

Patriot Small Companies Fund

Constitution

Patriot Asset Management Ltd

ACN 106 888 662

**Piper Alderman
Lawyers**

167 Flinders Street
Adelaide SA 5000
Australia
Telephone +61 8 8205 3333
Facsimile +61 8 8205 3300
www.piper-alderman.com.au

Sydney • Melbourne • Brisbane • Adelaide

© Piper Alderman

Contents	page
1. COMPLIANCE COVENANT	1
2. INTERPRETATION	1
3. COMPLETION	8
4. FORMATION OF THE TRUST	8
5. SUBSCRIPTIONS	9
6. APPLICATION OF SUBSCRIPTIONS	10
7. APPLICATION FOR UNITS	10
8. INCOME OF THE TRUST	11
9. COMMENCEMENT, PERIOD AND TERMINATION OF THE TRUST	12
10. REDEMPTION OF UNITS	13
11. TRANSFER OF UNITS	16
12. TRANSMISSION OF UNITS	17
13. NO ASSISTANCE WITH SALES	18
14. REGISTERS	19
15. LIABILITY OF MANAGER	20
16. RIGHTS, POWERS, DUTIES AND COVENANTS OF AND BY THE MANAGER	21
17. VALUATION	27
18. APPOINTMENT OF CUSTODIAN	28
19. MEETINGS OF UNITHOLDERS	28
20. LIMITATION OF LIABILITY OF UNITHOLDERS	30
21. TAXATION LIABILITY OF MANAGER	30
22. NOTICES	33
23. MISCELLANEOUS	34
Execution	36
Schedule 1 – Application Price	37
Schedule 2 – Redemption and Repurchase Price	38
Schedule 3 – Complaints Procedure	39
Schedule 4 – Incentive Fee	42

Constitution

BY Patriot Asset Management Ltd ACN 106 888 662 of Level 42, 120 Collins Street, Melbourne VIC 3000 (**Manager**)

Introduction

- A. The Manager holds an Australian financial services licence number 284442 issued by ASIC which authorises it to act as the responsible entity of a managed investment scheme which invests pursuant to a registered constitution and a registered compliance plan.
- B. The Manager has agreed to manage and administer the Trust for the benefit of the Unitholders.
- C. The Manager proposes to engage a custodian to hold the Assets of the Trust.
- D. This deed is made with the intent that the benefits and obligations contained in it will enure not only to the Manager but also to the extent provided in this Deed to every person who is, or becomes, a Unitholder.
- E. The Manager proposes to offer, or cause to be offered, for subscription units in the Trust by way of a Product Disclosure Statement.

NOW IT IS COVENANTED AND AGREED as follows:

1. COMPLIANCE COVENANT

Notwithstanding any other provision of this Constitution (including any provision of this Constitution which purports to apply notwithstanding other provisions of this Constitution) the Manager covenants and the Unitholders are, by virtue of clause 4.1(f), deemed to covenant with the Manager with effect throughout the term of this Constitution to ensure that the Trust is at all times conducted in accordance with the provisions of this Constitution and the Corporations Act and that the Assets are or will be held by the Custodian.

2. INTERPRETATION

2.1 Definition

In this Constitution and in any instrument, supplemental deed, agreement or other document made, entered into, executed or issued under this Constitution, unless a contrary intention appears, the following expressions shall have the following meanings:

Accounts means the accounts referred to in clause 8.3;

Affiliate means any person whose relationship with the Manager is of such a nature that a reasonable person might consider that dealings between them would not be at arm's length and includes an Associate;

Application Form means the application form attached to the Product Disclosure Statement as the application form for Units in the Trust;

Application Price means the issue price of a Unit determined by the Manager from time to time in accordance with Schedule 1 of this Constitution and the Product Disclosure Statement;

Approved Valuer means a valuer, or, if that valuer is a company or firm, a person employed in the valuation by the company or firm, who:

- (i) is authorised to practise as a valuer under the law of Victoria;
- (ii) has at least 5 years continuous experience in valuation;
- (iii) is appointed and instructed in writing solely by the Manager; and
- (iv) is independent of the Manager and the Custodian;

ASIC means the Australian Securities and Investments Commission, or any successor of that body;

Assets means all of the property, rights and Income of the Trust, and includes the Investments;

Assessment Period means a Business Day;

Associate means an associate as defined in Division 2 of Part 1.2 of the Corporations Act;

Australian Stock Exchange or **ASX** means Australian Stock Exchange Limited;

Auditor means a person who is a chartered accountant or a certified practising accountant and a registered company auditor under the Corporations Act or a firm of chartered accountants, at least one member of which is a registered company auditor, and where more than one of the above is appointed by the Manager includes each of them;

Australian Financial Services Licence or **AFSL** means the licence referred to in the Introduction;

Authorised Investment means an investment in any of the following:

- (i) shares, debentures, stock, bonds, notes, options, rights or other securities;
- (ii) interest bearing deposits including bills of exchange;
- (iii) interests in Managed Investment Schemes;
- (iv) any securities, bonds, notes or other interest bearing debt issued by the Commonwealth Government of Australia;
- (v) any other securities or interests whatsoever in the Manager's absolute discretion;

Authorised Representative means the same meaning as contained in the Corporations Act;

Banking shall have the meaning ascribed to the term "banking corporation" in section 9 of the Corporations Act;

Business Day means any day other than a Saturday or Sunday on which Banks are open for business in Melbourne or Sydney;

Cash includes currency, coin, cash at bank, payment orders, cheques, transfers and drafts;

Cheque includes bank cheques, personal cheques, payment orders, cheques, transfers, any other electronic method acceptable to the Manager and drafts;

Commencement Date means the date of receipt by the Custodian of the first Subscription;

Company includes "corporation" (as that term is defined in section 9 of the Corporations Act), public authority or body corporate or politic;

Completion means the date on which completion occurs in the terms of clause 3;

Completion Date means the date on which completion occurs in the terms of clause 3;

Compliance Committee means the committee established pursuant to the Compliance Plan relating to this Trust lodged by the Manager with ASIC;

Compliance Plan means the compliance plan relating to this Trust adopted by the Manager in compliance with the Corporations Act;

Constitution means this constitution as originally executed and as it may from time to time be amended;

Corporations Act means the Corporations Act 2001 (Cth);

Costs and Disbursements includes legal costs (on an indemnity basis), stamp duty, brokerage, bank charges and government taxes;

Court means the Supreme Court of Victoria;

Custodian means the person appointed to hold the Assets whether original, additional or substituted;

Custodian Agreement means the agreement under which the Manager engages the Custodian for the purposes of the Custodian holding the Assets in trust for the Trust;

Extraordinary Resolution has the same meaning as contained in the Corporations Act;

Financial Year means the period of 12 months ending on 30 June in each year during the continuance of this Constitution and includes the period commencing on the Commencement Date and expiring on the next succeeding 30 June and any period between 30 June last occurring before the termination of the Trust and the termination of the Trust;

GST means GST as defined in the A New Tax System (Goods and Services Tax) Act 1999;

Incentive Fee means the fee payable to the Manager calculated in accordance with clause 16.5(e);

Income means all amounts which are, or would be recognised as, income by the application of generally accepted accounting principles;

Income of the Trust means the Income received from the Investments;

Income Tax Act means the Income Tax Assessment Act 1997 and the regulations made under that Act from time to time;

Interest in a Managed Investment Scheme shall have the meaning ascribed to "interest" in section 9 of the Corporations Act;

Investments means any investment made by the Custodian at the direction of the Manager in an Authorised Investment;

Liabilities means any and all liabilities of any nature recognised by generally accepted accounting principles and practice, whether such liabilities are absolute, accrued, actual, contingent, present or future, liquidated or unliquidated, matured or unmatured including without limitation, any Taxes, imposts or duties (however called or imposed) of any nature whatsoever but excluding any amounts included as liabilities for accounting purposes reflecting funds available to pay Unitholders;

Managed Investment and **Managed Investment Scheme** shall have the meaning ascribed to those terms in section 9 of the Corporations Act;

Management Fee means the fee payable to the Manager for acting as the responsible entity of the Trust calculated in accordance with clause 16.5;

Manager includes any company appointed to undertake the management and to be the responsible entity of the Trust pursuant to the provisions of this Constitution (whether original, additional or substituted);

Minimum Investment Amount means Units with an aggregate Unit Value of not less than \$20,000, or such lesser number as the Manager in its absolute discretion chooses to accept, provided however that each Unitholder must at all times hold the Minimum Unitholding;

Minimum Subscription Amount means \$3,000,000 or such lesser amount that the Manager in its absolute discretion may determine;

Minimum Unitholding means that number of Units whose aggregate Unit Value is equal to or greater than \$20,000, or such lesser number as the Manager in its absolute discretion chooses to accept;

Minimum Withdrawal Amount means Units with an aggregate Unit Value of not less than \$1,000, or such lesser number as the Manager in its absolute discretion chooses to accept;

Month means calendar month;

Net Assets means in relation to the Trust such sum as is from time to time ascertained and fixed by the Manager by deducting from the aggregate of:

- (i) the Assets; and
- (ii) any other amounts which, in the opinion of the Manager, should be included in such aggregate for the purpose of making a fair and reasonable determination of the value of the Trust in accordance with generally accepted accounting standards and principles current from time to time,

the aggregate of:

- (iii) all Liabilities of the Trust; and
- (iv) any other amounts which, in the opinion of the Manager, should be included in such aggregate for the purpose of making a fair and reasonable determination of the value of the Trust in accordance with generally accepted accounting standards and principles current from time to time (including, without limitation, any provision for payment of fees to the Manager);

Notice or notice means a notice, circular, statement, document, communication or information;

Ordinary Resolution means a resolution passed at a meeting of Unitholders duly convened and held in accordance with the provisions of this Constitution by a majority of the persons voting at the meeting (whether present in person or by attorney, proxy or representative) upon a show of hands and if a poll is validly demanded then by a majority of the votes cast on such poll;

person includes Company, trust (including a person or body of persons acting on behalf of a trust), firm or body of persons;

Product Disclosure Statement means a product disclosure statement or other disclosure document of the Trust issued in accordance with the Corporations Act;

