

# Constitution of KKR Credit Income Fund

**The Trust Company (RE Services) Limited (ACN 003 278 831)**  
**("Responsible Entity")**

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# Constitution of KKR Credit Income Fund

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# Constitution of KKR Credit Income Fund

Details

12<sup>TH</sup> JUNE 2019

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<b>Responsible Entity</b>	<b>Name</b>	<b>The Trust Company (RE Services) Limited</b>
	ACN	003 278 831
	Address	Level 18, Angel Place 123 Pitt Street North Sydney NSW 2000
	Email	greg.wong@perpetual.com.au
	Attention	Greg Wong
<b>Fund</b>	KKR Credit Income Fund	
<b>Governing law</b>	New South Wales	

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# Constitution of KKR Credit Income Fund

## General terms

This deed poll is declared by the Responsible Entity to be the constitution of the KKR Credit Income Fund.

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Accept** means:

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

and **Acceptance** has a corresponding meaning.

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

- (a) the Fund itself, including:
  - (i) the establishment and formation of the Fund;
  - (ii) any structural or strategic changes to the Fund;
  - (iii) registering or deregistering the Fund as a managed investment scheme;
  - (iv) the preparation, verification, registration, production, printing, distribution and promotion of a disclosure document relating to the Fund, including any supplementary or replacement disclosure document relating to the Fund;
  - (v) any form of equity raising and debt refinancing associated with the Fund;
  - (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 Fund and the associated taking of accounts, discharging of Liabilities and Fund expenses and distribution of Assets;
- (b) the Fund Documents, including:
- (i) reviewing, negotiating, settling and executing Fund Documents;
  - (ii) dealing with or considering any request for any amendment, restatement, waiver or consent under a Fund Document or the termination of a Fund Document;
  - (iii) investigating circumstances which the Responsible Entity reasonably believes may be a default or breach by any person of a Fund Document; and
  - (iv) the actual or contemplated enforcement of, or the preservation or consideration of any right or power under, any Fund 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 Fund 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 Fund, any taxation audit, and the management of the tax affairs of the Fund;
  - (ii) preparing and maintaining the books, records and accounts of the Fund;
  - (iii) the preparation and audit of the taxation returns and accounts of the Fund;

- (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 Fund;
- (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 Fund; 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 Fund, 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 Fund 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 Fund 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 Fund or the Assets or in connection with the interpretation of a Fund Document; and
- (h) all matters incidental to any of the above.

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

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

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

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

**AMIT Regime** means the regime for the taxation of AMITs.

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

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

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

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

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

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

**Associate**, 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.

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

**Books Closing Date** has the meaning given in clause 14.22.

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

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

**Class** means a class of Units.

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

**Complaint<sup>2</sup>** means an expression of dissatisfaction made to the Responsible Entity, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

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

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

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

**CS Facility** has the same meaning as clearing and settlement facility in the Corporations Act.<sup>3</sup>

**CS Facility Operator** means the operator of the CS Facility.

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

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

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

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

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

**Distributable Amount** has the meaning given in clause 14.22.

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

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

**Distribution Period** means:

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

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

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

- (c) in all other circumstances, the period from the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date.

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

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

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

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

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

**Financial Year** means:

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

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

**Financial Year Termination Date** means:

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

**First Offer Document** means the first Offer Document issued in respect of the Fund.

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

**Fund** means the trust which is the subject of this constitution.

**Fund Document** means this Constitution, any document to which the Responsible Entity is a party in its capacity as responsible entity of the Fund, the governance, policies or procedures for the Fund and the distribution policies of the Fund.

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

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

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

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

**Income Distribution** means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 14.6.

**Initial Public Offer** means:

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

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

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

**Liabilities** means all present liabilities of the Fund including:

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

but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued;<sup>4</sup> or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units (where the Units have not yet been redeemed)

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<sup>4</sup> See clause 9.5 for the time at which Units are issued.

or to participate in the distribution of the Assets on winding up of the Fund.

**Liquid** has the same meaning as in the Corporations Act.<sup>5</sup>

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

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

**Manager** means any entity nominated by the Responsible Entity to provide management services for the Fund, and the first Manager will be KKR Australia Investment Management Pty Limited.

**Market Price** of a Unit on a particular day is:

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

the price per Unit determined by an adviser who:

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

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

- (i) the nature of the proposed offer of Units for which purpose the Market Price of a Unit is being calculated;
- (ii) the circumstances in which the proposed offer of Units will be made; and

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<sup>5</sup> Refer to CA Part 5C.6.



- (iii) the interests of Members generally, including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

**Market Value of an Asset means:**

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

**Member** means a person Registered as the holder of a Unit that has not been redeemed<sup>6</sup> (including persons jointly Registered) or otherwise stated to be a Member in accordance with clause 9.5 or any other provision of this constitution.

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

**Member Objection Choice** means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's

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<sup>6</sup> See clause 11.15 for the time at which Units are redeemed.

Member Component, including a choice made by a Member under sub-section 276-205(5) of the Tax Act.

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

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

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

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

**Officially Quoted** means admitted to quotation by ASX under the Listing Rules including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension<sup>7</sup> and **Official Quotation** has a corresponding meaning.

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

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

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

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

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

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

- (a) an Initial Public Offer;
- (b) a sell down of a substantial portion of the Units where all Members have the opportunity to participate in the sell down;
- (c) a sale of substantial Assets where all Members have an opportunity to have their Units redeemed or transferred; or
- (d) any other arrangement which has substantially the same economic effect as a transaction referred to in paragraph (a), (b) or (c).

**Record Date** means in relation to a Distribution Period:

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

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

<sup>8</sup> See footnote 3.

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

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

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

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

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

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

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

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

**Reorganisation Proposal** means:

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

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

**Resolution** means:

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

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

**Responsible Entity** means:

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

**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.

**Retail Client** has the same meaning as in the Corporations Act.<sup>10</sup>

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

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

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

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

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

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

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

**Stapling** means the linking together of securities or financial products ("instruments") so that one instrument may not be transferred or otherwise dealt with without the other instrument.

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

<sup>10</sup> See sections 761A, 761G and 761GA.

**Stapling Proposal** means a proposal to cause the Stapling of any other securities or financial products to the Units.

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

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

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

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

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

**Transaction Costs** means an amount determined by the Responsible Entity as appropriate to factor into the Application Price or the Redemption Price to avoid an adverse impact on other Members holding Units arising from transaction expenses which would be incurred if an acquisition or disposal of Assets was carried out because of the issue or redemption of Units. Unless the Responsible Entity otherwise determines (for example, in a case where part or all of an application or redemption involves a transfer of property to or from the Fund), the amount is:

- (a) when calculating the Application Price, the Responsible Entity's estimate of the total transaction costs of acquiring all of the Fund's existing assets; and
- (b) when calculating the Redemption Price, the Responsible Entity's estimate of the total transaction costs of selling all of the Fund's existing assets,

in each case adjusted if appropriate for any effect of assets being held through subsidiaries of the Fund or other investment vehicles. In the case of the issue of Units on reinvestment of distributions, transaction costs are zero.

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

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

**Unit** means a unit in the Fund.

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

- (a) an entitlement to a payment or a payment to or from the Fund in respect of a Member; or
- (b) anything a Member asks the Responsible Entity to do or omit to do,

which the Responsible Entity considers should be borne by that Member.

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

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

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

## 1.2 Interpretation

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

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

### **1.3 Other documents**

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

### **1.4 Constitution legally binding<sup>11</sup>**

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

### **1.5 Benefit and entitlement**

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

### **1.6 Corporations Act prevails to the extent of inconsistency**

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

### **1.7 Other restrictions and obligations excluded**

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

### **1.8 Severance**

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

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

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

### **1.9 Governing law**

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

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<sup>11</sup> Refer to section 601GB.

<sup>12</sup> ASIC RG 134.213

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## **2 Name of Fund**

### **2.1 Name**

The Fund is called the KKR Credit Income Fund or any other name as the Responsible Entity determines.<sup>13</sup>

### **2.2 Change of Responsible Entity**

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

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## **3 Assets held on trust**

### **3.1 Declaration of trust**

The Responsible Entity declares that it will hold the Assets on trust for the Members and act in the interests of the Members on and subject to the terms of this constitution.<sup>14</sup>

### **3.2 Holding property separately**

While the Fund is a Registered Scheme, any Assets held by the Responsible Entity as responsible entity of the Fund must be clearly identified as property of the Fund and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.<sup>15</sup> Subject to the law, the Responsible Entity may have Assets held by a Custodian.

