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Constitution of the Watermark Market Neutral Fund

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Dated:

2012

This **Deed Poll** is declared by **Watermark Funds Management Pty Ltd** (ABN 98 106 302 505) of Level 5, 139 Macquarie Street, Sydney NSW 2000 (**Responsible Entity**) to be the Constitution of the Watermark Market Neutral Fund.

1. Definitions and Interpretation

1.1. Definitions

In this Constitution:

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

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.

Benchmark Index means:

- (a) the "Cash Rate Target" as published by the Reserve Bank of Australia; or
- (b) an index as selected by the Responsible Entity in good faith should the RBA Cash Rate Target cease to be published providing a similar reference index to the RBA Cash Rate Target.

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

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

Class means a class of Units.

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.

Disclosure Document means an information memorandum, disclosure document, product disclosure statement or other similar document given to investors for the purpose of seeking applications for Units in the Trust.

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.

Expenses means consumptions or losses of future economic benefits in the form of reductions in Assets or increases in Liabilities of the Trust, other than those relating to distributions to Members, that result in a decrease in amounts attributable to Members during the Tax Year.

Gross Asset Value in relation to a Class means the sum of the value of Assets referable to that Class.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Income Distribution means in respect of a Member and a Distribution Period, the amount calculated in respect of the Member under Clause 12.3.

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

Liabilities means all present liabilities of the Trust including any provision which the Responsible Entity decides should be taken into account in determining the liabilities of the Trust in accordance with the Accounting Principles.

Liquid has the same meaning as in the Corporations Act.

Management Fee has the meaning given in Clause 21.1.

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

Net Asset Value means the value of the Assets calculated in accordance with Clause 10 less the Liabilities.

Net Taxable Income means, for the Trust and for any period, the net income for that period determined according to the principles applicable under the Tax Act.

Non-Cash Income means, for the Trust and for any period, any amount properly included in the Trust's Net Taxable Income for that period (including any amount representing grossing up of income for tax credits) which is not in the form of cash or other property derived by the Trust.

Performance Fee has the meaning given in Clause 21.2.

Register means the register of Members kept by the Responsible Entity.

Registered means recorded in the Register.

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

Registration means recording in the Register.

Resolution means:

- (a) a resolution passed at a meeting of Members in the Trust:

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

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

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 Watermark Funds Management Pty Ltd (ABN 98 106 302 505).

Revenues means inflows or other enhancements, or savings in outflows, or future economic benefits in the form of increases in Assets or reductions in Liabilities of the Trust, other than those relating to contributions by Members, that result in an increase in amounts attributable to Members during the Tax Year.

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) and/or the *Income Tax Assessment Act 1997* (Cth) as appropriate and, where appropriate, includes the *Taxation Administration Act 1953* (Cth), applicable imposition or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

Tax Year means:

- (a) for the first tax year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last tax year, the period from 1 July before the date 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 30 June in each year.

Transaction Costs means:

- (a) when calculating the Application Price of a Unit, the Responsible Entity’s estimate of the total costs of acquiring the Assets, being 1.0% of the Net Asset Value of the Trust; and
- (b) when calculating the Withdrawal Price of a Unit, the Responsible Entity’s estimate of the total costs of selling the Assets, being 1.0% of the Net Asset Value of the Trust,

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

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.

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

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 7.

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 any thing (including 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 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. 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 Watermark Market Neutral Fund or by such other name as the Responsible Entity determines from time to time.

2.2. Change of name

If the 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 Trust to a name that does not imply an association with the former Responsible Entity or its business.

3. Assets Held on Trust

3.1. Assets held on Trust

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

4. Units

4.1. Nature of Units

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

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

- (c) A Unit confers an interest in the Assets as a whole, subject to the Liabilities. It does not confer an interest in a particular Asset. The Responsible Entity may attach any terms and conditions to the issue of Units and entitlements to the Units themselves so long as the terms and conditions and entitlements are consistent with this Constitution and the Corporations Act.