Public Securities has the meaning given in paragraph (iv) of the definition of Authorised Investment;

Purchase Price means the amount paid to purchase the Investments;

Register means the register of Unitholders to be maintained by the Manager pursuant to clause 14;

Regulations means the Corporations Regulations;

Related, when used in relation to a Company, has a meaning consistent with section 50 of the Corporations Act;

Relevant Law includes an act of any Parliament, code, ordinance, statute or any rules, regulations, by-laws, orders or other subordinate legislation;

Relevant Person means, for the purpose of clause 21, a person who at any time is, was or becomes a Unitholder or the successor of any such person;

Repurchase Price means the price at which an individual Unit shall be repurchased or redeemed pursuant to clause 10, as determined by the Manager from time to time in accordance with Schedule 2 of this Constitution and the Product Disclosure Statement;

Resolution means a Special Resolution or an Ordinary Resolution;

Special Resolution means a resolution passed at a meeting of Unitholders duly convened and held in accordance with the provisions of this Constitution by a majority consisting of not less than 75% of the persons voting at the meeting (whether present in person, or by attorney, proxy or representative) upon a show of hands and if a poll is validly demanded then by a majority consisting of not less than 75% of the votes cast on such poll;

Subscriptions means the contributions to be made by the Unitholders in accordance with clause 5;

Taxable Income means so much of the Income of the Trust as the Manager determines to be "taxable income" as that term is defined in the Income Tax Act;

Taxation Amount for the purpose of clause 21, means in relation to a Relevant Person an amount of relevant Tax referable to that Relevant Person including, without limitation, an amount of Relevant Tax imposed on account of or in respect of:

- (i) that Relevant Person;
- (ii) a receipt or deemed receipt from, on behalf of, or in relation to, that Relevant Person;
- (iii) a sum paid or payable to or applied or applicable on behalf of that Relevant Person or a Unit registered in the name of or transferred to or by that Relevant Person;
- (iv) an amount of Relevant Tax which that Relevant Person is primarily liable to pay; and
- (v) an amount paid or payable to any person intended bona fide to reimburse that person for an amount of Relevant Tax referred to in this definition which is paid or payable by that person;

Taxes includes, without limitation, any:

- (i) present or future stamp or documentary taxes, or any other excise or property taxes, charges or similar levies, interest, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed which arise from any payment made to or by the Custodian or the Manager under this Constitution or the Custodian Agreement or any other instrument delivered under this Constitution or which are imposed on the Custodian or the Manager in respect of the Trust or any of the Authorised Investments of the Trusts;
- (ii) taxes, levies, imposts, duties, deductions or withholdings (however called), interest, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed of any nature whatsoever, whensoever and howsoever imposed, and all liabilities which arise from any payment made to or by the Custodian or the Manager under this Constitution or the Custodian Agreement or any other instrument delivered under this Constitution;
- (iii) taxes, interest, penalties, charges, fees or other amounts (if any) imposed, levied, collected, withheld or assessed upon Subscriptions, the Trust, or the Income, capital gains, profits, transactions, accounts, accruals, receivables, or any change in the worth or value of the Assets or the Investments or the Custodian, the Manager or both of them in their respective capacities as trustee or manager of the Trust,

all such taxes and imposts, to include, without limitation, all imposts, financial institutions duty, debits tax, withholding tax, stamp or documentary taxes, or any other excise or property taxes, charges or similar levies (howsoever called) imposed, levied, collected withheld or assessed by Australia or any political subdivision in, or of, Australia or any other jurisdiction whether within or outside Australia from, or to, which a payment is made by or on behalf of, a Unitholder or pursuant to any legislation enacted, proclaimed or otherwise brought into operation by any of the foregoing;

Total Incentive Fee or **TIF** means the total Incentive Fee calculated in accordance with schedule 4;

Trust means the trust established under this Constitution and is all of the Units;

Underlying Securities means the securities which comprise, or are to comprise, Assets;

Unit means an interest in the Trust as referred to in clause 4.2(a);

Units on Issue means all Units for the time being created and issued and not cancelled but in relation to a particular day shall not include Units which are redeemed on that day;

Unit Value means the value of each individual Unit in the Trust and shall be calculated in accordance with Schedule 2 of this Constitution as if references to "Repurchase Price" read "Unit Value";

Unitholder means a person for the time being registered under the provisions of this Constitution as the holder of Units in the Trust;

Value when used in relation to the Investments means the value established pursuant to clause 17;

Valuation Date means each succeeding anniversary of the Completion Date;

Withdrawal Request means a Notice from a Unitholder pursuant to clause 10 that the Unitholder wishes for some or all of their Units to be redeemed or repurchased.

2.2 Interpretation

In this Constitution:

- (a) the captions headings and marginal notes in this Constitution contained are inserted only as a matter of convenience and in no way define, limit, describe or affect the scope, intention, construction or effect of any of the provisions contained or implied in this Constitution;
- (b) words importing any gender include the other gender and the plural includes the singular and vice versa;
- (c) unless otherwise defined, a word or phrase which is given a special meaning by the Corporations Act shall, where the context permits, have the same meaning in this Constitution except that to the extent of any inconsistencies between meanings in this Constitution and the Corporations Act, the meaning given by this Constitution shall prevail;
- (d) all references to any clause or provision of this Constitution are references to such clause or provision as modified, altered or varied from time to time in accordance with this Constitution;
- (e) all references to sums of money are to amounts in Australian dollars unless otherwise expressly stated;
- (f) all references to time mean Melbourne local time;
- (g) all references to a Relevant Law, whether referred to as such or by name (whether that name is the one currently used or a superseded one), in this Constitution include that Relevant Law for the time being in force, as amended, or re-enacted, from time to time and any Relevant Law enacted in lieu of such Relevant Law, whether or not passed by the same Parliament and whether or not incorporating or adopting (wholly or in part) any Relevant Law passed by another Parliament, and all references to a section, clause or

other provision (or any part of a section, clause or provision) in any such Relevant Law shall be read in a corresponding manner;

- (h) the Schedules to this Constitution form part of it.

3. COMPLETION

Completion will occur when the Manager is notified by the Custodian that Subscriptions equal to or in excess of the Minimum Subscription Amount have been received.

4. FORMATION OF THE TRUST

4.1 Formation of Managed Investment Scheme

- (a) The Manager hereby declares that it shall stand possessed of the Assets upon trust for the Unitholders and with the powers and subject to the provision in this Constitution.
- (b) The Trust shall be known as the Patriot Small Companies Fund or such other name as the Manager from time to time designates.
- (c) The Manager has entered into or will enter into the Custodian Agreement with the Custodian whereby the Custodian will agree to act as the custodian for the Scheme.
- (d) The Custodian pursuant to the Custodian Agreement shall hold the title to the Assets.
- (e) The appointment of the Manager as responsible entity of the Trust is hereby confirmed and the Manager agrees to manage the Trust upon and subject to the terms and conditions contained in this Constitution.
- (f) This Constitution is made with the intention that the benefits and obligations under this Constitution may enure not only to the Manager but also to the extent provided to every Unitholder and the Units shall be held upon and subject to the provisions contained in this Constitution.
- (g) The terms and conditions of this Constitution shall be binding on the Manager and each Unitholder and all persons claiming through them respectively as if each such Unitholder was a party to this Constitution.
- (h) The Manager shall ensure that the Custodian opens and conducts such bank accounts as are necessary to hold any application moneys for Subscriptions and also to hold any moneys of the Trust.

4.2 Creation of Initial Units

- (a) The beneficial interest in the Net Assets of the Trust shall be divided into Units and every Unit shall confer on its holder an equal interest in the Net Assets of the Trust but shall not confer any interest in any particular part of the Net Assets but only such interest in the Net Assets as a whole as is conferred by a Unit in the Trust under the provisions contained in this Constitution.
- (b) At any given date all of the Units into which the beneficial interest in the Net Assets of the Trust is for the time being divided shall be of equal value.

- (c) A Unitholder must not interfere with any rights or powers of the Manager or the Custodian, exercise a right in respect of an Asset, lodge any notice affecting an Asset or otherwise claim any interest in any particular Asset or require an Asset to be transferred to the Unitholder.

5. SUBSCRIPTIONS

5.1 Payment

Each Unitholder shall at the time of lodging an application for a Unit pursuant to the Product Disclosure Statement pay to the Custodian the Subscription. Payment must be in cash or such other means as the Manager accepts.

5.2 Application Form

- (a) No person shall be eligible to become a Unitholder unless that person's Subscription is accompanied by an Application Form or other documentation acceptable to the Manager.
- (b) The Manager may, on receipt of Subscriptions that are not accompanied by a completed Application Form, as soon as practicable return the Subscription to the applicant; or
 - (1) attempt to obtain a completed Application Form from the applicant; and
 - (2) give the Subscription to the Custodian.

5.3 Holding

Pending Completion, the Manager shall ensure that all Subscriptions are held by the Custodian in an interest bearing account with a Bank nominated by the Manager and approved by the Custodian.

5.4 Interest

- (a) If Completion does not occur, the Manager shall calculate each Unitholder's share of the interest earned on the Subscriptions less any Taxes and bank and other charges and shall account to each Unitholder for the amount so calculated at the time that Subscriptions are refunded.
- (b) If Completion occurs, any interest earned on the Subscriptions shall form part of the Fund.

5.5 Custodian

The Manager will ensure that, if the Manager gives any Subscription to the Custodian, the Custodian will:

- (a) hold such Subscription in a trust account, on trust for the applicant, until the applicant's Application Form is received;
- (b) if the Manager advises the Custodian that the Application Form has been received by the Manager within 30 days after the Subscription has been received, apply the moneys as soon as practicable after being advised, but no later than the close of business on the next working day after being advised; and

- (c) if the Manager advises the Custodian that the Application Form has not been received by the Manager within 30 days after the Subscription is received, return the Subscription and interest less any Taxes and bank and other charges to the Unitholder as soon as practicable.

6. APPLICATION OF SUBSCRIPTIONS

6.1 Application

The aggregate of the Subscriptions shall be applied by the Custodian on behalf of the Unitholders at the direction of the Manager.

