



Supplemental Deed

Airlie Australian Share Fund

Magellan Asset Management Limited
ABN 31 120 593 946
(Responsible Entity)

Supplemental Deed

Airlie Australian Share Fund

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Details

Date 2019

Parties

Name	Magellan Asset Management Limited
ACN	120 593 946
Short form name	Responsible Entity
Notice details	Level 36, MLC Centre, 19 Martin Place, Sydney, New South Wales, Australia

Background

- A The current provisions of the constitution for the Fund dated 22 December 2017, as amended from time to time, (**Constitution**) presently facilitates the Fund's operation as a quoted fund on the ASX AQUA platform but not on any other securities exchange. Magellan is proposing to amend the Constitution to facilitate the Fund being a quoted fund on other securities exchanges including the securities exchange operated by Chi-X Australia Pty Limited.
- B Clause 44.1 of the Constitution provides that subject to the Corporations Act 2001 (Cth) (**Corporations Act**), the Responsible Entity may by supplemental deed modify, add to or delete from the Constitution. Pursuant to section 601GC(1)(a) of the Corporations Act, the constitution of a registered scheme may be modified by special resolution of the members
- C Magellan proposes to amend the Constitution in accordance with this supplemental deed. The amendments to the Constitution contained in this deed are made in accordance with the Constitution and the Corporations Act, and will take effect when a copy of this deed is lodged with the Australian Securities and Investments Commission (**ASIC**).

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed,

- (a) **Effective Time** means the date and time at which a copy of this deed is lodged with ASIC in accordance with subsection 601GC(2) of the Corporations Act; and
- (b) unless a contrary intention is expressed or implied, words and expressions defined in the Constitution have the same meanings when used in this deed.

1.2 Interpretation

Clause 1.2 of the Constitution applies to this deed as though that clause was set out in full.

2. Amendment of the Constitution

On and from the Effective Time, subject to clause 3, the Constitution is amended in the form of Annexure A to this deed, so that the words, numbers and symbols which are:

- (a) underlined are inserted into the Constitution; and
- (b) struck through are deleted from the Constitution.

3. Operation of this deed

3.1 No redeclaration etc

The Responsible Entity confirms that it is not, by clause 2 of this deed:

- (a) redeclaring the Fund;
- (b) resettling the Fund;
- (c) settling or declaring a fund;
- (d) causing the transfer, vesting or accruing of property in any person; or
- (e) entering into a new constitution.

3.2 Remaining provisions unaffected

Other than the amendments made in this deed, the Constitution continues in full force and effect. With effect from the Effective Time, the Constitution as amended by this deed is to be read as a single integrated document incorporating the amendments effected by this deed.

3.3 Binding provisions

The provisions of this deed are binding on and are made for the benefit of the Responsible Entity, each member of the Fund and all persons claiming through them as if each party were a party to this deed.

3.4 Governing law and jurisdiction

This deed is governed by the law of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

Signing page

EXECUTED as a deed poll.

Executed by Magellan Asset Management Limited ABN 31 120 593 946 in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Annexure A

Consolidated Constitution

Airlie Australian Share Fund

Magellan Asset Management Limited ABN 31 120 593 946
(Responsible Entity)

Airlie Australian Share Fund Constitution

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Details

Date

Responsible entity

Name	Magellan Asset Management Limited
ABN	31 120 593 946
Short form name	Responsible Entity
Notice details	Level 36, 19 Martin Place, Sydney, NSW, 2000, Australia Facsimile +61 2 8114 1800

Terms

1. Defined terms & interpretation

1.1 Defined terms

In this constitution:

Accounting Period means the twelve month period commencing on 1 July and ending on the following 30 June, except that:

- (a) the first Accounting Period commences on the date on which the Trust commences in accordance with clause 3 and ends on the following 30 June; and
- (b) the final Accounting Period ends on the date on which the assets of the Trust are fully distributed to Holders on or after the Termination Date and commences on the immediately preceding 1 July.

Accrual Period means the time determined by the Responsible Entity for the purpose of making a distribution under **clause 34**.

Accrual Time means the time determined by the Responsible Entity when the number of Units on issue is calculated for the purpose of making a distribution. Unless determined otherwise by the Responsible Entity, the Accrual Time in respect of any distribution will be:

- (a) while Units in the Trust are Quoted, the end of the last Business Day during which the Units are traded cum-entitlement on the ~~ASX-AQUA trading platform~~[Securities Exchange](#); or
- (b) if the Units are not Quoted, the end of the day on the last day of the Accrual Period or Accounting Period.

