
**Replacement Constitution-
CFMG Monthly Income Fund
ARSN 602 609 638**

**CFMG Equity and Income Funds Limited
ACN 112 753 8786**

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Title Constitution – CFMG Monthly Income Fund ARSN 602 609 638

Date 28 September 2017

Deed Poll

By

Responsible Entity CFMG Equity and Income Funds Limited (ACN 112 753 875) of Level 2, 117 McLachlan Street, Fortitude Valley, Queensland, 4006

In favour of Unitholders

Recitals

- A The Custodian Equity and Income Fund No. 4 ARSN 602 609 638 (**Trust**) was established by deed dated on or around 12 November 2014 (**Constitution**). The name of the Trust was changed to 'CFMG Equity and Income Fund No. 4' on or about 11 April 2017.
- B Clause 2.3 of the Constitution provides that the Responsible Entity may change the name of the Trust at its discretion.
- C The Responsible Entity has determined to change the name of the Trust from 'CFMG Equity and Income Fund No. 4' to 'CFMG Monthly Income Fund' and to amend the Constitution to facilitate the change of name.
- D Clause 25 of the Constitution provides that the Constitution may be varied or revoked (any part) by the Responsible Entity subject to the Corporations Act, provided no amendment may be made to the Constitution which may affect the entitlement of a Unitholder to any income or capital of the Trust.
- E *ASIC Corporations (Changing Scheme and Retail CCIV Constitutions) Instrument 2019/700 (LI 2019/700)* provides that the constitution of a registered managed investment scheme may be modified with the written consent of the sole Unitholder where a meeting of Unitholders is unable to be held because the quorum requirements in either s252R(2) of the Corporations Act or the Constitution is not capable of being satisfied because the Trust has an insufficient number of Unitholders.
- F The Responsible Entity proposes to amend the Constitution as set out in this deed poll pursuant to the relief granted by LI 2019/700.
- G The Responsible Entity confirms the Unitholder has consented to the proposed amendments and the other conditions and requirement of LI 2019/700 have been satisfied.
- H In accordance with section 601GC(2) of the Corporations Act, the amendments to the Constitution contained in this deed poll will take effect when a copy of this deed poll is lodged with ASIC.

Operative provisions

1. Amendments to the Constitution

The Constitution is amended by:

- (a) deleting clauses 1 to 28; and
 - (b) inserting the provisions in the schedule to this deed poll.
-

2. Trust not confirmed

No declaration or imposition of trust

- 2.1 Nothing expressly or impliedly contained in this supplemental deed (including the background) is effective to confirm, declare or otherwise acknowledge the trust declared under the Constitution, or to impress any new or additional trusts upon property held on trust as at the date of this supplemental deed.

No creation of trust

- 2.2 Nothing in this supplemental deed should be interpreted as creating any new or further trust and, at all times, the Trust remains a simple trust.
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3. Responsible Entity and Unitholders bound

The Responsible Entity and the Unitholders are bound by the terms of the Constitution as amended by this document.

4. Governing law

This supplemental deed will be construed in accordance with the laws of Queensland.

5. Severance

Any provision of, or the application of any provision of, this supplemental deed which is:

- (a) prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of the prohibition; or
- (b) void, illegal or unenforceable in any jurisdiction does not effect the validity, legality or unforeseeability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

Schedule 1

Agreed terms

Definitions and interpretation

1.1 In this Constitution, unless the context otherwise requires:

Accrued Income Entitlement in relation to a Unit means the Responsible Entity's estimate of the appropriate share of the Distributable Income of the Trust attributable to that Unit accrued from the commencement of the Distribution Period to the date for redemption of the Unit.

Adviser includes any adviser, consultant or expert, and any other person appointed by the Responsible Entity to provide advice in relation to the Trust.

AMIT has the meaning given in section 995-1 of the Tax Act.

AMIT Cost Base Increase Amount has the meaning given in section 995-1 of the Tax Act.

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

AMIT Regime means the laws related to the taxation of AMITs in the Tax Act and related legislation, as were implemented by the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth) and related Acts (being the *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* (Cth), *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* (Cth) and the *Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016* (Cth)), and as may be amended from time to time.

AMMA Statement has the meaning given in section 995-1 of the Tax Act.

Application Price means the application price for a Unit calculated in accordance with this Constitution.

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

ASIC Relief means a declaration made under, modification of or exemption from the provisions of the Corporations Act issued by ASIC.

Assets means all the property of the Trust, but not:

- (a) application money or property in respect of which Units have not yet been issued;
- (b) redemption money or property in respect of which Units have been redeemed; or
- (c) any Distributable Income payable, but not paid.

Auditor means the auditor from time to time appointed by the Responsible Entity under clause 13.11.

Business Day means a day other than a Saturday or Sunday on which banks are open for general banking business in Brisbane, Queensland.

Cash means currency and includes cheques.

Class means a class of Units with the same rights, restrictions and obligations, issued by the Responsible Entity in accordance with clause 8.

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

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

Compliance Committee Member means a member of the Compliance Committee.

Commencement Date means 12 November 2014, being the date upon which the Trust was established.

Consolidated Group's Assets means the consolidated assets of the Trust and the Trust's Controlled Entities with the effects of all transactions between the Trust and the Trust's Controlled Entities being eliminated in full.

Constitution means this deed poll.

Control has the meaning given under the Corporations Act and **Controlled** is to be construed accordingly.

Controlled Entity means an entity Controlled by the Trust.

Corporations Act means the *Corporations Act 2001* (Cth).

Determined Member Component has the meaning given in section 995-1 of the Tax Act.

Determined Trust Component has the meaning given in section 995-1 of the Tax Act.

Disclosure Document means a product disclosure statement, information memorandum or other disclosure document issued by the Responsible Entity relating to an offer of Units in the Trust.

Distributable Income means the amount determined in accordance with clause 15.

Distribution Calculation Date means each 30 September (and, if the Responsible Entity so determines, each 31 December, 31 March, and each 30 June or such other days as the Responsible Entity may designate) falling on or before the Termination Commencement Date.

Distribution Period means:

- (a) for the first distribution, the period beginning on the Commencement Date and ending on the first Distribution Calculation Date immediately following the Commencement Date;
- (b) for the last distribution, the period beginning on the day after the last preceding Distribution Calculation Date and ending on the date on which the final distribution is made to Unitholders; and
- (c) in all other cases in each year during the continuance of the Trust, each of the periods beginning on the day after the preceding Distribution Calculation Date and ending on the next occurring Distribution Calculation Date.

EDR means external dispute resolution.

Establishment Costs means any or all Expenses incurred by any person or paid in connection with the establishment and initial promotion of the Trust, including the production and distribution of the first offering document for the Trust.

Expenses includes any costs, liabilities, expenses, commissions, brokerage, fees, Taxes and duties. Examples of expenses are given in clause 24.13.

Financial Year means:

- (a) for the first financial year, the period on and from the Commencement Date and including the next 30 June;
- (b) for the last financial year, the period on and from 1 July immediately before the date of final distribution to and including the date of final distribution on termination of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

Former Unitholder means a person who was a Unitholder but ceases to hold an interest in the Trust.

Fully Paid Unit means a Unit on which the Application Price has been fully paid.

GST means a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only, including without limitation, 'GST' as defined in section 195-1 of the GST Act.

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

GST Group has the meaning given in the GST Act.

Income Distribution means the amount calculated in respect of the Unitholder under clause 15.6.

Input Tax Credit has the meaning given in the GST Act.

Liabilities means the liabilities of the Trust including any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Trust, but excluding any liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued; or
- (b) to Unitholders, arising by virtue of the right of Unitholders to request redemption of their Units or to participate in the distribution of the Assets on termination of the Trust.

Liquid has the same meaning as in the Corporations Act.

Member Component has the meaning given in section 995-1 of the Tax Act.

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

Minimum Holding means the amount from time to time determined by the Responsible Entity pursuant to clause 10.6 to be the minimum holding for Units.

Net Asset Value means the value of the Assets calculated reasonably current to the time of issue or withdrawal of Units or payment of an Income Distribution in accordance with clause 13 and generally accepted accounting principles and commercial practice applicable in Australia less the Liabilities.

Nominee means a nominee appointed by the Responsible Entity from time to time.

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

Prior Year Adjustment Amounts means the amount identified by the Responsible Entity as Unders and Overs relating to the financial years for which the Trust was an AMIT that are discovered in later financial years.

Redemption Price means the redemption price of a Unit calculated in accordance with this Constitution.

Redemption Request means a written request to the Responsible Entity to redeem Units.

Register means the register of Unitholders kept by the Responsible Entity under clause 13.7.

Registered means recorded in the Register.

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

Registration means recording in the Register.

Relevant Law means an act of any parliament, code, ordinance, statute or any rules, regulations, by-laws, orders or other subordinate legislation made pursuant thereto.

Representative Member has the meaning given in the GST Act.

Resolution means:

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

Except where this Constitution or any applicable law provides otherwise, the "required majority" is determined under clause 20.20.

Responsible Entity means CFMG Equity and Income Funds Limited (ACN 112 753 876) or any person who replaces CFMG Equity and Income Funds Limited (ACN 112 753 876) as trustee of the Trust from time to time.

Responsible Entity Group means any entity which Controls the Responsible Entity, and any other entity which is Controlled by the entity which Controls the Responsible Entity.

Security Interest means a right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or liability and includes a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation or other security interest.

Security Interest Rules means the rules and policies adopted by the Responsible Entity from time to time for the recognition of Security Interests over Units in accordance with clause 7.6.

Special Resolution means a Resolution passed by at least 75% of the votes cast by Unitholders entitled to vote on the Resolution.

Tax means all kinds of taxes, duties, imposts, deductions, withholding taxes 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* (Cth) or the *Income Tax Assessment Act 1997* (Cth) or both, as appropriate.

Termination Commencement Date means the date the termination or winding-up of the Trust commences under clause 3.2.

Transaction Costs means:

- (a) when calculating the Application Price of a Unit, the Responsible Entity's reasonable estimate of the average amount necessary to avoid an adverse impact on other Unitholders because of the acquisition of Units, which may, for the avoidance of doubt, include stamp duty; and
- (b) when calculating the Redemption Price of a Unit, the Responsible Entity's reasonable estimate of the average amount necessary to avoid an adverse impact on other Unitholders because of the redemption of Units, which may, for the avoidance of doubt, include stamp duty,

provided that the Responsible Entity may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

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

Trust Component has the meaning given in section 995-1 of the Tax Act.

