



Constitution of the US Masters Residential Property Fund

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Consolidated Constitution of the US Masters Residential Property Fund

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

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

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

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

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

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

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

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

Bid Consideration has the meaning given in Clause 5.6(a).

Business Day means a day which is a business day for the purposes of the Listing Rules.

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

Corporations Act means the Corporations Act 2001 (Cth).

Class means a class of Units.

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

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

Distribution Period means:

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

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

Gross Value of the Assets means from time to time, the gross value of all the Assets, with the value of real property assets being their fair market value as shown in the Trust's last produced audited or audit reviewed financial statements adjusted for any real property assets acquired or disposed of since that time at their acquisition or disposal prices.

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

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 10.3.

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

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

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

Listed means admitted to the official list of a Prescribed Financial Market whether or not quotation of the Units is deferred, suspended or subjected to a trading halt.

Listing Rules means the listing rules of the Prescribed Financial Market on which the Units are Listed.

Market Price of a Unit on any Business Day means:

- (a) the weighted average price per Unit in that Class for sales of that Class on the Prescribed Financial Market on which Units are Listed (excluding any special crossings) on a Trading Day for the period of 10 Trading Days immediately prior to the relevant Business Day (whether or not a sale was recorded on any particular day) adjusted to take into account any ex-entitlement dates that occurred during this period; or
- (b) if Units in that Class:
 - (i) have not been traded for at least 5 out of 10 consecutive Trading Days before the relevant Business Day; or
 - (ii) in the Responsible Entity's opinion, a determination under paragraph (a) would not provide a fair reflection of the current market value of the Unit,

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

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

Net Asset Value means the value of the Assets calculated in accordance with Clause 8 less the Liabilities.

Offer has the meaning given in Clause 5.6(c).

Officially Quoted means quoted on the official list of a Prescribed Financial Market including the situation where any such quotation is suspended for a continuous period not exceeding 60 days.

Operating Income means the gross income (including realised gains but excluding any unrealised gains) of the Trust from its operations including rent, interest, dividends, distributions and otherwise less:

- (a) costs arising in deriving that income including, but not limited to:
 - (i) property outgoings;
 - (ii) repairs and maintenance;
 - (iii) interest and other borrowing costs;
 - (iv) fees paid to the Responsible Entity; and
 - (v) Tax paid by the Responsible Entity;
- (b) any other amount the Responsible Entity considers prudent or appropriate to allow for contingencies or future Costs that will or may arise in respect of the Trust; and
- (c) realised (but not unrealised) losses on disposal of assets.

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

Prescribed Financial Market has the same meaning as in the Corporations Act.

Register means the register of Members kept by the Responsible Entity under the Corporations Act.

Registered means recorded in the Register.

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

Registration means recording in the Register.

Resolution means:

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

Except where this Constitution or any applicable law provides otherwise, the "required majority" is a simple majority.

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

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

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

Tax Year means:

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

Trading Day means those Business Days on which buying and selling occurs through the stock exchange automated trading system used by the Prescribed Financial Market on which the Units are Listed.

Transmission Event means:

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

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

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

Responsible Entity means:

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

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

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

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

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

1.2. Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) the singular includes the plural and vice versa;

- (c) amend includes delete or replace;
- (d) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution;
- (e) a reference to any provision being subject to the Corporations Act only operates if the Corporations Act applies to affect that provision;
- (f) words importing a gender include any gender;
- (g) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (h) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (i) a reference to anything (including, without limitation, any right) includes a part of that thing;
- (j) a reference to a Part, Clause, Party, Annexure, Exhibit or Schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any Annexure, Exhibit or Schedule;
- (k) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (l) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (m) a reference to a party to a document includes that party's successors and permitted assigns;
- (n) a reference to an agreement other than this Constitution includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (o) a reference to an asset includes all property of any nature, including, without limitation, a business, and all rights, revenues and benefits;
- (p) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind; and
- (q) amounts of money are expressed in Australian dollars unless otherwise expressly stated.

