



5 October 2022

CD Private Equity Fund IV Merger Proposal – CD Private Equity Fund Series

E&P Investments Limited, in its capacity as responsible entity (**Responsible Entity**) of CD Private Equity Fund IV (ARSN 624 474 531) (**Fund IV**), announces a proposed merger of Fund IV, CD Private Equity Fund I (ARSN 158 625 284) (**Fund I**), CD Private Equity Fund II (ARSN 162 057 089) (**Fund II**) and CD Private Equity Fund III (ARSN 612 132 813) (**Fund III**) (together, the **CD Private Equity Fund Series** or **Fund Series**).

It is proposed that the merger will be achieved by way of a trust scheme of arrangement (**Scheme**) whereby Fund III will acquire all of the Units in Fund I, Fund II and Fund IV to form a single larger and more diversified fund to be re-named the CD Private Equity Fund (**Merged Fund**).

It is then proposed that the Merged Fund will, after approximately 6 months, be converted from a closed-ended listed trust to an open-ended unlisted unit trust structure (together with the Scheme, **Proposal**).

The Responsible Entity has executed a Scheme Implementation Deed in which it undertakes, for the benefit of the unit holders in each fund in the Fund Series to take the steps required to carry out the merger, subject to certain conditions precedent, which include the grant of Judicial Advice from the Supreme Court of New South Wales and passing of resolutions to effect the Proposal by the required majorities of unit holders in each fund in the Fund Series.

A copy of the Scheme Implementation Deed is attached to this announcement.

Further information is expected to be released to the market following the first Court hearing in connection with the Judicial Advice sought, which is scheduled for Friday 7 October 2022.

Authorised for release by E&P Investments Limited (ACN 152 367 649, AFSL 410 433), the responsible entity of CD Private Equity Fund IV.

Scheme Implementation Deed

Dated 5 October 2022

E&P Investments Limited (ACN 152 367 649) as responsible entity of CD Private Equity Fund I (ARSN 158 625 284) (“**CD1**”)

E&P Investments Limited (ACN 152 367 649) as responsible entity of CD Private Equity Fund II (ARSN 162 057 089) (“**CD2**”)

E&P Investments Limited (ACN 152 367 649) as responsible entity of CD Private Equity Fund III (ARSN 612 132 813) (“**CD3**”)

E&P Investments Limited (ACN 152 367 649) as responsible entity of CD Private Equity Fund IV (ARSN 624 474 531) (“**CD4**”)

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Scheme Implementation Deed

Contents

Details	1
General terms	3
1 Definitions and interpretation	3
1.1 Definitions	3
1.2 General interpretation	11
1.3 Knowledge, belief or awareness	12
2 Undertaking to propose and implement Schemes	12
3 Conditions Precedent	12
3.1 Conditions Precedent	12
3.2 Waivers of Conditions Precedent	13
3.3 Best endeavours and co-operation	13
3.4 Regulatory Approvals	14
3.5 Failure of Conditions Precedent	14
3.6 Certificates in relation to Conditions Precedent	14
4 Schemes	15
4.1 Schemes	15
4.2 Relationship between the Schemes	15
4.3 Scheme Consideration	15
4.4 Payment of Scheme Consideration	15
5 Implementation	16
5.1 General obligations	16
5.2 The RE's obligations	16
5.3 Third party consents	18
5.4 Proxy solicitation	18
6 Board Recommendation and intentions	19
6.1 The RE Board Recommendation	19
6.2 Withdrawal of Recommendation	19
6.3 The RE Directors	19
6.4 Qualification of Recommendation	20
7 Conduct of business	20
7.1 Overview	20
7.2 Exceptions to conduct of business provisions	21
7.3 Permitted Distribution	21
8 Representations and warranties	21
9 Limitation of Liability	23
10 Termination	24
10.1 Termination by the RE	24

10.2	Effect of Termination	24
<hr/>		
11	General	24
11.1	Variation and waiver	24
11.2	Consents, approvals or waivers	24
11.3	Discretion in exercising rights	25
11.4	Partial exercising of rights	25
11.5	Conflict of interest	25
11.6	Remedies cumulative	25
11.7	Indemnities and reimbursement obligations	25
11.8	Inconsistent law	25
11.9	Supervening law	25
11.10	Entire undertaking	25
11.11	No liability for Loss	26
11.12	Severability	26
<hr/>		
12	Governing law	26
	Signing page	1
	Annexure A Supplemental Deeds	3

Scheme Implementation Deed

Details

Parties

CD1	Name	E&P Investments Limited as responsible entity of CD Private Equity Fund I
	ACN of RE	152 367 649
	ARSN	158 625 284
	Address	Level 32, 1 O'Connell Street, Sydney NSW 2000
	Email	cosec.funds@eap.com.au
	Attention	Company Secretary

CD2	Name	E&P Investments Limited as responsible entity of CD Private Equity Fund II
	ACN of RE	152 367 649
	ARSN	162 057 089
	Address	Level 32, 1 O'Connell Street, Sydney NSW 2000
	Email	cosec.funds@eap.com.au
	Attention	Company Secretary

CD3	Name	E&P Investments Limited as responsible entity of CD Private Equity Fund III
	ACN of RE	152 367 649
	ARSN	612 132 813
	Address	Level 32, 1 O'Connell Street, Sydney NSW 2000
	Email	cosec.funds@eap.com.au
	Attention	Company Secretary

CD4	Name	E&P Investments Limited as responsible entity of CD Private Equity Fund IV
	ACN of RE	152 367 649
	ARSN	624 474 531

Address	Level 32, 1 O'Connell Street, Sydney NSW 2000
Email	cosec.funds@eap.com.au
Attention	Company Secretary

Governing law	New South Wales, Australia
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- Recitals**
- A** Each of CD1, CD2 and CD3 are registered managed investment schemes listed on ASX, CD4 is a registered managed investment scheme that is not listed, and the responsible entity of each of the schemes is the RE.
 - B** It is proposed that CD3 will acquire all of the Units in each of CD1, CD2 and CD4 in exchange for the issue of Units in CD3, pursuant to the Schemes, and subject to the terms and conditions of this document.
 - C** The RE as responsible entity of CD3 undertakes to propose the Schemes to CD1 Unitholders, CD2 Unitholders and CD4 Unitholders, and to issue the Scheme Booklet to each group of Unitholders, and the RE in its various capacities has undertaken to implement the Schemes, upon and subject to the terms and conditions of this document.

Scheme Implementation Deed

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Adviser means, in relation to an Entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity in the ordinary course of its business and to the market in general and who has been engaged in that capacity in connection with the Schemes by that Entity.

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document and the RE was the designated body.

ASX means ASX Limited (ABN 98 008 624 691), or the market operated by it, as the context requires.

ASX Listing Rules means the Listing Rules of ASX, modified to the extent of any express written waiver by ASX.

ATO means the Australian Taxation Office.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

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

Buy-back Resolution means the ordinary resolution to be put to CD3 Unitholders for the purposes of section 601KH(8) of the Corporations Act to approve the buy-back of up to 10% of units in CD3 during the time while CD3 remains listed on ASX following implementation of the Schemes.

CD1 Trust Scheme means an arrangement in accordance with Guidance Note 15 under which CD3 acquires all of the CD1 Units, facilitated by amendments to the CD1 Constitution as set out in the CD1 Supplemental Deed.

CD2 Trust Scheme means an arrangement under which CD3 acquires all of the CD2 Units, facilitated by amendments to the CD2 Constitution as set out in the CD2 Supplemental Deed.

CD4 Trust Scheme means an arrangement in accordance with Guidance Note 15 under which CD3 acquires all of the CD4 Units, facilitated by amendments to the CD4 Constitution as set out in the CD4 Supplemental Deed.

CD1 Unit means a fully paid ordinary unit in CD1.

CD2 Unit means a fully paid ordinary unit in CD2.

CD3 Unit means a fully paid ordinary unit in CD3.

CD4 Unit means a fully paid ordinary unit in CD4.

CD1 Unitholder means the holder of a CD1 Unit.

CD2 Unitholder means the holder of a CD2 Unit.

CD3 Unitholder means the holder of a CD3 Unit.

CD4 Unitholder means the holder of a CD4 Unit.

Competing Proposal means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any Associates):

- (a) acquiring, directly or indirectly, a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, or the right to vote, 20% or more of the units in one or more of the Trusts;
- (b) directly or indirectly acquiring Control of or merging with one or more of the Trusts; or
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part or material part of all of the business or assets of one or more of the Trusts.

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, unitholder approved transaction, capital reduction or buy-back, sale or purchase of units or assets, joint venture, option, or other transaction or arrangement.

Conditions Precedent means the conditions precedent set out in clause 3.1.

Constitution means the constitution establishing a Trust, as amended from time to time.

Control has the meaning given in section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

Controller has the meaning it has in the Corporations Act.

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

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

Costs includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Court means the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by the RE.

Debt Facility means any loan or other debt instrument to which the RE in its capacity as responsible entity of a Trust is a party.

Delisting Resolution means the special resolution approving for the purposes of Listing Rule 17.1 and for all other purposes, the delisting of CD3 approximately 6 months after the Implementation Date, or on such later date as may be determined by the RE in consultation with the ASX.

Derivative means any derivative to which the RE in its capacity as responsible entity of a Trust is a party.

Details means the section of this document headed “Details”.

Director means a director of the RE.

Effective, when used in relation to the Schemes, means each Supplemental Deed taking effect pursuant to section 601GC(2) of the Corporations Act.

Effective Date means the date on which the Schemes become Effective.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

End Date means the date which is six months from the date of this document or such other date as is determined by the RE.

Entity includes a natural person, a body corporate, a partnership, a trust and the trustee of a trust.

E&P Financial Group means E&P Financial Group Limited (ACN 609 913 457) and its Related Bodies Corporate.

Executive Team means Alex MacLachlan, Warwick Keneally, and Patrick Broger.

First Court Date means the first day on which an application made to the Court to seek the First Judicial Advice is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

First Judicial Advice means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that (among other things):

- (a) the RE would be justified in convening the Scheme Meetings for the purposes of considering the Scheme Resolutions; and
- (b) subject to the CD1 Unitholders, the CD2 Unitholders, the CD3 Unitholders and the CD4 Unitholders passing the Scheme Resolutions by the requisite majorities, the RE would be justified in proceeding on the basis that amending the Trust Constitutions as set out in the Supplemental Deeds would be within the powers of alteration conferred by the Trust Constitutions and section 601GC of the Corporations Act.

Guidance Note 15 means *Guidance Note 15: Trust Scheme Mergers* issued by the Takeovers Panel.

Implementation Date means the next Business Day following the Record Date, or such other date after the Record Date as the RE determines.

Independent Expert means the independent expert appointed by the RE under clause 5.2(d).

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether in the Independent Expert's opinion the Schemes are fair and

reasonable to, and therefore in the best interests of each group of Trust Unitholders.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

Judicial Advice means the First Judicial Advice and the Second Judicial Advice.

Losses means all claims, demands, damages, losses, Costs, expenses and liabilities.

PDS means the product disclosure statement for the issue or offer of units in CD3 dated on or about the same date as the notices of meeting for the Scheme Meetings and the accompanying explanatory memorandum.

Permitted Distribution means a distribution declared or determined to be paid by the RE to Unitholders in any of the Trusts in the ordinary course.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth) and *Protection of Personal Information Act, No 4 of 2013* (South Africa).

PPSA means the *Personal Property Securities Act 2009* (Cth) and where applicable, the *Personal Property Securities Act 1999* (NZ).

PPS Register means the register established under the PPSA.

Prescribed Occurrence means the occurrence of any of the following events:

- (a) **(conversion)** The RE converts all or any of the Units in a Trust into a larger or smaller number of units or a resolution is passed to do so other than in accordance with the terms of this document;
- (b) **(reduction of capital)** The RE reduces or resolves to reduce the capital of any of the Trusts in any way;
- (c) **(redemption)** The RE redeems or resolves to redeem units in any of the Trusts;
- (d) **(buy-back)** The RE buys back or agrees to buy back units in any of the Trusts, including:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (e) **(issuing units or options)** The RE issues units or grants an option over units or agrees to make such an issue or grant such an option, other than in accordance with the terms of this document;
- (f) **(convertible securities)** The RE issues or agrees to issue convertible notes or other security or instruments convertible into units or debt securities of a Trust;
- (g) **(Encumbrances)** The RE creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property of a Trust;
- (h) **(assets)** The RE disposes, or agrees to dispose of the whole or a substantial part of the business or assets of a Trust;
- (i) **(wound up)** The RE resolves that a Trust be wound up;
- (j) **(liquidator)** A liquidator or provisional liquidator of the RE or a Trust is appointed;
- (k) **(court order)** A court makes an order for the winding up of the RE or a Trust;
- (l) **(administrator)** An administrator of the RE or any Trust is appointed under the Corporations Act;
- (m) **(company arrangement)** The RE executes a deed of company arrangement;
- (n) **(receiver)** A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of the RE or any Trust;
- (o) **(Trusts)** any of the following occur:
 - (i) The RE ceases to be or takes steps to retire as the responsible entity of any of the Trusts;
 - (ii) Unitholders resolve to remove or replace the RE as responsible entity of a Trust;
 - (iii) a meeting being convened to consider a resolution for the removal, retirement or replacement of the RE as responsible entity of a Trust; or

- (iv) any application being made in any court (including by the RE or its nominee) for the appointment of a temporary responsible entity of a Trust in accordance with the Corporations Act;
- (p) **(resettlement)** The RE (or its Representatives) effects or facilitates the resettlement of the trust property of a Trust;
- (q) **(delisting and extended suspension)** CD1, CD2 or CD3 ceases to be admitted to the official list of ASX, or units in those Trusts cease to be quoted by ASX or one or more of those Trusts is suspended, or the RE takes steps to suspend a Trust, from trading by ASX for a consecutive period of more than 2 weeks;
- (r) **(deregistration)** a Trust (acting through the RE) becomes or takes steps to become deregistered as a registered managed investment scheme or is otherwise dissolved;
- (s) **(distributions)** other than a Permitted Distribution, a Trust (acting through the RE) declares, resolves to pay or pays any distribution or share of its profits or assets or returns or agrees to return any capital to its unitholders (whether in cash or in specie);
- (t) **(constituent documents)** the Constitution of a Trust is repealed, replaced or a provision of it is modified, otherwise than in accordance with the terms of this document; and
- (u) **(indebtedness)** any Trust incurs any financial indebtedness or issues any indebtedness or debt securities other than:
 - (i) in the ordinary and usual course of business, including by way of drawdown of any available funding under facility arrangements; or
 - (ii) for the purposes of funding a Permitted Distribution,

provided that a Prescribed Occurrence will not include a matter:

- (v) required or expressly permitted by this document or the Schemes;
- (w) which was in place prior to the date of this document;
- (x) approved in writing by the RE; or
- (y) required by law, regulation, or by an order of a court or a Regulatory Authority.

Privacy Laws means the *Privacy Act 1988* (Cth), the protection of Personal Information principles agreed to in this document and any other legally binding requirement under Australian law industry code, policy or statement relating to the handling of Personal Information.

Public Announcement means the public announcement to be made by the RE following the signing of this document.

RE means E&P Investments Limited ACN 152 367 649.

RE Board means the board of directors of the RE as at the date of the Scheme Booklet.

Recommendation has the meaning given in clause 6.1.

Record Date means 7.00 pm on the date that is two Business Days after the Effective Date, or such other date as may be determined by the RE.

Register means the register of members of a Trust maintained by on or behalf of the RE in accordance with section 168(1) of the Corporations Act, and **Registry** has a corresponding meaning.

Regulatory Approval means any approval or consent of a Regulatory Authority to the Schemes or any aspect of it which is necessary or desirable to implement the Schemes, including the ASIC relief contemplated by clause 3.1(a).

Regulatory Authority means:

- (a) ASX, ACCC, ASIC and the Takeovers Panel;
- (b) any government or governmental, semi-governmental or judicial entity or authority;
- (c) any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Regulatory Guide 74 means ASIC's *Regulatory Guide 74 (Acquisitions Approved by Members)*.

Related Body Corporate has the meaning it has in the Corporations Act, but as if references to "body corporate" and "body" were to "Entity".

Relevant Interest has the meaning given in the Corporations Act.

Representations and Warranties means the representations and warranties of the RE in various capacities as set out in clause 8.

Representative means, in relation to the RE:

- (a) each Related Body Corporate of the RE;
- (b) an employee, officer, director of the RE or another member of the E&P Financial Group; or
- (c) an Adviser to the RE or another member of the E&P Financial Group.

Schemes means the CD1 Trust Scheme, the CD2 Trust Scheme and the CD4 Trust Scheme and **Scheme** means any of them as the case may be.

Scheme Booklet means, in respect of the Schemes, the group of separate documents that are to be read together containing information to be despatched to Unitholders in connection with the Schemes, comprising an explanatory statement complying with the requirements of the Corporations Act (which is to include the Independent Expert's Report), the PDS and the relevant notice or notices of meeting for the Scheme Resolutions, the Delisting Resolution and the Buy-back Resolution.

Scheme Consideration means the consideration to be provided by CD3 to each Scheme Participant for the transfer to CD3 of each CD1 Unit, each CD2 Unit and each CD4 Unit respectively, being:

- (a) 0.6285 of a CD3 Unit for each CD1 Unit transferred;
- (b) 0.9144 of a CD3 Unit for each CD2 Unit transferred; and

- (c) 1.0569 CD3 Units for each CD4 Unit Transferred (or such greater number as calculated by the responsible entity of CD4 to reflect amounts paid or payable from the assets of CD4 upon cancellation of forfeited units under clause 7.16 of the CD4 Constitution that occurs before implementation of the Schemes, up to a maximum ratio of 1.0583),

by a Scheme Participant.

Scheme Meetings means the meetings of Unitholders to be convened by the RE pursuant to the Constitutions of each of CD1, CD2, CD3 and CD4 (as applicable) and section 252A of the Corporations Act to consider the Scheme Resolutions, the Delisting Resolution and the Buy-back Resolution (as applicable), and includes any adjournment of those meetings.

Scheme Participant means each person who is a Unitholder in any or all of CD1, CD2 and CD4 respectively at the Record Date.

Scheme Resolutions means the following resolutions to be put to relevant Unitholders at the Scheme Meetings to approve the Schemes:

- (a) resolutions for the purposes of section 601GC(1) of the Corporations Act to amend the Constitutions of CD1, CD2, CD3 and CD4 as set out in each relevant Supplemental Deed and to authorise the RE to execute and lodge with ASIC each of those Supplemental Deeds to give effect to those amendments;
- (b) in respect of the CD1 Trust Scheme, an ordinary resolution for the purpose of item 7 of section 611 of the Corporations Act to approve the acquisition of all of the CD1 Units by CD3;
- (c) in respect of the CD2 Trust Scheme, an ordinary resolution for the purpose of item 7 of section 611 of the Corporations Act to approve the acquisition of all of the CD2 Units by CD3;
- (d) in respect of CD3, an ordinary resolution to approve the issue of units in CD3 for the purposes of Listing Rules 7.1 and 10.11, and for all other purposes; and
- (e) any other resolutions that the RE (acting reasonably) considers necessary or desirable.

Scheme CD1 Units means each CD1 Unit as at the Record Date.

Scheme CD2 Units means each CD2 Unit as at the Record Date.

Scheme CD4 Units means each CD4 Unit as at the Record Date.

Scheme Security means any of a Scheme CD1 Unit, a Scheme CD2 Unit and a Scheme CD4 Unit.

Second Court Date means the first day on which an application made to the Court to seek the Second Judicial Advice is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

Second Judicial Advice means confirmation from the Court under section 63 of the *Trustee Act 1925* (NSW) that if Unitholders in CD1, CD2 and CD4 have approved the Scheme Resolutions by the requisite majorities, the RE would be justified in implementing the Scheme Resolutions, giving effect to the provisions of each Constitution (as amended by the relevant Supplemental Deed) and in doing all things and taking all necessary steps to put the Schemes into effect.

Superior Proposal means a bona fide written Competing Proposal received after the date of this document that would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to Unitholders (as a whole) in CD1, CD2 or CD4 than the respective Schemes, taking into account all aspects of the Competing Proposal, including whether the transaction is reasonably capable of being completed, the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters.

Supplemental Deed means each deed poll pursuant to which the RE will amend each Trust Constitution, to be executed by the RE in the form of Annexure A to this document (or in such other form as may be agreed to by the RE).

Takeovers Panel means the Takeovers Panel of Australia.

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

Third Party means any person other than the RE or a related body corporate of the RE.

Timetable means the timetable agreed in accordance with clause 5.1.

Treasurer means the Treasurer of Australia.

Trust means any of CD 1, CD2, CD3 and CD4, and **Trusts** means all of them.

Trust Register means the register of members of a Trust maintained by or on behalf of the RE in accordance with section 168(1) of the Corporations Act.

Unitholder means a CD1 Unitholder, a CD2 Unitholder, a CD3 Unitholder or a CD4 Unitholder, and **Unitholders** means all of them.

1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney, New South Wales, Australia time;

- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations) in any jurisdiction (including Australia);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually; and
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it.

1.3 Knowledge, belief or awareness

- (a) Certain statements made in this document (including certain representations and warranties) are given and made by the RE only on the basis of its knowledge, belief or awareness. For the purposes of this document the RE’s knowledge, belief or awareness is limited to the actual knowledge, belief or awareness of the RE’s Executive Team.
- (b) The knowledge, belief or awareness of any person other than the persons identified in clause 1.3(a) will not be imputed to the RE.
- (c) Subject to the Corporations Act, none of the persons referred to in clause 1.3(a) will bear any personal liability in respect of the representations and warranties given in this document by the RE in any capacity (as the case may be) or otherwise under this document.

2 Undertaking to propose and implement Schemes

The RE in its capacity as responsible entity of each of the Trusts covenants, for the benefit of all Unitholders (and in particular Scheme Participants):

- (a) to propose the Schemes;
- (b) to implement the Schemes on and subject to the terms and conditions of this document; and
- (c) to meet and comply with all other obligations and promises made by the RE in this document that may confer rights or benefits on a Unitholder.

3 Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Schemes will not become Effective, and the obligations of the RE under clauses 5.2(m) and 5.2(o) are not binding, unless each of the following Conditions Precedent is satisfied, or waived in accordance with clause 3.2:

- (a) **(ASIC relief)** ASIC issues or provides such consents, waivers and approvals or does such other acts that are, in the opinion of the RE, necessary to implement the Schemes, and none of those consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date;
- (b) **(Unitholder approval)** at the Scheme Meetings, Unitholders in CD1, CD2, CD3 and CD4 approve the Scheme Resolutions by the requisite majorities and, for CD1 and CD2, for item 7 of section 611 of the Corporations Act (and, for CD3, for the purposes of Listing Rule 7.1 and 10.1); and Unitholders in CD3 approve the Delisting Resolution by the requisite majority under the Listing Rules;
- (c) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to the RE, stating that in its opinion the Schemes are fair and reasonable to, and therefore in the best interests of, each of the Unitholders in CD1, CD2, CD3 and CD4, and the Independent Expert does not change its conclusion or withdraw the Independent Expert's Report by notice in writing to the RE prior to 8.00am on the Second Court Date;
- (d) **(no restraints)** no applicable law shall have been enacted and no temporary, preliminary or final restraining order, injunction or other order made by a court of competent jurisdiction or Regulatory Authority is in effect that would prevent, make illegal or prohibit the implementation of the Schemes at 8.00am on the Second Court Date;
- (e) **(No Prescribed Occurrence)** no Prescribed Occurrence occurs between the date of this document and 8.00am on the Second Court Date;
- (f) **(ASX confirmations)** before 8.00am on the Second Court Date, ASX issues or provides such confirmations, consents, waivers and approvals, or does such other acts that are in the opinion of the RE necessary to implement the Schemes, and none of those confirmations, consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date; and
- (g) **(Judicial Advice)** the Court grants the Judicial Advice.

3.2 Waivers of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(d) 3.1(f) and 3.1(g) cannot be waived.
- (b) The Conditions Precedent in clause 3.1(c) and 3.1(e) may only be waived by the RE (in its absolute discretion) in writing.

3.3 Best endeavours and co-operation

- (a) The RE must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent that are within its control.
- (b) The RE will not take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by this document, or the Supplemental Deeds or is required by law.

3.4 Regulatory Approvals

Without limiting clauses 3.3, and except to the extent prohibited by law or a Regulatory Authority, the RE must:

- (a) apply or have applied for all relevant Regulatory Approvals necessary to give effect to the Schemes (including the ASIC relief, ASX waivers and the ASX approval contemplated in clause 3.1) and take or have taken all steps reasonably required as part of the approval process, including responding to requests for information from the relevant Regulatory Authority; and
- (b) to the extent a Regulatory Approval is expressed to be conditional, act reasonably and in good faith in considering whether to accept any such condition as being reasonably satisfactory.

3.5 Failure of Conditions Precedent

- (a) If:
 - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2 by the time or date specified in this document for the satisfaction of the Condition Precedent;
 - (ii) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
 - (iii) one or more of the Conditions Precedent has not been satisfied or waived by the End Date or becomes incapable of being satisfied by the End Date,

the RE must determine in good faith and in the best interests of members of each of the Trusts whether:

- (iv) the Schemes may proceed by way of alternative means or methods;
- (v) to extend the relevant time for satisfaction of the Condition Precedent;
- (vi) to change the date of the application to be made to the Court for the granting of the Judicial Advice or to adjourn such application (as applicable) to another date agreed by the parties; or
- (vii) to extend the End Date.

If the RE is not able to determine that variation or waiver of one or more Conditions Precedent under any of clauses 3.5(a)(iv) to 3.5(a)(vii) would be in the best interests of members of each of the Trusts by 5.00pm on the day before the Second Court Date, then the RE may terminate this document in accordance with clause 10.1.

3.6 Certificates in relation to Conditions Precedent

On the Second Court Date, the RE must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters

within its knowledge) whether or not as at 8.00am on the Second Court Date the Conditions Precedent have been satisfied or waived in accordance with this document.

4 Schemes

4.1 Schemes

The RE in its capacity as responsible entity of CD3 must propose the Schemes under which:

- (a) all the Scheme CD1 Units held by Scheme Participants at the Record Date will be transferred to become property of CD3;
- (b) all the Scheme CD2 Units held by Scheme Participants at the Record Date will be transferred to become property of CD3;
- (c) all the Scheme CD4 Units held by Scheme Participants at the Record Date will be transferred to become property of CD3; and
- (d) each Scheme Participant will be entitled to receive the Scheme Consideration.

4.2 Relationship between the Schemes

- (a) The CD1 Trust Scheme, the CD2 Trust Scheme and the CD4 Trust Scheme are inter-conditional so that each Scheme must become Effective for the Schemes to proceed.
- (b) The Delisting Resolution and the Scheme Resolutions are inter-conditional so that the resolution for delisting of CD3 will only be effective if the Scheme Resolutions are passed, and the Scheme Resolutions will only be effective if the Delisting Resolution is passed.
- (c) The Buy-back Resolution is conditional on the passing of the Scheme Resolutions and the Delisting Resolution, but the validity of the Scheme Resolutions and the Delisting Resolution is not affected if the Buy-back Resolution is not passed.

4.3 Scheme Consideration

Subject to and in accordance with this document and the Schemes, each Scheme Participant is entitled to receive the relevant Scheme Consideration in respect of each Scheme Security held by that Scheme Participant.

4.4 Payment of Scheme Consideration

- (a) Subject to this document and the terms of the Schemes, the RE in its capacity as responsible entity of CD3 undertakes and warrants for the benefit of each Scheme Participant (in its own right and separately as trustee or nominee for each Scheme Participant) that, in consideration of the transfer to it in its capacity as responsible entity of CD3 of each Scheme CD1 Unit, each Scheme CD2 Unit and each Scheme CD4 Unit held by a Scheme Participant, the RE will, on the Implementation Date:
 - (i) accept that transfer to it (or to its custodian) in its capacity as responsible entity of CD3 of each Scheme CD1 Unit, each Scheme CD2 Unit and each Scheme CD4 Unit; and

- (ii) pay or procure the payment of the Scheme Consideration to or at the direction of each Scheme Participant in accordance with the Schemes by way of issue to each Scheme Participant of the number of CD3 Units as provided for in the definition of Scheme Consideration.
- (b) Where the calculation of the Scheme Consideration to be provided to a Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a CD3 Unit, the fractional entitlement will be rounded up or down (as applicable) to the nearest whole CD3 Unit.

5 Implementation

5.1 General obligations

- (a) The RE must:
 - (i) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
 - (ii) procure that its officers and advisers work in good faith and in a timely fashion, to produce the Scheme Booklet, to convene the Scheme Meetings and to implement the Schemes as soon as reasonably practicable,

and in accordance with a timetable prepared by the RE and approved by the ASX ("**Timetable**").

- (b) Failure by the RE to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.1(a) to the extent that such failure is due to circumstances and matters outside the RE's control (including a delay caused by a Regulatory Authority).
- (c) To the extent that any of the dates or timeframes set out in the Timetable become unachievable due to matters outside of the RE's control (including due to any delays caused by a Regulatory Authority), the RE may amend the Timetable to accommodate any necessary extension to ensure such matters are completed within the shortest possible timeframe.

5.2 The RE's obligations

The RE must take all reasonable steps to propose and implement the Schemes on a basis consistent with this document as soon as reasonably practicable and in particular, must:

- (a) **(preparation of meeting materials)** prepare and despatch as components of the Scheme Booklet the notices of meeting and explanatory memorandum for the Scheme Meetings in accordance with all applicable laws, the ASX Listing Rules, Guidance Note 15 and, as applicable, Regulatory Guide 74;
- (b) **(preparation of PDS)** prepare and despatch as a component of the Scheme Booklet the product disclosure statement under which units in CD3 may be issued to provide the Scheme Consideration, and potentially further issues of units following delisting of CD3;
- (c) **(liaison with ASIC)** provide an advanced copy of the Scheme Booklet to ASIC for its review and approval;

- (d) **(Independent Expert)** provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for inclusion in the Scheme Booklet as soon as practicable;
- (e) **(supplementary disclosure)** if, after despatch of the Scheme Booklet until the date of the Scheme Meetings, the RE becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to Scheme Participants under any applicable law but was not included in the Scheme Booklet,
- promptly make any disclosure that the RE considers reasonably necessary in the circumstances, having regard to applicable laws;
- (f) **(ASIC and ASX)** as soon as reasonably practicable after the date of this document, apply to ASIC for the ASIC relief contemplated by clause 3.1(a) and apply to ASX for the confirmations, consents, waivers and approvals contemplated by clause 3.1(f);
- (g) **(ASX confirmation)** without limiting clause 5.2(f), seek confirmation from ASX under ASX Listing Rule 15.1 that ASX does not object to the proposed amendments to each of the CD1 Constitution, the CD2 Constitution and the CD3 constitution as set out in each Supplemental Deed or the Scheme Booklet;
- (h) **(Court documents)** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Schemes in accordance with applicable laws;
- (i) **(First Judicial Advice)** lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the First Judicial Advice;
- (j) **(Scheme Meetings)** subject to the Court providing the First Judicial Advice, convene the Scheme Meetings to be held on the date specified in the Timetable, hold the Scheme Meetings and put the Scheme Resolutions, the Delisting Resolution and the Buy-back Resolution to Unitholders in each Trust respectively at the Scheme Meetings, in each case taking all reasonable steps necessary to comply with the orders of the Court, Guidance Note 15, the Constitutions, the Corporations Act and the ASX Listing Rules (as applicable);
- (k) **(Second Judicial Advice)** if Unitholders in each of CD1, CD2, CD3 and CD4 respectively approve the Scheme Resolutions by the requisite majorities under sections 601GC(1) and item 7 of Section 611 of the Corporations Act and the Unitholders in CD4 approve the Delisting Resolution, and it can reasonably be expected that all of the Conditions Precedent (other than the Condition Precedent in clause 3.1(g) (in relation to the Second Judicial Advice only)) will be satisfied or waived in accordance with this document before 8.00am on the Second Court Date, lodge all documents with the Court and take all other reasonable steps so that an application is heard by the Court for the Second Judicial Advice;
- (l) **(execution and lodgement of each Supplemental Deed)** if the Court grants the Second Judicial Advice, as soon as practicable after, and in

any event no later than 5.00pm on the first Business Day after the later of the Second Court Date and the date on which all of the Conditions Precedent are satisfied or waived in accordance with this document, execute each Supplemental Deed and lodge with ASIC a copy of each executed Supplemental Deed;

- (m) **(implementation of the Schemes)** if the Court grants the Second Judicial Advice:
- (i) **(suspension of trading)** apply to ASX to suspend trading in CD1 Units and CD2 Units on the ASX with effect from the close of trading on the Effective Date;
 - (ii) **(Register)** instruct the Registry to close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
 - (iii) **(instruments of transfer)** on the Implementation Date:
 - (A) execute proper instruments of transfer and effect the transfer of Scheme CD1 Units, Scheme CD2 Units and Scheme CD4 Units to the RE in its capacity as responsible entity of CD3 (or its custodian) in accordance with the Schemes; and
 - (B) procure the registration of all transfers of Scheme CD1 Units, Scheme CD2 Units and Scheme CD4 Units to become property of CD3;
 - (iv) **(issue of CD3 Units)** on the Implementation Date:
 - (A) issue to each Scheme Participant the number of CD3 Units to which they are entitled under the terms of this document; and
 - (B) procure the recording of the issue of those CD3 Units in the Register for CD3.
 - (n) **(listing)** take all reasonable steps to maintain CD3's listing on ASX, notwithstanding any suspension of the quotation of CD3 Units, up to a date which is approximately 6 months after the Implementation Date, including making appropriate applications to ASX and ASIC; and
 - (o) **(other steps)** do all other things necessary to give effect to the Schemes and the orders of the Court approving the Schemes and ensure that the Schemes are effected in accordance with applicable laws and regulations.

5.3 Third party consents

Promptly following the passage of the Scheme Resolutions, the RE must notify the custodian for the Trusts of the changes to the Constitutions. No formal consents by third parties to the implementation of the Schemes are required other than as set out in this deed

5.4 Proxy solicitation

Notwithstanding any over provision of this document, the RE may develop and implement a program for securityholder engagement and proxy solicitation in support of the Schemes.

6 Board Recommendation and intentions

6.1 The RE Board Recommendation

- (a) The Public Announcement to be issued by the RE immediately after grant of the First Judicial Advice shall state (on the basis of written statements or resolutions made by each Director) that the RE Board unanimously recommends that Unitholders in each Trust vote in favour of the Schemes at the Scheme Meetings and all resolutions necessary to implement the Schemes, in the absence of a Superior Proposal and subject to the Independent Expert concluding that the Schemes are fair and reasonable to, and therefore in the best interests of, Unitholders in each Trust (the “**Recommendation**”).
- (b) The RE must use reasonable endeavours to procure that:
 - (i) the Scheme Booklet includes the Recommendation; and
 - (ii) the Directors do not change or withdraw their Recommendation.

6.2 Withdrawal of Recommendation

The obligations in clause 6.1 will cease to apply:

- (a) if the Independent Expert opines in the Independent Expert’s Report (or any update of, or any revision, amendment or supplement to, the Independent Expert’s Report) that the Schemes are not fair and reasonable to, and therefore not in the best interests of, Unitholders of the Trusts;
- (b) if the RE receives a Competing Proposal, where the RE Board has determined after consultation with its legal and financial advisors and acting in good faith, that the Competing Proposal is a Superior Proposal; or
- (c) in respect of the Recommendation of any Director:
 - (i) if a Court, ASIC, the Takeovers Panel or other Regulatory Authority requires or requests that Director to change, withdraw, qualify or modify, or abstain from making, his or her Recommendation; or
 - (ii) the RE reasonably determines that, in order to satisfy what the RE Board considers to be its statutory or fiduciary duties and acting in good faith after consultation with its legal and financial advisors, the relevant Director has an interest in the Schemes that renders it inappropriate for him or her to make or maintain such Recommendation.

6.3 The RE Directors

The RE represents and warrants for the benefit of Unitholders that it has been advised by each Director in office at the date of this document that he or she will make and maintain the Recommendation in accordance with clause 6.1.

6.4 Qualification of Recommendation

For the purposes of clause 6.1, customary qualifications and explanations contained in:

- (a) the Public Announcement to be released by the RE, the Scheme Booklet or any other public announcement in relation to a Recommendation to the effect that the Recommendation is made:
 - (i) in the absence of a Superior Proposal; or
 - (ii) in respect of any public announcement issued before the despatch of the Scheme Booklet to Unitholders, or in respect of the Scheme Booklet or any public announcements issued at the time of or after the despatch of the Scheme Booklet, *'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Schemes are fair and reasonable to, and therefore in the best interests of, Unitholders of the Trusts'*; or
- (b) any public announcement or other statement made by the RE, the RE Board or any Director to the effect that no action should be taken by Unitholders pending the assessment of a Competing Proposal by the RE Board,

will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation, or an endorsement of a Competing Proposal, and will not contravene this clause 6.

7 Conduct of business

7.1 Overview

From the date of this document up to and including the Implementation Date, except as provided in this document the RE must:

- (a) conduct the business of the Trusts in the ordinary course and in substantially the same manner as previously conducted;
- (b) not take or fail to take any action that constitutes a Prescribed Occurrence to the extent it is within the RE's control;
- (c) use reasonable endeavours to:
 - (i) preserve and maintain the value of the business and assets of each Trust;
 - (ii) keep available the services of the directors, officers and key employees of the RE that are engaged in the operation and management of the Trusts; and
 - (iii) maintain and preserve their relationships with Regulatory Authorities, customers, suppliers and others having business dealings with the RE in respect of the Trusts,

in each case, in accordance with the ordinary course of business;

For the avoidance of doubt, nothing in this clause 7 restricts the ability of the RE to respond to a Competing Proposal in accordance with clause 6.2(b).

7.2 Exceptions to conduct of business provisions

Nothing in this clause 7 restricts the ability of the RE from taking any action which:

- (a) is expressly required or permitted by this document, or the Schemes;
- (b) is undertaken in its capacity as trustee, responsible entity, manager (including an asset manager, property manager or investment manager), adviser, or in such other capacity, of a trust, fund, company, partnership or other investment vehicle which it operates, manages or advises (either partially or wholly) as at the date of this document on behalf of one or more Third Parties;
- (c) is required by, or to ensure compliance with:
 - (i) its contractual obligations; or
 - (ii) applicable law, regulation, licence conditions, a requirement or order of a court or Regulatory Authority, the rules or requirements of the ASX, or its fiduciary duties;
- (d) is reasonably necessary or prudent in response to legal proceedings; or
- (e) required to respond to an emergency, disaster or health advice of any Regulatory Authority.

7.3 Permitted Distribution

- (a) Notwithstanding any other provision in this document, subject to clause 7.3(b), the RE may (in its discretion) declare and determine to pay to Unitholders in any of the Trusts a Permitted Distribution.
- (b) If the RE declares or determines to pay a Permitted Distribution in accordance with clause 7.3(a):
 - (i) any such Permitted Distribution must be paid in cash;
 - (ii) the record date of any such Permitted Distribution must be a date on or before the Record Date; and
 - (iii) any such Permitted Distribution must comply with the Corporations Act.