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

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

Unitholder means a person who holds an interest in the Trust and, without limiting the foregoing, upon the issue of the interest being Registered as a holder of the relevant Units, means the person Registered as the holder of a Unit (including persons jointly Registered).

User Pays Fees means any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Unitholder; or
- (b) any act or omission requested by a Unitholder,

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

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

1.2 In this Constitution:

- (a) unless the context otherwise requires, a reference to:
 - (i) dollars or \$ are to Australian dollars, the lawful currency of the Commonwealth of Australia;

- (ii) time is to Brisbane, Queensland time;
- (iii) the singular includes the plural and vice versa;
- (iv) a gender includes all genders;
- (v) a document (including this Constitution) is a reference to that document (including any annexures) as amended, consolidated, supplemented, novated or replaced;
- (vi) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (vii) a person includes:
 - (A) a reference to an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency as the case requires; and
 - (B) the person's successors, permitted assigns, executors and administrators;
- (viii) a law:
 - (A) includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange;
 - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (C) is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
- (ix) proceedings includes litigation, arbitration and investigation; and
- (x) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (b) unless the context otherwise requires, a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (c) headings are for convenience only and do not affect interpretation;
- (d) if a payment or other act must (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the next Business Day;
- (e) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;
- (f) if a period occurs from, after or before a day or the day of an act or event, it excludes that day and;
- (g) while the Trust is a Registered Scheme, every provision in this Constitution is expressed to apply subject to the Corporations Act.

Corporations Act

- 1.3 Despite any other provision of this Constitution, a provision of this Constitution which is expressed to apply subject to the Corporations Act is only so subject while the Trust is a Registered Scheme.
-

2. Name of Trust

- 2.1 The Trust is called the CFMG Monthly Income Fund or such other name as the Responsible Entity determines from time to time.
- 2.2 If a person resigns or is removed as the Responsible Entity, the new Responsible Entity must change the name of the Trust to a name without any association with the old Responsible Entity or its related bodies corporate or their businesses.
-

3. Duration of the Trust

Initial settlement

- 3.1 The Trust commenced on the Commencement Date.

Termination

- 3.2 The Responsible Entity may commence termination of the Trust in accordance with the termination procedure set out in clause 25 on the earliest of:
- (a) the date specified by the Responsible Entity as the date of commencement of termination of the Trust in a notice given to Unitholders; and
 - (b) the date on which the Responsible Entity commences termination or winding up of the Trust in accordance with another provision of this Constitution or by law.
- 3.3 The Trust may be wound up in accordance with the Corporations Act. The Responsible Entity must cause an independent audit of the final accounts of the Trust to be conducted by a registered company auditor or audit firm after the winding up of the Trust commences.

Winding Up

- 3.4 The Trust may be wound up in accordance with the Corporations Act. The Responsible Entity must cause an independent audit of the final accounts of the Trust to be conducted by a registered company auditor or audit firm after the winding up of the Trust commences.

Restriction on issue and redemption of Units

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

Declaration of perpetuity period

- 3.6 The Responsible Entity declares that the perpetuity period is the period from the commencement of the Trust until the date which is the 80th anniversary of the day preceding the Commencement Date. The specification of a perpetuity period in this clause 3.6 does not require that the Trust terminate on the expiration of that period.

Change in taxation

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

4. Constitution legally binding

This Constitution binds the Responsible Entity and each present and future Unitholder and any person claiming through any of them as if each of them had been a party to this Constitution.

5. Assets held on Trust

- 5.1 The Responsible Entity must hold the Assets on Trust for Unitholders on the terms of and subject to this Constitution.
- 5.2 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.
- 5.3 If the Responsible Entity considers it desirable, the Assets or any of them may be held by a custodian.

6. Units

Nature of Units

- 6.1 The beneficial interest in the Trust is divided into Units.
- 6.2 Each Fully Paid Unit confers an equal undivided interest which is proportionate according to the amount of the Application Price that has been paid on the Unit.
- 6.3 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.

Rights attaching to Units

- 6.4 A Unitholder holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.

Rounding

- 6.5 Any excess application or other money or property which results from rounding under any provision of this Constitution becomes an Asset of the Trust.

Consolidation and division of Units

- 6.6 Subject to the Corporations Act, Units may be consolidated or divided as determined by the Responsible Entity, but the Responsible Entity must only do so on the same basis for all Units.

Joint tenancy

- 6.7 Persons Registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

Death or legal disability of Unitholder

- 6.8 If a Unitholder 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 the Units Registered in the Unitholder's name. The Responsible Entity may require any reasonable proof of entitlement, for example, a grant of probate.

Fractions of Units

- 6.9 The Responsible Entity may issue fractions of a Unit and such Units may be issued and dealt with in the proportion that the part bears to a whole Unit.
- 6.10 Where any calculation performed under this Constitution, or the terms of a withdrawal offer, results in the issue, redemption or holding of a part of one Unit, the number of Units to be issued, redeemed or held may be rounded up or down to the nearest number of whole Units as the Responsible Entity determines.
- 6.11 Any excess subscription or other money or property which results from rounding any fraction of a Unit in accordance with this Constitution becomes a part of the Assets.
- 6.12 Where any fractions of Units are on issue, the Responsible Entity may, in its discretion, cancel the fractions of Units on issue in respect of a class of Units or a particular fraction of a Unit on issue and any money or property attributable to the cancelled fractions of Units shall become a part of the Assets.

Certificates

- 6.13 No certificates will be issued in respect of Units in the Trust.

7. Transfer and Transmission of Units

Transfer of Units

- 7.1 Subject to this Constitution, a Unitholder may transfer Units subject to any minimum holding periods or requirements as determined by the Responsible Entity.
- 7.2 Transfers of Units must be effected:
- (a) by instruments of transfer that are:
 - (i) in a form approved by the Responsible Entity;
 - (ii) if necessary, presented for Registration duly stamped;
 - (iii) accompanied by any evidence reasonably required by the Responsible Entity to show the right of the transferor to make the transfer; and
 - (b) in a manner prescribed by the Responsible Entity.

Transferee of Units

- 7.3 The transferee in respect of a transfer of Units is deemed to have agreed:

- (a) to accept the Units transferred to it subject to the terms and conditions on which the transferor held them immediately before execution of the instrument of transfer; and
- (b) to be bound by this Constitution.

Registration of a transfer of Units

- 7.4 A transfer of Units is not effective until Registered and the transferor remains the holder of the Units specified in the transfer until the transfer is Registered.

Transferor's death

- 7.5 The Responsible Entity may Register a transfer of Units notwithstanding that the Responsible Entity at the time of Registration has notice of the transferor's death.

Security interest rules

- 7.6 The Responsible Entity may make and amend rules and policies from time to time for the recognition of Security Interests over Units but is not obliged to make such rules.

Responsible Entity may refuse to Register any transfer of Units in certain circumstances

- 7.7 Subject to this Constitution, the Responsible Entity may refuse to register any transfer of Units without giving any reason for the refusal, provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.
- 7.8 Without limiting clause 7.7, the Responsible Entity:
- (a) may refuse to register a transfer of Units if it would:
 - (i) result in either the transferor or transferee holding less than the Minimum Holding specified at the time; or
 - (ii) be in breach of the Security Interest Rules; and
 - (b) is not required to give effect to any transaction, transfer or dealing at the request of, or for the benefit of, a Unitholder, including registering a transfer, unless the Unitholder has paid to the Responsible Entity's satisfaction all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage and other charges which may have become or may be payable in respect of the transaction, transfer or dealing.

Assistance with sales

- 7.9 Subject to the provisions of this Constitution, the Responsible Entity is not responsible for selling Units or the enforcement of any terms of sale of Units.

8. Classes of Units

- 8.1 The Responsible Entity may:
- (a) issue different Classes of Units and may determine the rights, restrictions and obligations that will attach to the Units within each Class;
 - (b) alter the Class of a Unit by converting the entire Class of Units into another Class or by re-classifying or re-allocating particular Units to another Class; and

- (c) vary or cancel all or any rights and privileges attached to any Class (unless otherwise provided by the terms of issue of the Units of that Class),

provided such action will not materially diminish or expand Unitholders' rights to income and capital or the Trust.

- 8.2 The rights conferred on the Unitholders of any Class will not, unless otherwise expressly provided by the terms of issue of the Units of that Class, be deemed to be varied by the creation or issue of further Units ranking equally in respect of those rights.
- 8.3 The Responsible Entity must enter the terms of any rights or obligations of each Class in the Register.
- 8.4 The proportion of each variable properly referable to a Class under this Constitution is, where the variable relates:
- (a) only to a particular Class is solely referable to that Class; and
 - (b) to more than one Class, is apportioned between those Classes in the same proportions as:
 - (i) the aggregate value of Units on issue in each Class as at the most recent Valuation Time adjusted for the aggregate net value of Units issued at the Application Price and redeemed at the Redemption Price, both determined as at the last Valuation Time, in each Classbears to:
 - (ii) the aggregate value of Units in all Classes on issue at that Valuation Time adjusted for the aggregate net value of Units issued at the Application Price and redeemed at the Redemption Price, both determined as at the last Valuation Time, in all Classes,to which the variable relates.

Reclassification

- 8.5 Subject to clause 8.6, the Responsible Entity may at the request of, or with the consent of, a Unitholder re-classify Units of one Class held by the Unitholder as Units of another Class, provided that such re-classification would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.
- 8.6 Units will be taken to have been re-classified under clause 8.5 when the re-classification is recorded in the Register.

9. Application Price for Units

Issue of Units

- 9.1 Subject to clause 9.4, the Application Price for a Unit issued in respect of an application shall be calculated as:

$$A = \frac{B + C}{D}$$

where:

- A** is the Application Price for a Unit in respect of an application;
- B** is the Net Asset Value;
- C** is the amount of Transaction Costs (if any); and
- D** is the number of Units in issue.

9.2 Each of the variables in clause 9.1 must be determined as at the next Valuation Time after:

- (a) the Responsible Entity receives the application for Units; and
- (b) the Responsible Entity as the case requires:
 - (i) receives the application money; or
 - (ii) has vested in it the property against which Units are to be issued, whichever happens later.

9.3 Each of the variables in clause 9.1 are the proportion of each of those variables that is properly referable to the Class to which the Unit (for which the Application Price is being calculated) belongs.