1.3. Inclusive expressions

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

1.4. General compliance provision

- (a) A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Constitution.
- (c) This Clause 1.4 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

1.5. Listing Rules

- (a) This Constitution is to be interpreted subject to:
 - (i) the Corporations Act;
 - (ii) the Listing Rules, while the Trust is Listed; and
 - (iii) the ASX Settlement Operating Rules, while the Units are CHESSE Approved Securities.
- (b) Despite anything to the contrary in this Clause 1.5, this Clause 1.5 has effect subject to Clause 1.4.
- (c) While the Trust is Listed:
 - (i) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
 - (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
 - (iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
 - (v) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
 - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (d) While the Trust is Listed, the Responsible Entity must comply with the obligations imposed on it under the Listing Rules and the ASX Settlement Operating Rules. This obligation does not detract from or alter the power of the Responsible Entity to cause the Trust to cease to be Listed.
- (e) Unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules has the same meaning as in that provision.
- (f) In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of Clause 1.5(c) is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act.

1.6. Additional Listing Rule requirements

At all times that the Trust is Listed:

- (a) the Responsible Entity must not remove or change a Member's right to vote except if:
 - (i) an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Constitution;
 - (ii) the Member became the holder of that Unit after the time determined under the Corporations Regulations as the "specified time" for deciding who held the Unit for the purpose of the meeting;

- (iii) the right is removed or changed under Australian legislation or under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iv) the right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules or the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (v) the right is removed or changed under a court order;
- (b) a Member must not be divested of that Unit except in any of the following cases:
- (i) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or (if required) is approved by the operator of the Prescribed Financial Market on which the Units are Listed as appropriate and equitable;
 - (ii) the divestment is under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iii) the divestment is under a provision in this Constitution that is permitted by the Listing Rules or (if required) the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (iv) the divestment is under a court order;
- (c) the Responsible Entity must not divest a Member of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASX Settlement Operating Rules. Without limitation to clause 1.5, at all times that the Trust is Listed, the Responsible Entity must comply with ASX Settlement Operating Rule 8.13.

1.7. Other Documents

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

2. Name of Trust

2.1. Name of Trust

The Trust is called US Masters Residential Property Fund or by such other name as the Responsible Entity determines from time to time.

3. Assets held on trust

3.1. Assets held on Trust

- (a) The Responsible Entity must hold the Assets on trust for Members.
- (b) The Assets vest in the Responsible Entity, but must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.

4. Units

4.1. Nature of Units

- (a) The beneficial interest in the Trust is divided into Units.
- (b) Subject to the rights conferred on particular Classes, each Unit confers an equal undivided interest. Apart from any differences as to income entitlement arising from the time when a

Unit is issued, all Units in a Class confer an equal undivided interest as the other Units in that Class.

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

4.2. Fractions of Units

- (a) Fractions of a Unit may be issued by the Responsible Entity.
- (b) Where any calculation performed under this Constitution or the terms of a withdrawal offer results in the issue or redemption of a fraction of one Unit, that fraction may be rounded down or up to such number of decimal places as the Responsible Entity determines.
- (c) The provisions of the Constitution relating to Units and Members apply to fractions of Units in the proportion which the fraction bears to one Unit.
- (d) Any excess application or other money or property which results from rounding becomes an Asset of the Trust.

4.3. Consolidation and Division of Units

- (a) Units may be consolidated or divided as determined by the Responsible Entity.
- (b) The Unit structure may only be reconstructed:
 - (i) if the proportion of Units held by Members relative to each other immediately before the reconstruction is maintained; and

- (ii) in accordance with this Constitution, the Listing Rules (if applicable) and applicable law.

4.4. Joint Tenancy

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

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

4.5. Death, Legal Disability of Member

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

4.6. Benefits and obligations of Members

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

4.7. No further liability

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

4.8. Class rights

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

5. Application Price for Units

5.1. Application Price

- (a) The Application Price for the Units issued under the first product disclosure statement prepared for the Trust will be \$1.60 per Unit.
- (b) Subject to Clauses 5.1(d), after the issue of Units under the first product disclosure statement and for Units that are not Officially Quoted, the Application Price will be equal to:

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

- (c) Subject to Clause 5.1(d) and Clause 5.1(e), if the Units are Officially Quoted, the Application Price will be, at the at the discretion of the Responsible Entity, the Market Price calculated by reference to:
 - (i) with respect to an application for Units, the date the Responsible Entity decides to proceed to the issue of Units in accordance with Clause 6;
 - (ii) the date of offer of Units; or
 - (iii) the date of allotment of Units.
- (d) The Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by ASIC Relief (and subject to the terms of that ASIC Relief) and, if the Units are Officially Quoted, the Listing Rules. The following apply to the extent they reflect the requirements of ASIC Relief:
 - (i) in the case of a proportionate offer (including a rights issue), Clause 5.4;
 - (ii) in the case of an issue of Units as consideration for an off-market bid, Clause 5.6;
 - (iii) in the case of a placement of Units or pursuant to an interest purchase plan which complies with ASIC Class Order CO 09/425 while Units are Officially Quoted, Clause 5.7; and
 - (iv) in the case of reinvestment of income, Clause 5.8.
- (e) The Application Price for the Units issued under the third product disclosure statement prepared for the Trust (**3rd PDS**) will be the amount equal to:

$$\$1.56 \quad \times \quad \left(\frac{\text{IER}}{\text{FER}} \right) \quad + \quad \text{3rd PDS Entry Fee}$$