AMIT (or attribution managed investment trust) has the meaning given to it in the Tax Act.

AMMA Statement means an AMIT Member Annual Statement as defined in and issued under subdivision 276-H of the Tax Act.

AQUA Product has the meaning given in the [ASX](#) Operating Rules and **AQUA Products** is to be construed accordingly.

AQUA Rules means:

- (a) Schedules 10 and 10A of the [ASX](#) Operating Rules and ~~related procedures~~[Procedures](#);
- (b) such other listing rules that govern the listing of AQUA Products; and
- (c) such other rules that govern the transfer of AQUA Products,

as amended from time to time.

ASIC means the Australian Securities & Investments Commission or any body replacing it.

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

ASX means ASX Limited (ACN 008 624 691).

~~**ASX Settlement Period** means the relevant trade date plus the specified number of Business Days in which an ASX traded product must be settled.~~

Attribution Amount means, for a period, any amount calculated by the Responsible Entity and attributed to a Holder on a fair and reasonable basis and in accordance with this constitution and the Trusts constituent documents, for the purposes of Division 276 of the Tax Act and may include or be adjusted by:

- (a) components of an income character (including assessable, exempt and non-assessable, non-exempt characters);
- (b) components of a tax offset character;
- (c) any amount the Responsible Entity determines; and
- (d) an Under or Over.

Business Day:

- (a) for the purposes of clauses 28 and 29, means a day on which the primary securities exchange for any security that forms part of the Trust Property is open for trading; and
- (b) for all other purposes, has the meaning given in the Operating Rules.

CHESS has the meaning given in the Listing Rules.

Chi-X means [Chi-X Australia Pty Ltd \(ACN 129 584 667\)](#).

Chi-X Operating Rules means [the Chi-X Operating Rules, as amended from time to time](#).

Control has the meaning given under the Corporations Act and **Controlled** is to be construed accordingly.

Controlled Entity means an entity, including a body corporate, trust or partnership, Controlled by the Trust.

Corporate Tax Entity has the meaning given to that term in section 960-115 of the *Income Tax Assessment Act 1997* (Cth).

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

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

Determined Trust Components has the meaning given to it in the Tax Act.

Distributable Income for an Accrual Period or an Accounting Period (as applicable) will be the net income of the Trust under section 95 of the *Income Tax Assessment Act 1936* (Cth) (calculated by the Responsible Entity) less amounts attributable to franking credits, foreign tax credits and other notional and deemed amounts, unless the Responsible Entity in its discretion before the end of the Accrual Period or Accounting Period (as applicable) determines another amount to be the Distributable Income..

Distribution Reinvestment means the reinvestment in the Trust Property of distributions.

Eligible Unit in respect of any distribution means a Unit issued and not cancelled on or before the Accrual Time in respect of that distribution.

GST has the meaning given to it in the GST Act.

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

Holder means a person appearing on the Register as a holder of a Unit or Units and, where required by the Corporations Act, a person determined under the Corporations Act to be a member of the Trust.

Holding Lock means, as defined by [ASX-the Market Operator](#) from time to time, a facility that prevents securities from being deducted from, or entered into, a holding pursuant to a transfer or conversion.

Initial Minimum Investment means the amount determined by the Responsible Entity from time to time as the minimum number of Units or value of Units for which application may be made by a new Holder.

Issue Price means the price at which a Unit is issued.

Listing Rules means the listing rules of the ASX from time to time.

Management Fee means the management fee payable to the Responsible Entity from time to time for managing the Trust.

Market Operator means [the ASX or Chi-X and, without limitation, any other entity that operates a financial market on which Units are traded](#).

Meeting means a meeting of Holders or a class of Holders.

Minimum Balance means the amount determined by the Responsible Entity from time to time as the usual minimum number of Units or value of Units to be held by a Holder.

Minimum Redemption Amount means an amount determined by the Responsible Entity from time to time as the usual minimum number of Units or value of Units for which a Redemption Request may be made by a Holder.

Operating Rules means the operating rules of the [ASX-Market Operator](#) from time to time [and shall include, without limitation and as the context requires, the AQUA Rules or the Chi-X Operating Rules](#).