Issue of Units generally

9.4 In addition to any other power the Responsible Entity has to issue Units under this Constitution, the Responsible Entity may issue Units at a price determined by the Responsible Entity to the extent permitted by, and in accordance with the Corporations Act (as modified by any applicable ASIC Relief).

Rounding

9.5 The Application Price may be rounded as the Responsible Entity determines, provided that the amount of the rounding is no more than (1) one cent.

10. Application procedure

Application form

10.1 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.

Payment

10.2 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:

- (a) accompany the application; or
- (b) be received by or made available to the Responsible Entity or the custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
- (c) comprise a reinvestment of a distribution in accordance with this Constitution.

- 10.3 If the Responsible Entity accepts a transfer of property other than Cash, the value attributed to the property must be equivalent to the price at which the Responsible Entity could buy the property and if the Responsible Entity requires any costs associated with the valuation or transfer of the property must be paid by the Unitholder either directly or by deducting them from the market value of the property before the number of Units to be issued is calculated, as the Responsible Entity decides.

Application irrevocable

- 10.4 An applicant for Units may not withdraw an application once payment has been made unless the Responsible Entity agrees.

Responsible Entity may reject

- 10.5 The Responsible Entity may reject an application in whole or in part without giving any reason for the rejection.

Minimum amounts

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

Issue Date

- 10.7 Except in the case of a reinvestment of a distribution, Units are taken to be issued at the time when the Responsible Entity records them as issued in the Register against the name of the applicant.
- 10.8 The Responsible Entity may only effect the Registration of Units against the name of an applicant if the Responsible Entity:
- (a) accepts the application under the terms of issue; and
 - (b) as the case requires:
 - (i) receives the application money; or
 - (ii) has vested in it the property against which Units are to be issued.
- 10.9 Subject to the Corporations Act, the Responsible Entity may hold applications and application moneys without accepting them for such period as it determines.
- 10.10 Without limiting clause 10.9, the Responsible Entity is authorised to hold application moneys for the term of any offer period.
- 10.11 Units which are issued on a reinvestment of distribution in accordance with this Constitution are taken to be issued on the day the distribution is paid or applied in payment for the Units.

Uncleared funds

- 10.12 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 received or the property does not vest in the Responsible Entity within five Business Days of receipt of the application or such other period specified in the terms of any offer.

Register

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

Defective applications

10.14 Where, within 10 Business Days (or such longer period as the Responsible Entity determines) of the creation and issue of Units, the Responsible Entity determines that the:

- (a) applicant was not entitled to the Units issued;
- (b) application was incorrectly executed or executed without power or authority; or
- (c) application form was defective and was accepted in error,

then the Responsible Entity may in its sole discretion cancel those Units, make an appropriate entry in the Register and repay the application money to the applicant out of the Trust. If Units are cancelled under this clause, the Responsible Entity is not required to adjust any Application Price or Redemption Price determined before the cancellation of the Units.

11. Redemption Price of Units

Redemption Price

11.1 A Unit, must only be redeemed at a Redemption Price calculated as:

$$A = \frac{B - C}{D}$$

where:

- A is the Redemption Price for a Unit;
- B is the Net Asset Value;
- C is the amount of Transaction Costs (if any);
- D is the number of Units in issue.

11.2 Each of the variables in clause 11.1 are the proportion of each of those variables that is properly referable to the Class to which the Unit (for which the Redemption Price is being calculated) belongs.

11.3 Each of the variables in clause 11.1 must be determined:

- (a) while the Trust is a registered scheme and Liquid, or not a Registered Scheme, as at the next Valuation Time after the Responsible Entity determines that the Units are to be redeemed; or
- (b) while the Trust is a registered scheme, but not Liquid, at the time the withdrawal offer closes.

11.4 The Redemption Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1 cent.

11.5 The Redemption Price must be determined on basis of valuations of Assets which have been obtained in accordance with clause 13.

Responsible Entity Discretion

11.6 The Responsible Entity's discretion in relation to the Redemption Price only extend to:

- (a) deciding a matter that affects the value of a factor included in a formula;

- (b) deciding a matter that is an aspect of the method; and/or
 - (c) making an adjustment to the amount determined in accordance with clause 11.1 for costs in disposing Assets, for assets of the Trust that are not Assets or otherwise.
- 11.7 If the Responsible Entity exercises discretion in relation to any of the matters outlined in clause 11.1, or makes an adjustment affecting the Redemption Price, it must calculate the value based on ordinary commercial practice for valuing that type of Asset and produce a value that is reasonably current at the time of withdrawal.
- 11.8 The Responsible Entity's discretion in relation to calculating the Redemption Price in accordance with clause 11.1 must not be exercised on the basis that it will result in a particular Redemption Price being set.

12. Redemption procedures

Request for redemption

- 12.1 A Unitholder may make a Redemption Request in respect of some or all of their Units by giving the Responsible Entity notice in writing of the request, including via an electronic platform, specifying the number or value of Units to be redeemed and sufficient details to identify the Unitholder, or in any other manner approved by the Responsible Entity, provided the Trust is a registered scheme and Liquid, or not a registered scheme, the Responsible Entity may (but is not required to) give effect to that Redemption Request in accordance with this clause 12.
- 12.2 Subject to the Corporations Act, a Redemption Request for Units may not be revoked without the consent of the Responsible Entity.
- 12.3 Upon making a Redemption Request, the Unitholder will have no right to deal with the Units (unless and until the Redemption Request is denied by the Responsible Entity).
- 12.4 A Unitholder may lodge a Redemption Request during ordinary business hours on any Business Day.
- 12.5 Subject to clauses 12.6 and 12.26, if the Responsible Entity decides to give effect to a Redemption Request, it will redeem the relevant Units within 365 days.
- 12.6 Subject to the Corporations Act, the Responsible Entity may delay the redemption of Units if there is a circumstance outside its control which was not reasonably foreseen by the Responsible Entity at the time it accepted the redemption request and which it considers impacts on its ability to properly or fairly calculate the Redemption Price or realise Assets, including where the Assets or relevant currencies are subject to restrictions or if there is material market uncertainty, and in such case it may delay the redemption of Units for so long as the circumstance continues, provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.
- 12.7 If the Responsible Entity delays redemption of Units under clause 12.6, the Redemption Price is that next calculated after the circumstance ceases.

While the Trust is a registered scheme and Liquid or not a registered scheme

- 12.8 Clauses 12.9 to 12.12 apply while the Trust is:
- (a) a registered scheme and Liquid; or
 - (b) not a registered scheme.

- 12.9 Subject to the Corporations Act, the Responsible Entity may decide to satisfy a Redemption Request either in relation to all or some of the Units which are the subject of the request, provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust. The Responsible Entity will give notice of a decision to reject a Redemption Request.
- 12.10 If the Responsible Entity decides to give effect to a Redemption Request in respect of a Unit it must redeem the Units and pay the Redemption Price, calculated in accordance with this Constitution, from the Assets. The payment must be made within 21 days after the redemption of the Units.
- 12.11 If compliance with a Redemption Request would result in the Unitholder holding Units with an aggregate Redemption Price which is less than the then current Minimum Holding Amount, the Responsible Entity may treat the Redemption Request as including the balance of the Unitholder's holding.
- 12.12 If the Responsible Entity increases the Minimum Holding Amount, the Responsible Entity may after giving 30 days' notice to a Unitholder who holds Units with an aggregate Redemption Price less than the then current Minimum Holding Amount, redeem that Unitholder's holding without the need for a Redemption Request, provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.

While Trust is a registered scheme, but not Liquid

- 12.13 Clauses 12.14 to 12.19 apply while the Trust is a registered scheme, but not Liquid.
- 12.14 A Unitholder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity, which is in accordance with the provisions of the Corporations Act (including any ASIC Relief).
- 12.15 Any withdrawal amount payable under clauses 12.14 to 12.19 must be paid to a Unitholder within 21 days of the withdrawal offer's closing.
- 12.16 If there is no withdrawal offer currently open for acceptance by Unitholders, a Unitholder has no right to withdraw from the Trust.
- 12.17 The Responsible Entity is not at any time obliged to make a withdrawal offer.
- 12.18 The Responsible Entity may cancel a withdrawal offer in accordance with the Corporations Act.
- 12.19 If the Responsible Entity receives a Redemption Request before it makes a withdrawal offer, it may treat the request as an acceptance of the withdrawal offer effective as at the time the withdrawal offer is made.

Liquid or not Liquid

- 12.20 The Responsible Entity will determine whether or not the Trust is Liquid in accordance with the Corporations Act.

The Responsible Entity not obliged to pay out of its own funds

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

Transfer of Assets

- 12.22 The Responsible Entity may transfer Assets other than Cash to a Unitholder rather than pay Cash in satisfaction of all or part of a Redemption Request or pursuant to a withdrawal offer. These Assets, together with any Cash paid, must be of equal value to the total amount due to the Unitholder pursuant to the Redemption Request (as determined by the Responsible Entity) or withdrawal offer (based on a valuation in accordance with clauses 13.3 to 13.5). If the Responsible Entity requires, the costs involved in transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.
- 12.23 Clause 12.22 applies whether or not the Trust is Liquid.
- 12.24 For the purposes of clause 12.22 the Responsible Entity will be taken to have transferred Assets to a Unitholder or former Unitholder where the Responsible Entity has done everything reasonably necessary on its part to convey the Assets to the Unitholder or former Unitholder.

Redemption date

- 12.25 Units are taken to be redeemed when:

- (a) the Responsible Entity has accepted the redemption and calculated the Redemption Price; and
- (b) the Responsible Entity cancels the relevant Units against the name of the Unitholder or Former Unitholder in the Register,

and from that time the former Unitholder of the redeemed Units ceases to be a Unitholder in respect of the redeemed Units. For the avoidance of doubt, until the Redemption Price calculated in clause 12.25(a) is paid to the former Unitholder in respect of each redeemed Unit, the former Unitholder will be a creditor of the Trust in respect of any such unpaid amount.