IER is the Australian Dollar / US Dollar exchange rate published by Bloomberg at 5 pm (NY time) on or immediately prior to the date of the 3rd PDS;

FER is the Australian Dollar / US Dollar exchange rate published by Bloomberg at 5 pm (NY time) on or immediately prior to the date is 1 Business Day before Units are allotted under the 3rd PDS; and

3rd PDS Entry Fee is the fee payable to the Responsible Entity in accordance with Clause 19.2 in respect of an application for Units under the 3rd PDS which has been accepted by the Responsible Entity, referred to in the 3rd PDS as a 2% structuring and arranging fee and 2% handling fee (exclusive of GST) .

5.2. Variables

Each of the variables in Clause 5.1(b) must be determined as at the next Valuation Time after:

- (a) the Responsible Entity receives the application for Units; or
- (b) the Responsible Entity receives the application money,

whichever happens later.

5.3. Rounding

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

5.4. Pro rata rights issues

The Responsible Entity may (subject to the terms of any applicable ASIC Relief instrument) offer Units for subscription at a price determined by the Responsible Entity to those persons who were Members on a date determined by the Responsible Entity not being more than 20 Business Days immediately prior to the date of the offer, provided that:

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

but, subject to the Listing Rules and any applicable ASIC Relief, the Responsible Entity is not required to offer Units under this Clause 5.4 to persons whose address on the Register is in a place other than Australia.

5.5. Terms of pro rata issues

- (a) Any offer made under Clause 5.4 must specify the period during which it may be accepted and must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Responsible Entity under Clause 5.4, provided that the Responsible Entity may adjust any entitlement to accord with the Listing Rules and, in the case of fractions, the Responsible Entity must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.
- (b) Any Units offered for subscription under Clause 5.4 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, provided that the Application Price payable in relation to such further offer is the same price at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under Clause 5.4, such underwriter may take up any Units not subscribed for by Members.

5.6. Issue of Units as Bid Consideration

- (a) The Responsible Entity may issue Units as consideration, or part of the consideration, to acquire securities or financial products of a target entity under an off-market bid made in accordance with Chapter 6 of the Corporations Act (**Bid Consideration**).
- (b) The Responsible Entity may issue a Unit which is, or forms part of, the Bid Consideration at an Application Price which is equal to the Market Price of Units immediately prior to the date on which or as at which the public announcement of the off-market bid, or any revised off-market bid, for securities or financial products of the target entity is first made by the Responsible Entity or by an associate of the Responsible Entity in relation to the off-market bid.
- (c) If the Responsible Entity accepts the transfer of securities or financial products of the target entity, which are the subject of an acceptance of an offer under the off-market bid (**Offer**), then such transfer shall be taken to be in satisfaction of the obligation to make payment or transfer property for either:
 - (i) the application price for Units, in the event that only Units comprise the Bid Consideration; or
 - (ii) the application price for Units, after deducting the value of the other consideration under the Offer which has been accepted, where the Bid Consideration comprises Units and other consideration.

5.7. Placements

- (a) Subject to Clauses 5.7(b) and 5.7(c), while Units are Officially Quoted, and not suspended from quotation, the Responsible Entity may at any time issue Units to any person by way of a placement or interest purchase plan (that accords with ASIC Class Order CO 09/425) at the Market Price of Units.
- (b) In the case of an issue to any underwriter or sub-underwriter of a distribution reinvestment plan or any persons nominated by them at a price per Unit equal to the price at which Units are issued pursuant to that distribution reinvestment plan in accordance with Clause 5.8.
- (c) The Responsible Entity complies with the Listing Rules applicable to the issue and any applicable ASIC Relief.