8 Representations and warranties

The RE represents and warrants for the benefit of Unitholders that:

- (a) **(corporate status, capacity and solvency)** on each date from the date of this document until (and including) the Second Court Date:
 - (i) it is a corporation validly existing under the laws of its place of incorporation;
 - (ii) it has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;

- (iii) it has taken all necessary corporate action to authorise the entry into this document and has taken or will take all necessary corporate action to authorise the performance of this document;
 - (iv) its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
 - (v) the execution and performance by it of this document and each transaction contemplated by this document did not and will not violate in any respect a provision of:
 - (A) any law, treaty, judgment, ruling, order or decree binding on it;
 - (B) its constitution; or
 - (C) any other document or agreement that is binding on it; and
 - (vi) it is not Insolvent.
- (b) **(trustee status, capacity and solvency)** on each date from the date of this document until (and including) the Second Court Date:
- (i) each of the Trusts has been duly established and has not been terminated and each is a registered managed investment scheme;
 - (ii) it was validly appointed trustee of each of the Trusts in accordance with the terms of the respective Constitutions, it is the sole trustee of each of the Trusts, and no action has been taken to remove or replace it as the trustee of any of the Trusts;
 - (iii) it has no notice of any circumstances which will or are reasonably likely to lead to its removal as trustee or responsible entity of any of the Trusts;
 - (iv) it has not been removed from the office of trustee or responsible entity nor ceased to act and no additional trustee has been appointed;
 - (v) no action has been taken or proposed to, either:
 - (A) terminate any of the Trusts; or
 - (B) wind-up any of the trusts whether under Chapter 5C of the Corporations Act or otherwise;
 - (vi) it has the authorisations necessary for it to enter into the documents contemplated by this document (including any authorisation required under each Constitution) (if any); and
 - (vii) it has the right to be fully indemnified out of the assets of each Trust in respect of its obligations and liabilities under this document in accordance with the terms of the Constitutions;
- (c) **(capital structure)** as at the date of this document:
- (i) there are 36,551,180 CD1 Units on issue;
 - (ii) there are 52,479,086 CD2 Units on issue;

(iii) there are 72,028,420 CD3 Units on issue; and

(iv) there are 117,939,153 CD4 Units on issue,

and there are no other securities in any of the Trusts issued and outstanding as at the date of this document;

- (d) **(forfeited CD4 Units)** prior to the Record Date the RE will, in exercise of its powers under the CD4 Constitution, cancel all CD4 Units that it holds as property of CD4 by reason of their having been forfeited for non-payment of calls while those units were partly paid, thereby reducing the number of CD4 Units on issue with the effect as noted in paragraph (c) of the definition of Scheme Consideration; and
- (e) **(no regulatory action)** as at the date of this document, no regulatory action of any nature of which the RE is aware has been taken or threatened that may prevent or in any way restrict its ability to fulfil its obligations under this document, the Supplemental Deeds or under the Schemes.

9 Limitation of Liability

- (a) Subject to clause 9(d), the RE's liability under this document is limited to the RE's capacity as responsible entity of the Trust to which the matter relates, and the RE is not liable in any other capacity.
- (b) Subject to clause 9(d), the liability of the RE in respect of any cause of action, claim or loss arising:
- (i) under or in connection with this document;
 - (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
 - (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,
- (each, a "**Trust Claim**"), is limited to the trustee's rights, property and undertaking which are the subject of the relevant Trust, of whatever kind and wherever situated and whether present or future ("**Trust Assets**"). Subject to clause 9(d), the right of any person to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the RE is entitled and able to recover from the relevant Trust Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the RE personally.
- (c) Subject to clause 9(d), no Unitholder may, in respect of any Trust Claim:
- (i) bring proceedings against the RE in its personal capacity;
 - (ii) seek to appoint an administrator or liquidator to the RE;
 - (iii) commence the winding-up, dissolution or administration of the RE; or
 - (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the RE,

except to the extent that the steps taken affect any Trust Assets or the RE's right of recourse against, and indemnity from, the Trust Assets and nothing else.

- (d) If the RE acts in bad faith, negligently, fraudulently, dishonestly, with wilful misconduct or in breach of trust or breach of its statutory duties, or otherwise acts with a result that:
- (i) the RE's right of indemnity, exoneration or recoupment of the Trust Assets; or
 - (ii) the actual amount recoverable by the RE in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the RE will be personally liable and clauses 9(a), 9(b) and 9(c) do not apply.

10 Termination

10.1 Termination by the RE

The RE may terminate this document by notice to Unitholders made by announcement to ASX:

- (a) **(Failure of conditions precedent)** if one or more of the conditions for termination of this document under clause 3.5 is met;
- (b) **(Withdrawal of recommendation)** if a Director has withdrawn their Recommendation or made a public statement supporting or endorsing a Competing Proposal; or
- (c) **(End Date)** if the Schemes have not become Effective on or before the End Date.

10.2 Effect of Termination

In the event of termination of this document by the RE pursuant to clauses 3.5 or 10.1, this document will have no further force or effect, provided that this clause 10 and clauses 1, 9, 11 and 12 will survive termination.

11 General

11.1 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the RE.

11.2 Consents, approvals or waivers

By giving any approval, consent or waiver the RE does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

11.3 Discretion in exercising rights

Unless this document expressly states otherwise, the RE may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

11.4 Partial exercising of rights

Unless this document expressly states otherwise, if the RE does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

11.5 Conflict of interest

The RE may exercise its rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

11.6 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

11.7 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document.

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

11.8 Inconsistent law

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

11.9 Supervening law

Any present or future law which operates to vary the RE's obligations in connection with this document with the result that the RE's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

11.10 Entire undertaking

This document and the Supplemental Deeds constitute the entirety of undertakings by the RE in respect of the Schemes and supersedes all previous agreements, understandings and discussions with any person on those subject matters.

11.11 No liability for Loss

Unless this document expressly states otherwise, the RE is not liable for any Loss arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

11.12 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

12 Governing law

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

Scheme Implementation Deed

Signing page

DATED: 5 October 2022

EXECUTED by E&P INVESTMENTS LIMITED (ACN 152 367 649) as responsible entity of CD Private Equity Fund I (ARSN 158 625 284) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:



.....
Signature of director

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



.....
Signature of director

Peter Shear
.....
Name of director

EXECUTED by E&P INVESTMENTS LIMITED (ACN 152 367 649) as responsible entity of CD Private Equity Fund II (ARSN 162 057 089) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:



.....
Signature of director

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



.....
Signature of director

Peter Shear
.....
Name of director

EXECUTED by E&P INVESTMENTS LIMITED (ACN 152 367 649) as responsible entity of CD Private Equity Fund III (ARSN 612 132 813) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:



.....
Signature of director

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



.....
Signature of director

Peter Shear
.....
Name of director

EXECUTED by **E&P INVESTMENTS**)
LIMITED (ACN 152 367 649) as)
responsible entity of **CD Private Equity**)
Fund IV (ARSN 624 474 531) in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)



.....)
Signature of director)

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



.....)
Signature of director)

....Peter Shear.....)

Name of director
(block letters)

Annexure A Supplemental Deeds

Supplemental Deed – CD Private Equity Fund I

Dated

2022

E&P Investments Limited (ABN 78 152 367 649) in its capacity as
responsible entity of the CD Private Equity Fund I (“**Responsible Entity**”)

King & Wood Mallesons

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Supplemental Deed – CD Private Equity Fund

I

Details

Responsible Entity	Name	E&P Investments Limited in its capacity as responsible entity of the CD Private Equity Fund I ARSN 158 625 284
	ABN	78 152 367 649
	Address	Level 32, 1 O'Connell Street, Sydney NSW 2000

Recitals	A	The Trust is governed by the Constitution. The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
	B	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution: (a) by special resolution of the members of the scheme; or (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
	C	Under clause 22.1 of the Constitution, the Constitution may be amended, if the Corporations Act allows, by resolution of Members or by the Responsible Entity if the amendments do not adversely affect the rights of Members.
	D	On 7 November 2022, the Members of the Trust approved by special resolution the amendments to the Constitution set out in the schedule to this deed.
	E	The Responsible Entity now wishes to, by this deed, give effect to the amendments described in Recital D.

Governing law	New South Wales
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Date of deed	See Signing page
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Supplemental Deed – CD Private Equity Fund I

General terms

1 Interpretation

1.1 Definitions

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

Constitution means the document dated 12 June 2012 under which the Trust is governed as amended from time to time.

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

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

Member has the same meaning given under the Constitution.

Trust means the registered managed investment scheme currently named CD Private Equity Fund I (ARSN 158 625 284).

1.2 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

1.3 Headings

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

2 Modification of the Constitution

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

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

3 No redeclaration etc

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

- (a) redeclaring, resettling or terminating the Trust;

- (b) declaring any trust, or making any statement that purports to be a declaration of trust or acknowledgement of trust or the vesting of assets for the purposes of section 8AA of the *Duties Act 1997* (NSW); or
- (c) causing the transfer, vesting or accruing of property in any person.

4 Governing law

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

EXECUTED as a deed

Supplemental Deed – CD Private Equity Fund I

Signing page

DATED: _____

Executed as a deed

EXECUTED by **E&P INVESTMENTS LIMITED IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE CD PRIVATE EQUITY FUND I** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*

*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)

*delete whichever is not applicable

Supplemental Deed – CD Private Equity Fund I

Schedule 1 – Amended Constitution

**Constitution of the
CD Private Equity Fund I**

Consolidated to September 2020

Contents

1.	Definitions and Interpretation.....	1
2.	Name of Trust.....	8
3.	Assets held on trust	8
4.	Units.....	9
5.	Application Price for Units	11
6.	Application Procedure	13
7.	Transfers.....	15
8.	Valuation of Assets	17
9.	Accounts, Audit and Reports	18
10.	Income and Distributions to Members	18
11.	Payments.....	24
12.	Powers of the Responsible Entity	25
13.	Retirement of Responsible Entity	26
14.	Notices to Members	26
15.	Meetings of Members.....	27
16.	Rights and Liabilities of Responsible Entity.....	29
17.	Limitation of Liability and Indemnity in favour of Responsible Entity	30
18.	Liability of Members	31
19.	Remuneration and Expenses of Responsible Entity	32
20.	Duration of the Trust	34
21.	Procedure on Termination.....	35
22.	Amendments to this Constitution.....	36
23.	Compliance Committee	36
24.	Complaints	37
25.	General.....	38
26.	Withdrawal of Units.....	39
27.	Withdrawal Price	41
28.	Reorganisation Proposal.....	41

Constitution of the CD Private Equity Fund I

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

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

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

[AMIT means a trust which is an attribution managed investment trust under the Tax Act.](#)

[AMIT Income Year means a year of income for the purposes of the Tax Act that the Trust is an AMIT.](#)

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

[AMMA Statement has the meaning given to that phrase in the Tax Act.](#)

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

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

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

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

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

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

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

[CD2 means CD Private Equity Fund II \(ARSN 162 057 089\).](#)

[CD3 means CD Private Equity Fund III \(ARSN 612 132 813\).](#)

[CD3 Units means units in CD3.](#)

[CD4 means CD Private Equity Fund IV \(ARSN 624 474 531\).](#)

Class means a class of Units.

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

Corporations Act means the Corporations Act 2001 (Cth).

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

Designated Foreign Member means a Foreign Member in respect of whom the Responsible Entity has made a determination in accordance with clause 28.4(b).

Designated Foreign Member Cash-Out has the meaning given in clause 28.4(d).

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

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

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

Distribution Period means:

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

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

Exchange Ratio means 0.6285.

Foreign Member means a member whose address appearing in the Register is in a country outside Australia or New Zealand.

GST has the meaning given to that term in the GST Act.

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

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 10.4.

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

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

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

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

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

Market Price of a Unit on the Relevant Business Day means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Registered means recorded in the Register.

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

Registration means recording in the Register.

Relevant Business Day means either:

~~(a)~~(a) the date Units are offered;

~~(b)~~(b) the last date on which applications for Units can be received by the Responsible Entity;

~~(c)~~(c) the date Units are allotted; or

~~(d)~~(d) the date Units are issued,

determined by the Responsible Entity at its sole discretion.

Reorganisation Proposal means a proposal that has been approved by resolution by the requisite majority of Members and the members of each of CD2 and CD4, for the acquisition by the responsible entity of CD3 (or its custodian or nominee) of all the Units in exchange for consideration to be provided to each Member in the form of the issue of the number of CD3 Units calculated in accordance with clause 28.2(b).

Reorganisation Record Date has the meaning given in clause 28.1(a).

Resolution means:

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

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

Responsible Entity means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and
- (b) while the Trust is not a Registered Scheme, the Responsible Entity of the Trust, with the first Responsible Entity being Dixon Advisory & Superannuation Services Limited which retired and was replaced as responsible entity by Walsh & Company Investments Limited¹ (ACN 152 367 649) in April 2014.

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

Sale Consideration means the average price at which CD3 Units are sold by the Sale Nominee, multiplied by the number of CD3 Units sold by the Sale Nominee in respect of the relevant Designated Foreign Member (net of expenses, if any).

¹ The name of the Responsible Entity has since changed to E&P Investments Limited

Sale Nominee means a person appointed by the Responsible Entity to carry out the role described in [clause 28.4\(c\)\(ii\)](#);

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

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

Tax Year means:

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

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

Transmission Event means:

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

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

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

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

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

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

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

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

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

1.2. Interpretation

Unless the contrary intention appears, in this Constitution:

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

1.3. Inclusive expressions

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

1.4. General compliance provision

- (a) A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.

- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this Constitution.
- (c) This Clause 1.4 prevails over all other provisions of this Constitution including any that are expressed to prevail over it.

1.5. Listing Rules

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

1.6. Additional Listing Rule requirements

At all times while the Trust is Listed:

- (a) the Responsible Entity must not remove or change a Member's right to vote except if:

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

1.7. Other Documents

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

2. Name of Trust

2.1. Name of Trust

The Trust is called CD Private Equity Fund I or by such other name as the Responsible Entity determines from time to time.

3. Assets held on trust

3.1. Assets held on Trust

- (a) ~~[\[This clause 3.1\(a\) is preserved in its existing form and is not restated or amended\]](#)The Responsible Entity must hold the Assets on trust for Members².~~

² [In the existing constitution, clause 3.1\(a\) states "The Responsible Entity must hold the Assets on trust for Members".](#)

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

4. Units

4.1. Nature of Units

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

4.2. Fractions of Units

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

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

4.3. Consolidation and Division of Units

- (a) Units may be consolidated or divided as determined by the Responsible Entity.
- (b) The Unit structure may only be reconstructed:
 - (i) if the proportion of Units held by Members relative to each other immediately before the reconstruction is maintained; and
 - (ii) in accordance with this Constitution, the Listing Rules (if applicable) and applicable law.

4.4. Joint Tenancy

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

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

4.5. Death, Legal Disability of Member

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

4.6. Benefits and obligations of Members

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

4.7. No further liability

- (a) This Clause 4.7 is subject to any separate agreement between a Member and the Responsible Entity.
- (b) The liability of each Member in its capacity as such is limited to its investment in the Trust.
- (c) A Member is not required to indemnify the Responsible Entity or a creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Trust.

- (d) The recourse of the Responsible Entity and any creditor of the Responsible Entity is limited to the assets of the Trust.
- (e) Nothing in or under this Constitution makes the Responsible Entity an agent of a Member, nor does it create any relationship other than that of beneficiary and trustee.

4.8. Class rights

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

5. Application Price for Units

5.1. Application Price

- (a) The Application Price for the Units issued under the first product disclosure statement prepared for the Trust will be \$1.60 per Unit.
- (b) Subject to Clauses 5.1(c) and 5.1(d), after the issue of Units under the first product disclosure statement, the Application Price will be equal to:

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

- (c) Subject to Clause 5.1(d), if the Units are Officially Quoted, the Application Price will be the Market Price.
- (d) The Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by ASIC Relief (and subject to the terms of that ASIC Relief) and, if the Units are Officially Quoted, the Listing Rules without limiting the foregoing, the following apply to the extent they reflect the requirements of ASIC Relief:
 - (i) in the case of a proportionate offer (including a rights issue), Clause 5.4;
 - (ii) in the case of an issue of Units as consideration for an off-market bid, Clause 5.6;
 - (iii) in the case of a placement of Units or pursuant to an interest purchase plan which complies with ASIC Class Order CO 09/425 while Units are Officially Quoted, Clause 5.7; and
 - (iv) in the case of reinvestment of income, Clause 5.8.

5.2. Variables

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

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

whichever happens later.

5.3. Rounding

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

5.4. Pro rata rights issues

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

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

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

5.5. Terms of pro rata issues

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

5.6. Issue of Units as Bid Consideration

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

- (ii) the application price for Units, after deducting the value of the other consideration under the Offer which has been accepted, where the Bid Consideration comprises Units and other consideration.

5.7. Placements

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

5.8. Reinvestment

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

6. Application Procedure

6.1. Application Form

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

6.2. Payment

- (a) Payment in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
 - (i) accompany the application;
 - (ii) be received by or made available to the Responsible Entity within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
 - (iii) comprise a reinvestment of distribution in accordance with Clauses 10.15 to 10.16.
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.
- (c) Application Monies for Units issued under a product disclosure statement must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:

- (i) the minimum subscription, if any (to be specified in the product disclosure statement) has been reached and the Responsible Entity decides to proceed to allotment of Units; or
- (ii) the date by which the Application Monies would need to be repaid under the Corporations Act.

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

6.3. Responsible Entity May Reject

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

6.4. Minimum Amounts

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

6.5. Issue Date

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

6.6. Uncleared Funds

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

6.7. Register

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

6.8. Holding Statements

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

6.9. Foreign Members

- (a) The Responsible Entity may determine that Foreign Members are not to be offered Units which are otherwise offered to Members in that capacity where it reasonably considers that it would:
 - (i) be in the best interests of the Members; and
 - (ii) not be unfair to the Foreign Members.

- (b) If the Responsible Entity makes a determination under Clause 6.9(a) and it is practicable to do so, the Responsible Entity must sell the Foreign Interests and pay to each Foreign Member the amount calculated as follows:

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

Where:

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

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

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

N is the aggregate number of Foreign Interests; and

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

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

7. Transfers

7.1. Transfer

- (a) Before the Trust is Listed or at any time after the Trust has ceased to be Listed, all transfers of Units must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units under this Clause 7.1(a) unless the instrument of transfer:
- (i) is duly stamped (if applicable);
 - (ii) is accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
 - (iii) complies with any requirements prescribed by the Responsible Entity from time to time.
- (b) While the Trust is Listed, all transfers of Officially Quoted Units must be effected in accordance with the Listing Rules.
- (c) A transferor of Units remains the Member until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units of the transfer is effected in accordance with the ASX Settlement Operating Rules.

7.2. Transaction advice after transfer

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

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

7.3. No General Restriction on Transfer

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

7.4. Power to suspend registration of transfers

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

7.5. Transmission of Units

- (a) In the case of a Transmission Event in respect of a Member, the only persons who will be recognised as having any title to the Units registered in the Member's name or any benefits accruing in respect of those Units:
 - (i) where the Member is a joint holder, the survivor or survivors of the Member;
 - (ii) where the Member is an individual, the legal personal representative of the Member or the person entitled to the Units as a result of bankruptcy; or
 - (iii) where the Member is a body corporate, the person entitled to the Units as a result of the dissolution or succession.
- (b) Nothing in Clause 7.5(a) releases the Member or the estate of a deceased Member from any liability in respect of the Units held whether that Unit was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit as a result of a Transmission Event may, upon producing such evidence as the Responsible Entity may require to prove that person's entitlement to the Unit, elect:
 - (i) to be registered as the Member of the Unit by signing and serving on the Responsible Entity a notice in writing stating that election; or

- (ii) to have some other person nominated by that person registered as the transferee of the Unit by executing a transfer to that other person in accordance with Clause 7.1.
- (d) The Responsible Entity need not register any transfer or transmission pursuant to Clause 7.5(a) unless the transferee provides an indemnity in favour of the Responsible Entity in a form determined by the Responsible Entity in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this Constitution relating to the right to transfer, and the registration of transfers of, Units apply, so far as they can and with such changes as are necessary, to any transfer under Clause 7.5(c) as if the relevant Transmission Event had not occurred and the transfer was signed by the Member of the Unit.
- (f) For the purposes of this Constitution, where 2 or more persons are jointly entitled to any Unit in consequence of a Transmission Event they will, upon being registered as the Members of the Unit, be taken to hold the Unit as joint tenants and Clause 4.4 will apply to them.
- (g) Despite Clause 7.5(a), the Responsible Entity may register a transfer of Units signed by a Member before a Transmission Event even though the Responsible Entity has notice of the Transmission Event.

7.6. Recognition of Member

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

7.7. Participation in Transfer Systems

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

8. Valuation of Assets

8.1. Periodic Valuations

- (a) The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act if the Corporations Act section 601FC(1)(j) applies.
- (b) The Responsible Entity may determine Net Asset Value at any time.

8.2. Valuation Methods

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

9. Accounts, Audit and Reports

9.1. Accounts – Registered Scheme

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

9.2. Accounts – Not a Registered Scheme

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

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

10. Income and Distributions to Members

10.1. Distributable Income

- (a) The Responsible Entity must determine the distributable income of the Trust for each Tax Year.
- (b) For any Tax Year that is not an AMIT Income Year, the Distributable Income of the Trust for a Tax Year is the amount that the ~~Trustee~~ Responsible Entity determines, in its absolute discretion, to be the income of the Trust for that period. However, the distributable income must not be less than the amount which if distributed would prevent the Responsible Entity being liable to tax on the income of the Trust.
- (c) If no determination is made under clause 10.1(b) then the distributable income for the Tax Year is equal to the Operating Income for that Tax Year.
- (d) For any Tax Year that is an AMIT Income Year, unless the Responsible Entity determines otherwise, the Distributable Income will be the aggregate of:
 - (i) the amount determined by the Responsible Entity to be the aggregate of all Trust

Components for the Trust for the period that have an assessable income character, excluding any amounts of a tax offset character; and

(ii) any additional amount that the Responsible Entity consider appropriate for distribution in relation to the Trust for the relevant period, including:

(A) amounts referable to the discount capital gains concession; and

~~(e)~~(B) any other Trust Components that have the character of exempt income or non-assessable non-exempt income.

~~(d)~~(e) In making ~~the a~~ determination under this clause 10.1, the ~~Trustee~~Responsible Entity may classify any item as income or capital, in its absolute discretion.

~~(e)~~(f) In making ~~the a~~ determination under this clause 10.1, the ~~Trustee~~Responsible Entity does not have to take into account the Accounting Principles which apply to trusts. The preparation of the accounts of the Trust in accordance with the Accounting Principles is not to be regarded as a determination of the method for calculating the distributable income of the Trust under this clause 10.1.

10.2. Power to accumulate amounts

(a) The Responsible Entity may, in respect of a Tax Year for the Trust that is an AMIT Income Year, determine prior to the end of that Tax Year that all or part of the Distributable Income of the Trust that has not already been distributed to Members under clauses 10.4 or 10.9(b) will be accumulated.

(b) The effect of the Responsible Entity exercising its power to accumulate an amount pursuant to clause 10.2(a) is to exclude the relevant amount from the Income Distributions for Members of the Trust for the Tax Year.

(c) For the purposes of clause 10.12, amounts accumulated under clause 10.2(a) are to be treated for the purposes of the AMIT Regime as having been accumulated for the benefit of the Members at the time specified by the Responsible Entity. This time must be on or after the time the Responsible Entity determines to accumulate the relevant amount, but at or before the end of the relevant Financial Year.

(d) Amounts which are accumulated pursuant to clause 10.2(a) continue to form part of the Assets and no Member has any particular right to or interest in those amounts.

10.2.10.3. Present Entitlement

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

(a) If the Tax Year is not an AMIT Income year, the distributable income of the Trust for the Tax Year; and

(b) If the Tax Year is an AMIT Income Year, the Distributable Income of the Trust for the Tax Year excluding any amounts accumulated pursuant to clause 10.2,

in the proportion specified in Clause 10.4.

10.3.10.4. Income Distributions

(a) The Responsible Entity may determine to make an interim distribution of distributable income accruing during any Interim Distribution Period (an **Interim Distribution**). The Responsible Entity must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Members on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in Clause 10.4(d).

~~(b)~~ Within 90 days of the end of the Tax Year and subject to Clause 10.4(d), the Responsible Entity must pay to the Members on the Register at the end of the last day of that Tax Year an amount equal to the Income Distribution of distributable income accruing to the Trust for the Tax Year less:

~~(i)~~ any amounts previously distributed during that Tax Year under Clauses 10.4(a) or 10.9(b); and

~~(ii)~~ any amounts accumulated under clause 10.2(a).

~~(b)~~~~(c)~~ Subject to the rights, obligations and restrictions attaching to any particular Unit or Class and to Clause 10.4, a Member on the Register on the Distribution Calculation Date:

- (i) for the purposes of Clause 10.3, has an absolute vested and indefeasible interest in, and is presently entitled to;
- (ii) for the purposes of Clause 10.4(b)(ii), is presently entitled to a distribution of; and
- (iii) for the purposes of Clause 10.4(a), is presently entitled to an Interim Distribution out of distributable income of,

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

~~(c)~~~~(d)~~ Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Member is entitled to receive a distribution under Clause 10.4(a) or 10.4(b)(ii) in accordance with the following formula:

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

where:

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

~~(d)~~(e) The ~~Trustee~~ Responsible Entity may retain from each Member's Income Distribution all amounts which are necessary to avoid distributing a fraction of a cent or which the ~~Trustee~~ Responsible Entity determines it is not practical to distribute in respect of a Distribution Period. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.

10.4.10.5. Satisfaction of Present Entitlement

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

~~10.5. Minimum Distribution~~

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

10.6. Member's Rights

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

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

10.7. Trust taxed as a Company

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

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

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

where:

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

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

C = the Distributable Amount.

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

10.8. Withholding Tax

- (a) The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that it is required by law to deduct from such amount.
- (b) Where the income of the Trust is reduced by Additional Taxes attributable to the ownership of Units by certain Members, the entitlement to Income Distributions of such Members may be adjusted by the Responsible Entity, pursuant to Clause 10.4(d), so that the entitlement to Income Distribution or Distributable Amount of all other Members is equivalent to the amount they would receive in the absence of such Additional Taxes.

10.9. Other Distributions

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

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

10.10. Change in taxation

If there is any amendment to the Tax Act or a change in the administration of the Tax Act whether resulting from judicial determination or otherwise and as a consequence the ~~Trustee~~ Responsible Entity believes that it is in the best interests of Members that the Distributable Income should be determined otherwise than in accordance with clause 10.1, the ~~Trustee~~ Responsible Entity must by notice in writing to Members notify Members of the basis upon which it proposes to calculate the Distributable Income and may then calculate and pay the Distributable Income on that basis on and after the next Distribution Calculation Date or such later Distribution Calculation Date as is specified in the notice.

~~10.11. Not used.~~

~~10.12.~~ 10.11. Separate Accounts

- (a) The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Members.

- (b) Where Clause 10.8(b) has been applied to reduce income entitlements of certain Members, those Members are to have the corresponding additional credits for tax purposes allocated to them.

~~(b)~~ **10.12 Attribution under AMIT Regime – basis for attribution**

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Tax Year, attribute all of the Determined Trust Components of the Trust for the Tax Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under clause 10.13(a) in accordance with the Tax Act and the principle that the amount of each Member's Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this Constitution.
- (c) Without limiting clause 10.13(b), following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Trust, all of the Determined Trust Components of the Trust for the Tax Year that are reflected in any Income Distributions to which the Member or former Member has become entitled at the end of the Tax Year under clauses 10.4 or 10.9(b);
- (d) The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed are referable to Determined Trust Components of the Trust for the Tax Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under clause 10.13(a).

10.13. Attribution under AMIT Regime – Member objections

If the Trust is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Trust to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

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

10.14. AMIT Regime Unders/Overs

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

~~10.13.~~ 10.15. **Reinvestment**

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

~~10.14.~~ 10.16. **Position on Transfer of Units**

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

10.17. Liability

To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 10.17 or under the AMIT Regime in respect of an AMIT Income Year, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax

11. Payments

11.1. Responsible Entity Discretion

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

11.2. Unpresented Cheques

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

11.3. Unsuccessful Payment

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

11.4. No Fractions

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

11.5. Discharge of Responsible Entity

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

11.6. Deductions

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

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

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

12. Powers of the Responsible Entity**12.1. General Powers**

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

12.2. Contracting Powers

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

12.3. Investment Powers

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

12.4. Guarantees

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

12.5. Power of Delegation

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

12.6. Exercise of Discretion

~~Subject to Clause 1, t~~ The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

~~12.7. Discretion Limited~~

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

13. Retirement of Responsible Entity

13.1. Voluntary Retirement

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

13.2. Compulsory Retirement

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

13.3. New Responsible Entity

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

13.4. Release

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

13.5. Retirement Benefit

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

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

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

14. Notices to Members

14.1. Notices to Members

- (a) Subject to the Corporations Act, a notice or other communication required under this Constitution to be given to a Member may be given electronically, including by way of

announcements on the Prescribed Financial Market on which the Units are Listed, or in such other manner as the Responsible Entity determines, unless a Member specifies to receive such notices and communications in writing. In this case, notices and communications should be delivered or sent to the Member at the Member's physical or electronic address last advised to the Responsible Entity for delivery of notices.

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

14.2. Notices of the Responsible Entity

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

15. Meetings of Members

15.1. Corporations Act

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

15.2. Member's Request for Meeting

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

15.3. Notice Period

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

15.4. Responsible Entity May Determine

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

15.5. Quorum

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

15.6. No Quorum

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

15.7. Chairman

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

15.8. Adjournment

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

15.9. Resolutions Binding

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

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

While the Trust is a Registered Scheme:

- (a) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and
- (b) the Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

15.11. While the Trust is not a Registered Scheme

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

15.12. Voting

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

15.13. Poll

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

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

15.14. Proxies

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

15.15. Class Meetings

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

16. Rights and Liabilities of Responsible Entity**16.1. Holding Units**

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

16.2. Other Capacities

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

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

16.3. Responsible Entity May Rely

The Responsible Entity may take and may act upon:

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

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

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

17.1. No limitation of other undertakings

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

17.2. Limitation of liability

Except where the Corporations Act expressly provides otherwise:

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

any transaction arising under this Constitution notwithstanding that such payment need not have been made.

17.3. Acts or omissions of Responsible Entity and others

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

except where the Corporations Act expressly provides otherwise.

- (b) The Responsible Entity will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
- (i) any provision of any present or future law or statute of Australia or any State or Territory; or
 - (ii) any decree, order or judgement of any competent court;
 - (iii) or any document or agreement binding on the Responsible Entity,
- the Responsible Entity is prevented, forbidden or hindered from doing or performing.
- (c) No act or omission of the Responsible Entity will be considered fraud, negligence or breach of trust by it to the extent to which the act or omission was caused or contributed to by any failure by any other person to fulfil its obligations relating to the Trust or by any other act or omission of any other person.

17.4. Indemnity in Favour of Responsible Entity

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

18. Liability of Members

18.1. Liability Limited

- (a) Subject to Clauses 18.1(c) and 18.2, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- (b) A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets to meet the claim of any creditor of the Responsible Entity in respect of the Trust.

- (c) The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which Clause 18.3 applies.

18.2. Recourse

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

18.3. Restrictions on Members

A Member:

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

19. Remuneration and Expenses of Responsible Entity

19.1. Management Fee

- (a) Subject to the proper performance of its duties and to paragraph 19.1(b), the Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each month a monthly management fee (**Management Fee**) equivalent to 2% per annum of the gross value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee.

(b) Despite any other provision of this Constitution, the Responsible Entity is not entitled to the Management Fee under paragraph 19.1(a) in respect of any period when the Fund has only one Member.

- ~~(b)~~(c) In relation to the month in which the Trust is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month. Where the Management Fee was not paid for a particular month or part month or not in full, the Management Fee payable in a subsequent month will be the aggregate of the Management Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid.

~~19.2. Entry Fee~~

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

~~19.3.~~19.2. Payment of Responsible Entity's fee

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

~~19.4.~~19.3. **Priority of Responsible Entity's remuneration**

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

~~19.5.~~19.4. **Indemnity out of Fund**

In addition to the Responsible Entity's right of remuneration under Clauses 19.1 ~~and 1.4~~ and any other right of indemnity which it may have under this Constitution or at law, the Responsible Entity is indemnified and entitled to be reimbursed out of the Trust for, or entitled to have paid from the Trust, all Costs (including, without limitation, any amounts payable to any delegate, attorney, agent or custodian) incurred at law or under this Constitution in the proper performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

~~19.6.~~19.5. **Waiver of Fees**

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

~~19.7.~~19.6. **Expenses**

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

- (a) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (b) any proposed acquisition, disposal or other dealing with an investment;
- (c) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions ([including resolutions to implement the Reorganisation Proposal](#)) and communications with Members;
- (f) Tax, including any GST paid or payable as part of expenses incurred by the Responsible Entity in the proper performance of duties as Responsible Entity;
- (g) financial institution fees;
- (h) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (i) preparation and audit of the taxation returns and accounts of the Trust;

- (j) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (k) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this Clause 19.6(k) must be repaid;
- (l) any compliance or other committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (m) while the Trust is a Registered Scheme but there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (n) the preparation, implementation, amendment and audit of any compliance plan; ~~and~~
- (o) complying with any law, and any request or requirement of the ASIC.

~~19.8.~~19.7. GST

- (a) Words and expressions defined in the GST Act have the same meaning in this clause 19.87.
- (b) Unless otherwise explicitly stated, the consideration for any supply made under or in connection with this Constitution is exclusive of GST.
- (c) To the extent that any supply made by the Responsible Entity under or in connection with this Constitution is a taxable supply, then in addition to any consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount equal to the GST payable by the Responsible Entity in respect of the supply.
- (d) The amount by which the consideration is increased under this clause 19.78(c) is payable at the same time as the consideration for the supply.
- (e) Clause 19.87(c) does not apply to supplies in respect of which the consideration is explicitly expressed as GST inclusive in this Constitution.
- (f) In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1 + n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).

~~19.9.~~19.8. Sums Owed to the Responsible Entity

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

20. Duration of the Trust

20.1. Initial Settlement

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

20.2. Termination

The Trust terminates on the earliest of:

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

21. Procedure on Termination

21.1. Realisation of Assets

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

21.2. Audit of Winding Up

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

21.3. Distribution Following Termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in the following manner. The Responsible Entity may distribute proceeds of realisation in instalments. The Responsible Entity must first pay the Trust's income from the last Distribution Calculation Date prior to the termination of the Trust to the Members holding Ordinary Units pro rata according to the respective numbers or such Units held by them. Secondly, the Responsible Entity must pay the balance to the Members pro rata according to the respective numbers of Units held by them.
- (b) The Responsible Entity may distribute an asset of the Trust to a Member *in specie*. The Responsible Entity must determine the value of the asset of the Trust to be distributed *in specie*. Any costs payable on an *in specie* distribution must be paid by the Member before the distribution is made.
- (c) The Responsible Entity is entitled to:
 - (i) be paid from the proceeds of realisation of the Trust before any payment is made to the Members all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Trust;
 - (C) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and
 - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Responsible Entity in connection with the winding up of the Trust;
 - (ii) an indemnity against the amounts referred to in Clause 21.3(c)(i) which may be satisfied out of those proceeds before any distribution under Clause 21.3(a) is made; and

- (iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Clause 19.
- (d) The Responsible Entity may postpone the realisation of the Trust for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Responsible Entity may retain for as long as it thinks fit any part of the Trust which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this Constitution, including but not limited to under Clause 19.
- (f) Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under Clause 21.3, but during that period the Responsible Entity may not accept any applications for Units from a person who is not an existing Member.

22. Amendments to this Constitution

22.1. Responsible Entity May Amend

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

22.2. Statutory Requirements

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

23. Compliance Committee

23.1. Compliance Committee

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

23.2. Persons to whom Clauses 23.3 and 23.5 apply

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

23.3. Indemnity

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

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

23.4. Extent of indemnity

The indemnity in Clause 23.3:

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

23.5. Insurance

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

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

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

23.6. Savings

Nothing in Clauses 23.3 or 23.5:

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

24. Complaints

24.1. Complaints

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

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must, where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) must, where there is no compliance committee, consider the complaint;
- (d) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (e) may in its discretion give any of the following remedies to the complainant:

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

25. General

25.1. Restricted Securities

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

25.2. Small Holdings

- (a) Subject to the provisions of this Clause 25.2, while the Trust is Listed the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units under this Clause 25.2 on 1 occasion in any 12 month period.
- (c) The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this Clause 25.2.
- (d) The Responsible Entity may not sell or redeem the relevant Units:
- (i) before the expiry of 6 weeks from the date of the notice given under Clause 25.2(c); or
 - (ii) if within the 6 weeks allowed by Clause 25.2(d)(i), the Member advises the Responsible Entity that the Member wishes to retain the Units.

- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides.
- (g) The proceeds of the sale or redemption may not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.

25.3. Constitution Legally Binding

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

25.4. Severance

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

25.5. Governing Law

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

25.6. Other Obligations Excluded

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

26. Withdrawal of Units

26.1. Withdrawal request while Trust is Liquid

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

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

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

26.2. Action following a request

Within a reasonable time, and in any event within 30 days, of receiving a withdrawal request under Clause 26.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:

- (a) deny the request (but it must then notify the Member accordingly); or

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

26.3. Suspension of withdrawal request right

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

26.4. Withdrawal while Trust is not Liquid

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

26.5. Minimum holding

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

26.6. Sums owed

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

26.7. Liquid or not Liquid

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

26.8. Cooling off

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

26.9. Increase of minimum holding

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

26.10. On market buy back of Units

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

26.11. Order

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

27. Withdrawal Price

The Withdrawal Price for any Unit will be equal to:

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

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

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

28. Reorganisation Proposal

28.1. Power to give effect to Reorganisation Proposal

Without limiting any other provisions of this Constitution, the Responsible Entity has power to:

- (a) determine the time and date at which the Members on the Register will be the persons entitled to participate in the Reorganisation Proposal ("Reorganisation Record Date"), and to determine the time at which each step in the Reorganisation Proposal will occur which must be the same time and date as determined for the same purpose in respect of CD2, CD3 and CD4; and
- (b) do all other things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

28.2. Specific powers

Without limiting clause 28.1, to give effect to the Reorganisation Proposal, the Responsible Entity has power to:

- (a) first, make the determinations and effect the transfers contemplated by clause 28.4 so that any Units held by Designated Foreign Members are transferred to the Sale Nominee and update the Register accordingly;
- (b) apply on behalf of each Member for the number of CD3 Units calculated by multiplying the Exchange Ratio by the number of Units held by the Member and rounding up or down as applicable to the nearest whole CD3 Unit;
- (c) consent on behalf of each Member to become a member of CD3 and be bound by the constitution of CD3;
- (d) as consideration for the issue of that number of CD3 Units, transfer each Member's Units to the responsible entity of CD3 or its custodian or a nominee, as it determines, and give on behalf of each Member a warranty as to good and unencumbered title to the Units to be transferred;
- (e) make distributions and other payments out of the Assets, or make any determinations of dates or amounts for the purposes of clause 10 which are necessary or desirable to give effect to the Reorganisation Proposal; and
- (f) issue Units, transfer Assets, execute all documents and do all other things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

28.3. Appointment of Responsible Entity as agent and attorney

Without limiting clause 28.1, to give effect to the Reorganisation Proposal, the Responsible Entity is irrevocably appointed as the agent and attorney of each Member to:

- (a) apply for CD3 Units on behalf of each Member;
- (b) execute a transfer of -Units on behalf of each Member; and
- (c) execute all documents and do all things (including giving all consents) which the Responsible Entity reasonably considers are necessary or desirable to give effect to the Reorganisation Proposal.

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

28.4. Treatment of Foreign Members in the Reorganisation Proposal

- (a) This clause 28.4 applies where a Foreign Member is a Member on the Business Day before the Reorganisation Record Date.
- (b) The Responsible Entity may determine that a Foreign Member is a Designated Foreign Member with respect to the Reorganisation Proposal where the Responsible Entity reasonably determines that it will not offer, issue or transfer CD3 Units to that Foreign Member, having regard to:
 - (i) the number of Foreign Members in the jurisdiction of that Foreign Member;
 - (ii) the number and value of CD3 Units that may be offered, issued or transferred to Foreign Members in the foreign jurisdiction; and

- (iii) the cost of complying with legal requirements and the requirements or any relevant regulatory authority applicable to the offer, issue or transfer in the foreign jurisdiction.
- (c) If the Responsible Entity makes a determination in accordance with clause 28.4(b), despite anything to the contrary in this Constitution:
 - (i) the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to a Designated Foreign Member Cash-Out; and
 - (ii) any Member who is or becomes a Designated Foreign Member consents to the Designated Foreign Member Cash-Out and directs the Responsible Entity to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Designated Foreign Member Cash-Out (including to act as the Member's agent and attorney), including to:
 - (A) for the purposes of clause 28.2 transfer or arrange for the transfer of Units held by the Member to a Sale Nominee;
 - (B) arrange for the Sale Nominee to participate in the Reorganisation Proposal in respect of the Units referred to in paragraph 28.4(c)(ii)(A);
 - (C) arrange for the Sale Nominee to sell the CD3 Units issued or transferred in respect of the number of Units previously held by the Member; and
 - (D) arrange for the payment of the Sale Consideration to the Designated Foreign Member.
- (d) A "Designated Foreign Holder Cash-Out" means that Members who are Designated Foreign Members will:
 - (i) not receive CD3 Units as part of the Reorganisation Proposal; and
 - (ii) receive an amount of cash:
 - (A) realised by selling the CD3 Units to which the Member would have been entitled if they had participated fully in the Reorganisation Proposal; or
 - (B) otherwise determined by the Responsible Entity to be equivalent to the value of the CD3 Units to which the Member would have been entitled if they had participated fully in the Reorganisation Proposal.