Suspension of redemptions

- 12.26 Subject to any cooling off rights under the Corporations Act, the Responsible Entity may at any time suspend the redemption for up to 90 days, if:
- (a) it is impracticable for the Responsible Entity to calculate the Net Asset Value;
 - (b) redemption would cause the Responsible Entity to breach any law, regulation or obligation under which the Responsible Entity operates;
 - (c) there would be insufficient cash retained in the Trust after complying with a Redemption Request to meet other Liabilities and in the Responsible Entity's opinion it is not in the interests of Unitholders for any of the Trust's Assets to be sold in order to satisfy a Redemption Request;
 - (d) sufficient Assets cannot be realised at an appropriate price or on adequate terms of otherwise due to one or more circumstances outside the control of the Responsible Entity;
 - (e) the Responsible Entity reasonably estimates that it must sell 20% of Net Asset Value or more (by value) of the Assets to meet current unsatisfied Redemption Requests;
 - (f) there has been, or the Responsible Entity anticipates that there will be, Redemption Requests which will involve realising a significant amount of the Assets and the Responsible Entity considers that if those Redemption Requests are all satisfied

immediately, Unitholders who continue to hold Units may bear a disproportionate burden of capital gains tax or other expenses, or the meeting of those Redemption Requests would otherwise be to the existing Unitholders' disadvantage including (but not limited to) a material decrease in the value of the Assets; or

(g) it is otherwise in the interests of the Unitholders to suspend redemptions,

provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.

12.27 Any Redemption Request that is not processed, or for which a Redemption Price has not been calculated or confirmed prior to the commencement of a period of suspension, the Responsible Entity will deem it to have been received immediately before the end of the suspension period.

Compulsory Redemption

12.28 Without limiting any other provision of this clause 12, but subject to the Corporations Act (as modified by any applicable ASIC Relief), the Responsible Entity may, upon a minimum of 60 days' notice to a Unitholder or Unitholders, redeem all or a portion of Units of any or all classes held by any or all such Unitholder if:

- (a) the Responsible Entity believes that the Units are held in breach of prohibitions contained in this Constitution;
- (b) the Responsible Entity determines that the Trust is uneconomical to operate;
- (c) a Unitholder made a misrepresentation in acquiring its Units;
- (d) a Unitholder is a registered holder of Units having an aggregate value of less than the Minimum Holding Amount, provided that it does so in accordance with the terms of this Constitution and the Corporations Act (including any ASIC Relief); or
- (e) subject to the Corporations Act, such other circumstances as the Responsible Entity determines,

provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.

12.29 Notwithstanding clause 12.28, the Responsible Entity may, upon a minimum of 3 Business Days' notice to a Unitholder or Unitholders, redeem all or a portion of the Units held by any or all Unitholders if:

- (a) the Responsible Entity believes that the Units are held in circumstances which might result in a violation of an applicable law or regulation, or subject the Trust to taxation or otherwise adversely affect the Trust in any material respect; or
- (b) the Responsible Entity determines that the continued participation of a Unitholder might cause the Responsible Entity or any Unitholder to violate any law or if any litigation is commenced or threatened against the Responsible Entity or any Unitholder arising out of the participation of the Unitholder in the Trust,

provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.

12.30 Units that are compulsorily redeemed in accordance with clauses 12.28 or 12.29 will be redeemed by the Responsible Entity as if the Unitholder had lodged a Redemption Request in accordance with this clause 12.

Gating

- 12.31 Subject to the Corporations Act and clause 12.32, the Responsible Entity must not accept a redemption request if the Unitholder who has made the Redemption Request has not held Units the subject of the Redemption Request for the entirety of the minimum period, as disclosed in the Disclosure Document.
- 12.32 Subject to the Corporations Act, the Responsible Entity may in its discretion waive some or all of the restrictions in clause 12.31.

13. Valuation of Assets, Registers and Financial Statements

Responsible Entity may value

- 13.1 The Responsible Entity may cause an Asset or a Consolidated Group's Asset to be valued at any time, and must do as and when required by the Corporations Act.
- 13.2 The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.

Valuation methods

- 13.3 The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time. Where the Trust is a Registered Scheme, the valuation methods and policies determined by the Responsible Entity must be approved by the board of directors of the Responsible Entity, consistent with ordinary commercial practice and must produce a valuation that is reasonably current.
- 13.4 Unless the Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value, determined in accordance with the valuation methods and policies determined under clause 13.3.
- 13.5 Subject to clauses 13.3 and 13.4, where 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 or Redemption Price that is independently verifiable.
- 13.6 The Responsible Entity must determine the value of the Consolidated Group's Assets in accordance with clauses 13.3 to 13.5.

Register

- 13.7 The Responsible Entity may keep a register in which details of the holders of Units are recorded. The Register may show the name, address and information relating to the qualifications of an investor to hold Units. The Register may include such other information, as the Responsible Entity determines.
- 13.8 Entry of a person's name on the Register as the holder of a Unit is conclusive evidence of that person's ownership of that Unit.

Preparation of Financial Statements

- 13.9 The Responsible Entity must prepare Financial Statements as and when required by the Corporations Act.

- 13.10 The preparation of the Financial Statements of the Trust in accordance with clause 13.9 is not to be regarded as a determination of the method for calculating the Distributable Income of the Trust.
- 13.11 The Responsible Entity may appoint an auditor for the Trust to perform such roles as the Responsible Entity determines (for example, to prepare a report on the Financial Statements). The remuneration for the Auditor will be fixed by the Responsible Entity.

Assets attributable to a Class

- 13.12 The Responsible Entity may determine that an Asset is properly attributable to a Class for the purposes of this Constitution. Any Asset that is subject to such a determination is an Asset of that Class from that time.

14. Payments

Responsible Entity to determine payment method

- 14.1 Money payable by the Responsible Entity to a Unitholder may be paid in any manner the Responsible Entity determines, such as by cheque or electronic means.
- 14.2 In this clause 14, a reference to payment includes any method by which money payable by the Responsible Entity to a Unitholder is discharged.

Payment by cheque

- 14.3 Cheques may be given to the Unitholder or to anyone the Responsible Entity does not doubt to be authorised by the Unitholder or sent to the Unitholder's physical address. Cheques issued by the Responsible Entity that are not presented within six months may be cancelled.
- 14.4 Where a cheque which is cancelled was drawn in favour of a Unitholder, the money is to be:
- (a) held by the Responsible Entity for the Unitholder; or
 - (b) reinvested in the Trust on behalf of the Unitholder at the Application Price prevailing at the next Valuation Time after the cheque is cancelled; or
 - (c) paid by the Responsible Entity in accordance with the legislation relating to unclaimed money.

Payment by electronic transfer

- 14.5 Payments made by electronic transfer must be made to the account, details of which are provided to the Responsible Entity in writing by the Unitholder. Where the Responsible Entity attempts to make a payment to a Unitholder by electronic transfer of funds or any other electronic means and the payment to the Unitholder is unsuccessful, the money is to be:
- (a) held by the Responsible Entity for the Unitholder; or
 - (b) reinvested in the Trust on behalf of the Unitholder at the Application Price prevailing at the next Valuation Time after the payment is unsuccessful; or
 - (c) paid by the Responsible Entity in accordance with the legislation relating to unclaimed money.

Rounding of amounts to be paid

- 14.6 Only whole cents are to be paid, rounded as the Responsible Entity determines.

Payments to joint Unitholders

- 14.7 A payment to any one of joint Unitholders will discharge the Responsible Entity in respect of the payment.

Deductions from payments

- 14.8 The Responsible Entity may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder:
- (a) any amount of Tax (or an estimate of it);
 - (b) any other amount owed by the Unitholder to the Responsible Entity or any other person,
 - (c) which the Responsible Entity is required or authorised to deduct in respect of that payment or receipt or which the Responsible Entity considers should be deducted or owed by the Unitholder to the Responsible Entity or any other person.
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15. Income and Distributions

Determination of Distributable Income

- 15.1 The Responsible Entity must determine the Distributable Income of the Trust for each Distribution Period.
- 15.2 Unless the Responsible Entity determines otherwise prior to the end of the Financial Year, Distributable Income is:
- (a) the amount which, if distributed to Unitholders for the period, would, to the extent possible, prevent the Responsible Entity being liable to tax under section 99 or section 99A of the Tax Act for the Financial Year as if the period is a year of income; plus
 - (b) any additional amount of income which the Responsible Entity considers is appropriate to distribute to Unitholders under this clause 15.2.

Classification of income components

- 15.3 The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

Separate accounts

- 15.4 The Responsible Entity may keep separate accounts of different categories or sources of income, deductions or credits for tax purposes.

Present entitlement

- 15.5 Subject to the restrictions attaching to any particular Unit, a person who, at any time during a Financial Year, is or has been a Unitholder, is presently entitled to the Distributable Income for that Financial Year (on the last day of that Financial Year), in the proportion that the sum of the Income Distributions and Accrued Income Entitlements of the Unitholder in respect of that Financial Year bears to the sum of the Income Distributions and Accrued Income Entitlements in respect of that Financial Year of all persons who are or have been Unitholders at any time during that Financial Year.

Income Distributions

- 15.6 The Income Distribution for a Unitholder for a Distribution Period is an amount calculated by the Responsible Entity as follows:

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

where

- A** is the Income Distribution of the Unit for the Distribution Period;
- B** is the Distributable Income for the Distribution Period; and
- C** is the aggregate of the number of Fully Paid Units on issue at the end of the Distribution Period, but ignoring Units which are not entitled to participate in Distributable Income in respect of the Distribution Period;

Satisfaction of present entitlement

- 15.7 Income Distributions for a Distribution Period must be paid to a Unitholder within two months after the Distribution Calculation Date, or if the review or audit (if any) for that Distribution Period has not been completed, as soon as possible after the completion of the review or audit.

Entitlement to capital

- 15.8 The Responsible Entity may distribute any amount of capital (not included in Distributable Income) to Unitholders of the Trust by the payment of Cash or the issue of Units (the Application Price for which is to be determined in accordance with clause 9) of an amount determined in accordance with the following formula (rounded down to the nearest whole cent or as the Responsible Entity otherwise determines):

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

where:

- A** is the amount of the distribution to which the Unitholder is entitled;
- B** is the aggregate of the number of Fully Paid Units held by the Unitholder at the time determined by the Responsible Entity relevant to the return of capital (**relevant day**);
- C** is the aggregate of the number of Fully Paid Units in issue; and
- D** is the aggregate amount of Cash or the value of Assets (determined by the Responsible Entity) to be distributed.

Distribution by transfer of Assets

- 15.9 The Responsible Entity may effect a distribution to Unitholders by transferring Assets to all Unitholders rather than paying in Cash or issuing additional Units.
- 15.10 The Responsible Entity must effect the distribution to all Unitholders in accordance with clause 15.9 in the same way.