### **3.3 Mixing when not registered**

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

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## **4 Units**

### **4.1 Nature of Units**

The beneficial interest in the Fund is divided into Units.

### **4.2 Interest in Assets**

- (a) Subject to paragraph (b) and to any rights, obligations or restrictions attaching to any particular Unit, each Unit confers an equal undivided interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- (b) Where Units are taken to be issued under clause 9.5 and the issue has not yet been recorded in the Register, the person to whom the Units are taken to have been issued has an interest of the kind referred to in paragraph (a) based on the net amount of application money that person

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<sup>13</sup> See Corporations Regulation 5C.1.02.

<sup>14</sup> See section 601FC(2).

<sup>15</sup> See section 601FC(1)(i).



has contributed to acquire the Units, divided by the relevant Application Price, whether or not the Application Price has been ascertained at that time.

#### **4.3 Units and Classes of Units**

- (a) Subject to clause 4.3(b), the Responsible Entity may 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. A separate Class does not constitute a separate trust.
- (b) This clause 4.3 does not permit 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.

#### **4.4 Change of Class**

The Responsible Entity may by notice to a Member redesignate the Class of Units held by that Member.<sup>16</sup> Without limiting clause 14.8, a redesignation must not result in any defeasance of a Member's existing entitlement to income or capital of the Fund.

If the fees under clause 24 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.

#### **4.5 Rights attaching to Units**

A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.

#### **4.6 Fractions of Units**

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

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<sup>16</sup> Note the Responsible Entity's duties to treat members of a class equally (section 601FC(1)(d)), and to act in the best interests of Members (601FC(1)(c)). (A possible example would be where a class is so small that its operation is uneconomic for the Fund, and all members holding units in that class have their units redesignated at the same time.)

#### **4.7 Treatment of fractions**

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

#### **4.8 Income entitlement of Units**

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

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

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## **5 Options**

### **5.1 Options**

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

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

### **5.2 Terms of Options while a Registered Scheme**

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

- (a) at an application price (which may be nil) determined by the Responsible Entity if permissible under the Corporations Act or, if that determination may not be made, at a nil Application Price; and
- (b) on the basis that the Application Price for a Unit to be issued on exercise of the Option is a price determined by the Responsible Entity:

- (i) while the Units are Officially Quoted, in accordance with the terms of ASIC Relief<sup>17</sup> for a rights issue or a placement of Units (as applicable), or under clause 8.1(f);
- (ii) while the Units are not Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 8.1(g) or 8.1(h).

### **5.3 Other jurisdictions**

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

### **5.4 Exercise of Options**

To exercise an Option, the Option Holder must give notice to the Responsible Entity in accordance with the terms of the Option, together with payment of the exercise price. The Option Holder is entitled to subscribe for and be allotted the number of Units as the terms of the Option contemplate.

### **5.5 Lapse of Options**

An Option lapses on the earliest of:

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

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

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## **6 Financial Instruments**

### **6.1 Issue of Financial Instruments**

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

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

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<sup>17</sup> See ASIC Class Order [CO 13/655] notional section 601GAD (3)(b).

## **6.2 Rights of Financial Instrument Holders**

A Financial Instrument Holder holds a Financial Instrument subject to the terms attaching to that Financial Instrument. Subject to those terms and the Corporations Act:

- (a) a Financial Instrument will not confer any interest in, or any right to participate in, the income or capital of the Fund and does not entitle the Financial Instrument Holder to any other rights of a Member; and
- (b) a Financial Instrument Holder who is not a Member may, with the Responsible Entity's consent, attend any meeting of Members but is not entitled to receive notice of or speak or vote at the meeting.

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## **7 Transfer, transmission and joint holders**

### **7.1 Transfer of Relevant Securities**

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

### **7.2 Transfer if not Officially Quoted**

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

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

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

### **7.3 Transfer if Officially Quoted**

Subject to this constitution and the Listing Rules, if a Relevant Security is Officially Quoted, it is transferable:

- (a) as provided by the Operating Rules of a CS Facility if applicable;<sup>18</sup> or
- (b) by any other method of transfer which is required or permitted by the Corporations Act, ASX or ASIC.

If a duly completed instrument of transfer:

- (a) is used to transfer a Relevant Security in accordance with paragraph (b); and
- (b) is left for registration with the Registrar, duly stamped if required and accompanied by any information that the Responsible Entity properly requires to show the right of the transferor to make the transfer,

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<sup>18</sup> Part 7.11 Div 4 of the Corporations Act. Chi-X's market licence permits settlements by any CS Facility licensee approved for the purpose.

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

#### **7.4 When transfer is effective**

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

#### **7.5 Responsible Entity may request holding lock or refuse to register transfer<sup>19</sup>**

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

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

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

The Responsible Entity must:

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

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

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

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

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

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

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<sup>19</sup> Listing Rule 8.10 restricts the Responsible Entity's ability to prevent proper transfers, but allows for a holding lock in certain specified circumstances.

## **7.8 Joint tenancy**

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

## **7.9 Transmission on death<sup>20</sup>**

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

## **7.10 Information given by personal representative<sup>21</sup>**

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

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

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

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

## **7.11 Death of joint owner<sup>22</sup>**

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

## **7.12 Transmission on bankruptcy<sup>23</sup>**

If a person entitled to Relevant Securities because of the bankruptcy of a holder of Relevant Securities gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Relevant Securities, the person may:

- (a) by giving a written and signed notice to the Responsible Entity, elect to be registered as the holder of the Relevant Securities; or
- (b) by giving a completed transfer form to the Responsible Entity, transfer the Relevant Securities to another person.

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<sup>20</sup> This reflects sections 1071A and 1072A(1).

<sup>21</sup> This reflects sections 1071A and 1072A(2)-(4).

<sup>22</sup> This reflects sections 1071A and 1072A(5).

<sup>23</sup> This reflects sections 1071A and 1072B.

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

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

This clause has effect subject to the Bankruptcy Act 1966 (Cth).

### **7.13 Transmission on mental incapacity<sup>24</sup>**

If a person entitled to Relevant Securities because of the mental incapacity of a holder of Relevant Securities gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as the holder of the Relevant Securities:

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

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

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

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## **8 Application Price for Units**

### **8.1 Application Price**

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

- (a) in the case of Units offered pursuant to the First Offer Document at a price of \$2.50;
- (b) in the case of a proportionate offer (including a rights issue), in accordance with clause 8.4;
- (c) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 8.7;
- (d) in the case of reinvestment of distributions, in accordance with clauses 8.8 and 8.9;
- (e) in the case of Units issued pursuant to the exercise of an Option, in accordance with clause 5;

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<sup>24</sup> This reflects sections 1071A and CA 1072D.

- (f) while Units are Officially Quoted, the Market Price of Units immediately before the date on which or as at which the application price is to be calculated;
- (g) while Units are not Officially Quoted, in accordance with the following formula:

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

; or

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

## 8.2 Time for calculation

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

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

whichever happens later.

## 8.3 Rounding

Subject to the Listing Rules, the application price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more than 1% of the application price. Any excess application money or property which results from rounding becomes an Asset.<sup>25</sup>

## 8.4 Pro rata rights issues

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

- (a) provided that, subject to paragraph (b) of this clause 8.4, all Members are offered Units in proportion to the value of the Member's Units (or, where the offer is made only to Members who hold Units in a Class, to the value of the Member's units in that Class) at the relevant date; and
- (b) the Responsible Entity may exclude a Member from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief,<sup>26</sup>

<sup>25</sup> See notional section 601GAB in ASIC Corporations (Managed investment product consideration) Instrument 2015/847.

<sup>26</sup> See ASIC Class Order [CO 13/656] (Exemption – Equality of treatment)



whether or not the right of entitlement is renounceable.