28.5. Liability of Responsible Entity

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

28.6. Paramourcy of provision

The provisions of this clause 28 prevail over other provisions of this Constitution in the case of any inconsistency except to the extent provided in clauses 1.4 and 1.5(c).

Legal Compliance List

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

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

Section	Constitution to Specify	Clause
601GA(1)(a)	Consideration that is to be paid to acquire an interest in the Constitution of the CD Private Equity Fund I.	Clauses 5 and 6
601GA(1)(b)	Powers of the Responsible Entity in relation to making investments of, or otherwise dealing with, the CD Private Equity Fund I.	Clause 12
601GA(1)(c)	The method by which complaints made by Members in relation to the CD Private Equity Fund I is to be dealt with.	Clause 24
601GA(1)(d)	Winding up the CD Private Equity Fund I.	Clause 21
601GA(2)	(a) the Responsible Entity's rights to fees; (b) the Responsible Entity's right to indemnification for liabilities and expenses.	(a) Clause 19 (b) Clause 19.4
601GA(3)	Powers to borrow or raise money for the purposes of the CD Private Equity Fund I.	Clause 12.2
601GA(4)	The rights of Member's to withdraw from the Trust	Clauses 26 and 27
601GB	Legally enforceable between Members and the Responsible Entity.	Clause 25.3

Supplemental Deed – CD Private Equity Fund II

Dated 2022

E&P Investments Limited (ABN 78 152 367 649) in its capacity as
responsible entity of the CD Private Equity Fund II (“**Responsible Entity**”)

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
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DX 113 Sydney
www.kwm.com
602-0072621

Supplemental Deed – CD Private Equity Fund II

Details

Responsible Entity	Name	E&P Investments Limited in its capacity as responsible entity of the CD Private Equity Fund II ARSN 162 057 089
	ABN	78 152 367 649
	Address	Level 32, 1 O'Connell Street, Sydney NSW 2000

Recitals	A	The Trust is governed by the Constitution. The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
	B	Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution: (a) by special resolution of the members of the scheme; or (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
	C	Under clause 22.1 of the Constitution, the Constitution may be amended, if the Corporations Act allows, by resolution of Members or by the Responsible Entity if the amendments do not adversely affect the rights of Members.
	D	On 7 November 2022, the Members of the Trust approved by special resolution the amendments to the Constitution set out in the schedule to this deed.
	E	The Responsible Entity now wishes to, by this deed, give effect to the amendments described in Recital D.

Governing law	New South Wales
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Date of deed	See Signing page
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Supplemental Deed – CD Private Equity Fund II

General terms

1 Interpretation

1.1 Definitions

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

Constitution means the document dated 22 January 2013 under which the Trust is governed as amended from time to time.

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

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

Member has the same meaning given under the Constitution.

Trust means the registered managed investment scheme currently named CD Private Equity Fund II (ARSN 162 057 089).

1.2 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

1.3 Headings

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

2 Modification of the Constitution

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

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

3 No redeclaration etc

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

- (a) redeclaring, resettling or terminating the Trust;

- (b) declaring any trust, or making any statement that purports to be a declaration of trust or acknowledgement of trust or the vesting of assets for the purposes of section 8AA of the *Duties Act 1997* (NSW); or
- (c) causing the transfer, vesting or accruing of property in any person.

4 Governing law

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

EXECUTED as a deed

Supplemental Deed – CD Private Equity Fund II

Signing page

DATED: _____

Executed as a deed

EXECUTED by **E&P INVESTMENTS**)
LIMITED IN ITS CAPACITY AS)
RESPONSIBLE ENTITY OF THE CD)
PRIVATE EQUITY FUND II in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)

.....)
Signature of director)

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

.....)
Signature of director/company)
secretary*)

*delete whichever is not applicable)

.....)
Name of director/company secretary*)
(block letters))

*delete whichever is not applicable)

Supplemental Deed – CD Private Equity Fund II

Schedule 1 – Amended Constitution

**Constitution of the
CD Private Equity Fund II**

Consolidated to September 2020

Contents

1.	Definitions and Interpretation.....	1
2.	Name of Trust.....	8
3.	Assets held on trust	9
4.	Units.....	9
5.	Application Price for Units	11
6.	Application Procedure	13
7.	Transfers.....	15
8.	Valuation of Assets	18
9.	Accounts, Audit and Reports	18
10.	Income and Distributions to Members	18
11.	Payments.....	24
12.	Powers of the Responsible Entity	25
13.	Retirement of Responsible Entity	26
14.	Notices to Members	27
15.	Meetings of Members.....	27
16.	Rights and Liabilities of Responsible Entity.....	30
17.	Limitation of Liability and Indemnity in favour of Responsible Entity	30
18.	Liability of Members	32
19.	Remuneration and Expenses of Responsible Entity	32
20.	Duration of the Trust	35
21.	Procedure on Termination.....	35
22.	Amendments to this Constitution.....	36
23.	Compliance Committee	37
24.	Complaints	38
25.	General.....	38
26.	Withdrawal of Units.....	40
27.	Withdrawal Price	41
28.	Reorganisation Proposal.....	42

Constitution of the CD Private Equity Fund II

Dated:

This Constitution Poll is declared by Walsh & Company Investments Limited (ACN 152 367 649) of Level 7, 100 Pacific Highway, North Sydney NSW 2060 (**Responsible Entity**) to be the Constitution of the **CD Private Equity Fund II**.

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

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

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

[AMIT means a trust which is an attribution managed investment trust under the Tax Act.](#)

[AMIT Income Year means a year of income for the purposes of the Tax Act that the Trust is an AMIT.](#)

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

[AMMA Statement has the meaning given to that phrase in the Tax Act.](#)

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

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

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

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

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

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

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

[CD1 means CD Private Equity Fund I \(ARSN 158 625 284\).](#)

[CD3 means CD Private Equity Fund III \(ARSN 612 132 813\).](#)

[CD3 Units means units in CD3.](#)

[CD4 means CD Private Equity Fund IV \(ARSN 624 474 531\).](#)

Class means a class of Units.

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

Corporations Act means the Corporations Act 2001 (Cth).

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

Designated Foreign Member means a Foreign Member in respect of whom the Responsible Entity has made a determination in accordance with clause 28.4(b).

Designated Foreign Member Cash-Out has the meaning given in clause 28.4(d).

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

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

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

Distribution Period means:

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

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

Exchange Ratio means 0.9144.

Foreign Member means a member whose address appearing in the Register is in a country outside Australia or New Zealand.

GST has the meaning given to that term in the GST Act.

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

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 10.4.

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

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

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

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

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

Market Price of a Unit on the Relevant Business Day means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Registered means recorded in the Register.

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

Registration means recording in the Register.

Relevant Business Day means either:

~~(d)~~(a) the date Units are offered;

~~(e)~~(b) the last date on which applications for Units can be received by the Responsible Entity;

~~(f)~~(c) the date Units are allotted; or

~~(g)~~(d) the date Units are issued,

determined by the Responsible Entity at its sole discretion.

Reorganisation Proposal means a proposal that has been approved by resolution by the requisite majority of Members and the members of each of CD1 and CD4, for the acquisition by the responsible entity of CD3 (or its custodian or nominee) of all the Units in exchange for consideration to be provided to each Member in the form of the issue of the number of CD3 Units calculated in accordance with clause 28.2(b).

Reorganisation Record Date has the meaning given in clause 28.1(a).

Resolution means:

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

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

Responsible Entity means:

- (a) while the Trust is a Registered Scheme, the company which is registered with ASIC as the single responsible entity for the Trust under the Corporations Act; and

- (b) while the Trust is not a Registered Scheme, the Responsible Entity of the Trust, with the first Responsible Entity being Dixon Advisory & Superannuation Services Limited.¹

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

Sale Consideration means the average price at which CD3 Units are sold by the Sale Nominee, multiplied by the number of CD3 Units sold by the Sale Nominee in respect of the relevant Designated Foreign Member (net of expenses, if any).

Sale Nominee means a person appointed by the Responsible Entity to carry out the role described in clause 28.4(c)(ii);

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

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

Tax Year means:

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

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

Transmission Event means:

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

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

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

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

¹ The responsible as at September 2022 is E&P Investments Limited.

[Under has the meaning given to that term in the Tax Act.](#)

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

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

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

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

1.2. Interpretation

Unless the contrary intention appears, in this Constitution:

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

1.3. Inclusive expressions

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

1.4. General compliance provision

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

1.5. Listing Rules

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

- (f) In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of Clause 1.5(c) is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act.

1.6. Additional Listing Rule requirements

At all times while the Trust is Listed:

- (a) the Responsible Entity must not remove or change a Member's right to vote except if:
- (i) an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Constitution;
 - (ii) the Member became the holder of that Unit after the time determined under the Corporations Regulations as the "specified time" for deciding who held the Unit for the purpose of the meeting;
 - (iii) the right is removed or changed under Australian legislation or under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iv) the right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules or the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (v) the right is removed or changed under a court order;
- (b) a Member must not be divested of that Unit except in any of the following cases:
- (i) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or (if required) is approved by the operator of the Prescribed Financial Market on which the Units are Listed as appropriate and equitable;
 - (ii) the divestment is under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iii) the divestment is under a provision in this Constitution that is permitted by the Listing Rules or (if required) the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (iv) the divestment is under a court order;
- (c) the Responsible Entity must not divest a Member of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASX Settlement Operating Rules. Without limitation to Clause 1.5, at all times that the Trust is Listed, the Responsible Entity must comply with ASX Settlement Operating Rule 8.13.

1.7. Other Documents

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

2. Name of Trust

2.1. Name of Trust

The Trust is called the CD Private Equity Fund II or by such other name as the Responsible Entity determines from time to time.

3. Assets held on trust

3.1. Assets held on Trust

- (a) ~~[This clause 3.1(a) is preserved in its existing form and is not restated or amended]The Responsible Entity must hold the Assets on trust for Members².~~
- (b) The Assets vest in the Responsible Entity, but must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.

4. Units

4.1. Nature of Units

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

² In the existing constitution, clause 3.1(a) states "The Responsible Entity must hold the Assets on trust for Members".

4.2. Fractions of Units

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

4.3. Consolidation and Division of Units

- (a) Units may be consolidated or divided as determined by the Responsible Entity.
- (b) The Unit structure may only be reconstructed:
 - (i) if the proportion of Units held by Members relative to each other immediately before the reconstruction is maintained; and
 - (ii) in accordance with this Constitution, the Listing Rules (if applicable) and applicable law.

4.4. Joint Tenancy

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

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

4.5. Death, Legal Disability of Member

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

4.6. Benefits and obligations of Members

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

4.7. No further liability

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

4.8. Class rights

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

5. Application Price for Units**5.1. Application Price**

- (a) The Application Price for the Units issued under the first product disclosure statement prepared for the Trust will be \$1.60 per Unit.
- (b) Subject to Clauses 5.1(c) and 5.1(d), after the issue of Units under the first product disclosure statement, the Application Price will be equal to:

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

- (c) Subject to Clause 5.1(d), if the Units are Officially Quoted, the Application Price will be the Market Price.
- (d) The Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units to the extent it is permitted to do so by ASIC Relief (and subject to the terms of that ASIC Relief) and, if the Units are Officially Quoted, the Listing Rules without limiting the foregoing, the following apply to the extent they reflect the requirements of ASIC Relief:
 - (i) in the case of a proportionate offer (including a rights issue), Clause 5.4;
 - (ii) in the case of an issue of Units as consideration for an off-market bid, Clause 5.6;
 - (iii) in the case of a placement of Units or pursuant to an interest purchase plan which complies with ASIC Class Order CO 09/425 while Units are Officially Quoted, Clause 5.7; and
 - (iv) in the case of reinvestment of income, Clause 5.8.

5.2. Variables

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

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

- (b) the Responsible Entity receives the application money, whichever happens later.

5.3. Rounding

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

5.4. Pro rata rights issues

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

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

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

5.5. Terms of pro rata issues

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

5.6. Issue of Units as Bid Consideration

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

Responsible Entity or by an associate of the Responsible Entity in relation to the off-market bid.

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

5.7. Placements

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

5.8. Reinvestment

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

6. Application Procedure

6.1. Application Form

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

6.2. Payment

- (a) Payment in a form acceptable to the Responsible Entity, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
 - (i) accompany the application;

- (ii) be received by or made available to the Responsible Entity within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
 - (iii) comprise a reinvestment of distribution in accordance with Clauses 10.15~~10.12~~ and 10.16.
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.
- (c) Application Monies for Units issued under a product disclosure statement must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:
- (i) the minimum subscription, if any (to be specified in the product disclosure statement) has been reached and the Responsible Entity decides to proceed to allotment of Units; or
 - (ii) the date by which the Application Monies would need to be repaid under the Corporations Act.

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

6.3. Responsible Entity May Reject

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

6.4. Minimum Amounts

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

6.5. Issue Date

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

6.6. Uncleared Funds

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

6.7. Register

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

6.8. Holding Statements

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

6.9. Foreign Members

(a) The Responsible Entity may determine that Foreign Members are not to be offered Units which are otherwise offered to Members in that capacity where it reasonably considers that it would:

- (i) be in the best interests of the Members; and
- (ii) not be unfair to the Foreign Members.

(b) If the Responsible Entity makes a determination under Clause 6.9(a) and it is practicable to do so, the Responsible Entity must sell the Foreign Interests and pay to each Foreign Member the amount calculated as follows:

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

Where:

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

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

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

N is the aggregate number of Foreign Interests; and

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

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

(d) The Responsible Entity must take reasonable steps to maximise the amount payable to each Foreign Member under Clause 6.9(b).

7. Transfers

7.1. Transfer

(a) Before the Trust is Listed or at any time after the Trust has ceased to be Listed, all transfers of Units must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units under this Clause 7.1(a) unless the instrument of transfer:

- (i) is duly stamped (if applicable);

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

7.2. Transaction advice after transfer

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

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

7.3. No General Restriction on Transfer

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

7.4. Power to suspend registration of transfers

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

7.5. Transmission of Units

- (a) In the case of a Transmission Event in respect of a Member, the only persons who will be recognised as having any title to the Units registered in the Member's name or any benefits accruing in respect of those Units:
 - (i) where the Member is a joint holder, the survivor or survivors of the Member;
 - (ii) where the Member is an individual, the legal personal representative of the Member or the person entitled to the Units as a result of bankruptcy; or

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

7.6. Recognition of Member

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

7.7. Participation in Transfer Systems

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

8. Valuation of Assets

8.1. Periodic Valuations

- (a) The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act if the Corporations Act section 601FC(1)(j) applies.
- (b) The Responsible Entity may determine Net Asset Value at any time.

8.2. Valuation Methods

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

9. Accounts, Audit and Reports

9.1. Accounts – Registered Scheme

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

9.2. Accounts – Not a Registered Scheme

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

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

10. Income and Distributions to Members

10.1. Distributable Income

- (a) The Responsible Entity must determine the distributable income of the Trust for each Tax Year.
- (b) For any Tax Year that is not an AMIT Income Year, the the Distributable Income of the Trust for a Tax Year is the amount that the Responsible Entity ~~Trustee~~ determines, in its absolute discretion, to be the income of the Trust for that period. However, the distributable income

must not be less than the amount which if distributed would prevent the Responsible Entity being liable to tax on the income of the Trust.

- (c) If no determination is made under clause 10.1(b) then the distributable income for the Tax Year is equal to the Operating Income for that Tax Year.
- (d) For any Tax Year that is an AMIT Income Year, unless the Responsible Entity determines otherwise, the Distributable Income will be the aggregate of:
- (i) the amount determined by the Responsible Entity to be the aggregate of all Trust Components for the Trust for the period that have an assessable income character, excluding any amounts of a tax offset character; and
 - (ii) any additional amount that the Responsible Entity consider appropriate for distribution in relation to the Trust for the relevant period, including:
 - (A) amounts referable to the discount capital gains concession; and
 - ~~(B)~~ (B) any other Trust Components that have the character of exempt income or non-assessable non-exempt income.
- ~~(d)~~(e) In making ~~a the~~ determination under this clause 10.1, the Responsible Entity Trustee may classify any item as income or capital, in its absolute discretion.
- ~~(e)~~(f) In making ~~a the~~ determination under this clause 10.1, the Responsible Entity Trustee does not have to take into account the Accounting Principles which apply to trusts. The preparation of the accounts of the Trust in accordance with the Accounting Principles is not to be regarded as a determination of the method for calculating the distributable income of the Trust under this clause 10.1.

10.2. Power to accumulate amounts

- (a) The Responsible Entity may, in respect of a Tax Year for the Trust that is an AMIT Income Year, determine prior to the end of that Tax Year that all or part of the Distributable Income of the Trust that has not already been distributed to Members under clauses 10.4 or 10.9(b) will be accumulated.
- (b) The effect of the Responsible Entity exercising its power to accumulate an amount pursuant to clauses 10.2(a) is to exclude the relevant amount from the Income Distributions for Members of the Trust for the Tax Year.
- (c) For the purposes of clause 10.12, amounts accumulated under clause 10.2(a) are to be treated for the purposes of the AMIT Regime as having been accumulated for the benefit of the Members at the time specified by the Responsible Entity. This time must be on or after the time the Responsible Entity determines to accumulate the relevant amount, but at or before the end of the relevant Financial Year.
- (d) Amounts which are accumulated pursuant to clauses 10.2(a) continue to form part of the Assets and no Member has any particular right to or interest in those amounts.

~~10.2.10.3.~~ Present Entitlement

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

- (a) if the Tax Year is not an AMIT Income Year, the distributable income of the Trust for the Tax Year; and
- (b) if the Tax Year is an AMIT Income Year, the Distributable Income of the Trust for the Tax Year excluding any amounts accumulated pursuant to clause 10.2.

in the proportion specified in Clause 10.4.

~~10.3.10.4.~~ **Income Distributions**

(a) The Responsible Entity may determine to make an interim distribution of distributable income accruing during any Interim Distribution Period (an **Interim Distribution**). The Responsible Entity must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Members on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in Clause 10.4(d).

~~(b)~~ Within 90 days of the end of the Tax Year and subject to Clause 10.4(d), the Responsible Entity must pay to the Members on the Register at the end of the last day of that Tax Year an amount equal to the Income Distribution of distributable income accruing to the Trust for the Tax Year less:

~~(i)~~ any amounts previously distributed during that Tax Year under Clauses ~~10.4(a)~~ or 10.9(b); and

~~(ii)~~ any amounts accumulated under clause 10.2(a).

~~(b)(c)~~ Subject to the rights, obligations and restrictions attaching to any particular Unit or Class and to Clause 10.4, a Member on the Register on the Distribution Calculation Date:

(i) for the purposes of Clause 10.3~~10.2~~, has an absolute vested and indefeasible interest in, and is presently entitled to;

(ii) for the purposes of Clause 10.4(b)(ii)~~10.3(b)~~, is presently entitled to a distribution of; and

(iii) for the purposes of Clause 10.4(a), is presently entitled to an Interim Distribution out of distributable income of,

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

~~(c)(d)~~ Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Member is entitled to receive a distribution under Clause 10.4(a) or 10.4(b)(ii)~~10.3(b)~~ in accordance with the following formula:

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

where:

A = the amount of the Distributable Income in respect of the relevant Tax Year or Interim Distribution Period (as the case may be);

B = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on Issue held by any such Member;

C = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Tax Year or Interim Distribution Period which are entitled to a full income distribution for that period plus, if the Member holds at the close of business on the last Business Day of that period Units issued during that period which have a proportionate income entitlement in accordance with Clause 10.6, the aggregate number of such Units held by that Member multiplied by the relevant proportion;

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

~~(d)(e)~~ The ~~Responsible Entity Trustee~~ may retain from each Member's Income Distribution all amounts which are necessary to avoid distributing a fraction of a cent or which the ~~Responsible Entity Trustee~~ determines it is not practical to distribute in respect of a Distribution Period. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.

10.4.10.5. Satisfaction of Present Entitlement

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

10.5. Minimum Distribution

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

10.6. Member's Rights

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

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

10.7. Trust taxed as a Company

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

- (a) As soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity determines otherwise, the income in respect of the Distribution Period, income will be calculated in accordance with the Accounting Principles.
- (b) The Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) The Responsible Entity may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to Members on the Register on any date determined by the Responsible Entity (**CD Date**).
- (d) For each Distributable Amount being paid to Members under this Clause 10.7 the Responsible Entity:

- (i) must comply with Tax Act; and
 - (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) A Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

- A = the aggregate of the number of Units held by the Member as at the close of business on the CD Date for that Distributable Amount which are entitled to a full income distribution plus, if the Member holds on the CD Date for that Distributable Amount Units which have proportionate income entitlement, the aggregate number of such Units held by that Member multiplied by the relevant proportion;
 - B = the aggregate of the number of Units entitled to full income distribution plus if any Units have been issued with proportionate income entitlement, the aggregate of the total number of such Units multiplied by the relevant proportion in each case calculated as at the close of business on the CD Date for the Distributable Amount;
 - C = the Distributable Amount.
- (f) The Distributable Amount must be paid to Members within two months after the relevant CD Date.

10.8. Withholding Tax

- (a) The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that it is required by law to deduct from such amount.
- (b) Where the income of the Trust is reduced by Additional Taxes attributable to the ownership of Units by certain Members, the entitlement to Income Distributions of such Members may be adjusted by the Responsible Entity, pursuant to Clause 10.4(d), so that the entitlement to Income Distribution or Distributable Amount of all other Members is equivalent to the amount they would receive in the absence of such Additional Taxes.

10.9. Other Distributions

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

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

10.10. Change in taxation

If there is any amendment to the Tax Act or a change in the administration of the Tax Act whether resulting from judicial determination or otherwise and as a consequence the [Responsible Entity Trustee](#) believes that it is in the best interests of Members that the Distributable Income should be determined otherwise than in accordance with clause 10.1, the [Responsible Entity Trustee](#) must by notice in writing to Members notify Members of the basis upon which it proposes to calculate the Distributable Income and may then calculate and pay the Distributable Income on that basis on and after the next Distribution Calculation Date or such later Distribution Calculation Date as is specified in the notice.

10.11. Separate Accounts

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

10.12. Attribution under AMIT Regime – basis for attribution

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Tax Year, attribute all of the Determined Trust Components of the Trust for the Tax Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under clause 10.13(a) in accordance with the Tax Act and the principle that the amount of each Member's Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this Constitution.
- (c) Without limiting clause 10.13(b), following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Trust, all of the Determined Trust Components of the Trust for the Tax Year that are reflected in any Income Distributions to which the Member or former Member has become entitled at the end of the Tax Year under clauses 10.4 or 10.9(b);
- (d) The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed are referable to Determined Trust Components of the Trust for the Tax Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under clause 10.13(a).

10.13. Attribution under AMIT Regime – Member objections

If the Trust is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Trust to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

- (a) the Member or former Member must:
 - (i) provide the Responsible Entity with a copy of the objection notice including the basis for objection, within the time the Member is required to do so under the Tax Act for the objection to be effective;
 - (ii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Member's or former Member's objection or proposed objection; and

- (iii) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection. This paragraph (iii) does not limit the Responsible Entity's other rights to indemnification under this constitution;
- (b) the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members or former Members of the Trust to be protected, including in dealings with the Commissioner of Taxation; and
- (c) the Responsible Entity may amend its attribution of Determined Trust Components to Members or former Members based on the Responsible Entity's determination of what attribution is appropriate, and take such actions as the Responsible Entity determines are necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Members or former Members.

10.14. AMIT Regime Unders/Overs

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

10.12, 10.15. Reinvestment

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

10.13, 10.16. Position on Transfer of Units

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

10.17. Liability

To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 10.17 or under the AMIT Regime in respect of an AMIT Income Year, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

11. Payments

11.1. Responsible Entity Discretion

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

11.2. Unpresented Cheques

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

11.3. Unsuccessful Payment

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

11.4. No Fractions

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

11.5. Discharge of Responsible Entity

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

11.6. Deductions

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

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

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

12. Powers of the Responsible Entity

12.1. General Powers

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

12.2. Contracting Powers

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

12.3. Investment Powers

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

12.4. Guarantees

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

12.5. Power of Delegation

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

12.6. Exercise of Discretion

~~Subject to Clause 1,~~ The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

~~12.7. Discretion Limited~~

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

13. Retirement of Responsible Entity

13.1. Voluntary Retirement

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

13.2. Compulsory Retirement

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

13.3. New Responsible Entity

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

13.4. Release

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

13.5. Retirement Benefit

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

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

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

14. Notices to Members

14.1. Notices to Members

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

14.2. Notices of the Responsible Entity

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

15. Meetings of Members

15.1. Corporations Act

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

15.2. Member's Request for Meeting

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

15.3. Notice Period

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

15.4. Responsible Entity May Determine

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

15.5. Quorum

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

15.6. No Quorum

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

15.7. Chairman

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

15.8. Adjournment

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

15.9. Resolutions Binding

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

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

While the Trust is a Registered Scheme:

- (a) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and
- (b) the Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

15.11. While the Trust is not a Registered Scheme

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

15.12. Voting

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

15.13. Poll

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

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

15.14. Proxies

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

15.15. Class Meetings

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

16. Rights and Liabilities of Responsible Entity

16.1. Holding Units

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

16.2. Other Capacities

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

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

16.3. Responsible Entity May Rely

The Responsible Entity may take and may act upon:

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

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

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

17.1. No limitation of other undertakings

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

17.2. Limitation of liability

Except where the Corporations Act expressly provides otherwise:

- (a) the Responsible Entity and each director and officer of the Responsible Entity are not personally liable to a Member or any other person in connection with the office of the Responsible Entity or director or officer of the Responsible Entity;

- (b) the Responsible Entity will not be liable to any Member to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust;
- (c) a Member must not:
 - (i) bring proceedings against the Responsible Entity in its personal capacity; or
 - (ii) apply to have the Responsible Entity put into administration or wound up or apply to have a receiver or similar person appointed to the Responsible Entity or prove in the administration or winding up of the Responsible Entity;
- (d) the Responsible Entity is not required to do anything (including enter into any contract or commitment) which involves it incurring any Liability (actual or contingent) unless its Liability is limited in a manner satisfactory to it in its absolute discretion and the Responsible Entity must use reasonable endeavours to ensure that its Liability is limited to the extent to which it is entitled to be and is in fact indemnified out of the assets of the Trust actually vested in the Responsible Entity in respect of the Trust; and
- (e) the Responsible Entity is not liable to account to any person for any payment made in good faith to any Government Agency for any Tax or any other charges in respect of the Trust or for any transaction arising under this Constitution notwithstanding that such payment need not have been made.

17.3. Acts or omissions of Responsible Entity and others

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

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

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

17.4. Indemnity in Favour of Responsible Entity

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

18. Liability of Members

18.1. Liability Limited

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

18.2. Recourse

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

18.3. Restrictions on Members

A Member:

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

19. Remuneration and Expenses of Responsible Entity

19.1. Management Fee

- (a) Subject to the proper performance of its duties [and to paragraph 19.1\(b\)](#), the Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each quarter a quarterly management fee (**Management Fee**) equivalent to 2% per annum of the gross value of the Assets, calculated as at the end of the quarter immediately preceding the date of payment of the Management Fee.

[\(b\) Despite any other provision of this Constitution, the Responsible Entity is not entitled to the Management Fee under paragraph 19.1\(a\) in respect of any period when the Fund has only one Member.](#)

~~(b)~~(c) In relation to the quarter in which the Trust is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first quarter will be calculated on a pro-rata basis for that quarter.

~~(c)~~(d) Where the Management Fee was not paid for a particular quarter or part quarter or not in full, the Management Fee payable in a subsequent quarter will be the aggregate of the Management Fee payable for that quarter plus the amount that should have been paid for the prior quarter, part quarter or quarter that it was not paid, with the final payment to be pro rated if such payment is for a period less than a full quarter..

~~19.2.~~ **Entry Fee**

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

~~19.3.~~~~19.2.~~ **Payment of Responsible Entity's fee**

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

~~19.4.~~~~19.3.~~ **Priority of Responsible Entity's remuneration**

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

~~19.5.~~~~19.4.~~ **Indemnity out of Fund**

In addition to the Responsible Entity's right of remuneration under Clauses 19.1 ~~and 1.1~~ and any other right of indemnity which it may have under this Constitution or at law, the Responsible Entity is indemnified and entitled to be reimbursed out of the Trust for, or entitled to have paid from the Trust, all Costs (including, without limitation, any amounts payable to any delegate, attorney, agent or custodian) incurred at law or under this Constitution in the proper performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

~~19.6.~~~~19.5.~~ **Waiver of Fees**

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

~~19.7.~~~~19.6.~~ **Expenses**

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

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

- (c) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions ([including resolutions to implement the Reorganisation Proposal](#)) and communications with Members;
- (f) Tax, including any GST paid or payable as part of expenses incurred by the Responsible Entity in the proper performance of duties as Responsible Entity;
- (g) financial institution fees;
- (h) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (i) preparation and audit of the taxation returns and accounts of the Trust;
- (j) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (k) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this Clause 19.6(k) must be repaid;
- (l) any compliance or other committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (m) while the Trust is a Registered Scheme but there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (n) the preparation, implementation, amendment and audit of any compliance plan; and
- (o) complying with any law, and any request or requirement of the ASIC.

~~19.8.~~[19.7.](#) GST

- (a) Words and expressions defined in the GST Act have the same meaning in this clause [19.8](#).
- (b) Unless otherwise explicitly stated, the consideration for any supply made under or in connection with this Constitution is exclusive of GST.
- (c) To the extent that any supply made by the Responsible Entity under or in connection with this Constitution is a taxable supply, then in addition to any consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount equal to the GST payable by the Responsible Entity in respect of the supply.
- (d) The amount by which the consideration is increased under this clause [19.8](#)(c) is payable at the same time as the consideration for the supply.
- (e) Clause [19.8](#)(c) does not apply to supplies in respect of which the consideration is explicitly expressed as GST inclusive in this Constitution.

- (f) In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1 + n)$ where “n” is the new prevailing rate of GST (expressed as a decimal).

19.9.19.8. Sums Owed to the Responsible Entity

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

20. Duration of the Trust

20.1. Initial Settlement

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

20.2. Termination

The Trust terminates on the earliest of:

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

21. Procedure on Termination

21.1. Realisation of Assets

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

21.2. Audit of Winding Up

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

21.3. Distribution Following Termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in the following manner. The Responsible Entity may distribute proceeds of realisation in instalments. The Responsible Entity must first pay the Trust’s income from the last Distribution Calculation Date prior to the termination of the Trust to the Members holding Ordinary Units pro rata according to the respective numbers or such Units held by them. Secondly, the Responsible Entity must pay the balance to the Members pro rata according to the respective numbers of Units held by them.
- (b) The Responsible Entity may distribute an asset of the Trust to a Member *in specie*. The Responsible Entity must determine the value of the asset of the Trust to be distributed *in specie*. Any costs payable on an *in specie* distribution must be paid by the Member before the distribution is made.
- (c) The Responsible Entity is entitled to:

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

22. Amendments to this Constitution

22.1. Responsible Entity May Amend

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

22.2. Statutory Requirements

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

23. Compliance Committee

23.1. Compliance Committee

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

23.2. Persons to whom Clauses 23.3 and 23.5 apply

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

23.3. Indemnity

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

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

23.4. Extent of indemnity

The indemnity in Clause 23.3:

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

23.5. Insurance

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

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

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

23.6. Savings

Nothing in Clauses 23.3 or 23.5:

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

24. Complaints

24.1. Complaints

While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Member submits to the Responsible Entity a complaint regarding the Responsible Entity's conduct in its management or administration of the Trust (including a complaint about the complaints handling process itself), the Responsible Entity:

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

25. General

25.1. Restricted Securities

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

25.2. Small Holdings

- (a) Subject to the provisions of this Clause 25.2, while the Trust is Listed the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units under this Clause 25.2 on 1 occasion in any 12 month period.
- (c) The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this Clause 25.2.
- (d) The Responsible Entity may not sell or redeem the relevant Units:
 - (i) before the expiry of 6 weeks from the date of the notice given under Clause 25.2(c); or
 - (ii) if within the 6 weeks allowed by Clause 25.2(d)(i), the Member advises the Responsible Entity that the Member wishes to retain the Units.
- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides.
- (g) The proceeds of the sale or redemption may not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.

25.3. Constitution Legally Binding

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

25.4. Severance

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

25.5. Governing Law

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

25.6. Other Obligations Excluded

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

26. Withdrawal of Units

26.1. Withdrawal request while Trust is Liquid

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

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

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

26.2. Action following a request

Within a reasonable time, and in any event within 30 days, of receiving a withdrawal request under Clause 26.1, the Responsible Entity must consider that request and, in the Responsible Entity's absolute discretion:

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

26.3. Suspension of withdrawal request right

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

26.4. Withdrawal while Trust is not Liquid

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

- (d) The Responsible Entity may cancel a Withdrawal Offer in accordance with the Corporations Act.

26.5. Minimum holding

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

26.6. Sums owed

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

26.7. Liquid or not Liquid

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

26.8. Cooling off

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

26.9. Increase of minimum holding

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

26.10. On market buy back of Units

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

26.11. Order

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

27. Withdrawal Price

The Withdrawal Price for any Unit will be equal to:

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

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

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

28. Reorganisation Proposal

28.1. Power to give effect to Reorganisation Proposal

Without limiting any other provisions of this Constitution, the Responsible Entity has power to:

- (a) determine the time and date at which the Members on the Register will be the persons entitled to participate in the Reorganisation Proposal (“Reorganisation Record Date”), and to determine the time at which each step in the Reorganisation Proposal will occur which must be the same time and date as determined for the same purpose in respect of CD1, CD3 and CD4; and
- (b) do all other things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

28.2. Specific powers

Without limiting clause 28.1, to give effect to the Reorganisation Proposal, the Responsible Entity has power to:

- (a) first, make the determinations and effect the transfers contemplated by clause 28.4 so that any Units held by Designated Foreign Members are transferred to the Sale Nominee and update the Register accordingly;
- (b) apply on behalf of each Member for the number of CD3 Units calculated by multiplying the Exchange Ratio by the number of Units held by the Member and rounding up or down as applicable to the nearest whole CD3 Unit;
- (c) consent on behalf of each Member to become a member of CD3 and be bound by the constitution of CD3;
- (d) as consideration for the issue of that number of CD3 Units, transfer each Member’s Units to the responsible entity of CD3 or its custodian or a nominee, as it determines, and give on behalf of each Member a warranty as to good and unencumbered title to the Units to be transferred;
- (e) make distributions and other payments out of the Assets, or make any determinations of dates or amounts for the purposes of clause 10 which are necessary or desirable to give effect to the Reorganisation Proposal; and
- (f) issue Units, transfer Assets, execute all documents and do all other things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

28.3. Appointment of Responsible Entity as agent and attorney

Without limiting clause 28.1, to give effect to the Reorganisation Proposal, the Responsible Entity is irrevocably appointed as the agent and attorney of each Member to:

- (a) apply for CD3 Units on behalf of each Member;
- (b) execute a transfer of Units on behalf of each Member; and
- (c) execute all documents and do all things (including giving all consents) which the Responsible Entity reasonably considers are necessary or desirable to give effect to the Reorganisation Proposal.

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

28.4. Treatment of Foreign Members in the Reorganisation Proposal

- (a) This clause 28.4 applies where a Foreign Member is a Member on the Business Day before the Reorganisation Record Date.
- (b) The Responsible Entity may determine that a Foreign Member is a Designated Foreign Member with respect to the Reorganisation Proposal where the Responsible Entity reasonably determines that it will not offer, issue or transfer CD3 Units to that Foreign Member, having regard to:
- (i) the number of Foreign Members in the jurisdiction of that Foreign Member;
 - (ii) the number and value of CD3 Units that may be offered, issued or transferred to Foreign Members in the foreign jurisdiction; and
 - (iii) the cost of complying with legal requirements and the requirements or any relevant regulatory authority applicable to the offer, issue or transfer in the foreign jurisdiction.
- (c) If the Responsible Entity makes a determination in accordance with clause 28.4(b), despite anything to the contrary in this Constitution:
- (i) the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to a Designated Foreign Member Cash-Out; and
 - (ii) any Member who is or becomes a Designated Foreign Member consents to the Designated Foreign Member Cash-Out and directs the Responsible Entity to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Designated Foreign Member Cash-Out (including to act as the Member's agent and attorney), including to:
 - (A) for the purposes of clause 28.2 transfer or arrange for the transfer of Units held by the Member to a Sale Nominee;
 - (B) arrange for the Sale Nominee to participate in the Reorganisation Proposal in respect of the Units referred to in paragraph 28.4(c)(ii)(A);
 - (C) arrange for the Sale Nominee to sell the CD3 Units issued or transferred in respect of the number of Units previously held by the Member; and
 - (D) arrange for the payment of the Sale Consideration to the Designated Foreign Member.
- (d) A "Designated Foreign Holder Cash-Out" means that Members who are Designated Foreign Members will:
- (i) not receive CD3 Units as part of the Reorganisation Proposal; and
 - (ii) receive an amount of cash:
 - (A) realised by selling the CD3 Units to which the Member would have been entitled if they had participated fully in the Reorganisation Proposal; or
 - (B) otherwise determined by the Responsible Entity to be equivalent to the value of the CD3 Units to which the Member would have been entitled if they had participated fully in the Reorganisation Proposal.

28.5. Liability of Responsible Entity

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

28.6. Paramountcy of provision

The provisions of this clause 28 prevail over other provisions of this Constitution in the case of any inconsistency except to the extent provided in clauses 1.4 and 1.5(c).

Legal Compliance List

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

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

Section	Constitution to Specify	Clause
601GA(1)(a)	Consideration that is to be paid to acquire an interest in the Constitution of the CD Private Equity Fund II.	Clauses 5 and 6
601GA(1)(b)	Powers of the Responsible Entity in relation to making investments of, or otherwise dealing with, the CD Private Equity Fund II.	Clause 12
601GA(1)(c)	The method by which complaints made by Members in relation to the CD Private Equity Fund II is to be dealt with.	Clause 24
601GA(1)(d)	Winding up the CD Private Equity Fund II.	Clause 21
601GA(2)	(a) the Responsible Entity's rights to fees; (b) the Responsible Entity's right to indemnification for liabilities and expenses.	(a) Clause 19 (b) Clause 19.4
601GA(3)	Powers to borrow or raise money for the purposes of the CD Private Equity Fund II.	Clause 12.2
601GA(4)	The rights of Member's to withdraw from the Trust	Clauses 26 and 27
601GB	Legally enforceable between Members and the Responsible Entity.	Clause 25.3

Supplemental Deed – CD Private Equity Fund III

Dated 2022

E&P Investments Limited (ABN 78 152 367 649) in its capacity as responsible entity of the CD Private Equity Fund III (“**Responsible Entity**”)

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com
602-0072621

Supplemental Deed – CD Private Equity Fund III

Details

Responsible Entity	Name	E&P Investments Limited in its capacity as responsible entity of the CD Private Equity Fund III ARSN 612 132 813
	ABN	78 152 367 649
	Address	Level 32, 1 O'Connell Street, Sydney NSW 2000

- Recitals**
- A** The Trust is governed by the Constitution. The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
- B** Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution:
- (a) by special resolution of the members of the scheme; or
- (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
- C** Under clause 24.1 of the Constitution, the Constitution may be amended, if the Corporations Act allows, by resolution of Members or by the Responsible Entity if the amendments do not adversely affect the rights of Members.
- D** On 7 November 2022, the Members of the Trust approved by special resolution the amendments to the Constitution set out in the schedule to this deed.
- E** The Responsible Entity now wishes to, by this deed, give effect to the amendments described in Recital D.

