those amounts at any time.

6.5. Issue Date

- (a) Units which are issued on a reinvestment of distribution in accordance with this Constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (b) Except in the case of a reinvestment of distributions in accordance with this Constitution, in all other cases Units are taken to be issued on the date the applicant's name is recorded in the Register.

6.6. 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.

6.7. Register

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

6.8. Holding Statements

Subject to the Corporations Act, while the Trust is admitted to an uncertificated trading system, a holding statement may be issued to evidence the holding of Units.

6.9. Foreign Members

- (a) The Responsible Entity may determine that F_{foreign} M_{Members} are not to be offered Units which are otherwise offered to Members in that capacity where it reasonably considers that it would:
 - (i) be in the best interests of the Members; and
 - (ii) not be unfair to the F_{foreign} M_{Members}.
- (b) If the Responsible Entity makes a determination under Clause 6.9(a) and it is practicable to do so, the Responsible Entity must sell the F_{foreign} I_{interests} and pay to each F_{foreign} M_{member} the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$

Where:

AF is the amount to be paid to that F_{foreign} M_{Members};

NP is the net proceeds of sale of the F_{foreign} I_{interests} being the amount (if any) remaining after deducting from the proceeds of sale of the F_{foreign} I_{interests} the aggregate of:

- (i) the Costs of the sale;
- (ii) the amounts (if any) payable to the Responsible Entity by any nominee appointed under Clause 6.9(c) in respect of the F~~f~~oreign H~~i~~nterest; and
- (iii) any amounts the Responsible Entity would be required by law or otherwise entitled to deduct or withhold under this Constitution;

N is the aggregate number of F~~f~~oreign H~~i~~nterests; and

NF is the number of F~~f~~oreign H~~i~~nterests to which that F~~f~~oreign M~~m~~embers would otherwise have been entitled.

- (c) The Responsible Entity may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the F~~f~~oreign H~~i~~nterests under, and pay to each F~~f~~oreign M~~m~~ember the amount calculated in accordance with the formula in, Clause 6.9(b).
- (d) The Responsible Entity must take reasonable steps to maximise the amount payable to each F~~f~~oreign M~~m~~ember under Clause 6.9(b).

7. Transfers

7.1. Transfer

- (a) Before ~~the Trust is Listed~~ Units are Quoted or at any time after the ~~Trust has~~ Units have ceased to be ~~Listed~~ Quoted (or if permitted under the Listing Rules or the Operating Rules as applicable), all transfers of Units must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units under this Clause 7.1(a) without giving any reason, unless including if the instrument of transfer:
 - (i) is not duly stamped (if applicable);
 - (ii) is not accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
 - (iii) ~~complies~~ does not comply with any requirements prescribed by the Responsible Entity from time to time.

(b) Subject to this Constitution and the Listing Rules or the Operating Rules as applicable, if a Unit is Quoted, it is transferable:

(i) as provided by the Operating Rules of a CS Facility if applicable; or

~~(b)(ii) by any other method of transfer which is required or permitted by the Corporations Act, ASX or ASIC~~ While the Trust is Listed, all transfers of Officially Quoted Units must be effected in accordance with the Listing Rules.

If a duly completed instrument of transfer of a Quoted Unit:

(iii) is used to transfer the Unit in accordance with paragraph (ii); and

(iv) 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 A transferor of Units remains the Member until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units of to make the transfer,

the Responsible Entity must, subject to the Responsible Entity's powers, register the transferee as the Member.

~~(e) Except as provided by any applicable Operating Rules, a transfer is not effective until Registered is effected in accordance with the ASX Settlement Operating Rules.~~

7.2. Transaction advice after transfer

If the Responsible Entity accepts a transfer under this Clause ~~7.7~~, the Responsible Entity may issue a transaction advice for:

- (a) the Units which have been transferred; and
- (b) the balance of any Units which were not transferred.

7.3. No General Restriction on Transfer

(a) While the Units are Quoted, ~~There~~ is no restriction on the transfer of Units and, subject to Clause 25.1, the Responsible Entity may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under Clause 7.1(b)(ii).

(b) Except as otherwise set out in this Clause ~~7.7~~, there is no restriction on any other transfer of Units.

(c) In relation to Units which are ~~CHESSE Approved Securities~~Quoted:

(i) subject to Clauses 7.3(c)(ii)~~7.3(e)(iii)~~ and 7.3(c)(iii)~~7.3(e)(iii)~~, the Responsible Entity must not prevent, delay or in any way interfere with the registration of a proper ASX ~~Settlement Operating~~-Rules transfer;

(ii) the Responsible Entity may:

(A) request the CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to ~~specified CHESSE Approved Securities~~prevent a transfer of Units from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be; or

~~(ii) where permitted to do so by the Listing Rules; and~~

(B) the Responsible Entity may refuse to register a transfer ~~where permitted to do so by the Listing Rules~~of Units to which paragraph (A) does not apply,

(iii) the Responsible Entity ~~and~~ 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 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 Units to which paragraph (A) does not apply,

~~if required to do so by the Listing Rules,~~if the Corporations Act or Listing Rules or the Operating Rules as applicable require the Responsible Entity to do so or the transfer is in breach of Clause 25.1.

(iv) If, in the exercise of its rights under Clauses ~~7.3(c)(ii) and 7.3(c)(iii)~~, the Responsible Entity requests the application of a holding lock to prevent a transfer of securities or refuses to Register a transfer of 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 Member;

(B) the purported transferee; and

(C) the broker lodging the transfer, if any.

~~(iii)~~ Failure to give notice does not, however, invalidate the decision of the Responsible Entity.

7.4. Power to suspend registration of transfers

Subject to the Listing Rules and the ASX Settlement Operating Rules, whilst the Trust is Listed, the Responsible Entity may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as it thinks fit.

7.5. Transmission of Units

- (a) In the case of a Transmission Event in respect of a Member, the only persons who will be recognised as having any title to the Units registered in the Member's name or any benefits accruing in respect of those Units:
- (i) where the Member is a joint holder, the survivor or survivors of the Member;
 - (ii) where the Member is an individual, the legal personal representative of the Member or the person entitled to the Units as a result of bankruptcy; or
 - (iii) where the Member is a body corporate, the person entitled to the Units as a result of the dissolution or succession.
- (b) Nothing in Clause 7.5(a) releases the Member or the estate of a deceased Member from any liability in respect of the Units held whether that Unit was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit as a result of a Transmission Event may, upon producing such evidence as the Responsible Entity may require to prove that person's entitlement to the Unit, elect:
- (i) to be registered as the Member of the Unit by signing and serving on the Responsible Entity a notice in writing stating that election; or
 - (ii) to have some other person nominated by that person registered as the transferee of the Unit by executing a transfer to that other person in accordance with Clause 7.1.
- (d) The Responsible Entity need not register any transfer or transmission pursuant to Clause 7.5(a) unless the transferee provides an indemnity in favour of the Responsible Entity in a form determined by the Responsible Entity in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this Constitution relating to the right to transfer, and the registration of transfers of, Units apply, so far as they can and with such changes as are necessary, to any transfer under Clause 7.5(c) as if the relevant Transmission Event had not occurred and the transfer was signed by the Member of the Unit.
- (f) For the purposes of this Constitution, where 2 or more persons are jointly entitled to any Unit in consequence of a Transmission Event they will, upon being registered as the Members of the Unit, be taken to hold the Unit as joint tenants and Clause 4.4 will apply to them.
- (g) Despite Clause 7.5(a), the Responsible Entity may register a transfer of Units signed by a Member before a Transmission Event even though the Responsible Entity has notice of the Transmission Event.

7.6. Recognition of Member

- (a) Except as otherwise provided by law or provided in this Constitution, the Responsible Entity:

- (i) must treat the person entered on the Register as a Member as the absolute owner of all rights and interests of the Member; and
 - (ii) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit by any other person, even if the Responsible Entity has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Member until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Responsible Entity, Units held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in Clause 7.6(c) limits the operation of Clause 7.6(a).

~~(d)~~ —

7.7. Participation in Transfer Systems

The Responsible Entity may determine that Units which are ~~Officially~~ Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Responsible Entity may, with the approval of the operator of the ~~Prescribed Financial Market~~ Securities Exchange on which the Units are Listed, create rules to facilitate such participation which may be additional to or may override this Clause ~~7.7~~.

8. Valuation of Assets

8.1. Periodic Valuations

- (a) The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act if the Corporations Act section 601FC(1)(j) applies.
- (b) The Responsible Entity may determine Net Asset Value and Net Class Value at any time, but must, while the Trust is Listed, determine Net Asset Value as at the end of each month within 14 days after the end of each month.

8.2. Valuation Methods

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time provided that the valuation methods and policies are consistent with the Accounting Principles and ordinary commercial practice for valuing assets of the same type as the relevant category Assets.
- (b) Unless the Responsible Entity determines otherwise, and subject to the terms of any applicable ASIC Relief instrument, the value of an Asset for the purpose of calculating Net Asset Value or Net Class Value will be its ~~mMarket vValue~~ which must be determined in a manner consistent with the Accounting Principles and ordinary commercial practices for valuing assets of the same type as the Assets.
- (c) If an option has been granted over an Asset this is to be taken into account in assessing the value of the Asset.
- (d) If the Trust is a Registered Scheme then if the Responsible Entity values an Asset at other than its ~~mMarket vValue~~, or where there is no ~~mMarket vValue~~, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Application Price or the Withdrawal Price that is independently verifiable and which is reasonably current¹ at the time of issue or withdrawal of Units.

¹ ASIC RG 134.111 provides guidance on the meaning of "reasonably current".

9. Accounts, Audit and Reports

9.1. Accounts – Registered Scheme

If the Trust is a Registered Scheme, the Responsible Entity must comply with the requirements of Chapter 2M of the Corporations Act, in so far as they are relevant to the Trust.

9.2. Accounts – Not a Registered Scheme

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

- (a) must arrange the preparation and maintenance of such accounts and reports as the Responsible Entity, reasonably exercising its discretion, considers appropriate having regard to the nature of the Trust and its Assets, with a view to ensuring that the financial position of the Trust at any time is accurately recorded; and
- (b) will determine at its discretion whether or not to have the Trust's accounts audited (but will arrange for such an audit if so directed by all Members).