4.2. Classes of Units

- (a) The Responsible Entity may at any time create and issue new Classes of Units with such rights, obligations and restrictions attaching to the Units of such Classes as it determines in accordance with the Corporations Act.
- (b) Each Class is a separate Class of Units for the purposes of the Corporations Act but does not constitute a separate Trust.
- (c) The Responsible Entity may convert any Units from one Class to another Class or reclassify Units from one Class to another.
- (d) The Responsible Entity must enter on the Register the Class or terms of issue of Units held by a Member.

4.3. No interference

- (a) 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.
- (b) 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 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.

4.4. 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.

4.5. 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 and applicable law.

4.6. 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) 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.

4.7. Death and 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.

4.8. 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.

4.9. No further liability

- (a) This Clause 4.9 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.

4.10. 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:

- (i) Units issued under the first Disclosure Document will be \$1.00 per Unit; and
- (ii) other Units will, subject to Clauses 5.1(b) and 5.1(c), be equal to:

$$\frac{\text{Net Asset Value}}{\text{number of Units on issue}} \times (1 + \text{Transaction Costs})$$

- (b) 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).
- (c) The Responsible Entity may increase or decrease the Application Price of a Unit of a Class to reflect or take account of the charging or waiving of fees by the Responsible Entity on a differential basis in accordance with Clause 21.5, the Corporations Act or any ASIC Relief.

5.2. Variables

Each of the variables in Clause 5.1(a)(ii) 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. Postponement of determination

If the Responsible Entity considers it desirable for the protection of the Trust or in the interests of Members or a class of Members of the Trust, it may postpone the determination of an Application Price. If this occurs, each of the variables in Clause 5.1(a)(ii) must be determined as at the first Valuation Time after the cessation of the event giving rise to the postponement.

5.4. Determination next Business Day

The Responsible Entity may determine that an application for Units or application money or property received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

5.5. 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.

5.6. Reinvestment

- (a) The Application Price payable for each additional Unit upon reinvestment of Income Distributions is the Application Price calculated by reference to Clause 5.1(a)(ii) on the first

Business Day after the end of the Distribution Period (or Quarter as the case may be) to which the Income Distribution relates.

- (b) The Application Price payable in the case of an issue to any underwriter or sub-underwriter of a distribution reinvestment plan or any persons nominated by them is the Application Price at which Units are issued pursuant to that distribution reinvestment plan in accordance with this Clause 5.6.

6. Application Procedures

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 12.9 to 12.10.
- (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.

6.3. Responsible Entity may reject

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

6.4. Minimum and maximum amounts

- (a) The Responsible Entity may set a minimum application amount or maximum application amount (or both) and a minimum holding or maximum holding (or both) for the Trust and alter those amounts at any time. The Responsible Entity may do so in relation to a Class or Members generally.
- (b) A proposed application for an aggregate Application Price of an amount that is less than the minimum application amount may be approved at the discretion of the Responsible Entity.

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. Investment Confirmation

Subject to the Corporations Act, the Responsible Entity need not issue certificates for any Units created, but the Responsible Entity may issue an investment confirmation (in a form determined by the Responsible Entity) to the Member.

7. Withdrawal Price of Units

7.1. Withdrawal Price

- (a) Subject to Clause 7.1(c), the Withdrawal Price for any Unit will be equal to:

$$\frac{\text{Net Asset Value}}{\text{number of Units on issue}} \times (1 - \text{Transaction Costs})$$

- (b) Each of these variables will be calculated:

- (i) at all times while the Trust is not a Registered Scheme, as at the next Valuation Time to occur after the date 30 days (or such lesser period as the Responsible Entity may determine in its absolute and unfettered discretion) after the Responsible Entity received (or is taken to have received) the withdrawal request;
 - (ii) while the Trust is a Registered Scheme and is Liquid, as at the next Valuation Time to occur after the Responsible Entity received (or is taken to have received) the withdrawal request; and
 - (iii) while the Trust is a Registered Scheme and is not Liquid, as at the day the relevant Withdrawal Offer closes.
- (c) The Responsible Entity may increase or decrease the Withdrawal Price of a Unit of a Class to reflect or take account of the charging or waiving of fees by the Responsible Entity on a differential basis in accordance with Clause 21.5, the Corporations Act or any ASIC Relief.

