

Supplemental deed – AMP Capital Core Infrastructure Fund

Dated 29 JUNE 2023

AMP Capital Funds Management Limited (ACN 159 557 721) as
responsible entity of AMP Capital Core Infrastructure Fund (ARSN 127
019 238) (“**Responsible Entity**”)

King & Wood Mallesons

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Supplemental deed – AMP Capital Core Infrastructure Fund

Details

Responsible Entity	Name	AMP Capital Funds Management Limited
	ACN	159 557 721
	Capacity	Responsible Entity of the Scheme
	Address	Level 30, 50 Bridge Street SYDNEY NSW 2000

Governing law	New South Wales
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- | | | |
|-----------------|----------|--|
| Recitals | A | The Scheme is governed by the Constitution. The Scheme is registered as a managed investment scheme under Chapter 5C of the Corporations Act. |
| | B | Section 601GC(1) of the Corporations Act provides that the constitution of a registered scheme may be modified, or repealed and replaced with a new constitution: <ul style="list-style-type: none">(a) by special resolution of the members of the scheme; or(b) by the responsible entity, if the responsible entity reasonably considers the change will not adversely affect members' rights. |
| | C | Under clause 23.1 of the Constitution, the Responsible Entity may, if the Corporations Act allows, modify the Constitution by executing a supplemental deed. |
| | D | The Responsible Entity wishes to modify the Constitution as set out in this document. |
| | E | The Responsible Entity reasonably considers that the modifications to the Constitution contained in this document will not adversely affect the rights of Members of the Scheme. |

Supplemental deed – AMP Capital Core Infrastructure Fund

General terms

1 Interpretation

1.1 Definitions

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

Constitution means the deed dated 10 August 2007 under which the Scheme is governed, as amended from time to time.

Effective Date means the date that a copy of this document is lodged with the Australian Securities and Investments Commission.

Scheme means the registered managed investment scheme currently named AMP Capital Core Infrastructure Fund (ARSN 127 019 238).

1.2 Document supplemental to Constitution

This document is supplemental to the Constitution.

1.3 Headings

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

2 Modifications to the Constitution

The Constitution is modified on and from the Effective Date by:

- (a) deleting the text that is shown as deleted; and
- (b) inserting the text that is shown as underlined,

in the copy of the Constitution that is attached as an Annexure A to this document.

3 No redeclaration etc

The Responsible Entity is not, by this document:

- (a) redeclaring or resettling the Trust;
- (b) declaring any trust; or
- (c) causing the transfer, vesting or accruing of property in any person; or
- (d) acknowledging a trust for the purposes of section 8AA of the *Duties Act 1997* (NSW); or

(e) terminating the trust.

4 Governing law

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

EXECUTED as a deed


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Supplemental deed – AMP Capital Core Infrastructure Fund

Signing page

DATED: 29/6/2023

SIGNED, SEALED AND DELIVERED)
for AMP CAPITAL FUNDS)
MANAGEMENT LIMITED (ACN 159)
557 721) as responsible entity of AMP)
CAPITAL CORE INFRASTRUCTURE)
FUND (ARSN 127 019 238) by its)
undersigned attorneys who have not)
received notice of the revocation of the)
power of attorney dated 24 March 2023)
under the authority of which this)
document has been signed:)


.....
Signature of witness

Michelle Asimus

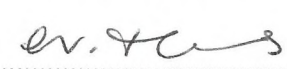
.....
Name of witness (block letters)



.....
Signature of attorney

Eleanor Gerrans

.....
Name of attorney (block letters)


.....
Signature of attorney

NICOLE LOUISE HARRIS
LEGAL PRACTITIONER
50 BRIDGE STREET
SYDNEY NSW 2000

.....
Name of attorney (block letters)

**Supplemental deed – AMP Capital Core
Infrastructure Fund
Annexure A – Amended Constitution**

See over page.

DexusAMP Capital Core Infrastructure Fund Constitution

Responsible Entity:

AMP Capital Funds Management LimitedAMP Capital Investors Limited

(ABN 15 159 557 721)(ABN 59 001 777 591)

Date of constitution: 10 August 2007, as amended on 4 October 2007, 19 October 2007, 16 December 2010, 26 May 2017, 26 June 2018 and [##] 2023

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Constitution of the ~~DexusAMP Capital~~ Core Infrastructure Fund

Date: ~~10 August 2007~~

Operative provisions:

This deed poll ~~was originally~~ declared by AMP Capital Investors Limited (ABN 59 001 777 591) to be the constitution of the ~~DexusAMP Capital~~ Core Infrastructure Fund¹.

1 Name of Trust

- 1.1 The Trust is called the ~~DexusAMP Capital~~ Core Infrastructure Fund or by such other name as the Responsible Entity determines from time to time⁴.
- 1.2 If a Responsible Entity retires or is removed, its successor as Responsible Entity must, unless otherwise approved by the former Responsible Entity, change the name of the Trust to a name that does not imply an association with the former Responsible Entity or its business.

2 Application of Schedules

- 2.1 While the Trust is not a Registered Scheme this constitution is to be read subject to Schedule 1.
- 2.2 When applying the terms of this constitution in respect of any Financial Year that is not an AMIT Income Year, this constitution is to be read subject to Schedule 3.

3 Assets held on trust

- 3.1 The Responsible Entity must hold the Assets on trust for Members³.
- 3.2 The Assets vest in the Responsible Entity, but must be clearly identified as property of the Trust and held separately from the assets of the Responsible Entity and any other managed investment scheme if and to the extent that the Corporations Act so requires⁴.

4 Units and Classes

Nature of Units

- 4.1 The beneficial interest in the Trust is divided into Units.
- 4.2 Subject to any rights, obligations and restrictions attaching to any particular Units or Class:
 - (a) each Unit confers an equal undivided interest;
 - (b) a Unit confers an interest in the Assets as a whole, subject to the Liabilities;
 - (c) a Unit does not confer an interest in a particular Asset; and
 - (d) all Units in a Class rank equally.

¹ AMP Capital Funds Management Limited (ABN 15 159 557 721) replaced AMP Capital Investors Limited (ABN 59 001 777 591) as the responsible entity of the Trust on 31 May 2013.

² See Corporations Regulation 5C.1.02

³ See section 601FC(2) of the Corporations Act

⁴ See section 601FC(1)(i)

Classes

- 4.3 The Responsible Entity may create and issue Classes with such rights, obligations and restrictions attaching to the Units of such Classes as it determines in accordance with the Corporations Act (if relevant).
- 4.4 If a Class is created in accordance with clause 4.3 and Units in the Class have at any time:
- (a) a Management Fee that is referable to that Class that is different to the Management Fee that is referable to another Class;
 - (b) a Performance Fee that is referable to that Class that is different to the Performance Fee that is referable to another Class; or
 - (c) a type or a particular expense or tax or a proportion of such an expense or tax that will be referable to that Class,

the Responsible Entity must:

- (d) calculate each Member's Distribution Amount or amount distributed under clause 10.10 by first calculating for each Class of Unit held by the Member that proportion of the variables in clause 10.8 that the Responsible Entity determines is properly referable to the Class and the Units held by the Member and then aggregating those amounts; and
- (e) determine the proportion of net proceeds of realisation under clause 22.3 that is properly referable to each Class and each proportion referable to each Class must be distributed pro rata to Members according to the number of Units in that Class they hold.

Nothing in this clause limits the extent to which a Class:

- (f) may have rights, obligations or restrictions other than or in addition to those specified above which differ from the rights, obligations and restrictions of any other Class; or
- (g) will have different rights, obligations or restrictions because of a determination by the Responsible Entity under clauses 5.1, 7.1 or any other clause of this constitution

- 4.5 The Responsible Entity in making any determination of variables properly referable to a Class under this constitution must ensure that:
- (a) any variable which relates only to a particular Class, and does not relate to other Classes, is solely referable to the Class to which it relates; and
 - (b) any variable which relates to more than one Class is apportioned between those Classes in the same proportions as the aggregate value of Units on issue in each Class as at the most recent Valuation Time bears to the aggregate value of Units in all Classes to which the variable relates on issue at that Valuation Time.

In this clause, the value of a Unit in a Class is the mid-point between the applicable Entry Price and Withdrawal Price for Units in that Class at the most recent Valuation Time.

Fractions of Units

- 4.6 Fractions of a Unit may be issued as determined by the Responsible Entity.

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

Consolidation and division of Units

- 4.10 Units may be consolidated or divided as determined by the Responsible Entity.

Transfer of Units

- 4.11 Members may transfer Units subject to their terms and conditions.
- 4.12 Transfers must be in a form approved by the Responsible Entity and be presented for Registration duly stamped as required by law.
- 4.13 A transfer is not effective until Registered.
- 4.14 The Responsible Entity may refuse to record any transfer in the Register without giving any reason for the refusal.

Joint tenancy

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

Legal interest

- 4.16 Subject to the Corporations Act (if relevant), only the persons Registered are recognised as having any interest in a Unit.

Death, legal disability of Member

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

Certificates

- 4.18 No certificates will be issued for Units.

5 Entry Price for Units⁵

- 5.1 Subject to clause 20.1 and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be issued at an Entry Price:

- (a) in the case of a reinvestment in accordance with clause 10.18 -
calculated as:

$$\frac{(\text{Net Asset Value} - \text{Accrued Income}) + \text{Transaction Costs}}{\text{number of Units in issue}}$$

⁵ Required to be included by Section 601GC(1)(a)

- (b) in any other case - calculated as:

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

For the purposes of the formulae in this clause 5.1, "Net Asset Value", "Accrued Income", "Transaction Costs" and "number of Units in issue" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Unit for which the Entry Price is being calculated belongs in accordance with clause 4.5.