Governing law New South Wales

Date of deed See Signing page

Supplemental Deed – CD Private Equity Fund III

General terms

1 Interpretation

1.1 Definitions

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

Constitution means the document dated 5 May 2016 under which the Trust is governed as amended from time to time.

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

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

Member has the same meaning given under the Constitution.

Trust means the registered managed investment scheme currently named CD Private Equity Fund III (ARSN 612 132 813).

1.2 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

1.3 Headings

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

2 Modification of the Constitution

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

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

3 No redeclaration etc

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

- (a) redeclaring, resettling or terminating the Trust;

- (b) declaring any trust, or making any statement that purports to be a declaration of trust or acknowledgement of trust or the vesting of assets for the purposes of section 8AA of the *Duties Act 1997* (NSW); or
- (c) causing the transfer, vesting or accruing of property in any person.

4 Governing law

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

EXECUTED as a deed

Supplemental Deed – CD Private Equity Fund III

Signing page

DATED: _____

Executed as a deed

EXECUTED by **E&P INVESTMENTS LIMITED IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE CD PRIVATE EQUITY FUND III** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*

*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)

*delete whichever is not applicable

Supplemental Deed – CD Private Equity Fund III

Schedule 1 – Amended Constitution

**Constitution of the
CD Private Equity Fund III**

Consolidated September 2020

Contents

1.	Definitions and Interpretation.....	2
2.	Name of Trust.....	10 109
3.	Assets held on trust	10
4.	Units and Options	10
5.	Application Price for Units	14 1413
6.	Application Procedure	15
7.	Redemption Price of Units.....	17
8.	Redemption Procedures	17
9.	Transfers.....	22 2221
10.	Valuation of Assets	24
11.	Accounts, Audit and Reports	25 2524
12.	Income and Distributions to Members	25
13.	Payments.....	35 3533
14.	Powers of the Responsible Entity	36 3633
15.	Retirement of Responsible Entity	37 3734
16.	Notices to Holders	37 3735
17.	Meetings of Holders	38 3835
18.	Rights and Liabilities of Responsible Entity.....	40 4038
19.	Limitation of Liability and Indemnity in favour of Responsible Entity	41 4139
20.	Liability of Members	43 4340
21.	Remuneration and Expenses of Responsible Entity	43 4341
22.	Duration of the Trust	46 4643
23.	Procedure on Termination.....	46 4644
24.	Amendments to this Constitution.....	47 4745
25.	Compliance Committee	48 4845
26.	Complaints	49 4946
27.	General.....	50 5047

Constitution of the CD Private Equity Fund ~~III~~

Dated:

This Deed Poll is declared by **Walsh & Company Investments Limited**¹ (ACN 152 367 649) of Level 15, 100 Pacific Highway, North Sydney NSW 2060 (**Responsible Entity**) to be the Constitution of the **CD Private Equity Fund ~~III~~**.

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

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

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

[AMIT means a trust which is an attribution managed investment trust for an income year for the purposes of the Tax Act.](#)

[AMIT Class Election means an election by the Responsible Entity for each Class of Units in the Trust to be treated as a separate AMIT for the purposes of the AMIT Regime, as provided for under the Tax Act.](#)

[AMIT Income Year means a year of income for the purposes of the Tax Act that the Trust is an AMIT.](#)

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

[AMMA Statement has the meaning given to that phrase in the Tax Act.](#)

Application Price means the Unit price payable to the Responsible Entity calculated in accordance with Clauses 5 and 12.22(d).

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

ASIC Relief means an exemption or declaration granted by ASIC which gives release from certain provisions of the Corporations Act including any class order relief available to the Responsible Entity, the Trust or Members.

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

[ASX means ASX Limited or the market operated by it, as the context requires.](#)

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

¹ [The Responsible entity has since changed its name to E&P Investments Limited](#)

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

[CD1 means CD Private Equity Fund I \(ARSN 158 625 284\).](#)

[CD2 means CD Private Equity Fund II \(ARSN 162 057 089\).](#)

[CD4 means CD Private Equity Fund IV \(ARSN 624 474 531\).](#)

Class means a class of Units.

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

Corporations Act means the *Corporations Act 2001* (Cth) subject to any exemptions granted and as modified in its application to the Trust by any declarations made by or exemptions granted by ASIC from time to time.

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

[Determined Member Component has the meaning given to that phrase in the Tax Act.](#)

[Determined Trust Component has the meaning given to that phrase in the Tax Act.](#)

[Discovery Year has the meaning given to that phrase in the Tax Act.](#)

Distributable Income [for a period is the amount determined by the Responsible Entity under](#) ~~has the meaning given in~~ Clause 12.3.

Distribution Calculation Date means the last day of each Tax Year [and any other days as the Responsible Entity designates](#) ~~or each Interim Distribution Period.~~

Distribution Period means:

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

~~**Entry Fee** means an entry fee of 5% of the Application Price for Units (or lesser amount as the Responsible Entity may in its absolute and unfettered discretion determines in accordance with Clause 21.5).~~

Financial Instrument has the meaning given in Clause 4.3.

Gross Asset Value means the value of the Assets of the Trust as determined by the Responsible Entity from time to time in accordance with Clause 10.

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

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

Holder means a Member, Option Holder or Holder of a Financial Instrument as the context requires.

Holder of a Financial Instrument means the person Registered in the register of Financial Instrument holders and includes persons jointly Registered or, if no such register is kept, the holder of a Financial Instrument.

Income Component has the meaning given in clause 8.14.

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 12.6.

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

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

Licensee means a holder of an Australian financial service licence issued under Part 7.6 of the Corporations Act.

Liquid has the same meaning as in the Corporations Act.

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

Listing Rules means the listing rules of the Prescribed Financial Market on which the Units are Listed subject to any waiver granted and as modified in its application to the Trust by ASX from time to time.

Market Price of a Unit on a Business Day means at all times while the Trust is listed:

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

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

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

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

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

Merger Date means the date on which the Reorganisation Proposal is implemented so that CD1, CD2 and CD4 become sub-trusts of the Trust.

Net Asset Value means the value of the Assets calculated in accordance with Clause 10 less the Liabilities.

[Non-AMIT Income Year](#) means a Tax Year which is not an AMIT Income Year.

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

Option means an option granted under this Constitution to subscribe for unissued Units.

Option Holder means the person Registered in the register of option holders and includes persons jointly Registered or, if no such register is kept, the holder of an Option.

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

[Over](#) has the meaning given to that term in the Tax Act.

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

Redemption Price means the Unit Price calculated in accordance with Clause 7.1.

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

Registered means recorded in the Register.

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

Registration means recording in the Register.

Relevant Business Day means either:

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

determined by the Responsible Entity at its sole discretion.

[Reorganisation Proposal](#) means a proposal that has been approved by resolution by the requisite majority of Members and the members of each of CD1, CD2 and CD4, for the acquisition by the Responsible Entity (or its custodian or nominee) for the Trust of all the Units in each of CD1, CD2 and CD4 in exchange for consideration to be provided to each Member in the form of the issue of the number of Units calculated in accordance with the constitution of CD1, CD2 or CD4 as applicable.

Resolution means:

- (a) a resolution passed at a meeting of Members in the Trust:
 - (i) on a show of hands, by the required majority of Members present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the required majority of votes cast by Members present in person or by proxy and voting on the poll; or

- (b) where the law allows, a resolution in writing signed by Members holding the required majority of the Units in the Trust.

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

Responsible Entity means:

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

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

Retail Members means those Members who are “retail clients” as defined in Section 761G of the Corporations Act.

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

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

Tax Year means:

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

Termination Resolution means [a special resolution that the Trust be terminated and that the Assets be realised and the net proceeds distributed to Members in accordance with clause 22.3.](#)

Terms of Issue in relation to a Unit means the terms and conditions upon which that Unit is issued.

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

Transmission Event means:

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

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

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

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

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

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

Wholesale Members means those Members who are "wholesale clients" as defined in Section 761G of the Corporations Act.

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

1.2. Interpretation

Unless the contrary intention appears, in this Constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) the singular includes the plural and vice versa;
- (c) amend includes delete or replace;
- (d) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution;
- (e) a reference to any provision being subject to the Corporations Act only operates if the Corporations Act applies to affect that provision;
- (f) words importing a gender include any gender;
- (g) other parts of speech and grammatical forms of a word or phrase defined in this Constitution have a corresponding meaning;
- (h) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (i) a reference to anything (including, without limitation, any right) includes a part of that thing;
- (j) a reference to a Part, Clause, Party, Annexure, Exhibit or Schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this Constitution and a reference to this Constitution includes any Annexure, Exhibit or Schedule;
- (k) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (l) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (m) a reference to a party to a document includes that party's successors and permitted assigns;

- (n) a reference to an agreement other than this Constitution includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (o) a reference to an asset includes all property of any nature, including, without limitation, a business, and all rights, revenues and benefits;
- (p) a reference to a document includes any agreement in writing and any certificate, notice, instrument or other document of any kind; and
- (q) amounts of money are expressed in Australian dollars unless otherwise expressly stated.

1.3. Inclusive expressions

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

1.4. General compliance provision

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

1.5. Listing Rules

- (a) This Constitution is to be interpreted subject to:
 - (i) the Corporations Act;
 - (ii) the Listing Rules at all times, while the Trust is Listed; and
 - (iii) the ASX Settlement Operating Rules, at all times while the Units are CHESS Approved Securities.
- (b) Despite anything to the contrary in this Clause 1.5, this Clause 1.5 has effect subject to Clause 1.4.
- (c) At all times while the Trust is Listed:
 - (i) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act must not be done;
 - (ii) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
 - (iii) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (iv) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
 - (v) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
 - (vi) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

- (d) At all times while the Trust is Listed, the Responsible Entity must comply with the obligations imposed on it under the Listing Rules and the ASX Settlement Operating Rules. This obligation does not detract from or alter the power of the Responsible Entity to cause the Trust to cease to be Listed.
- (e) Unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ASX Settlement Operating Rules has the same meaning as in that provision.
- (f) In accordance with ASIC Class Order 98/1808 or its equivalent and for so long as it applies to the Trust, a change in the text of this Constitution because of the operation of Clause 1.5(c) is not a modification of, or the repeal and replacement of, the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act.

1.6. Additional Listing Rule requirements

At all times while the Trust is Listed:

- (a) the Responsible Entity must not remove or change a Member's right to vote except if:
 - (i) an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Constitution;
 - (ii) the Member became the holder of that Unit after the time determined under the Corporations Regulations as the "specified time" for deciding who held the Unit for the purpose of the meeting;
 - (iii) the right is removed or changed under Australian legislation or under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iv) the right is removed or changed under a provision in this Constitution that is permitted by the Listing Rules or the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (v) the right is removed or changed under a court order;
- (b) a Member must not be divested of that Unit except in any of the following cases:
 - (i) the divestment is under Australian legislation and the mechanism the Responsible Entity adopts for divesting the Unit is set out in the legislation or (if required) is approved by the operator of the Prescribed Financial Market on which the Units are Listed as appropriate and equitable;
 - (ii) the divestment is under a provision in this Constitution that must be included to comply with Australian legislation;
 - (iii) the divestment is under a provision in this Constitution that is permitted by the Listing Rules or (if required) the operator of the Prescribed Financial Market on which the Units are Listed has approved as appropriate and equitable; or
 - (iv) the divestment is under a court order;
- (c) the Responsible Entity must not divest a Member of Units or forfeit Units while those Units are in a "CHESS Holding" as that term is defined in the ASX Settlement Operating Rules. Without limitation to Clause 1.5, at all times that the Trust is Listed, the Responsible Entity must comply with ASX Settlement Operating Rule 8.13.

1.7. Other Documents

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

2. Name of Trust

2.1. Name of Trust

The Trust is called the CD Private Equity Fund ~~III~~ or by such other name as the Responsible Entity determines from time to time.

3. Assets held on trust

3.1. Assets held on trust

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

4. Units and Options

4.1. Nature of Units

- (a) [This clause 3.1(a) is preserved in its existing form and is not restated or amended] ~~The beneficial interest in the Trust is divided into Units².~~
- (b) Subject to the rights conferred on particular Classes, each Unit confers an equal undivided interest. Apart from any differences as to income entitlement arising from the time when a Unit is issued, all Units in a Class confer an equal undivided interest as the other Units in that Class irrespective of the Application Price paid to the Responsible Entity for those Units.
- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset.
- (d) The Responsible Entity has a discretion to issue Units with any preferred, deferred or other special rights, obligations or restrictions whether in relation to distributions, voting, return of capital, withdrawal, payment of calls or otherwise that the Responsible Entity determines.
- (e) The Responsible Entity may convert any Units from one class to another class or reclassify Units from one class to another.
- (f) The Responsible Entity must enter on the Register the class or terms of issue of Units held by a Member.
- ~~(g)~~ (g) While the Trust is not Listed, each Unit held by a Member is subject to a condition that the Member must have provided, or will promptly provide on request to the Responsible Entity or its authorised agent, such information as the Responsible Entity may reasonably require for the Responsible Entity to meet its obligations under anti-money laundering or counter-terrorism financing laws.
- ~~(g)~~ (h) A Member may not:
 - (i) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Responsible Entity;
 - (ii) claim or exercise any right in respect of any asset of the Trust or lodge any caveat or other notice affecting any asset of the Trust; or

² In the existing constitution, clause 3.1(a) states "The Responsible Entity must hold the Assets on trust for Members".

(iii) require that any asset of the Trust be transferred to a Member.

~~(h)~~(i) Members may not give any directions to the Responsible Entity (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Responsible Entity to do or omit to do anything which may result in:

- (i) the Trust ceasing to comply with the Listing Rules (if applicable) or the Responsible Entity acting inconsistently with this Constitution; or
- (ii) the exercise of any discretion expressly conferred on the Responsible Entity by this Constitution or the determination of any matter which under this Constitution requires the agreement of the Responsible Entity.

4.2. Options

- (a) The Responsible Entity may create and issue Options on such terms and conditions as the Responsible Entity determines.
- (b) Subject to this Constitution, the Corporations Act, ASIC Relief and, while the Trust is Listed, the Listing Rules, the Responsible Entity may determine that Options will be issued:
 - (i) for consideration or no consideration;
 - (ii) in the case of an offer which complies with any applicable ASIC Relief and, while the Trust is Listed, the Listing Rules 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, and otherwise as determined under Clauses 5.1(b) - 5.1(f), as applicable; and
 - (iii) conferring on the Option Holder such other entitlement under this Constitution as the Responsible Entity determines,

and otherwise on terms and conditions and with such entitlements as determined by the Responsible Entity.

- (c) Subject to the conditions of any applicable ASIC Relief and while the Trust is Listed, the Listing Rules if the Responsible Entity is making an offer of Options to Members which is otherwise in proportion to their existing holdings of Units, the Responsible Entity is not required to offer Options under this clause to persons whose address on the Register is in a place other than Australia.
- (d) On exercise of an Option, the Option Holder is entitled to subscribe for and be allotted such number of the Units as the terms and conditions of issue of the Option contemplate, provided that Option Holder has given notice to the Responsible Entity in accordance with the terms upon which the Option was granted together with payment in full of the exercise price.
- (e) Upon the termination of the Trust, an Option Holder is entitled to repayment of the Application Price (if any) of any Option which has not been exercised, unless the terms of issue of the Option provide otherwise.
- (f) Subject to Clause 4.2(e), an Option does not confer on an Option Holder any interest in the Trust or any right to participate in any distribution of the income or capital of the Trust.

4.3. Financial Instruments

- (a) Subject to the Corporations Act:
 - (i) the Responsible Entity may, in addition to Units and Options, issue any other interest, rights or instruments relating to the Trust (including derivatives, debentures, convertible notes or other instruments of a debt, equity, quasi-debt, quasi-equity or hybrid nature) (**Financial Instruments**); and

- (ii) Financial Instruments may be issued;
 - (A) for \$100 per Financial Instrument or such other amount as the Responsible Entity determines; and
 - (B) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversion or otherwise) as the Responsible Entity determines.
- (b) Subject to the terms of issue of the Financial Instrument:
 - (i) a Financial Instrument does not convey any interest in, or any rights to participate in the income or capital of, the Trust;
 - (ii) each holder of a Financial Interest agrees not to:
 - (A) interfere with any rights or powers of the Responsible Entity under the Constitution;
 - (B) purport to exercise a right in respect of an Asset of the Trust or claim any interest in an Asset of the Trust (for example, by lodging a caveat affecting an interest in the Asset of the Trust); or
 - (C) require an Asset of the Trust to be transferred to them (or any other person); and
 - (iii) subject to the Corporations Act, a holder of a Financial Instrument who is not a Member is not entitled to any other rights of a Member.

4.4. Rights attaching to Units, Options and Financial Instruments

- (a) A Member holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.
- (b) An Option Holder holds an Option subject to the terms and conditions attaching to that Option.
- (c) The Holder of a Financial Instrument holds that Financial Instrument subject to the rights, restrictions and obligations attaching to that Financial Instrument.

4.5. Fractions of Units

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

4.6. Consolidation and Division of Units

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

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

4.7. Joint Tenancy

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

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

4.8. Death, Legal Disability of Member

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

4.9. Benefits and obligations of Members

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

4.10. No further liability

- (a) This Clause 4.10 is subject to any separate agreement between a Member and the Responsible Entity.
- (b) The liability of each Member in its capacity as such is limited to its investment in the Trust.
- (c) A Member is not required to indemnify the Responsible Entity or a creditor of the Responsible Entity against any liability of the Responsible Entity in respect of the Trust.
- (d) The recourse of the Responsible Entity and any creditor of the Responsible Entity is limited to the assets of the Trust.
- (e) Nothing in or under this Constitution makes the Responsible Entity an agent of a Member, nor does it create any relationship other than that of beneficiary and trustee.

4.11. Class rights

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

5. Application Price for Units

5.1. Application Price

- (a) The Application Price for a Unit issued under the first product disclosure statement prepared for the Trust is \$1.60 per Unit.
- (b) After the issue of Units under the first product disclosure statement referred to in 5.1(a) above, where the Units are not Officially Quoted the Application Price is equal to:

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

- (c) After the issue of Units under the first product disclosure statement referred to in Clause 5.1(a), where the Units are Officially Quoted, the Application Price is the Market Price.
- (d) The Application Price for a Unit issued on the exercise of an Option is the amount determined in accordance with Clause 4.2(b)(ii).
- (e) Notwithstanding 5.1(a)-(d), the Responsible Entity may determine a different Application Price in relation to some Units, a Class or all Units to the extent it is permitted to do so under the provisions of ASIC Class Order [CO 13/655] or any other ASIC Relief.

(f) Subject to compliance with the Corporations Act, the Listing Rules (as applicable), ASIC Class Order [CO 13/655] or any other applicable ASIC Relief and the statutory and fiduciary duties of the Responsible Entity, the Responsible Entity may issue Units at Application Prices that differ between applicants notwithstanding that the issues are undertaken at the same time or under the same product disclosure statement or other offer document.

(g) Despite anything in this clause 5, the Units to be issued under the Reorganisation Proposal must be issued at an Application Price equal to the value of the consideration in the form of units in each of CD1, CD2 and CD4 provided by the members of those trusts respectively under the Reorganisation Proposal such that:

(i) in exchange for each unit in CD1 that becomes an Asset of the Trust, the former holder of that unit will receive 0.6285 Units;

(ii) in exchange for each unit in CD2 that becomes an Asset of the Trust, the former holder of that unit will receive 0.9144 Units; and

~~(iii)~~ (iii) in exchange for each unit in CD4 that becomes an Asset of the Trust, the former holder of that unit will receive 1.0569 Units or such greater number up to 1.0583 as calculated by the Responsible Entity to reflect the cancellation of forfeited CD4 units under clause 7.16 of the CD4 constitution.

with the number of Units to be issued rounded up or down to the nearest whole Unit.

5.2. Variables

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

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

whichever happens later.

5.3. Rounding

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

6. Application Procedure

6.1. Application Form

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

6.2. Payment

- (a) [Subject to clause 5.1\(g\)](#), Payment in a form acceptable to the Responsible Entity, including by a direction from the Responsible Entity to apply any cash sum payable by the Responsible Entity to any applicant, or a transfer of property of a kind acceptable to the Responsible Entity and able to be vested in the Responsible Entity or a custodian appointed by it (accompanied by a recent valuation of the property, if the Responsible Entity requires), must:
- (i) accompany the application;
 - (ii) be received by or made available to the Responsible Entity within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time; or
 - (iii) comprise a reinvestment of distribution in accordance with Clauses 12.22 and 12.23
- (b) If the Responsible Entity accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets.
- (c) Application Monies for Units issued under a product disclosure statement must be paid to the Responsible Entity, to be placed by the Responsible Entity in a special trust account until the earlier of:
- (i) the minimum subscription, if any (to be specified in the product disclosure statement) has been reached and the Responsible Entity decides to proceed to allotment of Units; or
 - (ii) the date by which the Application Monies would need to be repaid under the Corporations Act.

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

6.3. Responsible Entity May Reject

The Responsible Entity may reject an application in whole or in part and, subject to the Listing Rules (at all times while the Trust is Listed), need not give any reason for the rejection.

6.4. Minimum Amounts

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

6.5. Issue Date

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

6.6. Uncleared Funds

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

6.7. Register

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

6.8. Holding Statements

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

6.9. Foreign Members

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

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

Where:

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

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

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

N is the aggregate number of Foreign Interests; and

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

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

7. Redemption Price of Units

7.1. Redemption Procedures

An Ordinary Unit must only be redeemed at a Redemption Price calculated in accordance with the following formula:

$$RP = \frac{NAV - TC}{U}$$

where:

RP is the Redemption Price;

NAV is the Net Asset Value;

TC is the Transaction Costs; and

U is the aggregate number of Ordinary Units on issue.

7.2. Time of Calculation

Each of the variables in Clause ~~7.1~~7.4 must be determined as at:

- (a) in the case of Units to be redeemed under a withdrawal offer as contemplated by clause 8.4, the last Valuation Time before the withdrawal offer closes; and
- (b) in any other case, the next Valuation Time after the Responsible Entity receives the redemption request or determines that the Units are to be redeemed, whichever is the earlier (**Redemption Date**).

7.3. Rounding

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

8. Redemption Procedures

8.1. Application of the provisions of Clause 8

- (a) Unless expressly stated otherwise, Clause 8.2 and Clauses 8.5 to 8.13 (each inclusive) apply whether or not the Trust is a Registered Scheme and, if the Trust is a Registered Scheme, whether or not the Trust is Liquid.
- (b) In addition to Clause 8.1(a):
 - (i) Clause 8.3 only applies to a trust that is not a Registered Scheme; and
 - (ii) Clause 8.4 only applies to a trust that is a Registered Scheme.

8.2. Requests for Redemption

- (a) A Member may make a request to the Responsible Entity to redeem some or all of their Units provided that those Units the subject of the redemption request have been held by that Member for the minimum period of time (if any) that is specified in the Terms of Issue, which must in any event not be less than 1 month.
- (b) The Responsible Entity may create forms to assist in redemption requests. If the Responsible Entity has created forms to assist with a redemption request or an applicable law requires the use of a form, a redemption request must be made on a withdrawal or redemption form.
- (c) The manner, and time by which, a redemption request must be given by a Member to the Responsible Entity will, be determined from time to time by the Responsible Entity.
- (d) Subject to any preferred, deferred or other special rights, obligations or restrictions required by the Terms of Issue of any Class of Unit issued from time to time, the Responsible Entity is not obliged to give effect to a redemption request.
- (e) A Member may not withdraw a redemption request without the consent of the Responsible Entity.

8.3. Redemption Process when the Trust is not a Registered Scheme or is Liquid

- (a) If the Responsible Entity decides to satisfy a redemption request in respect of a Unit the redemption will take effect on the Redemption Date calculated by reference to the date of receipt of the redemption request (subject to any suspension of redemptions). The Responsible Entity must pay from the Assets the Redemption Price calculated in accordance with Clause 7. The payment must be made by no more than 21 days following the said Redemption Date (subject to any suspension of redemptions).
- (b) The Responsible Entity need not give effect to a redemption request in respect of Units having an aggregate Redemption Price of less than the minimum application amount or such other amount as determined by the Responsible Entity from time to time unless the redemption request relates to the balance of the Member's holding.
- (c) If the Responsible Entity increases the minimum holding amount, the Responsible Entity may after giving 30 days' notice to a Member who holds Units with an aggregate Redemption Price less than the current minimum holding amount redeem that Member's holding without the need for a redemption request.
- (d) The Responsible Entity is not obliged to pay any part of the Redemption Price out of its own funds.

8.4. ~~Redemption process~~ Withdrawal offers when the Trust is a Registered Scheme and is not Liquid

- (a) ~~While the Trust is not Liquid, a Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity under the provisions of the Corporations Act regulating offers of that kind. While the Trust is a Registered Scheme, notwithstanding any other provision of this Constitution, neither part or all of the Units held by a Member may be redeemed except in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind. The payment must be made within the period specified in the Corporations Act if the Trust is non-Liquid, and by no more than 21 days after the Redemption Date if the Trust is Liquid.~~
- (b) No withdrawal request issued under a withdrawal offer may be satisfied while the offer is still open.
- (c) While the Trust is a Registered Scheme and is not Liquid. If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.

- ~~(d)~~ The Responsible Entity is not at any time obliged to make a withdrawal offer. If it does, it may do so by sending a copy of the offer to all Members, or making a copy of the offer available by electronic means (including on a website) provided that Members have been given information that withdrawal offers will be made by that means, either in a product disclosure statement for the Trust or a notice sent to Members.
- ~~(d)~~(e) The Responsible Entity may cancel a withdrawal offer at any time. If it does, it may do so by sending a notice that the offer is cancelled to all Members, or making the notice available by electronic means and giving notice to Members that it is available.
- ~~(e)~~(f) If the Responsible Entity receives a redemption request, and the Fund subsequently ceases to be Liquid before that request has been Accepted or rejected, the request lapses. ~~before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.~~

8.5. Reduction of the Number of Units the subject of a Redemption Request

Notwithstanding anything expressed or implied to the contrary in this Constitution, the Responsible Entity may in its absolute and unfettered discretion reduce the number of Units the subject of a redemption request in respect of the Class on a pro rata basis where it receives redemption requests for a particular Class equal to more than 10% (or such other percentage as the Responsible Entity in its discretion may determine) of the value of that Class at the Valuation Time are redeemed. The unredeemed portion of the relevant redemption requests will be carried forward to the next Valuation Time and be subject to further application of this Clause 8.5. This Clause 8.5 does not apply to withdrawal offers under clause 8.4.

8.6. Suspension of Redemption Requests

Notwithstanding anything expressed or implied to the contrary in this Constitution, if the Responsible Entity considers or determines that:

- (a) it is desirable for the protection of the Trust or in the interests of the Members as a whole including if any relevant financial, stock, bond, note, derivative or foreign exchange market is closed or trading on any such market is restricted;
- (b) any state of affairs exists as a result of which the Responsible Entity considers or determines that it is not or may not be reasonably practicable for the Responsible Entity to acquire or dispose of Assets or determine fairly the amount of the Redemption Price of a Unit (including any moratorium declared by a government of any country), the state of affairs will or may affect to a significant degree the ability of the Responsible Entity to acquire or dispose of Assets or the prices at which the Responsible Entity may acquire or dispose of Assets;
- (c) a situation (including one caused by a mechanical or electronic malfunction) exists as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Redemption Price of a Unit;
- (d) the realisation of Assets cannot be effected at prices or on terms which would be obtained if Assets were realised in an orderly fashion over a reasonable period in a stable market; or
- (e) it is in the interests of the Members,

the Responsible Entity may suspend for a reasonable period determined by it (**Suspension Period**) the redemption of Units and the payment for the redemption of Units during the Suspension Period. The Redemption Price for Units the subject of a Redemption Request received or deemed received during the Suspension Period shall be the amount of the Redemption Price next determined at the Valuation Time after the end of the Suspension Period. A Member's redemption request lodged during the Suspension Period is deemed lodged immediately after the end of the Suspension Period.

8.7. Discretion to redeem all or part of a Redemption Request

The Responsible Entity may redeem some or all of the Units which are the subject of a redemption request. If the Trust is a Registered Scheme, the discretion conferred on the Responsible Entity by this Clause 8.7 may only be exercised while the Trust is Liquid.

8.8. Power to compulsorily redeem Units

Without limiting any other provision of this Constitution, the Responsible Entity can determine to redeem Units without a request in the following circumstances and, if it does so, the Redemption Price is calculated at the next Valuation Time after it so determines:

- (a) if the Member has breached its obligations to the Responsible Entity or breached a term of this Constitution;
- (b) to satisfy any amount of money due to it (as responsible entity or in any other capacity) by the Member;
- (c) to satisfy any amount of money it (as responsible entity or in any other capacity) owes someone else relating to the Member (for example, to the tax office);
- (d) if this Constitution otherwise allows (for example, where a Member does not have a minimum holding);
- (e) where the Responsible Entity reasonably believes that the law prohibits the person from being a Member;
- (f) where the Terms of Issue otherwise provide for compulsory redemption of Units;
- (g) where the Responsible Entity determines it is in the best interests of the Members; or
- (h) where the Responsible Entity determines it is appropriate or necessary for administrative or other reasons.

~~8.9. Redemption and Issue~~

- ~~(a) The Responsible Entity may (without the consent of a Member) redeem any or all of a Member's Units in the Trust at the Redemption Price for Units calculated in accordance with Clause 7 (except that the price is not to be adjusted for Transaction Costs) at that time and apply the redemption proceeds to the payment of the Application Price for Units in the Trust in a Class determined by the Responsible Entity. Such Units will be taken to be issued contemporaneously with redemption and will be issued at the Application Price for that Class calculated in accordance with Clause 5 (except that price is not to be adjusted for Transaction Costs) immediately prior to the redemption.~~
- ~~(b) The Responsible Entity may only take the action in Clause 8.9(a) where it has determined that such action is:

 - ~~(i) in the best interests of the Members (as a whole); or~~
 - ~~(ii) appropriate or necessary for administrative or other reasons.~~~~
- ~~(c) The Units in the Class determined by the Responsible Entity must at least have the same terms as, and rank equally with, the redeemed Units.~~

~~8.10.8.9.~~ Sums Owed to the Responsible Entity

The Responsible Entity may deduct from the Redemption Price, any money due to it from the Member.

~~8.11.8.10.~~ Transfer of Assets

- (a) The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, pursuant to a withdrawal offer or in payment of a distribution.
- (b) These Assets with any cash paid must be of equal value to the total amount due to the Member pursuant to the redemption request, withdrawal offer or distribution (based on a valuation done in accordance with Clause 10.2(a) within one month before the date of the proposed transfer).

- (c) If the Responsible Entity requires, the costs involved in the transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.
- (d) The transfer of Assets to the Member must be completed by no more than 21 days after the Redemption Date.

8.12.8.11. Responsible Entity's obligations upon completion of Redemption Process

On the redemption of Units, the Responsible Entity:

- (a) must cancel the Units redeemed;
- (b) must immediately remove the name of Member from the Register in respect of the redeemed Units; and
- (c) may deliver a transaction advice to the Member.

8.13.8.12. Effect of Responsible Entity's redemption decisions

Any determination by the Responsible Entity concerning the redemption or repurchase of a Unit is binding on all interested persons, including any determination as to:

- (a) at what time a redemption request was received; or
- (b) the amount payable on redemption and when it is to be paid.

8.14.8.13. Liability on Redemption

The Responsible Entity is not liable for any consequences resulting from a redemption of Units in accordance with this Clause 8.

8.14. Distribution to Members on Redemption

(a) If, during a Distribution Period, the Responsible Entity redeems Units as a result of either a withdrawal offer or a redemption request, then the Responsible Entity may determine at or before the end of the relevant Distribution Period (including by way of standing determination):

- (i) what amount ("Income Component") of the Redemption Price in respect of the Units represents a distribution of the Distributable Income for that Tax Year; and
- (ii) whether the Income Component of the Redemption Price will comprise a distribution of Distributable Income for the Tax Year of any particular character for tax purposes.

and in the absence of a specific determination, the Income Component of the Redemption Price of a Unit will be that proportion of the Distributable Income for the relevant Distribution Period that is properly referable to the Unit as its share of income of the Trust up to the date of redemption. The calculation of the Distributable Income for the relevant Distribution Period may be performed after the date of redemption.

(b) Any determination under clause 8.14(a) in respect of a redemption by a Member or former Member (whether specifically determined by the Responsible Entity or otherwise), must take into consideration:

- (i) that component of the Distributable Income of the Trust for the Tax Year to date that has not been distributed (at the time the Redemption Price in respect of the redemption is determined under clause 8.14(a)) that the Responsible Entity determines is referable to:
 - (A) capital gains; or
 - (B) amounts which reflect gains (which are not capital gains) on the disposal or realisation of Assets; and

- (ii) the increase in the component of the Distributable Income of the Fund referred to in clause 8.14(b)(i)(A) as a result of the Responsible Entity realising sufficient Assets to satisfy redemptions in that Distribution Period; and
- (iii) the number of Units redeemed during that Distribution Period and the number of Units on issue at the time the redemptions are effected.
- (c) It is intended that the Income Component in respect of each Unit will be the same for all Units of the same class that are redeemed on the same date.
- (d) The Income Component will comprise part of the Redemption Price payable under Clause 7.1.

8.15. Buy backs

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

9. Transfers

9.1. Transfer

- (a) Before the Trust is Listed or at any time after the Trust has ceased to be Listed, all transfers of Units and, subject to their terms and conditions, Options and Financial Instruments, must be effected by a proper instrument of transfer and in a manner approved by the Responsible Entity. The Responsible Entity may decline to register a transfer of Units Options or Financial Instruments under this Clause 9.1(a) unless the instrument of transfer:
 - (i) is duly stamped (if applicable);
 - (ii) is accompanied by such evidence as the Responsible Entity requires to prove the title of the transferor; and
 - (iii) complies with any requirements prescribed by the Responsible Entity from time to time.
- (b) While the Trust is Listed, all transfers of Officially Quoted Units and, subject to their terms and conditions, Officially Quoted Options and Officially Quoted Financial Instruments, must be effected in accordance with the Listing Rules.
- (c) A transferor of Units remains the Member until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units of the transfer is effected in accordance with the ASX Settlement Operating Rules.

9.2. Transaction advice after transfer

If the Responsible Entity accepts a transfer under this Clause 9, the Responsible Entity may issue a transaction advice for:

- (a) the Units, Options or Financial Instruments which have been transferred; and
- (b) the balance of any Units, Options and Financial Instruments which were not transferred.

9.3. No General Restriction on Transfer

- (a) There is no restriction on the transfer of Units and, subject to their terms and conditions, Options and Financial Instruments and, subject to Clause 27.1, the Responsible Entity may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer effected under Clause 9.1(b).

- (b) Except as otherwise set out in this Clause 9, there is no restriction on any other transfer of Units, and subject to their terms and conditions, Options and Financial Instruments.
- (c) In relation to Units, Options or Financial Instruments, which are CHESS Approved Securities:
 - (i) subject to Clauses 9.3(c)(ii) and 9.3(c)(iii), the Responsible Entity must not prevent, delay or in any way interfere with the registration of a proper ASX Settlement Operating Rules transfer;
 - (ii) the Responsible Entity may apply a holding lock to specified CHESS Approved Securities where permitted to do so by the Listing Rules; and
 - (iii) the Responsible Entity may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

9.4. Power to suspend registration of transfers

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

9.5. Transmission of Units

- (a) In the case of a Transmission Event in respect of a Member or holder of Options or Financial Instruments (**Holder**), the only persons who will be recognised as having any title to the Units, Options or Financial Instruments registered in the Holder's name or any benefits accruing in respect of those Units, Options or Financial Instruments:
 - (i) where the Holder is a joint holder, the survivor or survivors of the Holder;
 - (ii) where the Holder is an individual, the legal personal representative of the Holder or the person entitled to the Units, Options or Financial Instruments as a result of bankruptcy; or
 - (iii) where the Holder is a body corporate, the person entitled to the Units, Options or Financial Instruments as a result of the dissolution or succession.
- (b) Nothing in Clause 9.5(a) releases the Holder or the estate of a deceased Holder from any liability in respect of the Units, Options or Financial Instruments held whether by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit, Options or Financial Instruments as a result of a Transmission Event may, upon producing such evidence as the Responsible Entity may require to prove that person's entitlement, elect:
 - (i) to be registered as the Holder of the Unit, Option or Financial Instrument by signing and serving on the Responsible Entity a notice in writing stating that election; or
 - (ii) to have some other person nominated by that person registered as the transferee of the Unit, Option or Financial Instrument by executing a transfer to that other person in accordance with Clause 9.1.
- (d) The Responsible Entity need not register any transfer or transmission pursuant to Clause 9.5(a) unless the transferee provides an indemnity in favour of the Responsible Entity in a form determined by the Responsible Entity in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this Constitution relating to the right to transfer, and the registration of transfers of, Units, Options or Financial Instruments apply, so far as they can and with such changes as are necessary, to any transfer under Clause 9.5(c) as if the relevant Transmission

Event had not occurred and the transfer was signed by the Holder of the Unit, Option or Financial Instrument.

- (f) For the purposes of this Constitution, where 2 or more persons are jointly entitled to any Unit, Option or Financial Instrument in consequence of a Transmission Event they will, upon being registered as the Holders of the Unit, Option or Financial Instrument be taken to hold the Unit, Option or Financial Instrument as joint tenants and Clause 4.7 will apply to them.
- (g) Despite Clause 9.5(a), the Responsible Entity may register a transfer of Units, Options or Financial Instruments signed by a Holder before a Transmission Event even though the Responsible Entity has notice of the Transmission Event.

9.6. Recognition of Member

- (a) Except as otherwise provided by law or provided in this Constitution, the Responsible Entity:
 - (i) must treat the person entered on the Register as a Member, Option Holder or Holder of a Financial Instrument as the absolute owner of all rights and interests of the Holder, and
 - (ii) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit by any other person, even if the Responsible Entity has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Responsible Entity, Units, Options or Financial Instruments held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in Clause 9.6(c) limits the operation of Clause 9.6(a).

9.7. Participation in Transfer Systems

The Responsible Entity may determine that Units, Options or Financial Instruments which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Responsible Entity may, with the approval of the operator of the Prescribed Financial Market on which the Units, Options or Financial Instruments are Listed, create rules to facilitate such participation which may be additional to or may override this Clause 9.

10. Valuation of Assets

10.1. Periodic Valuations

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

10.2. Valuation Methods

- (a) The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time provided that the valuation methods and policies are consistent with the Accounting Principles (to the extent required by law to be applied to that valuation) and ordinary commercial practice for valuing assets of the same type as the relevant

category of Assets and produce a valuation that is reasonably current at the time of issue or redemption of Units.

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

10.3. Currency conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Responsible Entity.

11. Accounts, Audit and Reports

11.1. Accounts – Registered Scheme

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

11.2. Accounts – Not a Registered Scheme

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

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

12. Income and Distributions to Members

12.1. Standing principles for determining Distributable Income

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

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

For any Tax Year for the Trust that is an AMIT Income Year, unless the Responsible Entity determines otherwise under clause 12.1, the standing principles for determining the Distributable Income for the Tax Year and any Distribution Period will be that the Distributable Income will be the amount determined by the Responsible Entity as being the aggregate of:

- (a) the amount determined by the Responsible Entity to be the aggregate of all Trust Components for the Trust for the period that have an assessable income character, determined as if the

period is a year of income for the purposes of the Tax Act and excluding any amounts of a tax offset character; and

(b) any additional amount that the Responsible Entity considers appropriate for distribution in relation to the Trust for the relevant period, including:

(ii) amounts referable to the discount capital gains concession; and

(iii) any other Trust Components that have the character of exempt income or non-assessable non-exempt income.

The standing principles made by the Responsible Entity under this clause may be changed or revoked at any time in accordance with clause 12.1.

12.1.12.3. Determination of Distributable Income

(a) The Responsible Entity ~~may~~ must determine the distributable income (**Distributable Income**) for each Distribution Period. In the case of any Distribution Period which does not end at the end of a Tax Year, the determination of the Distributable Income for that Distribution Period may be an estimate.