7.2. Rounding

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

7.3. Determination next Business Day

The Responsible Entity may determine that a withdrawal request received by the Responsible Entity after a particular time will be deemed to have been received on the next Business Day.

7.4. Accrued income entitlement

- (a) Unless the Responsible Entity otherwise determines, the Withdrawal Price paid to a Member will comprise capital only.

- (b) The Responsible Entity may however determine in its discretion that part of the Withdrawal Price comprises an amount being the relevant Member's entitlement to the distributable income of the Trust calculated as at the date on which the relevant Units are withdrawn.
- (c) If the Responsible Entity makes a determination under Clause 7.4(b), the Responsible Entity must notify the relevant Member of the composition of the Withdrawal Price.

8. Withdrawal Procedures

8.1. Withdrawal request while Trust is Liquid

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.

8.2. Action following a request

Within a reasonable time of receiving a withdrawal request under Clause 8.1, 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 part or all of the withdrawal by causing up to 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 Corporations Act, purchase or arrange for another person to purchase up to 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 8.2(b) and partially purchase Units (or arrange for Units to be purchased) in the manner described in Clause 8.2(c).

8.3. 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. 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, 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 8.2 (subject to the Corporations Act).

- (d) The Responsible Entity may cancel a Withdrawal Offer in accordance with the Corporations Act.

8.4. 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.

8.5. Reduction of the number of Units the subject of a withdrawal request

Notwithstanding anything expressed or implied to the contrary in this Constitution, where the Responsible Entity receives withdrawal requests for Units of a particular Class:

- (a) in respect of which the Withdrawal Price is to be calculated at the same Valuation Time in accordance with Clause 7.1(b); and
- (b) that represent more than 20% (or such other percentage as the Responsible Entity in its discretion may determine) of the Units on issue in that Class at that Valuation Time,

the Responsible Entity may in its absolute and unfettered discretion reduce the number of Units the subject of each such withdrawal request on a pro rata basis. The remaining portion of the relevant withdrawal requests will be carried forward to the next Valuation Time and be subject to further application of this Clause 8.5.

8.6. Suspension of withdrawal 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 Withdrawal 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 Withdrawal 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 Withdrawal Price for Units the subject of a withdrawal request received or deemed received during the Suspension Period shall be the amount of the Withdrawal Price determined at the next Valuation Time after the end of the Suspension Period. A Member's withdrawal request lodged during the Suspension Period is deemed lodged immediately after the end of the Suspension Period.

8.7. Power to compulsorily redeem Units

Without limiting any other provision of this Constitution, the Responsible Entity can determine to effect a withdrawal of Units in accordance with Clause 8.2 without a request in the following circumstances and, if it does so, the Withdrawal 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 and conditions on which the Unit was issued otherwise provide for compulsory redemption of Units;
- (g) where the Responsible Entity determines it is in the best interests of the Members;
- (h) where the Responsible Entity determines it is appropriate or necessary for administrative or other reasons; or
- (i) where the Responsible Entity suspects that the Member has or is likely to fail to meet any criteria for the admission of Members determined from time to time by the Responsible Entity (such as to avoid the Trust being required to be registered under the Corporations Act or taxed like a company under the Tax Act).

8.8. Redemption and issue

The Responsible Entity may (without the consent of a Member) redeem any or all of a Member's Units in the Trust at the Withdrawal 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.

8.9. 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.

8.10. Transfer of Assets to effect a withdrawal

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

8.11. 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.

8.12. Cooling off

Nothing in this Clause 8 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.

8.13. 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.

8.14. Order

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

8.15. Input tax credits

If the Responsible Entity considers that an input tax credit for the benefit of the Trust is likely to arise and is properly attributable to the withdrawal, the Responsible Entity may determine that the withdrawal proceeds be increased by an amount equal to the input tax credit.

9. Transfers**9.1. Transfer**

- (a) 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 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) 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.

9.2. 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.

9.3. 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 9.3(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 9.1.
- (d) The Responsible Entity need not register any transfer or transmission pursuant to Clause 9.3(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 9.3(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 4.6 will apply to them.
- (g) Despite Clause 9.3(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.

9.4. 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 9.4(c) limits the operation of Clause 9.4(a).

