

Centuria Metropolitan REIT No. 2 Constitution

Centuria Property Funds Limited

ABN 11 086 553 639

This document is a consolidated copy of the Constitution as at 27 October 2014 comprising the constitution dated on or around 27 November 2000 ("**Original Constitution**") as amended by various supplemental deeds. This is not a legally binding document. Reference should be made to the Original Constitution and the supplemental deeds for the operative provisions.

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CENTURIA METROPOLITAN REIT NO. 2 CONSTITUTION

RECITALS

This document is the constitution of the Scheme established by trust deed dated 27 November 2000 as amended from time to time.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

These definitions apply in this document.

Accounting Standards means:

- (a) all accounting standards and principles required by an Australian law to be complied with; and
- (b) except to the extent inconsistent with paragraph (a), generally accepted accounting principles.

Affiliate of a body corporate means:

- (a) any related body corporate of that body;
- (b) each director of that body; and
- (c) any person who has a substantial holding in that body.

Application Money means the Cash lodged with an application for Units or the value of the asset (other than Cash) contributed to the Scheme to acquire Units.

ASIC means the Australian Securities and Investments Commission or any body that takes over its functions in relation to managed investment schemes.

ASIC Instrument means:

- (a) an exemption or declaration granted by ASIC under Part 5C.11 of the Corporations Act; or
- (b) any other instrument issued by ASIC under a power conferred on ASIC which applies or relates to the Responsible Entity or the Scheme.

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

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

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Cash includes cheques.

Compliance Committee means a compliance committee for the Scheme for the purposes of the Corporations Act.

Compliance Plan means the compliance plan for the Scheme for the purposes of the Corporations Act.

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

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

CS Facility Operator means the operator of the CS Facility.

Derivative means any investment whose economic performance depends on any change in an interest rate, currency value or exchange rate or the economic performance of another security or commodity (including a warrant, swap, cap, collar and floor).

Distribution Amount of a Member means its portion of the distributable income of the Scheme which is worked out in accordance with clause 11.2.

Distribution Date means the last day of each Distribution Period and any other date specified by the Responsible Entity under clause 11.11.

Distribution Period means a period of not more than 12 months as determined by the Responsible Entity and either notified to Members or specified in an offer document. Where the termination of the Scheme occurs during a Distribution Period, the last Distribution Period will end on the date of termination. The Responsible Entity may change the duration or date of the commencement or end of Distribution Periods.

EM means the notice of meeting and explanatory memorandum for the Scheme issued by the Responsible Entity in or around September 2014.

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

Expenses means expenses, costs, charges, fees, commissions, brokerage, Taxes, interest on borrowings, rates, levies, insurance premiums, valuation fees and any other like payment and all amounts payable in respect of any of them.

Financial Year means the 12 month period beginning on 1 July and ending on 30 June in each year, except that the last Financial Year begins on the last 1 July before the date of final distribution on winding up of the Scheme and ends on the date of that final distribution.

Government Agency means:

- (a) a government or government department or other body;

- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST Law means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IPO Proposal means the admission of the Scheme to the Official List and the Official Quotation of the Units.

Issue Price has the meaning given by clause 6.2.

Issue Provision has the meaning in clause 6.2.

Issuer Sponsored Holding means a holding on an electronic sub register maintained by the Responsible Entity in accordance with the Listing Rules.

Listing Rules means the listing rules of ASX and any other applicable rules of ASX which are applicable while the Scheme is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

Market Price of a Unit on a particular day is:

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

the price per Unit determined by an adviser who:

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

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

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

Meeting means a meeting of Members.

Member means a person whose name is entered in the Register as the holder of a Unit.

Minimum Holding means the minimum holding for the Scheme set by the Responsible Entity, expressed in either or both dollar terms and number of Units.

Net Scheme Value means the Scheme Value less the Scheme Liabilities.

Offer Document means the product disclosure statement for Stapled Securities issued by the Responsible Entity in or around November 2014.

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

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

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

- (a) expenses arising in deriving that income including, but not limited to:
 - (i) property outgoings;
 - (ii) repairs and maintenance;
 - (iii) interest and other borrowing costs;
 - (iv) fees paid to the Responsible Entity;
 - (v) Tax paid by the Responsible Entity; and
- (b) realised losses on disposal of property or investments.

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

Option means an option granted under clause 6.10 to acquire Units by issue.

Redemption Amount means the amount worked out as follows:

Redemption Price x number of Units being redeemed

Redemption Offer means the offer for the redemption of Units made by the Responsible Entity under the EM.

Redemption Price has the meaning given by clause 14.1.

Redemption Provision has the meaning in clause 14.1.

Redemption Request means a request by a Member to the Responsible Entity to redeem all or some of the Member's Units.

Register means the register of Members kept as required by the Corporations Act.

Registrar means the body responsible for keeping the Register.

Responsible Entity means:

- (a) the body corporate named at the beginning of this document; or
- (b) if another body corporate holds office as responsible entity of the Scheme, that body corporate.

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

Scheme means the managed investment scheme regulated by this document.

Scheme Liabilities, as at a particular day, means the total, as at that day, of:

- (a) the amount of losses, Taxes, fees, expenses and other liabilities of the Responsible Entity in relation to the Scheme; and
- (b) amounts the Responsible Entity determines consistently with the Accounting Standards or in consultation with an auditor, including reasonable provision for distributions, contingent or future losses, expenses and other liabilities of the Responsible Entity in relation to the Scheme,

and includes accrued but unpaid Member entitlements in connection with the Scheme but excludes liabilities to Members arising by virtue of the right of Members to request redemption of their Units or to participate in the distribution of the Scheme Property on the winding up of the Scheme.

Scheme Property means property that is scheme property of the Scheme for the purposes of the Corporations Act, being property held by or for the Responsible Entity in connection with the Scheme.

Scheme Value means the value of the Scheme Property calculated in accordance with clause 8.

Stapled has the meaning given in clause 34.1.

Stapled Fund has the meaning given in clause 34.1.

Stapling has the meaning given in clause 34.1.

Stapling Provisions means the provisions of clause 34.

Stapled Security has the meaning given in clause 34.1.

Tax means a tax, levy, duty, charge, deduction or withholding (however it is described) that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Tax Act means the *Income Tax Assessment Act 1936* (Cth).

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

Unit means an undivided share in the beneficial interest in the Scheme Property as provided in this document.

Unit Value means the amount worked out using the formula:

$$\text{Net Scheme Value} \div \text{Units in Issue}$$

Units in Issue means the number of Units that have been issued less the number that have been redeemed.

Valuer means a valuer appointed by the Responsible Entity that is independent of the Responsible Entity and has experience in valuing the particular kind of asset or property.

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

1.2 Rules for interpreting this document

Headings and footnotes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept); such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) Words (other than words defined in clause 1.1) defined in the Corporations Act have the same meaning in this document where they relate to the same matters as the matters for which they were defined in the Corporations Act.
- (k) A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act.
- (l) A reference to **GST** includes any other Commonwealth, State or Territory goods and services tax, or any Commonwealth, State or Territory tax applying to a transaction in a way similar to GST.

- (m) Words defined in the GST Law have the same meaning in clauses 1.2(n) and (o) and clause 30.
- (n) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
- (o) If a person is notionally liable to pay GST under the GST Law or is liable to pay an amount which is treated as GST under the GST Law, references to GST which the person must pay extend to any notional liability of the person to pay GST and references to an input tax credit extend to any notional input tax credit to which the person is entitled.

1.3 **Business Days**

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 **Application of Corporations Act and Listing Rules**

In this deed:

- (a) a clause which is stated to be subject to the Corporations Act or apply except as the Corporations Act provides, is only subject to, or its application restricted by, the Corporations Act at any time while the Scheme is a registered scheme; and
- (b) a requirement of the Listing Rules only applies while the Scheme is admitted to the Official List.

2. **THIS DOCUMENT**

2.1 **Document binds Members and Responsible Entity**

This document binds the Responsible Entity and each Member as well as any person who claims through any of them.

2.2 **No agency or partnership created**

None of the following:

- (a) this document;
- (b) a trust created under this document;
- (c) a trust associated with this document; and

- (d) except so far as the agreement expressly provides otherwise, an agreement entered into in connection with the Scheme,

creates a relationship of principal and agent, or of partnership, between the Members and the Responsible Entity, or between the Members themselves.

2.3 If there are exemptions or modifications etc.

- (a) Subject to paragraph (c), if relief from the provisions of the Corporations Act is given by an ASIC Instrument, the provisions of this document operate subject to the ASIC Instrument.
- (b) Subject to paragraph (c), if relief from the provisions of the Corporations Act is given by an ASIC Instrument on condition that this document includes specified provisions, then, for so long as the condition applies, the provisions:
 - (i) are taken to be included in this document; and
 - (ii) prevail over the other provisions of this document to the extent of any inconsistency.
- (c) The specified provisions referred to in paragraph (b) are taken to be included in this document, unless the Responsible Entity determines that that is not the case, or does not comply with any relevant conditions.

3. NAME OF THE SCHEME

3.1 Initial name

The name of the Scheme is Centuria Metropolitan REIT No. 2.

3.2 Change of name generally

The Responsible Entity may change the Scheme's name.

3.3 Change of name on the Responsible Entity's retirement or removal

If the Responsible Entity retires or is removed and the name of the Scheme implies an association with the Responsible Entity or its business, the new responsible entity must, unless otherwise approved by the Responsible Entity, change the Scheme's name to a name that does not imply the association within 7 days after the Responsible Entity retires or is removed and withdraw any current offer document.

4. SCHEME PROPERTY

4.1 Scheme Property held for Members

The Responsible Entity is the Responsible Entity of the Scheme. The Responsible Entity holds the Scheme Property on trust for the Members.

4.2 Holding of Scheme Property

All Scheme Property must be held:

- (a) by the Responsible Entity; or
- (b) if required by law or if the Responsible Entity thinks it necessary or appropriate, by a custodian or nominee appointed by the Responsible Entity.

4.3 Custodian or nominee holding Scheme Property

A custodian or nominee must hold the Scheme Property either:

- (a) directly in its name; or
- (b) indirectly by any asset title, transfer or holding system approved by the Responsible Entity.

4.4 Scheme Property to be identified and held separately

The Responsible Entity, its custodians and nominees must clearly identify Scheme Property which the Responsible Entity holds as property of the Scheme.

5. UNITS

5.1 Scheme Property divided into Units

The beneficial interest in the Scheme Property is divided into Units.

5.2 Nature of Member's interest in Scheme Property

- (a) Subject to the rights attached to a class of Units, each Unit confers on a Member an equal undivided interest in the Scheme Property.
- (b) A Unit confers on a Member an interest in the Scheme Property as a whole. It does not confer on a Member an interest in any particular Scheme Property.

5.3 Rights attached to Units

Subject to the rights attached to a class of Units, all Units have the same rights attached to them. However, the Responsible Entity may determine that Units of the same class be issued with different rights or different terms, for example, that a Unit issued during a Distribution Period may participate in distributions of income for that Distribution Period on a preferential basis or pro rata based on the part of that Distribution Period for which it was on issue.

5.4 Consolidation, division and reclassification of Units

The Responsible Entity may consolidate, divide or reclassify Units, as it thinks fit.