(b) The Distributable Income is to be:

(i) if the Responsible Entity has determined standing principles under clause 12.1 (including pursuant to clause 12.2) which are applicable to the Tax Year or Distribution Period, the amount calculated by applying those principles in respect of the Tax Year or Distribution Period; and

(c) if there are no standing principles which are applicable to the Tax Year or Distribution Period under clause 12.1:

(i) for a Tax Year, the aggregate of the amount which the Responsible Entity determines to be the "net income of the trust estate" for the Trust for the purposes of section 95 of the Tax Act for the Tax Year determined disregarding any amounts that the Responsible Entity determines represent either franking credits or foreign tax offsets; and

(ii) for a Distribution Period, the amount which the Responsible Entity determines to be the Distributable Income for the Distribution Period, determined as if the Distribution Period is a Tax Year and a year of income for the purposes of the Tax Act

~~(a) by way of a standing determination (subject to the determination not being in contradiction of trust or tax laws), the application of which is capable of independent verification, and may change such principles from time to time in respect of Distribution Periods ending after the change in principles.~~

~~(b) In determining the Distributable Income the Responsible Entity may determine whether any receipt, profit, gain, cost, expense, outgoing or other amount is to be treated, for the purposes of the Trust, as being on income or capital account and may, in making that determination, reclassify amounts which are income as capital, and amounts which are capital as income.~~

~~(c) For the avoidance of doubt:~~

~~(i) in determining the Distributable Income, the Responsible Entity does not have to take into account the Accounting Principles; and~~

~~(ii) the preparation of the accounts of the Trust in accordance with current Accounting Principles is not to be regarded as a determination by the Responsible Entity of the method for calculating the Distributable Income.~~

- ~~(d) Unless the Responsible Entity determines otherwise on or before the Distribution Calculation Date, the Distributable Income for a Distribution Period must be:~~
- ~~(i) the net income of the Trust as defined in section 95(1) of the 1936 Act, excluding any amount that is included in the net income of the Trust that will not be received by the Responsible Entity; but~~
 - ~~(ii) not less than the amount which if distributed would prevent the Responsible Entity being liable to tax on the income of the Trust.~~

12.4. Accounting standards

The preparation of the accounts of the Trust in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 12.3.

12.5. Power to accumulate or defer amounts

(a) The Responsible Entity may, in respect of a Distribution Period in a Tax Year for the Trust that is an AMIT Income Year for the Trust, determine prior to the end of that Distribution Period that all or part of the Distributable Income of the Trust for the period from the commencement of the Tax Year until the end of the Distribution Period that has not already been distributed to Members under clauses 8.14, 12.6 or 12.21(b) will:

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

(b) The effect of the Responsible Entity exercising its power to accumulate or carry forward an amount pursuant to clause 12.5(a) is, in accordance with clause 12.6, to:

- (i) exclude the relevant amount from the Income Distributions for Members for:
 - (A) the Distribution Period; and
 - (B) in the case of an accumulation pursuant to clause 12.5(a)(i), all future Distribution Periods; and
- (ii) in the case of amounts which are carried forward for distribution later in the Tax Year under clause 12.5(a)(ii), include the relevant amount in the Income Distributions for a subsequent Distribution Period in the Tax Year unless the Responsible Entity determines to distribute the relevant amount earlier under clause 12.21(b).

(c) For the purposes of clause 12.15, amounts accumulated under clause 12.5(a)(i) are to be treated for the purposes of the AMIT Regime as having been accumulated for the benefit of the Members at the time specified by the Responsible Entity. This time must be on or after the time the Responsible Entity determines to accumulate the relevant amount, but at or before the end of the relevant Tax Year.

(d) Amounts which are:

- (i) accumulated pursuant to clause 12.5(a)(i); or
- (ii) carried forward for distribution later in the Tax Year pursuant to clause 12.5(a)(ii), but only until the time at which the amount is distributed under clauses 12.6 or 12.21(b).

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

12.2. Present Entitlement

~~A person who at any time during the Tax Year is or has been a Member, is presently entitled, at the end of the Tax Year to the Distributable Income of the Trust for the Tax Year, in the proportion specified in Clause 12.3.~~

12.6. Income Distributions

Subject to clauses 12.13 and 12.26 Income Distributions in respect of a Member means an amount calculated by the Responsible Entity as follows:

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

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

where:

A is the number of Units held by the Member at the end of the Distribution Period;

B is the number of Units held by all Members at the end of the Distribution Period;

C is the Distributable Income for the Distribution Period excluding:

(i) the Income Component of the Redemption Price of a Unit allocated to any Member pursuant to clause 8.14 during that Distribution period;

(ii) any amounts paid pursuant to clause 12.21(b) during that Distribution Period; and

(iii) any amounts which the Responsible Entity has determined to accumulate or carry forward for the Distribution Period under clause 12.5(b),

and including any amounts which the Responsible Entity has determined to carry forward for a previous Distribution Period in the Tax Year, and which the Responsible Entity determines has not previously been distributed in the Tax Year as an Income Distribution or under clause 12.21(b) and is appropriate to distribute for the Distribution Period; and

(b) in respect of a Distribution Period ending on the last day of the Tax Year, an amount calculated as follows:

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

where:

A is the number of Units held by the Member at the end of the Distribution Period;

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

C is any amount by which the Distributable Income for the Tax Year exceeds the aggregate of:

(1) the Distributable Income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Tax Year;

(2) the Income Component of the Redemption Price of a Unit allocated to any Member in the Tax Year pursuant to clause 8.14;

(3) any amounts paid pursuant to clause 12.21 during the Tax Year; and

(4) any amounts which the Responsible Entity has determined to accumulate for a Distribution Period in the Tax Year under clause 12.5(a)(i).

~~(a) The Responsible Entity may determine to make an interim distribution of Distributable Income accruing during any Interim Distribution Period (an Interim Distribution). The Responsible Entity must within 90 days of the last day of the Interim Distribution Period pay the Interim Distribution to the Members on the Register at the end of the last day of the Interim Distribution Period in the proportion specified in Clause 12.3(d).~~

~~(b) Within 90 days of the end of the Tax Year and subject to Clause 12.3(d), the Responsible Entity must pay to the Members on the Register at the end of the last day of that Tax Year an amount equal to the Income Distribution of Distributable Income accruing to the Trust for the Tax Year less any amounts previously distributed in respect of that Tax Year under Clause 12.3(a).~~

~~(c) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class and to this Clause 12.3, a Member on the Register on the Distribution Calculation Date:~~

~~(i) for the purposes of Clause 12.2, has an absolute vested and indefeasible interest in, and is presently entitled to;~~

~~(ii) for the purposes of Clause 12.3(b), is presently entitled to a distribution of; and~~

~~(iii) for the purposes of Clause 12.3(a), is presently entitled to an Interim Distribution out of Distributable Income of,~~

~~the Income Distribution referable to the Distribution Calculation Date.~~

~~(d) Subject to the rights, obligations and restrictions attaching to any particular Unit or Class a Member is entitled to receive a distribution under Clause 12.3(a) or 12.3(b) in accordance with the following formula:~~

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

~~where:~~

~~A = the amount of the distributable income in respect of the relevant Tax Year or Interim Distribution Period (as the case may be);~~

~~B = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of any particular Member or Members including the number or percentage of Units on Issue held by any such Member;~~

~~C = the aggregate of the number of Units held by the Member as at the close of business on the last Business Day of that Tax Year or Interim Distribution Period which are entitled to a full income distribution for that period plus, if the Member holds at the close of business on the last Business Day of that period Units issued during that period which have a proportionate income entitlement in accordance with Clause 12.6, the aggregate number of such Units held by that Member multiplied by the relevant proportion;~~

~~D = the aggregate of the total number of Units entitled to a full income distribution for the relevant Tax Year or Interim Distribution Period plus, if Units have been issued during that period which have a proportionate income entitlement in accordance with Clause 12.6, the aggregate of the total number of such Units multiplied by the relevant~~

~~proportion, in each case calculated as at the close of business on the last Business Day of that period; and~~

~~E = the amount of any Additional Tax that has arisen during or in respect of the relevant Tax Year or Interim Distribution Period as a consequence of the characteristics of the Member including the number or percentage of Units on Issue held by the Member.~~

12.3.12.7. Satisfaction of Present Entitlement

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

- (a) if the Tax Year is not an AMIT Income Year, the Distributable Income of the Trust for the Tax Year; and
- (b) if the Tax Year is an AMIT Income Year, the Distributable Income of the Trust for the Tax Year excluding any amounts accumulated pursuant to clause 12.5(a)(i).

in the proportion that the (i) Income Distributions calculated in respect of the Member or former Member in respect of the Tax Year under clause 12.6, (ii) any payments made to that Member or former Member in respect of that Tax Year under clause 12.21(b) and (iii) the Income Component of the Redemption Price allocated to the Member in the Tax Year pursuant to clause 8.14 bear to the sum of (i) all Income Distributions in respect of the Tax Year; (ii) all payments made under clause 12.21(b) to persons who are or have been Members at any time during the Tax Year; and (iii) the total Income Components under clause 8.14 in respect of redemptions effected during the Tax Year. ~~The present entitlement of a Member to Distributable Income of the Trust for a Tax Year will be satisfied by the payment of the Income Distributions to the Member in respect of the Tax Year.~~

12.8. Indefeasibility

Despite any other provision of this constitution, a person cannot be defeased of any share of the Distributable Income to which the person is entitled under clauses 12.6 and 12.7.

12.9. Distribution of income

Subject to any deductions made under clause 12.12 and subject to clause 12.1, the Responsible Entity must distribute to each person the person's entitlement to Distributable Income for a Distribution Period. The distribution in respect of the final Distribution Period in a Tax Year must occur within three months after the end of that Tax Year.

12.10. Separate accounts

The Responsible Entity may keep separate accounts of different categories or sources (or both) of income or gains, or deductions, losses or credits for tax purposes, and if such accounts are kept, they must be kept in accordance with the requirements of the Tax Act. The Responsible Entity may allocate income or gains from a particular category or source (or both) to particular Members or Members of a Class provided that the allocation is not inconsistent with the entitlements of Members to Distributable Income under clauses 8.14, 12.6 or 12.21(b) or the Responsible Entity's obligations to attribute amounts to Members under clause 12.15.

12.11. Position on transfer of Units

A person who is or was a Member as at a Distribution Calculation Date remains entitled to their share (if any) of the Distributable Income under clauses 12.6 and 12.7 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

12.12. Deductions from Distributable Income

The Responsible Entity may deduct from any entitlement of a person to a share of Distributable Income any amount which the Responsible Entity is required or authorised to deduct under clause 12.20. All amounts deducted must be applied in reimbursing the Trust for any corresponding amount.

paid, distributed or reimbursed out of the Trust or reimbursing the Responsible Entity for the payment of the Tax to the person or authority entitled to it.

12.13. Fractions

If the share of Distributable Income for a Member determined under clause 12.6 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated and the fraction of the cent becomes an Asset.

12.14. Classification of items

Without limiting clauses 12.1 to 12.3, the Responsible Entity must determine:

- (a) the classification of any item as being on income or capital account;
- (b) the extent to which reserves or provisions need to be made;
- (c) whether any item of income should be recognised as it is received or as it accrues (but not yet received); and
- (d) the character for tax purposes of any Distributable Income which the Responsible Entity chooses to accumulate or carry forward for distribution pursuant to clause 12.5(a).

12.15. Attribution under AMIT Regime – basis for attribution

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Tax Year, attribute all of the Determined Trust Components of the Trust, or each Class in the Trust where there is an AMIT Class Election in force for the Trust, for the Tax Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under clause 12.15(a) in accordance with the Tax Act and the following principles:
 - (i) the amount of each Member's Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this Constitution; and
 - (ii) if there is more than one Class on issue in the Trust and the Responsible Entity has made an AMIT Class Election for the Trust, each Class will be treated as a separate AMIT for the purposes of the attribution under clause 12.15(a).
- (c) Subject to clause 12.16 but without limiting clause 12.15(b), following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Trust, all of the Determined Trust Components of the Trust or relevant Class (where there is an AMIT Class Election in effect for the Trust) for the Tax Year that are reflected in:
 - (i) any Income Distributions that the Member or former Member has become entitled to at the end of each Distribution Period in the Tax Year under clause 12.6;
 - (ii) any Income Component distributed to the Member or the re Member under clause 8.14;
 - (iii) any distributions that the Member or former Member has become entitled to during the Tax Year under clause 12.21(b); and
 - (iv) any Income Distributions that would arise for the Member or former Member at a time specified in clause 12.5(c) ("Relevant Time") under clause 12.6 if the Relevant Time was the end of a Distribution Period and variable "C" in the formula set out in clause 12.6 for the Distribution Period was the amount accumulated under clause 12.5(a)(i).

The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed for the Trust as an Income Distribution under clause 12.9 or under clause 12.21(b) are referable to Determined Trust Components of the Trust or the relevant Class (where there is an AMIT Class Election in effect in relation to the Trust) for the Tax Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under clause 12.15(a).

12.16. Attribution under AMIT Regime – AMIT Class Election

Where there is an AMIT Class Election in effect, then without limiting clause 12.15:

- (a) in calculating the Determined Trust Components of each Class for the Trust, the Responsible Entity must only include in the Determined Trust Components of a Class the Determined Trust Components of the Trust that are referable to the Class, in accordance with the methodology used to determine the Income Distributions of Members of the Class, having regard to clause 12.26; and
- (b) the Responsible Entity must only attribute Determined Trust Components of a particular Class to Members or former Members of that Class (and not any other Class).

12.17. Attribution under AMIT Regime – Member objections

If the Trust is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Trust or a Class (where the Responsible Entity has made an AMIT Class Election for the Trust) to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

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

12.18. AMIT Regime Unders/Overs

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

~~12.4. Minimum Distribution~~

~~The Responsible Entity may transfer capital to enable distribution to Members holding Ordinary Units pro rata of the minimum amount necessary to avoid the Responsible Entity as Responsible Entity of the Trust becoming liable to pay tax under the Tax Act.~~

~~12.5. Member's Rights~~

~~For the avoidance of doubt and despite anything in this Clause 12:~~

- ~~(a) The rights of a Member under this Clause 12 are subject to the rights, obligation and restrictions attaching to the Units which they hold; and~~
- ~~(b) For the purposes of distribution entitlements, partly paid Units will be treated as that proportion of whole Units as the amount paid up bears to the total issue price for that Unit, rounded down to the nearest 2 decimal places, or in such other manner.~~

~~12.6.~~ 12.19. Trust taxed as a Company

If the Trust is to be taxed as if it were a company, the Responsible Entity may determine that this Clause 12.19 applies to any period (a **Distribution Period**) instead of Clauses 12.3 to 12.18~~12.6~~. If it does so:

- (a) As soon as practicable after the end of the Distribution Period the Responsible Entity must determine the income in respect of the Distribution Period. Unless the Responsible Entity determines otherwise, the income in respect of the Distribution Period, income will be calculated in accordance with the Accounting Principles.
- (b) The Responsible Entity must provide for, and pay from the Assets of the Trust when appropriate, all Tax attributable to the income of the Trust.
- (c) The Responsible Entity may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to Members on the Register on any date determined by the Responsible Entity (**CD Date**).
- (d) For each Distributable Amount being paid to Members under this Clause 12.19 the Responsible Entity:
- (i) must comply with Tax Act; and
 - (ii) may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) A Member is entitled to a portion of the Distributable Amount, calculated as follows:

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

where:

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

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

C = the Distributable Amount.

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

~~12.7.~~12.20. **Withholding Tax**

- (a) The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that is required by law to deduct from such amount.
- (b) Where the income of the Trust is reduced by Additional Taxes attributable to the ownership of Units by certain Members, the entitlement to Income Distributions of such Members may be adjusted by the Responsible Entity, ~~pursuant to Clause 12.3(d)~~, so that the entitlement to Income Distribution or Distributable Amount of all other Members is equivalent to the amount they would receive in the absence of such Additional Taxes.

~~12.8.~~12.21. **Other Distributions**

The Responsible Entity may at any time:

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

The distribution may be in cash or by way of additional Units or a transfer of Assets under clause 8.10. The distribution must be paid as soon as is reasonably practicable

~~12.9. Separate Accounts~~

- ~~(a) The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Members.~~
- ~~(b) Where Clause 12.8(b) has been applied to reduce income entitlements of certain Members, those Members are to have the corresponding additional credits for tax purposes allocated to them.~~

~~12.10.~~12.22. **Reinvestment**

- (a) The Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units of the same Class.
- (b) If the Responsible Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- (c) If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.
- (d) If reinvestment applies, the Application Price for the Units to be issued on reinvestment will be calculated as follows:
- (i) while the Units are Officially Quoted the Application Price payable for each additional Unit on reinvestment of Distributions (if any) is the simple average of the daily weighted average traded price of Units on each of the 10 Business Days from and including the second Business Day after the Distribution Calculation Date for the relevant distribution less such discount, if any, not exceeding 10% as the Responsible Entity may determine.

- (ii) while Units are not Officially Quoted, the Application Price payable for each additional Unit upon reinvestment of Distributions is the Application Price calculated by reference to Clause 5.1(b) on the first Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the distribution relates.

~~12.11.~~12.23. Position on Transfer of Units

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

12.24. Liability

To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of such discretion or power under this clause 12 or under the AMIT Regime in respect of an AMIT Income Year, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of any discretion or power despite any error or miscalculation in any provision made for Tax.

12.25. Member may direct

The Responsible Entity may act on a direction given by a Member in any form as the Responsible Entity requires to pay to a third party nominated in the direction all or part of the Member's entitlement to distributions of income and capital under this clause 12 or under clause 23.3 on winding up.

12.26. Classes

The rights of a Member under this clause 12 are subject to the rights, obligations and restrictions attaching to any particular Unit or the Class of Units which they hold.

12.27. Former Members

For the purposes of clauses 12.15 to 12.18, and notwithstanding clause 1.1, references to a "Member" or "Members" (other than in this clause 12.27) are taken to include former Members who were Members of the Trust during the relevant AMIT Income Year or, as appropriate, during an earlier AMIT Income Year. This clause 12.27 does not affect the interpretation of any clause of this constitution other than clauses 12.15 to 12.18.

13. Payments

13.1. Responsible Entity Discretion

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

13.2. Unpresented Cheques

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

13.3. Unsuccessful Payment

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

13.4. No Fractions

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

13.5. Discharge of Responsible Entity

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

13.6. Deductions

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

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

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

14. Powers of the Responsible Entity

14.1. General Powers

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

14.2. Contracting Powers

Without limiting Clause 14.1, the Responsible Entity in its capacity as Responsible Entity of the Trust has power to borrow or raise money and to lend or advance money (whether or not on security) and to incur all types of obligations and liabilities.

14.3. Investment Powers

Without limiting Clause 14.1, the Responsible Entity may in its capacity as Responsible Entity of the Trust invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

14.4. Guarantees

Without limiting Clause 14.1, the Responsible Entity may if it considers it appropriate in all the circumstances to do so, guarantee or assume the obligations of any person (including an associate of the Responsible Entity) and a third party dealing with the Responsible Entity may rely on a certified extract of the minutes of a meeting of the directors of the Responsible Entity as conclusive evidence that the Responsible Entity has formed the opinion that it is appropriate in all the circumstances to exercise its powers under this Clause 14 and is thereby empowered accordingly.

14.5. Power of Delegation

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

14.6. Exercise of Discretion

The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

15. Retirement of Responsible Entity

15.1. Voluntary Retirement

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

15.2. Compulsory Retirement

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

15.3. New Responsible Entity

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

15.4. Release

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

15.5. Retirement Benefit

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

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

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

16. Notices to Holders

16.1. Notices to Holders

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

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

16.2. Notices of the Responsible Entity

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

17. Meetings of Holders

17.1. Corporations Act

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

17.2. Member's Request for Meeting

- (a) While the Trust is not a Registered Scheme:
 - (i) the Responsible Entity must call and arrange to hold a meeting of Members to consider and vote on a proposed resolution on the request of Members with at least 50% of the votes that may be cast on the resolution; and
 - (ii) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in Clause 17.2(a) as if the Trust were a Registered Scheme.
- (b) While the Trust is a Registered Scheme, the provisions of the Corporations Act apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

17.3. Notice Period

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

17.4. Responsible Entity May Determine

- [\(a\)](#) Subject to the specific provisions of this Constitution relating to meetings of members and the Corporations Act (if the Corporations Act applies), the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.
- [\(b\)](#) Without limiting any other manner in which a meeting of Members may be held under the Corporations Act or this Constitution, for the purposes of section 252P of the Corporations Act.

[the Responsible Entity may convene a meeting of Members using virtual meeting technology only.](#)

17.5. Quorum

The quorum for a meeting of Members is at least 3 Members present in person or by proxy unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

17.6. No Quorum

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

17.7. Chairman

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

17.8. Adjournment

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

17.9. Resolutions Binding

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

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

While the Trust is a Registered Scheme:

- (a) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and
- (b) the Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

17.11. While the Trust is not a Registered Scheme

While the Trust is not a Registered Scheme, the remaining Clauses 17.12 to 17.15 apply.

17.12. Voting

- (a) Voting is by a show of hands, unless a poll is duly demanded or the proposed resolution is required by law or by this Constitution to be decided by a percentage of Units, or a percentage of votes able to be cast.
- (b) Each Member present in person or by proxy has:

- (i) on a show of hands, one vote; and
 - (ii) on a poll, one vote for each Unit they hold.
- (c) In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees. In the case of an equality of votes, the chairman has the casting vote.

17.13. Poll

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

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

17.14. Proxies

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

17.15. Class Meetings

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

17.16. Minutes

The minutes of a meeting of Members or Members of a class signed by the chair of the meeting are conclusive evidence of the matters stated in them, unless the contrary is proved.

17.17. Option Holders and Holders of Financial Instruments

- (a) The provisions of this Clause 17 relating to meetings of Members also apply to meetings of Option Holders and to meetings of Holders of Financial Instruments with any necessary modification.
- (b) Option Holders and Holders of Financial Instruments who are not Members are entitled to receive notice of and attend any meeting of Members but are not, unless the Corporations Act requires otherwise, entitled to speak or vote.

18. Rights and Liabilities of Responsible Entity

18.1. Holding Units

- (a) Notwithstanding any other provision of this Constitution, the Responsible Entity may not be or become a Member or otherwise be or become a beneficiary under the Trust. This Clause 18.1 is irrevocable and may not be amended or removed.
- (b) The associates of the Responsible Entity may hold Units in the Trust in any capacity.

18.2. Other Capacities

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

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

18.3. Responsible Entity May Rely

The Responsible Entity may take and may act upon:

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

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

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

19.1. No limitation of other undertakings

This Clause 19 does not limit or affect any other indemnities given to the Responsible Entity in this Constitution or at law.

19.2. Limitation of liability

Except where the Corporations Act expressly provides otherwise:

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

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

19.3. Acts or omissions of Responsible Entity and others

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

except where the Corporations Act expressly provides otherwise.

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

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

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

19.4. Indemnity in Favour of Responsible Entity

- (a) The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust.
- (b) To the extent permitted by the Corporations Act, (if the Corporations Act applies, and otherwise without limitation), the indemnity under this Clause 19.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- (c) This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as Responsible Entity of the Trust.

20. Liability of Members

20.1. Liability Limited

- (a) Subject to Clauses 20.1(c) and 20.2, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.
- (b) A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets to meet the claim of any creditor of the Responsible Entity in respect of the Trust.
- (c) The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax as a result of the Member's action or inaction, or as a result of an act or omission requested by the Member or former Member.
- (d) Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax to which Clause 20.3 applies.

20.2. Recourse

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

20.3. Restrictions on Members

A Member:

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

21. Remuneration and Expenses of Responsible Entity

21.1. Management Fee

- (a) Subject to the proper performance of its duties, the Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each month a monthly management fee (**Management Fee**) equivalent to 2.0% per annum of the Gross Assets Value of the Assets calculated as at the end of the month preceding the date of payment of the Management Fee.
- (b) In relation to the month in which the Trust is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month.
- (c) Where the Management Fee was not paid for a particular month or part month or not in full, the Management Fee payable in a subsequent month will be the aggregate of the Management Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid, with the final payment to be prorated if such payment is for a period less than a full month.

~~21.2. Entry Fee~~

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

~~21.3~~21.2 Priority of Responsible Entity's remuneration

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

~~21.4~~21.3 Indemnity out of Trust

In addition to the Responsible Entity's right of remuneration under Clauses 21.1 ~~and 21.2~~ and any other right of indemnity which it may have under this Constitution or at law, the Responsible Entity is indemnified and entitled to be reimbursed out of the Trust for, or entitled to have paid from the Trust, all Costs (including, without limitation, any amounts payable to any delegate, attorney, agent or custodian) incurred at law or under this Constitution in the proper performance of its duties.

~~21.5~~21.4 Waiver of Fees

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

~~21.6~~21.5 Expenses

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

- (a) the acquisition, disposal, insurance, custody and any other dealing with Assets;
- (b) any proposed acquisition, disposal or other dealing with an investment;
- (c) the administration or management of the Trust or its Assets and Liabilities (including but not limited to associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (f) Tax, including any GST paid or payable as part of expenses incurred by the Responsible Entity in the proper performance of duties as the Responsible Entity (subject to the application of Clause 21.~~6~~7(g));
- (g) financial institution fees;
- (h) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (i) preparation and audit of the taxation returns and accounts of the Trust;
- (j) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;

- (k) any court proceedings, arbitration or other dispute concerning a trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this Clause 21.5(k) must be repaid;
- (l) any compliance or other committee established by the Responsible Entity in connection with the Trust, including any fees paid to or insurance premiums in respect of committee members;
- (m) while the Trust is a Registered Scheme but there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (n) the preparation, implementation, amendment and audit of any compliance plan;
- (o) complying with any law, and any request or requirement of the ASIC, ASX or any other regulatory body;
- (p) registry fees; and
- (q) accounting services

~~21.7.~~21.6. GST

- (a) Words and expressions defined in the GST Act have the same meaning in this Clause 21.6.
- (b) Unless otherwise explicitly stated, the consideration for any supply made under or in connection with this Constitution is exclusive of GST.
- (c) To the extent that any supply made by the Responsible Entity under or in connection with this Constitution is a taxable supply, then in addition to any consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount equal to the GST payable by the Responsible Entity in respect of the supply.
- (d) The amount by which the consideration is increased under Clause 21.6(c) is payable at the same time as the consideration for the supply.
- (e) Clause 21.6(c) does not apply to supplies in respect of which the consideration is explicitly expressed as GST inclusive in this Constitution.
- (f) In relation to any fee that is expressed as GST inclusive in this Constitution, in the event of an increase in the rate of GST, the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure (based on the GST rate immediately prior to the new prevailing GST rate) and multiplying it by $(1 + n)$ where "n" is the new prevailing rate of GST (expressed as a decimal).
- (g) Any payment or reimbursement required to be made under this Constitution that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which the relevant entity is entitled for the acquisition to which the cost, expense or amount relates.

~~21.8.~~21.7. Sums Owed to the Responsible Entity

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

22. Duration of the Trust

22.1. Initial Settlement

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

22.2. Termination

The Trust terminates on the earliest of:

- (a) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Members;
- ~~(a)~~(b) the date specified in a resolution passed by Members under clause 22.3; and
- (c) the date on which the Trust terminates in accordance with another provision of this Constitution or by law.

22.3. Winding up by Members

- (a) This clause 22.3 applies only where:
 - (i) the Trust is not Liquid and Units are not Officially Quoted; and
 - (ii) during the 12 months preceding each 7 year anniversary of the Merger Date, the aggregate value of acceptances of withdrawal offers made by the Responsible Entity has exceeded by at least 25% the aggregate value of the withdrawal offers made during that period or if no withdrawal offers are made during that period.
- (b) The Responsible Entity must, within 30 Business Days after each 7 year anniversary of the Merger Date, convene a meeting to give the Members the opportunity to pass a Termination Resolution.
- ~~(b)~~(c) If a Termination Resolution is passed, the trust must be wound up in accordance with clause 23.

23. Procedure on Termination

23.1. Realisation of Assets

Following termination, the Responsible Entity must realise the Assets. This must be completed in an orderly manner with a view to maximising the value realised from Asset sales in the circumstances at the time, and may take up to 2 years, or longer if reasonably necessary ~~180 days if practical and in any event as soon as possible after that.~~

23.2. Audit of Winding Up

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

23.3. Distribution Following Termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in the following manner. The Responsible Entity may distribute proceeds of realisation in instalments. The Responsible Entity must first pay the Trust's income from the last Distribution Calculation Date prior to the termination of the Trust to the Members holding

Ordinary Units pro rata according to the respective numbers or such Units held by them. Secondly, the Responsible Entity must pay the balance to the Members pro rata according to the respective numbers of Units held by them.

- (b) The Responsible Entity may distribute an asset of the Trust to a Member *in specie*. The Responsible Entity must determine the value of the asset of the Trust to be distributed *in specie* based on a valuation completed in accordance with Clause 10.2 within one month before the date of the proposed distribution. Any costs payable on an *in specie* distribution must be paid by the Member before the distribution is made.
- (c) The Responsible Entity is entitled to:
 - (i) be paid from the proceeds of realisation of the Trust before any payment is made to the Members, all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Trust;
 - (C) by or on behalf of any creditor of the Responsible Entity in relation to the Trust; and
 - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Responsible Entity in connection with the winding up of the Trust;
 - (ii) an indemnity against the amounts referred to in Clause 23.3(c)(i) which may be satisfied out of those proceeds before any distribution under Clause 23.3(a) is made; and
 - (iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Clause 21.
- (d) The Responsible Entity may postpone the realisation of the Trust for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Responsible Entity may retain for as long as it thinks fit any part of the Trust which in its opinion, may be required to meet any actual or contingent liability of the Responsible Entity or any amounts payable actually or contingently to the Responsible Entity under this Constitution, including but not limited to under Clause 21.
- (f) Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under Clause 23.3, but during that period the Responsible Entity may not accept any applications for Units.

24. Amendments to this Constitution

24.1. Responsible Entity May Amend

- (a) While the Trust is a Registered Scheme, this Constitution may be amended, if the Corporations Act allows:
 - (i) by Resolution; or
 - (ii) by deed executed by the Responsible Entity if the Responsible Entity reasonably considers the amendments will not adversely affect the rights of members.

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

24.2. Statutory Requirements

While the Trust is a Registered Scheme, and the Corporations Act or any relief from the provisions of the Corporations Act granted by the ASIC requires that this Constitution contain certain provisions, then those provisions are deemed to be incorporated into this Constitution at all times at which they are required to be included and prevail over any other provisions of this Constitution to the extent of any inconsistency. Clause 24.1(a) does not apply to provisions deemed by this Clause 24.2 to be incorporated in the Constitution.

25. Compliance Committee

25.1. Compliance Committee

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

25.2. Persons to whom Clauses 25.3 and 25.5 apply

Clauses 25.3 and 25.5 apply to each person who is or has been a member of the Compliance Committee (if any).

25.3. Indemnity

The Responsible Entity must from the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this Clause 25.3 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

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

25.4. Extent of indemnity

The indemnity in Clause 25.3:

- (a) is a continuing obligation and is enforceable by a person to whom Clause 25.3 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

25.5. Insurance

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

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

for any person to whom this Clause 25.5 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or

for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

25.6. Savings

Nothing in Clauses 25.3 or 25.5:

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

26. Complaints

26.1. Retail Members

The Responsible Entity, as an Australian Financial Service licensee, must comply with the dispute resolution requirements in Section 912A(2) of the Corporations Act, in respect of Retail Members.

26.2. Wholesale Members

While the Trust is a Registered Scheme and if and for so long as the Corporations Act or ASIC policy requires, if a Wholesale Member submits to the Responsible Entity any complaints in relation to the Trust, the Responsible Entity:

- (a) must, whether the complaint is in writing, verbal, in person or otherwise, acknowledge receipt of the complaint immediately or as soon as practicable;
- (b) must, where there is a compliance committee, refer the complaint to the committee for its consideration;
- (c) must, where there is no compliance committee, consider the complaint;
- (d) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (e) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (f) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the complaint:
 - (i) the determination of the compliance committee (or if Clause 26.2(c) applies, the Responsible Entity);
 - (ii) the remedies (if any) available to the member; and
 - (iii) information regarding any further avenue for complaint.

27. General

27.1. Restricted Securities

- (a) Clause 27.1(b) only operates:
 - (i) while the Trust is Listed and the Listing Rules require this Constitution to contain a provision to the effect of Clause 27.1(b); and
 - (ii) to the extent that it is not inconsistent with the Corporations Act.
- (b) During a breach of the Listing Rules or of a restriction agreement relating to Units which are Restricted Securities the Member who holds the Units which are Restricted Securities is not entitled to any distribution from the Trust, nor any voting rights in respect to those Units.
- (c) All the time while the Trust is Listed, Restricted Securities cannot be disposed of during the escrow period except as permitted by the Listing Rules or the ASX.
- (d) All the time while the Trust is Listed, the Responsible Entity will refuse to acknowledge a disposal (including registering a transfer) of Restricted Securities during the escrow period except as permitted by the Listing Rules or the ASX.

27.2. Small Holdings

- (a) Subject to the provisions of this Clause 27.2, while the Trust is Listed the Responsible Entity may in its discretion from time to time sell or redeem any Units held by a Member which comprise less than a marketable parcel as provided in the Listing Rules without request by the Member.
- (b) The Responsible Entity may only sell or redeem Units under this Clause 27.2 on one occasion in any 12 month period.
- (c) The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this Clause 27.2.
- (d) The Responsible Entity may not sell or redeem the relevant Units:
 - (i) before the expiry of 6 weeks from the date of the notice given under Clause 27.2(c); or
 - (ii) if within the 6 weeks allowed by Clause 27.2(d)(i), the Member advises the Responsible Entity that the Member wishes to retain the Units.
- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.
- (f) The Responsible Entity or the purchaser of the Units must pay the costs of the sale as the Responsible Entity decides.
- (g) The proceeds of the sale or redemption may not be sent until the Responsible Entity has received the certificate (if any) relating to the Units, or is satisfied that the certificate has been lost or destroyed.

27.3. Constitution Legally Binding

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

27.4. Severance

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

27.5. Governing Law

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

27.6. Other Obligations Excluded

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

EXECUTED as a deed poll

Legal Compliance List

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

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

Section	Constitution to Specify	Clause
601GA(1)(a)	Consideration that is to be paid to acquire an interest in the Constitution of the Trust.	Clauses 5 and 6
601GA(1)(b)	Powers of the Responsible Entity in relation to making investments of, or otherwise dealing with the property of the Trust.	Clause 14
601GA(1)(c)	The method by which complaints made by Members in relation to the Trust is to be dealt with.	Clause 26
601GA(1)(d)	Winding up the Trust.	Clause 23
601GA(2)	(a) the Responsible Entity's rights to fees; (b) the Responsible Entity's right to indemnification for liabilities and expenses.	(a) Clause 21 (b) Clause 21.3
601GA(3)	Powers to borrow or raise money for the purposes of the Trust.	Clause 14.2
601GA(4)	The rights of Member's to withdraw from the Trust	Clauses 7 and 8
601GB	Legally enforceable between Members and the Responsible Entity.	Clause 27.3

Supplemental Deed – CD Private Equity Fund IV

Dated 2022

E&P Investments Limited (ABN 78 152 367 649) in its capacity as responsible entity of the CD Private Equity Fund IV (“**Responsible Entity**”)

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com
602-0072621

Supplemental Deed – CD Private Equity Fund IV

Details

Responsible Entity	Name	E&P Investments Limited in its capacity as responsible entity of the CD Private Equity Fund IV ARSN 624 474 531
	ABN	78 152 367 649
	Address	Level 32, 1 O'Connell Street, Sydney NSW 2000

- Recitals**
- A** The Trust is governed by the Constitution. The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act.
- B** Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution:
- (a) by special resolution of the members of the scheme; or
- (b) by the responsible entity if it reasonably considers the change will not adversely affect members' rights.
- C** Under clause 28.1 of the Constitution, the Constitution may be amended, subject to the Corporations Act, by resolution of Members or by the Responsible Entity if the amendments do not adversely affect the rights of Members.
- D** On 7 November 2022, the Members of the Trust approved by special resolution the amendments to the Constitution set out in the schedule to this deed.
- E** The Responsible Entity now wishes to, by this deed, give effect to the amendments described in Recital D.

Governing law New South Wales

Date of deed See Signing page

Supplemental Deed – CD Private Equity Fund IV

General terms

1 Interpretation

1.1 Definitions

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

Constitution means the document dated 16 February 2018 under which the Trust is governed as amended from time to time.

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

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

Member has the same meaning given under the Constitution.

Trust means the registered managed investment scheme currently named CD Private Equity Fund IV (ARSN 624 474 531).

1.2 Deed supplemental to Constitution

This deed is supplemental to the Constitution.

1.3 Headings

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

2 Modification of the Constitution

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

(a) inserting the words which are underlined; and

(b) deleting the text that is shown as crossed out,

in the copy of the Constitution at Schedule 1 to this deed.

3 No redeclaration etc

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

(a) redeclaring, resettling or terminating the Trust;

- (b) declaring any trust, or making any statement that purports to be a declaration of trust or acknowledgement of trust or the vesting of assets for the purposes of section 8AA of the *Duties Act 1997* (NSW); or
- (c) causing the transfer, vesting or accruing of property in any person.