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.
- (b) The Responsible Entity may determine Net Asset Value at any time, including more than once each day.

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 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 where it is necessary to calculate an Application Price or a Withdrawal Price of allowing for the calculation to be independently verifiable.

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. Distributable income

- (a) The Responsible Entity must determine the distributable income of the Trust for each Tax Year.
- (b) Subject to Clause 12.1(e), the distributable income for a Tax Year will be the Net Taxable Income in respect of the Tax Year less the Non-Cash Income in respect of the Tax Year.
- (c) If there are more than one Class of Units on issue, the Responsible Entity must allocate the distributable income of the Trust for each Tax Year between the different Classes of Units.
- (d) Subject to Clause 12.1(e), if there are more than one Class of Units on issue, the distributable income of each Class of Units will be calculated as follows:

$$DIC = \left[\frac{(DI + AF) \times GAV}{AGAV} \right] - F$$

where:

DIC is the distributable income of the Class of Units for the Tax Year;

DI is the distributable income of the Trust for the Tax Year calculated in accordance with this Clause 12.1;

AF is the sum of fees payable to the Responsible Entity in accordance with this Constitution in respect of all Units for the Tax Year;

F is the sum of fees payable to the Responsible Entity in accordance with this Constitution in respect of Units of the Class for the Tax Year;

GAV is the Gross Asset Value of the Class; and

AGAV is the sum of all Gross Asset Values for all Classes on issue at the end of the Tax Year.

- (e) If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may, at any time prior to the end of a Tax Year, determine:
 - (i) that the distributable income of the Trust for the Tax Year will be an amount other than the amount set out in Clause 12.1(b); and
 - (ii) if there are more than one Class of Units on issue, that the distributable income of each Class of Units for the Tax Year will be calculated other than in accordance with Clause 12.1(d).
- (f) The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

12.2. Present entitlement

A person who at any time during the Tax Year is or has been a Member, is presently entitled to, and has a vested and indefeasible interest in, the distributable income of the Trust for the Tax Year, in the proportion that the Income Distributions made to the Member in respect of the Tax Year bear to the sum of the Income Distributions made in respect of the Tax Year to all persons who are or have been Members at any time during the Tax Year.

12.3. Income Distributions

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

- (a) if there is only one Class of Units on issue at the end of the Distribution Period, the Income Distribution of the Member is:

- (i) in respect of a Distribution Period ending on a Distribution Calculation Date other than 30 June 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 total number of Units held by all Members at the end of the Distribution Period; and

C is an estimate of the distributable income for the Distribution Period calculated as if the Distribution Period were a year of income; and

- (ii) in respect of a Distribution Period ending on 30 June 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 total number of Units held by all Members at the end of the Distribution Period; and

C is the amount (if any) by which the distributable income for the Tax Year exceeds the aggregate of the estimates of distributable income calculated for the purposes of:

(A) variable C in Clause 12.3(a)(i) above; and

(B) if there were other Classes of Units on issue at any time during the Tax Year, variable C in Clause 12.3(b)(i) below for all such Classes of Units,

in respect of the previous Distribution Periods of the Tax Year; or

- (b) if there are more than one Class of Units on issue at the end of the Distribution Period, the Income Distribution of the Member in respect of Units of a Class is:

- (i) in respect of a Distribution Period ending on a Distribution Calculation Date other than 30 June in any year, an amount calculated as follows:

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

where:

- A is the number of Units in the Class held by the Member at the end of the Distribution Period;
- B is the total number of Units in the Class held by all Members at the end of the Distribution Period; and
- C is an estimate of the distributable income of the Class of Units for the Distribution Period calculated as if the Distribution Period were a year of income; and

- (ii) in respect of a Distribution Period ending on 30 June in any year, an amount calculated as follows:

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

where:

- A is the number of Units in the Class held by the Member at the end of the Distribution Period;
- B is the total number of Units in the Class held by all Members at the end of the Distribution Period; and
- C is the amount (if any) by which the distributable income of the Class of Units for the Tax Year exceeds the aggregate of the estimates of the distributable income of the Class of Units calculated for the purposes of variable C in Clause 12.3(b)(i) above in respect of the previous Distribution Periods of the Tax Year.