5.5 **Classes of Units**

The Responsible Entity may:

- (a) issue different classes of Units; or
- (b) divide issued Units into different classes.

The Responsible Entity must determine the rights attached to a class of Units when it issues a Unit in the class or divides issued Units into different classes. For example, the Responsible Entity may determine that Units will have different rights to participate in distributions of income or capital of the Scheme. Such rights will prevail over the provisions of this document to the extent of any inconsistency.

5.6 **No fractions of Units**

The Responsible Entity cannot issue a fraction of a Unit.

5.7 **Rounding**

Where any calculation done in accordance with this document or the Corporations Act would otherwise result in the issue or redemption of a fraction of a Unit or a consolidation or division of Units would otherwise result in the creation of a fraction of a Unit:

- (a) the number of Units to be issued or redeemed or resulting from the consolidation or division in respect of a holding may be rounded down or up as the Responsible Entity determines to the nearest whole number; and
- (b) the excess Application Money or other property which results from rounding on an issue or redemption becomes Scheme Property.

6. **ISSUING UNITS AND ISSUE PRICE**

6.1 **Responsible Entity may issue Units**

The Responsible Entity may issue a Unit on application, on exercise of an option granted by the Responsible Entity for the acquisition of Units, or under an arrangement to reinvest distributions to acquire Units.

6.2 **Issue Price**

Subject to clause 6.9 and the Stapling Provisions, a Unit may only be issued at its Issue Price, which is:

- (a) for issues made pursuant to the offer of Units set out in the first product disclosure statement for the Scheme issued after 1 January 2007, the greater of \$0.50 and the Unit Value as at the time of issue of the Unit plus the Issue Provision;
- (b) in the case of a proportionate offer (including a rights issue), in accordance with clause 6.4;

- (c) in the case of a placement of Units or issue of Units under a security purchase plan while Units are Officially Quoted, in accordance with clause 6.6;
- (d) in the case of a reinvestment of distributions, in accordance with clauses 6.7 and 6.8;
- (e) in the case of Units issued pursuant to the exercise of an Option, in accordance with clause 6.10;
- (f) subject to paragraphs (b) to (e), in all other circumstances while Units are Officially Quoted, the Market Price of Units immediately before the date on which or as at which the Issue Price is to be calculated; and
- (g) in all other circumstances while Units are not Officially Quoted, the Unit Value as at the time of issue of the Unit plus the Issue Provision.

In this clause, Issue Provision means at any time, an amount (if any) which the Responsible Entity determines on account of all Expenses which may be incurred or are expected to be incurred by the Responsible Entity if the Scheme was established, Units were issued and all Scheme Property held at that time were to be acquired at that time. If the Responsible Entity considers it appropriate, it may determine the Issue Provision to be a lesser sum or zero.

6.3 **Rounding of Issue Price**

The Issue Price may be rounded up or down as the Responsible Entity thinks fit.

6.4 **Pro rata rights issues**

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

- (a) provided that, subject to clause 6.4(b), all Members are offered Units in proportion to the value of the Member's Units (or, where the offer is made only to Members who hold Units in a particular class of Units, to the value of the Member's Units in that class) at the relevant date; but
- (b) the Responsible Entity may exclude a Member from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Instrument,

whether or not the right of entitlement is renounceable.

6.5 **Terms of pro rata issues**

- (a) Any offer made under clause 6.4 must specify the period during which it may be accepted. It must be made to Members in proportion to the value of their respective Unit holdings on the date determined by the Responsible Entity under clause 6.4. The Responsible Entity may adjust any entitlement

to accord with the Listing Rules and, in the case of fractions, the Responsible Entity must offer the next higher whole number of Units. Any Member may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

- (b) Any Units offered for subscription under clause 6.4 which are not subscribed for within the period of acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person. The Issue Price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 6.4, the underwriter may take up any Units not subscribed for by Members.

6.6 Placements and security purchase plan while listed

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

6.7 Reinvestment while listed

If reinvestment of distributions payable to a Member under clause 11.8 applies while the Units are Officially Quoted, subject to the Listing Rules, the Responsible Entity may issue Units on the basis that the Issue Price for each additional Unit issued or transferred upon reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the Issue Price by the date at which Units are to be issued upon reinvestment, the Issue Price will be the average of the VWAP for Units for each of the 10 Trading Days from and including the third Trading Day after the Distribution Date for the relevant Distribution Period.

6.8 Reinvestment while not listed

While Units are not Officially Quoted, the Responsible Entity may issue Units on the basis that the Issue Price payable for each additional Unit on reinvestment of distributions payable to a Member under clause 11.8 is the price determined by the Responsible Entity. If the Responsible Entity has not determined the Issue Price by the date at which Units are to be issued upon reinvestment, the Issue Price will be as calculated under clause 6.2(g) on the first Business Day after the end of the Distribution Period to which the distribution relates.

6.9 Partly paid units

The Responsible Entity may issue partly paid Units on such terms, including terms as to entitlement to participate in distributions of income or capital, as the Responsible Entity may determine.

6.10 Options

- (a) Subject to the Listing Rules and any applicable ASIC Instrument, the Responsible Entity may grant options, on terms that no consideration is paid for the grant of the option and on such other terms as the Responsible Entity determines, to acquire Units by issue on such issue terms as the Responsible Entity determines and on the basis that the exercise price for a Unit to be issued on exercise of the option is the price determined by the Responsible Entity in the case of an offer which complies with the Listing Rules and any applicable ASIC Instrument and the principles in clause 6.4, and otherwise as determined under clauses 6.2(f) or 6.2(g) (as applicable).
- (b) If the Scheme is a registered scheme and the Responsible Entity is making an offer of options which complies with the principles set out in clause 6.4, the Responsible Entity is not required to offer options to persons whose address on the Register is outside Australia in the circumstances permitted under the applicable ASIC Instrument and the Listing Rules.

7. APPLICATION PROCEDURE

7.1 Form of application

An application for Units must be in such form as the Responsible Entity determines. The Responsible Entity may determine that such application need not be in writing.

7.2 Deciding applications

The Responsible Entity may reject all or part of an application for Units without giving a reason for doing so.

7.3 What happens to rejected applications

If the Responsible Entity rejects an application for Units, it must:

- (a) give the applicant written notice of the rejection; and
- (b) cause an amount equal to the Application Money (less any Taxes and bank fees in connection with the application) to be paid back to the applicant.

7.4 Application Money

Application Money must be:

- (a) Cash; or
- (b) at the discretion of the Responsible Entity and subject to any conditions it imposes, an asset (other than Cash) or a combination of that and Cash,

and in the case of paragraph (b):

- (c) the contribution is taken to be the value of the asset as determined by a Valuer;

- (d) the application for Units cannot be accepted unless the asset is vested in the Responsible Entity or its custodian; and
- (e) any costs associated with the valuation and vesting of the asset are payable or can be reimbursed out of the Scheme Property.

7.5 **Number of Units to be issued**

The number of Units to be issued on an application for Units is worked out as follows:

$$\frac{\text{Application Money}}{\text{Issue Price}}$$

7.6 **Default in payment of Application Money**

If:

- (a) a cheque or similar instrument used to pay the Application Money is dishonoured on first presentation; or
- (b) an electronic transfer of funds to pay the Application Money is not actually received by the Responsible Entity,

the payment is taken never to have been made and any issue of Units against the Application Money is void.

7.7 **When Units are issued**

A Unit is taken to be issued when the name of the person to whom it is issued is entered in the Register as the holder of the Unit.

8. VALUING SCHEME PROPERTY

8.1 **Valuation roll to be kept**

The Responsible Entity must set up and keep a valuation roll which records the value of the Scheme Property.

8.2 **When the Scheme Property is to be valued**

The Responsible Entity:

- (a) may have the Scheme Property valued by a Valuer at any time; and
- (b) must have it done at regular intervals appropriate to the nature of the Scheme Property.

8.3 **Method for valuing Scheme Property**

The value of the Scheme Property for working out Scheme Value is its market value, unless the Responsible Entity in consultation with the Scheme auditor:

- (a) thinks it an inappropriate way of valuing particular Scheme Property; and
- (b) determines another way of valuing that Scheme Property.

8.4 Adjustments to Scheme Value and Net Scheme Value

In determining the Scheme Value and the Net Scheme Value, the Responsible Entity may make such incremental and decremental adjustments and provisions as it reasonably determines in consultation with the Scheme Auditor.

9. SCHEME VALUES

9.1 When the Scheme Value and Net Scheme Value is to be worked out

The Responsible Entity:

- (a) must work out the Scheme Value and the Net Scheme Value each time it is necessary to do so; and
- (b) may work them out at any other times it thinks fit, including more than once a day.

9.2 Effect of determination

The Responsible Entity's determination of a Scheme Value or Net Scheme Value binds all the Members.

10. PAYING LIABILITIES AND EXPENSES

The Responsible Entity may determine whether Liabilities and expenses of the Scheme for a Distribution Period are to be paid out of the income of the Scheme for that Distribution Period or out of the balance of the Scheme Property.

11. DISTRIBUTIONS

11.1 Working out distributable income

- (a) The Responsible Entity must work out the distributable income of the Scheme for each Distribution Period in its absolute discretion.
- (b) If no determination is made under clause 11.1(a) in respect of a Distribution Period before the end of that Distribution Period, the distributable income for that Distribution Period is equal to the Operating Income for that Distribution Period provided that if the Operating Income is less than the amount which if distributed in cash to Members for the Distribution Period would prevent the Responsible Entity being liable to tax on the income of the Scheme under section 99 or section 99A of the Tax Act for the Financial Year, the distributable income is the minimum amount to ensure the Responsible Entity is not liable to tax.
- (c) The preparation of the accounts of the Scheme in accordance with current Australian accounting standards and generally accepted accounting

principles is not to be regarded as a determination of the method for calculating the distributable income under this clause.

11.2 Working out Member's Distribution Amount

Subject to clause 14.5 and the rights attached to any particular Unit, a Member's Distribution Amount for a Distribution Period is the amount worked out by the Responsible Entity using the formula:

$$\text{distributable income of the Scheme for the Distribution Period} \times \frac{\text{Number of Units the Member holds}}{\text{Units in Issue}}$$

where the number of Units the Member holds, and the Units in Issue, are worked out as at 5:00pm (local time in the place where the Register is kept) on the Distribution Date.

11.3 Member's present entitlement to Distribution Amount

Subject to clause 14.5 and the rights attached to any particular Unit, each person who is a Member at 5:00pm (local time in the place where the Register is kept) on the Distribution Date is presently and irrevocably entitled at the end of the relevant Distribution Period to its Distribution Amount for that Distribution Period.

11.4 Transfer of Distribution Amounts to distribution account

As soon as possible after the Distribution Date, the Responsible Entity must transfer Members' Distribution Amounts for the relevant Distribution Period to a separate distribution account to be held for the Members entitled to the Distribution Amounts. When transferred, these amounts cease to be part of the Scheme Property.