10. Income and Distributions to Members

10.1. Distributable Income

- (a) The Responsible Entity may determine the distributable income for a Tax Year or each Distribution Period by way of a standing determination (subject to the determination not being in contradiction of trust or tax laws), the application of which is capable of independent verification, and may change such principles from time to time in respect of Tax Years or Distribution Periods ending after the change in principles.
- (b) In determining the distributable income the Responsible Entity may determine whether any receipt, profit, gain, cost, expense, outgoing or other amount is to be treated, for the purposes of the Trust, as being on income or capital account and may, in making that determination, reclassify amounts which are income as capital, and amounts which are capital as income.
- (c) For the avoidance of doubt:
 - (i) in determining the distributable income, the Responsible Entity does not have to take into account the Accounting Principles; and
 - (ii) the preparation of the accounts of the Trust in accordance with current Accounting Principles is not to be regarded as a determination by the Responsible Entity of the method for calculating the distributable income.

10.2. Standing principles for periods where the Trust is an AMIT

For any Tax Year for the Trust that is an AMIT Income Year, unless the Responsible Entity determines otherwise under Clause 10.1, the standing principles for calculating the distributable income for the Tax 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 Trust 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 Trust 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 may be changed or revoked at any time in accordance with Clause 10.1.

10.2.10.3. Determination of distributable income

~~(a)~~ 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 Tax Year this determination of the distributable income for that Distribution Period may be an estimate. ~~Unless the Responsible Entity determines otherwise, the~~ Distributable Income for a Distribution Period ~~must~~ is to be:

- (i) if the Responsible Entity has determined standing principles under Clause 10.1 or 10.2 which are applicable to the Tax Year or Distribution Period, the amount calculated by applying those principles in respect of the Tax Year or Distribution Period; and
- ~~(i)~~(ii) if there are no standing principles which are applicable to the Tax Year or Distribution Period under Clause 10.1 or 10.2, the net income of the Trust as defined in section 95(1) of the 1936 Act, excluding any amount that is included in the net income of the Trust that will not be received by the Responsible Entity; but
- (iii) not less than the amount which if distributed would prevent the Responsible Entity being liable to tax on the income of the Trust.

10.4. Power to accumulate or defer amounts

(a) The Responsible Entity may, in respect of a Distribution Period in a Tax Year for the Trust that is an AMIT Income Year for the Trust, determine prior to the end of that Distribution Period that all or part of the distributable income of the Trust for the period from the commencement of the Tax Year until the end of the Distribution Period that has not already been distributed to Members under Clauses 10.5 or 10.18(b) will:

- (i) be accumulated; or
- (ii) not be distributed in respect of the Distribution Period and will be distributed to Members of the Trust later in the Tax Year.

(b) The effect of the Responsible Entity exercising its power to accumulate or carry forward an amount pursuant to Clause 10.4(a) is, in accordance with Clause 10.5, to:

- (i) exclude the relevant amount from the Income Distributions for Members of the Trust for:
 - (A) the Distribution Period; and
 - (B) in the case of an accumulation pursuant to Clause 10.4(a)(i) all future Distribution Periods; and
- (ii) in the case of amounts which are carried forward for distribution later in the Tax Year under Clause 10.4(a)(i), include the relevant amount in the Income Distributions for a subsequent Distribution Period in the Tax Year unless the Responsible Entity determines to distribute the relevant amount earlier under Clause 10.18(b).

(c) For the purposes of Clause 10.13, amounts accumulated under Clause 10.4(a)(i) may be attributed to Members under the AMIT Regime.

(d) Amounts which are:

- (i) accumulated pursuant to Clause 10.4(a)(i); or
 - (ii) carried forward for distribution later in the Tax Year pursuant to Clause 10.4(a)(i), but only until the time at which the amount is distributed under Clauses 10.5 or 10.18(b),
- continue to form part of the Assets and no Member has any particular right to or interest in those amounts.

~~10.3.1.1.~~ **Present Entitlement**

~~A person who at any time during the Tax Year is or has been a Member, is presently entitled, at the end of the Tax Year to the distributable income of the Trust for the Tax Year, in the proportion specified in Clause 10.3.~~

~~10.4.~~~~10.5.~~ **Income Distributions**

- (a) Subject to Clause 11.4, The Responsible Entity may determine to make an interim distribution of distributable income accruing during any Interim Distribution Period (an **Interim Distribution**). The Responsible Entity must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Members on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in Clause 10.5(c).
- (b) Within 90 days of the end of the Tax Year and subject to Clause 10.5(d), the Responsible Entity must pay to the Members on the Register at the end of the last day of that Tax Year an amount equal to the Income Distribution of distributable income accruing to the Trust for the Tax Year less any amounts previously distributed during that Tax Year under Clause 10.5(a).
- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class and to Clause 10.5, a Member on the Register on the Distribution Calculation Date:
 - (i) for the purposes of Clause ~~10.2~~10.6, has a vested and indefeasible interest in, and is presently entitled to;
 - (ii) for the purposes of Clause ~~10.3(b)~~10.5(b), is presently entitled to a distribution of; and
 - (iii) for the purposes of Clause ~~10.3(a)~~10.5(a), is presently entitled to an Interim Distribution out of distributable income of,

the Income Distribution which the Responsible Entity determines to make, as is equal to the number of Units held by that Member on that date divided by the number of Units on issue on that date.

- (d) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Member is entitled to receive a distribution under Clause 10.5(a) or 10.5(b) in accordance with the following formula:

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

where:

- A = the amount of the distributable income in respect of the relevant Tax Year or Interim Distribution Period (as the case may be);
- B = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on ~~h~~issue held by any such Member;

- C = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Tax Year or Interim Distribution Period which are entitled to a full income distribution for that period plus, if the Member holds at the close of business on the last Business Day of that period Units issued during that period which have a proportionate income entitlement in accordance with Clause 10.11, the aggregate number of such Units held by that Member multiplied by the relevant proportion;
- D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Tax Year or Interim Distribution Period plus, if Units have been issued during that period which have a proportionate income entitlement in accordance with Clause 10.11, the aggregate of the total number of such Units multiplied by the relevant proportion, in each case calculated as at the close of business on the last Business Day of that period; and
- E = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of the Member including the number or percentage of Units on issue held by the Member.

10.6. Present Entitlement

A person who at any time during the Tax Year is or has been a Member, is presently entitled to:

(a) at the end of the Tax Year which is not an AMIT Income Year, to the distributable income of the Trust for the Tax Year, in the proportion specified in Clause 10.5; and

(b) if the Tax Year is an AMIT Income Year, the distributable income of the Trust for the Tax Year excluding any amounts accumulated pursuant to Clause 10.4(a)(i);

in the proportion that the:

(i) Income Distributions calculated in respect of the Member or former Member in respect of the Tax Year under Clause 10.5;

(ii) any payments made to that Member or former Member in respect of that Tax Year under Clause 10.18(b); and

(iii) the Income Component of any withdrawal payment made to the Member in the Tax Year pursuant to Clause 26.7;

bear to the sum of all Income Distributions calculated under Clause 10.5, all payments under Clause 10.18(b), and all of the Income Components of any withdrawal payments made to persons who are or have been Members at any time during the Tax Year.

10.5-10.7. Satisfaction of Present Entitlement

The present entitlement of a Member to distributable income of the Trust for a Tax Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Tax Year.

10.8. Indefeasibility

Despite any other provision of this Constitution, a person cannot be defensed of any share of the distributable income to which the person is entitled under Clause 10.5 and 10.6.

10.9. Distribution of income

Subject to any deductions made under Clause 10.6 or 10.17 and subject to Clause 10.1, 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.

~~10.6-10.10.~~ Minimum Distribution

If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may transfer capital to enable distribution to Members holding Ordinary Units pro rata of the minimum amount necessary to avoid the Responsible Entity as Responsible Entity of the Trust becoming assessable to pay tax under the Tax Act.

~~10.7-10.11.~~ Member's Rights

For the avoidance of doubt and despite anything in this Clause 10:

- (a) The rights of a Member under this Clause 10 are subject to the rights, obligation and restrictions attaching to the Units which they hold; and
- (b) For the purposes of distribution entitlements, partly paid Units will be treated as that proportion of whole Units as the amount paid up bears to the total issue price for that Unit, rounded down to the nearest 2 decimal places, or in such other manner.

~~10.8-10.12.~~ Trust taxed as a Company

If the Trust is to be taxed as if it were a company, the Responsible Entity may determine that this Clause 10.12 applies to any period (a **Distribution Period**) instead of Clauses 10.1 to ~~10.6~~10.10. If it does so:

- (a) As soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity determines otherwise, the income in respect of the Distribution Period, income will be calculated in accordance with the Accounting Principles.
- (b) The Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) The Responsible Entity may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to Members on the Register on any date determined by the Responsible Entity (**CD Date**).
- (d) For each Distributable Amount being paid to Members under this Clause 10.12 the Responsible Entity:
 - (i) must comply with Tax Act; and
 - (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) 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 as at the close of business on the CD Date for that Distributable Amount which are entitled to a full income distribution plus, if the Member holds on the CD Date for that Distributable Amount Units which have proportionate income entitlement, the aggregate number of such Units held by that Member multiplied by the relevant proportion;

B = the aggregate of the number of Units entitled to full income distribution plus if any Units have been issued with proportionate income entitlement, the aggregate of the total

number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the CD Date for the Distributable Amount;

C = the Distributable Amount.

(f) The Distributable Amount must be paid to Members within two months after the relevant CD Date.