## **8.5 Other jurisdictions**

If the Fund is a Registered Scheme and the Responsible Entity is making an offer of Units to Members which complies with the principles set out in clause 8.4, the Responsible Entity is not required to offer Units to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.<sup>27</sup>

## **8.6 Terms of pro rata issues**

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

## **8.7 Placements and security purchase plan while Listed**

While Units in a Class are Officially Quoted and not suspended from quotation, the Responsible Entity may at any time issue Units in that Class by way of a placement or under a security purchase plan at a price and on terms determined by the Responsible Entity, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.<sup>28</sup>

## **8.8 Reinvestment while Listed**

- (a) If reinvestment of distributions payable to a Member under clause 14.19 applies while the Units are Officially Quoted, subject to the Listing Rules, and to the extent it is permitted to do so or is not prohibited from doing so under the provisions of the Corporations Act and any applicable ASIC Relief, the Responsible Entity may issue Units on the basis that the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the application price by the date at which units are to be issued upon reinvestment, the price will be the average of the VWAP for Units for each of the 10 Trading Days from and including the Trading Day after the Record Date for the relevant Distribution Period, provided that if the Units do not trade on a minimum of 5 Trading Days during the 10 Trading Day period, the most recently

<sup>27</sup> The clause assumes the Responsible Entity is able to comply with the conditions in Listing Rule 7.7.1.

<sup>28</sup> See ASIC Class Orders [CO 13/655] and [CO 09/425].

announced Net Asset Value per Unit available at close of business on the last Trading Day of the 10 Trading Day 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.

## **8.9 Reinvestment while not Listed**

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

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# **9 Application procedure**

## **9.1 Application form**

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

## **9.2 Payment**

Payment in respect of an application in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a Custodian appointed by it, must:

- (a) accompany the application;
- (b) be received by or made available to the Responsible Entity or the Custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time or as the terms of issue of the relevant Option or Unit contemplate; or
- (c) comprise a reinvestment of distribution in accordance with clauses 14.19 to 14.21.

If the Responsible Entity accepts a transfer of property other than cash:

- (i) the value attributed to the property must be equivalent to a price at which the Responsible Entity could properly buy the property and, if the Responsible Entity requires the applicant must provide a recent valuation of the property;<sup>29</sup> and
- (ii) any costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factor in the Application Price for the Units must be paid by the applicant either directly or by deducting the costs from the Market Value of

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<sup>29</sup> ASIC RG 134.42

the property before the number of Units to be issued is calculated as the Responsible Entity decides.

### **9.3 Responsible Entity may reject**

The Responsible Entity may reject an application in whole or in part without giving any reason for the rejection.<sup>30</sup>

### **9.4 Minimum amounts**

The Responsible Entity may set a minimum application amount and a minimum holding for the Fund and alter or waive those amounts at any time.<sup>31</sup>

### **9.5 Issue date**

- (a) Except in the case of a reinvestment of distribution in accordance with this constitution, Units are taken to be issued at the time which is the earlier of:
  - (i) the time the issue of Units is recorded in the Register; and
  - (ii) the time when both of the following have occurred:
    - (A) the Responsible Entity Accepts the application for Units; and
    - (B) the Responsible Entity or its agent receives the application money (even if paid into the Applications Account or received in the form of a cheque) or the property against which Units are to be issued is vested in the Responsible Entity.
- (b) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.
- (c) At the time when Units are taken to be issued under paragraph (a)(ii) or (b):
  - (i) the applicant becomes a Member in respect of the Units, which are taken to be issued<sup>32</sup> even though the number of Units may not yet have been ascertained and the issue has not yet been entered in the Register; and
  - (ii) the applicant becomes entitled to be recorded in the Register as the holder of those Units as soon as it is reasonably practicable for the Responsible Entity or its agent to make the entry.

### **9.6 Uncleared funds**

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

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<sup>30</sup> Refer to Listing Rule 10.11 - restriction on issue of Units to related parties.

<sup>31</sup> While Units are Officially Quoted, see clause 32 regarding the sale of small holdings.

<sup>32</sup> For the purposes of section 761E(2).

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## 10 Redemption Price of Units<sup>33</sup>

### 10.1 Redemption Price

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

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

### 10.2 Time for calculation

Each of the variables in clause 10.1 must be determined:

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

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

### 10.3 Rounding

Subject to the Listing Rules, the Redemption Price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset of the Fund.<sup>34</sup>

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## 11 Redemption procedures<sup>35</sup>

### 11.1 While the Fund is Listed

While the Fund is Listed:

- (a) clauses 11.10 to 11.13 apply only to the extent provided for in clause 11.17;
- (b) clauses 11.9, and 11.14 to 11.16 apply; and
- (c) clauses 11.2 to 11.8 do not apply.<sup>36</sup>

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<sup>33</sup> Required to be included by section 601GA(4) if a right of redemption is to be offered and necessary in practice for any power to redeem.

<sup>34</sup> See notional section 601GAC in ASIC Class Order [CO 13/655] (or Corporations (Managed investment product consideration) Instrument 2015/847 which replaced Class Order [CO 05/26] and applies to schemes registered before October 2013 that have not opted in to [CO 13/655].

<sup>35</sup> While the Fund is a Registered Scheme, these procedures must be fair to all Members: section 601GA(4).

<sup>36</sup> Refer to Listing Rule 1.1 condition 5.

## **11.2 Request for redemption**

A Member may make a request for the redemption of some or all of their Units by giving the Responsible Entity notice in writing<sup>37</sup> of the request, specifying the number or value of Units to be redeemed and sufficient details to identify the Member, or by completing an electronic or digital form of redemption request or otherwise meeting the requirements of a personal or verbal redemption request process as determined by the Responsible Entity. The Responsible Entity is not obliged to satisfy any such request.

## **11.3 Request may not be withdrawn**

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

## **11.4 When Fund is Liquid<sup>38</sup> or not a Registered Scheme**

Clauses 11.5, 11.7 and 11.8 apply only while:

- (a) the Fund is Liquid<sup>39</sup>; or
- (b) the Fund is not a Registered Scheme.

## **11.5 Responsible Entity may redeem**

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may decide to Accept a request from a Member to redeem some or all of their Units, in whole or in part. The Responsible Entity is not required to Accept any such request.
- (b) If the Responsible Entity determines to Accept a redemption request in respect of a Unit, it must pay from the Assets to the Member or former Member the Redemption Price of that Unit calculated in accordance with clause 10. The payment must be made within 21 days of the date on which the Unit is redeemed under clause 11.15, or such longer period as allowed by clause 11.6.
- (c) If the Responsible Entity decides not to Accept some or all of the redemption request, it must notify the Member of its decision within 30 days of receipt of the request or such longer period as allowed by clause 11.6.
- (d) If the Responsible Entity does not decide whether to Accept the redemption request by the day which is 30 days after receipt of the request or the last day of such longer period as allowed by clause 11.6, on that day the Responsible Entity it is taken to have decided not to Accept the request, the request lapses and the Responsible Entity must notify the Member of its decision as soon as possible and in any event within a further 10 days following the deemed decision.
- (e) The day of receipt of the redemption request is:
  - (i) the day of actual receipt if the redemption request is received before 2.00pm on a Business Day; or

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<sup>37</sup> See clause 18

<sup>38</sup> Required to be included by section 601GA(4)(b).

<sup>39</sup> For a definition of a liquid Fund see section 601KA.

- (ii) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 2.00pm on a Business Day.
- (f) Notwithstanding clauses 11.5(a) to 11.5(e), but subject to the Corporations Act and the Listing Rules, the Responsible Entity may do anything necessary or desirable to give effect to the automatic redemption of the Initial Units under clause 25.1 without the need to comply with any of the provisions of this clause 11.

## **11.6 Delayed payment**

- (a) Subject to paragraph 11.6(b), the Responsible Entity may at any time suspend consideration of redemption requests, or defer its obligation to pay the Redemption Price in respect of a redemption request it has Accepted, if it is not possible or not in the best interests of Members (and former Members who have not yet received the Redemption Price for their Units) at the time the circumstances arise, for it to process redemption requests or make the payment (as applicable) due to one or more circumstances which are in the nature of extreme market events outside its control such as restricted, suspended or permanent cessation of trading or extreme price fluctuation or uncertainty in the market for an Asset not able to be reasonably anticipated at the relevant time, and the period allowed under clause 11.5 for consideration of the redemption request or payment of the Redemption Price may be extended by the number of days during which such circumstances apply. The time by reference to which the ability to reasonably anticipate an event for the purposes of this clause 11.6(a) is to be determined is, in the case of consideration of a redemption request, the time the Responsible Entity considers the request, and in the case of a request which the Responsible Entity has Accepted, the date of Acceptance.
- (b) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Responsible Entity must pay the redemption proceeds to the withdrawing Member or former Member within 21 days of the date on which the withdrawal offer closes.<sup>40</sup>

## **11.7 Minimum holding**

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

## **11.8 Increased minimum**

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

## **11.9 Payment from the Assets**

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

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<sup>40</sup> Section 601KD.