11.5 Deductions that may be made from Distribution Amount

The Responsible Entity may deduct from a Member's Distribution Amount:

- (a) the amount (or the amount it reasonably determines to be) of any Taxes, fees and charges relating to the Member or the Member's investment in the Scheme accrued for the relevant Distribution Period;
- (b) any fees or other amounts payable by the Member to the Responsible Entity, and
- (c) any amount in pro-rata proportions to all Members that the Responsible Entity in its absolute discretion determines is required for the proper purposes of the Scheme, provided that in each 12 month period ending on 30 June of each year if the Responsible Entity has not exercised this discretion by 7pm Sydney time on 30 June of the relevant year it may not deduct any amount from a Member's Distribution Amount under this clause 11.5(c),

before paying the Member's Distribution Amount or reinvesting it to acquire Units.

11.6 When Distribution Amount is paid

The Responsible Entity must pay the Member its Distribution Amount within 90 days after the relevant Distribution Date or any longer period allowed by law.

11.7 Income held over to next Distribution Period

The Responsible Entity may treat an item of income received or accrued during a Distribution Period as having accrued in the next Distribution Period, but only if it is not practicable to deal with it in the first Distribution Period.

11.8 Reinvestment of distributions

The Responsible Entity may allow Members to reinvest all or some of any distribution to acquire Units. If the Responsible Entity decides to allow reinvestment, it:

- (a) must notify Members of the procedure for reinvestment and any changes to the procedure; and
- (b) is taken to have received and accepted an application to reinvest distributions on the relevant Distribution Date.

11.9 Unreceived income

If an amount included in the distributable income of the Scheme for a Distribution Period is not actually received during that Distribution Period, the Responsible Entity may set it off against the income for a later Distribution Period and make appropriate adjustments to payments and entitlements.

11.10 Transfer of capital to enable minimum distribution of net income

The Responsible Entity may transfer capital to the distribution account to enable distribution to Members.

11.11 Interim distributions of income

The Responsible Entity may at any time make an interim distribution of income of the Scheme to the Members. If it does:

- (a) the Responsible Entity must specify a date as the Distribution Date; and
- (b) this clause 11 applies to the interim distribution as if it were a distribution of distributable income.

11.12 Capital distributions

The Responsible Entity may at any time distribute capital of the Scheme to the Members. Subject to the rights attached to any particular Unit, a person is entitled to the same portion of the capital as if it were distributable income. The capital may be distributed in Cash or by way of additional Units.

11.13 Determination whether capital or income

The question of whether an amount is capital or income is to be determined by the Responsible Entity.

11.14 Distribution statements to be sent out

The Responsible Entity must cause a distribution statement for each Distribution Period to be sent to the Members.

12. RESERVES

12.1 Establishing reserves

The Responsible Entity, after consulting the Auditor, may establish any reserve it thinks fit.

12.2 Crediting net capital gains and losses to a reserve

The Responsible Entity may:

- (a) separate net realised and unrealised capital gains and losses of the Scheme from other receipts, profits and gains of the Scheme; and
- (b) credit them to a reserve.

12.3 Distributing reserves

The Responsible Entity may distribute reserves to the Members in the same way as distributable income.

13. WITHDRAWING FROM THE SCHEME

13.1 Redemption Request

A Member may give the Responsible Entity a Redemption Request specifying the number of Units to be redeemed or, with the Responsible Entity's approval, the amount of the proceeds which the Member wishes to receive from the redemption.

13.2 No obligation to redeem

The Responsible Entity is not obliged to redeem any Units pursuant to a Redemption Request.

13.3 Redemption period

If the Responsible Entity accepts a Redemption Request under clause 13.1, the Responsible Entity must, while the Scheme is liquid, satisfy the Redemption Request within 360 days of receipt.

13.4 **Responsible Entity may cause redemption**

The Responsible Entity may at any time cause the redemption out of the property of the Scheme of any or all of a Member's Units on such terms and conditions as it determines.

13.5 **Minimum holding**

If compliance with a Redemption Request would result in the Member holding fewer Units than the current Minimum Holding, the Responsible Entity may treat the Redemption Request as relating to the Member's entire holding of Units.

13.6 **Minimum redemption**

The Responsible Entity need not redeem Units having a value less than the value of a Minimum Holding unless the Redemption Request relates to the balance of the Member's holding.

13.7 **Notice irrevocable**

A Member may not withdraw a Redemption Request unless the Responsible Entity agrees.

13.8 **Order**

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

13.9 **Redemption while Scheme illiquid**

While the Scheme is not liquid, the Member's only right to redeem any of its Units or otherwise withdraw (wholly or partly) from the Scheme is to do so in accordance with the terms of the Corporations Act and any current withdrawal offer made by the Responsible Entity.

14. **REDEMPTION PRICE**

14.1 **Working out Redemption Price**

A Unit may only be redeemed at its Redemption Price, which is:

- (a) while the Scheme is liquid - the Unit Value as at the preceding 30 June or such other time as determined by the Responsible Entity less the Redemption Provision or for a Unit redeemed under the Redemption Offer, \$0.94; and
- (b) while the Scheme is not liquid - the Unit Value as at the preceding 30 June or such other time as determined by the Responsible Entity less the Redemption Provision.

In this clause, "**Redemption Provision**" is the amount (if any) determined by the Responsible Entity in respect of, or as an allowance for, costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, Taxes and other costs

that may be incurred or are expected to be incurred by the Responsible Entity or its Affiliates in connection with:

- (a) the redemption;
- (b) the realisation and conversion into cash of Scheme Property to satisfy a particular Redemption Request;
- (c) where all or part of the Redemption Amount is paid by transferring Scheme Property, the valuation and transfer of the Scheme Property; and
- (d) the acquisition of Units by an Affiliate of the Responsible Entity to fund a redemption.

14.2 Rounding of Redemption Price

The Redemption Price may be rounded up or down as the Responsible Entity thinks fit.

14.3 Deducting redemption fees and other amounts from Redemption Amount

The Responsible Entity may deduct from the Redemption Amount payable to a Member any redemption fees and other amounts owing by the Member to the Responsible Entity.

14.4 Payment of Redemption Amount

The Responsible Entity may pay the Redemption Amount:

- (a) in Cash;
- (b) by transferring Scheme Property to the Member; or
- (c) a combination of both,

but in the case of paragraph (b) or (c):

- (d) the value of the Scheme Property and the Cash paid (if any) must be equal to the Redemption Amount;
- (e) the value of the Scheme Property must be based on a valuation carried out by a Valuer; and
- (f) the costs associated with valuation and transfer of the Scheme Property are payable or can be reimbursed out of the Scheme Property at the discretion of the Responsible Entity.

14.5 Redemption proceeds

The Responsible Entity may determine at its discretion that the Redemption Price will comprise income as well as capital in which case members will be presently entitled to such income component. In the absence of such a determination, the Redemption Price will comprise capital only.

14.6 Source of funds

To satisfy a Redemption Request, the Responsible Entity may apply or realise any part of the Scheme Property or obtain financial accommodation. The Responsible Entity is not obliged to pay any part of the Redemption Price out of its own funds.

14.7 Buy-backs

- (a) While the Units are Officially Quoted and not Stapled, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, purchase Units on the ASX or any other financial market on which the trading of Units is permitted, and also off-market, and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units.
- (b) While the Units are Officially Quoted and Stapled, the Responsible Entity and the responsible entities of each other Stapled Fund together may, subject to the Corporations Act and the Listing Rules, purchase Stapled Securities on the ASX or any other financial market on which the trading of Stapled Securities is permitted, and also off-market. When they do so, each responsible entity of each other Stapled Fund will be regarded as having purchased the units that they have issued and the Responsible Entity will be regarded as having purchased the Units, and upon such purchase Stapling will cease in relation to the Stapled Securities so purchased, and the units (including the Units) will be cancelled. No Redemption Price is payable on cancellation of the Units.
- (c) The price of each other unit in a Stapled Fund and a Unit purchased under clause 14.7(b) will be such allocation of the purchase price of the Stapled Security as agreed between the Responsible Entity and the responsible entities of each other Stapled Fund.

15. TRANSFER OF UNITS

15.1 Transfers

Units may be transferred subject to their terms, this clause and clause 37.

15.2 Transfer if not Officially Quoted

Subject to clause 15.3, if Units are not Officially Quoted a Member may transfer a Unit by a written document that:

- (a) relates only to Units of one class;
- (b) is executed by both the transferor and the transferee; and
- (c) is in a form approved by the Responsible Entity.

The Responsible Entity must not register a transfer that does not comply with this clause 15.2.

15.3 **Delivery of transfer if not Officially Quoted**

A transfer document under clause 15.2 must be:

- (a) delivered to the registered office of the Responsible Entity or the address of the Register last notified to Members by the Responsible Entity; and
- (b) marked with payment of any stamp duty payable.

Property in and title to a transfer document that is delivered to the Responsible Entity (but not the Units to which it relates) passes to the Responsible Entity on delivery.

15.4 **Transfer if Officially Quoted**

Subject to this deed and the Listing Rules, if a Unit is Officially Quoted, it is transferable:

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

If a duly completed transfer document:

- (c) is used to transfer a Unit in accordance with paragraph (b); and
- (d) is left for registration with the Registrar and marked with payment of any stamp duty payable,

the Responsible Entity must, subject to the Responsible Entity's powers, register the transferee as the holder of the Unit.

15.5 **Refusal to register transfer if not Officially Quoted**

If Units are not Officially Quoted, the Responsible Entity may refuse to register a transfer of Units without giving any reason for doing so, but if it does refuse to register a transfer, it must give the transferee written notice of the refusal within 2 months after the date on which the transfer was delivered to it.

15.6 **Responsible Entity may request holding lock or refuse to register transfer**

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

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

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

The Responsible Entity must:

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

if the Corporations Act or Listing Rules require the Responsible Entity to do so or the transfer is in breach of clause 37.

15.8 Notice of holding locks and refusal to register transfer

If, in the exercise of its rights under clause 15.6 or 15.7, the Responsible Entity requests the application of a holding lock to prevent a transfer of Units or refuses to register a transfer of Units, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

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

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

15.9 Transferor remains holder until transfer registered

Except as provided by any applicable Operating Rules of a CS Facility, the transferor of a Unit remains the holder of it until the transfer is registered and the transferee's name is entered in the Register as the holder of the Unit.

15.10 Responsible Entity may suspend registration of transfers

The Responsible Entity may suspend registration of transfers of Units at the times and for the periods it thinks fit if Units are not Officially Quoted or to the extent (if at all) permitted by the Operating Rules of a CS Facility.

15.11 Powers of attorney

The Responsible Entity may assume, as against a Member, that a power of attorney granted by that Member that is lodged with or produced or exhibited to the Responsible Entity remains in force, and may rely on it, until the Responsible Entity receives express notice in writing at its registered office of:

- (a) the revocation of the power of attorney; or
- (b) the death, dissolution or insolvency of the Member.

15.12 **Consideration for transfer**

The Responsible Entity need not concern itself with the consideration for a transfer of a Unit.

15.13 **Options**

This clause 15 applies to Options subject to any necessary modifications that are required in respect of any such transfers.

16. **TRANSMISSION OF UNITS**

16.1 **Death of joint holder**

The Responsible Entity must recognise only the surviving joint holders as being entitled to Units registered jointly in the names of a deceased Member and others. The estate of the deceased joint holder is not released from any liability in respect of the Units.