10.13. Attribution under AMIT Regime – basis for attribution

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Tax Year, attribute all of the Determined Trust Components of the Trust, or each Class in the Trust where there is an AMIT Class Election in force for the Trust, for the Tax Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under Clause 10.13(a) in accordance with the Tax Act and the following principles:
- (i) that the amount of each Member's Determined Member Components of a particular character is so much of the Trust'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 Trust and the Responsible Entity has made an AMIT class Election for the Trust, each Class will be treated as a separate AMIT for the purpose of the attribution under Clause 10.13(a).
- (c) Subject to Clause 10.14, but without limiting Clause 10.13(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 Trust or the relevant Class (where there is an AMIT Class Election in effect for the Trust), all of the Determined Trust Components of the Trust for the Tax 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 Tax Year under Clause 10.6;
- (ii) any Income Components distributed to a Member or former Member under to Clause 26.7;
- (iii) any distributions of distributable income that the Member or former Member has become entitled to during the Tax Year; and
- (iv) any Income Distributions that would arise for the Member or former Member at a time specified in Clause 10.4(d) ("Relevant Time") under Clause 10.6 if the Relevant Time was the end of a Distribution Period and variable "C" in the formula set out in Clause 10.6 for the Distribution Period was the amount accumulated under Clause
- (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 Trust as an Income Distribution under Clause 10.5 or under Clause 10.18(b) are referable to Determined Trust Components of the Trust or the relevant Class (where there is an AMIT Class Election in effect in relation to the Trust) for the Tax Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under Clause 10.13(a).

10.14. Attribution under AMIT Regime – AMIT Class Election

Where there is an AMIT Class Election in effect, then without limiting Clause 10.13:

- (c) in calculating the Determined Trust Components of each Class for the Trust, the Responsible Entity must only include in the Determined Trust Components of a Class the Determined Trust Components of the Trust 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 10.22; and
- (d) 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).

10.15. Attribution under AMIT Regime – Member objections

If the Trust 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 Trust or a Class (where the Responsible Entity has made an AMIT Class Election for the Trust) 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 Trust 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.

10.16. AMIT Regime Unders/Overs

(f) For any Tax Year that is an AMIT Income Year, the Responsible Entity may determine how any Unders or Overs that arise for the Trust 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.

10.9-10.17. Withholding Tax

- (a) The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that is required by law to deduct from such amount.
- (b) Where the income of the Trust is reduced by Additional Taxes attributable to the ownership of Units by certain Members, the entitlement to Income Distributions of such Members may be

adjusted by the Responsible Entity, pursuant to Clause 10.5(d), so that the entitlement to Income Distribution or Distributable Amount of all other Members is equivalent to the amount they would receive in the absence of such Additional Taxes.

~~10.10.~~10.18. **Other Distributions**

If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may at any time:

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

~~10.11.~~10.19. **Separate Accounts**

- (a) The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Members or Members of a Class provided that the allocation is not inconsistent with the entitlements of Members to distributable income under Clause 10.5 or 10.18(b) or the Responsible Entity's obligations to attribute amounts to Members under Clause 10.13. For a Tax Year for the Trust which is not an AMIT Income Year and if such allocation is made on any basis other than pro rata with all other Members, the Responsible Entity must notify the Member.
- (b) Where Clause 10.17(b) has been applied to reduce income entitlements of certain Members, those Members are to have the corresponding additional credits for tax purposes allocated to them.

~~10.12.~~10.20. **Reinvestment**

- (a) ~~If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes,~~ The Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units of the same Class.
- (b) If the Responsible Entity decides to permit or require reinvestment of some or all of any distribution, it must notify Members of the procedure and terms for reinvestment and any change in the procedure or terms.
- (c) If reinvestment applies to the share of distributable income (as determined under clause 10.1) on any Unit held by a Member at the end of a Distribution Period or any part of that share, the Responsible Entity is deemed to have received and accepted an application to reinvest that share of distributable income, or part of it, on the first Business Day following the end of the Distribution Period. The new Units are issued at the time of that acceptance. ~~on the day determined by the Responsible Entity in its absolute discretion.~~
- (d) If reinvestment applies, the Application Price for the Units to be issued on reinvestment will be calculated in accordance with Clause 5.9 or 5.10.

~~10.13.~~10.21. **Position on Transfer of Units**

Income in the distribution account when a transfer or transmission of Units is Registered remains credited to the transferor.

10.22. Classes

The rights of a Member under this Clause 10 subject to the rights, obligations and restrictions attaching to any particular Unit or the Class of Units which they hold.

11. Payments

11.1. Responsible Entity Discretion

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

11.2. Unpresented 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 Member, the money is to be reinvested in Units at the Application Price prevailing at the next Valuation Time after the cheque is cancelled.

11.3. Unsuccessful Payment

Where the Responsible Entity attempts to make a payment to a Member by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be reinvested in Units at the Application Price prevailing at the next Valuation Time after failure of the third attempt.

11.4. No Fractions

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

11.5. Discharge of Responsible Entity

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

11.6. Deductions

The Responsible Entity may deduct from any amount to be paid to a person who is or has been a Member or received from a person who is or has been a Member:

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

which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt by law or by this Constitution or which the Responsible Entity considers should be deducted.

12. Powers of the Responsible Entity

12.1. General Powers

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

12.2. Contracting Powers

Without limiting Clause 12.1, the Responsible Entity in its capacity as Responsible Entity of the Trust has power to ~~borrow or raise money and to lend or advance money (whether or not on security) 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.](#)

12.3. Investment Powers

Without limiting Clause 12.1, the Responsible Entity may in its capacity as Responsible Entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

12.4. Guarantees

Without limiting Clause 12.1, the Responsible Entity may if it considers it appropriate in all the circumstances to do so, guarantee or assume the obligations of any person (including an ~~a~~Associate of the Responsible Entity) and a third party dealing with the Responsible Entity may rely on a certified extract of the minutes of a meeting of the directors of the Responsible Entity as conclusive evidence that the Responsible Entity has formed the opinion that it is appropriate in all the circumstances to exercise its powers under this Clause 12 and is thereby empowered accordingly.

12.5. Power of Delegation

- (a) 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.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity sees fit.
- (c) The agent or delegate may be an ~~A~~associate of the Responsible Entity.

12.6. Exercise of Discretion

Subject to Clause 12.8, the Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

12.7. Rights and powers in relation to the AMIT Regime

Without limiting clause 12.1, the Responsible Entity has, in addition to its other rights and powers provided for under this Constitution and at law:

- (e) the power to make an election to determine that the Trust is an AMIT;
- (f) the power to make an AMIT Class Election; and
- (g) all of the powers and rights which are necessary for or incidental to the Trust being able to be operated in a manner permitted by the Tax Act as an AMIT, including:
 - (i) being eligible to apply the AMIT Regime;
 - (ii) complying with the requirements of the AMIT Regime;
 - (iii) being properly administered and operated under the AMIT Regime; and
 - (iv) maintaining equity between the Members as a result of the operation of the AMIT Regime.

~~12.7.12.8.~~ Discretion Limited

The Responsible Entity may not exercise its powers in a manner or to an extent that would cause the Trust to be subject to income taxation as a separate entity as a non-fixed trust.

13. Retirement of Responsible Entity

13.1. Voluntary Retirement

- (a) While the Trust is a Registered Scheme, the Responsible Entity may retire as the Responsible Entity of the Trust as permitted by law.
- (b) While the Trust is not a Registered Scheme, the Responsible Entity may retire on not less than 3 month's notice to Members. On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

13.2. Compulsory Retirement

- (a) While the Trust is a Registered Scheme, the Responsible Entity must retire as the Responsible Entity of the Trust when required by law.
- (b) While the Trust is not a Registered Scheme, the Responsible Entity must retire if required to do so by a Resolution passed by at least 75% of the votes cast by Members entitled to vote on the Resolution.

13.3. New Responsible Entity

If the Trust is not a Registered Scheme at the time the Responsible Entity is to retire, any proposed 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.

13.4. Release

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

13.5. Retirement Benefit

The Responsible Entity is entitled, subject to any approval required by law, to agree with the incoming Responsible Entity to be remunerated by, or to receive a benefit from, the incoming Responsible Entity in relation to:

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

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

14. Notices to Members

14.1. Notices to Members

- (a) Subject to the Corporations Act, a notice or other communication required under this Constitution to be given to a Member may be given electronically, including by way of announcements on the ~~Prescribed Financial Market~~ [Securities Exchange](#) on which the Units are Listed, or in such other manner as the Responsible Entity determines, unless a Member specifies to receive such notices and communications in writing. In this case, notices and communications should be delivered or sent to the Member at the Member's physical or electronic address last advised to the Responsible Entity for delivery of notices.
- (b) A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.

- (c) In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.
- (d) A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.

14.2. Notices of the Responsible Entity

- (a) A notice required under this Constitution to be given to the Responsible Entity must be given in writing (which includes a fax), or in such other manner as the Responsible Entity determines.
- (b) The notice is effective only at the time of receipt.
- (c) The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member unless the Responsible Entity dispenses with this requirement.

15. Meetings of Members

15.1. Corporations Act

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

15.2. Member's Request for Meeting

- (a) While the Trust is not a Registered Scheme:
 - (i) 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 50% of the votes that may be cast on the resolution; and
 - (ii) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in Clause 15.2(a) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

15.3. Notice Period

- (a) While the Trust 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.
- (b) While the Trust is a Registered Scheme, the requirements for notice of meetings of Members is governed by the Corporations Act.

15.4. Responsible Entity May Determine

Subject to the specific provisions of this Constitution relating to meetings of members and the Corporations Act (if the Corporations Act applies), 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.

[For the avoidance of doubt, such meetings may be convened and held either:](#)

- [\(a\) at a physical location;](#)

(b) entirely virtually via the use of technology; or

(c) by a combination of both paragraphs (a) and (b).

The Responsible Entity may at any time prior to the opening of a meeting, amend the time and place the meeting will be convened and the manner for which the meeting will be conducted.

15.5. Quorum

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

15.6. No Quorum

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

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

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

15.7. Chairman

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

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

15.8. Adjournment

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

15.9. Resolutions Binding

(a) A Resolution by:

(i) Members binds all Members; or

(ii) Members of a Class, binds all Members of that Class,

~~(a)~~ whether or not they 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).

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

15.10. Proxies and Voting while the Trust is a Registered Scheme

While the Trust is a Registered Scheme:

(a) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and

(b) 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.

15.11. While the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, the remaining Clauses 15.12 to 15.15 apply.

15.12. Voting

- (a) Voting is by a show of hands, unless a poll is duly demanded or the proposed resolution is required by law or by this Constitution to be decided by a percentage of Units, or a percentage of votes able to be cast.
- (b) Each Member present in person or by proxy has:
 - (i) on a show of hands, one vote; and
 - (ii) on a poll, one vote for each Unit they hold.
- (c) In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees. In the case of an equality of votes, the chairman has the casting vote.