- 15.11 If the property to be transferred to each Unitholder is a financial product issued by an entity they must be of the same type, have the same rights and, if relevant, be fully paid.
- 15.12 The property transferred may comprise solely a beneficial interest in tangible or intangible property.
- 15.13 In each case, where property other than Cash is to be transferred to Unitholders (or a nominee on behalf of a Unitholder), each Unitholder authorises the Responsible Entity to act as their agent to:
- (a) acquire the property on behalf of the Unitholder; and
 - (b) where the property comprise an interest in a financial product issued by an entity, agree to the Unitholder becoming a holder of that interest or a member of the relevant entity.
- 15.14 The property transferred, together with any Cash paid, must be of equal value to the total amount due to the Unitholder pursuant to the distribution (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, the costs involved in transfer of any property must be paid by the Unitholder or deducted from the distribution due to the Unitholder.

Trust taxed as Company

- 15.15 If in any Financial Year:

- (a) the Responsible Entity as trustee of the Trust; or
- (b) the Trust;

becomes taxable as if it were a company under the Tax Act, the Responsible Entity has an absolute discretion as to the level of distribution to be made in that or in any subsequent Financial Year.

Reinvestment

- 15.16 The Responsible Entity may decide whether to permit or require the Unitholders to reinvest some or all of any distribution to acquire Units, but in so doing must not materially diminish or expand a Unitholder's interest in the income or capital of the Trust. The offer to permit reinvestment must be made on the same terms to all Unitholders.
- 15.17 If the Responsible Entity decides to permit or require reinvestment, it must notify Unitholders of the procedure for reinvestment and any change in the procedure.
- 15.18 If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest immediately before the next Valuation Time after the end of the relevant Distribution Period and the Application Price for each additional Unit upon reinvestment of a distribution will be calculated in accordance with clause 9 on such a date, subject to any discretion that the Responsible Entity may have to determine the amount of the Application Price pursuant to this Constitution, the Corporations Act, and any ASIC Relief, provided that such exercise of discretion would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.
- 15.19 If the amount to be reinvested in additional Units results in a fraction of a Unit, the Responsible Entity may determine whether the money representing the fraction will be held for future reinvestment in the Trust at the next time that reinvestment is to occur or whether the money representing the fraction will become an Asset of the Trust, subject to the Responsible Entity must treat all Unitholders of the same Class equally, and Unitholders of

separate Classes fairly, in respect of any such determination. The Responsible Entity must credit money that will be held for future reinvestment in the Trust to an account to be designated as the "Distribution Account".

- 15.20 Whenever, under this Constitution or by law, money is held on behalf of a Unitholder for future reinvestment, the money so held may, in the discretion of the Responsible Entity be aggregated and, on each occasion on which the aggregated amount reaches the Application Price of a Unit, be applied in the subscription for a new Unit for issue to the Unitholder.
- 15.21 Units issued under clauses 15.16 to 15.20 inclusive are to participate fully for income in respect of the Distribution Period in which they are issued.

Liability

- 15.22 The Responsible Entity does not incur any liability and is not obliged to account to anyone (including any Unitholder or Former Unitholder) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 15 or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power notwithstanding any error or miscalculation in any provision made for Tax.

Rounding

- 15.23 If the Unitholder's entitlement to a distribution includes a fraction of a cent the entitlement is to be rounded down to the nearest cent below the amount of the Unitholder's entitlement.

Application to Classes

- 15.24 Subject to the Corporations Act, where more than one Class of Units is on issue the Responsible Entity may allocate income and Expenses to a particular Class, determine the Distributable Income and Income Distributions separately for each Class and make distributions separately for each Class (including making distributions on one or more, but not all, Classes) and to the extent applicable, the provisions of clauses 15.1 to 15.23 will be applied to give effect to this clause.

16. AMIT taxation regime

- 16.1 If the Trust becomes eligible during the financial year to make a choice to be taxed under the AMIT Regime, the Responsible Entity may make an election for the Trust to be taxed under the AMIT Regime by the Responsible Entity:
- (a) providing a notice in writing to Unitholders that the Trust will be taxed as an AMIT; and
 - (b) preparing the tax returns of the Trust on the basis that the Trust is an AMIT.
- 16.2 If the Responsible Entity makes an election under clause 16.1, this clause 16 will apply to the Trust.
- 16.3 If eligible, the Responsible Entity may make an election to treat each Class as a separate AMIT under the AMIT Regime by the Responsible Entity:
- (a) making a record of that choice;
 - (b) providing a notice in writing to Unitholders of each Class that the Class will be taxed as an AMIT; and

- (c) preparing the tax returns of that Class on the basis that each Class is an AMIT.
- 16.4 For the purposes of deciding whether to make a choice under clause 16.3, the Responsible Entity must consider whether:
 - (a) the rights, restrictions and obligations attached to each Unit within that Class are the same;
 - (b) each Unit in a Class is distinct from each Unit in each other Class.
- 16.5 If the Responsible Entity makes an election under clause 16.3, this clause 16 will apply to the Class as if the Class were a separate Trust.
- 16.6 The Responsible Entity must not exercise a right, power or discretion under this Constitution in a manner that would materially diminish or expand the right of a Unitholder to income or capital of the Trust.
- 16.7 Where clause 16 applies, the clause will prevail over any other provisions of this Constitution to the extent of any inconsistency.

Responsible Entity powers

- 16.8 The Responsible Entity has all of the powers and rights which are necessary and desirable to ensure compliance with and the effective operation of the Trust as an AMIT for the purposes of the AMIT Regime, including any steps necessary to determine each Unitholder's Determined Member Component. For the avoidance of doubt, this includes the Responsible Entity having the power and right to:
 - (a) stream a gain made on the disposal of an Asset by the Trust to a Unitholder in order to satisfy all or part of a Redemption Request of the Unitholder of that unit; and
 - (b) determine each Unitholder's Determined Member Component taking into account any Prior Year Adjustment Amounts.

Determining the Trust Components

- 16.9 The Responsible Entity must identify the Trust Components of the Trust, in a document that meets the requirements of the Tax Act. Each Trust Component will have a determined character for tax purposes, as contemplated in the AMIT Regime.
- 16.10 The Responsible Entity may adjust the Trust Components of a particular character for an income year to take into account any Unders or Overs of that character which the Trust has in the income year.

Attributing Trust Components to Unitholders

- 16.11 Following the end of the financial year, the Responsible Entity must allocate a portion of each Determined Trust Component to each Unitholder on a fair and reasonable basis and without regard to a Unitholder's tax characteristics.
- 16.12 A Member Component must be calculated for each particular character that is identified in respect of the Determined Trust Component.

AMMA statements

- 16.13 The Responsible Entity must issue an AMMA Statement to each Unitholder in respect of the Financial Year. The AMMA Statement will set out the Unitholder's Determined Member Component in respect of each Determined Trust Component as well as all of the other

information required under the AMIT Regime to be included in the statement. The AMMA Statement must be given to each Unitholder within the time specified in the Tax Act.

- 16.14 The Responsible Entity may re-issue revised AMMA Statements to a Unitholder in respect of a Financial Year which effectively replaces the previous AMMA Statement(s) issued in respect of that Financial Year. A revised AMMA Statement must be issued by the Responsible Entity in respect of the relevant Financial Year to which the AMMA Statement relates within the time specified in the Tax Act.

Unitholders' acknowledgement regarding choice for Unders/Overs

- 16.15 Each Unitholder acknowledges or is taken to acknowledge that the Responsible Entity has, under the AMIT Regime, a choice with respect to how the Responsible Entity is to address any Unders or Overs of a particular character for the Trust, including whether such amounts should be addressed by the Responsible Entity by either:

- (a) re-issuing revised AMMA Statements to Unitholders for the financial year to which the Over or Under relates; or
- (b) adjusting the Trust's Trust Components in the financial year in which the Under or Over is discovered to take account of the Under or Over.

Objection by Unitholders

- 16.16 If a Unitholder objects to the basis of the attribution of the Determined Trust Components for the purposes of the AMIT Regime, including by making a Member Objection Choice, the Unitholder agrees to:

- (a) provide the Responsible Entity with written notice of the Unitholder's intention to make an objection at least five business days prior to notifying the Commissioner of Taxation of Australia of its objection; and
- (b) include in the notice provided to the Responsible Entity, a summary of the reasons why the Unitholder considers the attribution to be inappropriate; and
- (c) provide to the Responsible Entity any information the Responsible Entity reasonably requests in order to assess the Unitholder's objection or proposed objection; and
- (d) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection or proposed objection.

Liability

- 16.17 The Responsible Entity does not incur liability nor is it obliged to account to anyone (including any Unitholder or Former Unitholder) nor is it liable for any loss or damage:

- (a) as a result of the exercise of any discretion or power under this clause 16; or
- (b) provided the Responsible Entity was acting in the proper performance of its duties, as a result of the exercise of any discretion or power, to the extent that the exercise of the discretion or power is necessary for, or incidental to the Trust being operated in a manner permitted by the AMIT Regime, or is exercised under the AMIT Regime, in respect of an AMIT Income Year; or
- (c) in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power covered by clause 16.17(a) despite any error or miscalculation in any provision made for Tax.

17. Powers and obligations of the Responsible Entity

General powers

- 17.1 Subject to this Constitution, the Responsible Entity has all the powers of a natural person in respect of the Trust as though it were the absolute owner of the Assets.

Specific powers

- 17.2 Without limiting the effect of clause 17.1, the Responsible Entity in its capacity as trustee of the Trust has power to:
- (a) invest in, dispose of or otherwise deal with property and rights in its absolute discretion, including the power to invest in a Controlled Entity and derivatives. For the avoidance of doubt, the Responsible Entity's power to lease real property includes a power to grant a lease or sublease for a period of more than 30 years in respect of a building lease and more than 21 years for any other lease;
 - (b) borrow or raise money whether or not on security of the Assets;
 - (c) incur all types of obligations and liabilities including guarantees; and
 - (d) enter into an arrangement with a person to underwrite the subscription or purchase of Units on such terms as the Responsible Entity determines.