- 5.2 Each of the variables in clause 5.1(a) must be determined as at the last Valuation Time in the Distribution Period to which the distribution relates.
- 5.3 Each of the variables in clause 5.1(b) must be determined as at the next Valuation Time after:
- (a) the Responsible Entity receives or is deemed to receive the application for Units; or
 - (b) the Responsible Entity receives the application money, or the property against which Units are to be issued is vested in the Responsible Entity,
- whichever happens later.
- 5.4 The Entry Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Entry Price.
- 5.5 For the purposes of clause 5.3 the day and time of receipt of an application for Units is:
- (a) the time of actual receipt if the application is received before the Prescribed Time on a Business Day; or
 - (b) the time of deemed receipt if the application is deemed to be received before the Prescribed Time on a Business Day; or
 - (c) the commencement of business on the next following Business Day if the application is received or is deemed to be received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

6 Application for Units

Application form

- 6.1 An applicant for Units must complete a form approved by the Responsible Entity and give it to the Responsible Entity if the Responsible Entity so requires. The form may be transmitted electronically if approved by the Responsible Entity.

Payment

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

- (b) be received by or made available to the Responsible Entity or the custodian within such period before or after the Responsible Entity receives the application as the Responsible Entity determines from time to time; or
- (c) comprise a reinvestment of distribution in accordance with clause 10.18.

Amount of payment

6.3 For the purposes of clause 6.2:

- (a) payment in respect of a Unit must be an amount equal to the Entry Price; and
- (b) transfer of property in respect of a Unit must have a value equal to the Entry Price plus any costs associated with the transfer of the property incurred or likely to be incurred by the Responsible Entity if the Responsible Entity so requires.

Responsible Entity may reject

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

Minimum amounts

6.5 Subject to the Corporations Act (if relevant), the Responsible Entity may set a minimum application amount and a minimum holding for the Trust or in respect of particular Classes or circumstances, and alter or waive those amounts at any time.

Issue date

6.6 Units which are issued (other than Units which are issued on a reinvestment of distribution in accordance with clause 10.18) are taken to be issued when:

- (a) the Responsible Entity accepts the application; or
- (b) the Responsible Entity receives the application money, or the property against which Units are to be issued is vested in the Responsible Entity,

whichever happens later.

Units which are issued on a reinvestment of distributions in accordance with clause 10.18 are taken to be issued on the first day after the end of the Distribution Period in which the application in respect of those Units is deemed to have been received.

Uncleared funds

6.7 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of property, are void if the funds are not subsequently cleared or the property does not vest in the Responsible Entity within 1 month of the date of the Units are taken to be issued in accordance with clause 6.6 or such other period as the Responsible Entity determines.

Keeping registers

6.8 The Responsible Entity must establish and keep a Register of members. The Register of Members must show, for each Member, the Member's name and

address, number of Units held and such other information as determined by the Responsible Entity.

7 Withdrawal Price of Units⁶

Withdrawal Price

- 7.1 Subject to clause 20.3 and any rights, obligations and restrictions attaching to any particular Units or Class, a Unit must only be redeemed at a Withdrawal Price calculated as:

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

For the purposes of the formula in this clause 7.1, "Net Asset Value", "Transaction Costs" and "number of Units in issue" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Unit for which the Withdrawal Price is being calculated belongs in accordance with clause 4.5.

- 7.2 Each of the variables in clause 7.1 must be determined:
- (a) while the Trust is Liquid - as at the last Valuation Time before the Responsible Entity processes the payment of the redemption request; or
 - (b) while the Trust is not Liquid - at the time the withdrawal offer closes.
- 7.3 The Withdrawal Price may be rounded as the Responsible Entity determines. The amount of the rounding must not be more than 1% of the Withdrawal Price.
- 7.4 For the purposes of clause 8.4 and Schedule 2 the day and time of receipt of a withdrawal request is:
- (a) the time of actual receipt if the request is received before the Prescribed Time on a Business Day; or
 - (b) the time of deemed receipt if the request is deemed to be received before the Prescribed Time on a Business Day; or
 - (c) the commencement of business on the next following Business Day if the request is received or is deemed to be received on a day which is not a Business Day or received on or after the Prescribed Time on a Business Day.

8 Withdrawal procedures⁷

Request for withdrawal

- 8.1 A Member may make a withdrawal request for the redemption of some or all of their Units in any manner and on such conditions as approved by the Responsible Entity, and the Responsible Entity must give effect to that request at the time and in the manner set out in this clause 8.

The conditions referred to in this clause 8.1 include the conditions for processing of redemptions set out in Schedule 2. Those conditions provide specific mechanisms for the operation of the provisions of this clause 8, and will apply to the Trust from the time the Responsible Entity determines, Once they apply, the Responsible Entity may terminate the procedures, or amend them in a manner

⁶ Required to be included by Section 601GA(4)

⁷ These procedures must be fair to all Members: Section 601GA(4)

not inconsistent with this clause 8, by giving notice to the Member at least 5 Business Days before the end of a Month, and the termination or amendment may take effect on a date specified in the notice, being not earlier than the last Business Day of the next following Month.

- 8.2 A Member may not withdraw a withdrawal request unless the Responsible Entity agrees.

When Trust is Liquid⁸

- 8.3 Clauses 8.4, 8.5 and 8.5A apply only while the Trust is Liquid⁹.

- 8.4 The Responsible Entity must satisfy a withdrawal request in respect of a Unit by payment from the Assets of the Withdrawal Price calculated in accordance with clause 7. The payment must be made within 365 days of receipt of the request or such longer period as allowed by clause 8.5.

- 8.5 If in the opinion of the Responsible Entity:

- (a) the Responsible Entity has taken all reasonable steps to realise sufficient Assets to satisfy a withdrawal request and is unable to do so due to circumstances outside its control such as restricted or suspended trading in the market for an Asset; or
- (b) the Responsible Entity does not consider that it is in the best interests of Members taken as a whole to realise sufficient Assets to satisfy a withdrawal request;
- (c) it is, for any reason, impracticable for it to calculate the Net Asset Value of the Assets including because of the closure of a securities or other exchange or trading restrictions on a securities or other exchange, or because of the existence of an emergency or other similar state of affairs or because of an event outside the reasonable control of the Responsible Entity or because of the requirements of any law;
- (d) there would be insufficient cash retained in the Assets after complying with a withdrawal request to meet other Liabilities and in its opinion it is not in the interests of Members for any Assets to be sold in order to satisfy a withdrawal request;
- (e) sufficient Assets cannot be realised at an appropriate price or on appropriate terms or otherwise due to circumstances outside the control of the Responsible Entity; or
- (f) it is in the interests of the Members to invoke this clause 8.5(f) and extend the period referred to in clause 8.4

then in each case the period allowed for satisfaction of the request may be extended by the number of days during which the Responsible Entity considers such circumstances apply.

An unsatisfied withdrawal request received by the Responsible Entity before or during any period of extension in accordance with this clause 8.5 is taken to be received by the Responsible Entity on the Business Day after the end of that period of extension.

- 8.5A Without limiting clause 8.5, if a Member who either:

⁸ Required to be included by Section 601GA(4)(b)

⁹ For definition of a liquid scheme see Section 601KA

- (a) at the date of the withdrawal request; or
- (b) at any time within the previous 12 months,

held 20% or more of the total Units in the Trust, makes a withdrawal request, the Responsible Entity may, if it considers that it is not in the best interests of the Members, taken as a whole, to satisfy the withdrawal request (in whole), restrict the amount the Member may withdraw during that quarter to a maximum of 25% of the greatest number of Units the Member held at any time within the previous 12 month period.

When Trust is not Liquid¹⁰

- 8.6 Clauses 8.7 to 8.11 apply only while the Trust is not Liquid.
- 8.7 A Member may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Responsible Entity under the Corporations Act and this constitution regulating offers of that kind¹¹.
- 8.8 If there is no withdrawal offer currently open for acceptance by Members, a Member has no right to withdraw from the Trust.
- 8.9 The Responsible Entity may make a withdrawal offer by:
- (a) publishing it by any means (for example in a newspaper or on the internet); or
 - (b) giving a copy to the Members or Members of a Class. However, the Responsible Entity is not at any time obliged to make a withdrawal offer.
- 8.10 The Responsible Entity may cancel a withdrawal offer by:
- (a) publishing a notice of cancellation by any means (for example in a newspaper or on the internet); or
 - (b) notice in writing to the Members to whom the withdrawal offer was made.
- 8.11 If the Responsible Entity receives a withdrawal request before it makes a withdrawal offer, it may treat the request as an acceptance of the offer effective as at the time the offer is made.

Clauses applicable to all withdrawals

- 8.12 The Responsible Entity is not obliged to pay any part of the Withdrawal Price out of its own funds.
- 8.13 Subject to the Corporations Act (if relevant), the Responsible Entity need not give effect to a withdrawal request in respect of Units having an aggregate Withdrawal Price of less than the minimum application amount or such other amounts as determined by the Responsible Entity from time to time unless the withdrawal request relates to the balance of the Member's holding.
- 8.14 Subject to the Corporations Act (if relevant), if compliance with a withdrawal request would result in the Member holding Units with an aggregate Withdrawal Price which is less than the then current minimum holding amount, the Responsible Entity may treat the withdrawal request as relating to the balance of the Member's holding.

¹⁰ Required to be included by Section 601GA(4)(c)

¹¹ Refer sections 601KB to 601KE

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

Discretionary withdrawal

- 8.17 If the Responsible Entity is not obliged to give effect to a withdrawal request, it may in any event, redeem some or all of the Units which are the subject of the request¹².

Sums owed to Responsible Entity

- 8.18 The Responsible Entity may deduct from the proceeds of withdrawal or money paid pursuant to a withdrawal offer any money due to it by the Member, including, without limitation, amounts owing by the Member described in clause 19.4.

Transfer of Assets

- 8.19 The Responsible Entity may transfer Assets to a Member rather than pay cash in satisfaction of all or part of a withdrawal request, pursuant to a withdrawal offer or in payment of a distribution. These Assets, together with any cash paid, must be of equal value to the total amount due to the Member pursuant to the withdrawal request, withdrawal offer or distribution (based on a valuation done within one month before the date of the proposed transfer). If the Responsible Entity requires, some or all of the costs involved in transfer of these Assets must be paid by the Member or deducted from the amount due to the Member.