Operational Net Trust Value means the total value of all Trust Property less all Trust Liabilities except for Redemption Liabilities.

Over has the meaning given to it in the Tax Act.

Procedures means [the ASX procedures from time to time](#).

Quoted means officially quoted on the [Securities Exchange-ASX AQUA trading platform](#).

Redemption Liabilities means the liabilities representing the Redemption Price for each Unit.

Redemption Price means the price payable on the redemption of a Unit.

Redemption Request means a request by a Holder to the Responsible Entity to redeem Units under clauses 14.8, 14.9 or 14.10.

Register means the unit register for the Trust referred to in clause 20.

Registered means a trust that is registered with ASIC as a managed investment scheme under Chapter 5C of the Corporations Act.

Regulatory Required Part has the meaning given to it in clause 44.2(b).

Regulatory Required Provisions has the meaning given to it in clause 44.2(a).

Regulatory Requirement has the meaning given to it in clause 44.2(b).

Relief means any declaration made or exemption granted by ASIC that is applicable to the Trust and that is in force.

Reporting Net Trust Value means the total value of Trust Property less all Trust Liabilities in accordance with the requirements under the Corporations Act from time to time in relation to the preparation of accounts and financial reporting.

Responsible Entity means the body named in this constitution as responsible entity while it remains as responsible entity of the Trust and also means any subsequent responsible entity of the Trust from time to time.

Retail Client has the meaning given to it in the Corporations Act.

Securities Exchange means, as the context requires, the ASX or Chi-X and, without limitation, any other exchange on which Units are traded, or the financial markets operated by them.

Settlement Rules means the operating rules, procedures, practices, directions, decisions and requirements of ASX Settlement Pty Ltd (ABN 49 008 504 532), as amended from time to time, has the meaning given in the ASX Operating Rules.

Specified Time means a time that may be determined by the Responsible Entity from time to time for the purpose of accepting applications for, issuing or redeeming Units.

Subsequent Minimum Investment means the amount determined by the Responsible Entity from time to time as the usual minimum number of Units or value of Units for which application may be made by an existing Holder.

Switch means an application for Units in the Trust by a person who is (or was) a holder of units in another class of Units in the Trust or another fund of which the Responsible Entity is also the responsible entity (or in the case of a superannuation or retirement product, the trustee), where the consideration for the application represents an amount payable to the applicant on redemption in respect of units in that other class of Units in the Trust or fund.

Tax Act means *Income Tax Assessment Act 1997* (Cth).

Taxes means all taxes, including without limitation income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, withholding, GST and wealth taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

Termination Date means the time specified in any notice sent by the Responsible Entity to the Holders as the time from which termination of the Trust commences.

Trust means the trust governed by this constitution.

Trust Liabilities include, except as otherwise provided in this constitution, borrowings, accrued costs, charges, expenses and outgoing, contingent liabilities, provisions the Responsible Entity decides to make (including a provision for accrued Management Fees), unpaid distributions due to Holders and other unpaid remuneration (if any) due to the Responsible Entity, but excludes Redemption Liabilities.

Trust Property means all property, rights and income of the Trust.

Under has the meaning given to it in the Tax Act.

Unit means a beneficial interest in the Trust.

Valuation Time means a time as at which the Responsible Entity calculates:

- (a) the Operational Net Trust Value for the purposes of clauses 12.2, 14.3 and 36.3(b); or
- (b) the Reporting Net Trust Value,

as the case may be.

1.2 Interpretation

In this constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this constitution, and a reference to this constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **AS, \$A, dollar or \$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this constitution or any part of it;
- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (m) where a rule in this constitution is stated to apply subject to the **AQUA-Operating Rules** and while the Trust is Quoted, it applies in respect of a class of Units, only while the units in that class are Quoted.
- (n) while the Trust is Quoted, it may have a class of Units that are not Quoted, and this constitution applies to each relevant class separately and independently, subject to the Corporations Act and the **AQUA-Operating Rules** (as applicable) being complied with.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 AQUA Rules Operating Rules

- (a) While the Trust is Quoted, the Responsible Entity must comply with the **AQUA-Operating Rules** in relation to the issue and despatch of holding statements, the transfer and transmission of Units and the establishment and maintenance of a register of holders of Units.
- (b) While the Trust is Quoted **and subject to the Corporations Act:**
 - (i) despite anything contained in this constitution, if the **AQUA-Operating Rules** prohibit an act being done, the act shall not be done;