4 Governing law

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

EXECUTED as a deed

Supplemental Deed – CD Private Equity Fund IV

Signing page

DATED: _____

Executed as a deed

EXECUTED by **E&P INVESTMENTS LIMITED IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE CD PRIVATE EQUITY FUND IV** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

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

.....
Signature of director/company secretary*

*delete whichever is not applicable

.....
Name of director/company secretary* (block letters)

*delete whichever is not applicable

Supplemental Deed – CD Private Equity Fund IV

Schedule 1 – Amended Constitution

Constitution of
CD Private Equity Fund IV
~~Consolidated September~~
~~2020~~

Walsh & Company Investments Limited (ACN 152 367 649)
("Responsible Entity")

King & Wood Mallesons

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Governor Phillip Tower
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CD Private Equity Fund IV Consolidated September 2020 Contents

Details	1
General terms	2
1 Definitions and interpretation	2
1.1 Definitions	2
1.2 Interpretation	13
1.3 Other documents	14
1.4 Constitution legally binding	14
1.5 Benefit and entitlement	14
1.6 Corporations Act prevails to the extent of inconsistency	14
1.7 Other restrictions and obligations excluded	14
1.8 Severance	14
1.9 Governing law	14
2 Name of Fund	15
2.1 Name	15
2.2 Change of Responsible Entity	15
3 Assets held on trust	15
3.1 Declaration of trust	15
3.2 Holding property separately	15
3.3 Mixing when not registered	15
4 Units	15
4.1 Nature of Units	15
4.2 Interest in Assets	15
4.3 Units and Classes of Units	16
4.4 Change of Class	16
4.5 Rights attaching to Units	16
4.6 Fractions of Units	16
4.7 Treatment of fractions	17
4.8 Income entitlement of Units	17
5 Options	17
5.1 Options	17
5.2 Terms of Options while a Registered Scheme	17
5.3 Other jurisdictions	18
5.4 Exercise of Options	18
5.5 Lapse of Options	18
6 Financial Instruments	18
6.1 Issue of Financial Instruments	18
6.2 Rights of Financial Instrument Holders	19
7 Partly Paid Units	19
7.1 Payment of Application Price by instalments	19
7.2 Variation or waiver of terms	19

7.3	On termination	19
7.4	Notice of instalments	19
7.5	Failure to pay instalments	20
7.6	Forfeiture	20
7.7	Cancelling forfeiture	20
7.8	Record of forfeiture	20
7.9	Balance to former holder	20
7.10	Price of forfeited Units	21
7.11	Rights and obligations of former holder	21
7.12	Evidence of forfeiture	21
7.13	Transfer of forfeited Unit	22
7.14	Entitlement to distributions	22
7.15	Joint holders	22
7.16	Cancellation of forfeited Units	22
<hr/>		
8	Transfer, transmission and joint holders	22
8.1	Transfer of Relevant Securities	22
8.2	Transfer if not Officially Quoted	22
8.3	Transfer if Officially Quoted	22
8.4	When transfer is effective	23
8.5	Responsible Entity may request holding lock or refuse to register transfer	23
8.6	Responsible Entity must request holding lock or refuse to register transfer	23
8.7	Notice of holding locks and refusal to register transfer	24
8.8	Joint tenancy	24
8.9	Transmission on death	24
8.10	Information given by personal representative	24
8.11	Death of joint owner	24
8.12	Transmission on bankruptcy	25
8.13	Transmission on mental incapacity	25
<hr/>		
9	Application Price for Units	25
9.1	Application Price	25
9.2	Time for calculation	26
9.3	Rounding	26
9.4	Pro rata rights issues	27
9.5	Other jurisdictions	27
9.6	Terms of pro rata issues	27
9.7	Placements and security purchase plan while Listed	28
9.8	Reinvestment while Listed	28
9.9	Reinvestment while not Listed	28
<hr/>		
10	Application procedure	28
10.1	Application form	28
10.2	Payment	28
10.3	Responsible Entity may reject	29
10.4	Minimum amounts	29
10.5	Issue date	29
10.6	Uncleared funds	30
<hr/>		
11	Redemption Price of Units	30
11.1	Redemption Price	30
11.2	Time for calculation	30
11.3	Rounding	30

12	Redemption procedures	31
12.1	While the Fund is Listed	31
12.2	Request for redemption	31
12.3	Request may not be withdrawn	31
12.4	When Fund is Liquid or not a Registered Scheme	31
12.5	Responsible Entity may redeem	31
12.6	Delayed payment	32
12.7	Minimum holding	32
12.8	Increased minimum	33
12.9	Payment from the Assets	33
12.10	While Fund is not Liquid	33
12.11	Responsible Entity not obliged	33
12.12	Cancellation of withdrawal offer	33
12.13	Treatment of request	33
12.14	Sums owed to Responsible Entity	34
12.15	When Units are redeemed	34
12.16	Buy backs	34
12.17	While Officially Quoted	34
12.18	Distribution to Members on a Redemption	34
13	Valuation of assets and accounts, audit and reports	35
13.1	Periodic valuations	35
13.2	Net Asset Value	35
13.3	Valuation methods	35
13.4	Currency conversion	36
13.5	Accounts, audit and reports	36
14	Reorganisation Proposals	36
14.1	Power to enter into Reorganisation Proposals	36
14.2	Power to give effect to Reorganisation Proposals	36
14.3	Specific powers in relation to CD3 Reorganisation Proposal	37
14.4	Appointment of Responsible Entity as agent and attorney	37
14.5	Foreign Investors	38
14.6	Liability of Responsible Entity	40
14.7	Partly Paid Units	40
14.8	Paramourncy of provision	40
15	Income and distributions to Members	40
15.1	Standing principles for determining Distributable Income	40
15.2	Standing principles for periods where Fund is an AMIT	40
15.3	Determination of Distributable Income	40
15.4	Accounting standards	41
15.5	Power to accumulate or defer amounts	41
15.6	Income Distributions	42
15.7	Present entitlement	43
15.8	Indefeasibility	44
15.9	Distribution of income	44
15.10	Separate accounts	44
15.11	Position on transfer of Units	44
15.12	Deductions from Distributable Income	44
15.13	Fractions	44
15.14	Classification of items	44
15.15	Attribution under AMIT Regime – basis for attribution	45
15.16	Attribution under AMIT Regime – AMIT Class Election	46

15.17	Attribution under AMIT Regime – Member objections	46
15.18	AMIT Regime Unders/Overs	47
15.19	Availability of reinvestment	47
15.20	Terms of reinvestment	47
15.21	Issue date	47
15.22	Fund taxed as company	47
15.23	Liability	48
15.24	Other distributions	48
15.25	Member may direct	48
15.26	Classes	49
15.27	Former Members	49
15.28	Partly Paid Units	49
<hr/>		
16	Payments	49
16.1	Payment method	49
16.2	Cheques	49
16.3	Electronic transfers	49
16.4	Rounding	49
16.5	Transfer of Assets	49
16.6	Joint Relevant Security Holders	50
16.7	Deduction of Tax or amounts owing	50
<hr/>		
17	Powers of the Responsible Entity	50
17.1	General powers	50
17.2	Contracting and borrowing powers	50
17.3	Investment and lending powers	51
17.4	Power of delegation	51
17.5	Terms of delegation	51
17.6	Delegate may be an associate	51
17.7	Exercise of discretion	51
17.8	Underwriting	51
17.9	Rights and powers in relation to the AMIT Regime	52
<hr/>		
18	Retirement of Responsible Entity	52
18.1	While a Registered Scheme	52
18.2	While not a Registered Scheme	53
18.3	New Responsible Entity	53
18.4	Release	53
<hr/>		
19	Notices to Relevant Security Holders	53
19.1	Notice	53
19.2	Cheques	53
19.3	Joint Relevant Security Holders	53
19.4	When notice received	54
<hr/>		
20	Notices to the Responsible Entity	54
20.1	Form of notice	54
20.2	When notice received	54
20.3	Signature	54
<hr/>		
21	Meetings of Members	54
21.1	Convening of meetings	54
21.2	Members' request for meeting - not Registered Scheme	54
21.3	Members' request for meeting - Registered Scheme	55
21.4	Notice period	55

21.5	Notice while Registered Scheme	55
21.6	Responsible Entity may determine	55
21.7	Quorum	55
21.8	No quorum	55
21.9	Chairman	56
21.10	Conduct of meeting	56
21.11	Adjournment	56
21.12	Postponement or cancellation	56
21.13	Voting - not a Registered Scheme	56
21.14	Voting - Registered Scheme	56
21.15	Proxies	56
21.16	Validity of proxy	57
21.17	Demand for a poll	57
21.18	Resolutions binding	57
21.19	Objection at meeting	57
21.20	Non-receipt	57
21.21	Option Holders and Financial Instrument Holders	57
21.22	Class meetings	57
22	Rights and liabilities of Responsible Entity	57
22.1	Holding Units	57
22.2	Other capacities	58
22.3	Responsible Entity may rely	58
23	Limitation of liability and indemnity in favour of Responsible Entity	58
23.1	Limitation on Responsible Entity's liability	58
23.2	Liability while Fund is not a Registered Scheme	59
23.3	Liability limited to Assets	59
23.4	Indemnity in favour of Responsible Entity	59
23.5	Liability for agents	59
23.6	Indemnity continues	59
23.7	Right of indemnity not affected by unrelated breach	59
23.8	Limitation of liability for AMIT Regime powers	59
24	Liability of Relevant Security Holders	60
24.1	Liability limited	60
24.2	Member need not indemnify	60
24.3	Tax or User Pays Fees	60
24.4	AMIT indemnity	60
24.5	Joint Relevant Security Holders	60
24.6	Recourse	61
24.7	Restrictions	61
25	Remuneration and expenses of Responsible Entity	61
25.1	Fees payable from the Assets	61
25.2	Fees subject to Corporations Act	61
25.3	Structuring fee and handling fee	61
25.4	Management fee	62
25.5	Deferral and waiver of fees	62
25.6	Expenses	63
25.7	GST	65
25.8	Input tax credits	65
25.9	Amendment of certain provisions is contemplated	66

26	Duration of the Fund	66
26.1	Initial settlement	66
26.2	Termination	66
26.3	Change in taxation	67
26.4	Restriction on issue and redemption of Units	67
27	Procedure on termination	67
27.1	Realisation of Assets and payment of expenses	67
27.2	Auditor and liquidator	67
27.3	Distribution following termination	68
27.4	Provisions continue to apply	68
28	Amendments to this constitution	69
28.1	Responsible Entity may amend	69
28.2	While not a Registered Scheme	69
28.3	Attribution Managed Investment Fund	69
29	Regulatory provisions and paramountcy	69
29.1	Listing Rules	69
29.2	Corporations Act and ASIC Relief	70
29.3	Application of Corporations Act and Listing Rules	70
29.4	ASIC Class Orders	71
29.5	Paramountcy of provisions	71
30	Compliance committee	71
31	Complaints	71
32	Restricted Securities	72
32.1	Disposal of Restricted Securities	72
32.2	Restriction on distributions and voting rights	72
33	Small holdings	73
33.1	Application of this clause	73
33.2	Responsible Entity may sell or redeem	73
33.3	Responsible Entity must notify	73
33.4	Timing	73
33.5	Takeover	73
33.6	Costs of sale	73
33.7	Certificate	73
33.8	Responsible Entity as Member's attorney	74
34	Security interests	74
34.1	Responsible Entity determines when clause applies	74
34.2	Form of notice	74
34.3	Entry of Security Interests on the Register	74
34.4	Responsible Entity not bound	74
34.5	Removal of Security Interests from the Register	74
34.6	Rights attaching to Units in respect of which a Security Interest is recorded	74
	Finding list - Corporations Act	76
	Finding list - Listing Rules	77

CD Private Equity Fund IV Consolidated September 2020 Details

Responsible Entity	Name	Walsh & Company Investments Limited¹
	ACN	152 367 649
	Address	Level 15 100 Pacific Highway North Sydney NSW 2060
	Email	info@walshandco.com.au
	Attention	Company Secretary
Fund	CD Private Equity Fund IV	
Governing law	New South Wales	

¹[The name of the Responsible Entity has since changed to E&P Investments Limited.](#)

CD Private Equity Fund IV Consolidated September 2020 General terms

This deed poll is declared by the Responsible Entity to be the constitution of the CD Private Equity Fund IV.

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Accept means:

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

and **Acceptance** has a corresponding meaning.

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

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

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

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

AMIT Regime means the regime for the taxation of AMITs.

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

Application Factor means the number 1 plus the percentage, expressed as a decimal, which represents the aggregate to be paid by an applicant for Units on account of structuring fees and handling fees under clause 25.3 in connection with the issue of the Units to which the relevant Application Price applies.

Application Price means the Unit price calculated in accordance with clause 9.

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

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

ASIC Relief means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.²

Assets means all the property, rights and income of the Fund, but not application money or property in respect of which Units have not yet been issued,³ or Uncalled Amounts on Partly Paid Units. However, for the purpose of calculating Net Asset Value as used in the formulae in clauses 9.1(g) and 11.1, "Assets" includes amounts not yet paid in respect of Partly Paid Units whether or not those amounts have been called.

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

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

Books Closing Date has the meaning given in clause 15.22.

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

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

[CD1 means CD Private Equity Fund I \(ARSN 158 625 284\).](#)

[CD2 means CD Private Equity Fund II \(ARSN 162 057 089\).](#)

[CD3 means CD Private Equity Fund III \(ARSN 612 132 813\).](#)

[CD3 Reorganisation Proposal means a proposal that has been approved by resolution by the requisite majority of Members and the members of each of CD1 and CD2, for the acquisition by the responsible entity of CD3 \(or its custodian or nominee\) of all the Units in exchange for consideration to be provided to each Member in the form of the issue of the number of CD3 Units calculated in accordance with clause 14.3\(c\).](#)

[CD3 Units means units in CD3.](#)

Class means a class of Units.

Complaint⁴ means an expression of dissatisfaction made to the Responsible Entity, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

³ See clause 10.5 for the time at which Units are issued, and clause 12.15 for the time when Units are redeemed.

⁴ This definition is sourced from ASIC Regulatory Guide 165 and Australian Standard AS ISO 10002 - 2006.

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

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

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

CS Facility has the same meaning as clearing and settlement facility in the Corporations Act.⁵

CS Facility Operator means the operator of the CS Facility.

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

Designated Foreign Investor means a Foreign Investor in respect of whom the [Responsible Entity Issuer](#) has made a determination in accordance with clause [14.5](#)~~14.4~~.

Designated Foreign Investor Cash-Out has the meaning given in clause [14.5\(d\)](#)~~14.4(d)~~.

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

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

Distributable Amount has the meaning given in clause 15.22.

Distributable Income for a period is the amount determined by the Responsible Entity under clause 15.3.

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

Distribution Period means:

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

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

⁵ See section 768A. Unless otherwise specified, all section references are to the Corporations Act.

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

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

Exchange Ratio means 1.0569 or such greater number as calculated by the Responsible Entity to reflect amounts paid or payable from the Assets upon cancellation of forfeited units under clause 7.16 that occurs before implementation of the CD3 Reorganisation Proposal, up to a maximum ratio of 1.0583.

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

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

Financial Year means:

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

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

Financial Year Termination Date means:

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

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

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

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

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

Gross Value of the Assets means the aggregate value of the Assets (calculated in accordance with clause 13), but without deducting any liabilities such as debt funding.

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

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

Income Component has the meaning given in clause 12.18(a)(i).

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under clause 15.6.

Initial Public Offer means:

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

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

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

Liabilities means all present liabilities of the Fund including:

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

but not liabilities:

- (a) to applicants for Units in respect of application money or property in respect of which Units have not yet been issued;⁶ or
- (b) to Members, arising by virtue of the right of Members to request redemption of their Units (where the Units have not yet been redeemed) or to participate in the distribution of the Assets on winding up of the Fund.

⁶ See clause 10.5 for the time at which Units are issued.

Liquid has the same meaning as in the Corporations Act.⁷

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

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

Manager means any entity nominated by the Responsible Entity to provide management services for the Fund.

Market Price of a Unit on a particular day is:

- (a) the weighted average of the VWAP for the Unit for each of the 10 Trading Days immediately before the relevant day (whether or not a sale was recorded on any particular day);
- (b) the price obtained pursuant to a bookbuild arranged by a reputable investment bank 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:

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

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

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

Market Value of an Asset means:

⁷ Refer to CA Part 5C.6.

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

Member means a person Registered as the holder of a Unit that has not been redeemed⁸ (including persons jointly Registered) or otherwise stated to be a Member in accordance with clause 10.5 or any other provision of this constitution.

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

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

Net Asset Value means the value of the Assets calculated in accordance with clause 13 less the Liabilities.

⁸ See clause 12.15 for the time at which Units are redeemed.

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

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

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

Officially Quoted means admitted to quotation by ASX under the Listing Rules including, if quotation is suspended for a continuous period not exceeding 60 days, the period of suspension⁹ and **Official Quotation** has a corresponding meaning.

Operating Rules means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended from time to time (whether in respect of the Fund or generally).¹⁰

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

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

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

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

Partly Paid Unit means a Unit on which the Application Price has not been paid in full.

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

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

Record Date means in relation to a Distribution Period:

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

Redemption Payments has the meaning given in clause 12.18(a)(i).

⁹ Securities will continue to be Officially Quoted by ASX, even if they are also traded on another market eg Chi-X.

¹⁰ See footnote 54.

Redemption Price means the Unit price calculated in accordance with clause 11.

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

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

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

Registrar means the body responsible for keeping the Register.

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

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

Reorganisation Proposal means:

- (a) any Realisation Transaction;
- (b) a Consolidation or Division Proposal;
- (c) a Stapling Proposal;
- (d) a CCIV Proposal;
- (e) a Top Hat Proposal;
- (f) a Spin-Off Proposal;
- (g) an Exchange Proposal;
- ~~(g)~~(h) the CD3 Reorganisation Proposal; or
- (i) any other proposal to reorganise or restructure the capital of the Fund which has substantially the same economic effect as one or more of (a) ~~(a)~~ to (g)~~(e)~~ above.

Reorganisation Record Date has the meaning given in clause 14.3(a).

Resolution means:

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

- (b) unless the law requires otherwise, a resolution in writing signed by Members holding the required majority of the Units in the Fund (or if applicable in the Class, or Option Holders or Financial Instrument Holders).

Except where this constitution or any applicable law provides otherwise, the “required majority” is a simple majority of 50% of votes validly cast.¹¹

Responsible Entity means:

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

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

Retail Client has the same meaning as in the Corporations Act.¹²

Sale Consideration means the average price at which Units, Options, Financial Instruments or other securities or financial products [\(including, for the avoidance of doubt, CD3 Units\)](#) are sold by the Sale Nominee, multiplied by the number of Units, Options, Financial Instruments or other securities or financial products [\(including, for the avoidance of doubt, CD3 Units\)](#) sold by the Sale Nominee in respect of the relevant Designated Foreign Investor (net of expenses, if any).

Sale Nominee means a person appointed by the [Responsible Entity Issuer](#) to carry out the role described in clause [14.5](#)~~14.4~~.

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

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

Security Interest Holder means a person whose Security Interest in Units is noted on the Register in accordance with a notice referred to in clause 34.2(a).

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

Specified Time has the meaning set out in clause 7.5.

Spin-Off Proposal means the payment of a cash distribution to all Members (other than Designated Foreign Investors) and the compulsory application of that distribution towards the subscription for, or transfer of, securities or financial products.

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

¹¹ Circumstances where a special resolution is required while the Fund is a Registered Scheme include a vote on amendments to this constitution if necessary (see section 601GC(1)(a)). For voting on winding up by Members and choosing a new responsible entity, see sections 601FL and 601NB.

¹² See sections 761A, 761G and 761GA.

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

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

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

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

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

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

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

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

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

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

Uncalled Amounts means amounts not yet called in respect of Partly Paid Units.

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

Unit means a unit in the Fund.

User Pays Fees means any cost incurred in relation to:

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

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

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

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

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

1.2 Interpretation

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

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

- (n) a reference to “**present**” in the context of a person being present at a meeting includes participating using technology approved by the Responsible Entity for the purposes of the meeting.

1.3 Other documents

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

1.4 Constitution legally binding¹³

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

1.5 Benefit and entitlement

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

1.6 Corporations Act prevails to the extent of inconsistency

Despite anything in this constitution, while the Fund is a Registered Scheme, to the extent that a clause of this constitution is inconsistent with a provision of the Corporations Act applicable to registered managed investment schemes, the clause is of no effect to the extent of the inconsistency, but not otherwise.¹⁴

1.7 Other restrictions and obligations excluded

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

1.8 Severance

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

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

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

1.9 Governing law

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

¹³ Refer to section 601GB.

¹⁴ ASIC RG 134.213

2 Name of Fund

2.1 Name

The Fund is called the CD Private Equity Fund IV or any other name as the Responsible Entity determines.¹⁵

2.2 Change of Responsible Entity

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

3 Assets held on trust

3.1 Declaration of trust

The Responsible Entity declares that it will hold the Assets on trust for the Members and act in the interests of the Members on and subject to the terms of this constitution.¹⁶

3.2 Holding property separately

While the Fund is a Registered Scheme, any Assets held by the Responsible Entity as responsible entity of the Fund must be clearly identified as property of the Fund and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires.¹⁷ Subject to the law, the Responsible Entity may have Assets held by a Custodian.

3.3 Mixing when not registered

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

4 Units

4.1 Nature of Units

The beneficial interest in the Fund is divided into Units.

4.2 Interest in Assets

- (a) Subject to paragraph (b) and to any rights, obligations or restrictions attaching to any particular Unit, each Fully Paid Unit confers an equal undivided interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset. Unless this constitution states otherwise, each Partly Paid Unit confers an interest of the same nature as each Fully Paid Unit but subject to the need to pay the amount remaining to be paid up on the Unit.

¹⁵ See Corporations Regulation 5C.1.02.

¹⁶ See section 601FC(2).

¹⁷ See section 601FC(1)(i).

- (b) Where Units are taken to be issued under clause 10.5 and the issue has not yet been recorded in the Register, the person to whom the Units are taken to have been issued has an interest of the kind referred to in paragraph (a) based on the net amount of application money that person has contributed to acquire the Units, divided by the relevant Application Price, whether or not the Application Price has been ascertained at that time.

4.3 Units and Classes of Units

- (a) Subject to clause 4.3(b), the Responsible Entity may issue Units of a single Class or different Classes, with different rights, obligations and restrictions as specified in their terms of issue. All Units in a Class rank equally. A separate Class does not constitute a separate trust.
- (b) This clause 4.3 does not permit the Responsible Entity to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Corporations Act requires those matters to be set out in this constitution.

4.4 Change of Class

The Responsible Entity may by notice to a Member redesignate the Class of Units held by that Member.¹⁸ Without limiting clause 15.8, a redesignation must not result in any defeasance of a Member's existing entitlement to income or capital of the Fund.

If the fees under clause 25 applicable to the new Class into which the Units are to be redesignated are higher than the fees for the old Class, the Responsible Entity may not exercise this power without first giving the Member 30 days' notice of the proposed change and details of the higher fees.

4.5 Rights attaching to Units

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

4.6 Fractions of Units

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

¹⁸ Note the Responsible Entity's duties to treat members of a class equally (section 601FC(1)(d)), and to act in the best interests of Members (601FC(1)(c)). (A possible example would be where a class is so small that its operation is uneconomic for the Fund, and all members holding units in that class have their units redesignated at the same time.)

- (d) Any excess application or other money or property which results from rounding under any provision of this constitution becomes an Asset of the Fund.

4.7 Treatment of fractions

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

4.8 Income entitlement of Units

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

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

5 Options

5.1 Options

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

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

5.2 Terms of Options while a Registered Scheme

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

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

- (i) while the Units are Officially Quoted, in accordance with the terms of ASIC Relief¹⁹ for a rights issue or a placement of Units (as applicable), or under clause 9.1(f);
- (ii) while the Units are not Officially Quoted, in accordance with the terms of ASIC Relief for a rights issue (if applicable) and otherwise in accordance with clause 9.1(g) or 8.1(h).

5.3 Other jurisdictions

If the Fund is a Registered Scheme and the Responsible Entity is making an offer of Options to Members which complies with the principles set out in clause 9.4, the Responsible Entity is not required to offer Options to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.

5.4 Exercise of Options

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

5.5 Lapse of Options

An Option lapses on the earliest of:

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

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

6 Financial Instruments

6.1 Issue of Financial Instruments

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

- (a) at an application price (which may be nil) determined by the Responsible Entity if permissible under the Corporations Act or, if such determination may not be made, at an application price of \$100 per Financial Instrument; and
- (b) on such other terms (including with preferred, deferred or other special rights, obligations or restrictions, with regard to distributions, voting, return of capital, payment of calls, redemption, conversions or otherwise) as the Responsible Entity determines, to the extent that the terms are not inconsistent with the provisions of this constitution which are required to be included in it by section 601GA of the Corporations Act.

¹⁹ See ASIC Class Order [CO 13/655] notional section 601GAD (3)(b).

6.2 Rights of Financial Instrument Holders

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

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

7 Partly Paid Units

7.1 Payment of Application Price by instalments

The Responsible Entity may offer or issue Units on the basis that the Application Price is payable by one or more instalments. The Responsible Entity may determine at the time of offer or issue, or at any later time, the amount of the instalments and the time at which they are payable. The Responsible Entity may require, as a term of issue, and pursuant to and in accordance with its rights under clause 7.5, that the called but unpaid portion of the Application Price bears interest until paid, calculated at a fair market rate as determined by the Responsible Entity.

7.2 Variation or waiver of terms

Subject to any law requiring the Responsible Entity to treat Members of the same Class equally and those of different Classes fairly,²⁰ where Units are offered for sale or subscription in accordance with clause 7.1, those terms may only be varied or compliance waived in accordance with clause 28. The variation or waiver must not take effect during the currency of any product disclosure statement or other document pursuant to which the Units were offered for sale or subscription.

Subject to any applicable law, the Responsible Entity may postpone or extinguish in full or in part any liability in respect of any money unpaid on Partly Paid Units.

7.3 On termination

Despite anything in this constitution or in the terms of any offer of Partly Paid Units, the whole of the called but unpaid portion of the Application Price of each Partly Paid Unit and any interest which has accrued on that amount is payable by the Member to the Responsible Entity immediately on termination of the Fund.

7.4 Notice of instalments

For Partly Paid Units that are not Officially Quoted, the Responsible Entity must give Members at least 10 Business Days' notice of the time and date each instalment, other than an initial instalment payable on subscription for Units, is due to be paid.

For Partly Paid Units that are Officially Quoted, the Responsible Entity must:

²⁰ Section 601FC(1)(d). If the power to waive is included, the \$500,000 wholesale client test may not apply.

- (a) give Members notice in accordance with the Listing Rules²¹ (the “**First Notice**”) of the time and date each instalment, other than an initial instalment payable on subscription for Units, is due to be paid and contain the information required by the Listing Rules; and
- (b) the Responsible Entity must send a second notice to all new Members and those Members whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.²²

Subject to the Listing Rules, failing to give a notice or the non-receipt of notice by the Member does not affect the obligation of the Member to pay the instalment and the provisions of this constitution regarding non-payment of an instalment apply as if notice had been given.

7.5 Failure to pay instalments

If a Member fails to pay in full any instalment due on any Partly Paid Unit on or by the day specified for payment, the Responsible Entity may serve a notice on that Member requiring payment of the unpaid instalment and any interest calculated from the due date until payment at a fair market rate as determined by the Responsible Entity. The notice must specify a time and day (“**Specified Time**”) (not earlier than 5 Business Days from the date of service of the notice) on or by which the payment is to be made. The notice must also state that in the event of non-payment on or by that Specified Time, the Partly Paid Units in respect of which all or part of the instalment remains unpaid may be forfeited.

7.6 Forfeiture

If the requirements of any notices issued under clause 7.4 and 7.5 are not complied with by the Specified Time, a Partly Paid Unit in respect of which the notice was given may be forfeited to the Responsible Entity as the Responsible Entity determines.

Subject to clause 7.14, all entitlements to the distribution of Distributable Income in connection with a forfeited Unit are suspended until reinstated by the Responsible Entity.

7.7 Cancelling forfeiture

The Responsible Entity may cancel forfeiture before the Units are disposed of on any terms it determines, if the Responsible Entity receives payment in full of all amounts owing in respect of the Units, including interest.

7.8 Record of forfeiture

The Responsible Entity may make any entry in the Register required to reflect any forfeiture under clause 7.6.

7.9 Balance to former holder

The Responsible Entity must account to the former holder of the forfeited Unit for any balance remaining after deducting from proceeds the Responsible Entity receives from any sale or disposal of the forfeited Unit, the amount owing to the Responsible Entity and the reasonable costs of the sale or disposal including the Responsible Entity’s internal costs of administering the forfeiture and any

²¹ Appendix 6A of the Listing Rules requires at least 30 but not more than 40 business days’ notice of a call.

²² Appendix 6A of the Listing Rules.

subsequent sale, interest on any called but unpaid amounts at a fair market rate as referred to in clause 7.1 and costs of all proceedings initiated against the former holder of the forfeited Unit to recover the unpaid amounts due. The Responsible Entity is not liable for any loss suffered by the former holder as a result of the sale.

7.10 Price of forfeited Units

A Unit forfeited under clause 7.6 may be sold or otherwise disposed of as a Fully Paid Unit or as a Partly Paid Unit, as the Responsible Entity determines:

- (a) while the Fund is a Registered Scheme, at a price that is no less than a price calculated in accordance with clause 9.1(f) or 9.1(g) as applicable (or if the Unit is disposed of as a Partly Paid Unit, the same proportion of that price as the total of the amount paid up on the Unit and the amount of the called but unpaid instalment(s) bears to the Application Price for that Unit); or
- (b) while the Units are Officially Quoted, at a price determined by the Responsible Entity where the sale of the forfeited Unit is in accordance with section 254Q of the Corporations Act other than subsections 254Q(1), (9), (10), (13) and (14) as if the Units were shares, the Fund was the company and the responsible entity was the board of directors of the company; or
- (c) while the Fund is a Registered Scheme, in accordance with any applicable ASIC Relief in relation to the sale of forfeited units, if the Responsible Entity complies with the conditions of the relief²³; or
- (d) subject to the Corporations Act and while Units are Officially Quoted, on ASX or other financial market on which Units are permitted to be traded; or
- (e) while the Fund is not a Registered Scheme, at any price the Responsible Entity can obtain.

The Responsible Entity is not liable to a Member for any loss suffered by the Member as a result of the sale.

7.11 Rights and obligations of former holder

The holder of Partly Paid Units which have been forfeited ceases to be a Member in respect of the forfeited Units but remains liable to pay to the Responsible Entity all amounts payable in respect of the forfeited Units (including costs associated with the forfeiture and all proceedings instituted against the Member to recover the amount due, and interest up to the date of actual payment). The former holder's liability ceases when the Responsible Entity receives payment of those amounts in full.

7.12 Evidence of forfeiture

A statement signed by an authorised officer of the Responsible Entity that a Partly Paid Unit has been forfeited on a specified date is conclusive evidence of those facts as against all persons claiming to be entitled to the forfeited Units.

²³ See ASIC Class Order [CO 13/655]

7.13 Transfer of forfeited Unit

Where a Partly Paid Unit is forfeited and disposed of, the Responsible Entity may receive the consideration given for a forfeited Unit (subject to clause 7.9), and the Responsible Entity may execute a transfer of the Unit in favour of the person to whom the Unit is sold or disposed of. That person must then be registered as the holder of that Unit and is not obliged to ensure that any part of the money which they have paid for the Unit is paid to the former holder of the Unit. That person's title to that Unit is not affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit.

7.14 Entitlement to distributions

Income and distributions of capital in accordance with clause 15 to which the holder of a forfeited Unit has become entitled and which have not been paid before forfeiture under this clause 7 must be treated under clause 7.9 as if it formed part of the proceeds of sale or disposal of the forfeited Unit.

7.15 Joint holders

Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on the Partly Paid Units held by them.

7.16 Cancellation of forfeited Units

The Responsible Entity may cancel Partly Paid Units that have been forfeited at any time but if it does so, must pay to the former holder of the Units from the Fund the amount calculated by subtracting from the Net Asset Value attributable to the Units the amount of any unpaid instalment(s) on the Units and, if the Responsible Entity so determines, any costs incurred in relation to the forfeiture, which may be a reasonable estimate.

8 Transfer, transmission and joint holders

8.1 Transfer of Relevant Securities

Relevant Securities may be transferred subject to their terms, this clause 8 and clause 32.

8.2 Transfer if not Officially Quoted

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

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

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

8.3 Transfer if Officially Quoted

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

- (a) as provided by the Operating Rules of a CS Facility if applicable;²⁴ or
- (b) by any other method of transfer which is required or permitted by the Corporations Act, ASX or ASIC.

If a duly completed instrument of transfer:

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

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

8.4 When transfer is effective

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

8.5 Responsible Entity may request holding lock or refuse to register transfer²⁵

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

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

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

The Responsible Entity must:

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

if the Corporations Act or Listing Rules require the Responsible Entity to do so or the transfer is in breach of clause 32.

²⁴ Part 7.11 Div 4 of the Corporations Act. Chi-X's market licence permits settlements by any CS Facility licensee approved for the purpose.

²⁵ Listing Rule 8.10 restricts the Responsible Entity's ability to prevent proper transfers, but allows for a holding lock in certain specified circumstances.

8.7 Notice of holding locks and refusal to register transfer

If, in the exercise of its rights under clauses 8.5 or 8.6, the Responsible Entity requests the application of a holding lock to prevent a transfer of Relevant Securities or refuses to Register a transfer of Relevant Securities, it must, within two months after the date on which the transfer was lodged with it, give written notice of the request or refusal to:

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

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

8.8 Joint tenancy

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

8.9 Transmission on death²⁶

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

8.10 Information given by personal representative²⁷

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

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

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

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

8.11 Death of joint owner²⁸

If a holder of Relevant Securities, who holds them jointly, dies, the Responsible Entity will recognise only the survivor as being entitled to the holder's interest in

²⁶ This reflects sections 1071A and 1072A(1).

²⁷ This reflects sections 1071A and 1072A(2)-(4).

²⁸ This reflects sections 1071A and 1072A(5).

the Relevant Securities. The estate of the holder is not released from any liability in respect of the Relevant Securities.

8.12 Transmission on bankruptcy²⁹

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

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

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

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

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

8.13 Transmission on mental incapacity³⁰

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

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

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

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

9 Application Price for Units

9.1 Application Price

Subject to clause 26.1, the application price for a Unit must be calculated as follows:

²⁹ This reflects sections 1071A and 1072B.

³⁰ This reflects sections 1071A and CA 1072D.

- (a) in the case of Units offered pursuant to the First Offer Document at a price of \$1.60;
- (b) in the case of a proportionate offer (including a rights issue), in accordance with clause 9.4;
- (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 9.7;
- (d) in the case of reinvestment of distributions, in accordance with clauses 9.8 and 9.9;
- (e) in the case of Units issued pursuant to the exercise of an Option, in accordance with clause 5;
- (f) subject to paragraphs (a) to (e), in all other cases while Units are Officially Quoted, the Market Price of Units immediately before the date on which or as at which the application price is to be calculated (plus, if the Units on issue at that time are partly paid, the amount per Unit remaining unpaid on the Units) multiplied by the Application Factor (if relevant);
- (g) while Units are not Officially Quoted, in accordance with the following formula:

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

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

and the Application Price may be payable either in full on application or by such instalments as the Responsible Entity determines in accordance with clause 7.

9.2 Time for calculation

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

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

whichever happens later.

9.3 Rounding

Subject to the Listing Rules, the application price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more

than 1% of the application price. Any excess application money or property which results from rounding becomes an Asset.³¹

9.4 Pro rata rights issues

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

- (a) provided that, subject to paragraph (b) of this clause 9.4, all Members are offered Units in proportion to the value of the Member's Units (or, where the offer is made only to Members who hold Units in a Class, to the value of the Member's units in that Class) at the relevant date; and
- (b) the Responsible Entity may exclude a Member from the pro rata offer if to do so would not be in contravention of paragraph 601FC(1)(d) of the Corporations Act, as modified by ASIC Relief,³²

whether or not the right of entitlement is renounceable.

9.5 Other jurisdictions

If the Fund is a Registered Scheme and the Responsible Entity is making an offer of Units to Members which complies with the principles set out in clause 9.4, the Responsible Entity is not required to offer Units to persons whose address on the Register is outside Australia and New Zealand in the circumstances permitted under the applicable ASIC Relief and, if relevant, the Listing Rules.³³

9.6 Terms of pro rata issues

- (a) Any offer made under clause 9.4 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 9.4. 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 9.4 which are not subscribed for within the period for acceptance set by the Responsible Entity may be offered for subscription by the Responsible Entity to any person. The application price payable in relation to such further offer must not be less than that at which the Units were originally offered to Members.
- (c) If an underwriter has underwritten any offer for subscription of Units under clause 9.4, the underwriter may take up any Units not subscribed for by Members.

³¹ See notional section 601GAB in ASIC Corporations (Managed investment product consideration) Instrument 2015/847.

³² See ASIC Class Order [CO 13/656] (Exemption – Equality of treatment)

³³ The clause assumes the Responsible Entity is able to comply with the conditions in Listing Rule 7.7.1.

9.7 Placements and security purchase plan while Listed

While Units in a Class are Officially Quoted and not suspended from quotation, the Responsible Entity may at any time issue Units in that Class by way of a placement or under a security purchase plan:

- (a) at the Market Price of Units during the 10 Trading Days immediately before the date on which the Units are offered; or
- (b) at a price and on terms determined by the Responsible Entity, provided that the Responsible Entity complies with the Listing Rules applicable to the issue and the conditions and restrictions of any applicable ASIC Relief.³⁴

9.8 Reinvestment while Listed

- (a) If reinvestment of distributions payable to a Member under clause 15.19 applies while the Units are Officially Quoted, subject to the Listing Rules, the Responsible Entity may issue Units on the basis that the application price for each additional Unit issued or transferred upon reinvestment is the price determined by the Responsible Entity. If the Responsible Entity has not determined the application price by the date at which units are to be issued upon reinvestment, the price will be the average of the VWAP for Units for each of the 10 Trading Days from and including the Trading Day after the Record Date for the relevant Distribution Period.
- (b) If the amount to be reinvested in additional Units results in a fraction of a Unit, the number of Units to be issued will be rounded down to the nearest whole Unit and any remaining amount becomes an Asset.

9.9 Reinvestment while not Listed

While Units are not Officially Quoted, the Responsible Entity may issue Units on the basis that the application price payable for each additional Unit on reinvestment of distributions payable to a Member under clause 15.19 is the price determined by the Responsible Entity. If the Responsible Entity has not determined the application price by the date at which Units are to be issued upon reinvestment, the application price will be as calculated under clause 9.1(g) or 8.1(h) on the first Business Day after the end of the Distribution Period to which the distribution relates.

10 Application procedure

10.1 Application form

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

10.2 Payment

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

- (a) accompany the application;

³⁴ See ASIC Class Orders [CO 13/655] and [CO 09/425].

- (b) be received by or made available to the Responsible Entity or the Custodian within such period before or after the Responsible Entity receives the application form as the Responsible Entity determines from time to time or as the terms of issue of the relevant Option or Unit contemplate; or
- (c) comprise a reinvestment of distribution in accordance with clauses 15.19 to 15.21.

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

- (i) the value attributed to the property must be equivalent to a price at which the Responsible Entity could properly buy the property and, if the Responsible Entity requires the applicant must provide a recent valuation of the property;³⁵ and
- (ii) any additional costs associated with the valuation or transfer of the property beyond the amount of the Transaction Costs factor in the Application Price for the Units must be paid by the applicant either directly or by deducting the costs from the value of the property before the number of Units to be issued is calculated.

10.3 Responsible Entity may reject

The Responsible Entity may reject an application in whole or in part without giving any reason for the rejection.³⁶

10.4 Minimum amounts

The Responsible Entity may set a minimum application amount and a minimum holding for the Fund and alter or waive those amounts at any time.³⁷

10.5 Issue date

- (a) Except in the case of a reinvestment of distribution in accordance with this constitution, Units are taken to be issued at the time which is the earlier of:
 - (i) the time the issue of Units is recorded in the Register; and
 - (ii) the later of the time when:
 - (A) the Responsible Entity Accepts the application for Units; and
 - (B) the Responsible Entity or its agent receives the application money (even if paid into the Applications Account or received in the form of a cheque) or the property against which Units are to be issued is vested in the Responsible Entity.
- (b) Units which are issued on a reinvestment of distribution in accordance with this constitution are taken to be issued on the first Business Day after the end of the Distribution Period to which the distribution relates.

³⁵ ASIC RG 134.42

³⁶ Refer to Listing Rule 10.11 - restriction on issue of Units to related parties.

³⁷ While Units are Officially Quoted, see clause 33 regarding the sale of small holdings.

- (c) At the time when Units are taken to be issued under paragraph (a)(ii) or (b):
- (A) the applicant becomes a Member in respect of the Units, which are taken to be issued³⁸ even though the number of Units may not yet have been ascertained and the issue has not yet been entered in the Register; and
 - (B) the applicant becomes entitled to be recorded in the Register as the holder of those Units as soon as it is reasonably practicable for the Responsible Entity or its agent to make the entry.

10.6 Uncleared funds

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

11 Redemption Price of Units³⁹

11.1 Redemption Price

Subject to clauses ~~12.16~~~~12.16~~ and 12.17, the redemption price for a Unit must be calculated as follows:

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

less any amount unpaid on the Unit whether called or uncalled.

11.2 Time for calculation

Each of the variables in clause 11.1 must be determined:

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

For the purposes of this calculation, if at the relevant Valuation Time Units have been issued under clause 10.5 but the Application Price of those Units has not yet been ascertained, the application money or property relating to those Units and the number of Units are to be excluded from the calculation.

11.3 Rounding

Subject to the Listing Rules, the Redemption Price may be rounded as the Responsible Entity determines but the amount of the rounding must not be more

³⁸ For the purposes of section 761E(2).

³⁹ Required to be included by section 601GA(4) if a right of redemption is to be offered and necessary in practice for any power to redeem.

than 1% of the Redemption Price. Any excess which results from rounding becomes an Asset of the Fund.⁴⁰

12 Redemption procedures⁴¹

12.1 While the Fund is Listed

While the Fund is Listed:

- (a) clauses 12.10 to 12.13 apply only to the extent provided for in clause 12.17;
- (b) clauses 12.9, and 12.14 to 12.16 apply; and
- (c) clauses 12.2 to 12.8 do not apply.⁴²

12.2 Request for redemption

A Member may make a request for the redemption of some or all of their Units by giving the Responsible Entity notice in writing⁴³ of the request, specifying the number or value of Units to be redeemed and sufficient details to identify the Member, or by completing an electronic or digital form of redemption request or otherwise meeting the requirements of a personal or verbal redemption request process as determined by the Responsible Entity. The Responsible Entity is not obliged to satisfy any such request.

12.3 Request may not be withdrawn

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

12.4 When Fund is Liquid⁴⁴ or not a Registered Scheme

Clauses 12.5, 12.7 and 12.8 apply only while:

- (a) the Fund is Liquid⁴⁵; or
- (b) the Fund is not a Registered Scheme.