### **11.10 While Fund is not Liquid<sup>41</sup>**

While the Fund is a Registered Scheme but is not Liquid,<sup>42</sup> a Member may withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind.<sup>43</sup> If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to request withdrawal from the Fund.

### **11.11 Responsible Entity not obliged**

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

### **11.12 Cancellation of withdrawal offer**

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

### **11.13 Treatment of request**

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

### **11.14 Sums owed to Responsible Entity**

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

### **11.15 When Units are redeemed**

Units are taken to be redeemed:

- (a) where the redemption is to occur in response to a redemption request from a Member, at the time at which the Responsible Entity has:
  - (i) received and Accepted the redemption request in respect of the Units; and
  - (ii) calculated the Redemption Price of the Units;<sup>44</sup> or
- (b) if paragraph (a) does not apply, at the time at which the Redemption Price is known and the redemption is recorded in the Register,

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<sup>41</sup> Required to be included by section 601GA(4)(c) if Members are to have the right to withdraw while the Fund is a Registered Scheme. This clause can also apply while the Fund is not a Registered Scheme - see also clause 11.4.

<sup>42</sup> For a definition of a liquid Fund see section 601KA(1).

<sup>43</sup> Refer to sections 601KB to 601KE.

<sup>44</sup> ASIC RG 134.167.

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

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

#### **11.16 Buy backs**

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

#### **11.17 While Officially Quoted**

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

#### **11.18 Distribution to Members on a Redemption**

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



Responsible Entity realising sufficient Assets to satisfy the Large Redemption Request; and

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

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

### **12.1 Periodic valuations**

The Responsible Entity may cause an Asset to be valued at any time and, if the Fund is a Registered Scheme, must do so as and when required by the Corporations Act.<sup>45</sup>

### **12.2 Net Asset Value**

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

### **12.3 Valuation methods**

The Responsible Entity may determine the value of an Asset, and determine valuation methods and policies for each category of Asset and change them from time to time. While the Fund is a Registered Scheme, the Responsible Entity's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Application Price or Redemption Price of a Unit, the value must be reasonably current<sup>46</sup>. In the absence of any other determination by the Responsible Entity, the value of an Asset will be its Market Value.

### **12.4 Currency conversion**

Where it is necessary for the purposes of a valuation to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank or an independent pricing provider (such as Reuters) nominated by the Responsible Entity. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency, and the value must be reasonably current at the time the Redemption Price is calculated.<sup>47</sup>

### **12.5 Accounts, audit and reports**

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

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<sup>45</sup> See section 601FC(j) for Responsible Entity's obligations concerning valuation.

<sup>46</sup> ASIC RG 134.110 provides guidance on the meaning of "reasonably current".

<sup>47</sup> ASIC RG 134.108.

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## **13 Reorganisation Proposals**

### **13.1 Power to enter into Reorganisation Proposals**

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

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

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

### **13.2 Power to give effect to Reorganisation Proposals**

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

- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
- (b) apply for or purchase fully paid Securities on behalf of the Members and to consent on behalf of Members to become a member of a company, trust or other body;
- (c) issue Units;
- (d) transfer Assets;
- (e) if Units or other Securities are to be transferred as part of a Reorganisation Proposal, to give on behalf of Members a warranty as to good and unencumbered title to the Units or Securities to be transferred, and other warranties customary in a transfer of securities; and
- (f) execute all documents and do all things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

### **13.3 Appointment of Responsible Entity as agent and attorney**

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

- (a) apply any proceeds referred to in clause 13.2(a) on behalf of the Member;

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

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

### **13.4 Foreign Investors**

- (a) This clause 13.4 applies where a Reorganisation Proposal involves the offer, issue or transfer of Units, Options, Financial Instruments or other financial products to Foreign Investors.
- (b) Subject to the Listing Rules<sup>48</sup> and the Corporations Act as modified by any applicable ASIC Relief<sup>49</sup>, the Responsible Entity may determine that a Foreign Investor is a Designated Foreign Investor with respect to a Reorganisation Proposal where the Responsible Entity reasonably determines that it will not offer, issue or transfer Units, Options, Financial Instruments or other financial products to that Foreign Investor, having regard to:
  - (i) the number of Foreign Investors in the jurisdiction of that Foreign Investor;
  - (ii) the number and value of Units, Options, Financial Instruments or other financial products that may be offered, issued or transferred to Foreign Investors in the foreign jurisdiction; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the offer, issue or transfer in the foreign jurisdiction.
- (c) If the Responsible Entity makes a determination in accordance with clause 13.4(b), despite anything to the contrary in this constitution:
  - (i) the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to a Designated Foreign Investor Cash-Out; and
  - (ii) any Investor who is or becomes a Designated Foreign Investor is taken to consent to the Designated Foreign Investor Cash-Out and directs the Responsible Entity to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Designated Foreign Investor Cash-Out (including to act as the Member's agent and attorney),

including to:

<sup>48</sup> See in particular Listing Rule 7.7

<sup>49</sup> ASIC Class Order [CO 13/656] – transaction-specific relief may also be required in the case of some Reorganisation Proposals

- (i) transfer or issue, or arrange for the transfer or issue of Units, Options, Financial Instruments or other financial products held by the Member or which would have been received by the Member under the Reorganisation Proposal to a Sale Nominee;
  - (ii) arrange for a Sale Nominee to participate in a Reorganisation Proposal in respect of Units, Options, Financial Instruments or other financial products received under clause 13.4(c)(ii)(i); and
  - (iii) arrange for a Sale Nominee to sell the Units, Options, Financial Instruments or financial products that are issued or transferred in respect of the Member's existing investment;
  - (iv) arrange for the payment of the Sale Consideration to the Designated Foreign Investor.
- (d) A **“Designated Foreign Investor Cash-Out”** means that Members who are Designated Foreign Investors will:
- (i) not be the holder of any newly acquired Securities or financial products as a result of implementation of a Reorganisation Proposal; and
  - (ii) receive an amount of cash:
    - (A) realised by selling Units, Options, Financial Instruments or other securities or financial products held by that Member or to which the Member would have been entitled if it had participated in the Reorganisation Proposal; or
    - (B) otherwise determined by the Responsible Entity to be equivalent to the value of Units, Options, Financial Instruments or other securities or financial products to which the Member would have been entitled if it had participated in the Reorganisation Proposal.
- (e) Each Investor acknowledges and recognises that the exercise of the powers given to the Responsible Entity under this clause 13.4 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of this clause 13.4 to be met.

### **13.5 Liability of Responsible Entity**

The Responsible Entity has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Reorganisation Proposal.

### **13.6 Paramountcy of provision**

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

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## **14 Income and distributions to Members<sup>50</sup>**

### **14.1 Standing principles for determining Distributable Income**

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

### **14.2 Standing principles for periods where Fund is an AMIT**

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

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

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

### **14.3 Determination of Distributable Income**

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

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

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<sup>50</sup> Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

- (B) any reduction in the net capital gain for the Trust for the Financial Year which the Trustee determines arises as a result of the discount capital gains concession; and
- (ii) for a Distribution Period, the amount which the Trustee determines to be the Distributable Income for the Distribution Period, determined as if the Distribution Period is a Financial Year and a year of income for the purposes of the Tax Act.

#### **14.4 Accounting standards**

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

#### **14.5 Power to accumulate or defer amounts**

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

- (ii) carried forward for distribution later in the Financial Year pursuant to clause 14.5(a)(ii), but only until the time at which the amount is distributed under clause 14.6 or 14.24(b),

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

## 14.6 Income Distributions

Subject to clauses 4.8, 14.13 and 14.26, Income Distributions in respect of a Member means an amount calculated by the Responsible Entity as follows:

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

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

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period;
- C is the Distributable Income for the Distribution Period excluding:
  - (i) the Income Component of any Redemption Payment made to any Member pursuant to clause 11.18 during that Distribution Period;
  - (ii) any amounts paid pursuant to clause 14.24(b) during that Distribution Period; and
  - (iii) any amounts which the Responsible Entity has determined to accumulate or carry forward for the Distribution period under clause 14.5(a),

and including any amounts which the Responsible Entity has determined to carry forward for a previous Distribution Period in the Financial Year, and which the Responsible Entity determines has not previously been distributed in the Financial Year as an Income Distribution or under clause 14.24(b) and is appropriate to distribute for the Distribution Period; and

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

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

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period; and

- C is any amount by which the Distributable Income for the Financial Year exceeds the aggregate of:
- (1) the Distributable Income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year;
  - (2) the Income Component of any Redemption Payment made to any Member in the Financial Year pursuant to clause 11.18; and
  - (3) any amounts paid pursuant to clause 14.24(b) during the Financial Year; and
  - (4) any amounts which the Responsible Entity has determined to accumulate for a Distribution Period in the Financial Year under clause 14.5(a)(i).