5.8. Reinvestment

- (a) While the Units are Officially Quoted the Application Price payable for each additional Unit on reinvestment of Distributions (if any) is the simple average of the daily weighted average traded price of Units on each of the 10 Business Days from and including the second Business Day after the Distribution Calculation Date for the relevant distribution less such discount, if any, not exceeding 10% as the Responsible Entity may determine.
- (b) While Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment of Distributions is the Application Price calculated by reference to Clause 5.1(b) on the first Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the distribution relates.

6. Application Procedure

6.1. Application Form

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

6.2. Payment

- (a) Payment in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
 - (i) accompany the application;
 - (ii) be received by or made available to the Responsible Entity within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
 - (iii) comprise a reinvestment of distribution in accordance with Clauses 10.11 to 10.13.
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.
- (c) Application Monies for Units issued under a product disclosure statement must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:
 - (i) the minimum subscription, if any (to be specified in the product disclosure statement) has been reached and the Responsible Entity decides to proceed to allotment of Units; or
 - (ii) the date by which the Application Monies would need to be repaid under the Corporations Act.

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

6.3. Responsible Entity May Reject

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

6.4. Minimum Amounts

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

6.5. Issue Date

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

6.6. Uncleared Funds

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

6.7. Register

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

6.8. Holding Statements

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

6.9. Foreign Members

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

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

Where:

AF is the amount to be paid to that Foreign Member;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

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

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Member would otherwise have been entitled.

- (c) The Responsible Entity may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Member the amount calculated in accordance with the formula in, Clause 6.9(b).
- (d) The Responsible Entity must take reasonable steps to maximise the amount payable to each Foreign Member under Clause 6.9(b).

7. Transfers

7.1. Transfer

- (a) Before the Trust is Listed or at any time after the Trust has ceased to be Listed, all transfers of Units must be effected by a proper instrument of transfer and in a manner approved by the

Responsible Entity. The Responsible Entity may decline to register a transfer of Units under this clause 7.1(a) unless the instrument of transfer:

- (i) is duly stamped (if applicable);
 - (ii) is accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
 - (iii) complies with any requirements prescribed by the Responsible Entity from time to time.
- (b) While the Trust is Listed, all transfers of Officially Quoted Units must be effected in accordance with the Listing Rules.
 - (c) A transferor of Units remains the Member until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units of the transfer is effected in accordance with the ASX Settlement Operating Rules.

7.2. Transaction advice after transfer

If the Responsible Entity accepts a transfer under this Clause 7, the Trustee may issue a transaction advice for:

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

7.3. No General Restriction on Transfer

- (a) There is no restriction on the transfer of Units and, subject to Clause 25.1, the Responsible Entity may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under Clause 7.1(b).
- (b) Except as otherwise set out in this Clause 7, there is no restriction on any other transfer of Units.
- (c) In relation to Units which are CHESS Approved Securities:
 - (i) subject to Clauses 7.3(c)(ii) and 7.3(c)(iii), the Responsible Entity must not prevent, delay or in any way interfere with the registration of a proper ASX Settlement Operating Rules transfer;
 - (ii) the Responsible Entity may apply a holding lock to specified CHESS Approved Securities where permitted to do so by the Listing Rules; and
 - (iii) the Responsible Entity may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

7.4. Power to suspend registration of transfers

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

7.5. Transmission of Units

- (a) In the case of a Transmission Event in respect of a Member, the only persons who will be recognised as having any title to the Units registered in the Member's name or any benefits accruing in respect of those Units:

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

7.6. Recognition of Member

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

7.7. Participation in Transfer Systems

The Responsible Entity may determine that Units which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Responsible Entity may, with the approval of the operator of the Prescribed Financial Market on which the Units are Listed, create rules to facilitate such participation which may be additional to or may override this Clause 7.

8. Valuation of Assets

8.1. Periodic Valuations

- (a) The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act if the Corporations Act section 601FC(i)(j) applies.
- (b) The Responsible Entity may determine Net Asset Value at any time.

8.2. Valuation Methods

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

9. Accounts, Audit and Reports

9.1. Accounts – Registered Scheme

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

9.2. Accounts – Not a Registered Scheme

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

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

10. Income and Distributions to Members

10.1. Distributable Income

- (a) The Responsible Entity must determine the distributable income of the Trust for each Tax Year.
- (b) The distributable income for a Distribution Period will be calculated in accordance with Clause 10 for that Distribution Period.
- (c) For each Distribution Period the Responsible Entity can determine, at its discretion, the Distributable Income for the Distribution Period.
- (d) If no determination is made under Clause 10.1(c) then the Distributable Income for the Distribution Period is equal to the Operating Income for that Distribution Period.
- (e) In making the determinations under this Clause 10.1, the Responsible Entity does not have to take into account Accounting Principles which apply to trusts.