15.13. Poll

A poll may be demanded before or on declaration of the result of a show of hands by either:

- (a) the chairman, or
- (b) at least 2 Members present in person or by proxy who together hold at least 10% of Units.

15.14. Proxies

- (a) A Member may be represented at a meeting by proxy. Proxies are governed by the provisions of the Corporations Act relating to Registered Schemes as if the Trust were a Registered Scheme.
- (b) 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.

15.15. Class Meetings

The rights attaching to a Class must not be varied without the written consent of all Members holding Units of that Class or by a ~~s~~Special ~~r~~Resolution of Members holding Units of that Class. Meetings of Members holding Units of a Class are to be convened and conducted in the same manner as meetings of Members generally under this Constitution.

16. Rights and Liabilities of Responsible Entity

16.1. Holding Units

Subject to the Corporations Act, the Responsible Entity and its Associates may be issued with, hold or trade in Units, or hold interests in any trust or company which is an Associate of any of them, in any capacity.~~The Responsible Entity and its associates may hold Units in the Trust in any capacity.~~

16.2. Other Capacities

Subject to the Corporations Act, if the Corporations Act applies, nothing in this Constitution restricts the Responsible Entity (or its ~~a~~Associates) from:

- (a) dealing with itself (as Responsible Entity of the Trust or in another capacity), an ~~a~~Associate or with any Member;

- (b) being interested in any contract or transaction with itself (as Responsible Entity of the Trust or in another capacity), an Associate or with any Member or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

16.3. Responsible Entity May Rely

The Responsible Entity may take and may act upon:

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

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

17. Limitation of Liability and Indemnity in favour of Responsible Entity

17.1. No limitation of other undertakings

This Clause 17 does not limit or affect any other indemnities given to the Responsible Entity in this Constitution or at law.

17.2. Limitation of liability

Except where the Corporations Act expressly provides otherwise:

- (a) the Responsible Entity and each director and officer of the Responsible Entity are not personally liable to a Member or any other person in connection with the office of the Responsible Entity or director or officer of the Responsible Entity;
- (b) the Responsible Entity will not be liable to any Member to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust;
- (c) a Member must not:
 - (i) bring proceedings against the Responsible Entity in its personal capacity; or
 - (ii) apply to have the Responsible Entity put into administration or wound up or apply to have a receiver or similar person appointed to the Responsible Entity or prove in the administration or winding up of the Responsible Entity;
- (d) the Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any Liability (actual or contingent) unless its Liability is limited in a manner satisfactory to it in its absolute discretion and the Responsible Entity must use reasonable endeavours to ensure that its Liability is limited to the extent to which it is

entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust; and

- (e) the Responsible Entity is not liable to account to any person for any payment made in good faith to any Government Agency for any Tax or any other charges in respect of the Trust or for any transaction arising under this Constitution notwithstanding that such payment need not have been made.

17.3. Acts or omissions of Responsible Entity and others

- (a) The Responsible Entity is not responsible for:
- (i) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
 - (ii) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
 - (iii) Costs if a person fails to carry out an agreement with the Responsible Entity or an attorney, delegate or agent of the Responsible Entity,

except where the Corporations Act expressly provides otherwise.

- (b) The Responsible Entity will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
- (i) any provision of any present or future law or statute of Australia or any State or Territory; or
 - (ii) any decree, order or judgement of any competent court;
 - (iii) or any document or agreement binding on the Responsible Entity,

the Responsible Entity is prevented, forbidden or hindered from doing or performing.

- (c) No act or omission of the Responsible Entity will be considered fraud, negligence or breach of trust by it to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Trust or by any other act or omission of any other person.

17.4. Indemnity in Favour of Responsible Entity

- (a) The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- (b) To the extent permitted by the Corporations Act, (if the Corporations Act applies, and otherwise without limitation), the indemnity under this Clause 17.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- (c) This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as Responsible Entity of the Trust.

- ~~(e)~~(d) Where a Liability is incurred pursuant to a proper exercise of the Responsible Entity's powers in the proper performance of its duties in relation to the Trust under this Constitution or at law, 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 Entity (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust 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.

18. Liability of Members

18.1. Liability Limited

- (a) Subject to Clauses 18.1(c) and 18.3, 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.
- (b) A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets to meet the claim of any creditor of the Responsible Entity in respect of the Trust.
- (c) The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which Clause 18.4 applies.

18.2. AMIT Indemnity

Without limiting Clause 10.15(a)(iii), 17.4, 18.1(c) or 18.1(d), the Responsible Entity is entitled to be indemnified by a Member or former Member for:

- (a) any Tax (or 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
- ~~(d)~~ (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 17.4 in the circumstances contemplated in Clause 18.2(a).

~~18.2-18.3.~~ 18.3. Recourse

In the absence of separate agreement with a Member, the recourse of the Responsible Entity and any creditor is limited to the Assets.

~~18.3-18.4.~~ 18.4. Restrictions on Members

A Member:

- (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; or
- (c) may not require an Asset to be transferred to the Member.

19. Remuneration and Expenses of Responsible Entity

19.1. Management Fee

- (a) Subject to the proper performance of its duties, 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 0.5% per annum of the gross value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee.

- (b) In relation to the month in which the Trust 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. 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.

19.2. ~~Entry Fee~~ Not Used

~~Subject to the proper performance of its duties (as they relate to new issues of Units), the Responsible Entity is entitled to be paid an Entry Fee in respect of an application for Units which has been accepted by the Responsible Entity.~~

19.3. Payment of Responsible Entity's fee

The Responsible Entity's fees accrue daily and are payable in arrears within 5 days of the last day of the month.

19.4. Priority of Responsible Entity's remuneration

The Responsible Entity's fee must be paid in priority to the payment of all other amounts payable from the Trust.

19.5. Indemnity ~~out of Fund~~ in favour of Responsible Entity

In addition to the Responsible Entity's right of remuneration under Clauses 19.1 and 19.2 and any other right of indemnity which it may have under this Constitution or at law, the Responsible Entity is indemnified and entitled to be reimbursed out of the Assets of the Trust for, or entitled to have paid from the Trust, all Costs (including, without limitation, any amounts payable to any delegate, attorney, agent or custodian) incurred at law or under this Constitution in the proper performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

19.6. Waiver of Fees

- (a) The Responsible Entity may in its absolute and unfettered discretion waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution.
- (b) The Responsible Entity may do so in relation to a Class or Members generally, that is, subject to the Corporations Act, may waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution differently for different Class.
- (c) Where payment is deferred, the fee and/or levy accrues daily until paid.

19.7. Expenses

All expenses incurred by the Responsible Entity or its related parties in connection with the Trust are payable or reimbursable out of the Assets, but while the Trust is a Registered Scheme such reimbursement or payment is only available to the extent that the amounts are incurred in the proper performance of the Responsible Entity's duties as Responsible Entity and only to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with including but not limited to:

- (a) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (b) any proposed acquisition, disposal or other dealing with an investment;

- (c) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (f) Tax, (including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as a reimbursement for GST), costs incurred in the implementation of the AMIT Regime and financial institution fees;
- (g) financial institution fees;
- (h) 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;
- ~~(h)~~(i) without limiting paragraph (h), an investment management fee payable to a person appointed by the Responsible Entity, which may include a related party of the Responsible Entity, of up to 2% per annum of the gross value of the Assets managed by it calculated and accrued daily, and payable within seven days of the end of each calendar month, plus, if so provided by the Responsible Entity under an investment management agreement, a performance fee;
- ~~(j)~~(j) preparation and audit of the taxation returns and accounts of the Trust;
- ~~(k)~~(k) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- ~~(l)~~(l) any court proceedings, arbitration or other dispute concerning a Trust 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 Clause 19.7(l) must be repaid;
- ~~(m)~~(m) any compliance or other committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- ~~(n)~~(n) while the Trust is a Registered Scheme but 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 appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- ~~(o)~~(o) the preparation, implementation, amendment and audit of any compliance plan; and
- (p) complying with any law, and any request or requirement of the ASIC, ASX or any other regulatory body.
- ~~(e)~~ —

The Responsible Entity may pay any items referred to in this clause 19.7 directly out of the Assets or it may pay them itself and be reimbursed out of the Assets.

19.7A Additional Fund Administration Services

- (a) The Responsible Entity is entitled, on the terms set out in clauses 19.7A(a) to (e), to take and retain for itself remuneration out of the Assets for time spent by it and Responsible Entity Personnel in providing Additional Fund Administration Services in relation to the proper performance of the Responsible Entity's duties in respect of the Trust.

- (b) Remuneration under clause 19.7A(a) is to be calculated on the basis of a maximum hourly rate of \$1,000 (Australian dollars) per hour, adjusted quarterly to reflect any increase in the 'All groups CPI weighted average of eight capital cities' published by the Australian Bureau of Statistics, in respect of each quarter.
- (c) The Responsible Entity is entitled to charge and take that remuneration out of the Assets calendar monthly in arrears.
- (d) The Responsible Entity may notify the Members of its current hourly rates for the purposes of clause 19.7A(b), and the amounts charged to the Assets under clause 19.7A(c) from time to time, but its rights to charge and take those amounts are not prejudiced by a failure to do so or a delay in doing so.
- (e) The Responsible Entity's rights under clause 19.7A(a) are in addition to:
 - (i) its rights to fees under clause 19; and
 - (ii) its rights under this constitution and at law to be indemnified in connection with debts, liabilities and expenses incurred by it in the proper performance of its duties as trustee and responsible entity of the Trust.
- (f) The Responsible Entity may appoint, engage or otherwise contract with a person other than Responsible Entity Personnel to perform any Additional Fund Administration Services.
- (g) An appointment, engagement or other contract under clause 19.7A(f) may be sole, joint, several or joint and several and may include a power in turn for a person to delegate the performance of any Additional Fund Administration Services to another person.
- (h) Subject to clause 19.7A(i), an appointment, engagement or other contract under clause 19.7A(f) may be on any terms that the Responsible Entity determines in its absolute discretion, including in relation to remuneration and other compensation. Subject to this constitution, the Responsible Entity is entitled to be indemnified out of the Assets in respect of that remuneration and compensation.
- (i) A Delegate may be an Associate of the Responsible Entity or an officer or employee of an Associate of the Responsible Entity. If and for so long as the Trust is a registered managed investment scheme, the terms on which an Associate is appointed, engaged or contracted must not contravene Chapter 2E of the Corporations Act (as modified by section 601LC of the Corporations Act).
- (j) To the extent permitted by law, the Responsible Entity may waive or excuse on any terms it thinks fit any breach by any Delegate of their obligations to the Responsible Entity in connection with the Trust.