#### **14.7 Present entitlement**

Subject to clause 4.8, a person who at any time during the Financial Year is or has been a Member is presently entitled on the last day of the Financial Year to:

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

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

#### **14.8 Indefeasibility**

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

#### **14.9 Distribution of income**

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

#### **14.10 Separate accounts**

The Responsible Entity may keep separate accounts of different categories or sources (or both) of income or gains, or deductions, losses or credits for tax purposes, and if such accounts are kept, they must be kept in accordance with the requirements of the Tax Act. The Responsible Entity may allocate income or gains from a particular category or source (or both) to particular Members or Members of a Class, provided that the allocation is not inconsistent with the



entitlements of Members to Distributable Income under clauses 14.6 or 14.24(b) or the Responsible Entity's obligation to attribute amounts to Members under clause 14.15. For a Financial Year for the Fund which is not an AMIT Income Year, if such allocation is made on any basis other than pro rata with all other Members, the Responsible Entity must notify the Member.

#### **14.11 Position on transfer of Units**

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

#### **14.12 Deductions from Distributable Income**

The Responsible Entity may deduct from any entitlement of a person to a share of Distributable Income any amount which the Responsible Entity is required or authorised to deduct under clause 15.7 and all amounts deducted must be applied in reimbursing the Fund for any corresponding amount paid, distributed or reimbursed out of the Fund or reimbursing the Responsible Entity for the payment of the Tax to the person or authority entitled to it.

#### **14.13 Fractions**

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

#### **14.14 Classification of items**

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

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

#### **14.15 Attribution under AMIT Regime – basis for attribution**

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Financial Year, attribute all of the Determined Trust Components of the Fund, or each Class in the Fund where there is an AMIT Class Election in force for the Fund, for the Financial Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under clause 14.15(a) in accordance with the Tax Act and the following principles:
  - (i) the amount of each Member's Determined Member Components of a particular character is so much of the Fund's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this constitution; and

- (ii) if there is more than one Class on issue in the Fund and the Responsible Entity has made an AMIT Class Election for the Fund, each Class will be treated as a separate AMIT for the purposes of the attribution under clause 14.15(a).
- (c) Subject to clause 14.16, but without limiting clause 14.15(b), following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Fund, all of the Determined Trust Components of the Fund or relevant Class (where there is an AMIT Class Election in effect for the Fund) for the Financial Year that are reflected in:
- (i) any Income Distributions that the Member or former Member has become entitled to at the end of each Distribution Period in the Financial Year under clause 14.6;
  - (ii) any Income Component distributed to the Member or the former Member under clause 11.18;
  - (iii) any distributions of Distributable Income that the Member or former Member has become entitled to during the Financial Year under clause 14.24(b); and
  - (iv) any Income Distributions that would arise for the Member or former Member at a time specified in clause 14.5(c) (“**Relevant Time**”) under clause 14.6 if the Relevant Time was the end of a Distribution Period and variable “C” in the formula set out in clause 14.6 for the Distribution Period was the amount accumulated under clause 14.5(a)(i).
- (d) The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed for the Fund as an Income Distribution under clause 14.6 or under clause 14.24(b) are referable to Determined Trust Components of the Fund or the relevant Class (where there is an AMIT Class Election in effect in relation to the Fund) for the Financial Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under clause 14.15(a).

#### **14.16 Attribution under AMIT Regime – AMIT Class Election**

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

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

#### **14.17 Attribution under AMIT Regime – Member objections**

If the Fund is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Fund or a Class (where the Responsible Entity has made an

AMIT Class Election for the Fund) to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

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

#### **14.18 AMIT Regime Unders/Overs**

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

#### **14.19 Availability of reinvestment**

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

#### **14.20 Terms of reinvestment**

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

#### **14.21 Issue date**

If reinvestment applies to the share of Distributable Income on any Unit held by a Member at the end of a Distribution Period or any part of that share, the Responsible Entity is taken to have received and Accepted an application to reinvest that share of Distributable Income, or part of it on the first Business Day

after the end of the Distribution Period. The new Units are issued at the time of that Acceptance.

#### 14.22 Fund taxed as company<sup>51</sup>

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

- (a) as soon as practicable after the end of the Financial Year the Responsible Entity must determine the income of the Fund in respect of the Financial Year, for each of taxation purposes and accounting purposes (which may be different amounts);
- (b) the Responsible Entity must provide for, and pay from the Assets of the Fund when appropriate, all taxation attributable to the income of the Fund;
- (c) the Members will not have a present entitlement at the end of a Distribution Period to the net income of the Fund;
- (d) the Responsible Entity may from time to time, including during the Financial Year, determine to pay distributions in respect of the Financial Year (each a "**Distributable Amount**") to the Members on the Register on any date determined by the Responsible Entity ("**Books Closing Date**");
- (e) in respect of a Distributable Amount being paid to Members under this clause 14.22:
  - (i) the Responsible Entity may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
  - (ii) the Responsible Entity must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies; and
- (f) subject to any rights attaching to any Unit, a Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

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

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<sup>51</sup> It is suggested that this clause be excluded unless needed for the particular fund, as it may run the risk of the Fund not being a fixed trust for tax purposes.

### **14.23 Liability**

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

### **14.24 Other distributions**

The Responsible Entity may at any time:

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

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

### **14.25 Member may direct**

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

### **14.26 Classes**

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

### **14.27 Former Members**

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

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## **15 Payments**

### **15.1 Payment method**

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

### **15.2 Cheques**

Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Relevant Security Holder, the money is to be held by the Responsible

Entity for the Relevant Security Holder or paid by the Responsible Entity in accordance with the legislation relating to unclaimed moneys.

### **15.3 Electronic transfers**

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

### **15.4 Rounding**

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

### **15.5 Transfer of Assets**

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

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

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

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

### **15.6 Joint Relevant Security Holders**

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

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

The Responsible Entity may deduct from any amount to be paid to a person who is or has been a Relevant Security Holder, or received from a person who is or has been a Relevant Security Holder, any amount of Tax (or an estimate of it) or any other amount owed by the Relevant Security Holder to the Responsible Entity or any other person which the Responsible Entity is required or authorised to deduct by law or by this constitution or which the Responsible Entity considers should be deducted, including under clauses 14.17(a)(iii), 23.3 or 23.4.

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## **16 Powers of the Responsible Entity**

### **16.1 General powers**

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

### **16.2 Contracting and borrowing powers<sup>52</sup>**

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

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

### **16.3 Investment and lending powers**

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

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

### **16.4 Power of delegation<sup>53</sup>**

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.

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<sup>52</sup> Required to be included by Section 601GA(3).

<sup>53</sup> See also Section 601FB.

## **16.5 Terms of delegation**

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

## **16.6 Delegate may be an associate**

The agent or delegate may be an Associate of the Responsible Entity.<sup>54</sup>

## **16.7 Exercise of discretion**

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

## **16.8 Underwriting**

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

## **16.9 Rights and powers in relation to the AMIT Regime**

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

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<sup>54</sup> Subject to Part 5C.7.



Corporations Act (if applicable) and otherwise at law and binding on Members; and

(ii) to the extent that any of these powers depends, for its operation, on the Fund being or not being an AMIT for the Financial Year, the Fund will be treated as if it were or were not (respectively) an AMIT for the purposes of that power.

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

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## **17 Retirement of Responsible Entity<sup>55</sup>**

### **17.1 While a Registered Scheme**

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

- (a) may retire as the responsible entity of the Fund as permitted by law;<sup>56</sup> and
- (b) must retire as the responsible entity of the Fund when required by law.