10.2. Present Entitlement

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

10.3. Income Distributions

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

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

- (d) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Member is entitled to receive a distribution under Clause 10.3(a) or 10.3(b) in accordance with the following formula:

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

where:

- A = the amount of the distributable income in respect of the relevant Tax Year or Interim Distribution Period (as the case may be);
- B = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on Issue held by any such Member;
- C = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Tax Year or Interim Distribution Period which are entitled to a full income distribution for that period plus, if the Member holds at the close of business on the last Business Day of that period Units issued during that period which have a proportionate income entitlement in accordance with Clause 10.6, the aggregate number of such Units held by that Member multiplied by the relevant proportion;
- D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Tax Year or Interim Distribution Period plus, if Units have been issued during that period which have a proportionate income entitlement in accordance with Clause 10.6, the aggregate of the total number of such Units multiplied by the relevant proportion, in each case calculated as at the close of business on the last Business Day of that period; and
- E = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of the Member including the number or percentage of Units on Issue held by the Member.

10.4. Satisfaction of Present Entitlement

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

10.5. Minimum Distribution

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

10.6. Member's Rights

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

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

10.7. Trust taxed as a Company

If the Trust is to be taxed as if it were a company, the Responsible Entity may determine that this Clause 10.7 applies to any period (a **Distribution Period**) instead of Clause 10.1 to 10.6. If it does so:

- (a) As soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity

determines otherwise, the income in respect of the Distribution Period, income will be calculated in accordance with the Accounting Principles.

- (b) The Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) The Responsible Entity may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to Members on the Register on any date determined by the Responsible Entity (**CD Date**).
- (d) For each Distributable Amount being paid to Members under this Clause 10.7 the Responsible Entity:
 - (i) must comply with Tax Act; and
 - (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) A Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

A = the aggregate of the number of Units held by the Member as at the close of business on the CD Date for that Distributable Amount which are entitled to a full income distribution plus, if the Member holds on the CD Date for that Distributable Amount Units which have proportionate income entitlement, the aggregate number of such Units held by that Member multiplied by the relevant proportion;

B = the aggregate of the number of Units entitled to full income distribution plus if any Units have been issued with proportionate income entitlement, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the CD Date for the Distributable Amount;

C = the Distributable Amount.

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

10.8. Withholding Tax

- (a) The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that is require by law to deduct from such amount.
- (b) Where the income of the Trust is reduced by Additional Taxes attributable to the ownership of Units by certain Members, the entitlement to Income Distributions of such Members may be adjusted by the Responsible Entity, pursuant to Clause 10.3(d), so that the entitlement to Income Distribution or Distributable Amount of all other Members is equivalent to the amount they would receive in the absence of such Additional Taxes.

10.9. Other Distributions

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

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

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

10.10. Separate Accounts

- (a) The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Members.
- (b) Where Clause 10.8(b) has been applied to reduce income entitlements of certain Members, those Members are to have the corresponding additional credits for tax purposes allocated to them.

10.11. Notification of Beneficial Ownership

Notwithstanding any obligation of a Member under law to notify the Responsible Entity of any legal or beneficial ownership of Units, a Member must notify the Responsible Entity immediately if, at any time, its beneficial ownership, directly or indirectly, of the Units exceeds:

- (a) 5% of the total Units on issue; and
- (b) 10% of the total Units on issue.

In addition, the Responsible Entity may require Members to provide notices from time to time confirming the beneficial ownership of Units or providing other relevant information.

Failure to give such notice to the Responsible Entity will not affect the interest of the Member in the Units or the liability of the Member under this Constitution and will not affect the rights of the Responsible Entity to determine a deduction for Tax in accordance with this Clause 10

10.12. Reinvestment

- (a) If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units of the same Class.
- (b) If the Responsible Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- (c) If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.
- (d) If reinvestment applies, the Application Price for the Units to be issued on reinvestment will be calculated in accordance with Clause 5.8.

10.13. Position on Transfer of Units

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

11. Payments

11.1. Responsible Entity Discretion

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

11.2. Unpresented Cheques

Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be reinvested in Units at the Application Price prevailing at the next Valuation Time after the cheque is cancelled.