6.2 Refund

If sufficient Subscriptions are not achieved to enable Completion to occur or if the Manager forms the opinion that the Trust will not acquire the Investments in accordance with the terms of this Constitution, the Manager shall ensure that the Custodian shall forthwith return to each Unitholder his Subscription together with the Unitholder's share of the interest pursuant to clause 5.4 above, less any Tax and bank and other charges.

7. APPLICATION FOR UNITS

7.1 Product Disclosure Statement

- (a) The Manager shall not offer any Unit for subscription or purchase, or issue invitations to subscribe for or buy Units, unless such offer is made pursuant to a Product Disclosure Statement (or such other document as required by the Corporations Act) in relation to those Units.
- (b) Every person applying for Units shall complete and lodge, or cause to be completed and lodged, the Application Form with the Manager.

7.2 Application Price

Units in the Trust shall be issued at the Application Price using either the last calculated Unit Value or a recalculated Unit Value, as the Manager sees fit.

7.3 Applications

- (a) The Manager in its absolute discretion may accept or refuse any application for Units in part or in whole (including, without limitation, from existing Unitholders) and it shall not be required to assign any ground for such refusal.
- (b) Where the Manager refuses an application for a Unit in part or in whole, it shall give written notice of its refusal to the applicant, and shall return to the applicant the Subscription paid by the applicant as soon as practicable.
- (c) The number of Units to be issued to an applicant whose application for Units is accepted in accordance with clause 7.3(a) shall be calculated in accordance with the following formula:

$$N = S/AP$$

where N is the number of Units to be issued;

S is the Subscription for Units; and

AP is the Application Price for Units.

- (d) The Manager shall issue each Unit for the Application Price.
- (e) Every person applying for Units shall apply for not less than the Minimum Investment Amount.

7.4 Completion

The Manager shall not issue any Units prior to Completion.

7.5 Minimum Unitholding

Unless a Unitholder has submitted a Withdrawal Request for all of their Units pursuant to clause 10, each Unitholder must at all times hold the Minimum Unitholding and the Manager shall not accept any application for Units, redeem any Units or register any transfer of Units which would result in a Unitholder holding less than the Minimum Unitholding.

7.6 Notice of Issue

The Manager shall within ten Business Days of issuing Units to a Person send a Notice to the Unitholder confirming the following:

- (a) the amount of their investment in the Trust;
- (b) the amount of Units issued to them and the issue price of such Units;
- (c) their investor number (if any);
- (d) the total number of Units they hold (if subsequent investment); and
- (e) confirmation of their personal details.

8. INCOME OF THE TRUST

8.1 Entitlement

Subject to the rights conferred and subject to this clause 8, at the end of each Financial Year the Unitholders shall be entitled to payment of the Taxable Income derived by the Trust during the Financial Year in proportion to the Units held.

8.2 Distributions

- (a) The Manager shall make or cause to be made distributions of the Income of the Trust on the last day of each Financial Year.
- (b) The first distribution will be for the period from the Completion Date until the end of that Financial Year.

- (c) The payments of such distributions will be made within one calendar month after the end of each Financial Year and the Manager shall include or cause to be included a statement setting out the particulars of the distribution.
- (d) The Manager may make or cause to be made distributions of the Income of the Trust at times in addition to the distribution required by clause 8.2(a).
- (e) Notwithstanding anything to the contrary contained in this Constitution, the Manager shall ensure that the Custodian shall make distributions directly to the Unitholders, provided however that the Manager shall be entitled to direct the Custodian to deduct from any amount so payable on whatever account an amount on account of any Tax which is payable or subject to deduction or withholding by, or assessed to, the Custodian and the Unitholder will be advised of such deduction at the time the payment or distribution is made and this will be sufficient for the Manager to discharge its duties under this Constitution in this regard.
- (f) Notwithstanding anything to the contrary contained in this Constitution, the Manager may:
 - (1) separately account for any class or source of income (including capital gains); and
 - (2) distribute, in its absolute discretion, to a Unitholder or class of Unitholders, income (including capital gains) from a specified class or source.

8.3 Accounts

The Manager shall send, or cause to be sent, within six weeks of the audit of the Accounts being completed to each Unitholder:

- (a) a statement of the Accounts for that Financial Year in relation to the Assets; and
- (b) a copy of the report of the Auditor on the statement set out in clause 8.3(a).

8.4 Income or Capital

Subject to any express provisions in this Constitution to the contrary, if any question shall arise as to whether any money or property constitutes income or capital the question shall be determined in accordance with this Constitution and having regard to generally accepted accounting principles and to any provisions of the Income Tax Act which operate to treat receipts and dispositions otherwise than in accordance with generally accepted accounting principles and if any question shall arise as to whether any expense is chargeable against income or capital (or at all) such question shall be determined in accordance with this Constitution.

9. COMMENCEMENT, PERIOD AND TERMINATION OF THE TRUST

9.1 Commencement

The Trust shall commence on the Completion Date.

9.2 Period

- (a) The trusts contained in this Constitution will, subject to the provision for earlier determination elsewhere in this Constitution, determine and be wound up on the expiration of eighty years less one day from the date of this Constitution.

- (b) Subject to not infringing the rule against perpetuities and any rules against perpetual trusts or remoteness of vesting, the Unitholders may by Special Resolution resolve to extend the duration of the trusts and upon the Manager so agreeing in writing the trusts contained in this Deed will extend for such further period as may be determined by the Manager.

9.3 Termination

- (a) If the Manager is removed or retires from the management of the Trust, and the relevant meeting does not appoint a replacement manager, or the replacement manager appointed by the meeting does not accept that appointment, then the Manager must determine the Trust and the provisions of clause 9.3(c) shall apply to such determination.
- (b) If:
 - (1) at a meeting of Unitholders an Extraordinary Resolution is passed directing the Manager to wind up the Trust; or
 - (2) the Court makes an order directing the Manager to wind up or determine the Trust,then the Manager shall do so and the provisions of clause 9.3(c) shall apply.
- (c) Upon determination of the Trust the Manager shall direct the Custodian to realise all Assets, and, after deduction of all fees, costs and expenses provided for in this Constitution, shall distribute the net proceeds of the realisation of the Assets among the Unitholders in proportion to the Units in respect of which they are respectively registered as holders provided always that the Custodian shall be entitled to retain its and the Manager's costs, charges and expenses including remuneration and shall be entitled to retain for so long as it thinks fit such amount which in its opinion may be required to meet all claims, demands and expenses incurred or expected to be incurred by the Trust on the determination of the Trust, provided further that a distribution shall be made only against delivery to the Custodian of such evidence as the Custodian may require of the Unitholder's entitlement to such distribution and against delivery to the Custodian of such form of receipt and discharge as may reasonably be required by the Custodian.
- (d) Notwithstanding anything to the contrary contained in this Constitution, the Investments may be continued to be held and the Trust may be continued if the Manager reasonably believes it to be in the best interests of the Unitholders to do so.
- (e) If the requisite number of Unitholders wish the Trust to be wound up earlier than in accordance with the foregoing provisions, then a meeting of Unitholders may be called in accordance with the provisions of the Corporations Act and this Constitution to consider and vote on an extraordinary resolution directing the Manager to wind up the Trust.
- (f) Upon determination of the Trust the Manager shall appoint an Auditor to perform an independent audit of the final accounts of the Trust.

10. REDEMPTION OF UNITS

10.1 Manager Will Repurchase or Redeem Units

Subject to the succeeding provisions of this clause 10, the Manager hereby covenants that it will during the continuance of the Trust at the request of a Unitholder repurchase from such

Unitholder, or at the option of the Manager cause the redemption of, the Units to which such request relates at the Repurchase Price calculated in accordance with the provisions of this Constitution provided that:

- (a) the Manager may in its sole discretion refuse to repurchase or cause to be redeemed Units in the Trust to a value of less than the Minimum Withdrawal Amount unless the aggregate Unit Value of the total number of Units in the Trust held by the requesting Unitholder is less than the Minimum Unitholding and the request relates to all of the Units held;
- (b) where the repurchase or redemption pursuant to a request by a Unitholder would result in the value of the total number of Units held by that Unitholder being less than the Minimum Unitholding the Manager shall be entitled without request from the Unitholder to repurchase or cause to be redeemed the balance of the Units in the Trust held by the Unitholder; and
- (c) the Manager may in its sole discretion for a period of no more than 120 days or such longer period as the Manager considers reasonable refuse to repurchase or cause to be redeemed Units where such repurchase or redemption within that period would result in the Manager or the Trust having insufficient funds or such repurchase or redemption would otherwise prejudice the interests of the remaining Unitholders.

10.2 Manner of Request

- (a) A Withdrawal Request shall specify the dollar amount or Units required to be redeemed or repurchased (if both dollars and Units are specified, the Manager may choose one measure in its absolute discretion) and shall be made in any one of the following ways:
 - (1) in writing in such form as from time to time is prescribed by the Manager and delivered to any office of the Manager or any other place agreed to in writing by the Manager;
 - (2) in such other manner as is from time to time prescribed by the Manager.
- (b) A Withdrawal Request may not be withdrawn or revoked except with the written approval of the Manager.

10.3 Receipt of Notice

The Units comprised in the Withdrawal Request shall be repurchased by the Manager, or at the option of the Manager, caused to be redeemed not later than thirty days following receipt of the Withdrawal Request provided that if the cheque for the Subscription has not been honoured and the proceeds of that cheque have not been received, the Manager or the Custodian may, notwithstanding clauses 10.1 and 10.2, at its sole discretion refuse to repurchase, cause a redemption or redeem (as the case may be) or distribute income in relation to those Units until the Business Day following the day upon which such cheque is honoured by the Bank on which it was drawn and the proceeds of that cheque received.

10.4 Proceeds of Repurchase or Redemption

- (a) Subject to the provisions of clause 10.5, on repurchase or redemption (as the case may be) the Manager shall in respect of each Unit comprised in the Withdrawal Request pay or cause to be paid to the Unitholder an amount equal to the Repurchase Price applicable to

the Unit as at the time the Manager next calculates the Net Assets following receipt by the Manager of the Withdrawal Request.