The appointment, engagement or other contracting of a Delegate under clause 19.7A(f) does not relieve the Responsible Entity from the obligation to properly perform all of its duties and obligations, including to ensure that the services delegated are properly performed

19.8. GST

- (a) 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, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. This Clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this Constitution.

- (b) In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1 + n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).
- (c) In the event that 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 Trust by way of reimbursement an additional amount equivalent to the amount of such input tax.

19.9. Sums Owed to the Responsible Entity

The Responsible Entity may redeem some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

20. Duration of the Trust

20.1. Initial Settlement

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

20.2. Termination

The Trust terminates on the earliest of:

- (a) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Members; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution or by law.

20.3. 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 the income of the Trust other than income not distributed to Members, the Responsible Entity may call a meeting of the Members to consider winding up the Trust and if by Special Resolution the meeting so decides, the Responsible Entity may wind up the Trust.

20.4. Restriction on issue and withdrawal of Units

~~(b)~~ Despite any other provisions in this Constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or withdrawal would not offend the rule against perpetuities, or any other rule of law or equity.

21. Procedure on Termination

21.1. Realisation of Assets

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

21.2. Audit of Winding Up

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

21.3. Distribution Following Termination

- (a) Subject to any rights, obligations and restrictions attaching to any particular Unit or Class, the~~The~~ net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in the following manner. The Responsible Entity may distribute proceeds of realisation in instalments. The Responsible Entity must first pay the Trust's income from the last Distribution Calculation Date prior to the termination of the Trust to the Members holding Ordinary Units pro rata according to the respective numbers or such Units held by them. Secondly, the Responsible Entity must pay the balance to the Members pro rata according to the respective numbers of Units held by them.
- (b) The Responsible Entity may distribute an asset of the Trust to a Member *in specie*. The Responsible Entity must determine the value of the asset of the Trust to be distributed *in specie*. Any costs payable on an *in specie* distribution must be paid by the Member before the distribution is made.
- (c) The Responsible Entity is entitled to:
- (i) be paid from the proceeds of realisation of the Trust before any payment is made to the Members all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Trust;
 - (C) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and
 - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Responsible Entity in connection with the winding up of the Trust;
 - (ii) an indemnity against the amounts referred to in Clause 21.3(c)(i) which may be satisfied out of those proceeds before any distribution under Clause 21.3(a) is made; and
 - (iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Clause 19.
- (d) The Responsible Entity may postpone the realisation of the Trust for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Responsible Entity may retain for as long as it thinks fit any part of the Trust which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this Constitution, including but not limited to under Clause 19.
- (f) Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under Clause 21.3, but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Member.

22. Amendments to this Constitution

22.1. Responsible Entity May Amend

- (a) While the Trust is a Registered Scheme, this Constitution may be amended, if the Corporations Act allows:
- (i) by Resolution; or
 - (ii) by deed executed by the Responsible Entity.

~~(ii)~~ If the Constitution is amended by Resolution, the Responsible Entity may give effect to the amendments by executing a supplemental deed.

- (b) While the Trust is not a Registered Scheme, the Responsible Entity may by deed amend this Constitution but, where the amendments adversely affect the rights of Members, may only do so with the approval of a Resolution.

22.2. Statutory Requirements

While the Trust is a Registered Scheme, and the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this Constitution contain certain provisions, then those provisions are deemed to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. Clause 22.1(a) does not apply to provisions deemed by this Clause 22.2 to be incorporated in the Constitution.

22.3. Attribution Managed Investment Scheme

Without limiting the Responsible Entity's powers in Clauses 22.1 and 22.2, 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:

- (a) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Trust;
- (b) facilitate compliance with the terms of the AMIT Regime in relation to the Trust, 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 Trust 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 Trust in reliance on such relief.

22.4. Changes for quotation of a Class

Without limiting the Responsible Entity's powers in the other provisions of this clause 22, but subject to the Corporations Act, the Responsible Entity may make any change to this Constitution required by a Securities Exchange for Units in a Class to be quoted on the Securities Exchange.

22.5. Class Rights

The rights attaching to a Class of Units may only be amended or varied by Special Resolution of Members of that Class or with the consent of all members of that Class.

23. Compliance Committee

23.1. Compliance Committee

While the Trust is a Registered Scheme and a compliance committee is acting in that capacity for the Trust, 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.

23.2. Persons to whom Clauses 23.3 and 23.5 apply

Clauses 23.3 and 23.5 apply to each person who is or has been a ~~member of the~~ Compliance Committee [Member](#) (if any).

23.3. Indemnity

The Responsible Entity must from the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this Clause 23.3 applies for Costs (other than Taxes) incurred by the person as a ~~member of the Trust's~~ Compliance Committee [Member](#) (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Corporations Act.

23.4. Extent of indemnity

The indemnity in Clause 23.3:

- (a) is a continuing obligation and is enforceable by a person to whom Clause 23.3 applies even though that person may have ceased to be a ~~member of the Trust's~~ Compliance Committee [Member](#); and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

23.5. Insurance

The Responsible Entity may, from the Trust, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this Clause 23.5 applies against any liability incurred by the person as a ~~member of the Trust's~~ Compliance Committee [Member](#) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

23.6. Savings

Nothing in Clauses 23.3 or 23.5:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Responsible Entity to indemnify or provide insurance for any person to whom those clauses do not apply.

24. Complaints

24.1. Complaints

- (a) A Member who is dissatisfied with the Trust or a service provided by the Responsible Entity in relation to the Trust is entitled to make a Complaint to the Responsible Entity.²
- (b) A “Complaint” will be taken to be an expression of dissatisfaction made to the Responsible Entity in relation to the products and services being provided to the Member, which in this case relates to the Trust as the product and the services supplied in relation to the Trust, including the complaints handling process itself, where a resolution is explicitly or implicitly expected.
- (c) The Responsible Entity must comply, as an Australian financial services licensee, with the dispute resolution requirements under section 912A(2) of the Corporations Act for Retail Members in dealing with a complaint of a Member that is a Retail Member.³
- (d) The Responsible Entity must apply the following procedure in relation to complaints of a Member that is not a Retail Member:
 - (i) the Responsible Entity will from time to time designate certain of its officers, employees or agents to be responsible for handling complaints;
 - (ii) the Responsible Entity will ensure that a complaint is acknowledged in writing immediately and a Member making the complaint is treated courteously;⁴ and
 - (iii) the Responsible Entity will ensure that a final written response will be provided to the Member within 45 days of receipt of the Complaint and in a manner that is fair to the Member and Responsible Entity or its officers or employees against whom it is made. The final written response will inform the Member of the final outcome of their complaint within the internal dispute resolution scheme (including the remedies available to the Member.
- (e) For the purposes of this clause 24, a reference to a Member includes any person who has an “interest” in the Trust as that term is defined in section 9 of the Corporations Act, and any person whose Units have been redeemed under clause 26.2 but who has not yet been paid the Redemption Price of the Units.

~~While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Responsible Entity a complaint regarding the Responsible Entity’s conduct in its management or administration of the Trust, the Responsible Entity:~~

- ~~(a) — must, whether the complaint is in writing, verbal, in person or otherwise, acknowledge receipt of the complaint immediately or as soon as practicable;~~
- ~~(b) — must, where there is a compliance committee, refer the complaint to the committee for its consideration;~~
- ~~(c) — must, where there is no compliance committee, consider the complaint;~~
- ~~(d) — must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;~~
- ~~(e) — may in its discretion give any of the following remedies to the complainant:~~

² See ASIC RG 134.135

³ The Responsible Entity may treat retail and wholesale clients differently for this purpose – see RG 134.145 and [CO 13/656].

⁴ Australian 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.

- ~~(i) information and explanation regarding the circumstances giving rise to the complaint;~~
- ~~(ii) an apology; or~~
- ~~(iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and~~
- ~~(f) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint:~~
 - ~~(i) the determination of the compliance committee (or if Clause 24.1(c) applies, the Responsible Entity);~~
 - ~~(ii) the remedies (if any) available to the member; and~~
 - ~~(iii) information regarding any further avenue for complaint.~~

25. General

25.1. Restricted Securities

- (a) Clause 25.1(b) only operates:
 - (i) while the Trust is Listed and the Listing Rules require this Constitution to contain a provision to the effect of Clause 25.1(b); and
 - (ii) to the extent that it is not inconsistent with the Corporations Act.
- (b) During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights in respect to those Units.
- (c) While the Trust is Listed, Restricted Securities cannot be disposed of during the Escrow Period except as permitted by the Listing Rules or the ASX.
- ~~(b)(d)~~ While the Trust is Listed, the Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or the ASX.

25.2. Small Holdings

- (a) Subject to the provisions of this Clause 25.2, while the Trust is Listed the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units under this Clause 25.2 on one occasion in any 12 month period.
- (c) The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this Clause 25.2.
- (d) The Responsible Entity may not sell or redeem the relevant Units:
 - (i) before the expiry of 6 weeks from the date of the notice given under Clause 25.2(c); or
 - (ii) if within the 6 weeks allowed by Clause 25.2(d)(i), the Member advises the Responsible Entity that the Member wishes to retain the Units.

- (e) 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.
- (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides.
- (g) The proceeds of the sale or redemption may not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.

25.3. Constitution Legally Binding

This Constitution binds the Responsible Entity and each present and future Member and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Constitution.

25.4. Severance

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

25.5. Governing Law

This Constitution is governed by the law of New South Wales. The Responsible Entity and the Members submit to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

25.6. Other Obligations Excluded

Except as required by the Corporations Act, all obligations of the Responsible Entity which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Responsible Entity in its capacity as Responsible Entity of the Trust arising under any statute.