11.3. Unsuccessful Payment

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

11.4. No Fractions

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

11.5. Discharge of Responsible Entity

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

11.6. Deductions

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

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

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

12. Powers of the Responsible Entity

12.1. General Powers

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

12.2. Contracting Powers

Without limiting Clause 12.1, the Responsible Entity in its capacity as Responsible Entity of the Trust has power to borrow or raise money and to lend or advance money (whether or not on security) and to incur all types of obligations and liabilities.

12.3. Investment Powers

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

12.4. Guarantees

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

12.5. Power of Delegation

- (a) The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- (b) The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity sees fit.
- (c) The agent or delegate may be an associate of the Responsible Entity.

12.6. Exercise of Discretion

Subject to Clause 12.7, the Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

12.7. Discretion Limited

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

13. Retirement of Responsible Entity**13.1. Voluntary Retirement**

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

13.2. Compulsory Retirement

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

13.3. New Responsible Entity

If the Trust is not a Registered Scheme at the time the Responsible Entity is to retire, any proposed replacement Responsible Entity must execute a deed by which it covenants to be bound by this Constitution as if it had originally been a party to it.

13.4. Release

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

13.5. Retirement Benefit

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

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

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

14. Notices to Members

14.1. Notices to Members

- (a) Subject to the Corporations Act, a notice or other communication required under this Constitution to be given to a Member may be given electronically, including by way of announcements on the Prescribed Financial Market on which the Units are Listed, or in such other manner as the Responsible Entity determines, unless a Member specifies to receive such notices and communications in writing. In this case, notices and communications should be delivered or sent to the Member at the Member's physical or electronic address last advised to the Responsible Entity for delivery of notices.
- (b) A cheque payable to a Member may be posted to the Member's physical address or handed to the Member or a person authorised in writing by the Member.
- (c) In the case of joint Members, the physical or electronic address of the Member means the physical or electronic address of the Member first named in the Register.
- (d) A notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine. Proof of actual receipt is not required. Subject to the Corporations Act, the Responsible Entity may determine the time at which other forms of communication will be taken to be received.

14.2. Notices of the Responsible Entity

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

15. Meetings of Members

15.1. Corporations Act

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

15.2. Member's Request for Meeting

- (a) While the Trust is not a Registered Scheme:
 - (i) the Responsible Entity must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 50% of the votes that may be cast on the resolution; and
 - (ii) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in Clause 15.2(a) as if the Trust were a Registered Scheme.

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

15.3. Notice Period

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

15.4. Responsible Entity May Determine

Subject to the specific provisions of this Constitution relating to meetings of members and the Corporations Act (if the Corporations Act applies), the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

15.5. Quorum

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

15.6. No Quorum

- (a) If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Members - dissolved; or
 - (ii) otherwise - adjourned to such place and time as the Responsible Entity decides.
- (b) At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

15.7. Chairman

- (a) Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting of Members.
- (b) The decision of the chairman on any matter relating to the conduct of the meeting is final.

15.8. Adjournment

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

15.9. Resolutions Binding

- (a) A Resolution binds all Members, whether or not they were present at the meeting.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

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

While the Trust is a Registered Scheme:

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

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

15.11. While the Trust is not a Registered Scheme

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

15.12. Voting

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

15.13. Poll

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

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

15.14. Proxies

- (a) A Member may be represented at a meeting by proxy. Proxies are governed by the provisions of the Corporations Act relating to Registered Schemes as if the Trust were a Registered Scheme.
- (b) The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

15.15. Class Meetings

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

16. Rights and Liabilities of Responsible Entity

16.1. Holding Units

The Responsible Entity and its associates may hold Units in the Trust in any capacity.

16.2. Other Capacities

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

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

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

16.3. Responsible Entity May Rely

The Responsible Entity may take and may act upon:

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

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

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

17.1. No limitation of other undertakings

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

17.2. Limitation of liability

Except where the Corporations Act expressly provides otherwise:

- (a) the Responsible Entity and each director and officer of the Responsible Entity are not personally liable to a Member or any other person in connection with the office of the Responsible Entity or director or officer of the Responsible Entity;
- (b) the Responsible Entity will not be liable to any Member to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust;
- (c) a Member must not:
 - (i) bring proceedings against the Responsible Entity in its personal capacity; or
 - (ii) apply to have the Responsible Entity put into administration or wound up or apply to have a receiver or similar person appointed to the Responsible Entity or prove in the administration or winding up of the Responsible Entity;

- (d) the Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any Liability (actual or contingent) unless its Liability is limited in a manner satisfactory to it in its absolute discretion and the Responsible Entity must use reasonable endeavours to ensure that its Liability is limited to the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust; and
- (e) the Responsible Entity is not liable to account to any person for any payment made in good faith to any Government Agency for any Tax or any other charges in respect of the Trust or for any transaction arising under this Constitution notwithstanding that such payment need not have been made.