16.2 **Death of single holder**

The Responsible Entity must not recognise anyone except the legal personal representative of the deceased Member as having any title to Units registered in the sole name of a deceased Member. If the personal representative gives the Responsible Entity the documents described in the Corporations Act or other information that satisfies the Responsible Entity of the representative's entitlement to be registered as holder of the Units:

- (a) subject to clauses 15.5 and 16.4, the Responsible Entity must register the personal representative as the holder of the Units as soon as possible after receipt of a written and signed notice to the Responsible Entity from the representative requiring it to do so; and
- (b) whether or not registered as the holder of the Units, the personal representative:
 - (i) may, subject to clause 15, transfer the Units to another person; and
 - (ii) has the same rights as the deceased Member.

16.3 **Transmission of Units on insolvency or mental incapacity**

Subject to the *Bankruptcy Act* 1966 (Cth), if a person entitled to Units because of the insolvency or mental incapacity of a Member gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as holder of the Units:

- (a) subject to clauses 15.5 and 16.4, the Responsible Entity must register that person as the holder of the Units as soon as possible after receipt of a written and signed notice to the Responsible Entity from that person requiring it to do so; and
- (b) whether or not registered as the holder of the Units, that person:

- (i) may, subject to clause 15, transfer the Units to another person; and
- (ii) has the same rights as the insolvent or incapable Member.

16.4 Refusal to register holder

The Responsible Entity has the same right to refuse to register a personal representative or person entitled to Units on the insolvency or mental incapacity of a Member as it would have if that person were the transferee named in a transfer signed by a living, solvent, competent Member.

17. INVESTMENT ADVICES

17.1 Requirement for investment advices

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may determine whether or not investment advices will be issued for Units.

17.2 Cancellation, replacement of investment advices

The Responsible Entity may cancel or replace any investment advices in the circumstances and subject to the conditions determined by the Responsible Entity.

17.3 Signature of investment advices

Investment advices may be prepared as the Responsible Entity determines and need not be signed.

17.4 Evidence of ownership

Investment advices will not be evidence of ownership of Units.

18. REGISTER

18.1 Changes to details in Register

A Member must promptly notify the Responsible Entity of any change to its name or address and the Responsible Entity must update the Register to reflect the change.

18.2 Non-beneficial holders of Units

Subject to this document, the Responsible Entity:

- (a) may treat the person named in the Register as the holder of the Unit as the absolute owner of it; and
- (b) need not recognise any equitable or other claim or interest in a Unit by any person except the registered holder,

unless otherwise ordered by a court of competent jurisdiction or required by statute.

19. MEMBERS

19.1 Joint tenancy

Where 2 or more persons are registered as the holder of a Unit, they hold it as joint tenants and not as tenants in common unless the Responsible Entity otherwise agrees.

19.2 Things a Member has no right to do

Except as otherwise provided by this document or the Corporations Act, a Member has no right or power, merely because it is a Member:

- (a) to interfere with, or question the exercise or non-exercise of, any power, duty or right of the Responsible Entity;
- (b) to exercise a right in respect of the Scheme Property;
- (c) to lodge, in respect of the Scheme Property, a caveat or other document that prohibits (whether conditionally or not) an action, or the registration of a dealing, in respect of the Scheme Property;
- (d) to claim an interest in the Scheme Property; or
- (e) to require the Scheme Property to be transferred to the Member.

19.3 Member's liability limited

- (a) If there is not enough Scheme Property to meet the liabilities of the Responsible Entity in relation to the Scheme, a Member does not have to:
 - (i) make up the difference; or
 - (ii) indemnify or make a payment to the Responsible Entity or any of its creditors.
- (b) The liability of a Member is limited to the unpaid part (if any) of the Issue Price of its Units.
- (c) A Member has no liability to the creditors of the Responsible Entity.

19.4 Convening and conducting of Meetings

- (a) Subject to the Corporations Act and the Listing Rules, Meetings may be convened and conducted in such manner as the Responsible Entity shall in its discretion determine, including requirements in relation to proxies and their use.
- (b) Accidental omission to give notice to, or the non-receipt of notice of meeting by a Member will not invalidate the Meeting.

- (c) The chairman may adjourn a Meeting for any reason to such place and at such time as he thinks fit. Subject to the Corporations Act, adjournment of a Meeting need not be notified to Members.
- (d) The chairman may cancel or postpone a Meeting for any reason to a place and time as the chairman thinks fit.
- (e) The decision of the chairman on any matter relating to the conduct of a Meeting is final.
- (f) The quorum for a Meeting shall be 2 Members at all times during the Meeting present in person or by proxy or, in the case of a body corporate, by representative, holding at least 10% by value of the Units in Issue at such time prior to the date of the Meeting as is determined by the Responsible Entity.
- (g) Each individual present at a Meeting may only be counted once towards a quorum.
- (h) If a Meeting is called by Members, or as a result of a request of Members, under the Corporations Act and a quorum is not present within 30 minutes after the time for which the Meeting is called, the Meeting is dissolved.
- (i) If a poll is demanded, it will be taken in such manner and at such time as the chairman directs.
- (j) Where there is an equality of votes, the chairman shall have a casting vote.

19.5 Proxies

- (a) An appointment of a proxy or representative of a body corporate must be signed in such manner as the Responsible Entity requires.
- (b) The Responsible Entity may determine that proxies may be received less than 48 hours before the Meeting.
- (c) The appointment of a proxy may be a standing one. However, no proxy is valid after the expiration of 12 months from the date of its execution unless the Responsible Entity determines otherwise.
- (f) The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

19.6 Form and effect of resolutions

- (a) A resolution passed at a Meeting shall be binding on all Members, whether or not present at such Meeting. The decision of the chairman on any matter shall be final.
- (b) If all Members shall have signed a resolution sent by the Responsible Entity, that resolution shall be deemed to have been passed by the requisite majority of those Members at a Meeting on the day and at the time at which

the resolution was last signed by a Member. The resolution may consist of several documents in the same form, each signed by one or more Members. In respect of such a resolution a Member has the number of votes determined in accordance with section 253C(2) of the Corporations Act. The value of a Member's total interests must be determined at such time as the Responsible Entity specifies.

19.7 Class meetings

The provisions of Part 2G.4 of the Corporations Act, and the provisions of clauses 19.4 to 19.6 relating to Meetings, apply so far as they can and with such changes as are necessary, to each separate Meeting of Members holding Units of a class.

20. RESPONSIBLE ENTITY

20.1 Responsible Entity

The Responsible Entity agrees to act as the responsible entity of the Scheme.

20.2 Retirement and removal of Responsible Entity

- (a) The Responsible Entity must retire as responsible entity in any of the circumstances specified in the Corporations Act.
- (b) The Responsible Entity may retire as responsible entity subject to compliance with the Corporations Act.

20.3 Appointment of new Responsible Entity

On the retirement or removal of the Responsible Entity as provided in clause 20.2, the Responsible Entity may, subject to compliance with the requirements of the Corporations Act, appoint some other corporation to be the Responsible Entity.

20.4 Retirement Payment

The Responsible Entity shall, in consideration of its retirement as a responsible entity, be entitled to agree with an incoming responsible entity to be remunerated by, or to receive a benefit from, the incoming responsible entity and shall not be required to account to Members for such remuneration or benefit.

21. RESPONSIBLE ENTITY'S POWERS

21.1 General powers

Subject to this document, the Responsible Entity has:

- (a) all the powers in respect of the Scheme Property that it is possible under the law to confer on a trustee;
- (b) all the powers it would have if it were the absolute owner of the Scheme Property and were acting in its personal capacity; and

- (c) all the powers necessary or desirable for the performance or exercise of its powers, duties and rights in respect of the Scheme (including its obligations under this document).

The other provisions of this clause 21 do not limit the Responsible Entity's general powers under this clause.

21.2 Power to borrow and use Scheme Property as security

The Responsible Entity may:

- (a) borrow, raise money or otherwise obtain financial accommodation for the purposes of the Scheme, on terms it thinks fit;
- (b) give guarantees, indemnities or other credit enhancements; and
- (c) use Scheme Property as security, but only in relation to borrowing, raising money or obtaining financial accommodation for the purposes of the Scheme.

21.3 Investment Power

Subject to the Corporations Act, the Responsible Entity may invest or apply the Scheme Property as it thinks fit.

For example, the Responsible Entity may:

- (a) invest in real property;
- (b) invest in securities;
- (c) invest in derivatives;
- (d) lend monies to any persons on commercial terms; and
- (e) invest in managed investment schemes.

21.4 Exercise of discretions by Responsible Entity

The Responsible Entity has an unfettered discretion whether or not to exercise, and how and when to exercise, its powers, duties and rights under this document.

21.5 Management Power

The Responsible Entity may do whatever it thinks proper in the management and operation of the Scheme.

21.6 Delegation power

- (a) The Responsible Entity may appoint an agent or delegate to perform any act or exercise any power that the Responsible Entity can in relation to the Scheme, including the power to appoint a sub-agent or sub-delegate.

- (b) Paragraph (a) includes:
 - (i) the power to appoint an attorney in respect of a dealing with Scheme Property, on terms the Responsible Entity thinks fit (including a provision authorising the attorney to appoint a sub-attorney); and
 - (ii) the power to appoint a person to act as a custodian of Scheme Property, with the powers, duties and rights specified in the appointment document - for example, the appointment may authorise the custodian:
 - (A) to act within or outside Australia;
 - (B) to act in the name of the Responsible Entity or, at its direction, in its own name or in a name nominated by the custodian and approved by the Responsible Entity; or
 - (C) to appoint sub-custodians.
- (c) The appointment may be joint, in which case the agents or delegates may act or exercise a power jointly and severally.
- (d) The agent or delegate may be an Affiliate or employee of the Responsible Entity.
- (e) In the document appointing the agent or delegate, the Responsible Entity may include provisions for the protection and convenience of those who deal with the agent or delegate that the Responsible Entity thinks fit.

21.7 Power to give effect to the IPO Proposal

The Responsible Entity has power to give effect to the IPO Proposal including power to do all things which it considers necessary, desirable or reasonably incidental to give effect to the IPO Proposal.

22. RESPONSIBLE ENTITY'S RIGHTS

22.1 Responsible Entity may hold Units

- (a) The Responsible Entity and its Affiliates may hold and deal with Units in any capacity.
- (b) Unless otherwise expressly provided by this document or the Corporations Act, the Responsible Entity and its Affiliates, as Members, have all the rights of a Member in relation to the Units they hold.

22.2 Responsible Entity may deal etc with itself in other capacities

Subject to the Corporations Act, the Responsible Entity (or any of its Affiliates) may:

- (a) deal with itself (in any capacity), an Affiliate or a Member, including:

- (i) buying Scheme Property;
- (ii) selling property into the Scheme;
- (iii) underwriting any issue of Units; or
- (iv) paying any fee (including any acquisition fee for the acquisition of Scheme Property),

in its own right, as trustee or responsible entity of another trust or scheme or in another capacity;

- (b) be interested in any contract or transaction with itself (in any capacity), an Affiliate or a Member; or
- (c) act in the same or similar capacity in relation to another managed investment scheme or trust.

22.3 Responsible Entity not accountable

The Responsible Entity and its Affiliates do not have to account for, and may retain for their own benefit, any profit or benefit arising from anything referred to in clause 22.2.