Power of delegation

- 17.3 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.
- 17.4 The Responsible Entity may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Responsible Entity thinks fit.
- 17.5 Subject to the Corporations Act, the agent or delegate may be any member of the Responsible Entity Group or an associate of the Responsible Entity or the Responsible Entity Group.
- 17.6 Subject to the Corporations Act, the Responsible Entity may include provisions in any document relating to a delegate to limit the Responsible Entity's liability, as the Responsible Entity thinks fit.

Exercise of discretion

- 17.7 The Responsible Entity may in its absolute discretion decide how and when to exercise its powers, provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.

Related party transactions

- 17.8 The Responsible Entity may deal with and engage the services of its associates and related parties.
- 17.9 The Responsible Entity and any of its agents or delegates may invest in trusts or other assets controlled or managed by or otherwise associated with related parties and associates of the Responsible Entity.

- 17.10 Where the Responsible Entity engages, deals with or invests in any related party or related party asset(s) the Responsible Entity may, but is not obliged to, negotiate a rebate or reduced level of fees or services charges.
- 17.11 The Responsible Entity may:
- (a) deal with itself (as Responsible Entity of the Trust or in any other capacity), any associate or any Unitholder;
 - (b) be interested in any contract or transaction with itself (as Responsible Entity of the Trust or in any other capacity), any associate or Unitholder; and
 - (c) may act in the same or a similar capacity in relation to any other Trust or managed investment scheme, and retain any benefit or benefits from doing such dealing, interests or so acting.

Obligations of the Responsible Entity

- 17.12 The Responsible Entity has an obligation to treat all Unitholders within the same Class equally and the Unitholders in different Classes fairly subject to any relief provided to or modification of corresponding statutory requirements which relief and modifications shall be deemed to apply on the same terms to this clause.
- 17.13 In accordance with ASIC Corporations (Chapter 5C - Miscellaneous Provisions) Instrument 2017/125 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of clause 17.13 is not a modification of, or the repeal or replacement of the Constitution for the purposes of sections 601GC(1) and (2) of the Corporations Act.

18. Change of Responsible Entity

Retirement and removal of Responsible Entity

- 18.1 Where the Trust is not a registered scheme, the Responsible Entity may retire at any time on not less than one month's notice to Unitholders, and may appoint in writing a new trustee to replace it.
- 18.2 Where the Trust is a registered scheme:
- (a) the Responsible Entity may retire as permitted by the Corporations Act, and must retire as required by the Corporations Act; and
 - (b) a new trustee is appointed in accordance with the Corporations Act; and
 - (c) subject to the Corporations Act, Unitholders have no right to remove the Responsible Entity.

Replacement Responsible Entity to execute deed

- 18.3 Any proposed replacement Responsible Entity must execute a deed by which it agrees to be bound by this document.

Obligations of retiring Responsible Entity

- 18.4 Upon the retirement or removal of the Responsible Entity, the Responsible Entity must promptly, at the expense of the Trust:

- (a) hand to the new Responsible Entity all books, records, documents and other property of or relating to the Trust;
- (b) do all things necessary to transfer the legal title in the Assets to the new Responsible Entity;
- (c) sign authorities and give directions reasonably required by the new Responsible Entity to give possession or control of any part of the Trust in the hands of third parties; and
- (d) give any assistance reasonably required by the new Responsible Entity to put the new Responsible Entity into full knowledge of the affairs of the Trust.

Release

18.5 When the Responsible Entity changes, the outgoing Responsible Entity is released from all obligations in relation to the Trust arising after the time it retires or is removed except those which the Corporations Act continues to impose.

Retirement benefits

18.6 The Responsible Entity is entitled to agree with the proposed replacement Responsible Entity to be remunerated by, or to receive a benefit from, the proposed replacement Responsible Entity in relation to:

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

(unless such remuneration or benefit is not permitted under the Corporations Act) and is not required to account to Unitholders for such remuneration or benefit.

Responsible Entity cannot be beneficiary

18.7 When the Responsible Entity changes as a consequence of the retirement of the Responsible Entity or the appointment of a new Responsible Entity pursuant to this clause 18, the new Responsible Entity (or continuing Responsible Entity if there is more than one) or previous Responsible Entity must not be at the time of its appointment and cannot subsequently become a Unitholder or a beneficiary under the Trust. Notwithstanding any other provision of this deed this clause 18.7 is irrevocable and may not be removed or amended.

19. Communications

Communications to a Unitholder

19.1 Subject to the Corporations Act, communications between the Responsible Entity and Unitholders must be in writing which includes any electronic means (including sending an electronic link to a document to a Unitholder) and fax and must be sent to the Unitholder at the Unitholder's physical or electronic address.

Communications to joint Unitholders

19.2 For joint Unitholders, the physical or electronic address is that of the Unitholder first named in the Register.

Receipt of communications to a Unitholder

19.3 Without limiting any other means by which a Responsible Entity may be able to prove that a notice has been received by a Unitholder, communications to a Unitholder will be considered to have been received:

- (a) if sent by hand, when left at the address of the recipient;
- (b) if sent by pre-paid post, three days (if posted within Australia to an address in Australia) or seven days (if posted from one country to another) after the date of posting;
- (c) if sent by facsimile, on receipt by the sender of an acknowledgement or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number; or
- (d) if sent by electronic means, are taken to be delivered 1 hour after sending, provided that the sender has no reason to doubt successful receipt (for example, where the email has bounced),

but if a notice is served by hand, received by the recipient's facsimile or received by the recipient's information system via electronic means on a day that is not a Business Day, or after 5.00 pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9.00 am (recipient's local time) on the next Business Day.

19.4 Proof of actual receipt is not required.

Communications to the Responsible Entity

19.5 Communications to the Responsible Entity must be sent to the Responsible Entity at the last advised physical or (if the Responsible Entity allows) electronic address.

19.6 The notice is effective only at the time of actual receipt.

19.7 Communications to the Responsible Entity must carry the actual, facsimile or electronic signature of the Unitholder or someone authorised by the Unitholder, unless the Responsible Entity waives this requirement.

19.8 Unless it has reason to doubt these things, the Responsible Entity may assume that an email has been sent by the apparent sender and has arrived uncorrupted.

19.9 The Responsible Entity may take and may act (or not act, as relevant) on any advice, information and documents which the Responsible Entity has no reason to doubt is authentic, accurate or genuine and is not liable for so acting or not acting.

20. Meetings of Unitholders

Convening of meetings

20.1 The Responsible Entity may at any time convene a meeting of Unitholders or Unitholders of a Class of Units to consider any matter, including resolutions, and must do so if the Corporations Act requires.

20.2 While the Trust is a registered scheme, meetings of Unitholders must be convened and conducted in accordance with Part 2G.4 of the Corporations Act and this Constitution.

- 20.3 While the Trust is not a registered scheme, meetings of Unitholders will be convened and conducted in accordance with this Constitution as if Part 2G.4 applied with any necessary modifications.

Responsible Entity may determine

- 20.4 Subject to the specific provisions of this Constitution relating to meetings of Unitholders and to the Corporations Act, the Responsible Entity may determine the time and place at which a meeting of Unitholders will be convened and the manner and procedures to apply in the conduct of the meeting.

Notice of meeting

- 20.5 At least 21 days' notice of a meeting of Unitholders must be given to Unitholders. If a Unitholder does not receive a notice of a meeting or a cancellation or postponement of a meeting (including if the notice was accidentally omitted to be given to them), the meeting is not invalidated.
- 20.6 In computing the period of notice, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

Quorum

- 20.7 The quorum for a meeting of:
- (a) all of the Unitholders of the Trust is at least 2 Unitholders of the Trust present in person or by proxy together holding at least 5% of all Units of the Trust; and
 - (b) of the Unitholders of a Class in a Trust, is at least 2 Unitholders present in person or by proxy together holding at least 5% of all Units of that Class.
- 20.8 If a Trust or a Class of Units of a Trust has only one (1) Unitholder who may vote on a resolution, the Unitholder constitutes a quorum at a meeting of the Unitholders of the Trust or the Unitholders of the Class.

No quorum

- 20.9 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Responsible Entity decides by notice to the Unitholders and others entitled to notice of the meeting.
- 20.10 At any adjourned meeting, those Unitholders present in person or by proxy, attorney or representative constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

Chair

- 20.11 The Responsible Entity may appoint a person to chair a meeting of Unitholders.
- 20.12 The chair of a meeting of Unitholders:
- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (b) may require the adoption of any procedure which is in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

- (c) may terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chair under this clause 20.12 is final.

Adjournment or cancellation

- 20.13 Subject to the Corporations Act, the chair has power to cancel a meeting or adjourn a meeting for any reason to such place and time as the chair thinks fit.

Adjournment of meeting

- 20.14 The chair of a meeting of Unitholders may at any time during the meeting adjourn the meeting or any business, motion, question, Resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place. In exercising this discretion, the chair may, but need not, seek the approval of the Unitholders present. Unless required by the chair, no vote may be taken or demanded by the Unitholders present in respect of any adjournment.

- 20.15 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Notice of adjourned meeting

- 20.16 It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

Voting

- 20.17 Any 2 Unitholders present in person or by proxy holding at least 30% by value of Units and entitled to vote on the issue may demand a poll, unless the Trust or class has only one (1) Unitholder, in which case that one (1) Unitholder may do so.
- 20.18 Subject to the rights and obligations attaching to any class of Units, on a show of hands each Unitholder has one (1) vote and on a poll each Unit is worth one (1) vote.
- 20.19 Subject to the Corporations Act, the Responsible Entity is not obliged to take any action in connection with the result of any vote.

Questions decided by majority

- 20.20 A Resolution is taken to be carried if a simple majority of the votes cast on the Resolution are in favour of it, subject to this Constitution and (where the Trust is a registered scheme) the Corporations Act in respect of any special majority requirement for a particular Resolution.
- 20.21 The Responsible Entity and any associate may vote on all Resolutions unless (where the Trust is a registered scheme) under the Corporations Act they are not permitted to vote on a particular Resolution.

Voting for a Unitholder

- 20.22 The provisions of the Corporations Act governing proxies and voting for meetings of Unitholders of registered schemes apply to the Trust.
- 20.23 A proxy is entitled to speak and vote for a Unitholder (to the extent allowed by the appointment) even if the Unitholder is present at the meeting, but only so long as the Unitholder does not speak or vote.

- 20.24 Subject to the Corporations Act, an appointment of proxy is valid even if it contains only some of the information required by the proxy form.

Minutes

- 20.25 The minutes of a meeting of Unitholders signed by the chair of the meeting are conclusive evidence of the matters stated in them, unless the contrary is proved.