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

### **17.2 While not a Registered Scheme**

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

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

On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.<sup>57</sup>

### **17.3 New Responsible Entity**

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

### **17.4 Release**

When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.<sup>58</sup>

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<sup>55</sup> Refer to Listing rule 3.16.2(a).

<sup>56</sup> See section 601FL. The change does not take effect until the ASIC alters its records: section 601FJ.

<sup>57</sup> See section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

<sup>58</sup> See section 601FR for the Responsible Entity's obligation to transfer records, etc. Section 601FS restricts this release.

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## **18 Notices to Relevant Security Holders<sup>59</sup>**

### **18.1 Notice**

Subject to the Corporations Act, a notice or other communication required to be given to a Relevant Security Holder in connection with the Fund must be given in writing (including by fax, email or other electronic means) or in such other manner as the Responsible Entity determines, including a notification that is it available by electronic means. A notice or other communication may be delivered or sent to the Relevant Security Holder at their physical or electronic address last advised to the Responsible Entity for delivery of notices.

### **18.2 Cheques**

A cheque payable to a Relevant Security Holder may be posted to their physical address or handed to them or a person authorised in writing by them.<sup>60</sup>

### **18.3 Joint Relevant Security Holders**

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

### **18.4 When notice received**

Subject to the Corporations Act,<sup>61</sup> a notice or other communication sent to a Relevant Security Holder:

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

A cheque is taken to be received on the Business Day after it is posted.

Proof of actual receipt is not required. The Responsible Entity may determine<sup>62</sup> the time at which other forms of communication will be taken to be received.

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## **19 Notices to the Responsible Entity**

### **19.1 Form of notice**

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

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<sup>59</sup> While Units are Officially Quoted, notices to Members must be copied to ASX - refer to Listing Rule 3.17.

<sup>60</sup> See clause 21.3(c).

<sup>61</sup> See section 601FC(1)(d).

<sup>62</sup> See section 252G(4).

## **19.2 When notice received**

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

## **19.3 Signature**

The notice must bear the actual, facsimile or electronic signature of the Relevant Security Holder or their duly authorised officer or representative,<sup>63</sup> unless the Responsible Entity dispenses with this requirement.

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## **20 Meetings of Members**

### **20.1 Convening of meetings**

The Responsible Entity may at any time convene a meeting of Members, and must do so if required by the Corporations Act.<sup>64</sup>

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

While the Fund is not a Registered Scheme:

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

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

While the Fund is a Registered Scheme:

- (a) subject to clause 20.3(b), the provisions of the Corporations Act<sup>65</sup> apply to determine the circumstances if any in which a meeting must be convened on the request of Members; and
- (b) while the Fund is Listed, in respect of a requisition by Members to hold a meeting to vote on a proposed ordinary resolution to terminate the Investment Management Agreement in accordance with the terms of that agreement, section 252B of the Corporations Act is taken to be amended as it applies to the Fund by deleting the words "special or extraordinary" where appearing before the word "resolution", with the intention that the Members will have the same right to requisition the meeting for that purpose as if section 252B had applied to ordinary resolutions (but not for any other purpose).

### **20.4 Notice period**

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

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<sup>63</sup> See clause 21.3(c).

<sup>64</sup> Refer to Part 2G.4.

<sup>65</sup> Section 252B.

## **20.5 Notice while Registered Scheme**

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

## **20.6 Responsible Entity may determine**

Subject to this clause 20, the Corporations Act<sup>66</sup> and the Listing Rules, the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted including a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.<sup>67</sup>

## **20.7 Quorum**

- (a) Subject to clause 20.7(b), the quorum for a meeting of Members is at least 3 Members present in person or by proxy.
- (b) If the Fund has only one Member, that one Member may appoint 2 proxies<sup>68</sup> each to exercise a proportion of the Member's votes at the meeting, and those 2 proxies will constitute a quorum.
- (c) If one or more of such Members is excluded from voting on any Resolution proposed at the meeting they may still be counted towards the quorum.

## **20.8 No quorum**

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

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

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

## **20.9 Chairman**

Subject to the Corporations Act,<sup>69</sup> the Responsible Entity may appoint a person to chair a meeting of Members.

## **20.10 Conduct of meeting**

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

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<sup>66</sup> Refer to Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 31 - Restricted securities.

<sup>67</sup> Refer to Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

<sup>68</sup> Section 252V(3) allows 2 proxies.

<sup>69</sup> Refer to Part 2G.4, in particular section 252S.

### **20.11 Adjournment**

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

### **20.12 Postponement or cancellation**

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

### **20.13 Voting - not a Registered Scheme**

- (a) While the Fund is not a Registered Scheme, voting is by a show of hands, unless a poll is duly demanded or the Resolution proposed is required by this constitution or by law to be decided by a percentage of all Units.
- (b) Subject to the rights, obligations and restrictions attaching to any particular Units, each Member who is 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 held.
- (c) In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees.

### **20.14 Voting - Registered Scheme**

While the Fund is a Registered Scheme, subject to clause 20.17, the provisions of the Corporations Act governing voting for meetings of members of Registered Schemes apply to the Fund.

### **20.15 Proxies**

Subject to clause 20.16, the provisions of the Corporations Act governing proxies for meetings of members of Registered Schemes apply to the Fund.<sup>70</sup>

### **20.16 Validity of proxy**

The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.<sup>71</sup>

### **20.17 Demand for a poll**

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

### **20.18 Resolutions binding**

A Resolution by:

- (a) Members binds all Members; or

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<sup>70</sup> This provision is included for completeness - while the Fund is a Registered Scheme the law operates of its own force.

<sup>71</sup> Section 252Y(1) specifies the information which is normally to be included in an appointment of a proxy.

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

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

#### **20.19 Objection at meeting**

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

#### **20.20 Non-receipt**

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

#### **20.21 Option Holders and Financial Instrument Holders**

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

#### **20.22 Class meetings**

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

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## **21 Rights and liabilities of Responsible Entity**

### **21.1 Holding Units**

The Responsible Entity and its associates may hold Units in the Fund, or interests in any trust or company which is an associate of any of them, in any capacity.<sup>72</sup>

### **21.2 Other capacities**

Subject to the Corporations Act,<sup>73</sup> the Responsible Entity (and any of its associates to the extent applicable) may:

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

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

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<sup>72</sup> See section 601FG, section 253E and Part 5C.7.

<sup>73</sup> Refer to Part 5C.7, and see also Listing Rule 10.1.

### **21.3 Responsible Entity may rely**

The Responsible Entity may take and may act on:

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

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

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## **22 Limitation of liability and indemnity in favour of Responsible Entity**

### **22.1 Limitation on Responsible Entity's liability**

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

### **22.2 Liability while Fund is not a Registered Scheme**

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

### **22.3 Liability limited to Assets**

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

### **22.4 Indemnity in favour of Responsible Entity**

The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in relation to the proper performance of its duties, whether incurred by exercise of its powers under this constitution or by any other act, omission or circumstance.<sup>74</sup>

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<sup>74</sup> See section 601GA(2).

## **22.5 Liability for agents**

To the extent permitted by the Corporations Act,<sup>75</sup> and otherwise without limitation, the indemnity under clause 22.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.

## **22.6 Indemnity continues**

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

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

Where a Liability is incurred by the Responsible Entity in relation to the proper performance of its duties, whether incurred by exercise of its powers under this constitution or by any other act, omission or circumstance, the Responsible Entity may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor or the Responsible Entity (in its capacity as trustee or responsible entity of the Fund), despite any loss the Fund may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Responsible Entity or by any person or entity acting on behalf of the Responsible Entity.

## **22.8 Limitation of liability for AMIT Regime powers**

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

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

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## **23 Liability of Relevant Security Holders**

### **23.1 Liability limited**

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

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<sup>75</sup> See sections 601FB(2) and 601GA(2).



### **23.2 Member need not indemnify**

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

### **23.3 Tax or User Pays Fees**

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

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

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

### **23.4 AMIT indemnity**

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

- (a) any Tax (or an estimate of it) payable by the Responsible Entity under or in connection with the AMIT Regime and which the Responsible Entity determines is properly referable to the Member or former Member; and
- (b) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member or former Member under clause 22.4 in the circumstances contemplated in clause 23.4(a).