26. Withdrawal of Units

26.1. Withdrawal request while Trust is Liquid

While the Trust is Liquid or is not a registered scheme, a Member may make a request to the Responsible Entity to redeem some or all of the Units of which they are Registered as the Member by giving the Responsible Entity notice in writing of the request, specifying the number or value of the Units to be redeemed and sufficient details to identify the Member, or in any other manner approved by the Responsible Entity.

The Responsible Entity may create forms to assist in redemption requests. If the Responsible Entity has created forms to assist with a redemption request or an applicable law requires the use of a form, a redemption request must be made on that form.

~~Subject to Clause 26.3, while the Trust is Liquid or is not a registered scheme, any Member may request that some or all of their Units be withdrawn. Each request must:~~

- ~~(a) — satisfy the form and content requirements prescribed by the Responsible Entity; and~~
- ~~(b) — be delivered to the Responsible Entity at its registered office (or other place nominated by the Responsible Entity).~~

Upon making such a request, the Member will have no right to deal with the Units (unless and until the request is denied by the Responsible Entity).

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

The Responsible Entity will determine whether the Trust is Liquid or not by reference to the definition in the Corporations Act.

26.2. Action following a request

Within 28 days of receiving a withdrawal request under Clause 26.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion subject to the Listing Rules and any other applicable Operating Rules:

- (a) deny the request (but it must then notify the Member accordingly); or
- (b) effect the withdrawal by causing the number (or value) of Units held by the Member referred to in the withdrawal request to be redeemed at the applicable Withdrawal Price out of the Assets, in which case the Responsible Entity must pay the Withdrawal Price of the Units redeemed to the Member or former Member within 21 days of the date on which redemption occurs; or
- (c) subject to the ~~Listing Rules~~ rules of any Securities Exchange on which the Units are Quoted and the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Member referred to in the withdrawal request; or
- (d) partially effect the withdrawal in the manner described in Clause 26.2(b) and partially purchase Units (or arrange for Units to be purchased) in the manner described in Clause 26.2(c).

26.3. Suspension of withdrawal request right or processing of redemptions

(a) Unless the Responsible Entity determines otherwise, the right to make a withdrawal request under Clause 26.1 is suspended while the Units in the Trust are Officially Quoted.

(b) If the Responsible Entity considers or determines that:

- (i) it is desirable for the protection of the Trust in circumstances where the market for any relevant financial, stock, bond, note, derivative or foreign exchange is closed or trading on any such market is restricted;
- (ii) any state of affairs exists as a result of which the Responsible Entity considers or determines that it is not or may not be reasonably practicable for the Responsible Entity to acquire or dispose of Assets or determine fairly the amount of the Withdrawal Price of a Unit (including any moratorium declared by a government of any country), the state of affairs will or may affect to a significant degree the ability of the Responsible Entity to acquire or dispose of Assets or the prices at which the Responsible Entity may acquire or dispose of Assets;
- (iii) a situation (including one caused by a mechanical or electronic malfunction) exists as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Withdrawal Price of a Unit;
- (iv) the realisation of Assets cannot be effected at prices or on terms which would be obtained if Assets were realised in an orderly fashion over a reasonable period in a stable market; or
- (v) other circumstances beyond the Responsible Entity's control mean that it is in the best interests of the Members, taking into account not only the interests of current Members, but also former Members who have not yet received the Withdrawal Price for their Units at the time the circumstances arise.

the Responsible Entity may suspend for the period while such circumstances apply ("Suspension Period") the redemption of Units and the payment for the redemption of Units during the Suspension Period. The Withdrawal Price for Units the subject of a redemption request received or deemed received during the Suspension Period shall be the amount of the Withdrawal Price next determined at the Valuation Time after the end of the Suspension Period.

A Member's redemption request lodged during the Suspension Period is deemed lodged immediately after the end of the Suspension Period.

In determining whether to suspend or defer under this clause 26.3, to the extent permitted under the Corporations Act the Responsible Entity may take into account the interests of both current Members and former Members who have not yet received the Withdrawal Price for their Units at the time the circumstances arise

26.4. Withdrawal while Trust is not Liquid

- (a) While the Trust is a registered scheme but is not Liquid the Responsible Entity may make a Withdrawal Offer to all Members or to Members in a Class. A Member may withdraw from the Trust in accordance with the terms of any current Withdrawal Offer. Otherwise, a Member has no right to request that some or all of the Member's Units be withdrawn. A Member may not withdraw an acceptance of a Withdrawal Offer unless the Responsible Entity agrees.
- (b) A Withdrawal Offer must contain the information required by the Corporations Act and, if applicable, the Listing Rules. The Withdrawal Offer may be made by:
 - (i) publishing it (for example, in a national newspaper or on the internet); or
 - (ii) giving a copy to all Members (or a Class of Members).
- (c) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may determine the terms of a Withdrawal Offer in its absolute discretion but the means of effecting the withdrawal must be one of those permitted under Clause 26.2 (subject to the Corporations Act and the Listing Rules).
- (d) The Responsible Entity may cancel a Withdrawal Offer in accordance with the Corporations Act.

26.5. Minimum holding

If the Responsible Entity has established a minimum number of Units for which an application can be made or a minimum number of Units which must be held at any time, then the Responsible Entity may treat a withdrawal request (including acceptance of a Withdrawal Offer), which if accepted, would lead a Member to hold fewer Units than that minimum number, as a request for the withdrawal of all that Member's Units. If there is more than one Class, this Clause only applies to Units in the same Class.

26.6. Sums owed

The Responsible Entity may deduct from the proceeds of withdrawal of Units any money due to the Responsible Entity in relation to the Member.

26.7. Distribution to Members or former Members on a withdrawal

- (a) If, during a Distribution Period, the Responsible Entity proposes to withdraw (in circumstances permitted under applicable provisions of the Corporations Act and the ASX Rules) Units of a Member which comprise 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 Withdrawal 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 Withdrawal Request ("Withdrawal Payment") in respect of the Units represents a distribution of the distributable income for that Tax Year; and
 - (ii) whether the Income Component of the Withdrawal Payment will comprise a distribution of distributable income for the Tax Year of any particular character for tax purposes.

(b) Where the Responsible Entity makes a determination under Clause 26.7(a) in respect of a Withdrawal 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 Trust for the Tax Year to date that has not been distributed (at the time the Withdrawal Price in respect of the Large Withdrawal Request is determined under Clause 27) 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

(ii) the increase in the component of the distributable income of the Trust referred to in Clause 26.7(b)(i)(A) as a result of the Responsible Entity realising sufficient assets to satisfy the Large Withdrawal Request; and

(iii) the number of Units specified in the Large Withdrawal Request and the number of Units on issue at the time the Large Withdrawal Request is made.

26.7-26.8. Transfer of Assets to effect a withdrawal

Rather than pay cash to effect a withdrawal in whole or in part, the Responsible Entity may transfer Assets to a Member (or the Member's nominee). The Responsible Entity must satisfy itself that the Assets (with any cash paid) will equal the total amount of cash otherwise payable. The Responsible Entity may do this on the basis of a valuation of the Assets obtained within one month of the withdrawal date.

26.8-26.9. Liquid or not Liquid

The Responsible Entity will determine whether or not the Trust is Liquid and, where the Trust is a registered scheme, will make this determination in accordance with the Corporations Act. ~~Such a determination is binding on Members and no Member will challenge it.~~

26.9-26.10. Cooling off

Nothing in this Clause 26 prevents the Responsible Entity from complying with any requirement to return application money to Members in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the Responsible Entity or the Trust.

26.10-26.11. Increase of minimum holding

If the Responsible Entity increases the minimum holding for the Trust, the Responsible Entity may, after giving 30 days' notice to a Member who holds Units with an aggregate Withdrawal Price less than the current minimum holding, redeem that Member's holding without the need for a withdrawal request.

26.11-26.12. On market buy back of Units

Subject to the Listing Rules or the Operating Rules as applicable, the Corporations Act and any relevant ASIC exemption, including but not limited to an ASIC class order, while Units are Quoted the Responsible Entity may effect a buy-back of Units by purchasing Units on market as if the Trust was a company, with any adaptations that the operator of the ~~Prescribed Market~~ Securities Exchange on which the Units are ~~Listed~~ Quoted, or ASIC consider appropriate.

26.12-26.13. Order

Unless the Responsible Entity decides otherwise, the first Units issued to a Member are the first Units withdrawn.

26.14. AML information

If a Member has failed to comply with clause 4.1(q), within 30 days of a written request from the Responsible Entity to do so, the Responsible Entity may redeem that Member's holding without the need for a redemption request

27. Withdrawal Price

(a) The Withdrawal Price for any Unit will be equal to:

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

number of Units on issue

For the purposes of the formula in this Clause 27, "Net Asset Value" and "Transaction Costs" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Units for which the Withdrawal Price is being calculated belongs in accordance with Clause 4.1(g), and the "number of Units on issue" is the number of Units of that Class as recorded in the Register.

(b) While the Trust is not a registered scheme or is Liquid, each of these variables will be calculated as at the next Valuation Time after the Responsible Entity received (or is taken to have received) the withdrawal request.—

(c) If the Trust is a registered scheme but is not Liquid, then each such variable will be calculated as at the day the relevant Withdrawal Offer closes.

28. Withdrawal Price may represent distributable income

The Responsible Entity may determine, by the last day of the Distribution Period in which Units are redeemed, whether any portion of the Withdrawal Price paid to a Member represents either or both of:

(a) all or part of the distributable income of the Trust as determined under Clause 10.1; and

(b) a particular category of income or gains that is not included in the distributable income of the Trust as determined under Clause 10.1.

EXECUTED as a deed poll

Schedule 1 (Quotation of Units on AQUA market)

The following provisions apply, while the Trust is not Listed, to the Responsible Entity and Members in respect of Units in a Class (and to those Units) if the Responsible Entity has made a determination under clause 4.1(h) of this Constitution for Units in that Class to be Quoted on a Securities Exchange including the AQUA market of ASX or Chi-X. A reference to a Unit in this Schedule 1 is a reference to a Unit in that Quoted Class.