- (c) If as a result of one or more withdrawal requests received by the Responsible Entity on a day in relation to Units of a Class of Units the Responsible Entity determines that all the Units of that Class will be redeemed, the Responsible Entity may determine a Distribution Calculation Date immediately prior to calculation of the Withdrawal Price for all Units of that Class.

12.4. Satisfaction of present entitlement

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

12.5. Member's rights

For the avoidance of doubt and despite anything in this Clause 12, the rights of a Member under this Clause 12 are subject to the rights, obligation and restrictions attaching to the Units which they hold.

12.6. Withholding Tax

The Responsible Entity may deduct from any amount dealt with under this Clause any Tax that is require by law to deduct from such amount.

12.7. Entitlement to capital

If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may at any time distribute any amount of capital to Members by the payment of cash or the issue of Units to each Member of an amount determined in accordance with the following formula (rounded down to the nearest whole cent or as the Responsible Entity otherwise determines):

$$CE = \frac{DA \times UV}{AUV}$$

where:

- CE is the proportion of the distribution to which the Member is entitled;
- DA is the amount of capital of the Trust determined by the Responsible Entity to be distributed to Members;
- UV is the sum of the Withdrawal Price of all Units of each Class of Units held by the Member in the Trust at the date of distribution calculated by:
- (i) disregarding Clause 7.1(b);
 - (ii) determining each of the variables in Clauses 7.1(a) and 7.1(c) at the date of distribution; and
 - (iii) assuming all Units held by the Member at the relevant time were to be redeemed at the date of distribution.
- AUV is the aggregate Withdrawal Price of all Units of each Class of Units held by all Members in the Trust at the date of distribution calculated by:
- (i) disregarding Clause 7.1(b);
 - (ii) determining each of the variables in Clauses 7.1(a) and 7.1(c) at the date of distribution; and
 - (iii) assuming all Units held by all Members at the relevant time were to be redeemed at the date of distribution.

12.8. Separate accounts

- (a) The Responsible Entity may (but is not obliged to):
- (i) keep separate accounts of different categories or sources of Revenues, Expenses, Assets or Liabilities, or deductions or credits for tax purposes; and
 - (ii) allocate Revenues, Expenses, Assets or Liabilities, Non-Cash Income, deductions or credits from a particular category or source to particular Members or Classes of Units.
- (b) Nothing in this Constitution requires the Responsible Entity to establish a separate bank or financial institution account for any distribution to any Member or to the Members.

12.9. Reinvestment

- (a) If and for so long as this does not result in the Trust failing to be a fixed trust for taxation purposes, the Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units of the same Class.
- (b) If the Responsible Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.
- (c) If reinvestment applies, the Responsible Entity is deemed to have received and accepted an application to reinvest on the first day after the end of the Distribution Period to which the distribution relates.
- (d) If reinvestment applies, the Application Price for the Units to be issued on reinvestment will be calculated in accordance with Clause 5.6.

12.10. Position on transfer of Units

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

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 and raise money, to grant security over any Asset, to lend and advance money 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

Subject to Clause 14.7, the Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

14.7. 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.

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 1 month's notice to Members. On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

15.2. Compulsory retirement

While the Trust is a Registered Scheme, the Responsible Entity must retire as the Responsible Entity of the Trust when required by law.

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 Members

16.1. 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 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.

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 Members

17.1. Corporations Act

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

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 are governed by the Corporations Act.

17.4. 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.

17.5. 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.

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 Responsible Entity and its associates are not entitled to vote their interest on a resolution at a meeting of the Members if they have an interest in the resolution or matter other than as a Member;
- (b) the provisions of the Corporations Act governing proxies and voting for meetings of members of Registered Schemes apply to the Trust; and
- (c) 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 (as that term is given its meaning as provided in the Corporations Act for a Registered Scheme) 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.

18. Rights and Liabilities of Responsible Entity

18.1. Holding Units

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

18.2. Other capacities

Subject to the Corporations Act, 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.