- (b) If there is any undistributed income entitlement of the Unitholder standing to the credit of the Unitholder in the Accounts (that is, a distribution to be made under clause 8.2(a) or 8.2(b) but not yet paid under clause 8.2(c)) in respect of the Units comprised in the Withdrawal Request, such entitlement shall remain credited to the Unitholder and be distributed to the Unitholder in accordance with the provisions of this Constitution notwithstanding that the Unitholder has ceased to be the holder of the relevant Units.
- (c) The Manager shall be entitled to deduct from the moneys payable to the Unitholder in accordance with clause 10.4(a) and clause 10.4(b) any fees or other moneys unpaid by the Unitholder in their capacity as Unitholder to the Manager and the total amount to be paid to the Unitholder for all the Units specified in the Withdrawal Request shall be rounded downward to the nearest cent.

10.5 Repurchase or Redemption

- (a) Where the Units specified in the Withdrawal Request are being repurchased, the Manager shall pay to the Unitholder the moneys referred to in clause 10.4 out of the Manager's own funds.
- (b) Where the Units specified in the Withdrawal Request are being redeemed, the Manager shall:
 - (1) direct the Custodian to pay to the Unitholder (or to the Manager for the account of the Unitholder on the terms of clause 10.5(f)) all or part of the moneys referred to in clause 10.4 out of the Net Assets of the Trust (or if there shall be any unpaid fees or other moneys owed by the Unitholder to the Manager to pay those moneys to the Manager for its own benefit and the balance to the Unitholder or to the Manager for the account of the Unitholder on the terms of clause 10.5(f)) and the Manager shall ensure that a sufficient amount of the Assets are available in Cash to enable the Custodian to make such payment; and/or
 - (2) direct the Custodian to either distribute to the Unitholder or to hold on behalf of the Unitholder such Assets as the Manager shall specify having a value (ascertained in accordance with clause 17) equivalent to the moneys referred to in clause 10.4 or the balance of such moneys where a payment is also made in accordance with clause 10.5(b)(1) (less the amount of any unpaid fees or other moneys owed by the Unitholder to the Manager, which shall be paid to the Manager in Cash) in such manner as the Manager determines,

and the Manager shall use reasonable endeavours to ensure that after such redemption the Trust will retain sufficient Assets to meet any commitments of the Trust.

- (c) Upon receiving a direction in accordance with clause 10.5(b), the Custodian shall forthwith pay to the Unitholder (or to the Manager for the account of the Unitholder, where applicable) the moneys referred to in clause 10.4 having, if necessary, realised such of the Assets as have been for the purpose specified in writing by the Manager, distribute to the Unitholder the Assets specified by the Manager or hold the Assets specified by the Manager for the benefit of the Unitholder (as the case requires).

- (d) If the moneys paid or Assets distributed to the Unitholder shall have been furnished from the Net Assets pursuant to clause 10.5(b), redemption of the Units is effective on the day when payment of such moneys is deemed by clause 23.2(b) to have been made or the Assets are so distributed, and the Units shall not be reissued, but this shall not restrict the right of the Manager to create additional and/or to issue further Units of the Trust.
- (e) If the moneys paid to the Unitholder shall have been provided wholly out of the funds of the Manager pursuant to clause 10.5(a), repurchase of the Units in respect of which the moneys so provided have been paid is effective on the day when payment of such moneys is deemed by clause 23.2(b) to have been made, and the Manager shall be entitled to the benefit of the Units and may at any time thereafter resell each of such Units in accordance with the terms of this Constitution.
- (f) Where the Custodian pays all or part of the moneys referred to in clause 10.4 to the Manager for the account of the Unitholders pursuant to clause 10.5(b)(1) out of the Net Assets, the Manager shall hold such moneys exclusively for the benefit of the respective Unitholders entitled to such moneys and shall remit those moneys to the Unitholders as soon as practicable (but in any event not later than the expiration of the period referred to in clause 10.3).

10.6 Entry in Register

On repurchase or redemption the Manager shall make an appropriate entry in the Register specifying the number of Units in the Trust which have been repurchased or redeemed.

10.7 Redemption of Units Held by Manager

- (a) Notwithstanding that the Manager has repurchased any Units itself, the Manager shall be entitled at all times and from time to time to request that redemption of Units to the benefit of which it is entitled by virtue of the provisions of this Constitution.
- (b) The provisions of this clause 10 shall apply so far as they are applicable and unless otherwise provided elsewhere in this Constitution in respect of all or any of the Units held by the Manager in respect of which a redemption request is made.

10.8 Suspension of Obligation to Repurchase

The obligations of the Manager to repurchase or redeem Units in the Trust from a Unitholder pursuant to the preceding provisions of this Constitution relating to or howsoever concerning the repurchase or redemption of Units from Unitholders shall be suspended if the Trust shall be terminated provided that notwithstanding termination of the Trust the Manager shall be obliged to redeem or repurchase Units where the request for redemption or repurchase shall have been received prior to the date of termination of the Trust.

11. TRANSFER OF UNITS

11.1 Permitted Transfer

A Unitholder may transfer Units in the Trust only in accordance with the following provisions:

- (a) the transferee must agree to be bound by the provisions of this Constitution in a form acceptable to the Manager; and

- (b) a stamped transfer of the Units in the Trust must be delivered to the Manager.

11.2 Taxes

- (a) The Manager shall not be required to effect any transaction or dealing in any Unit on behalf of, or for the benefit of, or at the request of, any Unitholder unless the Unitholder has paid or otherwise provided for, to the Manager's satisfaction, all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges (whether similar to the foregoing or not) which may have become or may be payable in respect of the transaction or dealing.
- (b) The Manager is entitled, if it thinks fit, to pay and discharge all or any of those duties and charges on behalf of the Unitholder concerned and retain the amount so paid out of any moneys to which the Unitholder may be, or become, entitled.

11.3 Closed Register

The Manager may decline to register any transfer during the period that the Register is closed under clause 14.6.

11.4 Instrument of Transfer

Every instrument of transfer of Units which is registered shall be retained by the Manager for such period as the Manager may determine, after which (subject to the provisions of any law or this Constitution to the contrary) the Manager may destroy it.

11.5 Refusal to Register

Where the Manager refuses to register any instrument of transfer, within two months after the date on which the instrument was deposited with the Manager the Manager shall give notice of the refusal to the person who deposited it, and any instrument of transfer which the Manager refuses to register shall (except in the case of suspected fraud) be returned to the person depositing it upon request by such person within two months of the giving of the notice. The Manager shall not be required to give reasons for the refusal.

11.6 Confirmation

Upon the registration of a transfer of any Units, the Manager shall, within one month after the date of such registration, issue to the transferee or transmittee written confirmation of the transfer or transmission.

12. TRANSMISSION OF UNITS

12.1 Deceased Unitholder

In the case of the death of a Unitholder, the survivor of the deceased Unitholder where the deceased Unitholder was a joint holder of Units, or the executor or administrator of the deceased Unitholder where the deceased Unitholder was the sole Unitholder of Units, shall be the only person recognised by the Manager as having any title to any Unit registered in the name of the deceased Unitholder.

12.2 Registration

Subject to clause 12.5, any person becoming entitled to any Unit in consequence of the death or bankruptcy or lunacy of a Unitholder or otherwise by operation of law may upon such evidence being produced as may from time to time be required by the Manager and subject as provided in this Constitution elect either to be registered as holder of the Unit or to have some person nominated by that person registered as the holder of the Unit.

12.3 Notice

- (a) Subject to clause 12.5, if the person so becoming entitled shall elect to be registered, the person shall deliver or send to the Manager a notice in writing in the form prescribed by the Manager or in such other form as the Manager may approve signed by the person stating that he so elects.
- (b) If the person so becoming entitled elects to have a nominee registered, the person and the person's nominee shall testify the election by delivering or sending to the Manager a form of transfer of the Units to that nominee.
- (c) All the provisions of this Constitution relating to the registration or transfer of Units shall be applicable to any such notice or transfer as if the death or bankruptcy or lunacy of the Unitholder had not occurred and the notice or transfer was a transfer executed by such Unitholder.

12.4 Entitlements

A person becoming entitled to Units in consequence of the death, bankruptcy or lunacy of a Unitholder or otherwise by operation of law shall be entitled to receive and may give a discharge of all moneys payable in respect of the Units but shall not be entitled to receive notices of or to attend or vote at any meetings of Unitholders until the Person shall have become registered as the holder of the Units.

12.5 Application for Registration

For the purposes of this clause 12, an application by a personal representative of a deceased Unitholder for registration as the holder of Units in place of the deceased Unitholder shall be deemed to be an instrument of transfer effecting a transfer of the Unit to the personal representative.

12.6 Evidence of Grant

The production to the Manager of a document that is under the laws of a State or Territory of Australia sufficient evidence of probate of the will, or letters of administration of the estate of a deceased Unitholder having been granted to a person, shall be accepted by the Manager as sufficient evidence of the grant.

13. NO ASSISTANCE WITH SALES

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

14. REGISTERS

14.1 Maintain

The Manager covenants that it shall keep and maintain an up-to-date Register of Unitholders at the registered office or principal place of business of the Manager in Melbourne, or at its designated agent's office, in such form and containing such particulars as are required by the Corporations Act or any declaration, exemption or ruling granted or made under the Corporations Act, and such other particulars as the Manager may from time to time consider appropriate.

14.2 Contents

Subject to clause 14.1, there shall be entered in the Register:

- (a) the names, addresses and descriptions of the Unitholders from time to time;
- (b) the Units from time to time held by each Unitholder;
- (c) the date at which the name of each Unitholder was entered in the Register in respect of their Units; and
- (d) the date at which any person ceased to be the holder of Units.

14.3 Removal of Information

The information relating to a Unitholder (or any of it) may be removed from the Register at any time after the first day of the Financial Year occurring 7 years after the Financial Year in which the Unitholder ceased to be the holder of Units.