When Units are redeemed

- 8.20 Units redeemed under this clause 8 are taken to be redeemed at the time as at which the applicable Withdrawal Price is calculated, and from that time until payment, the former holder of the redeemed Units ceases to be a Member in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

9 Valuation of assets

Periodic valuations

- 9.1 The Responsible Entity may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act (if relevant).¹³
- 9.2 The Responsible Entity may determine Net Asset Value at any time, including more than once on each day.
- 9.3 The Responsible Entity may determine valuation methods and policies for each category of Asset and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value¹⁴. The value of an Asset which is an interest in an Unlisted Fund, trust or managed investment scheme for the

¹² Subject to section 601FC(1)(d)

¹³ See section 601FC(1)(j) for the Responsible Entity's obligations concerning valuation

¹⁴ ASIC Policy Statement 134, paragraph 29: constitution should set out how scheme property will be valued.

purpose of calculating the Net Asset Value is the most recent price of an interest in that Unlisted Fund supplied by the operator of the Unlisted Fund. Where the Responsible Entity values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the Entry Price or Withdrawal Price that is independently verifiable.

10 Income and distributions to Members

Distributable income

- 10.1 The Responsible Entity must determine the Distributable Income of the Trust for each Financial Year.
- 10.2 Unless the Responsible Entity determines otherwise prior to the time at which the Responsible Entity pays all the Income Distributions for the final Distribution Period in the Financial Year, the Distributable Income for the Financial Year or a period in the Financial Year is the aggregate of:
- (a) the amount determined by the Responsible Entity as being the minimum amount which, if distributed by the Responsible Entity in respect of the Financial Year, would prevent there being an adjustment to the tax cost base of any Units in the Trust under the AMIT Regime, assuming that:
 - (i) the Financial Year is a year of income for the purposes of the Tax Act;
 - (ii) the Member Components of each Member match the Member's entitlement to the distribution;¹⁵ and
 - (b) any additional amount which the Responsible Entity considers appropriate for distribution for the period.
- 10.3 The Responsible Entity may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made.

Power to accumulate amounts

- 10.4 The Responsible Entity may, at any time prior to the time at which the Responsible Entity pays all of the Income Distributions for the final Distribution Period in the Financial Year, determine that all or part of any Distributable Income of the Trust for a Financial Year will be accumulated, provided that at the time the determination is made the Distributable Income:
- (a) has not been included in the Distribution Amount for a Distribution Period in the same Financial Year; and
 - (b) is not attributable to a Redemption Attribution Amount that has arisen in relation to a Significant Redemption that has occurred.
- 10.5 For the purposes of identifying the Members to whom any Determined Trust Components reflected in the Distributable Income that is accumulated under

¹⁵ This is intended to capture all of the assessable income components of the Trust's taxable income for the year, excluding tax offset amounts (such as franking credits and foreign tax offsets), together with any non-assessable non-exempt income of the Trust that the Responsible Entity will attribute to Members under the AMIT Regime. For these purposes, any discount capital gains components of the Trust's taxable income should be doubled (i.e. determined gross of any reduction as a result of the discount capital gains concession).

clause 10.4 are to be attributed under the AMIT Regime, the Distributable Income accumulated will be treated for the purposes of the AMIT Regime as having been accumulated for the benefit of the Members of the Trust at the time specified by the Responsible Entity.

- 10.6 This time specified by the Responsible Entity for the purposes of an accumulation of Distributable Income under clause 10.5 must be at or before the end of the relevant Financial Year.
- 10.7 Amounts accumulated pursuant to clause 10.4:
- (a) continue to form part of the Assets and are not Liabilities of the Trust; and
 - (b) no Member has any right to or interest in those amounts.

Income Distributions

- 10.8 An Income Distribution for a person for a Distribution Period means in respect of Units held by the person at the end of the Distribution Period $\frac{A \times C}{B}$

where

- A is the number of Units held by the Member at the end of the Distribution Period;
- B is the number of Units held by all Members at the end of the Distribution Period; and
- C is the Distribution Amount for the Distribution Period.

Satisfaction of Income Distributions

- 10.9 Income Distributions must be paid to a Member within three months after the Distribution Calculation Date.

Other distributions

- 10.10 The Responsible Entity may at any time distribute an amount (whether capital or income) to Members pro rata according to the number of Units held as at a time decided by the Responsible Entity. The distribution may be in cash or by way of additional Units.

Separate accounts

- 10.11 The Responsible Entity may keep separate accounts of different categories or sources of income, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Members or Classes, provided that the allocation is not inconsistent with the entitlements of Members to Distributable Income under clause 10.8 or the Responsible Entity's obligation to attribute amounts in accordance with clauses 10.12 to 10.15.

Attribution under AMIT Regime – general

- 10.12 The Responsible Entity must, following the end of the Financial Year, attribute all of the Determined Trust Components of the Trust for the Financial Year to persons who were Members of the Trust during the Financial Year under the AMIT Regime in accordance with the following principles:

- (a) the amount of each Member's or former Member's Determined Member Components of a particular character is so much of the Trust's Determined Trust Components of that particular character as is attributable to the Units held by the Member or former Member, having regard to the provisions of this constitution;
 - (b) the attribution must be worked out on a fair and reasonable basis, in accordance with this constitution and any other documents that constitute "constituent documents" for the Trust, as this phrase is used in section 276-210(3) of the Tax Act; and
 - (c) the Responsible Entity must not attribute any part of a Determined Trust Component of the Trust to a Member's Units because of the tax characteristics of the Member or former Member for the purposes of the AMIT Regime.
- 10.13 Without limiting the generality of clause 10.12, the Responsible Entity must attribute in respect of an AMIT Income Year:
- (a) to each Member or former Member whose Units have been redeemed during the Financial Year under a Significant Redemption during the Financial Year, all of the Redemption Attribution Amounts determined by the Responsible Entity in respect of the Significant Redemption;
 - (b) to each Member or former Member who is or will be entitled to an Income Distribution for a Distribution Period in the Financial Year under clause 10.8, so much of the Determined Trust Components of the Trust for the Financial Year as the Responsible Entity reasonably determines are reflected in the Income Distributions; and
 - (c) to each Member or former Member who was a Member at a time specified in clause 10.5 ("**Relevant Time**") during the Financial Year, so much of the Determined Trust Components of the Trust for the Financial Year as the Responsible Entity reasonably determines are reflected in any Income Distributions that the Member or former Member would have received at the Relevant Time if the Relevant Time was the end of a Distribution Period and the amount accumulated under clause 10.4 was the Distribution Amount for the Distribution Period.

Redemption Attribution Amounts

- 10.14 If a Member redeems Units under a Significant Redemption, the Responsible Entity may determine prior to the time at which the Significant Redemption occurs that a Redemption Attribution Amount arises in respect of the Significant Redemption.
- 10.15 If the Responsible Entity determines that a Redemption Attribution Amount arises, it will be the aggregate of:
- (a) the Determined Trust Components of the Trust for the Financial Year that arise from the sale or disposal of Assets in order to fund or satisfy the Significant Redemption, including any sales in order to fund the payment of the Withdrawal Price for the Units redeemed under the Significant Redemption; and
 - (b) the Determined Trust Components of the Trust for the Financial Year that would be attributed to the Member if the time just prior to when the Significant Redemption occurs was the end of a Distribution Period, based on the Income Distributions that would arise for the Member in respect of the Units redeemed under the Significant Redemption, but calculated assuming that the Distribution Amount for that Distribution Period excluded any amounts to be attributed under clause 10.15(a).

Attribution under AMIT Regime – objections

10.16

- (a) If a Member or former Member makes an objection or proposed objection to how the Responsible Entity attributes the Determined Trust Components of the Trust to the Member or former Member under the AMIT Regime, including by making a Member Objection Choice, the Responsible Entity has power to:
- (i) take such actions as it considers necessary, appropriate or reasonable to provide for the rights and interests of other Members or former Members of the Trust to be protected, including in dealings with the Commissioner of Taxation;
 - (ii) amend its attribution of the Determined Trust Components to Members based on the Responsible Entity's determination of what attribution is appropriate, and take such actions as the Responsible Entity determines is necessary to give effect to the amended attribution, including issuing or reissuing AMMA Statements to Members; and
 - (iii) require that the Member or former Member indemnify the Responsible Entity against all costs and liabilities incurred by the Responsible Entity as a result of the objection.
- (b) The Responsible Entity may, in the exercise of the powers referred to in clause 10.16(a) require that the Member or former Member do, or omit to do, such acts, matters or things as the Responsible Entity reasonably requests in order to appropriately protect the interests or rights of other Members or former Members of the Trust in relation to the objection or any proceedings arising in relation to the objection, including to:
- (i) provide the Responsible Entity with a copy of the objection notice including the basis for the objection, within the time the Member is required to do so under the Tax Act for the objection to be effective;
 - (ii) provide to the Responsible Entity any information the Responsible Entity reasonably requests in relation to the Member's or former Member's objection and proceeding in relation to the objection;
 - (iii) consent to the Responsible Entity becoming a party to any proceedings with the Commissioner of Taxation relating to the objection.

Unders/overs

- 10.17 Responsible Entity is not liable to any Member or former Member with respect to how it addresses any Unders or Overs provided that the Responsible Entity addresses them in accordance with the AMIT Regime and irrespective of whether any choices made by the Responsible Entity result in a different attribution outcome for the Member than if the Responsible Entity had not made the choice, or had made the choice in a different way.

Reinvestment

- 10.18 The Responsible Entity may decide whether to permit or require the Members to reinvest some or all of any distribution to acquire Units.

- 10.19 If the Responsible Entity decides to permit or require reinvestment, it must notify Members of the procedure for reinvestment and any change in the procedure.