23. RESPONSIBLE ENTITY'S FEES AND EXPENSES

23.1 Fees payable to Responsible Entity

The Responsible Entity is to be paid the following fees in relation to the proper performance of its duties in respect of the Scheme:

- (a) A management fee equal to 0.60 % per annum of the Scheme Value calculated monthly and payable monthly, from the date the Scheme is established to the date of final distribution under clause 28.2(d).
- (b) While the Units are not Officially Quoted, an incentive/ performance fee, if any property (including units in any sub trust) is sold by the Scheme at a sale price (after proper costs) that exceeds its acquisition price by 15% or more, equal to 15% of the amount exceeding the acquisition price multiplied by 1.15.
- (c) While the Units are not Officially Quoted, an acquisition fee of 5% of the purchase price of any real property.
- (d) While the Units are not Officially Quoted, a transfer fee for each transfer of Units to either an existing Member or a third party equal to 3% of the gross transfer value.
- (e) While the Units are not Officially Quoted, a redemption fee of:
 - (i) 3.00% of the Redemption Amount for any investments held in the Scheme for less than 3 years.

- (ii) 2.00% of the Redemption Amount for any investments held in the Scheme for more than 3 years.
- (iii) 1.00% of the Redemption Amount for any investment held in the Scheme for more than 4 years.
- (iv) Nil for any investments held in the Scheme for more than 5 years.

23.2 Responsible Entity's fees accrue daily

The management fee payable to the Responsible Entity pursuant to clause 23.1(a) accrues daily. The other fees in clause 23 are payable at the time of the relevant transaction.

23.3 GST

All fees payable to the Responsible Entity are exclusive of GST.

23.4 Adjustment of Responsible Entity's fees on proportionate basis

Where a fee is payable in respect of a period and the fee commences or ceases to be payable during the period, the fee must be adjusted on a proportionate basis.

23.5 Waiver

The Responsible Entity may waive, lower, or defer its right to receive fees, or recover expenses in relation to such amounts, for such period and on such terms as it determines. The Responsible Entity may pay to any Member, from its own resources, any amounts which it in its discretion determines by way of offset or rebate of fees.

23.6 Responsible Entity's expenses

Where permitted by the Corporations Act, the Responsible Entity will be paid or reimbursed out of the Scheme Property on a full indemnity basis for all expenses and liabilities which it may incur in connection with the Scheme or in performing its obligations or exercising its powers under this document including in connection with the following matters:

- (a) cheques, certificates, investment advices, accounts, distribution statements, and other communications;
- (b) registers, accounting and other records;
- (c) meetings of Members;
- (d) any transaction or proposed transaction in relation to the Scheme, including the acquisition, disposition, and development or redevelopment of Scheme Property;
- (e) due diligence in connection with any transaction or proposed transaction in relation to the Scheme;

- (f) borrowing money or obtaining any form of financial accommodation in relation to the Scheme, or a proposal to do so;
- (g) management of Scheme Property including leasing and valuation and development or redevelopment;
- (h) accounts;
- (i) Taxes, rates, charges (including bank charges), duties and other imposts, including any GST collectable from, or incurred or payable by, the Responsible Entity in connection with the Scheme, or the management or administration of the Scheme (including Taxes payable by the Responsible Entity in respect of its fees and reimbursable expenses);
- (j) regulatory compliance;
- (k) any restructuring or listing of the Scheme;
- (l) offers or invitations, to apply for, or issues, redemptions or transfers of, Units;
- (m) delegates, agents, consultants, experts, advisers and other persons retained or appointed by the Responsible Entity, including legal and accounting advisers and members of any Compliance Committee;
- (n) researching property and securities markets;
- (o) this document;
- (p) custody of the Scheme Property;
- (q) computer hardware, software and other equipment (including development and maintenance of internet facilities);
- (r) any court proceedings, arbitration or dispute;
- (s) retirement or removal of the Responsible Entity;
- (t) Compliance Committees and any compliance officer;
- (u) preparing documentation in relation to the Scheme and the Scheme Property;
- (v) insurances, including insurance premiums payable in respect of insurance policies for Scheme Property, for the Responsible Entity, its directors, and Compliance Committee members;
- (w) promoting the Scheme to, or communicating with, Members, potential members and their advisers;
- (x) Member complaints resolution;

- (y) provision of guarantees and indemnities by the Responsible Entity (including any indemnity given to a retiring responsible entity of the Scheme);
- (z) travel and accommodation expenses; and
- (aa) underwriting.

24. LIMITATION ON RESPONSIBLE ENTITY'S LIABILITY

24.1 Limitation on liability to Members generally

Without limiting its liability under the Corporations Act:

- (a) if the Responsible Entity acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Members for any loss or damage suffered in any way relating to the Scheme; and
- (b) the Responsible Entity will not be liable to Members to any greater extent than the extent to which it is entitled to be and is in fact indemnified for such liabilities out of Scheme Property.

24.2 Responsible Entity not liable for certain loss or damage

Except as otherwise provided by law, the Responsible Entity is not liable for any loss or damage:

- (a) caused by it relying on:
 - (i) the Register; or
 - (ii) information or a document given to it by its agent, delegate or adviser,unless it has reason to suspect that it is incorrect;
- (b) caused by it relying on a document as authentic, unless it has reason to suspect that it is not authentic;
- (c) caused by it relying on an opinion or information from an expert, unless it has reason to suspect that the expert does not have the appropriate expertise;
- (d) caused by it relying on an opinion or information from a banker, the Scheme auditor or the Compliance Plan auditor;
- (e) caused by it complying with a law or an order or direction of a court, Government Agency or government official;
- (f) that arises because Scheme Property which is auctioned does not attract a particular price; or

- (g) that arises because of something the operator of an asset title, transfer or holding system does or does not do.

This clause 24.2 does not limit clause 24.1.

24.3 Responsible Entity may limit liability

The Responsible Entity is not required to do anything (for example, enter into a contract) that may involve it incurring a liability unless its liability is limited in a way that the Responsible Entity (acting reasonably) thinks appropriate and the Responsible Entity may limit its liability in this way.

24.4 Other obligations and duties excluded

Except as required by the Corporations Act, all obligations and duties of the Responsible Entity which might otherwise be implied or imposed at law or in equity are expressly excluded to the extent the law allows it.

25. INDEMNITIES

25.1 Responsible Entity to be indemnified out of Scheme Property

The Responsible Entity is to be indemnified out of the Scheme Property for any loss, damage, expense or other liability incurred by it in properly performing or exercising any of its powers, duties or rights in relation to the Scheme.

25.2 Responsible Entity's indemnity includes liability of its agents etc

To the extent the Corporations Act allows it, the indemnity under clause 25.1 includes any loss, damage, expense or other liability incurred as a direct or indirect result of any act or omission of an agent or delegate appointed by the Responsible Entity.

25.3 Responsible Entity's indemnity additional to those at law etc and is a continuing one

The indemnity under clause 25.1 is:

- (a) in addition to any indemnity the Responsible Entity may have at law or in equity; and
- (b) a continuing indemnity and, subject to the Corporations Act, it applies to the Responsible Entity after it retires or is removed as responsible entity of the Scheme.

25.4 Indemnity for Compliance Committee members

Subject to, and so far as permitted by, the Corporations Act, the Responsible Entity must, to the extent the person is not otherwise indemnified, indemnify every member of the Compliance Committee against a liability:

- (a) incurred as a Compliance Committee member to a person (other than the Responsible Entity or a related body corporate), unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred by the Compliance Committee member in defending civil or criminal proceedings in which judgment is given in favour of the member or in which the member is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to the member under the Corporations Act.

25.5 Insurance for Compliance Committee members

Subject to the Corporations Act, the Responsible Entity may enter into, and pay premiums on, a contract of insurance for a person who is or has been a member of the Compliance Committee.

25.6 Compliance Committee members' indemnity is a continuing one

The indemnity in favour of Compliance Committee members under clause 25.4 is a continuing indemnity. It applies in respect of all acts done by a person while a member of the Compliance Committee even though the person is not a member at the time the claim is made.

25.7 Deeds

Subject to the Corporations Act and without limiting a person's rights under this clause 25, the Responsible Entity may enter into an agreement with a person who is or has been a member of the Compliance Committee to give effect to the rights of the person under this clause 25 on any terms that the Responsible Entity thinks fit.

25.8 Amounts owed to the Responsible Entity

To the extent permitted by the Corporations Act, the Responsible Entity may redeem some or all of the Units held by a Member to satisfy any amount due to it by the Member.

25.9 Indemnity for Tax

The Responsible Entity is entitled to be indemnified by a Member (current or former) to the extent that the Responsible Entity incurs any liability for Tax as a result of an act or omission requested by the Member.

26. MEMBER COMPLAINTS

While the Scheme is Registered, if a Member makes or submits a complaint to the Responsible Entity in relation to the Scheme, then the Member must provide all further information and assistance that the Responsible Entity requires to enable the Responsible Entity to understand the nature of the complaint and the extent to which the Member's rights have been adversely affected. The Responsible Entity must:

- (a) acknowledge the complaint in writing as soon as reasonably practicable and in any event within 14 days from receipt;
- (b) use reasonable endeavours to deal with the complaint appropriately and within a reasonable timeframe having regard to the nature of the complaint;
- (c) as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint communicate to the Member in writing:
 - (i) the remedies which the Responsible Entity may make available to the Member which may include compensation, an apology or information; and
 - (ii) the decision of the Responsible Entity and any further avenue for complaint; and
- (d) provide a Member with all reasonable assistance and information that the Member may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Responsible Entity.

27. TERM OF THE SCHEME

27.1 Establishing the Scheme

The Scheme was established when the Responsible Entity accepted the first application for the issue of a Unit.

27.2 Termination

The Scheme terminates on the earlier of:

- (a) **(rule against remoteness)** the day before 80 years after the Scheme was established;
- (b) **(by notice)** the date determined by the Responsible Entity and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
- (c) **(by extraordinary resolution)** the date specified in an extraordinary resolution of the Members as the date of termination of the Scheme; and
- (d) **(another provision of this document or law)** the date on which the Scheme terminates in accordance with another provision of this document or an order of a court or by law.

28. WINDING UP THE SCHEME

28.1 Winding up

On termination of the Scheme, the Responsible Entity must wind it up in accordance with:

- (a) this clause 28; and
- (b) any orders a court makes under the Corporations Act.

28.2 Procedure

To wind up the Scheme, the Responsible Entity must liquidate the Scheme Property and:

- (a) first, pay the expenses of the winding up;
- (b) next, pay all other fees, expenses and liabilities of the Scheme;
- (c) next, pay any preferential payments to Members in accordance with the rights attached to the class of Units held by them; and
- (d) next, subject to the rights attached to a class of Units, distribute the balance to Members in proportion to the number of fully paid Units held by them.

For the purpose of paragraph (d), a partly paid Unit is counted as a fraction of a fully paid Unit equal to the proportion which the amount paid on it bears to the Issue Price of the Unit.

28.3 Distribution by instalments

The Responsible Entity may make a distribution under clause 28.2(d) in instalments.