1 Definitions and interpretation

The following new clauses 1.8 and 1.9 are added at the end of clause 1:

25.2 Operating Rules

In respect of Units which are Quoted, subject to the Corporations Act and clause 1.5:

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

25.3 Clearing and Settlement Rules

- (a) If any of the Units of a Class are CHESSE approved securities, the Responsible Entity must:
 - (i) comply with any Settlement Rules and Clearing Rules applicable to dealing in those Units;
 - (ii) not in any way prevent, delay or interfere with the generation of a proper transfer in accordance with the Settlement Rules or Clearing Rules, or the registration of a paper-based transfer in registrable form, unless a holding lock under clause 7.3 applies or the Operating Rules or the Clearing and Settlement Rules require or permit the action; and
- (b) if there are also any Units of that Class on issue which are not CHESSE approved securities, ensure that an issuer-sponsored subregister, or a certificated subregister, for that Class is maintained in addition to the CHESSE sub register for the Class.

6 Application Procedure

The words “and sale of Units” are added to the end of the heading of clause 6.

Clause 6.5 is amended by adding at the start of paragraph (b) the words “Subject to paragraph 6.5(c); and inserting a new paragraph 6(c) as follows:

“While Units are Quoted, Units in that Class that are to be recorded on the CHESSE subregister are created and issued in the manner and at the time CHESSE or the Operating Rules, Settlement Rules or Clearing Rules contemplate.”

A new clause 6.10 is added as follows:

6.10 Responsible Entity may sell Units on-market

While Units are Quoted, subject to the applicable Operating Rules of the relevant Securities Exchange, the Responsible Entity may, in accordance with clause 29, offer and/or agree to sell Units on market and issue Units to itself as determined by the Responsible Entity for the purposes of fulfilling the sale of Units on market.

12 Powers of the Responsible Entity

A new clause 12.9 applies as follows:

12.9 Quotation of Units

Without limiting clause 12.1 the Responsible Entity has power to:

- (a) do all things necessary, desirable or reasonably incidental to give effect to:
 - (i) the Quotation of a Class of Units on a Securities Exchange;
 - (ii) removal of a class of Units from Quotation; or
 - (iii) suspension of a class of Units from trading on a Securities Exchange,

and for this purpose the Responsible Entity is authorised on its own behalf and on behalf of each Member as the Member’s agent or attorney to do all things necessary to effect Quotation;

- (b) hold and transact in Units including for the purpose of conducting market-making activities in respect of that Quoted class of Units; and
- (c) prescribe procedures relating to the issue and withdrawal of Units which supplement the procedures in this Constitution, including to:
 - (i) impose obligations on applicants for Units and on Members who have made a withdrawal request or accepted a withdrawal offer;
 - (ii) in order to facilitate the issue of Units, provide for Units the subject of an application to first be issued to a nominee for the applicant approved by the Responsible Entity, following which the Units are to be transferred to the applicant;

- (iii) in order to facilitate the withdrawal of Units, require a Member who has made a withdrawal request or accepted a withdrawal offer to transfer the Units which are to be redeemed to a nominee for the Responsible Entity approved by the Responsible Entity; and
- (iv) set out consequences of failure to comply with the procedures, such as the power of the Responsible Entity to cancel an issue or withdrawal of Units.

Unless the Responsible Entity agrees otherwise, each applicant for Units, and each Member who makes a withdrawal request or accepts a withdrawal offer, is bound by and must comply with the procedures prescribed under this clause 12.9 as in force from time to time.

17 Limitation of liability and indemnity in favour of Responsible Entity

A new clause 17.2A applies as follows:

17.2A Timing of payment

Without limiting clauses 17.1 to 17.2 but subject to the Corporations Act, the Responsible Entity is not liable to Members for any loss suffered in any way relating to:

- (a) the issue or transfer of Units in circumstances where the Responsible Entity or Custodian has not received the payment due in respect of an application for Units; or
- (c) the payment of the Withdrawal Price of Units where the Member has not at any time been Registered as the holder of at least the number of Units which are the subject of the withdrawal request, or the Responsible Entity or the Custodian has not received the transfer of the Units the subject of the withdrawal request.

19 Expenses

Clause 19.7 is amended by deleting at the end of paragraph (n) the word "and", and adding new paragraphs (p) and (q) as follows:

- (p) all costs associated with applying for and maintaining Quotation of a class of Units on a Securities Exchange, including approval of the Responsible Entity as a product issuer and any fee payable to any person for providing services as a market-making agent or the cost of the Responsible Entity conducting market-making activities itself, or for subscribing or agreeing to subscribe for Units, or procuring or agreeing to procure subscription for Units; and
- (q) removal of a class of Units from Quotation, or suspension from trading.

26 Withdrawal Procedures

Clauses 26.4, 26.6, 26.7, 26.8, 26.9, 26.10 and 26.12 are renumbered as clauses 26.12 to 26.18 respectively, and clauses 26.1 to 26.3, 26.5, 26.11 and 26.13 are replaced with the following clauses:

26.1 Request for withdrawal

If:

- (a) the Responsible Entity determines to allow withdrawals; or
- (b) the rules of the relevant Securities Exchange or any other law requires that a Member be given the right to make a withdrawal request,

a Member may make a request for the withdrawal of some or all of its Units in the manner and on such conditions as set out in this Clause 26. The Responsible Entity must give effect to that request in the circumstances, at the time and in the manner set out in this Clause 26.

26.2 Form of request

Unless the Responsible Entity agrees otherwise, a withdrawal request may be made in the form from time to time determined by the Responsible Entity and delivered to any office of the Responsible Entity or the Custodian, or any other place determined by the Responsible Entity.

26.3 When Units suspended

While Units are Quoted, any Member may make a request to redeem their Units where Units are suspended from Quotation for more than five consecutive trading days unless (A) the Trust is being wound up (B) the Trust is not Liquid or (C) the Responsible Entity has suspended withdrawal of Units pursuant to Clause 26.8(k), and the Responsible Entity must meet that request as provided in this Clause 26.

26.5 Giving effect to withdrawals

Unless the Responsible Entity rejects a withdrawal request for a Unit under Clause 26.6(l) and subject to this Clause 26, the Responsible Entity must pay to the Member the Withdrawal Price in respect of that Unit out of the Assets referable to the Class of Units to be withdrawn within 21 days of the date on which the redemption occurs.

While Units a Class are Quoted, if the Responsible Entity does decide to satisfy a redemption request, it may require a member who holds their Units on a CHESSE sub-register to have the Units the subject of the redemption request moved to an issuer-sponsored sub-register, and to provide any information the Responsible Entity reasonably requires prior to processing the redemption request

26.6 Suspension or rejection of withdrawals

If:

- (a) the Responsible Entity has taken all reasonable steps to realise sufficient Assets to pay the Withdrawal Price in respect of Units to which a withdrawal request applies and is unable to do so due to circumstances outside its control such as restricted or suspended trading in the market for an Asset;
- (b) the Responsible Entity believes that it is impracticable or not possible to transfer, in the manner acceptable to the Responsible Entity, sufficient Assets to satisfy the entitlement to the Withdrawal Price in respect of Units to which a withdrawal request applies (for example, because of disruption to a settlement or clearing system);
- (c) the Responsible Entity believes that it is not practicable or desirable to carry out the calculations necessary to satisfy an entitlement to the Withdrawal Price in respect of Units to which a withdrawal request applies (for example, because it is impracticable to calculate the Net Asset Value because of restricted or suspended trading in the market for an Asset or because the value of any Asset cannot otherwise promptly or accurately be ascertained);
- (d) the Quotation of any Units is suspended, the trading of any Units is otherwise halted, interrupted or restricted by the Market Operator, the trading of any Units on the Securities Exchange is subject to a period of deferred settlement trading, the Responsible Entity's product issuer status is suspended or revoked or there is a period during which Units are subject to a consolidation or division;
- (e) the Units cease to be Quoted;

- (f) a withdrawal request is received during any period before or after a Distribution Calculation Date which period the Responsible Entity determines to be necessary or desirable to facilitate the calculation and distribution of distributable income;
 - (g) there have been, or the Responsible Entity anticipates that there will be, withdrawal requests that involve realising a significant amount of the Assets and the Responsible Entity considers that if those withdrawal requests are all met immediately, Members who continue to hold Units may bear a disproportionate burden of capital gains tax or other expenses, or the meeting of those withdrawal requests would otherwise be to the existing Members' disadvantage including by way of a material diminution in the value of the Assets or departure from the investment strategy of the Trust;
 - (h) the Responsible Entity does not consider that it is in the best interests of Members taken as a whole to transfer or realise sufficient Assets to satisfy the entitlement to the Withdrawal Price in respect of Units to which a withdrawal request relates;
 - (i) the Responsible Entity believes that Assets cannot be realised at prices that would be obtained if Assets were realised in an orderly fashion over a reasonable period in a stable market; or
 - (j) it is otherwise legally permitted,
- the Responsible Entity may either:
- (k) suspend the withdrawal of Units for, or extend the period allowed for satisfaction of the withdrawal request by, the number of days during which such circumstances apply; or
 - (l) reject the withdrawal request.

26.7 When Units are redeemed

Units are taken to be redeemed at the time the Withdrawal Price is paid or transferred to the redeeming Member. The Responsible Entity must, as soon as is reasonably practicable after the withdrawal of Units, arrange for the redemption to be recorded in the Register.

26.8 Trust ceases to be Liquid

The Responsible Entity is not required to satisfy a withdrawal request under Clauses 26.1 to 26.9 if the request is made while the Trust is Liquid and the Trust ceases to be Liquid before the Units are redeemed.

26.9 When Trust is not Liquid

Clause 26.18 applies while the Trust is not Liquid.

26.10 Order

Unless the Responsible Entity decides otherwise, the first Units issued to a Member are the first Units withdrawn.

26.11 Withdrawal via on-market disposal

- (a) While Units are Quoted, a Member may agree to sell their Units on market to the Responsible Entity. Any such sale will be governed by the applicable Settlement Rules and the Operating Rules.

- (b) Subject to the Corporations Act, the Responsible Entity may determine the price at which it is prepared to acquire the Units.⁵
- (c) Any bids the Responsible Entity places on market will be subject to the Operating Rules and the potential for interventions by the Market Operator including suspensions and trading halts.
- (d) Any Units the Responsible Entity has acquired on market in excess of Units sold on market on a Trading Day will be cancelled by the Responsible Entity as soon as reasonably practicable after settlement of those Units.