Position on transfer of Units

- 10.20 A person registered as a Member on a Distribution Calculation Date is to receive the Income Distribution for the distribution period notwithstanding a transfer or transmission of Units after the Distribution Calculation Date.

Classes

- 10.21 The rights of a Member under this clause 10 are subject to the rights, obligations and restrictions attaching to any particular Unit or the Class of Units which they hold.

Liability

- 10.22 The Responsible Entity does not incur any liability, nor is it obliged to account to anyone (including any Member), nor is it liable for any loss or damage:
- (a) as a result of the exercise of any discretion or power under the AMIT Regime, including powers exercised under the AMIT Regime in accordance with this clause 10, or
 - (b) in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power despite any error or miscalculation in any provision made for Tax.

Exercise of Responsible Entity's Powers

- 10.23 If the Responsible Entity purports to exercise a power under clause 10 or Schedule 3 on the basis that the Responsible Entity believes that the Trust is not or will not be an AMIT for the Financial Year:
- (a) the exercise of the powers by the Responsible Entity must, to the maximum extent possible, be treated as a proper exercise of the Responsible Entity's powers under this clause 10 or Schedule 3 and at law;
 - (b) to the extent that any of these powers depends, for its operation, on the Trust not being an AMIT for the Financial Year, the Trust will be treated as if it were not an AMIT for the purposes of the exercise of that power; and
 - (c) nothing in this clause 10 will be taken to invalidate any action that is undertaken by the Responsible Entity pursuant to its powers under this clause 10 or Schedule 3 and these powers may be exercised by the Responsible Entity despite any contrary powers provided under this clause 10.

11 Payments

General

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

Cheques

- 11.2 Cheques issued by the Responsible Entity that are not presented within 6 months or such lesser period as determined by the Responsible Entity may be

cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money is to be reinvested in Units at the Entry Price prevailing at the next Valuation Time after the cheque is cancelled.

Unsuccessful payment

- 11.3 Where the Responsible Entity attempts to make a payment to a Member and is unsuccessful, any amounts to be paid to that Member after the failure of the attempt may be reinvested by the Responsible Entity on behalf of the Member without attempting again to make payment to the Member at the Entry Price prevailing at the next Valuation Time after the Responsible Entity determines not to attempt to make another payment.

Fractions of cents

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

Joint Members

- 11.5 A payment to any one of joint Members discharges the Responsible Entity in respect of the payment.

Tax and amounts owing

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

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

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

12 Powers of the Responsible Entity

General powers

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

Contracting powers¹⁶

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

Investment powers

- 12.3 Without limiting clause 12.1, the Responsible Entity in its capacity as trustee of the Trust may invest in, partition, dispose of or otherwise deal with property and rights in its absolute discretion.¹⁷

¹⁶ Required to be included by Section 601GA(3)

¹⁷ Subject to Section 601FC(4)

Power of delegation¹⁸

- 12.4 The Responsible Entity may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold any Asset or title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power, including the power to appoint in turn its own agent or delegate.
- 12.5 The Responsible Entity may include in the authorisation provisions to:
- (a) protect and assist those dealing with the agent or delegate; and
 - (b) limit the Responsible Entity's liability,
- as the Responsible Entity thinks fit.
- 12.6 The agent or delegate may be an associate of the Responsible Entity.¹⁹

Exercise of discretion

- 12.7 The Responsible Entity may in its absolute discretion decide how and when to exercise its powers.

Voting

- 12.8 Subject to the Corporations Act (if relevant) and without limiting clause 12.1 the Responsible Entity may exercise all voting rights conferred by the Assets at its absolute discretion.

Investments and arrangement with associates

- 12.9 Without limiting any other provision of this clause 12, the Responsible Entity is specifically empowered to:
- (a) acquire Assets, including interest in Unlisted Funds, which are managed by an associate of the Responsible Entity including interests in Infrastructure Equity Trust and Strategic Infrastructure Trust of Europe (A\$);
 - (b) acquire Assets from the Responsible Entity or any associate or related party of the Responsible Entity;
 - (c) enter into:
 - (i) co-owner agreements with itself in another capacity or an associate or related party which give the Responsible Entity, the associated or related party:
 - (A) a first right of refusal over the Asset;
 - (B) a right to acquire the Asset if [AMP Capital Funds Management Limited \(ABN 15 159 557 721\)](#)~~AMP Capital Investors Limited (ABN 59 001 777 591)~~ ceases to be the trustee or responsible entity of the Trust; and
 - (ii) other documents or arrangements with itself or an associate or related party which may result in fees being paid to the Responsible Entity, an associate or related party of the

¹⁸ See also Section 601FB.

¹⁹ Subject to Part 5C.7

Responsible Entity for asset management, acquisition, due diligence, debt placement, property management, leasing or other services.

12.10 Each Member acknowledges that the Units are issued for the purpose of doing the things described in clause 12.9 and authorises the Responsible Entity to do those things. Nothing in this limits the purpose of the Trust or the powers of the Responsible Entity under this constitution or by operation of law.

AMIT Powers

12.11 Without limiting clause 12.1, the Responsible Entity has, in addition to its other rights and powers provided for under this constitution:

- (d) the power to make an election to determine the Trust to be an AMIT; and
- (e) all of the powers and rights which are necessary for or incidental to the Trust being able to be operated in a manner permitted by the Tax Act as an AMIT, including for:
 - (i) the Trust to be eligible to apply the AMIT Regime;
 - (ii) the Responsible Entity to comply with the requirements of the AMIT Regime;
 - (iii) the Trust to be properly administered and operated under the AMIT Regime; and
 - (iv) the Responsible Entity to maintain equity among the Members as a result of the operation of the AMIT Regime.

13 Retirement of Responsible Entity

Voluntary retirement

13.1 The Responsible Entity may retire as permitted by law.

Compulsory retirement

13.2 The Responsible Entity must retire when required by law²⁰.

New responsible entity

13.3 Any proposed replacement Responsible Entity must execute a deed by which it covenants to be bound by this constitution as if it had originally been a party to it.

Release

13.4 When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Trust arising after the time it retires or is removed.²¹

14 Notices to Members

14.1 Subject to the Corporations Act (if relevant), a notice or other communication required under this constitution to be given to a Member must be:

²⁰ See Section 601FM and 601FA.

²¹ See section 601FR for the Responsible Entity's obligation to transfer records, etc. Section 601FS restricts this release.

- (a) given in writing (which includes a facsimile) or in such other manner as the Responsible Entity determines; and
 - (b) delivered or sent to the Member at the Member's address last advised to the Responsible Entity or, if the Responsible Entity determines, to the electronic address or facsimile number last advised to the Responsible Entity or given by telephone.
- 14.2 A cheque payable to a Member or a person authorised in writing by the Member may be:
- (a) posted to the Member's address; or
 - (b) handed to the Member or a person authorised in writing (including by facsimile) by the Member²²; or
 - (c) delivered to the Member in such other manner as agreed by the Responsible Entity.
- 14.3 In the case of joint Members, the address, electronic address or facsimile number of the Member means the address, electronic address or facsimile number of the Member first named in the Register.
- 14.4 Subject to the Corporations Act (if relevant), a notice, cheque or other communication sent by the Responsible Entity by post is taken to be received on the Business Day after it is posted and a facsimile is taken to be received immediately upon receipt by the transmitter of confirmation of transmission from the receiving facsimile machine. Proof of actual receipt is not required. The Responsible Entity may determine²³ the time at which other forms of communication will be taken to be received.

15 Notices to the Responsible Entity

- 15.1 A notice required under this constitution to be given to the Responsible Entity must be given in writing (which includes a facsimile), or in such other manner as the Responsible Entity determines. A written notice given to the Responsible Entity must be legible.
- 15.2 The notice is effective only at the time of receipt unless the Responsible Entity determines another time at which a form of communication is taken to be received.
- 15.3 The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer or representative of the Member²⁴ unless the Responsible Entity dispenses with this requirement.

16 Meetings of Members

Corporations Act

- 16.1 This clause 16 is subject to the Corporations Act (if relevant).²⁵
- 16.2 The Responsible Entity may at any time convene a meeting of Members or of a Class of Members, and must do so if required by the Corporations Act (if relevant).²⁶

²² See Clause 17.3(c)

²³ See Section 252G(4)

²⁴ See Clause 17.3(c)

²⁵ Refer Part 2G.4

Responsible Entity may determine

- 16.3 Subject to this clause 16 the Responsible Entity may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

Notice

- 16.4 A meeting of Members or a Class of Members must be convened by notice in writing sent to every Member entitled to attend and vote. The notice of meeting need not set out the terms of any resolution.

Proxies

- 16.5 The Responsible Entity may determine that an appointment of a proxy is valid even if it contains only some of the information required under the Corporations Act (if relevant).²⁷

Non-receipt

- 16.6 If a Member does not receive a notice (including if notice was accidentally omitted to be given to them), the meeting is not invalidated.

No quorum

- 16.7 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Members - dissolved; or
 - (b) otherwise - adjourned to such place and time as the Responsible Entity decides.

At any adjourned meeting, those Members present in person or by proxy constitute a quorum.

Chairman

- 16.8 The Responsible Entity may appoint a person to chair a meeting of Members.
- 16.9 The decision of the chairman on any matter relating to the conduct of the meeting is final.

Adjournment

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

Other attendees

- 16.11 The Responsible Entity may invite any person to attend and speak at a meeting.