12.5 Responsible Entity may redeem

- (a) Subject to the Corporations Act and the Listing Rules, the Responsible Entity may decide to Accept a request from a Member to redeem some or all of their Units, in whole or in part. The Responsible Entity is not required to Accept any such request.
- (b) If the Responsible Entity determines to Accept a redemption request in respect of a Unit, it must pay from the Assets to the Member or former Member the Redemption Price of that Unit calculated in accordance with

⁴⁰ See notional section 601GAC in ASIC Corporations (Managed investment product consideration) Instrument 2015/847.

⁴¹ While the Fund is a Registered Scheme, these procedures must be fair to all Members: section 601GA(4).

⁴² Refer to Listing Rule 1.1 condition 5.

⁴³ See clause 19

⁴⁴ Required to be included by section 601GA(4)(b).

⁴⁵ For a definition of a liquid Fund see section 601KA.

clause 11. The payment must be made within 21 days of the date on which the Unit is redeemed under clause 12.15, or such longer period as allowed by clause 12.6.

- (c) If the Responsible Entity decides not to Accept some or all of the redemption request, it must notify the Member of its decision within 30 days of receipt of the request or such longer period as allowed by clause 12.6.
- (d) If the Responsible Entity does not decide whether to Accept the redemption request by the day which is 30 days after receipt of the request or the last day of such longer period as allowed by clause 12.6, on that day the Responsible Entity it is taken to have decided not to Accept the request, the request lapses and the Responsible Entity must notify the Member of its decision as soon as possible and in any event within a further 10 days following the deemed decision.
- (e) The day of receipt of the redemption request is:
 - (i) the day of actual receipt if the redemption request is received before 3.00pm on a Business Day; or
 - (ii) the Business Day following the day of actual receipt if the redemption request is received on a day which is not a Business Day or is received after 3.00pm on a Business Day.
- (f) Notwithstanding clauses 12.5(a) to 12.5(e), but subject to the Corporations Act and the Listing Rules, the Responsible Entity may do anything necessary or desirable to give effect to the automatic redemption of the Initial Units under clause 26.1 without the need to comply with any of the provisions of this clause 12.

12.6 Delayed payment

- (a) Subject to paragraph 12.6(b), the Responsible Entity may at any time suspend consideration of redemption requests, or defer its obligation to pay the Redemption Price in respect of a redemption request it has Accepted, if it is not possible or not in the best interests of Members and former Members who have not yet received the Redemption Price for their Units at the time the circumstances arise, for it to process redemption requests or make the payment (as applicable) due to one or more circumstances outside its control such as restricted, suspended or permanent cessation of trading or extreme price fluctuation or uncertainty in the market for an Asset, and the period allowed under clause 12.5 for consideration of the redemption request or payment of the Redemption Price may be extended by the number of days during which such circumstances apply.
- (b) In relation to a withdrawal offer to which Part 5C.6 of the Corporations Act applies, the Responsible Entity must pay the redemption proceeds to the withdrawing Member or former Member within 21 days of the date on which the withdrawal offer closes.⁴⁶

12.7 Minimum holding

If Acceptance of a redemption request would result in the Member holding Units with an aggregate Redemption Price which is less than the then current minimum

⁴⁶ Section 601KD.

holding amount, the Responsible Entity may treat the redemption request as relating to the balance of the Member's holding.

12.8 Increased minimum

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

12.9 Payment from the Assets

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

12.10 While Fund is not Liquid⁴⁷

While the Fund is not Liquid,⁴⁸ a Member may withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Responsible Entity in accordance with the provisions of the Corporations Act regulating offers of that kind.⁴⁹ While the Fund is a Registered Scheme and is not Liquid, if there is no withdrawal offer currently open for acceptance by Members, a Member has no right to request withdrawal from the Fund.

12.11 Responsible Entity not obliged

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

12.12 Cancellation of withdrawal offer

The Responsible Entity may cancel a withdrawal offer at any time. If it does, it may do so by sending a notice that the offer is cancelled to all Members, or making the notice available by electronic means and giving notice to Members that it is available.

The cancellation of a withdrawal offer by the Responsible Entity does not affect the rights of Members or former Members whose acceptance of the offer has been received by the Responsible Entity in accordance with clause 20 after the offer period has opened but before the date on which the offer is cancelled to withdraw from the Fund in accordance with the terms of the withdrawal offer.

12.13 Treatment of request

If the Responsible Entity receives a redemption request, and the Fund subsequently ceases to be Liquid before that request has been Accepted or rejected, the request lapses.

⁴⁷ Required to be included by section 601GA(4)(c) if Members are to have the right to withdraw while the Fund is a Registered Scheme. This clause can also apply while the Fund is not a Registered Scheme - see also clause 12.4.

⁴⁸ For a definition of a liquid Fund see section 601KA(1).

⁴⁹ Refer to sections 601KB to 601KE.

12.14 Sums owed to Responsible Entity

The Responsible Entity may deduct from the proceeds of redemption or money paid pursuant to a withdrawal offer any money due to it by the Member or former Members whose Units have been redeemed. While the Fund is Liquid or not a Registered Scheme, the Responsible Entity may redeem without a redemption request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member.

12.15 When Units are redeemed

Units are taken to be redeemed:

- (a) where the redemption is to occur in response to a redemption request from a Member, at the time at which the Responsible Entity has:
 - (i) received and Accepted the redemption request in respect of the Units; and
 - (ii) calculated the Redemption Price of the Units,⁵⁰ or
- (b) if paragraph (a) does not apply, at the time at which the Redemption Price is known and the redemption is recorded in the Register,

and from that time until payment of the Redemption Price, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Fund in respect of the redemption proceeds.

If Units are redeemed at the time referred to in paragraph (a), the Responsible Entity must as soon as is reasonably practicable arrange for the redemption of the Units to be recorded in the Register.

12.16 Buy backs

While the Units are Officially Quoted, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, purchase Units on ASX or any other financial market on which the trading of Units is permitted, and also off-market, and cause the Units to be cancelled. No Redemption Price is payable on cancellation of the Units.

12.17 While Officially Quoted

While the Units are Officially Quoted, the Responsible Entity may, subject to the Corporations Act and the Listing Rules, make a withdrawal offer under clause 12.10, in which case clauses 12.10 to 12.13 apply in relation to the withdrawal offer, and the Redemption Price is to be calculated in accordance with clause 11.2(b).

12.18 Distribution to Members on a Redemption

- (a) If, during a Distribution Period, the Responsible Entity Accepts a redemption request from a Member which is in respect of 5% or more of the Units on issue or such other amount as may be determined by the Responsible Entity and notified to Members from time to time (“**Large Redemption Request**”) then the Responsible Entity must determine at or before the end of the relevant Distribution Period:
 - (i) what amount (“**Income Component**”) of the payment in satisfaction of the Large Redemption Request (“**Redemption**”

⁵⁰ ASIC RG 134.167.

Payment) in respect of the Units represents a distribution of the Distributable Income for that Financial Year; and

- (ii) whether the Income Component of the Redemption Payment will comprise a distribution of Distributable Income for the Financial Year of any particular character for tax purposes.
- (b) Where the Responsible Entity makes a determination under clause 12.18(a) in respect of a Redemption Payment to a Member or former Member, the Responsible Entity must make the determination by reference to:
- (i) that component of the Distributable Income of the Fund for the Financial Year to date that has not been distributed (at the time the Redemption Price in respect of the Large Redemption Request is determined under clause 12.18(a)) that the Responsible Entity determines is referable to:
 - (A) capital gains; or
 - (B) amounts which reflect gains (which are not capital gains) on the disposal or realisation of Assets; and
 - (ii) the increase in the component of the Distributable Income of the Fund referred to in clause 12.18(b)(i)(A) as a result of the Responsible Entity realising sufficient Assets to satisfy the Large Redemption Request; and

the number of Units specified in the Large Redemption Request and the number of Units on issue at the time the Large Redemption Request is made.

13 Valuation of assets and accounts, audit and reports

13.1 Periodic valuations

The Responsible Entity may cause an Asset to be valued at any time and, if the Fund is a Registered Scheme, must do so as and when required by the Corporations Act.⁵¹

13.2 Net Asset Value

The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.

13.3 Valuation methods

The Responsible Entity may determine the value of an Asset, and determine valuation methods and policies for each category of Asset and change them from time to time. While the Fund is a Registered Scheme, the Responsible Entity's policy for the valuation of Assets must be based on the range of ordinary commercial practice for valuing the relevant type of asset and, where used to calculate the Application Price or Redemption Price of a Unit, the value must be reasonably current⁵². In the absence of any other determination by the Responsible Entity, the value of an Asset will be its Market Value.

⁵¹ See section 601FC(j) for Responsible Entity's obligations concerning valuation.

⁵² ASIC RG 134.110 provides guidance on the meaning of "reasonably current".

13.4 Currency conversion

Where it is necessary for the purposes of a valuation to convert one currency to another, the conversion is to be made at a time and at the rate quoted by a bank or an independent pricing provider (such as Reuters) nominated by the Responsible Entity. Where the value of an Asset denominated in foreign currency is converted for the purposes of calculating the Redemption Price of a Unit, the currency valuation applied must be consistent with the range of ordinary commercial practice for valuing currency, and the value must be reasonably current at the time the Redemption Price is calculated.⁵³

13.5 Accounts, audit and reports

While the Fund is not a Registered Scheme, the Responsible Entity must keep or cause to be kept proper books of account which correctly record and explain the transactions and financial position of the Fund and may, but need not, have those records audited.

14 Reorganisation Proposals

14.1 Power to enter into Reorganisation Proposals

Without limiting any other provision of this constitution, the Responsible Entity may determine to carry out and give effect to:

(a) [the CD3 Reorganisation Proposal](#);

~~(a)~~(b) without reference to or approval from Members, a Consolidation or Division Proposal or, to the extent and in the manner permitted by the Corporations Act, a CCIV Proposal; or

~~(b)~~(c) any other Reorganisation Proposal not referred to in clause 14.1(a) (including a Spin-Off Proposal, a Stapling Proposal, a Realisation Transaction, a Top Hat Proposal or an Exchange Proposal), which is in each case approved by Ordinary Resolution.

Unless the Responsible Entity agrees otherwise, it is a term of issue of each Unit, Option or Financial Instrument that the Unit, Option or Financial Instrument may be subject to a Reorganisation Proposal as provided in this clause 14.1. Each Member, by subscribing for or taking a transfer of, or otherwise acquiring a Unit, Option or Financial Instrument, is taken to have consented to these Reorganisation Proposals.

14.2 Power to give effect to Reorganisation Proposals

If the Responsible Entity determines to carry out a Reorganisation Proposal in accordance with clause 14.1, then the Responsible Entity has power to do all things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the relevant proposal, including to:

- (a) make distributions and other payments out of the Assets and (subject to the Corporations Act and the Listing Rules) to redeem Units, and to apply the payment or redemption proceeds on behalf of Members;
- (b) apply for or purchase fully paid securities on behalf of the Members and to consent on behalf of Members to become a member of a company, trust or other body;

⁵³ ASIC RG 134.108.

- (c) issue Units;
- (d) transfer Assets;
- (e) if Units or other securities are to be transferred as part of a Reorganisation Proposal, to give on behalf of Members a warranty as to good and unencumbered title to the Units or securities to be transferred, ~~and other warranties customary in a transfer of securities~~; and
- (f) execute all documents and do all things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

14.3 Specific powers in relation to CD3 Reorganisation Proposal

Without limiting any other provisions of this constitution, to give effect to the CD3 Reorganisation Proposal, the Responsible Entity has power to:

- (a) determine the time and date at which the Members on the Register will be the persons entitled to participate in the CD3 Reorganisation Proposal (“Reorganisation Record Date”), and to determine the time at which each step in the CD3 Reorganisation Proposal will occur which must be the same time and date as determined for the same purpose in respect of CD1, CD2 and CD3;
- (b) make the determinations and effect the transfers contemplated by clause 14.5 so that any Units held by Designated Foreign Investors are transferred to the Sale Nominee and update the Register accordingly;
- (c) apply on behalf of each Member for the number of CD3 Units calculated by multiplying the Exchange Ratio by the number of Units held by the Member and rounding up or down as applicable to the nearest whole CD3 Unit;
- (d) consent on behalf of each Member to become a member of CD3 and be bound by the constitution of CD3;
- (e) as consideration for the issue of that number of CD3 Units, transfer each Member’s Units to the responsible entity of CD3 or its custodian or a nominee, as it determines, and give on behalf of each Member a warranty as to good and unencumbered title to the Units to be transferred, and other warranties customary in a transfer of securities;
- (f) make distributions and other payments out of the Assets, or make any determinations of dates or amounts for the purposes of clause 15 which are necessary or desirable to give effect to the CD3 Reorganisation Proposal; and
- (g) issue Units, transfer Assets, execute all documents and do all other things which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the CD3 Reorganisation Proposal.

14.314.4 Appointment of Responsible Entity as agent and attorney

To give effect to a Reorganisation Proposal the Responsible Entity is irrevocably appointed the agent and attorney of each Member, to do all things which the Responsible Entity considers necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal, including to:

- (a) apply any proceeds referred to in clause 14.2(a) on behalf of the Member;
- ~~(b)~~ execute any withdrawal request on behalf of the Member, or any application for, or transfer of, any securities or financial products in favour of the Member;
- ~~(b)~~~~(c)~~ in relation to the CD3 Reorganisation Proposal, apply for CD3 Units on behalf of each Member;
- ~~(c)~~~~(d)~~ execute a transfer of Units, Options or Financial Instruments held by or on behalf of the Member;
- ~~(d)~~~~(e)~~ execute a transfer of Assets to a Member; and
- ~~(e)~~~~(f)~~ execute all documents and do all things (including giving ~~e~~ all consents) which the Responsible Entity considers are necessary, desirable or reasonably incidental to give effect to the Reorganisation Proposal.

The Responsible Entity is authorised to execute these documents and to do these things without needing further authority or approval from Members.

~~14.4~~14.5 Foreign Investors

- (a) This clause ~~14.5~~14.4 applies where a Reorganisation Proposal involves the offer, issue or transfer of Units, Options, Financial Instruments or other financial products (including, for the avoidance of doubt, CD3 Units) to Foreign Investors.
- (b) Subject to the Listing Rules⁵⁴ and the Corporations Act as modified by any applicable ASIC Relief⁵⁵, the Responsible Entity may determine that a Foreign Investor is a Designated Foreign Investor with respect to a Reorganisation Proposal where the Responsible Entity reasonably determines that it will not offer, issue or transfer Units, Options, Financial Instruments or other financial products (including, for the avoidance of doubt, CD3 Units) to that Foreign Investor, having regard to:
 - (i) the number of Foreign Investors in the jurisdiction of that Foreign Investor;
 - (ii) the number and value of Units, Options, Financial Instruments or other financial products (including, for the avoidance of doubt, CD3 Units) that may be offered, issued or transferred to Foreign Investors in the foreign jurisdiction; and
 - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the offer, issue or transfer in the foreign jurisdiction.
- (c) If the Responsible Entity makes a determination in accordance with clause ~~14.5(b)~~14.4(b), despite anything to the contrary in this constitution:
 - (i) the Responsible Entity has power to do all things which it considers necessary, desirable or reasonably incidental to give effect to a Designated Foreign Investor Cash-Out; and

⁵⁴ See in particular Listing Rule 7.7

⁵⁵ ASIC Class Order [CO 13/656] – transaction-specific relief may also be required in the case of some Reorganisation Proposals

- ~~(ii)~~ any Investor who is or becomes a Designated Foreign Investor is taken to consent to the Designated Foreign Investor Cash-Out and directs the Responsible Entity to do all things which it considers necessary, desirable or reasonably incidental to give effect to the Designated Foreign Investor Cash-Out (including to act as the Member's agent and attorney),
- (ii) including to:
- ~~(iii)~~(A) transfer or issue, or arrange for the transfer or issue of Units, Options, Financial Instruments or other financial products (including, for the avoidance of doubt, CD3 Units) held by the Member or which would have been received by the Member under the Reorganisation Proposal to a Sale Nominee;
- ~~(iv)~~(B) arrange for a Sale Nominee to participate in a Reorganisation Proposal in respect of Units, Options, Financial Instruments or other financial products (including, for the avoidance of doubt, CD3 Units) received under clause 14.5(c)(ii)(A), ~~14.4(c)(ii)(iii)~~; and
- ~~(v)~~(C) arrange for a Sale Nominee to sell the Units, Options, Financial Instruments or financial products (including, for the avoidance of doubt, CD3 Units) that are issued or transferred in respect of the Member's existing investment; and
- ~~(vi)~~(D) arrange for the payment of the Sale Consideration to the Designated Foreign Investor.
- (d) A “**Designated Foreign Investor Cash-Out**” means that Members who are Designated Foreign Investors will:
- (i) not be the holder of any newly acquired Securities or financial products (including, for the avoidance of doubt, CD3 Units) as a result of implementation of a Reorganisation Proposal; and
- (ii) receive an amount of cash:
- (A) realised by selling Units, Options, Financial Instruments or other securities or financial products (including, for the avoidance of doubt, CD3 Units) held by that Member or to which the Member would have been entitled if it had participated in the Reorganisation Proposal; or
- (B) otherwise determined by the Responsible Entity to be equivalent to the value of Units, Options, Financial Instruments or other securities or financial products (including, for the avoidance of doubt, CD3 Units) to which the Member would have been entitled if it had participated in the Reorganisation Proposal.
- (e) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under this clause 14.5~~14.4~~ may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that this result may be necessary to enable the requirements of this clause 14.5~~14.4~~ to be met.

14.5 **14.6** **Liability of Responsible Entity**

The Responsible Entity has no liability of any nature whatsoever beyond the Assets to Members arising, directly or indirectly, from the Responsible Entity doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the implementation of a Reorganisation Proposal.

14.6 **14.7** **Partly Paid Units**

If any Unit is a Partly Paid Unit at the time of a Reorganisation Proposal, the unpaid amount of the Application Price and any instalment payable will be amended in the same ratio.

14.7 **14.8** **Paramourncy of provision**

The provisions of this clause 14 prevail over other provisions of this constitution in the case of any inconsistency to the extent provided in clause 29.5.

15 **Income and distributions to Members**⁵⁶

15.1 **Standing principles for determining Distributable Income**

The Responsible Entity may determine standing principles for calculating and distributing the Distributable Income for any Financial Year or Distribution Period and may change the principles from time to time.

15.2 **Standing principles for periods where Fund is an AMIT**

For any Financial Year for the Fund that is an AMIT Income Year, unless the Responsible Entity determines otherwise under clause 15.1, the standing principles for determining the Distributable Income for the Financial Year and any Distribution Period will be that the Distributable Income will be the amount determined by the Responsible Entity as being the aggregate of:

- (a) the amount determined by the Responsible Entity to be the aggregate of all Trust Components for the Fund for the period that have an assessable income character, determined as if the period is a year of income for the purposes of the Tax Act and excluding any amounts of a tax offset character; and
- (b) any additional amount that the Responsible Entity considers appropriate for distribution in relation to the Fund for the relevant period, including:
 - (i) amounts referable to the discount capital gains concession; and
 - (ii) any other Trust Components that have the character of exempt income or non-assessable non-exempt income.

The standing principles made by the Responsible Entity under this clause 15.2 may be changed or revoked at any time in accordance with clause 15.1.

15.3 **Determination of Distributable Income**

The Responsible Entity must determine the Distributable Income for each Distribution Period. In the case of any Distribution Period which does not end at

⁵⁶ Refer to Listing Rules 3.20 - notification to ASX of record date, and 6.10 - prohibition on changing the right to a distribution.

the end of a Financial Year this determination of the Distributable Income for that Distribution Period may be an estimate. The Distributable Income is to be:

- (a) if the Responsible Entity has determined standing principles under clause 15.1 (including pursuant to clause 15.2) which are applicable to the Financial Year or Distribution Period, the amount calculated by applying those principles in respect of the Financial Year or Distribution Period; and
- (b) if there are no standing principles which are applicable to the Financial Year or Distribution Period under clause 15.1:
 - (i) for a Financial Year, the aggregate of:
 - (A) the amount which the Responsible Entity ~~Trustee~~ determines to be the “net income of the trust estate” for the Trust for the purposes of section 95 of the Tax Act for the Financial Year, determined disregarding:
 - (aa) any amounts that the Responsible Entity ~~Trustee~~ determines represent either franking credits or foreign tax offsets; and
 - (ab) any reduction in the net capital gain for the Trust for the Financial Year which the Responsible Entity ~~Trustee~~ determines arises as a result of the discount capital gains concession; and
 - (ii) for a Distribution Period, the amount which the Responsible Entity ~~Trustee~~ determines to be the Distributable Income for the Distribution Period, determined as if the Distribution Period is a Financial Year and a year of income for the purposes of the Tax Act.

15.4 Accounting standards

The preparation of the accounts of the Fund in accordance with current Australian accounting standards and generally accepted accounting principles is not to be regarded as a determination of the method for calculating the Distributable Income under clause 15.3.

15.5 Power to accumulate or defer amounts

- (a) The Responsible Entity may, in respect of a Distribution Period in a Financial Year for the Fund that is an AMIT Income Year for the Fund, determine prior to the end of that Distribution Period that all or part of the Distributable Income of the Fund for the period from the commencement of the Financial Year until the end of the Distribution Period that has not already been distributed to Members under clauses 12.18, 15.6 or 15.24(b) will:
 - (i) be accumulated; or
 - (ii) not be distributed in respect of the Distribution Period and will be distributed to Members of the Fund later in the Financial Year.
- (b) The effect of the Responsible Entity exercising its power to accumulate or carry forward an amount pursuant to clause 15.5(a) is, in accordance with clause 15.6, to:

- (i) exclude the relevant amount from the Income Distributions for Members of the Fund for:
 - (A) the Distribution Period; and
 - (B) in the case of an accumulation pursuant to clause 15.5(a)(i), all future Distribution Periods; and
 - (ii) in the case of amounts which are carried forward for distribution later in the Financial Year under clause 15.5(a)(ii), include the relevant amount in the Income Distributions for a subsequent Distribution Period in the Financial Year unless the Responsible Entity determines to distribute the relevant amount earlier under clause 15.24(b).
- (c) For the purposes of 15.15, amounts accumulated under clause 15.5(a)(i) are to be treated for the purposes of the AMIT Regime as having been accumulated for the benefit of the Members at the time specified by the Responsible Entity. This time must be on or after the time the Responsible Entity determines to accumulate the relevant amount, but at or before the end of the relevant Financial Year.
- (d) Amounts which are:
- (i) accumulated pursuant to clause 15.5(a)(i); or
 - (ii) carried forward for distribution later in the Financial Year pursuant to clause 15.5(a)(ii), but only until the time at which the amount is distributed under clauses 15.6 or 15.24(b),

continue to form part of the Assets and no Member has any particular right to or interest in those amounts.

15.6 Income Distributions

Subject to clauses 4.8, 15.13 and 15.28, Income Distributions in respect of a Member means an amount calculated by the Responsible Entity as follows:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than the end of the Financial Year in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period;
- C is the Distributable Income for the Distribution Period excluding:
 - (i) the Income Component of any Redemption Payment made to any Member pursuant to clause 12.18 during that Distribution Period;

- (ii) any amounts paid pursuant to clause 15.24(b) during that Distribution Period; and
- (iii) any amounts which the Responsible Entity has determined to accumulate or carry forward for the Distribution period under clause 15.5(a),

and including any amounts which the Responsible Entity has determined to carry forward for a previous Distribution Period in the Financial Year, and which the Responsible Entity determines has not previously been distributed in the Financial Year as an Income Distribution or under clause 15.24(b) and is appropriate to distribute for the Distribution Period; and

- (b) in respect of a Distribution Period ending on the end of the Financial Year in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where:

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period; and
- C is any amount by which the Distributable Income for the Financial Year exceeds the aggregate of:
 - (1) the Distributable Income calculated for the purposes of variable C in paragraph (a) above in respect of the previous Distribution Periods of the Financial Year;
 - (2) the Income Component of any Redemption Payment made to any Member in the Financial Year pursuant to clause 12.18; and
 - (3) any amounts paid pursuant to clause 15.24(b) during the Financial Year; and
 - (4) any amounts which the Responsible Entity has determined to accumulate for a Distribution Period in the Financial Year under clause 15.5(a)(i).

15.7 Present entitlement

Subject to clause 4.8, a person who at any time during the Financial Year is or has been a Member is presently entitled on the last day of the Financial Year to:

- (a) if the Financial Year is not an AMIT Income Year, the Distributable Income of the Fund for the Financial Year; and
- (b) if the Financial Year is an AMIT Income Year, the Distributable Income of the Fund for the Financial Year excluding any amounts accumulated pursuant to clause 15.5(a)(i),

in the proportion that the (i) Income Distributions calculated in respect of the Member or former Member in respect of the Financial Year under clause 15.6

and (ii) any payments made to that Member or former Member in respect of that Financial Year under clause 15.24(b) and (iii) the Income Component of any Redemption Payment made to the Member in the Financial Year pursuant to clause 12.18 bear to the sum of (i) all Income Distributions calculated under clause 15.6 and (ii) all payments made under clause 15.24(b) and (iii) all of the Income Components of any Redemption Payments made to persons who are or have been Members at any time during the Financial Year.

15.8 Indefeasibility

Despite any other provision of this constitution, a person cannot be defeated of any share of the Distributable Income to which the person is entitled under clause 15.6 and 15.7.

15.9 Distribution of income

Subject to any deductions made under clause 15.12 and subject to clause 15.1, the Responsible Entity must distribute to each person the person's entitlement to Distributable Income for a Distribution Period. That distribution must occur within three months after the Distribution Calculation Date for the Distribution Period.

15.10 Separate accounts

The Responsible Entity may keep separate accounts of different categories or sources (or both) of income or gains, or deductions, losses or credits for tax purposes, and if such accounts are kept, they must be kept in accordance with the requirements of the Tax Act. The Responsible Entity may allocate income or gains from a particular category or source (or both) to particular Members or Members of a Class, provided that the allocation is not inconsistent with the entitlements of Members to Distributable Income under clauses 15.6 or 15.24(b) or the Responsible Entity's obligation to attribute amounts to Members under clause 15.15. For a Financial Year for the Fund which is not an AMIT Income Year, if such allocation is made on any basis other than pro rata with all other Members, the Responsible Entity must notify the Member.

15.11 Position on transfer of Units

A person who is or was a Member as at a Distribution Calculation Date remains entitled to their share (if any) of the Distributable Income under clause 15.6 despite any transfer, transmission or redemption of Units by or in respect of the person, being Units which gave rise to the entitlement.

15.12 Deductions from Distributable Income

The Responsible Entity may deduct from any entitlement of a person to a share of Distributable Income any amount which the Responsible Entity is required or authorised to deduct under clause 16.7 and all amounts deducted must be applied in reimbursing the Fund for any corresponding amount paid, distributed or reimbursed out of the Fund or reimbursing the Responsible Entity for the payment of the Tax to the person or authority entitled to it.

15.13 Fractions

If the share of Distributable Income for a Member determined under clause 15.6 includes a fraction of a cent, the share is to be adjusted to the nearest cent below the amount calculated and the fraction of the cent becomes an Asset.

15.14 Classification of items

Without limiting clauses 15.1 to 15.3, the Responsible Entity must determine:

- (a) the classification of any item as being on income or capital account;
- (b) the extent to which reserves or provisions need to be made; and
- (c) whether any item of income should be recognised as it is received or as it accrues (but not yet received); and
- (d) the character for tax purposes of any Distributable Income which the Responsible Entity chooses to accumulate or carry forward for distribution pursuant to clause 15.5(a).

15.15 Attribution under AMIT Regime – basis for attribution

- (a) The Responsible Entity must, for an AMIT Income Year, following the end of the Financial Year, attribute all of the Determined Trust Components of the Fund, or each Class in the Fund where there is an AMIT Class Election in force for the Fund, for the Financial Year to Members under the AMIT Regime.
- (b) The Responsible Entity must perform the attribution under clause 15.15(a) in accordance with the Tax Act and the following principles:
 - (i) the amount of each Member's Determined Member Components of a particular character is so much of the Fund's Determined Trust Component of that particular character as is attributable to the Units held by the Member, having regard to the provisions of this constitution; and
 - (ii) if there is more than one Class on issue in the Fund and the Responsible Entity has made an AMIT Class Election for the Fund, each Class will be treated as a separate AMIT for the purposes of the attribution under clause 15.15(a).
- (c) Subject to clause 15.16, but without limiting clause 15.15(b), following the end of an AMIT Income Year, the Responsible Entity must determine for and attribute to each Member or former Member of the Fund, all of the Determined Trust Components of the Fund or relevant Class (where there is an AMIT Class Election in effect for the Fund) for the Financial Year that are reflected in:
 - (i) any Income Distributions that the Member or former Member has become entitled to at the end of each Distribution Period in the Financial Year under clause 15.6;
 - (ii) any Income Component distributed to the Member or the former Member under clause 12.18;
 - (iii) any distributions of Distributable Income that the Member or former Member has become entitled to during the Financial Year under clause 15.24(b); and
 - (iv) any Income Distributions that would arise for the Member or former Member at a time specified in clause 15.5(c) ("**Relevant Time**") under clause 15.6 if the Relevant Time was the end of a Distribution Period and variable "C" in the formula set out in clause 15.6 for the Distribution Period was the amount accumulated under clause 15.5(a)(i).
- (d) The Responsible Entity may, during an AMIT Income Year, make estimates of the extent to which particular amounts of Distributable Income that have been distributed for the Fund as an Income Distribution

under clause 15.6 or under clause 15.24(b) are referable to Determined Trust Components of the Fund or the relevant Class (where there is an AMIT Class Election in effect in relation to the Fund) for the Financial Year of a particular character. These estimates are not binding on the Responsible Entity when undertaking the process provided for under clause 15.15(a).

15.16 Attribution under AMIT Regime – AMIT Class Election

Where there is an AMIT Class Election in effect, then without limiting clause 15.15:

- (a) in calculating the Determined Trust Components of each Class for the Fund, the Responsible Entity must only include in the Determined Trust Components of a Class the Determined Trust Components of the Fund that are referable to the Class, in accordance with the methodology used to determine the Income Distributions of Members of the Class, having regard to clause 15.26; and
- (b) the Responsible Entity must only attribute Determined Trust Components of a particular Class to Members or former Members of that Class (and not any other Class).

15.17 Attribution under AMIT Regime – Member objections

If the Fund is an AMIT and a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Fund or a Class (where the Responsible Entity has made an AMIT Class Election for the Fund) to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice:

- (a) the Member or former Member must:
 - (i) provide the Responsible Entity with a copy of the objection notice including the basis for objection, within the time the Member is required to do so under the Tax Act for the objection to be effective;
 - (ii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Member's or former Member's objection or proposed objection;
 - (iii) indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection. This paragraph (iii) does not limit the Responsible Entity's other rights to indemnification under this constitution;
- (b) the Responsible Entity may take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members or former Members of the Fund to be protected, including in dealings with the Commissioner of Taxation; and
- (c) the Responsible Entity may amend its attribution of Determined Trust Components to Members or former Members based on the Responsible Entity's determination of what attribution is appropriate, and take such actions as the Responsible Entity determines are necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Members or former Members.

15.18 AMIT Regime Unders/Overs

For any Financial Year that is an AMIT Income Year, the Responsible Entity may determine how any Unders or Overs that arise for the Fund are to be dealt with in accordance with the AMIT Regime. The Responsible Entity is not liable to any Member or former Member with respect to how it addresses any Unders or Overs, provided that the Responsible Entity addresses the Unders or Overs in accordance with the AMIT Regime, and irrespective of whether the choices made result in an attribution outcome for a Member or former Member that is different from the attribution outcome if the Responsible Entity had not made the choice, or had made the choice differently.

15.19 Availability of reinvestment

The Responsible Entity may decide whether to permit the Members to reinvest some or all of any distribution.

15.20 Terms of reinvestment

If the Responsible Entity decides to permit reinvestment, it must notify Members of the procedure and terms for reinvestment and any change in the procedure or terms.

15.21 Issue date

If reinvestment applies to the share of Distributable Income on any Unit held by a Member at the end of a Distribution Period or any part of that share, the Responsible Entity is taken to have received and Accepted an application to reinvest that share of Distributable Income, or part of it at the end of that Distribution Period. The new Units are issued at the time of that Acceptance.

15.22 Fund taxed as company⁵⁷

If the Fund is to be taxed as if it were a company, whether because it is or becomes a public trading trust for the purposes of Division 6C of Part III of the Tax Act or otherwise, the following provisions of this clause 15.22 apply and clauses 15.1 to 15.13 do not apply. If this clause 15.22 applies:

- (a) as soon as practicable after the end of the Financial Year the Responsible Entity must determine the income of the Fund in respect of the Financial Year, for each of taxation purposes and accounting purposes (which may be different amounts);
- (b) the Responsible Entity must provide for, and pay from the Assets of the Fund when appropriate, all taxation attributable to the income of the Fund;
- (c) the Members will not have a present entitlement at the end of a Distribution Period to the net income of the Fund;
- (d) the Responsible Entity may from time to time, including during the Financial Year, determine to pay distributions in respect of the Financial Year (each a "**Distributable Amount**") to the Members on the Register on any date determined by the Responsible Entity ("**Books Closing Date**");

⁵⁷ It is suggested that this clause be excluded unless needed for the particular fund, as it may run the risk of the Fund not being a fixed trust for tax purposes.

- (e) in respect of a Distributable Amount being paid to Members under this clause 15.22:
- (i) the Responsible Entity may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
 - (ii) the Responsible Entity must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies; and
- (f) subject to any rights attaching to any Unit, a Member is entitled to a portion of the Distributable Amount, calculated as follows:

$$\frac{A \times C}{B}$$

where:

- A = the aggregate of the number of Units held by the Member at the Books Closing Date;
- B = the aggregate of the number of Units in issue at the Books Closing Date; and
- C = the Distributable Amount.

15.23 Liability

To the maximum extent permitted by law, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 15 or under the AMIT Regime in respect of an AMIT Income Year, or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

15.24 Other distributions

The Responsible Entity may at any time:

- (a) distribute any amount of capital to Members pro rata according to the number of Units they hold as at a time decided by the Responsible Entity; or.
- (b) distribute any amount of income, [or income and capital as components of Distributable Income](#), to Members pro rata according to the number of Units they hold as at a time decided by the Responsible Entity.

The distribution may be in cash or by way of additional Units or a transfer of Assets under clause 16.5. The distribution must be paid as soon as is reasonably practicable.

15.25 Member may direct

The Responsible Entity may act on a direction given by a Member in such form as the Responsible Entity requires to pay to a third party nominated in the direction all or part of the Member's entitlement to distributions of income and capital under this clause 15 or under clause 27 on winding up.

15.26 Classes

The rights of a Member under this clause 15 are subject to the rights, obligations and restrictions attaching to any particular Unit or the Class of Units which they hold.

15.27 Former Members

For the purposes of clauses 15.15 to 15.18, and notwithstanding clause 1.1, references to a "Member" or "Members" (other than in this clause 15.27) are taken to include former Members who were Members of the Fund during the relevant AMIT Income Year or, as appropriate, during an earlier AMIT Income Year. This clause 15.27 does not affect the interpretation of any clause of this constitution other than clauses 15.15 to 15.18.

15.28 Partly Paid Units

A Unit which is a Partly Paid Unit participates in the distribution of Distributable Income or the Distributable Amount as if it were a Fully Paid Unit.

16 Payments

16.1 Payment method

Money payable by the Responsible Entity to a Relevant Security Holder may be paid in any manner the Responsible Entity decides.

16.2 Cheques

Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Relevant Security Holder, the money is to be held by the Responsible Entity for the Relevant Security Holder or paid by the Responsible Entity in accordance with the legislation relating to unclaimed moneys.

16.3 Electronic transfers

Where the Responsible Entity attempts to make a payment by electronic transfer of funds to a Relevant Security Holder and the transfer is unsuccessful on 3 occasions, the money may be held by the Responsible Entity for the Relevant Security Holder or paid by the Responsible Entity in accordance with the legislation relating to unclaimed moneys.

16.4 Rounding

Only whole cents are to be paid, and any remaining fraction of a cent becomes an Asset.

16.5 Transfer of Assets

The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a redemption request, in payment of a distribution of income or capital, amounts owing under a buyback or as part of the winding up of the Fund or any other amounts owing to the Member in respect of the Fund, either:

- (a) with the consent of the Member; or

- (b) if the Responsible Entity reasonably considers the transfer of Assets rather than cash is in the best interests of Members, without the consent of the Member.

The Assets transferred, together with any cash paid, must be of equal value to the total amount due to the Member (based on a valuation which is consistent with the range of ordinary commercial practice for valuation of assets of that type and is reasonably current, having regard to the type of asset involved and prevailing market conditions). If paragraph (a) of this clause 16.5 applies, the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

For the purposes of this clause 16.5, the Responsible Entity will be taken to have transferred Assets to a Member or former Member where the Responsible Entity has done everything reasonably necessary on its part to convey the Assets to the Member or former Member.

16.6 Joint Relevant Security Holders

A payment to any one of joint Relevant Security Holders will discharge the Responsible Entity in respect of the payment.

16.7 Deduction of Tax or amounts owing

The Responsible Entity may deduct from any amount to be paid to a Relevant Security Holder, or received from a Relevant Security Holder, any amount of Tax (or an estimate of it) or any other amount owed by the Relevant Security Holder to the Responsible Entity or any other person which the Responsible Entity is required or authorised to deduct by law or by this constitution or which the Responsible Entity considers should be deducted, including under clauses 15.17(a)(iii), 24.3 or 24.4.

17 Powers of the Responsible Entity

17.1 General powers

- (a) Subject to this constitution, the Responsible Entity has all the legal capacity and powers both inside and outside Australia in respect of the Fund that it is possible under the law to confer on a trustee and as though the Responsible Entity were an individual who is the absolute owner of the Assets acting in their personal capacity.
- (b) Except as provided in clause 14, the Responsible Entity is not, and nothing in this constitution entitles the Responsible Entity to act as, the agent of any Member or Members. This is so despite any directions or instructions the Member or Members may give or may be entitled to give to the Responsible Entity.

17.2 Contracting and borrowing powers⁵⁸

Without limiting clause 17.1, the Responsible Entity in its capacity as trustee of the Fund has power to enter into any form of contract and to incur all types of obligations and liabilities including:

⁵⁸ Required to be included by Section 601GA(3).

- (a) to borrow and raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities) including to issue Financial Instruments;
- (b) to grant all types of security (whether for the obligations of the Responsible Entity or another person);
- (c) to grant guarantees and indemnities; and
- (d) to enter into derivatives.

17.3 Investment and lending powers

Without limiting clause 17.1, the Responsible Entity may in its capacity as trustee of the Fund invest in, dispose of or otherwise deal with property and rights in its absolute discretion. This includes the power to:

- (a) invest the whole or part of the Assets in a single type of asset, or in trusts managed or controlled by the Responsible Entity or its related body corporate, or such other investments as the Responsible Entity determines; and
- (b) lend money and on-lend or provide financial accommodation to any person.

17.4 Power of delegation⁵⁹

The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.

17.5 Terms of delegation

The Responsible Entity may include provisions in the authorisation to protect and assist those dealing with the agent or delegate and to limit the Responsible Entity's liability, as the Responsible Entity thinks fit.

17.6 Delegate may be an associate

The agent or delegate may be an associate of the Responsible Entity.⁶⁰

17.7 Exercise of discretion

Subject to this constitution, the Responsible Entity may in its absolute discretion decide how, when and how often to exercise its powers.

17.8 Underwriting

Subject to the Corporations Act, the Responsible Entity may enter into an agreement with a person (including an associate of the Responsible Entity) to underwrite the subscription or purchase of Units, Options or Financial Instruments or to manage the offer of Units, Options or Financial Instruments on such terms as the Responsible Entity determines. Unless the agreement expressly states otherwise, the underwriter or offer manager will not be an agent or delegate of the Responsible Entity.

⁵⁹ See also Section 601FB.

⁶⁰ Subject to Part 5C.7.