14.4 Access

Subject to clause 14.5, the Manager covenants that any Unitholder and any other person shall be entitled to:

- (a) inspect the Register, in the case of any Unitholder, free of charge, and in the case of any other person, upon payment for each inspection of the maximum amount prescribed by the Corporations Act or Regulations or such lesser amount as the Manager may from time to time require; and/or
- (b) obtain a copy of the Register, in the case of the Unitholder or other person, at a charge prescribed by the Manager from time to time provided that any such charge shall not exceed (for each copy) the maximum amount prescribed from time to time by the Corporations Act or Regulations,

during normal business hours on any Business Day.

14.5 Limitation

Clause 14.4 shall not require the Manager to make available or provide copies of the Register in excess of their obligations to do so under the Corporations Act having regard to any declaration or exemption made or given by ASIC.

14.6 Closure

The Manager may close the Register or part of the Register for any time or times but so that no part of the Register shall be closed for more than 30 days in the aggregate in each calendar year.

14.7 Alteration

Each Unitholder shall give the Manager notice of any change of name or address on the part of such Unitholder and the Manager, upon receiving such notification, shall alter the Register accordingly and confirm the change that has been made with the Unitholder.

15. LIABILITY OF MANAGER

Subject to and without in any way limiting the covenants given by the Manager under this Constitution and in accordance with the requirements of the Corporations Act and without prejudice to any indemnity allowed by law or elsewhere given in this Constitution to the Manager it is hereby expressly declared as follows:

- (a) the Manager shall not incur any liability to anyone in respect of any failure to perform or do any act or thing which by reason of any provision of any present or future law of the Commonwealth of Australia or any State or Territory of Australia or any ordinance rule regulation or by-law made pursuant to such law or of any decree order or judgment of a competent court the Manager shall be hindered prevented or forbidden from doing or performing;
- (b) the Manager shall not be liable to account to any Unitholder or otherwise for any payments made by the Custodian or the Manager in good faith to any duly empowered authority of the Commonwealth of Australia or any State or Territory (including any local government authority or semi-governmental instrumentality) of Australia for Taxes or other charges on the Assets or otherwise or with respect to any transaction under this Constitution notwithstanding that any such payment ought not or need not have been made;
- (c) the Manager may validly act upon the opinion or advice of or information obtained from barristers and solicitors whether instructed by the Manager or by the Custodian or by the Compliance Committee or by any third party and the Manager may act upon any statement of or information obtained from the Custodian or any bankers, accountants, Approved Valuers or other persons believed by the Manager in good faith to be expert in relation to the matters upon which they are consulted and the Manager shall not be liable for anything done or suffered or not done or suffered by it in good faith (which shall not include any loss occasioned to a Unitholder to the extent that such loss may be attributable to the Manager's neglect or default) in reliance upon such opinion advice statement or information provided that any such barristers, solicitors, bankers, accountants, Approved Valuers and other persons consulted are independent of the Manager and provided further that in any case where the Manager is seeking to be indemnified out of the Assets in relation to any matters upon which such bankers, accountants, Approved Valuers or other persons have been consulted the Manager undertakes to supply the Custodian and the Unitholders, at its own expense, with all information in its possession or over which it has control which may be relevant to any decision by them to so indemnify the Manager;

- (d) except so far as is otherwise expressly provided in this Constitution, the Manager shall as regards all the trusts, powers, authorities and discretions vested in it have absolute and uncontrolled discretions as to the exercise whether in relation to the manner or as to the mode of and time for the exercise and in the absence of fraud or breach of trust the Manager shall be in no way responsible for any loss costs damages or inconvenience that may result from the exercise or non-exercise;
- (e) subject to any statute or rule of law, nothing in this Constitution shall prevent the Custodian or any subsidiary of the Custodian or the directors or officers of the Custodian or of such subsidiary or the Manager or any subsidiary of the Manager or the directors or officers of the Manager or of such subsidiary from at any time contracting or acting in any capacity as representative or agent or entering into any financial, banking, agency or other transaction with the other of them or any Unitholder or any company in or with which any part of the Assets are invested by the Custodian in the performance of any of the duties or obligations imposed upon the Manager pursuant to the terms of this Constitution and provided further that any such person or corporation shall act in connection with such transactions in a fiduciary relationship of utmost good faith to all Unitholders;
- (f) the Manager may appoint any officer (whether jointly or severally) to exercise for or on behalf of the Manager all or any of the powers and authorities exercisable by the Manager under the provisions of this Constitution provided that the Manager may not delegate the discretionary powers conferred upon it pursuant to this Constitution;
- (g) other than as set out in this Constitution, no Unitholder shall be entitled to require the transfer of any Asset nor be entitled to interfere with or question the exercise or non-exercise by the Manager or the Custodian of any of the trust powers, authorities or discretions conferred upon them by this Constitution or in respect to any Asset;
- (h) all powers authorities and discretions vested in and all indemnities allowed to trustees pursuant to the provisions of the Trustee Act 1958 (Victoria) or in equity or at common law are deemed to be included in this Constitution and all such powers authorities and discretions are vested in and such indemnities are allowed to the Manager;
- (i) the Manager shall be entitled to commence, institute, carry on and prosecute all actions, suits and proceedings at law to procure compliance with the provisions of this Constitution or the terms of any Product Disclosure Statement, and to obtain and recover any moneys payable to it or to enforce the payment or for damages against any person arising out of any loss suffered by Unitholders and to pursue the same to judgment, decree, order and execution or to discontinue, become non-suited in or abandon or otherwise to act as the Manager or Custodian may determine, and the Manager and Custodian shall be indemnified in respect of all costs, charges and expenses incurred by it in respect to any such action, suit or proceeding.

16. RIGHTS, POWERS, DUTIES AND COVENANTS OF AND BY THE MANAGER

16.1 Powers

- (a) Subject to any limitations contained in the Corporations Act or under the law of trusts generally, the Manager shall have all the powers of a natural person and a body corporate including, without limitation, to borrow monies, to acquire, subscribe for, sell, dispose of and otherwise deal with Authorised Investments, Investments and the Assets.

- (b) Without limiting clause 16.1(a), the Manager may invest the Trust in any manner, in any property in the world as the Manager thinks fit and the Manager may exchange any Investment for any other Investment, vary the term of any Investment and surrender any Investment.
- (c) The Manager has the power to classify and re-classify the whole or any portion of the Units on Issue with the prior consent of the relevant Unitholder(s).
- (d) The Manager has the power to issue different classes of Units in consultation with any applicant for such Units (including, without limitation, the power to issue Units designated as different classes but otherwise with the same rights).

16.2 Rights and Duties

The Manager will:

- (a) ensure that the Investments are purchased, held and sold by the Custodian in the terms of this Constitution and the Product Disclosure Statement;
- (b) cause the issue or notification to Unitholders setting out their respective entitlement to Units not more than thirty days after the allotment or transfer of those Units, and will issue further notification where necessary;
- (c) ensure that the Investments are valued in accordance with clause 17;
- (d) disclose to Unitholders, on request:
 - (1) its instructions to an Approved Valuer;
 - (2) the current valuation of the Investments; and
 - (3) the last calculated Repurchase Price of the Units;
- (e) provide the Approved Valuer with all information the Approved Valuer may reasonably require to make an accurate, fair and reasonable valuation;
- (f) keep the Custodian fully informed of the identity of the Investments and any policy of the Manager in respect of the proportion of the value of the Assets attributable to borrowings and the conditions attached to borrowings;
- (g) take or defend any court or arbitration action to protect the Units or any of the Investments;
- (h) deal with any authorities, public or otherwise;
- (i) keep records relating to all financial transactions and prepare any necessary income tax and other returns to report on such matters to Unitholders and to pay related costs and expenses;
- (j) appoint the Auditor, Compliance Committee (if necessary) and Auditor of the Compliance Plan;

- (k) cause the Custodian to operate any bank accounts and cheque accounts as are deemed necessary by the Manager;
- (l) subject to the Corporations Act delegate its authorities to such persons as it thinks fit;
- (m) appoint any financial, legal, accounting, valuation or other expert to advise the Manager in relation to the exercise of the Manager's authorities referred to in this clause;
- (n) generally to do all things necessary to give effect to this Constitution;
- (o) adopt and maintain the complaints resolution procedure that is fully set out in Schedule 3;
- (p) appoint such suitably qualified and experienced persons as Authorised Representatives under the AFSL;
- (q) specify its investment policy in the Product Disclosure Statement, but nothing shall prevent the Manager from varying that policy from time to time.

16.3 Covenants of the Manager

Subject to the provisions of clause 1, the Manager hereby covenants with the Unitholders with the intent that the benefit of the covenants shall enure to the Unitholders jointly and to each of them severally that:

- (a) it will strive to carry on and conduct its business in a proper and efficient manner and to ensure that the business, undertaking, enterprise or scheme to which this Constitution relates is carried on and conducted in a proper and efficient manner;
- (b) it will prepare all cheques and notices which are to be issued as provided in this Constitution and stamp the same as required and produce the same, or in the case of cheques to Unitholders for distribution of income, details of the same, to the Custodian so as to afford the Custodian reasonable time to examine and check the same and to sign, or in the case of cheques to Unitholders for distribution of income, to authorise the Manager to sign (by autographical, mechanical or other means) such cheques and notices for dispatch by the Manager on or before the day on which they ought to be dispatched;
- (c) it will keep proper books of account wherein it will record capital receipts and expenditures and income receipts and other costs fees expenses disbursements and all other payments and outgoings and accruals and outgoings properly chargeable against Income together with a record of the Investments;
- (d) it will pay to the Custodian within 30 days after the receipt thereof by the Manager any moneys which under this Constitution are payable by the Manager to the Custodian;
- (e) it or its agents servants or officers shall manage and supervise the Investments and it shall endeavour to ensure that the Investments are dealt with to the best advantage of the Unitholders;
- (f) it will perform its transactions and exercise its powers under this Constitution in the best interests of all Unitholders and not in the interests of the Manager if those interests are not the same as those of Unitholders generally;
- (g) subject to clause 16.3(f), it will treat holders of Units equally and fairly;