Resolutions binding

- 16.12 A Resolution by:
- (a) Members binds all Members; or

²⁶ Refer Part 2G.4

²⁷ Refer part 252Y(2)

(b) Members of a Class, binds all Members of that Class,

whether or not they voted or were present at the meeting (in the case of a Resolution passed at a meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

16.13 No objection may be made to any vote cast unless the objection is made at the meeting.

Minutes

16.14 The minutes of a meeting of Members or Members of a Class signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

17 Rights and liabilities of Responsible Entity

Holding Units

17.1 The Responsible Entity and its associates may hold Units in the Trust in any capacity²⁸.

Other capacities

17.2 Subject to the Corporations Act²⁹ (if relevant), the Responsible Entity (and its associates) may:

- (a) deal with itself (as trustee of the Trust or in another capacity), an associate, any Member or with any other person;
- (b) be interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), an associate, any Member or with any other ; or
- (c) act in the same or a similar capacity in relation to any other managed investment scheme,

and in each case, the Responsible Entity (and its associates) may retain for its own benefit all profits or benefits derived from that activity.

Responsible Entity may rely

17.3 To the extent legally permitted (and in no way limiting or purporting to exclude, or reduce liability under, the Corporations Act in particular) the Responsible Entity may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Responsible Entity, in relation to the interpretation of this constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Responsible Entity who are in each case believed by the Responsible Entity in good faith to be expert in relation to the matters upon which they are consulted;

²⁸ See Section 601FG, Section 253E and Part 5C.7

²⁹ Refer Part 5C.7

- (c) a document which the Responsible Entity believes in good faith to be the original or a copy of an appointment by a Member of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Responsible Entity in connection with the Trust upon which it is reasonable for the Responsible Entity to rely;

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

18 Limitation of liability and indemnity in favour of Responsible Entity

Limitation on Responsible Entity's liability

- 18.1 Subject to the Corporations Act (if relevant), if the Responsible Entity acts in good faith and without gross negligence it is not liable in contract, tort or otherwise to Members for any loss suffered in any way relating to the Trust.
- 18.2 Subject to the Corporations Act (if relevant), the liability of the Responsible Entity to any person other than a Member in respect of the Trust (including any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Responsible Entity's ability to be indemnified from the Assets.

Indemnity in favour of Responsible Entity

- 18.3 The Responsible Entity is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust³⁰.
- 18.4 To the extent not prohibited by the Corporations Act (if relevant)³¹ the indemnity under clause 18.3 includes any liability incurred by the Responsible Entity as a result of any act or omission of a delegate or agent appointed by the Responsible Entity.
- 18.5 This indemnity is in addition to any indemnity allowed by law. It continues to apply after the Responsible Entity retires or is removed as trustee of the Trust.
- 18.6 Where a liability is incurred pursuant to a proper exercise of the Responsible Entity's powers under this constitution or at law, the Responsible Entity may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that liability to itself or any creditor of the Responsible Entity (in its capacity as trustee or responsible entity of the Trust), despite any loss the Trust may have suffered or any diminution in the value of the Assets as a consequence of any unrelated act or omission by the Responsible Entity or by any person or entity acting on behalf of the Responsible Entity.

19 Liability of Members

Liability limited

- 19.1 Subject to clauses 19.3 and 19.6, the liability of a Member is limited to the amount if any which remains unpaid in relation to the Member's subscription for their Units.

³⁰ See Section 601GA(2)

³¹ See Sections 601FB(2) and 601GA(2)

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

19.3 The Responsible Entity is entitled to be indemnified by a Member or former Member to the extent that the Responsible Entity incurs any liability for Tax or User Pays Fees as a result of:

- (a) the Member's or former Member's action or inaction;
- (b) any act or omission requested by the Member or former Member; or
- (c) any other matter arising in connection with Units held by the Member or former Member.

19.4 Without limiting clauses 11.6 or 19.3, each Member is required to indemnify the Responsible Entity for:

- (a) any Tax (or an estimate of it) payable by the Responsible Entity under or in connection with the AMIT Regime and which the Responsible Entity determines is properly referable to the Member; and
- (b) any other costs, expenses or liabilities incurred by the Responsible Entity as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under clause 19.4(a).

19.5 Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax or User Pays Fees to which clause 19.3 applies and payments under clause 19.4.

Recourse

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

Restrictions on Members

19.7 A Member:

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

20 Remuneration and expenses of Responsible Entity

Entry fee

20.1 Subject to the Corporations Act (if relevant), the Responsible Entity is entitled in respect of each application for Units in the Trust which it accepts to a fee of 5% of:

- (a) the application money; or
- (b) the value of the property transferred,

as the case requires. When calculating the number of Units to be issued, the entry fee must first be deducted from the value of the application money or property.

Management fee

20.2 Subject to the Corporations Act (if relevant), the Responsible Entity is entitled to a management fee of 3% per annum of the value of the Assets calculated daily and payable monthly, from the date the Trust commences to the date of final distribution in accordance with clause 22.3. For the purpose of calculating the management fee under this clause 20.2, an Asset may be valued by the Manager based on the value of an asset underlying (whether directly or indirectly) that Asset. For example, where the Asset is an interest in a trust (including a sub-trust) or other entity which holds an underlying asset, the Asset may be valued based on the value of that underlying asset disregarding any borrowings, other liabilities or provisions of the trust or other entity. In valuing an underlying asset, the Manager may adopt the value of the asset in the books of the trust or other entity which holds the asset, or any other valuation method determined by the Manager.

Withdrawal fee

20.3 Subject to the Corporations Act (if relevant), the Responsible Entity is entitled to a withdrawal fee of 5% of the value of the withdrawal proceeds, and may deduct the withdrawal fee from the proceeds of withdrawal to be paid to a Member or the value of property to be transferred to a Member on withdrawal.

Performance fee

20.4 Subject to the Corporations Act (if relevant) the Responsible Entity is entitled to a performance fee for a Performance Fee Period calculated as:

$$15\% \times (\text{Fund Return} - \text{Benchmark Return}) \times \text{Net Asset Value}$$

Where:

Fund Return means the percentage change in the Performance Fee Unit Price between the preceding Valuation Time and the current Valuation Time.

Benchmark Return means the Benchmark as at the preceding Valuation Time multiplied by the number of days between the preceding Valuation Time and the current Valuation Time divided by 365.

Benchmark means the 10 year Australian Government Bond Yield + 3.25% per annum, expressed as a percentage.

Net Asset Value has the meaning set out in clause 26.

Performance Fee Unit Price means an amount calculated at the relevant Valuation Time by the addition of (a), (b) and (c) as follows:

(a)

$$\frac{\text{Net Asset Value}}{\text{number of Units in issue}}$$

(b) the aggregate of all Per-Unit Distributions; and

(c) the aggregate of all Per-Unit Performance Fees.

Per-Unit Distribution means the amount of any Distribution Amount that has been paid since the establishment of the Trust or that the Responsible Entity has

provided for but not yet paid as at the relevant Valuation Time, divided by the number of Units on issue at the relevant Distribution Calculation Date for each Distribution Amount.

Per-Unit Performance Fee means the amount of any Performance Fee that has been paid since the establishment of the Trust or that has been provided for but not yet paid as at the relevant Valuation Time, divided by the number of Units on issue at the relevant Performance Fee Period End Date for each Performance Fee.

Performance Fee Period End Date means 30 June and 31 December in each calendar year.

Performance Fee Period means:

- (a) for the first performance fee period:
 - (i) the period from the date the amount invested in Assets other than cash is at least \$25,000,000 to the next Performance Fee Period End Date; unless
 - (ii) in the case of a Class created after the time referred to in paragraph (i), the period from the date the Class is created to the next Performance Fee Period End Date;
- (b) for the last performance fee period, the period from the day after the preceding Performance Fee Period End Date to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from the day after the preceding Performance Fee Period End Date to the next occurring Performance Fee Period End Date.

Valuation Time has the meaning set out in clause 26.1.

20.5 The Performance Fee is calculated at each Valuation Time in the Performance Fee Period. If the aggregate of all Performance Fees for a Performance Fee Period:

- (a) is positive, this amount is payable to the Responsible Entity; or
- (b) is negative, no Performance Fee is payable to the Responsible Entity for that Performance Fee Period, and the amount must reduce the Performance Fee calculated on the first Valuation Time in the next Performance Fee Period. On each third anniversary after 31 December 2007, the Responsible Entity may determine that any such amount is zero.

20.6 The Performance Fee above is:

- (a) payable within 1 month of the relevant Performance Fee Period End Date;
- (b) to be calculated separately in respect of each Class, and for the purposes of applying the formula to a Class, "Net Asset Value", "number of Units on issue", "Per-Unit Distribution" and "Per-Unit Performance Fee" is each that proportion of those variables that the Responsible Entity determines is properly referable to the Class.

Waiver of fees

- 20.7 The Responsible Entity may accept lower fees than it is entitled to receive under this constitution, or may defer payment for any period. The Responsible Entity may do so in relation to any Class or any Member. Where payment is deferred, the fee accrues daily until paid.

Units in place of cash

- 20.8 The Responsible Entity may issue Units to itself instead of receiving payment in cash in respect of any fee to which it is entitled under this clause 20. Units must be issued at the Entry Price determined as at the first Valuation Time after the Responsible Entity elects to issue Units in accordance with this clause 20.8.