17.9 Rights and powers in relation to the AMIT Regime

- (a) Without limiting clause 17.1, the Responsible Entity has, in addition to its other rights and powers provided for under this constitution and at law:
- (i) the power to make an election to determine that the Fund is an AMIT;
 - (ii) the power to make an AMIT Class Election; and
 - (iii) all of the powers and rights which are necessary for or desirable, and may take any steps necessary to enable the Fund to be able to be operated as an AMIT, including:
 - (A) being eligible to apply the AMIT Regime;
 - (B) complying with the requirements of the AMIT Regime;
 - (C) being properly administered and operated under the AMIT Regime; and
 - (D) maintaining equity between the Members as a result of the operation of the AMIT Regime.
- (b) If the Fund is not an AMIT for a Financial Year but the Responsible Entity purports to exercise a power in the reasonable belief that the Fund will or will not be an AMIT for the Financial Year, then the following provisions apply in respect of the exercise of the relevant power:
- (i) the exercise of the powers by the Responsible Entity will, to the maximum extent possible be treated as a proper exercise of the Responsible Entity's powers under this constitution and the Corporations Act (if applicable) and otherwise at law and binding on Members; and
 - (ii) to the extent that any of these powers depends, for its operation, on the Fund being or not being an AMIT for the Financial Year, the Fund will be treated as if it were or were not (respectively) an AMIT for the purposes of that power.
- (c) In circumstances where the Fund is not or ceases to be a Registered Scheme, the Responsible Entity must only exercise the powers and discretions set out in this constitution in an AMIT Income Year in such a way to ensure that the rights of each Member under this constitution are clearly defined for the purposes of the AMIT Regime.

18 Retirement of Responsible Entity⁶¹

18.1 While a Registered Scheme

While the Fund is a Registered Scheme, the Responsible Entity:

- (a) may retire as the responsible entity of the Fund as permitted by law;⁶² and

⁶¹ Refer to Listing rule 3.16.2(a).

⁶² See section 601FL. The change does not take effect until the ASIC alters its records: section 601FJ.

- (b) must retire as the responsible entity of the Fund when required by law.

Subject to the Corporations Act, the Responsible Entity may appoint in writing, or propose the appointment of, another person to be the Responsible Entity.

18.2 While not a Registered Scheme

While the Fund is not a Registered Scheme, the Responsible Entity:

- (a) may retire as the trustee of the Fund on not less than 1 month's notice to Members (or any shorter period as they agree); and
- (b) must retire as the trustee of the Fund if required by law or by all Members.

On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.⁶³

18.3 New Responsible Entity

Any replacement Responsible Entity must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

18.4 Release

When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.⁶⁴

19 Notices to Relevant Security Holders⁶⁵

19.1 Notice

Subject to the Corporations Act, a notice or other communication required to be given to a Relevant Security Holder in connection with the Fund must be given in writing (including by fax or email) or in such other manner as the Responsible Entity determines, and be delivered or sent to the Relevant Security Holder at their physical or electronic address last advised to the Responsible Entity for delivery of notices.

19.2 Cheques

A cheque payable to a Relevant Security Holder may be posted to their physical address or handed to them or a person authorised in writing by them.⁶⁶

19.3 Joint Relevant Security Holders

In the case of joint Relevant Security Holders, their physical or electronic address means the physical or electronic address of the Relevant Security Holder first named in the Register.

⁶³ See section 601FM and 601FA. Note that Listing Rules 13.3 and 13.4 do not apply to a managed investment scheme.

⁶⁴ See section 601FR for the Responsible Entity's obligation to transfer records, etc. Section 601FS restricts this release.

⁶⁵ While Units are Officially Quoted, notices to Members must be copied to ASX - refer to Listing Rule 3.17.

⁶⁶ See clause 22.3(c).

19.4 When notice received

Subject to the Corporations Act,⁶⁷ a notice or other communication sent to a Relevant Security Holder:

- (a) by post is taken to be received on the Business Day after it is posted;
- (b) by fax is taken to be received 1 hour after receipt by the transmitter of confirmation of transmission from the receiving fax machine; and
- (c) by email is taken to be received 1 hour after it is sent if the sender has not received a notice of non-delivery.

A cheque is taken to be received on the Business Day after it is posted.

Proof of actual receipt is not required. The Responsible Entity may determine⁶⁸ the time at which other forms of communication will be taken to be received.

20 Notices to the Responsible Entity

20.1 Form of notice

A notice required under this constitution to be given to the Responsible Entity must be given in writing (including by fax), or in such other manner as the Responsible Entity determines.

20.2 When notice received

A notice to the Responsible Entity is effective only at the time of receipt in legible form.

20.3 Signature

The notice must bear the actual, facsimile or electronic signature of the Relevant Security Holder or their duly authorised officer or representative,⁶⁹ unless the Responsible Entity dispenses with this requirement.

21 Meetings of Members

21.1 Convening of meetings

The Responsible Entity may at any time convene a meeting of Members, and must do so if required by the Corporations Act.⁷⁰

21.2 Members' request for meeting - not Registered Scheme

While the Fund is not a Registered Scheme:

- (a) the Responsible Entity must call and arrange to hold a meeting of Members to consider and vote on a proposed Resolution on the request of Members with at least 15% of the votes that may be cast on the resolution; and

⁶⁷ See section 601FC(1)(d).

⁶⁸ See section 252G(4).

⁶⁹ See clause 22.3(c).

⁷⁰ Refer to Part 2G.4.

- (b) sections 252B(2), (3), (6), (7) and (8) of the Corporations Act apply to the calling of a meeting referred to in sub-paragraph (a) as if the Fund were a Registered Scheme.

21.3 Members' request for meeting - Registered Scheme

While the Fund is a Registered Scheme, the provisions of the Corporations Act⁷¹ apply to determine the circumstances if any in which a meeting must be convened on the request of Members.

21.4 Notice period

While the Fund is not a Registered Scheme, at least 10 days' notice of a meeting must be given to Members, or such shorter notice as they agree.

21.5 Notice while Registered Scheme

While the Fund is a Registered Scheme, the requirements for notice of meetings of Members are governed by the Corporations Act.

21.6 Responsible Entity may determine

Subject to this clause 21, the Corporations Act⁷² and the Listing Rules, the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted including a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.⁷³

21.7 Quorum

The quorum for a meeting of Members is at least 3 Members present in person or by proxy, and:

- (a) if one or more of those Members is excluded from voting on any Resolution proposed at the meeting they may still be counted towards the quorum; and
- (b) if the Fund has only one Member, that one Member may appoint two proxies⁷⁴ each to exercise a proportion of the Member's votes at the meeting, and those 2 proxies will constitute a quorum.

21.8 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Members - dissolved; or
- (b) otherwise - adjourned to such place and time as the Responsible Entity decides.

⁷¹ Section 252B.

⁷² Refer to Part 2G.4, especially sections 253C - voting rights, and 252W - proxies. See also clause 32 - Restricted securities.

⁷³ Refer to Listing Rules 3.13.2, 3.13.3, 6.10, 7.3, 10.10, 10.11 and 10.14.

⁷⁴ Section 252V(3) allows 2 proxies.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

21.9 Chairman

Subject to the Corporations Act,⁷⁵ the Responsible Entity may appoint a person to chair a meeting of Members.

21.10 Conduct of meeting

The decision of the chairman on any matter relating to the conduct of the meeting is final.

21.11 Adjournment

The chairman has power to adjourn a meeting for any reason to a place and time as the chairman thinks fit.

21.12 Postponement or cancellation

The chairman has power to cancel a meeting or postpone a meeting for any reason to a place and time as the chairman thinks fit.

21.13 Voting - not a Registered Scheme

- (a) While the Fund is not a Registered Scheme, voting is by a show of hands, unless a poll is duly demanded or the Resolution proposed is required by this constitution or by law to be decided by a percentage of all Units.
- (b) Subject to the rights, obligations and restrictions attaching to any particular Units, each Member who is present in person or by proxy has:
 - (i) on a show of hands, one vote; and
 - (ii) on a poll, one vote for each Unit held.
- (c) In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees.

21.14 Voting - Registered Scheme

While the Fund is a Registered Scheme, subject to clause 21.17, the provisions of the Corporations Act governing voting for meetings of members of Registered Schemes apply to the Fund.

21.15 Proxies

Subject to clause 21.16, the provisions of the Corporations Act governing proxies for meetings of members of Registered Schemes apply to the Fund.⁷⁶

⁷⁵ Refer to Part 2G.4, in particular section 252S.

⁷⁶ This provision is included for completeness - while the Fund is a Registered Scheme the law operates of its own force.

21.16 Validity of proxy

The Responsible Entity may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.⁷⁷

21.17 Demand for a poll

A poll may be demanded by the chairman, or by Members present in person or by proxy holding at least 5% of Units.

21.18 Resolutions binding

A Resolution by:

- (a) Members binds all Members; or
- (b) Members of a Class, binds all Members of that Class,

whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

21.19 Objection at meeting

No objection may be made to any vote cast unless the objection is made at the meeting.

21.20 Non-receipt

If a Member does not receive a notice (including if notice was accidentally omitted to be given to them) the meeting is not invalidated.

21.21 Option Holders and Financial Instrument Holders

Clauses 21.1 to 21.20 apply to meetings of Option Holders and Financial Instrument Holders with any necessary modifications.

21.22 Class meetings

Subject to the Corporations Act, the provisions of this deed relating to meetings of Members apply so far as they are capable of application to a meeting of a Class of Members.

22 Rights and liabilities of Responsible Entity

22.1 Holding Units

The Responsible Entity and its associates may hold Units in the Fund, or interests in any trust or company which is an associate of any of them, in any capacity.⁷⁸

⁷⁷ Section 252Y(1) specifies the information which is normally to be included in an appointment of a proxy.

⁷⁸ See section 601FG, section 253E and Part 5C.7.

22.2 Other capacities

Subject to the Corporations Act,⁷⁹ the Responsible Entity (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Fund or in another capacity), its associates or with any Member, including to engage any of its associates to provide services to the Responsible Entity or to redeem Units it has acquired as a result of forfeiture and vesting under clause 7.6;
- (b) be interested in any contract or transaction with itself (as trustee of the Fund or in another capacity), its associates or with any Member or any other person; and
- (c) act in the same or a similar capacity in relation to any other managed investment scheme or trust,

and retain for its own benefit any profits or benefits derived from any of these acts, dealings, relationships, capacities, contracts or transactions.

22.3 Responsible Entity may rely

The Responsible Entity may take and may act on:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Responsible Entity, in relation to applicable law or the interpretation of this constitution or any other document or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are believed by the Responsible Entity in good faith to be expert in relation to the matters on which they are consulted;
- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Relevant Security Holder of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Responsible Entity in connection with the Fund on which it is reasonable for the Responsible Entity to rely,

and the Responsible Entity will not be liable for anything done or omitted by it in good faith in reliance on any opinion, advice, statement, information or document.

23 Limitation of liability and indemnity in favour of Responsible Entity

23.1 Limitation on Responsible Entity's liability

While the Fund is a Registered Scheme, the Responsible Entity is not liable in contract, tort or otherwise to Relevant Security Holders for any loss suffered in any way relating to the Fund except to the extent that the Corporations Act imposes such liability.

⁷⁹ Refer to Part 5C.7, and see also Listing Rule 10.1.

23.2 Liability while Fund is not a Registered Scheme

While the Fund is not a Registered Scheme, if the Responsible Entity acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Relevant Security Holders for any loss suffered in any way relating to the Fund.

23.3 Liability limited to Assets

Subject to the Corporations Act, the liability of the Responsible Entity to any person other than a Member in respect of the Fund including any contracts entered into as trustee of the Fund or in relation to any Assets is limited to the Responsible Entity's ability to be indemnified from the Assets.

23.4 Indemnity in favour of Responsible Entity

The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in relation to the proper performance of its duties, whether incurred by exercise of its powers under this constitution or by any other act, omission or circumstance.⁸⁰

23.5 Liability for agents

To the extent permitted by the Corporations Act,⁸¹ and otherwise without limitation, the indemnity under clause 23.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.

23.6 Indemnity continues

The indemnity in clause 23.4 is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as trustee of the Fund.

23.7 Right of indemnity not affected by unrelated breach

Where a Liability is incurred pursuant to a proper exercise of the Responsible Entity's powers under this constitution or at law, the Responsible Entity may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that Liability to any creditor or the Responsible Entity (in its capacity as trustee or responsible entity of the Fund), despite any loss the Fund may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the Responsible Entity or by any person or entity acting on behalf of the Responsible Entity.

23.8 Limitation of liability for AMIT Regime powers

Without limiting any other provision of this clause 23, to the maximum extent permitted by law but subject to the Corporations Act while the Fund is a Registered Scheme, the Responsible Entity does not incur any liability nor is it obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage:

- (a) as a result of the exercise of any discretion or power under clauses 15.15 to 15.18 and 17.9 or under the AMIT Regime;

⁸⁰ See section 601GA(2).

⁸¹ See sections 601FB(2) and 601GA(2).

- (b) in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax; or
- (c) as a result of any act, matter or thing done or omitted to be done by a Member or former Member in relation to an objection to the basis of attribution of the Trust Components under the AMIT Regime, including by the Member or former Member making a Member Objection Choice.

24 Liability of Relevant Security Holders

24.1 Liability limited

Subject to clauses 24.3 and 24.6, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

24.2 Member need not indemnify

A Member need not indemnify the Responsible Entity if there is a deficiency in the Assets or meet the claim of any creditor of the Responsible Entity in respect of the Fund.

24.3 Tax or User Pays Fees

The Responsible Entity is entitled to be indemnified by a present or former Relevant Security Holder to the extent that the Responsible Entity incurs any liability for Tax or User Pays Fees as a result of:

- (a) that person's action or inaction; or
- (b) an act or omission requested by that person ; or
- (c) any other matter arising in connection with Relevant Securities held by that person,

but, in the absence of a separate agreement with the Relevant Security Holder, is not otherwise entitled to be indemnified by them.

24.4 AMIT indemnity

Without limiting clause 15.17(a)(iii) or 24.3, the Responsible Entity is entitled to be indemnified by a Member or former Member for:

- (a) any Tax (or an estimate of it) payable by the Responsible Entity under or in connection with the AMIT Regime and which the Responsible Entity determines is properly referable to the Member or former Member; and
- (b) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member or former Member under clause 23.4 in the circumstances contemplated in clause 24.4(a).

24.5 Joint Relevant Security Holders

Joint Relevant Security Holders are jointly and severally liable in respect of all payments, including payments in respect of Partly Paid Units and payments of Tax and User Pays Fees to which clause 24.3 applies.

24.6 Recourse

In the absence of separate agreement with a Relevant Security Holder, the recourse of the Responsible Entity or any creditor, and any person claiming through them, is limited to the Assets.

24.7 Restrictions

a Relevant Security Holder:

- (a) must not interfere with any rights or powers of the Responsible Entity under this constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
- (c) may not require an Asset to be transferred to them.

25 Remuneration and expenses of Responsible Entity

25.1 Fees payable from the Assets

The fees in clauses 25.3 and 25.4 are payable to the Responsible Entity out of the Assets.

25.2 Fees subject to Corporations Act

While the Fund is a Registered Scheme, the fees in clauses 25.3 and 25.4 may only be paid to the Responsible Entity to the extent they are payable in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Fund.⁸²

25.3 Structuring fee and handling fee

- (a) The Responsible Entity is entitled, to the extent and in the manner set out in this clause 25.3, to apply in respect of each application for Units which it Accepts under an offer of Units ("Offer"):
 - (i) a structuring fee for structuring and documenting the Offer of up to 2.5% of the gross proceeds of the Offer; and
 - (ii) a handling fee for processing each application for Units of up to 2.5% of the gross proceeds of the Offer,

and for this purpose the "gross proceeds of the Offer" means the Units in respect of which applications have been Accepted, multiplied by the relevant Application Price.

- (b) While the Trust is Listed or the Offer Document for the relevant Units states that the Trust is to be Listed following upon the issue of those Units, the whole of the Application Price for the Units including these fees becomes an Asset, and the fees are payable to, or as directed by, the Responsible Entity from the Assets immediately after the Units are issued.
- (c) While the Trust is not Listed:

⁸² See section 601GA(2) and ASIC RG 134.122.

- (i) although the handling fee is included as a component of the Application Price, and is not deducted from the value of the application money or property for the purpose of calculating the number of Units to be issued, the amount of the handling fee must be set aside and retained in the Applications Account until paid at the direction of the applicant, and is not paid into the Fund as an Asset or otherwise to, or for the benefit of, the Responsible Entity; and
- (ii) the remainder of the Application Price after setting aside the handling fee under paragraph (i) is paid into the Fund and becomes an Asset, and the structuring fee is payable to, or as directed by, the Responsible Entity from the Assets immediately after the Units are issued.

25.4 Management fee

- (a) Subject to clause 25.4(b), ~~The~~ the Responsible Entity is entitled to be paid out of the Assets within 10 Business Days of the beginning of each month a monthly management fee (“Management Fee”) equivalent to:
 - (i) a responsible entity fee of 0.50% per annum of the sum of the Gross Value of the Assets and the total of Uncalled Amounts (if any), calculated as at the end of the month preceding the date of payment of the Management Fee, in respect of the operation of the Fund for that prior month; and
 - (ii) an administration fee of 0.50% per annum of the sum of the Gross Value of the Assets and the total of Uncalled Amounts (if any), calculated as at the end of the month preceding the date of payment of the Management Fee, in respect of the operation of the Fund for that prior month.

In relation to the month in which the Fund is first registered with ASIC, the Responsible Entity will perform its duties from the date of registration and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month.

(b) ~~Despite any other provision of this constitution, the Responsible Entity is not entitled to the Management Fee under clause 25.4(a) in respect of any period when the Fund has only one Member.~~

~~(b)~~(c) Where the Management Fee was not paid for a particular month or part month or not in full, the Management Fee payable in a subsequent month will be the aggregate of the Management Fee payable for that month plus the amount that should have been paid for the prior month, part month or months that it was not paid, with the final payment to be prorated if such payment is for a period less than a full month.

The Management Fee is payable first out of income of the Fund and then out of capital.

25.5 Deferral and waiver of fees

The Responsible Entity may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period and may also charge variable fees:

- (a) while the Fund is a Registered Scheme, in relation to any Class or Members generally, if and to the extent permitted by the Corporations Act (including the conditions of any applicable ASIC Relief), based on

bands, tiers or other criteria nominated in the relief instrument or by the Responsible Entity; or

- (b) while the Fund is not a Registered Scheme, in relation to any Member.

If payment is deferred, the relevant fee accrues daily until paid.

25.6 Expenses

All expenses incurred by the Responsible Entity in connection with the Fund are payable or reimburseable out of the Assets or out of the assets of a controlled sub trust of the Fund, but while the Fund is a Registered Scheme reimbursement or payment is only available in relation to the proper performance of the Responsible Entity's duties as responsible entity of the Fund⁸³ and is reimburseable out of the Assets (or the assets of the sub trust as the case may be) to the extent that reimbursement is not prohibited by the Corporations Act. This includes the expenses connected with the following:

- (a) this constitution, the formation of the Fund and any investment vehicle in which the Fund expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
- (b) registration of the Fund as a Registered Scheme;
- (c) the preparation, review, distribution and promotion of any product disclosure statement, offering memorandum or other disclosure document in respect of Relevant Securities or other promotion of the Fund;
- (d) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
- (e) any proposed acquisition, disposal or other dealing with any investment;
- (f) borrowing arrangements and raising money on behalf of the Fund or guarantees in connection with the Fund, including hedging costs, and costs relating to interest rate swaps or any gearing facility;
- (g) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management, supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Fund has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (h) the services of asset managers, property managers, development managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any real property in which the Fund has a direct or indirect interest, which may include an associate of the Responsible Entity;
- (i) the Investment Management Agreement including base management or performance fees and expenses payable to the Manager;
- (j) rates, development, repair, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants, costs of

⁸³ Refer to section 601GA(2)(b).

leasing (including marketing) and leasing incentives in relation to any real property in which the Fund has a direct or indirect interest;

- (k) travel and accommodation expenses of directors and employees of the Responsible Entity in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed Asset;
- (l) the administration or management of the Fund or its Assets and Liabilities, including expenses in connection with maintaining the Register and dealings with Relevant Securities;
- (m) costs of the admission of the Fund to the Official List and compliance with the Listing Rules;
- (n) underwriting or managing any subscription or purchase of Relevant Securities, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Responsible Entity of its obligations, representations or warranties under such agreement;
- (o) convening and holding meetings of Relevant Security Holders, the implementation of any Resolutions and communications with Relevant Security Holders;
- (p) Tax (including any amount charged by a person making a supply to the Responsible Entity by way of or as a reimbursement for GST), costs incurred in the implementation and application of the AMIT Regime, and financial institution fees;
- (q) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (r) accounting and compliance with taxation laws and procedures (whether internal expenses of the Responsible Entity or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Fund;
- (s) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (t) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph must be repaid;
- (u) all damages, expenses, payments, legal and other costs and disbursements incurred by the Responsible Entity in relation to or in connection with any claim, dispute or litigation (“**Claim**”) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Fund including any project document in connection with the investment and any offering document or borrowing document in connection with the Fund except where the Claim arises out of the fraud or wilful default of the Responsible Entity;

- (v) any compliance committee established by the Responsible Entity in connection with the Fund, including any fees paid to or insurance premiums⁸⁴ in respect of Compliance Committee Members;
- (w) while the Fund is a Registered Scheme and there is no compliance committee, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (x) fees payable to any audit committee for the Fund appointed in accordance with ASX corporate governance guidelines or otherwise;
- (y) the preparation, implementation, amendment and audit of the compliance plan;
- (z) the cost of handling complaints from Members and resolving disputes with them, including the cost of membership of an external dispute resolution scheme;
- (aa) the cost of the Responsible Entity employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Fund;
- (bb) complying with any law, and any request or requirement of ASIC or ASX; and
- (cc) in connection with any CCIV Proposal, Top Hat Proposal, Exchange Proposal or any other Reorganisation Proposal.

In this clause 25, "Expenses" includes amounts paid by the Responsible Entity to related bodies corporate for services where the expenses would have been reimburseable had they been incurred by the Responsible Entity.

25.7 GST

Except where stated otherwise, all amounts in this constitution do not include any amount payable on account of GST. If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this constitution then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid out of the Assets an additional amount on account of GST. This amount is to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST.

In relation to fees that are expressed as GST inclusive in this constitution, this clause applies only to the extent to which there has been an increase in the rate of GST so that the new GST inclusive fee is determined by converting the existing GST inclusive fee to a GST exclusive figure and multiplying it by the prevailing rate of GST.

25.8 Input tax credits

If the Responsible Entity is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Responsible Entity by any person, or payable by the Responsible Entity by way of reimbursement of GST

⁸⁴ See section 601JG.

referable directly or indirectly to any supply made under or in connection with this constitution, the Responsible Entity is entitled to recover from the Fund by way of reimbursement an additional amount equivalent to the amount of the input tax.

25.9 Amendment of certain provisions is contemplated

Without limiting clause 28, the Responsible Entity has power to amend any part of this clause 25 with the effect of increasing or decreasing any amount of fees due to it, or introducing new types of fees, or to otherwise amend, delete or replace any of the provisions of this clause 25 if:

- (a) while the Fund is a Registered Scheme, the Responsible Entity complies with any applicable requirements of the Corporations Act relating to:
 - (i) amending the constitution of a Registered Scheme,⁸⁵ and
 - (ii) increasing fees or charges in relation to a Registered Scheme,⁸⁶ or
- (b) while the Fund is not a Registered Scheme, the Responsible Entity obtains the written consent of the sole Member or, if there is more than one Member, gives at least five Business Days' prior notice to Members of the amendment or complies with clause 28.2.

26 Duration of the Fund

26.1 Initial settlement

The Fund commences when one or more persons subscribe \$16 each or another amount determined by the Responsible Entity or, at the discretion of the Responsible Entity, transfers property acceptable to the Responsible Entity, for Units in the Fund ("**Initial Units**") and the Responsible Entity issues Units to that person in return for that payment or transfer. The Application Price for Units issued under this clause is \$1.60, and the price may be paid in instalments as the Responsible Entity determines. The Initial Units will be automatically redeemed immediately upon the issue of Units under clause 9.1(a) or any other issue of Units, without the need for a redemption request, at a Redemption Price of \$1.60 per Unit.

26.2 Termination

The Fund terminates on the earliest of:

- (a) while the Fund is a Registered Scheme;
 - (i) a date which the Members determine by extraordinary resolution (as defined in the Corporations Act); or
 - (ii) a date determined by the Responsible Entity and advised to Members by notice in writing not less than 60 days before the proposed date of termination;
- (b) while the Fund is not a Registered Scheme, a date determined by the Responsible Entity and specified in a notice to Members sent at least 1

⁸⁵ Section 601GC.

⁸⁶ Section 1017B(4).

month before the proposed termination, unless all Members consent to shorter notice; and

- (c) the date on which the Fund terminates in accordance with clause 26.3, any other provision of this constitution, or by law.⁸⁷

26.3 Change in taxation

If at any time legislation is enacted the result of which is that the Responsible Entity is liable to pay any income tax or capital gains tax (other than withholding tax or tax of a similar nature) on the income of the Fund other than income not distributed to Members, the Responsible Entity may call a meeting of the Members to consider winding up the Fund and if by special resolution the meeting so decides, the Responsible Entity may wind up the Fund.

26.4 Restriction on issue and redemption of Units

Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Fund commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

27 Procedure on termination

27.1 Realisation of Assets and payment of expenses

Following termination, the Responsible Entity must:

- (a) realise the Assets except to the extent it determines to distribute Assets to Members in accordance with clause 16.5 pro rata according to their holding of Units as part of winding up of the Fund; and
- (b) make payments (or set aside estimated amounts) from the Assets to pay the Fund's expenses and liabilities, and the costs or anticipated costs of winding up the Fund. These amounts will reduce the proceeds of winding up that a Member may otherwise receive, but a Member is not required to pay any of these amounts from their own funds.⁸⁸

To the extent that realisation of Assets is required, this must be completed in 180 days if practical and in any event as soon as possible after that. The Responsible Entity may, however, postpone realisation of the Assets or any Asset if the Responsible Entity reasonably considers it would be in the best interests of Members to do so and the Responsible Entity is not responsible for any consequent loss or damage attributable to that postponement.

27.2 Auditor and liquidator

- (a) If, at the time it is to be wound up, the Fund is a Registered Scheme, the Responsible Entity must arrange for an independent audit of the final accounts of the Fund by a registered company auditor.⁸⁹
- (b) If the Fund is to be wound up because its Liabilities exceed its Assets or there is expected to be insufficient cash for the Responsible Entity to meet Liabilities from the Assets as and when they fall due, the Responsible Entity may appoint an appropriately qualified liquidator to

⁸⁷ See Part 5C.9 on winding up.

⁸⁸ ASIC RG 134.192.

⁸⁹ ASIC RG 134.200, 134.201.

carry out the winding up, and delegate to the liquidator the powers of the Responsible Entity under this constitution as necessary to facilitate the winding up.⁹⁰

27.3 Distribution following termination

Subject to clause 16.5, the net proceeds of realisation, after making allowance for all Liabilities of the Fund (actual and anticipated) including entitlements of Members to a share of Distributable Income, meeting the expenses (including anticipated expenses) of the termination, and taking into account Assets which are to be distributed pro rata to Members as part of the winding up, must be distributed to Members in accordance with the following formula for the amount a particular Member is to receive:

$$\frac{(A + X) \times B}{C} - Y$$

Where:

- A = the amount remaining in the Fund, excluding unpaid amounts in relation to Partly Paid Units and any interest on those amounts (if applicable), after deduction of the Liabilities and expenses referred to in this clause 27.3;
- B = the aggregate of the number of Units held by the Member as at termination, including both Fully Paid Units and Partly Paid Units;
- C = the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid Units;
- X = the aggregate of the amounts remaining unpaid on all Partly Paid Units in issue (if any) and interest (if applicable); and
- Y = the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Member (if any) as at termination and interest (if applicable).

If the calculation of the entitlement to distribution of capital in respect of a particular Member in accordance with the formula in this clause 27.3 results in a negative dollar amount, then that Member must pay to the Responsible Entity within 30 days of the date of a written request to do so that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the winding up of the Fund.

The Responsible Entity may distribute any Assets and the net proceeds of realisation in instalments.

27.4 Provisions continue to apply

Subject to the Corporations Act and this constitution, the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 27.3, but during that period the Responsible Entity may not:

- (a) accept any applications for Units from a person who is not an existing Member and the Responsible Entity is under no obligation to consider or process redemption requests received after the date of termination; or

⁹⁰ ASIC RG 134.198.

- (b) accumulate an amount under clause 15.5(a)(i) for the last Distribution Period of the Fund.

28 Amendments to this constitution

28.1 Responsible Entity may amend

Subject to the Corporations Act,⁹¹ while the Fund is a Registered Scheme, this constitution may be amended:

- (a) by Resolution;⁹² or
- (b) by deed executed by the Responsible Entity.

If the constitution is amended by Resolution, the Responsible Entity may give effect to the amendments by executing a supplemental deed.

28.2 While not a Registered Scheme

While clause 28.1 does not apply, the Responsible Entity may by deed amend this constitution.

28.3 Attribution Managed Investment Fund

Without limiting the Responsible Entity's powers in clauses 28.1 or 28.2, but subject to the Corporations Act, the Responsible Entity may make any change to this constitution or take any other action which the Responsible Entity reasonably believes is necessary or desirable to:

- (a) facilitate compliance with the preconditions for the operation of the AMIT Regime in relation to the Fund;
- (b) facilitate compliance with the terms of the AMIT Regime in relation to the Fund, including any provisions of the AMIT Regime that, if not complied with, would result in any additional liability or penalty for the Responsible Entity or Members;
- (c) facilitate the proper administration and operation of the Fund under the AMIT Regime and ensure that there is an appropriate and equitable application of the powers and rights of the Responsible Entity and Members that arise under the AMIT Regime; or
- (d) comply with the conditions of any ASIC Relief issued in relation to the AMIT Regime, or facilitate operation of the Fund in reliance on such relief.

29 Regulatory provisions and paramountcy

29.1 Listing Rules⁹³

While the Fund is included in the Official List:

⁹¹ See section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with ASIC.

⁹² The required majority under section 601GC(1)(a) is 75%.

⁹³ See ASX Listing Rules Appendix 15A.

- (a) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act will not be done;
- (b) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is taken to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains the provision, this constitution is taken not to contain that provision; and
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.

29.2 Corporations Act and ASIC Relief

- (a) If the Corporations Act requires that this constitution contain certain provisions, or if ASIC Class Order [CO 13/655] (or any other ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Fund and the Responsible Entity) requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("**Required Provisions**"); or
- (b) if any part of this constitution (a "**Required Part**") is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX ("**Regulatory Requirement**") and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is taken to be amended so that the Required Provisions are included as separate provisions, or the Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

The Members:

- (i) authorise the Responsible Entity to make the amendments referred to in this clause 29.2 in a deed and, if required, to lodge it with ASIC; and
- (ii) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

29.3 Application of Corporations Act and Listing Rules

In this constitution:

- (a) except as otherwise provided in a particular clause or by law, a requirement of the Corporations Act only applies while the Fund is a Registered Scheme; and
- (b) a requirement of the Listing Rules only applies while the Fund is Listed.

29.4 ASIC Class Orders

In accordance with ASIC Class Order [CO 98/1808]⁹⁴ or its equivalent or any similar ASIC Relief from subsections 601GC(1) and (2) of the Corporations Act, and for so long as they apply to the Fund, a change in the text of this constitution because of the operation of clause 29.2 that is covered by the relief instrument is not a modification of, or the repeal and replacement of, the constitution for the purposes of subsections 601GC(1) and (2) of the Corporations Act⁹⁵. Changes in the text of the constitution to which this clause 29.4 applies are made pursuant to the power in clause 28.1 but in respect of those changes the requirements of clause 28.1 are to be read subject to this clause 29.4.

29.5 Paramountcy of provisions

Subject to the Corporations Act and the Listing Rules, the following provisions prevail over other provisions of this constitution in the following order to the extent of any inconsistency:

- (a) first, clauses 29.1 and 29.2 and provisions taken to be included or amended under them; and
- (b) then, the Reorganisation Proposals set out in clauses 14.1 to ~~14.5~~14.4.

Paragraphs (a) and (b) only prevail where this would not result in a breach of the Corporations Act, the Listing Rules or any other law.

30 Compliance committee

While the Fund is a Registered Scheme, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.⁹⁶

31 Complaints

While the Fund is a Registered Scheme, if a Member or former Member submits to the Responsible Entity a Complaint in relation to the Fund, the Responsible Entity:

- (a) must, if the Member or former Member is a Retail Client, comply with the requirements of section 912A(2) of the Corporations Act applicable to the Complaint;⁹⁷ and
- (b) in respect of a Complaint from a Member or former Member who is not a Retail Client:⁹⁸

⁹⁴ This Class Order permits a constitution to include a provision to the effect of Appendix 15A of the Listing Rules, such as clause 29.1 of this constitution. This is sometimes known as the 'listing rules compliance clause'.

⁹⁵ This sentence reflects the wording used in ASIC Class Order [CO 98/1808].

⁹⁶ See section 601JF.

⁹⁷ See ASIC RG 134.135

⁹⁸ The Responsible Entity may treat retail and wholesale clients differently for this purpose – see RG 134.145 and [CO 13/656].

- (i) must acknowledge receipt of the Complaint as soon as possible and in any event within 14 days from receipt;⁹⁹
 - (ii) must ensure that the Complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
 - (iii) where the Complaint relates to an error which is capable of being corrected without affecting the rights of third parties, act in good faith to deal with the Complaint by endeavouring to correct the error;
 - (iv) may give any of the following remedies to the complainant:
 - (A) information and explanation regarding the circumstances giving rise to the Complaint;
 - (B) an apology; or
 - (C) compensation for loss incurred by the Member as a direct result of any breach; and
 - (v) must communicate to the complainant as soon as practicable and in any event not more than 45 days after receipt by the Responsible Entity of the Complaint:
 - (A) the determination in relation to the Complaint;
 - (B) any remedies available to the Member; and
 - (C) information regarding any further avenue for Complaint.
- (c) For the purposes of this clause 31, a reference to a Member includes any person who has an “interest “ in the Fund as that term is defined in section 9 of the Corporations Act, and any person whose Units have been redeemed under clause 12.15 but who has not yet been paid the Redemption Price of the Units.

32 Restricted Securities

32.1 Disposal of Restricted Securities¹⁰⁰

If the Listing Rules require, Restricted Securities cannot be disposed of during the Escrow Period and the Responsible Entity must not register a transfer of Restricted Securities during the Escrow Period except as permitted by the Listing Rules or ASX.

32.2 Restriction on distributions and voting rights

During a breach of a restriction agreement or the Listing Rules relating to Units which are Restricted Securities, the Member who holds those Restricted

⁹⁹ Australian compliance standard AS ISO 10002 - 2006 was adopted in ASIC RG 165 (for financial services licensees). It states that the provider should “aim” to respond to complaints immediately. The Responsible Entity may wish to include this in their complaints handling policy.

¹⁰⁰ Listing Rule 15.12 requires a listed entity’s constitution to provide for each of the matters set out in clause 32.

Securities is not entitled to any distribution from the Fund, nor any voting rights, in respect of those Restricted Securities.

33 Small holdings

33.1 Application of this clause

This clause 33 applies while the Units are Officially Quoted.

33.2 Responsible Entity may sell or redeem

Subject to the provisions of this clause 33, the Responsible Entity may sell or redeem any Units held by a Member without request by the Member where the Units comprise less than a marketable parcel as provided in the Listing Rules. The Responsible Entity may only sell or redeem Units on one occasion in any 12 month period. Subject to clause 33.6, if the Units are redeemed, the Redemption Price must be the amount calculated under clause 11.1.

33.3 Responsible Entity must notify

The Responsible Entity must notify the Member in writing of its intention to sell or redeem Units under this clause 33, and give the Member at least 6 weeks from the date of the notice in which to notify the Responsible Entity that the Member wishes to retain the Units.

33.4 Timing

The Responsible Entity will not sell or redeem the relevant Units:

- (a) before the expiry of 6 weeks from the date of the notice given by the Responsible Entity under clause 33.3; or
- (b) if, within the 6 weeks allowed by clause 33.4(a):
 - (i) the Member notifies the Responsible Entity that the Member wishes to retain the Units; or
 - (ii) the market value of the Units held by the Member increases to at least a marketable parcel as provided in the Listing Rules.

33.5 Takeover

The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of the offers made under the takeover.

33.6 Costs of sale

The Responsible Entity or the purchaser of the Units must pay the costs of the sale or redemption as the Responsible Entity decides.

33.7 Certificate

The proceeds of the sale or redemption will not be sent to the Member until the Responsible Entity has received any certificate relating to the Units, or is satisfied that the certificate has been lost or destroyed.

33.8 Responsible Entity as Member's attorney

To effect the sale or redemption of Units under this clause 33, the Member appoints the Responsible Entity as the Member's attorney to do all acts and things and execute all documents which the Responsible Entity considers necessary, desirable or reasonably incidental or appropriate to effect the sale or redemption of the Units.

34 Security interests

34.1 Responsible Entity determines when clause applies

The Responsible Entity may determine when this clause 34 applies to the Fund and when it ceases to apply. If the Responsible Entity determines that it ceases to apply:

- (a) this clause 34 continues to apply to all Security Interests noted on the Register at the time of that determination; and
- (b) the Responsible Entity must not accept any further notices under clause 34.2 after the time of that determination.

34.2 Form of notice

The Responsible Entity may determine the form of notice which:

- (a) a Member or their duly appointed agent must give for a Security Interest to be noted on the Register; and
- (b) a Security Interest Holder must give in order for a Security Interest to be removed from the Register.

34.3 Entry of Security Interests on the Register

If a Member or their duly appointed agent gives the Responsible Entity a notice as referred to in clause 34.2(a), the Responsible Entity must cause a note of the Security Interest Holder's interest to be recorded in the Register in respect of the relevant Units.

34.4 Responsible Entity not bound

The Responsible Entity is not taken to be bound by, or obliged to enquire into, the terms of any Security Interest of which it has notice.

34.5 Removal of Security Interests from the Register

If a Security Interest Holder's interest is noted on the Register in respect of a Unit, the Responsible Entity may not give effect to a transfer or redemption of the Unit without the written permission of the Security Interest Holder.

34.6 Rights attaching to Units in respect of which a Security Interest is recorded

Subject to the Corporations Act, while a Security Interest remains entered on the Register:

- (a) if the Responsible Entity receives a direction (in such form as the Responsible Entity determines) signed by the Member or their duly appointed agent to the effect that it must pay to the Security Interest

Holder any distributions, whether on winding up or otherwise and whether of capital or income, which would, in the absence of such direction have been made or paid to the relevant Member, the Responsible Entity may act on that direction until it is revoked by the Member or their duly appointed agent with the written consent of the Security Interest Holder;

- (b) when acting in good faith, the Responsible Entity is not liable either to the Member or to the Security Interest Holder if a payment made to the Member or Security Interest Holder is not in accordance with clause 34.6(a);
- (c) the Responsible Entity may provide to the Security Interest Holder any notice or information which would normally be provided to the Member; and
- (d) if the Responsible Entity becomes aware that a dispute has arisen between a Member and a Security Interest Holder as to any right to a payment relating to Units in respect of which the Security Interest is noted on the Register, the Responsible Entity may either:
 - (i) pay the disputed amount to the Security Interest Holder; or
 - (ii) pay the disputed amount into any court in which proceedings in relation to the dispute are to be conducted,

and the Responsible Entity will not be liable either to the Member or the Security Interest Holder for any consequences of so doing.

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Finding list - Corporations Act

This list is included to assist ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment schemes.

Corporations Act	Constitution
601GA	
(1)(a)	9.1 - 9.9
(1)(b)	17.1 - 17.3
(1)(c)	31
(1)(d)	27
(2)	23.4 -23.7, 25.1 - 25.9
(3)	17.2
(4)(a)	12.2 - 12.8, but not a right while listed (12.1)
(4)(b)	12.4 - 12.8, 12.14, 11.1 - 11.3
(4)(c)	12.10 - 12.14, 12.17, 11.1 - 11.3
601GB	1.4

Finding list - Listing Rules

This list is included to assist ASX in identifying the provisions in this constitution which satisfy the requirements of the Listing Rules which relate to constitutions of registered managed investment schemes.

Listing Rules	Constitution
1.1, condition 2	29.1, 29.5
1.1, condition 5	12.1, 12.10-12.13, 12.16-12.17
15.12.1	32
15.12.2	32
15.12.3	32
15.13	33
15.14	N/A