18.4. Lien for amounts owing

The Responsible Entity has a first and paramount lien over Units for any amounts owing to the Responsible Entity in respect of Units registered in the name of a Member, including any unpaid calls or fees which are payable to the Responsible Entity in respect of those Units and also for such amounts as the Responsible Entity may be called upon by law to pay and has paid in respect of the Units of such Members. The lien extends to distributions from time to time payable in respect of such Units but if the Responsible Entity registers any transfer of any Unit upon which it has a lien, those Units are freed and discharged from the lien.

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 30 days of the beginning of each month a monthly management fee (**Management Fee**) equivalent to 3% per annum (or such lesser amount as the Responsible Entity may in its absolute and unfettered discretion determine in accordance with Clause 21.5) of the Net Asset Value 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 commences in accordance with Clause 22.1, the Responsible Entity will perform its duties from the date of commencement and the Management Fee payable in respect of the first month will be calculated on a pro-rata basis for that month.
- (c) The Management Fee accrues daily and is payable in arrears.

21.2. Performance Fee

- (a) Subject to the proper performance of its duties, the Responsible Entity is, subject to this Clause 21.2, entitled to be paid out of the Assets a performance fee (**Performance Fee**) of 20% (or such lesser amount as the Responsible Entity may in its absolute and unfettered discretion determine in accordance with Clause 21.5) of BA where BA for a Performance Calculation Period as calculated as follows:

$$BA = (FV - IV) - (II \times IV) - CP$$

where:

BA is the base amount to be used in calculating the Performance Fee outlined above;

FV is the Net Asset Value, calculated on the last Business Day of the relevant Performance Calculation Period;

IV is the Net Asset Value, calculated on the last Business Day of the preceding Performance Calculation Period or, if there is no preceding Performance Calculation Period, on the Commencement Date;

II is the percentage increase in the Benchmark Index over the Performance Calculation Period; and

CP the value of any under-performance carried forward in accordance with Clause 21.2(b).

- (b) If the Net Asset Value calculated on the last Business Day of a Performance Calculation Period (FV) is less than the aggregate of:
 - (i) the Net Asset Value calculated on the last Business Day of the preceding Performance Calculation Period (IV); and
 - (ii) the percentage increase in the Benchmark Index over the Performance Calculation Period multiplied by the Net Asset Value calculated on the last day of the preceding Performance Calculation Period (II x IV),

no Performance Fee is payable in respect of that Performance Calculation Period and that carried forward under performance value will be applied to the variable CP (as a nonnegative integer) under Clause 21.1(a) for subsequent Performance Calculation Periods. Following the accrual of a CP value the CP value will be carried forward and may accumulate with subsequent CP values, but once a Performance Fee becomes payable to the Responsible Entity the CP value is reset to zero. For the avoidance of doubt, any under performance of

the Benchmark Index is carried forward to future Performance Calculation Periods and must be recouped before the Responsible Entity is entitled to a Performance Fee.

- (c) If the amount calculated under Clause 21.2(a) is a negative number, no Performance Fee is payable in respect of that Performance Calculation Period.
- (d) For the purposes of Clause 21.2, **Performance Calculation Period** is:
 - (i) the period from the Commencement Date to the earlier of the date of termination and 30 June 2012;
 - (ii) thereafter and subject to Clause 21.2(d)(iii), the period from the first day after the preceding Performance Calculation Period to the date 12 months after the last day of the preceding Performance Calculation Period;
 - (iii) if the trust terminates on a date other than 30 June, the last Performance Calculation Period is the period from the first day after the preceding Performance Calculation Period or, if there is no preceding Performance Calculation Period, the Commencement Date, to the date of termination.
- (e) In calculating the Performance Fee for the Performance Calculation Period, changes in the Net Asset Value as a result of the issue of interests in the Trust, redemptions and income distributions undertaken by the Trust will be disregarded or adjusted in a manner determined by the auditor of the Trust at the conclusion of that Performance Calculation Period.
- (f) Performance Fees accrue monthly as a Liability of the Trust as determined by the Responsible Entity. Payment is to be made by the 20th Business Day after the end of the relevant Performance Calculation Period.

21.3. 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.