Expenses

- 20.9 All expenses incurred by the Responsible Entity in relation to the proper performance of its duties in respect of the Trust³² are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act (if relevant). This includes, without limitation, the following and expenses connected with following:
- (a) this constitution and the formation of the Trust;
 - (b) the registration of the Trust as a Registered Scheme;
 - (c) the preparation, review, distribution and promotion of any prospectus, product disclosure statement or offering memorandum in respect of Units or other promotion of the Trust;
 - (d) any bid costs incurred in relation to the acquisition of prospective Assets (whether successful or not);
 - (e) the acquisition, disposal, insurance, custody and any other dealing with Assets;
 - (f) analysis or investigations of any potential or proposed acquisition, disposal or other dealing with an investment;
 - (g) having the Trust credit rated;
 - (h) the administration or management of the Trust or its Assets and Liabilities (including without limitation the payment of fees to investment and asset consultants appointed in relation to the Fund);
 - (i) convening and holding meetings of Members, the implementation of any Resolutions and communications with Members;
 - (j) Tax;
 - (k) financial institution fees;
 - (l) the engagement of agents, valuers, contractors and advisers (including legal advisers) whether or not the agents, valuers, contractors or advisers are associates of the Responsible Entity;
 - (m) preparation and audit of the taxation returns and accounts of the Trust;
 - (n) termination of the Trust and the retirement or removal of the Responsible Entity and the appointment of a replacement;

³² Refer Section 601GA(2)(b)

- (o) any court proceedings, arbitration or other dispute including proceedings against the Responsible Entity, except to the extent that the Responsible Entity is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this clause 20.6(m) must be repaid;
- (p) the compliance committee established by the Responsible Entity in connection with the Trust (if any), including any fees paid to or insurance premiums³³ in respect of compliance committee members;
- (q) while there is no compliance committee and the Trust is a Registered Scheme, any costs and expenses associated with the board of directors of the Responsible Entity carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act (if relevant);
- (r) the preparation, implementation, amendment and audit of the compliance plan;
- (s) any borrowings or raising of money (including any interest, fees or other payments) pursuant to clause 12.2;
- (t) the establishment and maintenance of a gearing facility;
- (u) complying with any law, and any request or requirement of the ASIC; and
- (v) travel and accommodation expenses of directors and employees of the Responsible Entity incurred in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed acquisition or disposal or any other transaction in connection with the Assets or prospective Asset.

In this clause 20, the term "expenses" includes:

- (i) internal expenses of the Responsible Entity incurred in connection with the matters referred to in this clause 20.9 including costs of appointing and maintaining staff in connection with those matters); and
- (ii) amounts paid by the Responsible Entity to related bodies corporate for services provided to the Responsible Entity in connection with the Trust where the expenses referable to such service would have been reimbursable under this clause 20.9 had they been incurred by the Responsible Entity.

Deferral and waiver of expenses

20.10 The Responsible Entity may waive the right to be reimbursed or defer reimbursement for any period, of any or all (or any part) of the expenses under clause 20.9. Where reimbursement is deferred, the expense (or part) accrues daily until paid.

Class Expenses

20.11 Subject to the Corporations Act (if relevant), where a Class of Units is on issue the Responsible Entity may make a determination that an expense, or part of an

³³ See Section 601JG

expense, is to be a Class Expense in relation to a Class; but if no determination is made under this clause, then:

- (a) Fee GST and the corresponding reduced input credit or input credit (as the case may be) that arises in connection with a fee payable or other supply in respect of a Class, is to be referable to that Class; and
- (b) any other expense under clause 20 is to be referable to all Units on an equal basis GST.

20.12 The User Pays Fees and the fees payable to the Responsible Entity under this constitution do not include any amount referable to GST. If the Responsible Entity is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including the supply of any goods, services, rights, benefits or things), then, in addition to any fee or other amount or consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Responsible Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

Sums owed to the Responsible Entity

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

20.14 Without limiting the generality of clause 20.13, the Responsible Entity may redeem without a withdrawal request some or all of the Units held by a Member to satisfy any amount of money due to it by the Member described in clause 19.4.

Differential fee arrangements

20.15 Subject to any ASIC relief, the Responsible may agree with any Member fee arrangements in respect of that Member which are different to those provided for under this constitution.

21 Duration of the Trust

Initial settlement

21.1 The Trust commences when the Responsible Entity's nominee subscribes \$2 for Units in the Trust. The Responsible Entity's nominee must be issued with 2 Units in return for that payment.

Termination

21.2 The Trust terminates on the earliest of:

- (a) a date which all Members determine and specify in a notice to the Responsible Entity sent at least 1 month before the proposed termination, unless the Responsible Entity consents to shorter notice;
- (b) a date determined by the Responsible Entity and specified in a notice to Members sent at least 1 month before the proposed termination unless all Members consent to shorter notice; and

- (c) The date on which the Trust terminates in accordance with another provision of this constitution or by law³⁴.

Perpetuity period and restriction on issue and redemption of Units

- 21.3 Despite any other provision in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day before the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities or any other rule of law or equity.

22 Procedure on termination

Realisation of Assets

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

Audit of winding up

- 22.2 If and to the extent that ASIC policy so requires, the Responsible Entity must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

Distribution following termination

- 22.3 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), meeting the expenses (including anticipated expenses) of the termination and satisfying Income Distributions, must be distributed, subject to the rights, obligations and restrictions attaching to any particular Units or Classes pro rata to Members according to the number of Units they hold.

The Responsible Entity may distribute proceeds of realisation in instalments.

- 22.4 Subject to the Corporations Act (if relevant), the provisions of this constitution continue to apply from the date of termination until the date of final distribution under clause 22.3, but during that period the Responsible Entity may not:

- (a) accept any applications for Units from a person who is not an existing Member;
- (b) satisfy any withdrawal requests; or
- (c) accumulate any amounts pursuant to clause 10.4 for the final Financial Year for the Trust.

23 Amendments to this constitution and statutory requirements

Responsible Entity may amend

- 23.1 Subject to the Corporations Act³⁵ (if relevant), the Responsible Entity may by deed amend this constitution.

Statutory requirements

- 23.2 (a) If:

³⁴ See Part 5C.9 on winding up

³⁵ See Section 601GC for power to amend the constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

- (i) the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Trust and the Responsible Entity requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("Required Provisions"); or
- (ii) any part of this constitution (a "Required Part") is included to comply with the requirements of the Corporations Act, Listing Rules, ASIC or ASX ("Regulatory Requirement") and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, this constitution is automatically amended so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement; and the Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

- (b) The Members:
 - (i) authorise the Responsible Entity to make the amendments referred to in this clause 23 in a deed made for that purpose and, if required, to lodge it with ASIC; and
 - (ii) agree that, subject to the Corporations Act (if relevant), their rights under this constitution do not include or extend to any right that would be adversely affected by the operation of this clause 23.
- (c) Where this clause 23 operates to automatically amend this constitution to incorporate a provision, it is deemed to be incorporated as a separate and distinct provision.

24 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act³⁶.

25 Complaints

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

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Responsible Entity as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;

³⁶ See section 601JF

- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Member as a direct result of the breach (if any); and
- (e) must communicate to the complainant as soon as practicable and in any event not more than 90 days after receipt by the Responsible Entity of the complaint:
 - (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Member; and
 - (iii) information regarding any further avenue for complaint.

26 Interpretation

Definitions

26.1 In this constitution these words and phrases have the following meaning unless the contrary intention appears:

Accrued Income: the Income Distribution for all Members of the Trust in respect of the Distribution Period in which the application is deemed to be received.

AMIT: has the meaning given to that word in the Tax Act.

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

AMIT Regime: the regime for the taxation of AMITs, as set out in the following legislation:

- (a) Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016 (Cth);
- (b) Income Tax Rates Amendment (Managed Investment Trusts) Act 2016 (Cth);
- (c) Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016 (Cth); and
- (d) Income Tax (Attribution Managed Investment Trusts – Offsets) Act 2016 (Cth).

AMMA Statement: has the meaning given to that phrase in section 276-460 of the Tax Act.

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

ASIC Relief: an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

Assets: all the property, provisions, rights and income of the Trust, but not application money or property in respect of which Units have not yet been issued, proceeds of withdrawal which have not yet been paid or any amount in the distribution account.

Business Day:

- (a) a day other than a Saturday or a Sunday on which banks are open for general banking business in Sydney; and
- (b) any other day specified by the Responsible Entity to be or not to be a business day for the purposes of this definition.

Class: a class of Units, for example (but not limited to) the Classes comprising the Class A Units, the Retail Units, the Wholesale Units and the No Fee Units.

Class Expense: in relation to Class means an expense or a tax or a proportion of an expense or a tax determined by the Responsible Entity to be referable to a Class in accordance with clause 20.11 and includes expenses and taxes of the kind listed in clauses 20.9 and 20.12.

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

Corporations Act: the Corporations Act 2001 (Cth)

Determined Member Component: has the meaning given to that phrase in section 276-205 of the Tax Act.

Determined Trust Component: has the meaning given to that phrase in section 276-255 of the Tax Act.

Distributable Income: for a period is the amount determined by the Responsible Entity under clause 10.2. **Distribution Amount:** for a Distribution Period will be:

- (a) for a Distribution Period in a Financial Year (other than the last Distribution Period in a Financial Year), so much of the income or capital as the Responsible Entity considers is appropriate for distribution for the Distribution Period which shall exclude any amounts which:
 - (i) the Responsible Entity has determined to accumulate pursuant to clause 10.4; and
 - (ii) the Responsible Entity determined are referable to Redemption Attribution
 - (iii) Amounts that have arisen in respect of a Significant Redemption that occurs prior to the end of the Distribution Period; and
- (b) for the last Distribution Period in a Financial Year, the excess of (i) over the aggregate of (ii) to (iv) for the Distribution Period:

where:

- (i) is Distributable Income for the Financial Year;
- (ii) is the aggregate of Distribution Amounts for preceding Distribution Periods in the Financial Year;

- (iii) is the aggregate of all amounts included in (i) that the Responsible Entity has determined to accumulate pursuant to clause 10.4; and
- (iv) is the aggregate of all amounts included in (i) that are referable to Redemption Attribution Amounts that arise in respect of a Significant Redemption during the Financial Year.

Distribution Calculation Date: the last day of each Financial Year and such other days as the Responsible Entity designates.

Distribution Period:

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

Entry Price: the Unit price calculated in accordance with clause 5.

Fee GST: amounts paid or payable to the Responsible Entity in accordance with clause 20.12.

Financial Year:

- (a) for the first financial year, the period from the establishment of the Trust to the next 30 June;
- (b) for the last financial year, the period from 1 July before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

GST: a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only.

Income Distribution: in respect of a Member for a Distribution Period, the amount calculated in respect of the Member under clause 10.8 or paragraph 3.4 of Schedule 3.