Meetings by technology

- 20.26 A meeting of Unitholders may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

21. Rights and liabilities of Responsible Entity

Holding Units

- 21.1 Any member of the Responsible Entity Group and their associates may hold Units in the Trust in any capacity.

Other capabilities

- 21.2 Nothing in this Constitution restricts the Responsible Entity (or its associates) from:
- (a) dealing with itself (as trustee of the Trust or in another capacity), any of its Controlled Entities, any member of the Responsible Entity Group, an associate or with any Unitholder;
 - (b) being interested in any contract or transaction with itself (as Responsible Entity of the Trust or in another capacity), any of its Controlled Entities, any member of the Responsible Entity Group, an associate or with any Unitholder;
 - (c) acting in the same or a similar capacity in relation to any other managed investment scheme, company or other entity; or
 - (d) dealing with any other entity in which the Responsible Entity holds an investment on behalf of the Trust or dealing with any Units,

and in each case the Responsible Entity or any associate may retain all profits or benefits derived from that activity.

Responsible Entity may rely

- 21.3 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 Unitholder 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, to the extent legally permitted, 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.

- 21.4 The Responsible Entity may rely on signatures without enquiry if it has no reason to doubt their authenticity or genuineness.

22. Limitation of liability and indemnity in favour of Responsible Entity

Limitation on Responsible Entity's liability

- 22.1 Whilst the Responsible Entity acts in good faith and in the proper performance of its duties, the Responsible Entity is not liable in contract, tort or otherwise to Unitholders for any loss suffered in any way relating to the Trust.
- 22.2 The liability of the Responsible Entity to any person other than a Unitholder in respect of the Trust (including in respect of any contracts entered into as Responsible Entity of the Trust or in relation to any Assets) is limited to the amount the Responsible Entity actually receives under its right to be indemnified from the Assets.
- 22.3 Subject to any liability which law might impose on the Responsible Entity which cannot be excluded, and subject to any agreement it may have with a Unitholder, 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.

Indemnity in favour of Responsible Entity

- 22.4 The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing any of its duties and in exercising any of its powers in the proper performance of its duties in relation to the Trust. This right of indemnity is not lost by reason of a separate incident that was itself a breach of trust.
- 22.5 To the extent permitted by the Corporations Act, the indemnity under clause 22.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- 22.6 The indemnity under clause 22.4:
- (a) is in addition to any indemnity allowed by law; and
 - (b) continues to apply after the Responsible Entity retires or is removed from the office it holds in relation to the Trust.

23. Liability of Unitholders

Recourse of the Responsible Entity

- 23.1 In the absence of separate agreement with a Unitholder or creditor, the recourse of the Responsible Entity and any creditor of the Trust against a Unitholder in connection with the Trust is limited to the Assets.

Liability limited

- 23.2 Subject to clause 23.3, the liability of a Unitholder is limited to the amount, if any, which remains unpaid in relation to the Unitholder's subscription for their Units.

Indemnity for Tax or User Pays Fees

- 23.3 The Responsible Entity is entitled to be indemnified by a Unitholder or Former Unitholder to the extent that the Responsible Entity incurs any liability for Tax or User Pays Fees as a result of the Unitholder's action or inaction, or as a result of an act or omission requested by the Unitholder or Former Unitholder. The Responsible Entity may redeem some or all of the Units held by a Unitholder to satisfy any amount of money due to it by the Unitholder.

Joint Unitholders

- 23.4 Joint Unitholders and former joint Unitholders are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 23.3 applies. Amounts so payable are payable on demand.

No indemnity

- 23.5 A Unitholder need not indemnify the Responsible Entity if there is a deficiency in the Assets or meet the claim of any creditor of the Responsible Entity in respect of the Trust.

Restrictions on Unitholders

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

24. Fees and Expenses

Responsible Entity's fees

- 24.1 The Responsible Entity is entitled to receive out of the Assets of the Trust, for its own benefit or the benefit of a person it determines, a management fee equal to the sum up to 1% per annum of the funds invested in the Trust. The management fee is calculated and payable to the Responsible Entity (or as directed by the Responsible Entity) monthly in arrears.
- 24.2 The Responsible Entity is entitled to be paid out of the Assets of the Trust, for its own benefit or the benefit of a person it determines, an asset identification, fundraising and structuring fee equal to the sum up to 4% of the value of all funds raised by the Trust from Unitholders. This

fee is payable to the Responsible Entity (or as directed by the Responsible Entity) on the issue of Units.

- 24.3 The Responsible Entity is entitled to be paid out of the Assets of the Trust, for its own benefit or the benefit of a person it determines, an administration fee equal to the sum up to 0.05%% per annum of the funds invested in the Trust. This administration fee is calculated and payable to the Responsible Entity (or as directed by the Responsible Entity) monthly in arrears.
- 24.4 The Responsible Entity is entitled to be paid out of the Assets of the Trust, for its own benefit or the benefit of a person it determines, a removal fee equal to the sum up to 5% of the value of the Trust Assets provided the Responsible Entity is not removed for failing to properly perform its duties.
- 24.5 The management fee and administration fee must be paid up to the date of completion of the final winding up of the Trust.

Waiver of fees

- 24.6 The Responsible Entity may waive, rebate, assign or postpone the receipt of any fee (or any part of a fee) or charge a lesser fee than it would otherwise have been entitled to receive under this Constitution. Where the Responsible Entity postpones any fee or any part of a fee the Responsible Entity can charge interest.

Units as payment for fees or Expenses

- 24.7 Subject to the Corporations Act, the Responsible Entity in its discretion may elect that payment of fees and Expenses under this Constitution is to be by way of the issue of Units to the recipient of the fee or Expense (including the Responsible Entity itself) instead of by way of a cash payment of the fee or Expense.
- 24.8 The number of Units to be issued to a person under clause 24.7 will be calculated as follows:

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

where:

- A** is the number of Units to be issued under clause 24.7 (rounded down to the nearest whole number);
- B** is the fee (plus any GST) to be paid or the Expense (plus any GST) to be reimbursed by way of issue of Units;
- C** is the Application Price on the day on which the fee is to be paid or the day on which the Expenses are reimbursable (as applicable).
- 24.9 To the extent that there is any surplus fee or reimbursable expense as a result of any rounding of the calculation in clause 24.8, the Responsible Entity may determine, in its absolute discretion, that any such amount remains payable to the relevant person or that such amount becomes an Asset, provided that such exercise of power would not materially diminish or expand a Unitholder's interest in the income or capital of the Trust.

Establishment Costs

- 24.10 The Responsible Entity may, on behalf of the Trust, pay or reimburse any person the Establishment Costs out of the Assets.

- 24.11 The Responsible Entity or the person entitled to payment of the Establishment Costs (as the case may be) may waive recovery of any of the Establishment Costs, or may be reimbursed from the Assets in a year or years later than the year in which any Establishment Cost was incurred or be able to charge interest.

Expenses

- 24.12 All Expenses incurred by the Responsible Entity including those in connection with the establishment, promotion and operation of the Trust or in properly performing its duties or exercising its powers are payable or can be reimbursed out of the Assets.

- 24.13 The following are Expenses covered by clause 24.12, being Expenses which are in any way connected with:

- (a) **formation and establishment of the Trust:** the preparation, approval, execution, interpretation and enforcement of this Constitution, the formation and establishment of the Trust and any supplemental deed poll amending this Constitution or proposed supplemental deed poll to amend this Constitution, including Advisers' fees;
- (b) **promotion of the Trust:**
 - (i) the preparation, printing, review, distribution and promotion of any Disclosure Document and any marketing material in connection with such offering;
 - (ii) investor or potential investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Trust or any subsequent offering of Units; and
 - (iii) the issuing of Units by the Responsible Entity or any sales of Units by one or more Unitholders, including underwriting costs, brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units;
- (c) **dealing with Assets:**
 - (i) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets or property; and
 - (ii) the investigation, negotiation or acquisition of any possible or proposed investment;
- (d) **the operations of the Trust:** the establishment, administration, management or valuation of the Trust or its Assets and Liabilities, including:
 - (i) the establishment and maintenance of accounts and Registers;
 - (ii) the operation and development of information systems and data processing;
 - (iii) the distribution of cheques, transaction advices, accounts, distribution statements, notices, reports and other documents and information to a Unitholder under this Constitution;
 - (iv) communicating with Unitholders (written or otherwise);
 - (v) dealing with Unitholder enquiries and complaints;

- (vi) the purchase or leasing of premises in or outside of Australia for the Responsible Entity in connection with the Trust;
- (vii) any travel or entertainment costs incurred in connection with the Trust;
- (viii) any membership fees payable in relation to industry bodies of which the Trust or Responsible Entity is apart or whose membership benefits the Trust;
- (ix) fees payable to ASIC and to any other regulatory body in relation to the Trust, the Responsible Entity or Units;
- (x) any membership fees payable to an EDR scheme in relation to the Trust;
- (xi) obtaining and maintaining a credit rating in relation to the Trust;
- (xii) the convening and holding meetings of Unitholders, or of directors of the Responsible Entity, regardless of where the directors live or where the meetings are held, and the implementation of any Resolutions;
- (xiii) Taxes and bank fees;
- (xiv) the engagement of custodians, Advisers and others;
- (xv) the preparation, lodgement and audit of the taxation returns and accounts, and other reports including compliance reports, of the Trust;
- (xvi) the termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a new Responsible Entity;
- (xvii) any court proceedings, arbitration or other dispute concerning the Trust, including proceedings against the Responsible Entity;
- (xviii) obtaining financial accommodation for the Trust, including fees payable to any underwriter or broker;
- (xix) the establishment, promotion and operation of any Controlled Entities and affiliates, whether or not incorporated, including the board of directors and officers (including compliance officer) of Controlled Entities and affiliates (if any), the payment of fees and associated insurance premiums and travel and accommodation costs, regardless of where the directors live or where the meetings are held;
- (xx) the operation of any investment committee, including fees payable to any investment committee member, insurance premiums and travel and accommodation costs;
- (xxi) the operation of any investment committee or Compliance Committee, including fees payable to any investment committee or Compliance Committee Member, insurance premiums and travel and accommodation costs;
- (xxii) a bid in which the Trust is the target, a takeover offer made by the Responsible Entity or Controlled Entity in accordance with Chapter 6 of the Corporations Act or any other offer made by the Responsible Entity or a Controlled Entity to acquire financial products of a target entity or a merger or scheme in which the Trust or the Unitholders participate, provided the Expenses are incurred in the interests of the Unitholders;

- (e) **Controlled Entity:** any Controlled entity as if the charges, expenses and outgoing described in clauses 24.13(a) to 24.13(d)(xxii) applied to a Controlled Entity with any necessary modification (including those charges, expenses and outgoings of any Controlled Entity itself).