17.3. Acts or omissions of Responsible Entity and others

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

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

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

17.4. Indemnity in Favour of Responsible Entity

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

18. Liability of Members

18.1. Liability Limited

- (a) Subject to Clauses 18.1(c) and 18.2, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- (b) A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets to meet the claim of any creditor of the Responsible Entity in respect of the Trust.
- (c) The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which Clause 18.3 applies.

18.2. Recourse

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

18.3. Restrictions on Members

A Member:

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

19. Remuneration and Expenses of Responsible Entity

19.1. Management Fee

- (a) Subject to the proper performance of its duties, the Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each month a monthly management fee (**Management Fee**) equivalent to 0.5% per annum of the Gross Value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee.
- (b) This calculation of the Management Fee is to be made and paid to the Responsible Entity in United States of America dollars unless the Responsible Entity agrees to accept the sum converted into Australian currency with such conversion to occur at the date of payment.
- (c) In relation to the month in which the Trust is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month. Where the Management Fee was not paid for a particular month or part month or not in full, the Management Fee payable in a subsequent month will be the aggregate of the Management Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid.

19.2. Entry Fee

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

19.3. Payment of Responsible Entity's fee

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

19.4. Priority of Responsible Entity's remuneration

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

19.5. Indemnity out of Fund

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

19.6. Waiver of Fees

The Responsible Entity may in its absolute and unfettered discretion waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution.

The Responsible Entity may do so in relation to a Class or Members generally, that is, subject to the Corporations Act, may waive, reduce, refund or defer any part of the fees and levies that the Responsible Entity or the Trust is entitled to receive under this Constitution differently for different Classes of Units.

Where payment is deferred, the fee and/or levy accrues daily until paid.

19.7. Expenses

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

- (a) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (b) any proposed acquisition, disposal or other dealing with an investment;
- (c) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;

- (f) Tax, including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as a reimbursement for GST;
- (g) financial institution fees;
- (h) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (i) preparation and audit of the taxation returns and accounts of the Trust;
- (j) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (k) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this Clause 19.7(k) must be repaid;
- (l) any compliance or other committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (m) while the Trust is a Registered Scheme but there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (n) the preparation, implementation, amendment and audit of any Compliance Plan; and
- (o) complying with any law, and any request or requirement of the ASIC.

19.8. GST

- (a) If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this Constitution then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST. This clause does not apply to supplies in respect of which the relevant fees are expressed as GST inclusive in this Constitution.
- (b) In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1 + n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).
- (c) In the event that the Responsible Entity is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this Constitution, the Responsible Entity is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax.

19.9. Sums Owed to the Responsible Entity

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

20. Duration of the Trust

20.1. Initial Settlement

The Trust commences when an initial person nominated by the Responsible Entity subscribes at least \$16 for Ordinary Units in the Trust. The Responsible Entity's nominee must be issued with one (1) Ordinary Unit in return for each \$1.60 of that payment.

20.2. Termination

The Trust terminates on the earliest of:

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

21. Procedure on Termination

21.1. Realisation of Assets

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

21.2. Audit of Winding Up

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

21.3. Distribution Following Termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in the following manner. The Responsible Entity may distribute proceeds of realisation in instalments. The Responsible Entity must first pay the Trust's income from the last Distribution Calculation Date prior to the termination of the Trust to the Members holding Ordinary Units pro rata according to the respective numbers or such Units held by them. Secondly, the Responsible Entity must pay the balance to the Members pro rata according to the respective numbers of Units held by them.
- (b) The Responsible Entity may distribute an asset of the Trust to a Member *in specie*. The Responsible Entity must determine the value of the asset of the Trust to be distributed *in specie*. Any costs payable on an *in specie* distribution must be paid by the Member before the distribution is made.
- (c) The Responsible Entity is entitled to:
 - (i) be paid from the proceeds of realisation of the Trust before any payment is made to the Members all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Trust;
 - (C) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and

- (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Responsible Entity in connection with the winding up of the Trust;
 - (ii) an indemnity against the amounts referred to in clause 21.3(c)(i) which may be satisfied out of those proceeds before any distribution under Clause 21.3(a) is made; and
 - (iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Clause 19.
- (d) The Responsible Entity may postpone the realisation of the Trust for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
 - (e) The Responsible Entity may retain for as long as it thinks fit any part of the Trust which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this Constitution, including but not limited to under Clause 19.
 - (f) Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under Clause 21.3, but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Member.