Liabilities means all present liabilities of the Trust including any provision taken into account in accordance with Accounting Standards in determining the liabilities of the Trust, but not liabilities:

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

For the avoidance of doubt, this definition of "Liabilities" applies to the operation of the Trust under this constitution only and is not intended to affect any other

meaning of "liabilities" of the Trust which the Responsible Entity may be required to adopt for financial reporting purposes

Liquid: has the same meaning as in the Corporations Act.³⁷

Management Fee: the fee payable under clause 20.2.

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

Member Component: has the meaning given to that phrase in section 276-210 of the Tax Act.

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

Month: a calendar month, and **Monthly** has a corresponding meaning.

Net Asset Value: the value of the Assets calculated in accordance with clause 9 less the Liabilities.

Non-AMIT Income Year: a Financial Year which is not an AMIT Income Year.

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

Performance Fee: the fee payable under clause 20.4.

Prescribed Time: 2.00 pm Sydney time, or such other time or times as the Responsible Entity determines.

Redemption Attribution Amount: the Determined Trust Components of the Trust that will be attributed to a Member who redeems Units under a Significant Redemption if the Responsible Entity so determines under clauses 10.14 and 10.15.

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

Registered: recorded in the Register.

Registered Scheme: has the meaning given in the Corporations Act.

Registration: recording in the Register.

Required Majority: except where this constitution or any applicable law provides otherwise, a simple majority³⁸.

Resolution:

- (a) a resolution passed at a meeting of Members (or at a meeting of a Class of Members) in the Trust:
 - (i) on a show of hands, by the Required Majority of Members in the Trust (or in the Class) present in person or by proxy and voting on the show of hands; or

³⁷ Refer Part 5C.6

³⁸ Circumstances where an extraordinary resolution is required include winding up by Members, and choosing a new responsible entity.

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

Responsible Entity: the company which is registered with the ASIC as the responsible entity for the Trust.

Significant Redemption: a redemption of Units that represents 5% or more of the Units on issue, or such other percentage as the Responsible Entity may determine from time to time, provided that the Responsible Entity has notified Members of the change, and the date from which it will apply, at least 30 days before the redemption request is received.

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

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

Transaction Costs:

- (a) when calculating the Entry Price of a Unit, an allowance for the total cost of acquiring the Assets; and
- (b) when calculating the Withdrawal Price of a Unit, an allowance for the total cost of selling the Assets;

provided that subject to the Corporations Act³⁹ (if relevant) the Responsible Entity may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trust: the trust constituted under or governed by this constitution.

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

Unit: subject to any rights, obligations and restrictions attaching to any particular Unit or Class, an undivided share in the beneficial interest in the Trust as provided in this constitution.

Unlisted Fund: Unlisted Fund means an unlisted fund, trust, managed investment scheme or other type of entity in which the Trust holds an interest.

User Pays Fees: any cost incurred in relation to:

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

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

³⁹ See section 601FC(1)(d)

Valuation Time: a time at which the Responsible Entity calculates Net Asset Value, and in relation to the Performance Fee calculated in accordance with clause 20.4 means each Business Day or such other day as determined by the Responsible Entity.

Withdrawal Price: the Unit price calculated in accordance with clause 7.

Interpretation

26.2 Unless the contrary intention appears, in this constitution:

- (a) terms defined in the Corporations Act are used with their defined meaning;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the words "includes" or "including", "for example" or "such as" when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;
- (e) amend includes insert, delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association or an authority;
- (g) the cover page, contents, headings, footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this constitution; and
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively.

Other documents

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

Constitution legally binding⁴⁰

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

Governing law

26.5 This constitution is governed by the law of New South Wales.

Other obligations excluded

26.6 Except as required by the Corporations Act (if relevant) all obligations of the Responsible Entity which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any

⁴⁰ Refer Section 601GB

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

EXECUTED as a deed

Execution page

NOT USED

~~Executed for and on behalf of Capital Investors Ltd (ABN 59 001 777 591)
by power of attorney~~

Schedule 1 When Trust is not a Registered Scheme

The following provisions operate when the Trust is not a Registered Scheme:

4 Units and Classes

A new clause 4.19 applies as follows:

Register

- 4.19 The Responsible Entity must set up and maintain the Register. The Register must show, for each Member, the Member's name, address and number of Units held and such other information as determined by the Responsible Entity.

7 Withdrawal price of Units

Replacement clause 7.2 applies as follows:

- 7.2 Each of the variables in clause 7.1 must be determined at the next Valuation Time after the Responsible Entity receives a withdrawal request.

8 Withdrawal procedures

Clause 8.3 does not apply

Replacement clause 8.4 applies as follows:

- 8.4 The Responsible Entity may satisfy a withdrawal request in respect of a Unit by payment from the Assets of the Withdrawal Price calculated in accordance with clause 7. If the Responsible Entity determines to satisfy a withdrawal request, the payment must be made within a reasonable period.

Clauses 8.6 to 8.11 do not apply

12 Powers of the Responsible Entity

New clauses 12.12 and 12.13 apply as follows:

- 12.12 Clause 12.13 applies only while in an AMIT Income Year or a Financial Year that would be an AMIT Income Year if this clause 12.12 applies:

- (a) there is more than one Class on issue; and
- (b) there would not be Clearly Defined Rights by virtue of the application of section 276-15 of the Tax Act.

- 12.13 The Responsible Entity may only exercise any rights or discretion conferred on it under clauses 10 or 12.11 in a manner which is consistent with there being Clearly Defined Rights for that Financial Year.

13 Retirement of the Responsible Entity

Replacement clause 13.1 applies as follows:

- 13.1 The Responsible Entity may retire on giving notice to Members. On retirement, the Responsible Entity may appoint in writing another person to be the Responsible Entity.

Clause 13.2 does not apply.

16 Meetings of Members

A new clause 16.1A applies as follows:

Members request for meeting

16.1A

- (a) The Responsible Entity must call and arrange to hold a meeting of the Members to consider and vote on the request of Members with at least 20% of the votes that may be cast on the resolution.
- (b) Sections 252B(2),(3), (6), (7) and (9) of the Corporations Act will apply to the calling of meetings as if the Trust is a Registered Scheme.

A new clause 16.3A applies as follows:

Notice Period

- 16.3A At least 10 days' notice of a meeting must be given to Members or a Class of Member or such shorter notice as they agree.

A new clause 16.4A applies as follows:

Quorum

- 16.4A The quorum for a meeting of Members is at least 2 Members present in person or by proxy together holding at least 10% of all Units, unless the Trust has only one Member who may vote on a Resolution, in which case that one Member constitutes a quorum.

New clauses 16.9A to 16.9E apply as follows:

Voting

- 16.9A Voting is by a show of hands, unless a poll is duly demanded or the Resolution proposed is required by this deed or by law to be decided by a percentage of all Units.
- 16.9B Subject to the rights, obligations and restrictions attaching to any particular Units or Class, each Member which is present in person or by proxy has:
- (a) on a show of hands, one vote; and
- (b) on a poll, for each fully paid Unit held, one vote for each dollar of the value of the total Units held in the Trust rounded to the nearest 2 decimal places or such other number as the Responsible Entity determines prior to the meeting.

For the purposes of this clause 16.9B, the value of a Unit in the Trust is the amount the Responsible Entity determines to be the price a willing but not anxious buyer would pay for the Unit if it was sold on the Business Day immediately before the day on which the poll is taken.

In the case of joint Members, only the first named in the Register may vote unless the Responsible Entity otherwise agrees. In the case of an equality of votes the chair has a casting vote.

Poll

16.9C A poll may be demanded before or on declaration of the result of a show of hands by either:

- (a) the chair; or
- (b) at least 2 Members present in person or by proxy holding itself or between it and other Members demanding the poll at least 10% of Units.

Proxies

16.9D A Member may be represented at a meeting by proxy. Proxies are governed by the Corporations Act as if the Trust were a Registered Scheme. A proxy delivered by facsimile is valid unless proved not to be genuine. The Responsible Entity is not obligated to enquire whether a proxy has been validly given. A proxy expires after 12 months. A proxy is still valid after it is revoked or after the Member who gave it dies or becomes under a legal disability, unless the Responsible Entity has received written notice of that fact before the meeting at which the proxy is used.

Representatives

16.9E A body corporate may be represented at a meeting by a person appointed in the manner provided in the Corporations Act as if the Trust is a Registered Scheme. The Responsible Entity may accept a certificate as evidence of the person's appointment. The person may exercise on the body's behalf the same powers as the body could if it were a natural person and the body is taken to be present at the meeting in person.

24 Compliance Committee

Clause 24 does not apply.

25 Complaints

Clause 25 does not apply.

26 Interpretation

The following definition is inserted after the definition of "Class Expense":

Clearly Defined Rights: where the rights to income and capital arising from each of the Units in the Trust are "clearly defined" at all times during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.

The definition of Responsible Entity is replaced with the following definition:

Responsible Entity means the trustee of the Trust, and the ~~current~~first trustee is [AMP Capital Funds Management Limited \(ABN 15 159 557 721\)](#). ~~AMP Capital Investors Limited.~~

Schedule 2

The conditions for processing of redemptions referred to in clause 8.1 are set out below.

1. Withdrawal request to be considered Monthly

Withdrawal requests made under clause 8.1 will be considered on a Monthly basis and may only be submitted for consideration for a Month up to the Set Time on the 15th day of the Month (or if that 15th day is not a Business Day, the next following Business Day) (“**Specified Withdrawal Time**”). Each request received before the Specified Withdrawal Time in a Month will be considered for processing in accordance with the provisions of this Constitution including Schedule 2 on the first Business Day of the Month following the Month in which the request was received (“**Redemption Day**”). Despite anything in this condition 1, all redemption requests must be processed within the period allowed for effecting redemptions under clause 8.4 being 365 days from the day of receipt of the request or such longer period as allowed in any of the circumstances referred to in clause 8.5, or at law.