### **23.5 Joint Relevant Security Holders**

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

### **23.6 Recourse**

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

### **23.7 Restrictions**

a Relevant Security Holder:

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

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## **24 Remuneration and expenses of Responsible Entity**

### **24.1 Fees and remuneration payable from the Assets**

The fees and remuneration in clauses 24.3 and 24.6 are payable to the Responsible Entity out of the Assets.

### **24.2 Fees and remuneration subject to Corporations Act**

While the Fund is a Registered Scheme, the fees in clauses 24.3 and 24.6 may only be paid to the Responsible Entity to the extent they are payable in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Fund.<sup>76</sup>

### **24.3 RE fee**

- (a) The Responsible Entity is entitled to a responsible entity fee of 3% per annum of the Net Asset Value of the Fund, calculated on the last day of each month, and paid out of the Assets within 10 Business Days of the end of the month ("RE Fee"). The RE Fee is payable first out of income of the Fund and then out of capital.
- (b) In relation to the month in which the Fund is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the RE Fee payable in respect of the first month will be calculated on a pro-rata basis for that month.
- (c) Where the RE Fee was not paid for a particular month or part month or not in full, the RE Fee payable in a subsequent month will be the aggregate of the RE Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid, with the final payment to be prorated if such payment is for a period less than a full month.

### **24.4 Deferral and waiver of fees**

The Responsible Entity may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period.

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

### **24.5 Expenses**

All expenses incurred by the Responsible Entity in connection with the Fund are payable or reimburseable out of the Assets or out of the assets of a controlled sub trust of the Fund, but while the Fund is a Registered Scheme reimbursement or payment is only available in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Fund<sup>77</sup> and is reimburseable out of the Assets (or the assets of the sub trust as the case may be) to the extent that reimbursement is not prohibited by the Corporations Act. This includes the expenses connected with the following:

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<sup>76</sup> See section 601GA(2) and ASIC RG 134.122.

<sup>77</sup> Refer to section 601GA(2)(b).

- (a) this constitution, the formation of the Fund and any investment vehicle in which the Fund expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
- (b) registration of the Fund as a Registered Scheme;
- (c) the preparation, review, distribution and promotion of any product disclosure statement, offering memorandum or other disclosure document in respect of Relevant Securities or other promotion of the Fund, including those incurred in connection with an offer roadshow;
- (d) the engagement of any legal, accounting or other professional advisers in connection with an offer of Relevant Securities, including fees paid to an arranger or lead manager;
- (e) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
- (f) any proposed acquisition, disposal or other dealing with any investment;
- (g) borrowing arrangements and raising money on behalf of the Fund or guarantees in connection with the Fund, including hedging costs, and costs relating to interest rate swaps or any gearing facility;
- (h) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management (including investment management fees, performance fees, carried interest distributions, transaction fees, arranging fees, monitoring fees, asset leasing fees, expense reimbursements (including those incurred in connection with travel, events and entertainment) or any other compensation or amounts), supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Fund has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (i) the Investment Management Agreement including base management or performance fees and taxes, costs, charges and expenses payable to the Manager;
- (j) the administration or management of the Fund or its Assets and Liabilities, including expenses in connection with maintaining the Register and dealings with Relevant Securities;
- (k) costs of the admission of the Fund to the Official List and compliance with the Listing Rules;
- (l) underwriting or managing any subscription or purchase of Relevant Securities, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under such agreement;
- (m) convening and holding meetings of Relevant Security Holders, the implementation of any Resolutions and communications with Relevant Security Holders;

- (n) Tax (including any amount charged by a person making a supply to the Responsible Entity by way of or as a reimbursement for GST), costs incurred in the implementation and application of the AMIT Regime, and financial institution fees;
- (o) 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;
- (p) accounting and compliance with taxation laws and procedures (whether internal expenses of the Responsible Entity or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Fund;
- (q) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (r) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph must be repaid;
- (s) all damages, expenses, payments, legal and other costs and disbursements incurred by the Responsible Entity in relation to or in connection with any claim, dispute or litigation ("**Claim**") arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Fund including any project document in connection with the investment and any offering document or borrowing document in connection with the Fund except where the Claim arises out of the fraud or wilful default of the Responsible Entity;
- (t) any compliance committee established by the Responsible Entity in connection with the Fund, including any fees paid to or insurance premiums<sup>78</sup> in respect of Compliance Committee Members;
- (u) while the Fund is a Registered Scheme and there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (v) fees payable to any audit committee for the Fund appointed in accordance with ASX corporate governance guidelines or otherwise;
- (w) the preparation, implementation, amendment and audit of the compliance plan;
- (x) the cost of handling complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution scheme;
- (y) the cost of the Responsible Entity employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Fund;

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<sup>78</sup> See section 601JG.

- (z) complying with any law, and any request or requirement of ASIC or ASX; and
- (aa) in connection with any CCIV Proposal, Top Hat Proposal, Exchange Proposal or any other Reorganisation Proposal.

In this clause 24, "Expenses" includes amounts paid by the Responsible Entity to related bodies corporate for services where the expenses would have been reimburseable had they been incurred by the Responsible Entity.

#### 24.6 **Additional Responsible Entity remuneration for Additional Fund Administration Services**

- (a) The Responsible Entity is entitled, on the terms set out in clauses 24.6(a) to 24.6(e), to be paid out of the Assets remuneration for time spent by it and Responsible Entity Personnel in providing Additional Fund Administration Services.
- (b) While the Fund is a Registered Scheme, the remuneration under clause 24.6(a) may only be paid to the Responsible Entity to the extent it is payable in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Fund.
- (c) Remuneration under clause 24.6(a) is to be:
  - (i) calculated on the basis of a maximum hourly rate of \$1,000.00 per hour, adjusted on each Review Date to reflect any increase since the previous Review Date in the 'All groups CPI weighted average of eight capital cities' published by the Australian Bureau of Statistics, in respect of each quarter; and
  - (ii) paid calendar monthly in arrears.
- (d) The Responsible Entity may notify the Members of its current hourly rates for the purposes of clause 24.6(c), and the amounts charged to the Assets under clause 24.6(c)(ii) from time to time, but its rights to be paid 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 24.6(a) are in addition to its rights under clauses 24.3 and 24.5.

In this clause "**Review Date**" means:

- (i) the day that is one calendar quarter after the issue of the Units pursuant to the First Offer Document; and
- (ii) each day that is one calendar quarter after a previous Review Date.

#### 24.7 **GST**

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

for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST.

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

## **24.8 Input tax credits**

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

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## **25 Duration of the Fund**

### **25.1 Initial settlement**

The Fund commences when one or more persons subscribe \$25.00 each or another amount determined by the Responsible Entity or, at the discretion of the Responsible Entity, transfers property acceptable to the Responsible Entity, for Units in the Fund ("**Initial Units**") and the Responsible Entity issues Units to that person in return for that payment or transfer. The Application Price for Units issued under this clause is \$2.50. The Initial Units will be automatically redeemed immediately upon the issue of Units under clause 8.1(a) or any other issue of Units, without the need for a redemption request, at a Redemption Price of \$2.50 per Unit.

### **25.2 Termination**

The Fund terminates on the earliest of:

- (a) while the Fund is a Registered Scheme;
  - (i) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
  - (ii) a date determined by the Responsible Entity and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
- (b) while the Fund is not a Registered Scheme, a date determined by the Responsible Entity and specified in a notice to Members sent at least 1 month before the proposed termination, unless all Members consent to shorter notice; and
- (c) the date on which the Fund terminates in accordance with clause 25.3, any other provision of this constitution, or by law.<sup>79</sup>

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<sup>79</sup> See Part 5C.9 on winding up.

### **25.3 Change in taxation**

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

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

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

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## **26 Procedure on termination**

### **26.1 Realisation of Assets and payment of expenses**

Following termination, the Responsible Entity must:

- (a) realise the Assets except to the extent it determines to distribute Assets to Members in accordance with clause 15.5 pro rata according to their holding of Units as part of winding up of the Fund; and
- (b) make payments (or set aside estimated amounts) from the Assets to pay the Fund's expenses and liabilities, and the costs or anticipated costs of winding up the Fund. These amounts will reduce the proceeds of winding up that a Member may otherwise receive, but a Member is not required to pay any of these amounts from their own funds.<sup>80</sup>

To the extent that realisation of Assets is required, this must be completed in 180 days if practical and in any event as soon as possible after that. The Responsible Entity may, however, postpone realisation of the Assets or any Asset if the Responsible Entity reasonably considers it would be in the best interests of Members to do so and the Responsible Entity is not responsible for any consequent loss or damage attributable to that postponement.