This clause 24.13 is not intended to limit Expenses which may be payable or reimbursed under clause 24.12.

- 24.14 If the Responsible Entity incurs Expenses for and on behalf of, or for the benefit of, the Trust and its Controlled Entities as a group, the Responsible Entity may seek payment or reimbursement of some or all of the Expenses out of the assets of a Controlled Entity in its absolute discretion.
- 24.15 Amounts payable under clause 24.12 are in addition to other fees payable under this clause 24 and rights to indemnification or reimbursement conferred under this Constitution or by law.¹

Waiver of Expenses

- 24.16 The Responsible Entity may waive or postpone reimbursement of any or all Expenses under clause 24.12.

GST

- 24.17 The fees payable to the Responsible Entity under this Constitution do not include any amount referable to GST.
- 24.18 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 consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid an additional amount on account of GST. The additional amount is to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Responsible Entity will be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

Liability net of GST

- 24.19 Where a party is entitled to be indemnified or reimbursed for any cost, expense or other liability that it has incurred, the amount of the indemnity or reimbursement shall not include the amount of any Input Tax Credit to which that party is entitled in relation to the relevant cost, expense or other liability. Any reference to a party's liability to pay GST or an entitlement to an Input Tax Credit includes a liability or entitlement of the Representative Member of that party's GST Group.

Differential fee arrangements

- 24.20 Subject to the Corporations Act and any ASIC Relief, the Responsible Entity may agree with any Unitholder fee arrangements in respect of that Unitholder which are different to those provided for under this Constitution.

Availability of fees and indemnity

- 24.21 The Responsible Entity will only be entitled to the fees set out in this clause 24 or the payment or reimbursement of Expenses incurred under this clause 24 in relation to the performance of its duties under this Constitution where it has properly performed those duties.

¹ Section 601GA(2) of the Corporations Act.

25. Procedure on termination

Realisation of Assets

- 25.1 The Responsible Entity must realise the Assets following the Termination Commencement Date.
- 25.2 The realisation of the Assets must be completed within 180 days of the Termination Commencement Date if practicable, and in any event, as soon as practicable.
- 25.3 The Responsible Entity may in its discretion postpone the sale of any Asset if the Responsible Entity considers it would be in the best interests of Unitholders to do so.

Audit of termination of winding-up of the Trust

- 25.4 The Responsible Entity must arrange for an independent audit of the final accounts of the Trust by a registered company auditor after winding-up.

Appointment of liquidator

- 25.5 If the Trust is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Responsible Entity to meet Liabilities from the Assets as and when they fall due, the Responsible Entity may appoint an appropriately qualified liquidator to carry out the winding up, and delegate to the liquidator the powers of the Responsible Entity under this deed as necessary to facilitate the winding up.

Distribution following termination

- 25.6 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), Expenses (including anticipated Expenses of the termination) and Accrued Income Entitlements must be distributed, subject to the rights, obligations and restrictions attaching to any particular Units, to Unitholders in accordance with the following formula:

$$A = \left[\left(\frac{B}{C} \right) \times D \right]$$

where:

- A** is the amount to be distributed to the Unitholder (subject to the rights, obligations and restrictions attaching to any particular Units);
- B** is the aggregate of the number of Units held by the Unitholder as at termination;
- C** is the aggregate of the total number of Units in issue as at termination;
- D** is the amount remaining in the Trust after deduction of the Liabilities, Expenses and Accrued Income Entitlements referred to in this clause 25.6. This amount can not be less than zero.
- 25.7 The Responsible Entity may distribute proceeds of realisation to Unitholders in instalments, with each such instalment to be calculated in accordance with clause 25.6.

Provisions of this Constitution continue to apply

- 25.8 The provisions of this Constitution continue to apply from the Termination Commencement Date until the date of final distribution under clauses 25.6 to 25.7, but during that period the

Responsible Entity may not accept any applications for Units from a person who is not an existing Unitholder.

25.9 The Trust terminates on the date of final distribution under clauses 25.6 and 25.7.

26. Amendments to this Constitution

Responsible Entity may amend

26.1 While the Trust is not a registered scheme, this Constitution may be amended, if the Corporations Act allows by:

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

26.2 While the Trust is a registered scheme, the Constitution may only be amended by:

- (a) Special Resolution by Unitholders entitled to vote on that resolution; or
- (b) deed executed by the Responsible Entity provided the Responsible Entity reasonably considers the amendment will not adversely affect Unitholder's rights.

26.3 If the Constitution is amended by Resolution or Special Resolution, the Responsible Entity must give effect to the amendments by executing a supplemental deed poll and complying with any requirements of the Corporations Act that apply.

26.4 Without limiting clauses 26.1(b) or 26.2(b), the Responsible Entity may amend this Constitution by deed to facilitate the listing or quotation of any Units on any securities exchange.

26.5 Without limiting clauses 26.1 to 26.4, the Responsible Entity has power to amend the fees payable under clause 24.

Operation of the Trust as an AMIT

26.6 Without limiting this clause 26:

- (a) the Responsible Entity may amend this Constitution as the Responsible Entity considers necessary or desirable to facilitate compliance with and the effective operation of the Trust as an AMIT for the purposes of the AMIT Regime, including in relation to amendments to the AMIT Regime or the interpretation or administration of the AMIT Regime; and
 - (b) the Responsible Entity is authorised to take any action under clause 26.6 without seeking approval from Unitholders (subject to the Corporations Act as modified by any applicable ASIC Relief).
-

27. Compliance Committee

27.1 If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be reimbursed by the Responsible Entity in respect of that liability to the extent permitted by the Corporations Act.

Compliance with regulatory required provisions

27.2 If:

- (a) the Corporations Act or ASIC Class Order 13/655 (or any other ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Trust and the Responsible Entity) requires that this Constitution contain certain provisions or can only be relied upon if this Constitution contains certain provisions (**Regulatory Required Provisions**); or
- (b) if any part of this Constitution (**Regulatory Required Part**) is included to comply with the requirements of the Corporations Act or ASIC (**Regulatory Requirement**), and the Regulatory Requirement ceases or changes,

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

Unitholders' authorisation

27.3 The Unitholders:

- (a) authorise the Responsible Entity to make the amendments referred to in clause 27.2 in a deed and, if required, to lodge it with ASIC; and
- (b) agree that, subject to the Corporations Act, their rights under this Constitution do not include or extend to a right not to have this Constitution amended to comply with a Regulatory Requirement or to include Regulatory Required Provisions.

28. Complaints

Complaints procedures

28.1 The Responsible Entity must have a dispute resolution system for retail clients and wholesale clients (each as defined by the Corporations Act), consisting of:

- (a) an internal dispute resolution procedure that:
 - (i) complies with applicable standards and requirements, made or approved by ASIC;
 - (ii) without limiting clause 28.1(a)(i), if the Complaint is made by a retail client, complies with the requirements of section 912A(2) of the Corporations Act; and
- (b) membership with the Australian Financial Complaints Authority.

Additional complaints procedure for wholesale clients

28.2 The Responsible Entity will comply with the following procedure when dealing with Complaints by a Unitholder (who is a 'wholesale client' for the purposes of the Corporations Act) in relation to the Trust:

- (a) if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as possible;
- (b) ensure that the complaint receives proper consideration resulting in a determination by a person or committee of persons designated by the Responsible Entity as appropriate to handle complaints;

- (c) 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;
- (d) consider, in its discretion, any appropriate remedies, including:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Unitholder or former Unitholder as a direct result of the breach (if any);
- (e) respond to complaint promptly in accordance with the urgency of the complaint and, in any event, not more than 45 days after receipt by the Responsible Entity of the complaint, provide:
 - (i) the determination in relation to the complaint;
 - (ii) any remedies available to the Unitholder and
 - (iii) information regarding any further avenue for complaint.

Application of complaints provisions

28.3 Clauses 28.1 and 28.2 only apply if the Trust is a registered scheme.

Complaints relating to AMIT Regime

28.4 If a Unitholder submits a Complaint relating to Determined Trust Components or their Member Component and the Trust is an AMIT, the Responsible Entity must take all steps required or reasonably appropriate under the AMIT Regime to comply with its obligations under the Tax Act.

29. Miscellaneous

Severance

29.1 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.

Governing law

29.2 This Constitution is governed by the laws of Queensland. The Responsible Entity and Unitholders submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

Other obligations excluded

29.3 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 any obligation of the Responsible Entity in its capacity as Responsible Entity of the Trust arising under any statute.

Overriding interpretive provisions

- 29.4 To the extent that any provision in this document is inconsistent with the Corporations Act, that provision will have no effect.
- 29.5 Nothing in any document derogates from the rights of Unitholders under this Constitution in respect of any matter required to be included in this Constitution under section 601GA or section 601GB of the Corporations Act

Counterparts

- 29.6 This Constitution may be executed in any number of counterparts. All counterparts taken together will be deemed to constitute one document.

30. Table of Compliance with Corporations Act

Subject	Section	Clauses
Meetings	Part 2G.4	20
Assets held on trust	601FC(2)	5
Consideration paid	601GA(1)(a)	9
Complaints	601GA(1)(c), 601JF	28
Winding up and termination	601GA(1)(d) & 601NA-NF	3.2, 3.3, 3.4, 25
Indemnity	601GA(2), 601FB(2)	22
Fees & Expenses	601GA(2)	24
Powers	601GA(1)(b), 601GA(2), 601GA(3) & 601FB	17
Withdrawal	601GA(4), 601GAC, 601KA(1) & 601KA(2), 601KB to 601KE, 601KH & 601KI	11, 12
Enforceability	601GB	4
Amendments	601GC	26

Execution

Executed as a deed.

Signed by
**CFMG Equity and Income Funds
Limited ACN 112 753 876**
in accordance with section 127 of the
Corporations Act 2001 by a director and
secretary/director:

Signature of director

JAMES F. F. FRAYNR.
Name of director (please print)

Signature of director/secretary

Scott Holden
Name of director/secretary (please print)