28.4 Transfer of Scheme Property to Member

- (a) The Responsible Entity may transfer Scheme Property to a Member to satisfy the making of a payment or distribution under clause 28.2 instead of making it in Cash.
- (b) The value of the Scheme Property to be transferred must be based on a valuation carried out by a Valuer. The costs associated with the valuation and transfer of the Scheme Property are payable by the Member.

28.5 Receipt and discharge

The Responsible Entity may require each Member to give it a receipt and discharge (in a form approved by the Responsible Entity) before it makes a payment or distribution under clause 28.2.

28.6 Timing for liquidation of Scheme Property

As far as reasonably practical having regard to the interests of Members, the Responsible Entity must liquidate the Scheme Property within 18 months after the termination of the Scheme, but the Responsible Entity may extend that period if it thinks it is in the interests of Members to do so.

28.7 **Audit on winding up**

After the Scheme is wound up, the Responsible Entity must arrange for an independent audit of the Scheme's final accounts by a registered company auditor. Despite clause 28.8, this clause 28.7 continues to apply after the date of termination of the Scheme until the audit is finished.

28.8 **Provisions continue after termination of Scheme**

Subject to the Corporations Act, the provisions of this document continue to apply after the date of termination of the Scheme until the date of final distribution under clause 28.2(d), but during that period the Responsible Entity must not accept any applications for Units or Redemption Requests or make any withdrawal offers.

29. **PAYMENT AND DISCHARGE**

29.1 **How payments can be made**

The Responsible Entity may pay money to a Member:

- (a) by paying it into an account with a financial institution nominated by the Member, where the Responsible Entity has not received a written notice that the nomination is withdrawn;
- (b) by sending a cheque crossed not negotiable and drawn in favour of the Member or to bearer, by mail to the address of the Member set out in the Register or notified to the Responsible Entity under clause 32.5; or
- (c) in any other way it thinks fit.

29.2 **Cancellation of cheques**

The Responsible Entity may cancel a cheque it has issued that is not presented within 6 months after the date the cheque is issued. Subject to the Corporations Act, when such a cheque was drawn in favour of a Member or where the Responsible Entity attempts to make a payment to a Member by electronic transfer of funds and the transfer is unsuccessful, the money may be:

- (a) reinvested in Units (or if Units are Stapled, Stapled Securities) at the issue price prevailing on the day the cheque is cancelled or the Responsible Entity determines that an electronic funds transfer has not been successful;
- (b) held by the Responsible Entity for the benefit of the Member;
- (c) paid by the Responsible Entity in accordance with applicable unclaimed money legislation; or
- (d) in the case of an unsuccessful electronic transfer of funds, used to draw a cheque in favour of the Member.

29.3 **Whole cents**

The Responsible Entity will only pay whole cents, and any remaining fraction of a cent becomes Scheme Property.

29.4 **Discharge of Responsible Entity**

- (a) A payment to a Member or, in the case of joint holders of a Unit, to any of them in accordance with clause 29.1 will discharge the Responsible Entity in respect of that payment.
- (b) A discharge or release by a Member or, in the case of joint holders of a Unit, by any of them to the Responsible Entity is a good discharge of the liability concerned.

29.5 **Deductions for Tax**

The Responsible Entity may deduct from any money to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) that the Responsible Entity:

- (a) is required or authorised to deduct by law; or
- (b) in its reasonable opinion, thinks should be deducted.

30. **GST**

30.1 **GST indemnity**

If the Responsible Entity must pay GST on any supply under or in connection with this document made in the proper performance or exercise of any of its powers, duties or rights in relation to the Scheme, the Responsible Entity may recover the amount of that GST out of the Scheme Property. However, the Responsible Entity must not recover out of the Scheme Property any amount for GST that it has included in or added to a fee paid by a Member, or has deducted from an amount paid to a Member.

30.2 **Refund to Scheme for GST overpaid**

The Responsible Entity must refund to the Scheme any over recovery of GST by it out of the Scheme Property. The Responsible Entity need not refund to the Scheme any amount for GST paid to the Commissioner of Taxation unless the Responsible Entity has received a refund or credit for that amount.

30.3 **GST on claims**

If the Responsible Entity pays money or distributes property to a Member to satisfy a claim or a right to a claim for a breach of duty by the Responsible Entity under or in connection with this document (for example, for breach of trust) and that payment gives rise to a liability to pay GST, the Responsible Entity must pay the amount of that GST, and if the Member is liable to pay that GST, the Responsible Entity must indemnify the Member against that amount. The Responsible Entity must not

recover out of the Scheme Property any amount for GST paid by it under this clause 30.3.

30.4 GST on expenses

If the Responsible Entity has a claim under or in connection with this document for an expense on which it must pay GST, the claim is for the expense plus all GST (except to the extent that the Responsible Entity is entitled to an input tax credit for any GST).

31. AMENDMENT

Subject to the Corporations Act, the Responsible Entity may amend this document by deed:

- (a) if the Responsible Entity reasonably considers that the amendment does not adversely affect the rights of the Members; or
- (b) if authorised by a special resolution of the Members.

32. NOTICES

32.1 When this clause 32 does not apply

Clauses 32.2 and 32.3 do not apply to a notice of Meeting.

32.2 How to give a notice

A notice, consent or other communication under this document is properly given if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - (ii) sent by fax to the fax number (if any) nominated by that person and the machine from which it is sent produces a report that states that it was sent in full; or
 - (iii) in the case of a notice, consent or other communication given by the Responsible Entity, sent by electronic message to the electronic address (if any) nominated by that person.

32.3 When a notice is given

A notice, consent or other communication to the Responsible Entity that complies with this clause 32 is regarded as given and received:

- (a) if it is delivered or sent by fax or electronic message:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail to the Responsible Entity - on actual receipt; and
- (c) if it is sent by mail to any other person:
 - (i) within Australia - 3 Business Days after posting; or
 - (ii) to a place outside Australia - 7 Business Days after posting.

32.4 Responsible Entity's address for notices

The Responsible Entity's address and fax number are those set out below or another address or fax number notified (in writing) to the Members by the Responsible Entity:

Address: Suite 39.01, 100 Miller Street, North Sydney NSW 2060
Fax number: (02) 9460 2960
Attention: Company Secretary

32.5 Member's address for notices

A Member's address is that set out in the Register, but if the address is not in Australia, the Member may notify the Responsible Entity of an address in Australia to which notices or other communications may be sent.

32.6 Joint holders

A notice or other communication to joint holders of a Unit must be given to the joint holder named first in the Register.

32.7 Person entitled to a Unit

Every person who becomes entitled to a Unit is bound by every notice in respect of that Unit which was properly given to the person registered as the holder of the Unit before the transfer or transmission of the Unit was entered in the Register.

32.8 Signature on notices

The Responsible Entity may sign a notice or other communication by original or printed signature or in any other way it determines.

32.9 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day the notice is given nor the day the action is to be taken is to be counted in working out the period.

32.10 **Certificate of director or secretary**

A certificate signed by a director or secretary of the Responsible Entity stating that a notice or other communication was given by the Responsible Entity is admissible as evidence, and is conclusive evidence, that the notice or other communication was given.

32.11 **Notices to lost Members**

If:

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this clause 32 is returned and unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Responsible Entity believes on other reasonable grounds that a Member is not at the address set out in the Register or notified to the Responsible Entity under clause 32.5,

the Responsible Entity may give effective notice to that Member by exhibiting the notice at the Responsible Entity's registered office for at least 48 hours.

This clause 32.11 ceases to apply if the Member notifies the Responsible Entity of a new address.

33. **GENERAL**

33.1 **Governing law**

- (a) This document is governed by the law in force in New South Wales.
- (b) The Responsible Entity and the Members:
 - (i) submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document; and
 - (ii) waive any right they may have to claim that those courts are an inconvenient forum.

33.2 **Waiver of rights by Responsible Entity**

The Responsible Entity only waives a right it has under this document by notice in writing, and:

- (a) no other conduct of the Responsible Entity (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right by the Responsible Entity on one or more occasions does not operate as a waiver of that right if it arises again; and

- (c) the exercise of a right by the Responsible Entity does not prevent any further exercise of that right or of any other right.

33.3 Severance

Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

33.4 Consents

Where this document contemplates that the Responsible Entity may agree or consent to something (however it is described), the Responsible Entity may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

In this clause 33.1, **agree** includes approve.

34. STAPLING

34.1 Definitions

The following definitions apply in this clause.

Cashout Unit means a Unit issued under clause 34.3 or a Unit reclassified under clause 34.4.

Investor means a person entered in the Register as a holder of Stapled Securities.

Market Price of a Stapled Security on a particular day is:

- (a) the weighted average of the VWAP for the Stapled Security for each of the 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day);
- (b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank with experience in arranging bookbuilds in the Australian equity market, provided that the Auditor has provided written certification that the bookbuild was conducted in accordance with normal market standards; or
- (c) if:
 - (i) in the case of paragraph (a), Stapled Securities have not been Officially Quoted for at least 10 consecutive Trading Days before the relevant day; or

- (ii) in the case of paragraphs (a) or (b), in the Responsible Entity's opinion, a determination under paragraph (a) or (b) of this definition (as relevant) would not provide a fair reflection of the market value of the Stapled Security having regard to the nature of the proposed offer of Stapled Securities and the circumstances in which the proposed offer is made,

the price per Stapled Security determined by an adviser who:

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

to be the fair market price of the Stapled Security, having regard to:

- (v) the nature of the proposed offer of Stapled Securities for which purpose the Market Price of a Stapled Security is being calculated;
- (vi) the circumstances in which the proposed offer of Stapled Securities will be made; and
- (vii) the interests of Investors generally, including balancing the dilutionary effect of any such issue against the desirability of a successful capital raising.

Master Scheme means the Stapled Funds as one scheme for the purposes of registration under Part 5C of the Corporations Act.

Merger Proposal means the proposal detailed in a notice of meeting and accompanying information issued by the Responsible Entity on or about October 2005, for certain schemes to be Stapled as Stapled Funds, for formulating a constitution for the Master Scheme, and for registering the Master Scheme.

Proposal means a proposal for Stapling, including the Merger Proposal, or a proposal for cessation of Stapling.

Register means the register of Investors kept by the responsible entities of the Stapled Funds under clause 34.7(u) and the Corporations Act.

Staple means:

- (a) for Stapled Funds, to link together each Stapled Fund; and
- (b) for Units, to link together the rights and obligations which attach to one Unit with the rights and obligations which attach to one unit in each other Stapled Fund,

and **Stapled** and **Stapling** have a corresponding meaning.

Stapled Fund means the Scheme and each other fund to whose units any Units in the Scheme are from time to time Stapled pursuant to clause 34.5.

Stapled Security means a security formed by Stapling together one Unit and a unit in each other Stapled Fund.

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

34.2 **Issues of Units for Merger Proposal**

The Responsible Entity may issue Units to members of a fund to whose units the Responsible Entity proposes to Staple Units in the Scheme under the Merger Proposal.

34.3 **Issue of Cashout Units**

The Responsible Entity may, for the same issue price as a Unit issued under clause 34.2, issue Cashout Units of a separate class which rank equally with all other Units and have the same rights and obligations attached to them as a Unit, except that a Cashout Unit may be redeemed for an amount equal to its issue price.