21.4. 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 any amounts payable to any delegate, attorney, agent or custodian) incurred at law or under this Constitution in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

21.5. Waiver of Fees

- (a) The Responsible Entity may in its absolute and unfettered discretion waive, reduce, refund or defer any part of the fees, levies and expenses 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 the Responsible Entity may, subject to the Corporations Act, 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:
 - (i) to or for the benefit of a Member (or any other person) on a basis that differs from that applying to other Members (or other people); and
 - (ii) differently for different Classes of Units.
- (c) Where payment is deferred, the fee and/or levy and/or expense accrues daily until paid.

21.6. 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:

- (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 associated travel expenses);
- (d) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (e) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
- (f) Tax, including any amount charged by a supplier of goods or services, or both, to the Responsible Entity by way of or as a reimbursement for GST;
- (g) financial institution fees;
- (h) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
- (i) preparation and audit of the taxation returns and accounts of the Trust;
- (j) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;
- (k) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this Clause 21.6(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;
- (o) the preparation, review, distribution and promotion of any Disclosure Document or other marketing and promotion of the Trust;
- (p) having the Trust rated by a rating agency; and
- (q) complying with any law, and any request or requirement of the ASIC.

21.7. GST

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

21.8. 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.

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 for Units in the Trust. The Responsible Entity's nominee must be issued with 1 Unit in return for each \$1.00 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; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution or by law.

23. Procedure on Termination

23.1. 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.

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 review or 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 to each Member in accordance with the following formula:

$$CE = \frac{NP \times UV}{AUV}$$

where:

CE is the proportion of the distribution to which the Member is entitled;

NP is 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;

UV is the sum of the Withdrawal Price of all Units of each Class of Units held by the Member in the Trust at the date of distribution calculated by:

- (A) disregarding Clause 7.1(b);
- (B) determining each of the variables in Clauses 7.1(a) and 7.1(c) at the date of distribution; and
- (C) assuming all Units held by the Member at the relevant time were to be redeemed at the date of distribution.

AUV is the aggregate Withdrawal Price of all Units of each Class of Units held by all Members in the Trust at the date of distribution calculated by:

- (D) disregarding Clause 7.1(b);
- (E) determining each of the variables in Clauses 7.1(a) and 7.1(c) at the date of distribution; and
- (F) assuming all Units held by all Members at the relevant time were to be redeemed at the date of distribution.

- (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 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 distribute proceeds of realisation in instalments, and may postpone the realisation of the Trust for as long as it thinks desirable in the interests of Members 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 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 from a person who is not an existing Member.

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.
- (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 in a material way, 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 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 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. 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 26.1(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. 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.

27.2. 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.

27.3. 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.

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

27.5. Member liabilities

Unless the Responsible Entity otherwise determines, each Member is liable for all Taxes and costs incurred by the Responsible Entity or Trust in relation to that Member's application for acquisition, redemption, or disposal of Units and any entitlement to, or payment of, income or capital to, or any act requested by, that Member.

27.6. Withholding Payment

The Responsible Entity may withhold payment of any money payable to a Member until all amounts payable by the Member to the Responsible Entity in accordance with this Constitution are discharged, or may meet the liability and recover the amount from any money or property held for, or distribution payable to, or by redeeming of Units of, the Member.

EXECUTED as a deed poll

SIGNED by)
Watermark Funds Management Pty Ltd)
(ABN 98 106 302 505))
in accordance with section 127 of the)
Corporations Act:)

Director/Secretary

Director

Name (please print)

Name (please print)

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 Watermark Market Neutral Fund.	Clauses 5 and 6
601GA(1)(b)	Powers of the Responsible Entity in relation to making investments of, or otherwise dealing with, Watermark Market Neutral Fund.	Clause 14
601GA(1)(c)	The method by which complaints made by Members in relation to the Watermark Market Neutral Fund is to be dealt with.	Clause 26
601GA(1)(d)	Winding up the Watermark Market Neutral Fund.	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 21.4
601GA(3)	Powers to borrow or raise money for the purposes of the Watermark Market Neutral Fund.	Clause 14.2
601GA(4)	The rights of Member's to withdraw from the Trust	Clauses 8 and 7
601GB	Legally enforceable between Members and the Responsible Entity.	Clause 27.1