22. Amendments to this Constitution

22.1. Responsible Entity May Amend

- (a) While the Trust is a Registered Scheme, this Constitution may be amended, if the Corporations Act allows:
 - (i) by Resolution; or
 - (ii) by deed executed by the Responsible Entity.
- (b) While the Trust is not a Registered Scheme, the Responsible Entity may by deed amend this Constitution but, where the amendments adversely affect the rights of Members, may only do so with the approval of a Resolution.

22.2. Statutory Requirements

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

23. Compliance Committee

23.1. Compliance Committee

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

23.2. Persons to whom Clauses 23.3 and 23.5 apply

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

23.3. Indemnity

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

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

23.4. Extent of indemnity

The indemnity in Clause 23.3:

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

23.5. Insurance

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

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

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

23.6. Savings

Nothing in Clauses 23.3 or 23.5:

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

24. Complaints

24.1. Complaints

While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Responsible Entity a complaint alleging that the Member has been adversely affected by the Responsible Entity's conduct in its management or administration of the Trust, the Responsible Entity:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must, where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) must, where there is no compliance committee, consider the complaint;
- (d) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (e) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (f) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint:
 - (i) the determination of the compliance committee (or if Clause 24.1(c) applies, the Responsible Entity);
 - (ii) the remedies (if any) available to the member; and
 - (iii) information regarding any further avenue for complaint.

25. General

25.1. Restricted Securities

- (a) Clause 25.1(b) only operates:
 - (i) while the Trust is Listed and the Listing Rules require this Constitution to contain a provision to the effect of Clause 25.1(b); and
 - (ii) to the extent that it is not inconsistent with the Corporations Act.
- (b) During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights in respect to those Units.

25.2. Small Holdings

- (a) Subject to the provisions of this Clause 25.2, while the Trust is Listed the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units under this Clause 25.2 on 1 occasion in any 12 month period.
- (c) The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this Clause 25.2.
- (d) The Responsible Entity may not sell or redeem the relevant Units:

- (i) before the expiry of 6 weeks from the date of the notice given under Clause 25.2(c); or
 - (ii) if within the 6 weeks allowed by Clause 25.2(d)(i), the Member advises the Responsible Entity that the Member wishes to retain the Units.
- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
 - (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides.
 - (g) The proceeds of the sale or redemption may not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.

25.3. Constitution Legally Binding

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

25.4. Severance

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

25.5. Governing Law

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

25.6. Other Obligations Excluded

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

26. Withdrawal of Units

26.1. Withdrawal request while Trust is Liquid

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

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

Upon making such a request, the Member will have no right to deal with the Units (unless and until the request is denied by the Responsible Entity). A Member may not withdraw a withdrawal request unless the Responsible Entity agrees.

26.2. Action following a request

Within a reasonable time of receiving a withdrawal request under Clause 26.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:

- (a) deny the request (but it must then notify the Member accordingly); or
- (b) effect the withdrawal by causing the number (or value) of Units held by the Member referred to in the withdrawal request to be redeemed at the applicable Withdrawal Price out of the Assets ; or
- (c) subject to the Listing Rules and the Corporations Act, purchase or arrange for another person to purchase the number (or value) of Units held by the Member referred to in the withdrawal request; or
- (d) partially effect the withdrawal in the manner described in Clause 26.2(b) and partially purchase Units (or arrange for Units to be purchased) in the manner described in Clause 26.2(c).

26.3. Suspension of withdrawal request right

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

26.4. Withdrawal while Trust is not Liquid

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

26.5. Minimum holding

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

26.6. Sums owed

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

26.7. Transfer of Assets to effect a withdrawal

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

Entity may do this on the basis of a valuation of the Assets obtained within one month of the withdrawal date.

26.8. Liquid or not Liquid

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

26.9. Cooling off

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

26.10. Increase of minimum holding

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

26.11. On market buy back of Units

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

26.12. Order

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

27. Withdrawal Price

The Withdrawal Price for any Unit will be equal to:

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

number of Units on issue

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

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

Legal Compliance List

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

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

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