- (h) it will in any Product Disclosure Statement and other representations relating to the Trust direct that all cheques and other payment orders in respect of an application for Units be drawn in favour of the Custodian on account of the Trust;
- (i) it will advise the Custodian if an Associate of the Manager would be party to a transaction involving the Investments;
- (j) it will lay the latest audited Accounts before a meeting convened in accordance with the Corporations Act;
- (k) it shall provide to each Unitholder and any relevant regulatory authority any report required to be provided by law;
- (l) it will on receipt of Subscriptions with a completed Application Form, pay to the Custodian the moneys as soon as practicable after their receipt;
- (m) it will lodge for each Financial Year such tax returns as is necessary showing each Unitholder's share of Income and expenditure of the Trust in accordance with Income Tax Act;
- (n) it will for each Financial Year forward to each Unitholder a statement of the tax position for the Financial Year of the Trust;
- (o) it will not exercise a right to vote attached to a Unit held by or on behalf of it or its Associates in relation to a resolution calling for the retirement of the Manager;
- (p) it will report to the Unitholders not later than 90 days after the end of each Financial Year and give the report to the Unitholders with the statement of Accounts;
- (q) it will review in the report the operation of the Trust in the Financial Year to which the report relates and, in particular, will include in the report a statement on each of the following matters:
 - (1) the principal activities of the Trust;
 - (2) the policies for investment and borrowing by the Trust, any changes in those policies and the manner in which those policies have been given effect;
 - (3) any fees and charges paid in relation to the affairs of the Trust to the Manager, or any associate of the Manager, showing separately initial service charges, management fees, ongoing service charges and any other fees and charges;
 - (4) any interest of the Manager, or an associate of the Manager, shown separately, in the Trust:
 - (A) held by the Custodian on behalf of the Unitholders; or
 - (B) disposed of by the Custodian on behalf of the Unitholders,or a statement that there was not an interest of that kind;

- (5) the net amount distributed, or to be distributed, in respect of each Unit to each Unitholder from profits made, or reserves kept, by the Custodian together with the respective gross amounts;
 - (6) the details of any bonus issue made;
 - (7) any circumstances that materially affect the Unitholders;
 - (8) any changes in the value of the Investments and the Assets and the circumstances in which those changes occurred, distinguishing between realised and unrealised changes.
- (r) it will comply with the conditions to which the AFSL is subject;
- (s) if the Manager breaches a condition to which the AFSL is subject the Manager will, not later than the day after the day on which it becomes aware of the breach, inform ASIC in writing of the details of the breach.

16.4 Other Managers

Subject to fulfilling its obligations under clauses 16.2 and 16.3, the Manager may engage itself or any other person to manage the Assets or any portion of the Assets and/or the Underlying Securities or any portion of the Underlying Securities.

16.5 Remuneration and Expenses of Manager

- (a) The Manager shall be entitled to the fees contained in this clause 16.5 subject only to the proper performance of its duties as Manager.
- (b) The Manager shall be entitled to an establishment fee of up to 3% of an investor's application money, which is to be deducted from such funds.
- (c) The Manager shall be entitled to a contribution fee of up to 3% of an investor's application money for additional investments, which is to be deducted from such funds.
- (d) The Manager shall be entitled to an annual management fee of up to 2% per annum of the Net Assets of the Trust (**Management Fee**) which shall be calculated on each Business Day and paid to the Manager by the Custodian within ten Business Days of the end of each calendar month.
- (e) The Manager shall be entitled to an Incentive Fee calculated in accordance with schedule 4 and paid by the Custodian within 10 Business Days of the end of each Incentive Fee Calculation Period.
- (f) If the Manager exercises its rights under clause 16.4 to appoint itself it shall be entitled to pay to itself such fees as would be payable to a manager with skills, ability and performance history similar to that of the Manager (including, without limitation, management and Incentive Fees) and to otherwise agree commercial terms of engagement and the Manager shall be entitled to retain, for its own benefit, those fees and other benefits in addition to the other fees and benefits specified in this Constitution.
- (g) The Manager shall be entitled to retain (for its own benefit) certain fees generally known as trailing fees paid by financial institutions for depositing funds of the Trust with those

financial institutions in cash management and similar accounts as well as any rebates of brokerage, any underwriting or sub-underwriting fees or any other fees, rebates, commissions or payments ordinarily received by a securities dealer or holder of an Australian financial services licence in the ordinary course of conducting their business.

- (h) In the event that the Trust is terminated or the Manager retires or is removed, the Manager shall be entitled to a termination fee equal to 2.00% of the net asset value of the Trust as at the last valuation date preceding the termination or removal as well as any accrued Management and Incentive Fees.
- (i) All costs, charges and expenses reasonably and properly incurred by the Manager in connection with the Trust or in properly performing its obligations under this Constitution are payable or reimbursable out of the Assets or the Trust including (without limitation) costs, charges and expenses connected with:
- (1) this Constitution, the Compliance Plan, any supplemental deed, the formation of the Trust and other costs associated with establishing the Trust;
 - (2) the appointment, actions and removal of the Custodian as the trustee of the Assets;
 - (3) the preparation, distribution and promotion of a Product Disclosure Statement or other offer documentation in respect of the Trust or Units in the Trust;
 - (4) the sale, purchase, insurance, custody and any other dealing with the Assets;
 - (5) any proposed investment;
 - (6) the administration, management and promotion of the Trust or its Assets and Liabilities;
 - (7) convening and holding meetings of Unitholders, the implementation of Resolutions and communications with Unitholders (including without limitation postage);
 - (8) Tax (provided it is not on the personal account of the Manager or Custodian) and bank fees;
 - (9) the engagement of agents, valuers, advisers and contractors;
 - (10) the preparation and audit of the taxation returns and Accounts of the Trust;
 - (11) the bookkeeping and maintenance of all appropriate registers of the Trust;
 - (12) the termination of the Trust and the retirement or removal of the Manager and the appointment of a new Manager;
 - (13) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Manager or Custodian by the other of them (except to the extent that the person incurring the expenses is found by a court to be in breach of trust, in default or to have been negligent);
 - (14) travelling, hotel and other expenses incurred by any director, employee or agent of the Manager in going from the person's usual residence or abroad or otherwise

for the purpose of the Trust or in the performance of any obligation of the Manager under this Constitution, including without limitation any expense incurred in the monitoring of investments and the review and assessment of Authorised Investments; and

- (15) any brokers' fees or other costs associated with the purchase or sale of securities (including the GST component).
- (j) The Manager may defer reimbursement of any or all expenses to which it is entitled.
- (k) All amounts payable to the Manager under this Constitution (including, without limitation, any of the Management Fees) are expressed as being exclusive of GST and must be increased by the applicable rate of GST at the time the relevant supply takes place.

17. VALUATION

17.1 Timing of Valuations

The Manager may ascertain the Net Assets at any time in its absolute discretion but in any event shall (subject to clause 17.6) do so not less frequently than once each Month.

17.2 Valuation of Assets

A valuation or revaluation of any Asset may be made at any time and from time to time but in any event shall (subject to clause 17.6) be made not less frequently than once each Month.

17.3 Net Assets

In ascertaining the Net Assets the Manager shall take into account the valuation or revaluation of any of the Assets carried out in accordance with clause 17.2.

17.4 Valuation by Approved Valuer

- (a) The Manager shall have the right at any time and from time to time to instruct an Approved Valuer to value any or all of the Assets and shall upon receipt of such valuation promptly send a copy thereof to the Auditor.
- (b) The costs of such valuations shall be borne by the Trust.
- (c) Where such a valuation discloses a figure lower than the value of the Asset as shown in the books of accounts of the Trust then for the purposes of ascertaining the Net Assets that lower figure shall be taken into account in substitution for the value of the Asset as shown in the books of account of the Trust.

17.5 Valuation Principles

- (a) The Manager may cause any of the Assets to be valued at any time (not limited to once a day) and the Manager may calculate the value of the Net Assets of the Trust as at any time (not limited to once a day), in each case, in its absolute discretion.
- (b) The Manager's determination of the value of the Net Assets of the Trust including the determination of any part of the Trust or an Asset of the Trust shall be final and binding on all Unitholders.

- (c) The Manager is not to be regarded as having the knowledge of a valuer or any other expertise in valuation.
- (d) The valuation method or policy for any type of Asset is to be determined by the Manager and the Manager may vary it whenever it so decides. Where the Manager values any Asset of the Trust at other than its market value then a description of the valuation method or policy applied by the Manager must be given to the Auditor for the time being of the Trust prior to its implementation.

17.6 Postponement of Valuation

Without in any way limiting this clause 17, if the Manager determines that due to circumstances prevailing on the Australian Stock Exchange or affecting any Asset it is not practicable to value any Asset at any particular time or that any valuation obtained would not properly reflect the realisable value of the Assets, then the Manager may postpone the valuation or revaluation of any Asset so affected for the purpose of this clause 17 and may postpone the determination of the Net Assets for the period while such circumstances exist.

18. APPOINTMENT OF CUSTODIAN

18.1 Costs

Subject to clause 16.5(g), the Manager shall remunerate the Custodian out of the Manager's own funds and shall pay all costs, fees, expenses and other payments to which the Custodian is entitled under the Custodian Agreement.

18.2 Indemnity

The Manager, on behalf of the Unitholders, shall be entitled to indemnify the Custodian from and against all losses, claims and damages arising out of the proper performance of its duties.

19. MEETINGS OF UNITHOLDERS

19.1 Provisions of the Law

The provisions of Part 2G.4 of the Corporations Act apply to meetings of Unitholders, except as varied specifically by this clause 19.

19.2 When A Poll May Not Be Demanded

A poll may not be demanded on any resolution concerning:

- (a) the election of the chairman of the meeting; or
- (b) an adjournment of a meeting.

19.3 Appointment of a Proxy

- (a) The Manager may, at its absolute discretion, accept the appointment of a proxy as valid even though the appointment contains only some of the information required by section 252Y(1).

19.5 Authority of a Proxy Where the Unitholder Attends

- (a) If a Unitholder has appointed a proxy for a meeting and the Unitholder attends the meeting, then the proxy retains the authority to attend and vote for the Unitholder at the meeting provided that, if the chairman gives a Member the opportunity to speak and the Unitholder informs the chairman that the authority of the proxy is suspended then the authority will be suspended.
- (b) If the Member does revoke the authority of the proxy during a meeting then this does not, of itself, invalidate any action validly taken by the proxy leading up to the revocation.
- (c) Nothing in this clause 19.5 requires the chairman to give any Member an opportunity to revoke the authority given to a proxy.