27 Withdrawal Price

The text of paragraph 27(b) is deleted, and replaced with the following new text:

“Each of the variables in paragraph 27(a) must be determined:

- (i) while the Trust is a Registered Scheme and is not Liquid, as at the last Valuation Time before the withdrawal offer closes;
- (ii) while the Trust is not a Registered Scheme or is Liquid:
 - (A) unless paragraph (b)(ii) applies, as at the next Valuation Time after the relevant redemption request has been, or is taken to have been, received and accepted by the Responsible Entity; or
 - (B) where the Responsible Entity has acquired Units on market, as at the time immediately prior to the last applicable Valuation Time on a Business Day.”

A new clause 29 applies as follows:

29 Market Making

29.1 Responsible Entity must make a market

While units are Quoted, if and for so long as required by the Operating Rules or by the Market Operator in its discretion as a condition of Quotation or otherwise, the Responsible Entity must make a market and provide liquidity in respect of the Units on market as set out in this Clause 29.⁶ The Responsible Entity may make a market and provide liquidity in respect of the Units at other times as it sees fit.

29.2 Responsible Entity may sell Units on-market

- (a) While the Units are Quoted, and subject to the applicable Operating Rules, the Responsible Entity may from time to time offer and/or agree to sell Units on-market.
- (b) Where the Responsible Entity sells Units on market as specified in clause 29.2(a), the Responsible Entity will honour any contract to sell Units into which it enters, in accordance with applicable Settlement Rules and Operating Rules.

⁵ In the absence of ASIC Relief, the Responsible Entity must not acquire the Units at a price less than the consideration that would be payable by another person. See Corporations Act section 601FG.

⁶ For example, the ASX Operating Rules do not require the Responsible Entity to make a market if the Responsible Entity has engaged an external market maker to provide the required liquidity in the market on terms acceptable to ASX. Also, see Chi-X Operating Rules 14.16 to 14.18, which provide for different methods by which sufficient market liquidity can be provided.

- (c) Any offers for the sale of Units made by the Responsible Entity on market will be subject to the Operating Rules and any interventions by the relevant Market Operator including a suspension or trading halt.

29.3 Sale Price

Subject to the Operating Rules and its duties under the Corporations Act, the Responsible Entity may determine the price at which it is prepared to offer or agree to sell Units on-market in accordance with clause 29.2(a).

29.4 Responsible Entity may issue Units to itself

Where the Responsible Entity offers to sell Units on-market under Clause 29.2(a), it has a presently exercisable and unconditional power and right to issue to itself, and vest title in itself of the corresponding number of Units and take any other action necessary so that it can exercise that power, and vest title in itself of the Units so issued.

29.5 Excess sold Units

Without limiting Clause 29.4, at the end of each Business Day where the number of Units which the Responsible Entity has agreed to sell on-market during that Business Day in accordance with Clause 29.2(a) (excluding any Units sold on-market during that Business Day in respect of which the Responsible Entity has previously issued and/or vested title in pursuant to Clause 29.4) exceeds the number of Units which the Responsible Entity has agreed to acquire on-market during that Business Day in accordance with Clause 29.6 (such excess number being the **Excess Sold Units**), the Responsible Entity must issue to itself the Excess Sold Units as soon as reasonably practicable for the purposes of enabling the Responsible Entity to fulfil its obligations under settlement of the sale of those Excess Sold Units.

29.6 Responsible Entity may purchase Units on-market

Whilst the Units are Quoted, subject to the ASX Operating Rules, the Responsible Entity may from time to time offer and/or agree to purchase Units on market. The price at which the Responsible Entity offers or agrees to purchase Units on market is at the absolute discretion of the Responsible Entity subject to the ASX Operating Rules and its duties under the Corporations Act.

29.7 Excess acquired Units

At the end of each Business Day where the number of Units which the Responsible Entity has agreed to acquire on-market during that Business Day under Clause 29.6 exceeds the number of Units which the Responsible Entity has agreed to sell on-market during that Business Day under Clause 29.2(a) (excluding any Units sold on-market during that Business Day in respect of which the Responsible Entity has previously issued and/or vested title in pursuant to Clause 29.4) (such excess number being the **Excess Acquired Units**), the Responsible Entity must cancel the Excess Acquired Units as soon as reasonably practicable after settlement of the acquisition of those Excess Acquired Units.

29.8 Transactions are on account of the Trust

- (a) The price of any Units purchased pursuant to Clause 29.6 will be paid out of the Assets attributable to the Quoted Class.
- (a) Any Units issued to or acquired by the Responsible Entity pursuant to Clause 29.2 and 29.6 are regarded as part of the Assets attributable to the quoted Class until dealt with in accordance with this Clause 29.

Schedule 2 (Additional Fund Administration Services)

Additional Fund Administration Services means actions and activities in connection with the management and administration of the Trust including actions and activities in connection with:

(a) the Trust itself, including:

- (i) the establishment and formation of the Trust;
- (ii) any structural or strategic changes to the Trust;
- (iii) registering or deregistering the Trust as a managed investment scheme;
- (iv) the preparation, verification, registration, production, printing, distribution and promotion of a disclosure document relating to the Trust, including any supplementary or replacement disclosure document relating to the Trust;
- (v) any form of equity raising and debt refinancing associated with the Trust;
- (vi) obtaining and maintaining a rating from any ratings agency;
- (vii) the retirement, removal or replacement of the Responsible Entity; and
- (viii) the termination or winding up of the Trust and the associated taking of accounts, discharging of Liabilities and Trust expenses and distribution of Assets;

(b) the Trust documents, including:

- (i) reviewing, negotiating, settling and executing Trust documents;
- (ii) dealing with or considering any request for any amendment, restatement, waiver or consent under a Trust document or the termination of a Trust document;
- (iii) investigating circumstances which the Responsible Entity reasonably believes may be a default or breach by any person of a Trust document; and
- (iv) the actual or contemplated enforcement of, or the preservation or consideration of any right or power under, any Trust document;

(c) the Assets, including:

- (i) the actual, attempted or proposed acquisition, investment, disposal or other dealing in, of or with assets which are, were or are to become Assets;
- (ii) taking out and maintaining all insurances in relation to the Trust and the Assets which the Responsible Entity reasonably believes are appropriate; and
- (iii) the receipt, collection, management, maintenance, custody, holding, supervision, insurance, repair, valuation and distribution of Assets;

(d) the Liabilities, including:

- (i) raising and complying with the terms of financial accommodation of any kind, including all dealings with the providers of that accommodation;
- (ii) appointing or engaging, negotiating with and instructing advisers and experts; and

(iii) appointing or engaging, negotiating with and instructing third parties to perform any of the activities described in this definition;

(e) accounting, compliance, recordkeeping and taxation, including:

(i) complying with all obligations and requirements under tax laws, including the keeping of taxation records, the preparation of taxation returns, taxation statements, invoices and documents relating to the Trust, any taxation audit, and the management of the tax affairs of the Trust;

(ii) preparing and maintaining the books, records and accounts of the Trust;

(iii) the preparation and audit of the taxation returns and accounts of the Trust;

(iv) the establishment and maintenance of the compliance committee and the preparation, implementation, amendment and audit of the compliance plan; and

(v) liaising with compliance plan auditors in relation to any breaches, incidents or events which have occurred in respect of the Trust;

(f) dealing with Members, including:

(i) offering, issuing and redeeming Units;

(ii) facilitating, convening and holding meetings of Members and implementing resolutions of Members;

(iii) corresponding and communicating with Members;

(iv) maintaining and operating the Register and any other register of the Trust; and

(v) establishing and administering complaints handling procedures and obtaining and maintaining membership of an external dispute resolution scheme;

(g) other dealings, including:

(i) complying with all applicable laws;

(ii) dealings with any securities exchange;

(iii) dealings with regulators, taxation authorities and other governmental agencies, whether in the ordinary course or in relation to requests, requirements, complaints, investigations, enquiries or disputes;

(iv) dealings with service providers of the Trust, including work performed by the Responsible Entity in respect of potentially reportable breaches caused by service providers and completing ad-hoc monitoring visits of service providers of the Trust as a result of systemic incidents or performance issues reported;

(v) initiating, prosecuting, defending and compromising any court, arbitration, mediation or other dispute resolution action, claim or proceedings concerning the Responsible Entity (in that capacity), the Trust or the Assets, whether commenced or to be commenced by the Responsible Entity or not; and

(vi) approaching any court of competent jurisdiction to seek opinion, advice or direction on any question in connection with the management or administration of the Trust or the Assets or in connection with the interpretation of a Trust document; and

(h) all matters incidental to any of the above.

Legal Compliance List

Part 5C.3 of the Corporations Act 2001 requires the Constitution of a registered managed investment scheme to make adequate provision for the matters listed in section 601GA(1), to specify fees, expenses and liabilities payable to the Responsible Entity (section 601GA(2)), to specify the investment and borrowing powers of the Responsible Entity (section 601GA(3)), and that the Constitution be a legally enforceable document (section 601GB).

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.

Section	Constitution to Specify	Clause
601GA(1)(a)	Consideration that is to be paid to acquire an interest in the Constitution of the Evans & Partners Global Flagship Fund.	Clauses 5 and 6
601GA(1)(b)	Powers of the Responsible Entity in relation to making investments of, or otherwise dealing with, Evans & Partners Global Flagship Fund.	Clause 12
601GA(1)(c)	The method by which complaints made by Members in relation to Evans & Partners Global Flagship Fund is to be dealt with.	Clause 24
601GA(1)(d)	Winding up the Evans & Partners Global Flagship Fund.	Clause 21
601GA(2)	(a) the Responsible Entity's rights to fees; (b) the Responsible Entity's right to indemnification for liabilities and expenses.	(a) Clause 19 (b) Clause 19.5
601GA(3)	Powers to borrow or raise money for the purposes of the Evans & Partners Global Flagship Fund.	Clause 12.2
601GA(4)	The rights of Member's to withdraw from the Trust	Clauses 26 and 27
601GB	Legally enforceable between Members and the Responsible Entity.	Clause 25.3