- (ii) nothing contained in this constitution prevents an act being done that the [AQUA Operating Rules](#) requires to be done;
 - (iii) if the [Operating AQUA Rules](#) require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (iv) if the [Operating AQUA Rules](#) require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
 - (v) if the [Operating AQUA Rules](#) requires this constitution not to contain a provision and it contains such provision, this constitution is deemed not to contain that provision; and
 - (vi) if any provision of this constitution is or becomes inconsistent with the [Operating AQUA Rules](#), this document is deemed not to contain that provision to the extent of the inconsistency.
- (c) ~~In accordance with Subject to~~ ASIC Class Order 98/1808 or ~~its~~ equivalent [ASIC Relief applying](#) and for so long as ~~it~~ [this relief](#) applies to the Trust, a change in the text of this constitution because of the operation of clause 1.4 is not a modification of, or the repeal or replacement of the constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Corporations Act.

1.5 Participation in CHES

- (a) While the Trust is Quoted, the Responsible Entity may at any time resolve that the Trust will participate in CHES.
- (b) Clauses 1.6 to 1.8 will apply if the Trust is granted participation in CHES.

1.6 Compliance with the Settlement Rules

The Trust must comply with the Settlement Rules if any of its Units are CHES approved securities. In particular, the Trust must comply with the requirements of the Settlement Rules regarding the maintenance of registers, the issuing of holding statements and transfers in relation to its CHES approved securities.

1.7 Registers

If the Trust's Units are CHES approved securities, in addition to the CHES subregister, the Responsible Entity must provide for an issuer sponsored subregister, or a certificated subregister, or both (at least if the Trust has restricted securities on issue).

1.8 No interference with proper transfer

The Responsible Entity must not in any way prevent, delay or interfere with the generation of a proper transfer in accordance with the Settlement Rules or the registration of a paper-based transfer in registrable form (which satisfies the requirements of clause 22), except as permitted by clause 22.2, the [Operating AQUA Rules](#) or the Settlement Rules.

2. Constitution

2.1 Constitution

This is the constitution of the Trust for the purposes of the Corporations Act.

2.2 Unit trust

By this constitution the Responsible Entity constitutes a unit trust called the "Airlie Australian Share Fund".

2.3 Benefit of the Trust

The Trust is constituted for the benefit of Holders.

2.4 Responsible entity

The Responsible Entity is the responsible entity of the Trust for the purposes of the Corporations Act and the trustee of the Trust.

2.5 Constitution legally binding

This constitution binds the Responsible Entity and each present and future Holder and any person claiming through any of them as if each of them had been a party to this constitution.

3. Commencement

3.1 Initial Holder

The Trust commences when the first investor (**Initial Holder**) pays an amount to the Responsible Entity to subscribe for Units (**Initial Units**). The Responsible Entity must issue the Initial Holder with these Initial Units in return for payment of the Issue Price for the Initial Units as provided for in clause 12.1.

3.2 Initial Units

The Responsible Entity may determine the methods under which an investor may subscribe for Initial Units and the terms and conditions under which an investor will be taken to be an Initial Holder and be taken to have subscribed for Initial Units.

4. Vesting

The Trust Property vests in the Responsible Entity on trust for the Holders.

5. Fund

5.1 Separate fund

The Responsible Entity must hold the Trust Property as a separate fund which is not available to meet liabilities of any other trust. The Responsible Entity may mingle Trust Property with other property to the extent legally permitted.

5.2 Trust Liabilities

Except as otherwise provided in this constitution, Trust Liabilities are determined in accordance with generally accepted accounting principles.

6. Units

6.1 Beneficial interest

The beneficial interest in the Trust is divided into Units.

6.2 Rights of Holders

A Unit confers on its Holder an undivided beneficial interest in the Trust as a whole, subject to Trust Liabilities, not in parts or single assets. All Units confer identical interests and rights except as otherwise provided in this constitution or by their respective terms of issue.

6.3 Consolidation, division and issue of Units

Subject to the Corporations Act and the [Operating AQUA Rules](#), the Responsible Entity may at any time consolidate, divide, or issue Units or create and issue Units of different classes.