20. LIMITATION OF LIABILITY OF UNITHOLDERS

20.1 Limit

Notwithstanding any other provision of this Constitution or any provision included or deemed to be included in this Constitution (whether expressly or by implication) (other than the provisions of clause 21), no Unitholder shall be under any obligation personally to indemnify the Manager or any creditor of the Manager in respect of any of the Liabilities (whether due to any deficiency or not) of the Manager in relation to, arising from, or in connection with, the Trust, whether arising from or by reason of the holding of a Unit or any relationship with the Custodian or the Manager arising from any such holding and any such Liability is hereby expressly excluded.

20.2 Recourse to Assets Only

The only rights (if any) or indemnity of the Manager and its creditors, and the Custodian and its creditors, shall be limited to having recourse to the Assets.

20.3 No Agency

Nothing in this Constitution shall constitute the Manager as the agent of any Unitholder.

20.4 Reliance

Without limiting the generality of the provisions of this clause 20, the Unitholders shall be entitled to rely on the provisions of this clause in cases where any liability is incurred as a result of any directions or request of the Unitholders.

21. TAXATION LIABILITY OF MANAGER

21.1 Manager May Deduct

The Manager may deduct or require to be deducted from any amount otherwise payable to, or to be applied in respect of, a Relevant Person an amount equal to the Taxation Amount of that Relevant Person which is payable, or anticipated to become payable, by the Manager on its own account or out of the Assets.

21.2 Application of Assets

Amounts deducted under clause 21.1 shall be applied in:

- (a) payment of the Taxation Amount of the person or authority entitled to such payment;
- (b) reimbursement of the Manager of any corresponding amount paid from its own funds; or
- (c) payment to the Relevant Person of any amount deducted pursuant to clause 21.1 which is not required for the purposes of this clause 21.2,

and pending such application shall form part of the Assets.

21.3 Manager's Indemnity

Save to the extent to which the relevant Taxation Amount has been deducted pursuant to clause 21.1:

- (a) the Manager shall be entitled to be indemnified by each Relevant Person for the Taxation Amount of that Relevant Person paid by the Manager save to the extent to which the Manager is reimbursed out of the Assets in respect of that amount; and
- (b) the Manager on account of the Trust shall be entitled to be indemnified by each Relevant Person for the Taxation Amount of that Relevant Person paid out of the Assets and for the amount of any reimbursement of the Taxation Amount paid to the Manager.

21.4 Interest

- (a) The Manager on its own account and on account of the Trust shall be entitled to be paid by the Relevant Person interest on the amount outstanding for which the Manager is entitled to be indemnified from the date on which the payment in respect of which right of indemnity has arisen was made at the rate equal to the rate then charged by the National Australia Bank Limited on overdrafts in excess of \$100,000.
- (b) Nothing in this clause shall oblige the Manager, whether on its own account or on account of the Trust, to seek payment of such interest.

21.5 Reimbursement

If the Manager on its own account or on account of the Trust becomes entitled to be indemnified pursuant to clause 21.3, the Manager on its own account and on account of the Trust:

- (a) may deduct or require to be deducted from any amount otherwise payable to, or to be applied in respect of, the Relevant Person the amount for which it or the Trust is entitled to be indemnified (together with interest thereon pursuant to clause 21.4) and apply such amount on account of such interest and right of indemnity; or
- (b) may by notice to the Relevant Person require the amount for which it is entitled to be indemnified, together with interest, to be paid on or before such date (not earlier than the expiration of 21 days from the date of service of the notice) as the notice may specify and the notice shall state that in the event of such payment not being made on or before that date, any Units registered in the name of the Relevant Person shall be liable to be caused to be redeemed to recover such amount.

21.6 Recovery

If the requirements of the notice under clause 21.5(b) are not complied with by the Relevant Person within the time specified therein, the Manager may:

- (a) cause the Units held by the Relevant Person which were specified in such notice or such part of it as the Manager may in its discretion determine to be sold by the Manager at whatever price the Manager deems fit, and the Manager is hereby authorised by the Relevant Person to take such steps and to sign such documents in the name of the Relevant Person as may be necessary for the sale and transfer of the Relevant Person's Units and to account to the Unitholder for the proceeds after deducting all reasonable expenses in relation to the sale;
- (b) appoint a person to execute on behalf of the Relevant Person a transfer of such Units; and
- (c) in priority to any transfer by the Relevant Person, complete the sale.

21.7 Application

The proceeds of the sale of the Units shall be applied first on account of the amount in respect of which the notice pursuant to clause 21.5(b) was given and secondly in payment of the balance (if any) remaining to the Relevant Person.

21.8 Information

- (a) The Manager may, by notice to a Relevant Person, require that Relevant Person to furnish in writing within 14 days of service of such notice to the Manager such particulars regarding the Relevant Person, or his holding of Units or any other matter as may be specified in the notice, being particulars which are required by the Manager to enable the Manager to determine whether there exists or may in the future exist a Taxation Amount in relation to that Relevant person and that Relevant Person shall furnish such particulars within 14 days of service of such Notice.
- (b) If any particular furnished to the Manager pursuant to clause 21.8(a) ceases to be correct for any reason it shall be the duty of the Relevant Person who furnished such particular, if they are a Unitholder at the time such particular ceases to be correct, promptly to give to the Manager notice of the fact that such particular is no longer correct, and to furnish to the Custodian or Manager such particulars as are, at the time of such notification, correct in lieu of the particular which has ceased to be correct.
- (c) If a Relevant Person fails to provide a particular specified in a notice in accordance with clause 22 or which he is required to provide pursuant to clause 21.8(b), the Manager shall be entitled to make such assumption as it thinks fit as to the particular, and the Relevant Person shall have no claim against the Manager or the Trust for any loss suffered as a result of such assumption being incorrect.
- (d) Without limiting the preceding provisions of this clause 21, the Manager, on its own account and on account of the Trust, shall be entitled to be indemnified by any person who supplies an incorrect particular pursuant to clause 21.8(a) or fails to give the Manager Notice pursuant to clause 21.8(b) that a particular has ceased to be correct, for any loss suffered as a result of the Manager acting on the basis of the incorrect particular. Each of the Manager on its own account and on account of the Trust shall be entitled to be so

indemnified irrespective of whether the relevant particular was furnished or notified to the Manager.

21.9 General

- (a) If the Manager, on its own account or on account of the Trust, is entitled to be indemnified pursuant to clause 21.3, the provisions of clauses 21.6 to 21.7 shall, mutatis mutandis, apply.
- (b) Nothing in this clause 21 shall prejudice or affect any right or remedy which any other clause in this Constitution or any law may confer or purport to confer on the Manager, and as between the Manager and every Relevant Person, their executor, administrator and estate, wheresoever constituted or situate, any right or remedy which this Constitution or such law shall confer or purport to confer on the Manager shall be enforceable by the Manager.

22. NOTICES

22.1 Notice to Unitholders

- (a) A notice may be given under this Constitution to any Unitholder personally, or by leaving it at his address as stated in the Register, or by sending it addressed to the Unitholder at such address by ordinary pre-paid post, or if that address is outside Australia, by pre-paid airmail.
- (b) In the case of joint Unitholders a notice given to the joint Unitholder whose name appears first in the Register shall be sufficient notice to all such joint Unitholders.
- (c) Any notice sent by post will be deemed to have been served at the expiration of 48 hours after posting, and in proving service it will be sufficient to provide that the envelope or wrapper containing the notice was properly addressed and posted.
- (d) Any notice by advertisement will be deemed to have been served on the day of publication of the newspaper containing the advertisement.
- (e) A notice given by the Manager need not be signed but, if signed, the signature may be written or printed.
- (f) Subject to the Corporations Act, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.
- (g) Every person who, by operation of law, equity or other means whatsoever, becomes entitled to any Unit or any part of a Unit, shall be bound by every notice which, prior to the person's name and address being entered into the Register, has been duly given to the person from whom the person so entitled derives title to the same.
- (h) Any notice delivered or sent by post to, or left at, the address as stated in the Register or address for service of any Unitholder, if an individual, in pursuance of the provisions of this Constitution will (notwithstanding that the Unitholder, if an individual, is then deceased and

whether or not the Manager and the Custodian have notice of his death) be deemed to have been duly served in respect of his Unit.

- (i) Without limiting the generality of any other clause of this Constitution, any notice, request or application (including, without limitation, a notice to be given by a Unitholder) shall be given to the Manager at its registered office, at any of its principal places of business in each State or Territory of Australia, or at such other places as the Manager may from time to time determine and advise in a notice to Unitholders.

22.2 Notices to the Manager and Unitholders

- (a) Any notice required by this Constitution to be given or made by the Manager to a Unitholder to the other of them shall be given or made in writing and addressed to the general manager, secretary or a director of the party to whom it is intended to be given or made at its address (or to such other officer and/or such other address as may from time to time be notified by that party to the other as the appropriate officer and/or address for service of notice pursuant to this Constitution) and shall be signed by a duly authorised officer on behalf of the other giving or making it provided that such notice may be given, sent or made by electronic mail, facsimile transmission, hand delivery or ordinary mail with postage pre-paid.
- (b) Any notice referred to in clause 22.2(a) shall be deemed to have been given, sent or made;
 - (1) when received by the general manager, the secretary or a director of the party to whom it is addressed or other officer notified in accordance with clause 22.2(a); or
 - (2) 2 clear Business Days after being deposited in the mail with postage pre-paid; or
 - (3) if sent by facsimile transmission, when receipt is acknowledged; or
 - (4) if sent by electronic mail, when sent.

23. MISCELLANEOUS

23.1 Access to Records and Constitution

- (a) Subject to all applicable Acts applications for Units and instruments of transfer and transmission shall be retained by the Manager for seven years after which time the same may, in the absolute discretion of the Manager, be destroyed.
- (b) The Manager must send a copy of this Constitution to a Unitholder within seven days if the Unitholder asks the Manager, in writing, for the copy and pays any fee (up to the prescribed amount) required by the Manager.