34.4 **Reclassification as a Cashout Unit**

If an existing Unit becomes Stapled to a unit from another Stapled Fund which is of a separate class to other units in that Stapled Fund and has rights similar to those of a Cashout Unit, that existing Unit becomes a Cashout Unit of a separate class with the rights and obligations stated in clause 34.3.

34.5 **When Stapling applies**

The Responsible Entity may by written notice declare that some or all Units in the Scheme are Stapled to units in one or more other managed investment schemes. From the date of that declaration (or from a date specified by that declaration) Stapling pursuant to this clause 34 applies despite any other provision of this document. The date specified by the Responsible Entity may be earlier than the date of that declaration, and if so:

- (a) all Units are to be treated as if Stapling had occurred on the specified date;
- and

- (b) all Units already on issue and all further Units issued in connection with Stapling are to rank equally in all respects from the specified date (even if the specified date precedes their date of issue).

34.6 **Stapling continues despite changes in Stapled Funds**

Stapling pursuant to this clause 34 continues to apply while any Unit remains Stapled to a unit in at least one other Stapled Fund, even if:

- (a) Units have ceased to be Stapled to units in one or more other Stapled Funds; or
- (b) Units have begun to be Stapled to units in a further Stapled Fund.

34.7 **Units and units of each other Stapled Fund are Stapled**

While Stapling pursuant to this clause 34 applies:

- (a) **(Units Stapled)** each Unit is Stapled to a unit in each other Stapled Fund;
- (b) **(Unit dealings)** there must be no dealing of any kind in relation to a Unit unless there is also an identical dealing by the same parties with each unit in a Stapled Fund to which that Unit is Stapled;
- (c) **(offers of Units)** the Responsible Entity must not offer Units for subscription or sale unless:
 - (i) it also offers, at the same time and to the same person, the same number of units in each other Stapled Fund for subscription or sale; and
 - (ii) the offer is on condition that the offeree may not accept the offer unless the offeree also accepts the offer for units in each other Stapled Fund;
- (d) **(Unit issues, sales)** the Responsible Entity must not issue or sell any Units to a person unless it at the same time issues or sells to that person the same number of units in each other Stapled Fund;
- (e) **(reorganisations)** the Responsible Entity must not consolidate, subdivide, cancel or reorganise Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or reorganisation of the units in each other Stapled Fund;
- (f) **(Unit transfers)** a Member must not transfer a Unit to a person unless at the same time the Member transfers to that person the same number of units in each other Stapled Fund;
- (g) **(Unit redemption)** the Responsible Entity must not redeem Units of a Member unless at the same time the same number of units of the Member in each other Stapled Fund are redeemed;

- (h) **(Unit transmission)** Units registered in the name of a Member are not capable of being transmitted to any person unless at the same time the same number of units registered in the name of the Member in each other Stapled Fund are transmitted to that person;
- (i) **(allocation of price among Stapled Funds)** the Responsible Entity may apply money received for the issue of Stapled Securities to the Stapled Funds or pay money for the redemption of Stapled Securities from the Stapled Funds in proportion to the Net Scheme Value of the Scheme and the net scheme values of the other Stapled Funds worked out under their constitutions, or may apportion the receipts or payments between the Stapled Funds as otherwise agreed with the responsible entity of each other Stapled Fund;
- (j) **(alternative calculation of prices)** subject to the Corporations Act, the Responsible Entity may keep valuation records and financial records for the Stapled Funds as an economic entity, eliminate transactions between Stapled Funds (such as loans between Stapled Funds before calculating the net scheme value of the economic entity) and may use the net scheme value of the economic entity to calculate the issue price or redemption price of a Stapled Security instead of, where applicable, aggregating the unit values of the units comprising a Stapled Security;
- (k) **(regard to interests of holders in Stapled Funds)** in exercising its powers or discretions or performing its functions under this document or in relation to the Scheme, the Responsible Entity may as it sees fit:
 - (i) take into account the interests of holders of units in Stapled Funds other than the Scheme; and
 - (ii) exercise its powers and discretions or perform its functions even though to do so would be for the benefit of those persons and not for the direct benefit of Unitholders;
- (l) **(discretion may be fettered)** the Responsible Entity may in connection with the Stapling fetter its discretions under this document or in relation to the Scheme, as it thinks fit, including by agreeing to consult with, or obtain the consent of, a person administering another Stapled Fund;
- (m) **(compromises)** the Responsible Entity may with the responsible entity of any other Stapled Fund compromise
 - (i) any allocation of assets or property or liabilities between the Scheme and any Stapled Fund;
 - (ii) any allocation of application money for Units and units in any other Stapled Fund; or
 - (iii) any other matter between the Scheme and a Stapled Fund that the Responsible Entity considers to be necessary or appropriate in connection with the Stapling or the relationship created by the Stapling;

- (n) (**guarantees**) the Responsible Entity may in connection with the Stapling or the relationship created by the Stapling give any guarantee or indemnity or become liable for the payment of money or the performance of any contract or other obligation by any person including the responsible entity of any other Stapled Fund;
- (o) (**security for guarantees**) the Responsible Entity may if it thinks fit give security for any such guarantee or indemnity or other liability over all or any part of the Scheme Property;
- (p) (**consideration**) the Responsible Entity may if it thinks fit in connection with the Stapling or the relationship created by the Stapling exercise all or any of these powers whether or not there is consideration or benefit for the Scheme and either alone or jointly with any person including the responsible entity of any other Stapled Fund or as responsible entity of any other Stapled Fund, and may assume joint and several or several liability in respect of any joint exercise of these powers;
- (q) (**cooperative operation**) the Responsible Entity may cooperate with the responsible entity of any other Stapled Fund to facilitate the operation of the Stapled Funds as an economic entity for the benefit of Unitholders and of holders of units in each Stapled Fund;
- (r) (**amendment**) an amendment of this deed that directly affects the terms on which a Unit is held is of no effect unless the units of each other Stapled Fund are affected in the same way;
- (d) (**Small Holdings**) a reference to a "Small Holding" or "New Small Holding" in clause 38 is taken to be a reference to a small holding or new small holding of Stapled Securities (and other references to "Units" in each case are to be construed accordingly);
- (e) (**request for holding lock**) the Responsible Entity must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of a Unit from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of the same number of units in each other Stapled Fund;
- (f) (**single Register**) subject to the Corporations Act, a single Register may be kept in which details of the holders of the Stapled Securities are recorded; and
- (g) (**expenses**) in clause 23.6, a reference to a "Unit" is a reference to it as part of a Stapled Security, a reference to "Scheme" is a reference to the Scheme as part of a stapled group and a reference to "register" includes any single register under clause 34.7(u) and clause 23.6 is taken to also include expenses in connection with:
 - (i) establishing, administering and managing Stapling, including the costs in enforcing Stapling, the Stapling of new units, the unstapling of Units and the unstapling of Stapled Securities; and

- (ii) organising, convening and holding meetings of Investors, implementing any resolutions and communicating with Investors.

34.8 Conduct of Stapled Funds

To the extent permitted by law, the Responsible Entity must cooperate with the responsible entities of each other Stapled Fund in everything relating to the Stapled Securities. Without limitation, the Responsible Entity must do everything needed on its part to ensure that the Scheme and the other Stapled Funds:

- (a) **(accounting policies)** adopt consistent accounting policies;
- (b) **(valuation policies)** adopt consistent valuation policies;
- (c) **(proposed investments)** take a consistent approach on proposed investments;
- (d) **(meetings)** hold Members' meetings concurrently or, where necessary, consecutively and, subject to the Corporations Act, the Responsible Entity may make rules for the conduct of those meetings as it sees fit;
- (e) **(new issues, redemptions)** agree on the terms and timing of all new issues, bonus and rights issues, placements, redemptions and buy-backs;
- (f) **(value)** consult before taking any action (or omitting to take any action) which may materially affect the value of the Stapled Securities;
- (g) **(distribution)** co-ordinate the announcement and payment of distributions; and
- (h) **(reinvestments)** co-ordinate any distribution re-investment plan.

34.9 Unstapling

The following provisions apply for cessation of Stapling:

- (a) The Responsible Entity may declare that Stapling ceases to apply to some or all Units in the Scheme immediately, or upon a stated day.
- (b) Stapling will automatically cease to apply to all Units in the Scheme if the Scheme terminates in accordance with clause 27.2.
- (c) The Members may, by special resolution, determine that Stapling will cease to apply to some or all Units in the Scheme.
- (d) If Stapling ceases to apply to a Unit, the preceding provisions of this clause 34 then cease to apply to that Unit.
- (e) If Stapling ceases to apply to all Units in the Scheme, the Responsible Entity must do everything reasonably necessary to give effect to the cessation of Stapling, including:
 - (i) amending any records of the Scheme;

- (ii) transferring any property or paying any Tax; and
- (iii) giving directions to any custodian or responsible entity that holds the assets or property of a Stapled Fund to which Stapling will cease to apply.

34.10 **Stapling mechanics and implementation**

The following provisions apply for implementing a Proposal (including the Merger Proposal):

- (a) The Responsible Entity may do everything it reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit or un-Staple a Unit.
- (b) The Responsible Entity:
 - (i) is appointed irrevocably as agent and attorney of each Member to sign any document or do anything the Responsible Entity reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit or un-Staple a Unit; and
 - (ii) may (as agent or attorney of the Member) on behalf of the Member:
 - (A) receive and apply returned capital or redemption proceeds (including to repay borrowings of the Member or to apply for a unit):
 - (B) apply for a unit in another Stapled Fund or former Stapled Fund (including copying or deriving an application form from a product disclosure statement given to the Member); and
 - (C) consent to be bound by the constitution of a scheme comprising Stapled Funds or formerly comprising Stapled Funds .
- (c) The Responsible Entity may enter into a deed or agreement (including with the responsible entity of another scheme) for implementing a Proposal for or for the conduct of Stapled Funds.
- (d) The Responsible Entity may apply for Cashout Units on behalf of a Member whose address in the Register is outside Australia.

34.11 **Limitation of liability of and indemnity for Responsible Entity**

Subject to the Corporations Act, clause 24.1 and each other provision of this document limiting the liability of the Responsible Entity, and clause 25.1 and each other provision of this document indemnifying the Responsible Entity, apply in connection with a Proposal (including the Merger Proposal) or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling.

34.12 Expenses of Proposal

The indemnity for expenses and liabilities in clause 23.6 includes all expenses and liabilities in connection with a Proposal (including the Merger Proposal) or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling, such as due diligence, retaining experts or advisers, and preparing information for Unitholders.

34.13 Effective Date of Merger Proposal

If implemented, the Merger Proposal will be deemed to have been implemented with effect from 2 December 2005 for all interests and purposes.