6.4 Parts of Units

- (a) Subject to clause 6.4(b), a part of a Unit may be created and issued and dealt with in the proportion that the part bears to a whole Unit.
- (b) Subject to the ~~Operating AQUA~~ Rules and while the Trust is Quoted, a part of a Unit may not be created and issued as the Responsible Entity determines.
- (c) Where any calculation performed under this Constitution, or the terms of a withdrawal offer, results in the issue, redemption or holding of a part of one Unit, the number of Units to be issued, redeemed or held may be rounded up or down to the nearest number of whole Units as the Responsible Entity determines. Any excess subscription for other money or property which results from rounding shall be dealt with in accordance with clause 9.10.
- (d) Where any fractions of Units are on issue, the Responsible Entity may, in its discretion, cancel the fractions of Units on issue in respect of a class of Units or a particular fraction of a Unit on issue and any money or property attributable to the cancelled fractions of Units shall become a part of the Trust Property.

6.5 Buy backs

Subject to clause 13, the Responsible Entity may, in accordance with the Corporations Act and the ~~AQUA-Operating~~ Rules buy back Units in a particular class on any terms and conditions determined by the Responsible Entity. The consideration paid for a buy back of Units in a particular class may include specific assets, including financial products of the Trust or of any other corporation, trust or entity.

6.6 Responsible Entity may hold Units in Trust

Subject to the Corporations Act and ~~AQUA-Operating~~ Rules, the Responsible Entity may hold Units in the Trust from time to time and trade them as the Responsible Entity determines.

6.7 Holders not to interfere

A Holder may not interfere with, or exercise powers of, the Responsible Entity in respect of any Trust Property, Trust Liabilities or obligation and has no right to lodge a caveat affecting any Trust Property.

7. Classes of Units

7.1 Management Fees, expenses or tax referable to a class

If a class is created in accordance with clause 6.3 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; or
- (b) a type or a particular expense or tax or a proportion of a particular expense or tax referable to that class,

the Responsible Entity must:

- (c) calculate each Holder's share of Distributable Income or amount distributed under clause 34 by first calculating for each class of Unit held by the Holder that proportion of the variables in clause 34 that the Responsible Entity determines is properly referable to the class and the Units held by the Holder and then aggregating those amounts; and
- (d) determine the proportion of net proceeds of realisation under clause 25.4 that is properly referable to each class and each proportion referable to each class must be distributed pro rata to Holders according to the number of Units in that class they hold.

7.2 No limitation of class rights or obligations

Clause 7.1 does not limit the extent to which a class:

- (a) may have rights, obligations or restrictions other than or in addition to those specified in clause 7.1 different from any other class; or
- (a) subject to the Corporations Act and the ~~AQUA-Operating~~ Rules, may have different rights, obligations or restrictions because of a determination by the Responsible Entity under this constitution, including in relation to issue and redemption prices applicable to different classes of Units.

For the avoidance of doubt, any rights, obligations or restrictions in relation to matters that are dealt with in sections 601GA and 601GB of the Corporations Act will remain subject to the terms of this constitution.

7.3 Determination of variables in relation to a class

The Responsible Entity in making any determination of variables properly referable to a class under this constitution must ensure that any variable which relates:

- (a) only to a particular class is solely referable to that class; and
- (b) 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 on issue at that Valuation Time, to which the variable relates.

8. Specified Time

Subject to the Corporations Act and the ~~AQUA-Operating~~ Rules, the Responsible Entity may determine (and whenever it elects, vary) one or more times during each Business Day for the purposes of:

- (a) subscriptions for Units;
- (b) the issue of Units; and
- (c) Redemption Requests,

different times being applicable to different classes of Units, locations or methods of communication or payment. The times relevant to applications for Units, issues of Units and to Redemption Requests may differ.

9. Subscriptions for Units

9.1 Subscriptions for Units

Except as otherwise provided in this constitution and subject to the Corporations Act (including any ASIC Relief) and the relevant procedures set out in the ~~AQUA-Operating~~ Rules (if the Trust is Quoted), a person intending to subscribe for Units must (other than in relation to Distribution Reinvestment):

- (a) subscribe in a form and manner approved by the Responsible Entity from time to time; and
- (b) give consideration to the Responsible Entity or custodian (where there is one) in relation to a subscription for Units, including by payment of subscription money, or transfer of other property.

9.2 Payment in kind

A person intending to subscribe for Units may only transfer property (other than money) to pay for some or all of the consideration payable in relation to a subscription for those Units, if:

- (a) the Responsible Entity permits;
- (b) the property is in a form permitted by the Responsible Entity; and
- (c) the property is accompanied by a valuation acceptable to the Responsible Entity.