23.2 Cheques

- (a) Any moneys payable to a Unitholder under the provisions of this Constitution may be paid by crossed "not negotiable" Cheque made payable to the Unitholder or bearer and sent through the post to the registered address of such Unitholder or in the case of joint Unitholders made payable to the joint Unitholders or bearer and sent to the registered address of that joint Unitholder whose name stands first in the Register.

- (b) Payment of every such Cheque if duly presented and paid shall be satisfaction of the moneys payable and shall be a good discharge to the Manager.

23.3 Jurisdiction

This Constitution shall be construed and governed in accordance with the laws of the State of Victoria.

23.4 No Other Relationship

Nothing in this Constitution is intended to or shall be construed so as to create any association, partnership, joint venture or other legal entity (other than that which is expressly created by the terms of this Constitution) between the Manager and the Unitholders or any of the Unitholders.

23.5 Manager May Manage Other Schemes

The Manager may establish, and act as manager or responsible entity for, other Managed Investment Schemes (whether or not those schemes are registered).

23.6 Other Obligations Excluded

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

Execution

Executed as a deed on

10th May

2005

Executed by
Patriot Asset Management Ltd
by authority of its directors

Greenway

.....
Director

NICHOLAS GREENWAY

.....
Name (please print)



.....
Director/Company Secretary

STEPHEN SEDGMAN

.....
Name (please print)

Schedule 1 – Application Price

Application Price of a Unit shall be calculated as follows:

- (a) for the period from the issue of the Product Disclosure Statement up to the Completion Date, the Application Price shall be the sum of \$1.00; and
- (b) thereafter the Application Price shall be calculated in accordance with the following formula:

$$AP = (1 + (Z/100)) (NA/U)$$

Where:

AP = Application Price (per Unit)

Z = 0.75 or such lower amount as the Manager specifies in the Product Disclosure Statement for Units;

NA = Net Assets;

U = aggregate of the number of Units on Issue at the date of the calculation of the Application Price.

Schedule 2 – Redemption and Repurchase Price

The price for redemption or repurchase of a Unit (**Repurchase Price**) shall be calculated in accordance with the following formula:

$$RP = (1 - (Y/100)) (NA/U)$$

RP = Repurchase Price (per Unit);

Y = 0.75 or such lower amount as the Manager specifies in the Product Disclosure Statement for Units;

NA = Net Assets;

U = aggregate number of Units on Issue at the date of the calculation of the Repurchase Price.

Schedule 3 – Complaints Procedure

The Manager has adopted the following complaints handling procedures.

1. The Manager will appoint a person to oversee its complaints handling procedures (**Complaints Officer**).
 2. The Manager expressly adopts the Australian Standard on Complaints Handling (AS4269) (**Standard**) except where necessarily modified because of the nature of the Trust and also because of the terms of this Constitution. The Standard shall be the guide for the Manager's complaints handling procedures.
 3. All oral and written complaints received by the Manager will be referred to the Complaints Officer unless the complaint is against the Complaints Officer or the Complaints Officer is unable to act in which case the complaint will be referred to another senior officer.
 4. The Complaints Officer's responsibilities will include:
 - 4.1 making all employees of the Manager aware of the Manager's complaints handling procedures;
 - 4.2 ensuring all employees refer any complainants to the Complaints Officer at the earliest possible opportunity;
 - 4.3 training all employees to empathise with complainants prior to the referral in 4.2 above;
 - 4.4 immediately upon becoming aware of the complaint, the complainant should be forwarded acknowledgement of receipt of the complaint and the time-frame in which the complaint will be considered;
 - 4.5 ensuring all complaints are to be properly considered and dealt with within 10 Business Days of receipt of the complaint and the complainant will be informed that the complaint is being investigated and a resolution will be sought within this time-frame;
 - 4.6 if it is not reasonable to resolve the complaint within 10 working days, the complainant must be notified of the reasons for the delay. If the complaint remains unresolved after this period of time, or if it has been determined but not to the complainant's satisfaction, the complainant must be advised that they are entitled to lodge the complaint with an external disputes resolution body. Clients of the Manager must be informed that any complaint will only be dealt with by an external dispute resolution body after first being considered by the Manager;
 - 4.7 if the Complaints Officer considers that a complaint could produce a serious consequence, and after consultation with the managing director of the Manager, the Manager's insurers should be notified and legal advice should be sought;
-

- 4.8 keeping a record of all complaints and maintaining a complaints register which record will set out:
 - 4.8.1 the name, address and telephone number of each complainant;
 - 4.8.2 the date and time each complaint was received;
 - 4.8.3 the employee of the Manager to whom the complainant first spoke and such employee's record of the conversation;
 - 4.8.4 all correspondence concerning the complaint; and
 - 4.8.5 any other information the Complaints Officer deems appropriate;
- 4.9 producing a brochure for Unitholders outlining the Manager's complaint handling procedures which will contain:
 - 4.9.1 the manner in which the Manager will acknowledge complaints;
 - 4.9.2 the time-frame within which it will properly consider complaints;
 - 4.9.3 how it will communicate with Unitholders;
 - 4.9.4 an outline of the remedies available to Unitholders; and
 - 4.9.5 advice to Unitholders of any further avenues for complaint.
5. The Complaints Officer will cause copies of such a brochure to be available at the Manager's place of business and will send a copy to a Unitholder within seven days of a Unitholder asking the Manager, in writing, for a copy.
6. Within two months of the end of each financial year, the Complaints Officer is responsible for writing a review for the previous year of the complaints handling procedures for the board of directors of the Manager which review shall include:
 - 6.1 number of complaints received;
 - 6.2 nature of complaints received;
 - 6.3 business practices about which complaints are made;
 - 6.4 response time;
 - 6.5 staff resources analysis;
 - 6.6 actions taken including remedies, determinations and results;
 - 6.7 trend analyses; and
 - 6.8 such other matters that the Complaints Officer deems appropriate.
7. The Complaints Officer must review the complaints handling process on a three monthly basis and otherwise when required.

8. The Complaints Officer covenants to do all things necessary to maintain membership of the Financial Industry Complaints Service during the life of the Trust.

Schedule 4 – Incentive Fee

The Manager shall be entitled to a Total Incentive Fee (**TIF**) at the end of each Incentive Fee Calculation Period (**IFCP**) calculated in accordance with the following steps:

1. An IFCP shall be each six monthly period ending 30 June or 31 December, except that the first IFCP shall be that period from the date the Manager commences investing the Assets until the next 30 June or 31 December as the case may be, and the last IFCP shall be that period from the last 30 June or 31 December at which a TIF was calculated to the date the Manager ceases managing the Assets.

2. Calculate Gross Trust Performance (**GTP**) for day(x) as follows

GTP day(x) (expressed as a percentage)

= (Interim unit price day(x) - unit price day(x-1)) / unit price day(x-1), where

- a) day(x) is a Business Day during an IFCP;
- b) interim unit price day(x) = the unit price determined by dividing the Net Assets at the end of day(x) by the number of units for day(x). For the avoidance of doubt, the Net Assets for this purpose shall only be net of accrued incentive fees during the relevant IFCP prior to Day(x);
- c) accrued incentive fees represent incentive fees that are reflected in the Net Assets and the unit price from time to time, in accordance with 5 below; and
- d) for the avoidance of doubt, Net Assets at the end of day(x) shall be gross of the total amount of any distributions made that day.

3. Calculate the Bond Rate Incentive Fee Percentage (**BRIFP**) for day(x) as follows

BRIFP Day(x) (expressed as a percentage)

= 20% x (GTP Day(x) – BRR), where

BRR (Bond Rate of Return) is the percentage return represented by the implied percentage annual yield on the 5 year Commonwealth Government Bond as indicated in the last Australian Financial Review to be published on a Business Day prior to the commencement of the IFCP, divided by the number of Business Days in the Financial Year that includes the relevant IFCP. In the event the Australian Financial Review is not available or ceases to publish the implied percentage annual yield on the 5 year Commonwealth Government Bond, the Manager shall have absolute discretion to identify the implied percentage annual yield on the 5 year Commonwealth Government Bond from an alternative source in its sole discretion.

4. Calculate the Daily Incentive Fee (**DIF**) for day(x) as follows

DIF day(x) (expressed in \$A) = BRIFP x unit price day(x-1) x number of units for day(x)

DIF day(x) may be a positive or negative value and the amount shall be included within the Incentive Fee Register (**IFR**). The IFR represents the cumulative balance of the sum of each DIF during the relevant IFCP, plus the amount of any negative total balance of the IFR carried forward from the end of the previous IFCP.

5. Calculate Accrued Incentive Fees

Accrued incentive fees are incentive fees as per the IFR day(x) that are reflected in Net Assets day(x) and the unit price day(x), and shall only be permitted to be reflected as such, to the extent that the following conditions are satisfied:

- a) the sum of unit price day(x) and CDPU(x) must at least equal the High Water Mark (**HWM**), where CDPU(x) represents the cumulative total of distributions per unit made during the relevant IFCP up to an including day(x);
- b) the sum of unit price day(x) and CDPU(x) must at least equal the unit price at the commencement of the IFCP adjusted (upwards or downwards as the case requires) for the cumulative percentage return of the S&P/ASX Small Ordinaries Accumulation Index plus 2% per annum since the commencement of the IFCP; and
- c) where IFR Day(x) is less than or equal to zero, no IFR shall be reflected in Net Assets day(x) or unit price day(x).

The HWM is the higher of \$1.00 and the last unit price in respect of which the relevant accrued incentive fee was subsequently paid to the Manager reduced for any distributions paid to Unitholders since that time. The HWM shall be set at the commencement of each IFCP and shall apply for the duration of that IFCP.

Where the IFR at the end of an IFCP is less than zero, that negative amount shall not be payable by the Manager however, the amount shall be carried forward as the opening balance of the IFR in the subsequent IFCP.

Where an accrued incentive fee is reflected in Net Assets at the end of an IFCP, that amount shall equal the TIF for that IFCP. To the extent a positive balance remains in the IFR after reducing the IFR by the TIF, that amount will not be carried forward to any future IFCP. Accordingly, the IFR at the beginning of each IFCP shall be reset to zero in these circumstances.