2. Valuation Time

The Valuation Time for the purpose of clause 7.2(a) applicable to Units redeemed on the Redemption Day for a Month will be the Set Time on the next proceeding Business Day prior to the Redemption Day on which the request are processed.

3. Cut off time

All withdrawal requests outstanding on the Redemption Day for a Month will be considered for processing on that day, in whole or in part as this Schedule 2 and clause 8 permit except that, subject to condition 6, withdrawal requests received after the Specified Withdrawal Time in the Month immediately prior to the relevant Redemption Day will be considered for processing on the next Redemption Day after the relevant Redemption Day.

4. Pro rata processing

If in the opinion of the Responsible Entity the processing of one or more outstanding withdrawal requests for a particular Month would result in there being insufficient cash or liquid assets to meet the Liabilities of the Trust, or result in the sale of Assets at a price or on terms which would not be appropriate, or the processing of the request or requests would not be in the best interests of Members, or any of the other circumstances in clause 8.5 apply, then under clause 8.17 and consistent with its duty to treat Members equally but subject to condition 6, the Responsible Entity may determine to process all outstanding withdrawal requests which are considered for processing on that day by redeeming some only of the Units the subject of each such request on a pro rata basis.

For the purpose of satisfying request pro rata, all requests from the same Member which are outstanding at any time may be treated on a cumulative basis as if they were a single request.

5. Balance of request may be withdrawn or lapse

Where only some of the Units the subject of withdrawal request made by a Member have been redeemed, the balance of the request is withdrawn and the Responsible Entity is no longer obliged to request if:

- (a) the Member has given direction to the Responsible Entity that the balance is to be withdrawn by way of an instruction on a redemption form, by accepting conditions in a PDS through signing an application form or by way of a standing direction; or

- (b) the Responsible Entity has determined for the relevant Month that the balance of all requests which have been met pro rata for that Month will lapse and not be carried forward for processing in the next Month, provided that in relation to a particular request the Responsible Entity must revoke such determination and process the request if the determination that the balance of a request would lapse would result in the Member's right to have any request (to the extent that it has not been withdrawn) met within 365 days of the time it was originally received by the Responsible Entity, or such longer period as allowed under clause 8.5 or otherwise by law, being adversely affected.

6. Other provisions continue to apply

Nothing in this Schedule 2 affects the operation of the other provisions of clause 7 and 8 that are not referred to here, and in particular:

- (a) clause 7.5 applies to redemptions processed in accordance with these conditions;
- (b) these conditions operate subject to clause 8.5A; and
- (c) despite anything in this Schedule 2, any withdrawal request which has been received by the Responsible Entity must, to the extent it has not been withdrawn, be met within 365 days of the time it was originally received by the Responsible Entity, or such longer period as allowed under clause 8.5 or otherwise by law.

7. Set Time

For the purpose of this Schedule 2, "Set Time" means:

- (a) in respect of Units of the Class designated by the Manager as Platform Class Units, 2.00 pm;
- (b) in respect of Units of the Class designated by the Manager as Personal Investors Class Units, 3.00 pm; and
- (c) in respect of any other Units, 2.00 pm or such other time as specified in a product disclosure statement or other documents in which Units are offered.

Schedule 3 When Trust is not an AMIT

The following provisions operate in respect of any Non-AMIT Income Year:

1 Interpretation

1.1 In this Schedule these words and phrases have the following meaning unless the contrary intention appears:

Distribution Amount: has the meaning given to that phrase in paragraph 3.5 of this Schedule 3.

Distribution Amount on Redemption: where paragraph 4.1 of this Schedule 3 applies for a Relevant Period will be the Responsible Entity's estimate of the amount that would be appropriate to distribute if the Relevant Period were a Distribution Period, taking into account any amounts realised as a result of the withdrawal requests to which paragraph 4.1 of this Schedule 3 applies.

Income for a Financial Year will be the amount the Responsible Entity determines to be the "net income" of the Trust under section 95(1) of the Tax Act for the Financial Year together with the amount described in paragraph 3.2(b) of this Schedule 3 for the Financial Year.

Redemption Entitlement: for a Unit, the amount, if any, calculated in accordance with paragraph 4.3 of this Schedule 3.

Relevant Period: where paragraph 4 of this Schedule 3 applies, means the period commencing on the first day of the Distribution Period in which the withdrawal request is received and ending on the day the Withdrawal Price is calculated.

2 Application of this Schedule

2.1 In respect of any Non-AMIT Income Year:

- (a) the provisions of clause 10 will operate subject to, and be qualified by, the provisions of this Schedule for that Financial Year; and
- (b) if the Responsible Entity purports to exercise a power under clause 10 in respect of a Financial Year on the basis that the Responsible Entity believes that the Trust is or will be an AMIT for the Financial Year:
 - (i) the exercise of the powers by the Responsible Entity must, to the maximum extent possible, be treated as a proper exercise of the Responsible Entity's powers under clause 10 and at law;
 - (ii) to the extent that any of these powers depends, for its operation, on the Trust being an AMIT for the Financial Year, the Trust will be treated as if it were an AMIT for the purposes of the exercise of that power; and
 - (iii) nothing in clause 10 or this Schedule will be taken to invalidate any action that is undertaken by the Responsible Entity pursuant to its powers under clause 10 and these powers may be exercised by the Responsible Entity despite any contrary powers provided under this Schedule.

3 Modifications to income and distributions

Determining Income

- 3.1 The Responsible Entity must determine the Distributable Income of the Trust for each Financial Year.

Distributable Income

- 3.2 Distributable Income for a Financial Year will be the amount the Responsible Entity determines to be the distributable income being:
- (a) the amount which if distributed in cash to Members for the period would prevent the Responsible Entity being liable to tax on the income of the Trust under section 99 or section 99A of the Tax Act for the Financial Year as if the period is a year of income; and
 - (b) any additional amount whether income or capital which the Responsible Entity considers appropriate for distribution for the period.

Power to accumulate does not apply

- 3.3 The powers given to the Responsible Entity to accumulate amounts of Distributable Income in clause 10.4 to 10.7 do not apply during a Non-AMIT Income Year. Any purported exercise of such a power will:
- (a) if it is exercised during a Distribution Period that does not end on the last day of a Financial Year, be treated as if it is an exercise of the Responsible Entity's power to exclude the relevant amount from the Distribution Amount for the Distribution Period under paragraph 3.5 of this Schedule 3; and
 - (b) if it is exercised during or after the final Distribution Period in a Financial Year, have no effect.

Income Distributions

- 3.4 For Distribution Periods that are within a Non-AMIT Income Year, an Income Distribution for a person for a Distribution Period means the sum of:
- (a) in respect of Units held by the person at the end of the Distribution Period, the amount determined in clause 10.8 but applied with the modified definition of Distribution Amount in paragraph 3.5 of this Schedule 3; and
 - (b) in respect of Units redeemed by the person in the Distribution Period, the sum of the Redemption Entitlements for each relevant Unit redeemed by them in the Distribution Period.
- 3.5 For Distribution Periods that are within a Non-AMIT Income Year, the Distribution Amount for a Distribution Period will be:
- (a) for a Distribution Period in a Financial Year (other than the last Distribution Period in a Financial Year), so much of the income or capital as the Responsible Entity considers is appropriate for distribution for the Distribution Period which amount shall not be less than the sum of the Redemption Entitlements for Units withdrawn in the Distribution Period; and
 - (b) for the last Distribution Period in a Financial Year, the excess of (i) over (ii) for the Distribution Period:
- where:
- (i) is Distributable Income for the Financial Year; and

- (ii) is the aggregate of Distribution Amounts for preceding Distribution Periods in the Financial Year and the Redemption Entitlements determined in respect of Units redeemed in the Financial Year.

3.6 Income Distributions to the extent that they comprise Redemption Entitlements must be paid in accordance with clause 8.

No obligation to attribute

3.7 Clauses 10.12 to 10.16 do not apply for a Non-AMIT Income Year.

4 Redemption Entitlements

Responsible Entity may determine Redemption Entitlements

- 4.1 During a Non-AMIT Income Year, where on any day the aggregate Withdrawal Prices to be calculated in respect of Units for which withdrawal requests have been received on that day exceed 5% of the Net Asset Value, the Responsible Entity must determine the extent to which the Withdrawal Price to be calculated for each relevant Unit includes a Redemption Entitlement determined in accordance with paragraph 4.3 of this Schedule 3.
- 4.2 If wholly or in part because of this paragraph 4 of this schedule 3 the Trust may be subject to entity taxation as a non-fixed trust, this paragraph 4 of this Schedule 3 shall cease to have effect.

Redemption Entitlement

4.3 Where paragraph 4.1 of this Schedule 3 applies, the Responsible Entity must calculate a Redemption Entitlement for each Unit for which the Withdrawal Price is being calculated for that day. The Redemption Entitlement for a Unit is an amount calculated by the Responsible Entity as follows:

$$\frac{A}{B}$$

where

- A is the Distribution Amount on Redemption for the Relevant Period; and
- B is the number of Units held by all Members at the time of the calculation of the Withdrawal Price (including Units in relation to which withdrawal requests have been received).

For the purposes of the formula in this paragraph 4.3 of this Schedule 3, "Distribution Amount on Redemption" and "number of Units held by all Members" are each that proportion of those variables that the Responsible Entity determines is properly referable to the Class to which the Unit for which the Redemption Entitlement is being calculated belongs.

5 Present entitlement

Present entitlement

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

Satisfaction of present entitlement

5.2 The present entitlement of a person to Income of the Trust for a Financial Year will be satisfied by:

- (a) for Income Distributions except to the extent that they comprise Redemption Entitlements, the payment of that part of the Income Distributions to the Member in respect of the Financial Year; and
- (b) for Income Distributions to the extent that they comprise Redemption Entitlements, the payment of the Withdrawal Price to the person in respect of each Unit.

6 Withdrawal procedures

6.1 The Responsible Entity may determine whether any part of the Withdrawal Price paid to a Member or former Member represents income or gains of the Trust.