9.3 Responsible Entity may deduct

The Responsible Entity or custodian may deduct Taxes and costs incurred in receiving, and in calculating the value of, consideration for Units.

9.4 Holding of subscription money

The Responsible Entity or custodian may hold subscription money for Units in a single account containing subscription money for one or more schemes.

9.5 Responsible Entity may set investment minimums

Subject to the [AQUA-Operating](#) Rules (while the Trust is Quoted) and the conditions and restrictions in any applicable ASIC Relief, the Responsible Entity from time to time may determine and may vary the current Initial Minimum Investment, Subsequent Minimum Investment and Minimum Balance.

9.6 Consideration for Units

Subject to the [AQUA-Operating](#) Rules (while the Trust is Quoted) and the conditions and restrictions in any applicable ASIC Relief, the amount or value of the consideration for Units on application must equal or exceed the Initial Minimum Investment (or in the case of a subsequent investment, Subsequent Minimum Investment) except if:

- (a) the consideration is received under a savings plan or Distribution Reinvestment or paid by the Responsible Entity on behalf of a Holder; or
- (b) the Responsible Entity elects to accept lower consideration where it reasonably expects that this will not cause any material adverse effect on other Holders.

9.7 Responsible Entity may reject subscriptions

The Responsible Entity may reject a subscription for Units without giving a reason. Where the Responsible Entity rejects a subscription for Units under this clause 9.7 it must tell the subscriber of the refusal.

9.8 Timing

Consideration may be provided at or within such time before or after the Responsible Entity is given the subscription as the Responsible Entity may determine or accept from time to time.

9.9 Issue of Units

Other than as contemplated by clause 3, Units are created and issued when the Responsible Entity has received both the subscription (if relevant) and either the consideration or a commitment in a form acceptable to the Responsible Entity to provide the consideration ~~or~~ [expand](#), while the Trust is Quoted, in any [other](#) way CHESS or the [AQUA-Operating](#) Rules contemplate. Units issued against consideration paid other than in cleared funds are void if the funds are not subsequently cleared or the consideration is not provided or transferred at or within the time specified by the Responsible Entity.

9.10 Rounding

Any excess subscription or other money or property which results from rounding any provision of this constitution becomes a part of the Trust Property.

10. Duration

10.1 End of Trust

The Trust ends on the date determined by the Responsible Entity or at any earlier time provided by this constitution or by law.

10.2 No issue of units after 80th anniversary

No units may be issued after the 80th anniversary of the date of this constitution if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity.

11. Valuation

11.1 Responsible Entity's expertise

The Responsible Entity does not have any special expertise in valuing property.

11.2 Use of Reporting Net Trust Value and Operational Net Trust Value

Subject to clause 11.8, the Responsible Entity must use the Reporting Net Trust Value of the Trust if a calculation on that basis is required by the Corporations Act but otherwise must use the Operational Net Trust Value.

11.3 Calculation of Operational Net Trust Value and Reporting Net Trust Value

Subject to clause 11.8, the Responsible Entity must calculate:

- (a) the Operational Net Trust Value by determining the total value of all Trust Property on the basis set out in this clause 11; and
- (b) the Reporting Net Trust Value, by determining the total value of all Trust Property in accordance with the requirements under the Corporations Act from time to time in relation to the preparation of accounts and financial reporting.

11.4 Value

Subject to clauses 11.3, 11.5(a) and 11.8, the value of any property is the market value, the net fair value, or other value appropriate to the nature of the property and the nature of the Trust and, where required, meeting Australian Accounting Standards from time to time. Property acquired must be valued at cost until revalued.

11.5 Determining value

Subject to clauses 11.2, 11.3 and 11.8, the value of any Trust Property must be determined by:

- (a) a valuer who is independent of the Responsible Entity; or
- (b) a method determined by a valuer who is independent of the Responsible Entity; or
- (c) the Responsible Entity using any other appropriate method the Responsible Entity decides to adopt which is capable of being verified independently by a registered company auditor including estimates of value based on objective criteria where actual figures are not available and the Responsible Entity reasonably considers that there is no significant detriment to any Holder.

11.6 Revaluation

Subject to clause 11.8, the Responsible Entity may cause some or all Trust Property to be revalued whenever it sees fit and shall do so from time to time having regard to the nature of the property.