34.14 Issue Price while Stapling applies

- (a) Stapled Securities issued pursuant to the Offer Document are to be issued at an issue price of \$2.00 per Stapled Security.
- (b) Subject to clauses 34.14(a) and 34.14(d), while Units are not Officially Quoted but are Stapled, the Issue Price payable for a Unit is the price calculated under clause 6, and the issue price of a Stapled Security is the sum of that amount and the issue price of a unit in each other Stapled Fund.
- (c) Subject to clause 34.14(d), while Units are Officially Quoted as part of a Stapled Security, the Issue Price payable for any Unit is such part of the Market Price of a Stapled Security on the date on which or as at which the Issue Price is to be calculated, as is calculated in accordance with clause 34.16.
- (d) The Responsible Entity may determine a different Issue Price for any Units (subject to the Corporations Act as modified by any applicable ASIC Instrument and the Listing Rules) in the case of:
 - (i) offers made to persons who were Investors on a date determined by the Responsible Entity:
 - (A) provided that, subject to clause 34.14(d)(i)(B), all Investors are offered Stapled Securities in proportion to the value of the Investor's Stapled Securities (or, where the offer is made only to investors who hold Stapled Securities in a particular class, to the value of the Investor's Stapled Securities in that class) at the relevant date; but
 - (B) an Investor may be excluded from the pro rata offer if to do so would not cause the Responsible Entity to be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Instrument,

whether or not the right of entitlement is renounceable.

Any offer made under this clause 34.1(d)(i) must specify the period during which it may be accepted. The Responsible Entity may

adjust any entitlement to accord with the Listing Rules and, in the case of fractions the Responsible Entity must offer the next higher whole number of Units and Stapled Securities. Any Investor may renounce their entitlement in favour of some other person, unless the issue is expressed to be non-renounceable.

Any Stapled Securities offered for subscription under this clause 34.1(d)(i) which are not subscribed for within the period for acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person. The issue price payable in relation to such further offer must not be less than that at which the Units and Stapled Securities were originally offered to Investors.

If an underwriter has underwritten any offer for subscription of Stapled Securities under this clause 34.1(d)(i), the underwriter may take up any Stapled Securities not subscribed for by Investors;

- (e) a placement of Stapled Securities that complies with the Listing Rules and any applicable ASIC Instrument, where the issue price for the placement of a Stapled Security is determined in accordance with clause 6.6 (as modified by this clause 34), and the Issue Price for the Unit is determined in accordance with clause 34.16;
- (f) a security purchase plan that complies with the Listing Rules and any applicable ASIC Instrument, where the issue price for a Stapled Security is determined in accordance with clause 6.6 (as modified by this clause 34), and the Issue Price for the Unit is determined in accordance with clause 34.16;
- (g) a reinvestment of distributions, where the Issue Price is determined in accordance with clause 34.15;
- (h) Units issued pursuant to the exercise of an Option, where the Issue Price is determined in accordance with clause 6.10 in the case of an offer which complies with the Listing Rules, any applicable ASIC Instrument and the principles in clause 6.4; and
- (i) any of the other circumstances set out in the Corporations Act, as modified by any applicable ASIC Instrument.

34.15 Issue Price if reinvestment applies

- (a) If a reinvestment of capital or income payable to an Investor under clause 11.8 applies while Units are Officially Quoted and Stapled, subject to the Listing Rules, the aggregate of the Issue Price of each additional Unit issued and the issue price for each unit in each other Stapled Fund upon reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the issue price by the date at which Units are to be issued upon reinvestment, the price will be the average of the VWAP for Stapled Securities for each of the 10 Trading Days from and

including the third Trading Day after the Distribution Date for the relevant Distribution Period.

- (b) While Units are not Officially Quoted but are Stapled, the Issue Price payable for each additional Unit issued on a reinvestment of capital or income payable to an Investor under clause 11.8 is the price determined by the Responsible Entity. If the Responsible Entity has not determined the Issue Price by the date at which Units are to be issued upon reinvestment, the price for a Unit will be the Issue Price calculated under clause 6.5(f) on the first Business Day after the end of the Distribution Period to which the distribution relates.

34.16 Allocation of Issue Price

If a Unit is to be issued as part of a Stapled Security and this deed contains a provision for the calculation or determination of the issue price for a Stapled Security but not for the Unit, the Responsible Entity must, in accordance with clause 34.7(i), determine what part of the issue price of a Stapled Security is to represent the Issue Price of a Unit for the purposes of this deed.

34.17 Paramountcy

Subject to clauses 2.3, 34.18 and 36, this clause 34 has effect despite any other provision of this document and a provision of this document that is inconsistent with this clause 34 does not have effect to the extent of the inconsistency.

34.18 Operation of Corporations Act and Listing Rules

The provisions of this clause 34 are subject to, and any right or discretion of the Responsible Entity set out in this clause 34 must be exercised in accordance with, the Corporations Act, any applicable ASIC Instrument and the Listing Rules.

35. CONTINUANCE OF MANAGEMENT ARRANGEMENTS

35.1 Intention to continue

Any arrangement or agreement entered into by the Responsible Entity in exercising its powers under clause 21.6 of this document (including, without limitation, any management agreement) shall, subject to the terms of the relevant arrangement or agreement, continue to apply despite any change in the Responsible Entity made in accordance with clause 20.2 of this document.

35.2 Responsible Entity's undertaking

The Responsible Entity undertakes to use reasonable endeavours:

- (a) to ensure that any change of the kind referred to in clause 35.1 is made subject to any arrangement or agreement entered into by the Responsible Entity in exercising its powers under clause 21.6 of this document (including, without limitation, any management agreement) continuing to apply;

- (b) to take all actions and execute all documents that are considered necessary or desirable (acting reasonably) to give effect to the intention set out in clause 35.1

36. LISTING RULES

If the Scheme is admitted to the Official List, the following clauses apply:

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

37. RESTRICTED SECURITIES

37.1 Disposal of Restricted Securities

If the Listing Rules require, Restricted Securities cannot be disposed of during the Escrow Period and the Responsible Entity must refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

37.2 Restriction on distribution and voting rights

During a breach of a restriction agreement or the Listing Rules relating to Units which are Restricted Securities, the holder of those Restricted Securities is not entitled to any distribution, or voting rights, in respect of those Restricted Securities.

38. SMALL HOLDINGS

38.1 Application of this clause

This clause 38 applies while the Units are Officially Quoted.

38.2 Divestment Notice

If the Responsible Entity determines that a Member is a Small Holder or a New Small Holder the Responsible Entity may give the Member a Divestment Notice to notify the Member:

- (a) that the Member is a Small Holder or a New Small Holder, the number of Units making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;
- (b) that the Responsible Entity intends to sell the Relevant Units in accordance with this clause 38 after the end of the Relevant Period specified in the Divestment Notice;
- (c) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Responsible Entity in writing that the Member desires to retain the Relevant Units and that if the Member does so the Responsible Entity will not be entitled to sell the Relevant Units under that Divestment Notice; and
- (d) after the end of the Relevant Period the Responsible Entity may for the purpose of selling the Relevant Units that are in a CS Facility holding initiate a holding adjustment to move those Units from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Units, the Divestment Notice must comply with those Operating Rules.

38.3 Relevant Period

For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.

38.4 Responsible Entity can sell Relevant Units

At the end of the Relevant Period the Responsible Entity is entitled to sell on-market or in any other way determined by the Responsible Entity:

- (a) the Relevant Units of a Member who is a Small Holder, unless that Member has notified the Responsible Entity in writing before the end of the Relevant Period that the Member desires to retain the Relevant Units, in which event the Responsible Entity must not sell those Relevant Units under that Divestment Notice; and
- (b) the Relevant Units of a Member who is a New Small Holder.

38.5 No obligation to sell

The Responsible Entity is not bound to sell any Relevant Units which it is entitled to sell under this clause 38 but unless the Relevant Units are sold within six weeks after the end of the Relevant Period the Responsible Entity's right to sell the Relevant Units under the Divestment Notice relating to those Units lapses and it must notify the Member to whom the Divestment Notice was given accordingly.

38.6 Responsible Entity as Member's attorney

To effect the sale and transfer by the Responsible Entity of Relevant Units of a Member, the Member appoints the Responsible Entity and each director and secretary of the Responsible Entity jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Responsible Entity considers necessary or appropriate to effect the sale or transfer of the Relevant Units and, in particular:

- (a) to initiate a holding adjustment to move the Relevant Units from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
- (b) to execute on behalf of the Member all deeds, instruments or other documents necessary to transfer the Relevant Units and to deliver any such deed, instruments or other documents to the purchaser.

38.7 Conclusive evidence

A statement in writing by or on behalf of the Responsible Entity under this clause 38 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Units specified in the statement have been sold in accordance with this clause 38 is conclusive against all persons claiming to be entitled to the Relevant Units and discharges the purchaser from all liability in respect of the Relevant Units.

38.8 Registering the purchaser

The Responsible Entity must register the purchaser of Relevant Units as the holder of the Relevant Units transferred to the purchaser under this clause. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Units transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Responsible Entity under this clause 38.

38.9 Payment of proceeds

Subject to clause 38.10, where:

- (a) relevant Units of a Member are sold by the Responsible Entity on behalf of the Member under this clause; and
- (b) the certificate for the Relevant Units (unless the Responsible Entity is satisfied that the certificate has been lost or destroyed or the Relevant Units are uncertificated securities) has been received by the Responsible Entity,

the Responsible Entity must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this clause is at the risk of the Member to whom it is sent.

38.10 Costs

In the case of a sale of the Relevant Units of a New Small Holder in accordance with this clause, the Responsible Entity is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Responsible Entity. In any other case, the Responsible Entity or a purchaser must bear the costs of sale of the Relevant Units. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Responsible Entity in connection with the sale and transfer of the Relevant Units.

38.11 Remedy limited to damages

The remedy of a Member to whom this clause applies, in respect of the sale of the Relevant Units of that Member is expressly limited to a right of action in damages against the Responsible Entity to the exclusion of any other right, remedy or relief against any other person.

38.12 Dividends and voting suspended

Unless the Responsible Entity determines otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this clause, then despite any other provision in this deed, the rights to receive payment of distributions and to vote attached to the Relevant Units of that Member are suspended until the Relevant Units are transferred to a new holder or that Member ceases to be a New Small Holder. Any distributions that would, but for this clause, have been paid to that Member must be held by the Responsible Entity and paid to that Member within 60 days after the earlier of:

- (a) the date the Relevant Units of that Member are transferred; and
- (b) the date that the Relevant Units of that Member cease to be subject to a Divestment Notice.

38.13 Twelve month limit

If it is a requirement of the Listing Rules, the Responsible Entity must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by clause 38.14).

38.14 Effect of takeover bid

From the date of the announcement of a takeover bid for the Units until the close of the offers made under the takeover bid, the Responsible Entity's powers under this clause to sell Relevant Units of a Member cease. After the close of the offers under the takeover bid, the Responsible Entity may give a Divestment Notice to a Member who is a Small Holder or a new Small Holder, despite clause 38.13 and the fact that it may be less than 12 months since the Responsible Entity gave a Divestment Notice to that Member.

38.15 Definitions

Divestment Notice means a notice given under clause 38.2 to a Small Holder or a New Small Holder.

Market Value in relation to a Unit means the closing price on ASX of the Unit.

New Small Holder is a Member who is the holder or a joint holder of a New Small Holding.

New Small Holding means a holding of Units created after the date on which this clause 38 came into effect by the transfer of a parcel of Units the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Units as provided under the Listing Rules.

Relevant Period means the period specified in a Divestment Notice under clause 38.2.

Relevant Units are the Units specified in a Divestment Notice.

Small Holder is a Member who is the holder or a joint holder of a Small Holding.

Small Holding means a holding of Units the aggregate Market Value of which at the relevant date is less than a marketable parcel of Units as provided under the Listing Rules.