### **26.2 Auditor and liquidator**

- (a) If, at the time it is to be wound up, the Fund is a Registered Scheme, the Responsible Entity must arrange for an independent audit of the final accounts of the Fund by a registered company auditor.<sup>81</sup>
- (b) If the Fund is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Responsible Entity to meet Liabilities from the Assets as and when they fall due, the Responsible Entity may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the powers of the Responsible Entity under this constitution as necessary to facilitate the winding up.<sup>82</sup>

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<sup>80</sup> ASIC RG 134.192.

<sup>81</sup> ASIC RG 134.200, 134.201.

<sup>82</sup> ASIC RG 134.198.

### **26.3 Distribution following termination**

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

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

Where:

A = the amount remaining in the Fund after deduction of the Liabilities and expenses referred to in this clause 26.3;

B = the aggregate of the number of Units held by the Member as at termination; and

C = the aggregate of the total number of Units in issue as at termination.

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

### **26.4 Provisions continue to apply**

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

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

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## **27 Amendments to this constitution**

### **27.1 Responsible Entity may amend**

Subject to the Corporations Act,<sup>83</sup> while the Fund is a Registered Scheme, this constitution may be amended:

- (a) by Resolution;<sup>84</sup> or
- (b) by deed executed by the Responsible Entity.

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

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<sup>83</sup> See section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with ASIC.

<sup>84</sup> The required majority under section 601GC(1)(a) is 75%.



## **27.2 While not a Registered Scheme**

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

## **27.3 Attribution Managed Investment Fund**

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

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

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## **28 Regulatory provisions and paramourtycy**

### **28.1 Listing Rules<sup>85</sup>**

While the Fund is included in the Official List:

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

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<sup>85</sup> See ASX Listing Rules Appendix 15A.

## 28.2 Corporations Act and ASIC Relief

- (a) If the Corporations Act requires that this constitution contain certain provisions, or if ASIC Class Order [CO 13/655] (or any other ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Fund and the Responsible Entity) requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("**Required Provisions**"); or
- (b) if any part of this constitution (a "**Required Part**") is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX ("**Regulatory Requirement**") and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

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

## 28.3 Application of Corporations Act and Listing Rules

In this constitution, except as otherwise provided in a particular clause or by law:

- (a) a requirement of the Corporations Act only applies while the Fund is a Registered Scheme; and
- (b) a requirement of the Listing Rules only applies while the Fund is Listed.

## 28.4 ASIC Class Orders

In accordance with ASIC Corporations (Chapter 5C – Miscellaneous Provisions) Instrument 2017/125<sup>86</sup> or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Fund, a change in the text of this constitution because of the operation of clause 28.2 that is covered by the relief instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act. Changes in the text of the constitution to which this clause 28.4 applies are made pursuant to the power in clause 27.1 but in respect of those changes the requirements of clause 27.1 are to be read subject to this clause 28.4.

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<sup>86</sup> ASIC Instrument 2017/125 permits a constitution to include a provision to the effect of Appendix 15A of the Listing Rules, such as clause 28.1 of this constitution. This is sometimes known as the 'listing rules compliance clause'.

## 28.5 Paramourncy of provisions

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

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

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

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## 29 Compliance committee

While the Fund is a Registered Scheme, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.<sup>87</sup>

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## 30 Complaints

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

- (a) must, if the Member or former Member is a Retail Client, comply with the requirements of section 912A(2) of the Corporations Act applicable to the Complaint;<sup>88</sup> and
- (b) in respect of a Complaint from a Member or former Member who is not a Retail Client:<sup>89</sup>
  - (i) must acknowledge receipt of the Complaint as soon as possible and in any event within 14 days from receipt;<sup>90</sup>
  - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
  - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the Complaint by endeavouring to correct the error;
  - (iv) may give any of the following remedies to the complainant:

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<sup>87</sup> See section 601JF.

<sup>88</sup> See ASIC RG 134.135

<sup>89</sup> The Responsible Entity may treat retail and wholesale clients differently for this purpose – see RG 134.145 and [CO 13/656].

<sup>90</sup> 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.

- (A) information and explanation regarding the circumstances giving rise to the Complaint;
  - (B) an apology; or
  - (C) compensation for loss incurred by the Member as a direct result of any breach; and
- (v) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the Complaint:
- (A) the determination in relation to the Complaint;
  - (B) any remedies available to the Member; and
  - (C) information regarding any further avenue for Complaint.
- (c) For the purposes of this clause 30, while the Fund is a Registered Scheme, a reference to a Member includes any person who has an "interest" in the Fund as that term is defined in section 9 of the Corporations Act, and any person whose Units have been redeemed under clause 11.15 but who has not yet been paid the Redemption Price of the Units.

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## **31 Restricted Securities**

### **31.1 Disposal of Restricted Securities<sup>91</sup>**

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

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

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

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## **32 Small holdings**

### **32.1 Application of this clause**

This clause 32 applies while the Units are Officially Quoted.

### **32.2 Responsible Entity may sell or redeem**

Subject to the provisions of this clause 32, the Responsible Entity may sell or redeem any Units held by a Member without request by the Member where the Units comprise less than a marketable parcel as provided in the Listing Rules. The Responsible Entity may only sell or redeem Units on one occasion in any 12

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<sup>91</sup> Listing Rule 15.12 requires a listed entity's constitution to provide for each of the matters set out in clause 31.

month period. Subject to clause 32.6, if the Units are redeemed, the Redemption Price must be the amount calculated under clause 10.1.

### **32.3 Responsible Entity must notify**

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

### **32.4 Timing**

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

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

### **32.5 Takeover**

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

### **32.6 Costs of sale**

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

### **32.7 Certificate**

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

### **32.8 Responsible Entity as Member's attorney**

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

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## **33 Security interests**

### **33.1 Responsible Entity determines when clause applies**

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

- (a) this clause 33 continues to apply to all Security Interests noted on the Register at the time of that determination; and
- (b) the Responsible Entity must not accept any further notices under clause 33.2 after the time of that determination.

### **33.2 Form of notice**

The Responsible Entity may determine the form of notice which:

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

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

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

### **33.4 Responsible Entity not bound**

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

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

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

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

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

- (a) if the Responsible Entity receives a direction (in such form as the Responsible Entity determines) signed by the Member or their duly appointed agent to the effect that it must pay to the Security Interest Holder any distributions, whether on winding up or otherwise and whether of capital or income, which would, in the absence of such direction have been made or paid to the relevant Member, the Responsible Entity may act on that direction until it is revoked by the Member or their duly appointed agent with the written consent of the Security Interest Holder;
- (b) when acting in good faith, the Responsible Entity is not liable either to the Member or to the Security Interest Holder if a payment made to the Member or Security Interest Holder is not in accordance with clause 33.6(a);
- (c) the Responsible Entity may provide to the Security Interest Holder any notice or information which would normally be provided to the Member; and

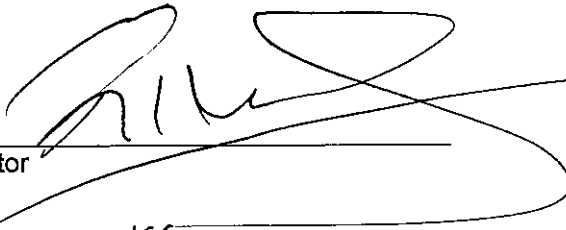

- (d) if the Responsible Entity becomes aware that a dispute has arisen between a Member and a Security Interest Holder as to any right to a payment relating to Units in respect of which the Security Interest is noted on the Register, the Responsible Entity may either:
  - (i) pay the disputed amount to the Security Interest Holder; or
  - (ii) pay the disputed amount into any court in which proceedings in relation to the dispute are to be conducted,

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

**EXECUTED** as a deed poll

EXECUTED as a deed poll.

EXECUTED BY THE TRUST COMPANY (RE SERVICES) LIMITED:

 _____ Director	 _____ Director/Secretary
<b>RICHARD MCCARTHY</b> _____ Name	<b>ALTERNATE</b> <b>PHILIP BLACKMORE</b> _____ Name



## Finding list - Corporations Act

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

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

## Finding list - Listing Rules

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

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