11.7 Time of calculation

Subject to clause 11.8, the Responsible Entity may calculate the Operational Net Trust Value or Reporting Net Trust Value as at the Valuation Time determined by the Responsible Entity. The Responsible Entity must calculate the Operational Net Trust Value, other than when redemption or other transactions are suspended, at least once each Business Day on the basis of the most recent valuation of each item of Trust Property and determination of Trust Liabilities. The Responsible Entity may calculate Operational Net Trust Value more than once a day.

11.8 Valuation while the Trust is Registered

While the Trust is Registered, the Responsible Entity's policy for the valuation of Operational Net Trust Value and the Reporting Net Trust Value must be based on the range of ordinary commercial practice by valuing the relevant type of asset and, where used to calculate the Issue Price or Redemption Price of a Unit, the value must be reasonably current.

12. Issue Price of Units

12.1 Issue Price of initial Units

The Issue Price of the initial Units issued on the first Business Day on which Units are issued is \$2.50 per Unit.

12.2 Issue Price of subsequent Units

- (a) Subject to clauses 12.2(b) and 12.2(c), the Issue Price of Units issued after the first Business Day on which Units are issued is:
 - (i) the Operational Net Trust Value as at the first Valuation Time after the next applicable Specified Time, after receipt of both the subscription for Units and either the consideration for the Units or a commitment in a form acceptable to the Responsible Entity to provide the consideration; plus
 - (ii) any subscription transaction costs described in clause 12.3; divided by the number of Units on issue at that Valuation Time.
- (b) Subject to clause 12.2(c), where the Responsible Entity issues Units to itself in circumstances set out in clause 12.4(a)(ii), the Issue Price of Units issued after the first Business Day on which Units are issued is:
 - (i) the Operational Net Trust Value as at the Valuation Time immediately prior to the next applicable Specified Time, after receipt of both the subscription for Units and either the consideration for the Units or a commitment in a form acceptable to the Responsible Entity to provide the consideration; plus
 - (ii) any subscription transaction costs described in clause 12.3; divided by the number of Units on issue at that Valuation Time.
- (c) While the Trust is Quoted, the Responsible Entity will comply with the [AQUA-Operating Rules](#) applicable to the issue and the conditions and restrictions in any applicable ASIC Relief.

12.3 Subscription transaction costs

The subscription transaction costs are:

- (a) an estimate by the Responsible Entity of the total transaction costs the Trust would incur to acquire afresh the Trust Property;
- (b) if appropriate having regard to the actual cost which would be incurred because of the issue or sale of the Units (including in relation to Units issued by way of Distribution Reinvestment), the Responsible Entity's estimate of a portion of the total transaction costs, which may be zero; or
- (c) if the Responsible Entity does not make an estimate, zero.

12.4 Responsible Entity may sell Units on-market

- (a) While the Trust is Quoted and subject to the [AQUA-Operating Rules](#), the Responsible Entity may:
 - (i) offer and/or agree to sell Units on-market; and
 - (ii) issue Units to itself as determined by the Responsible Entity for the purposes of fulfilling the sale of Units on-market in accordance with [paragraph clause 12.4\(a\)\(i\)](#).
- (b) Where the Responsible Entity sells Units on-market as specified in [paragraph clause 12.4\(a\)\(i\)](#), the Responsible Entity will honour any contract to sell Units it enters into in accordance with [ASX any applicable settlement procedures](#) under the Listing Rules, [Settlement Rules](#) and [AQUA-Operating Rules](#).
- (c) The price at which the Responsible Entity offers or agrees to sell Units on-market in accordance with [paragraph clause 12.4\(a\)\(i\)](#) is at the absolute discretion of the Responsible Entity subject to its obligations under the Corporations Act and the [AQUA-Operating Rules](#).
- (d) Any offers for the sale of Units the Responsible Entity places on-market will be subject to:
 - (i) the Listing Rules and [AQUA-Operating Rules](#); and
 - (ii) interventions by [ASX as market operator the Market Operator](#), including, for example, suspensions and trading halts.
- (e) Where the Responsible Entity offers and/or agrees to sell Units on-market pursuant to [paragraph clause 12.4\(a\)\(i\)](#), it has a presently exercisable and unconditional power and right to issue to itself, and vest title in, the corresponding number of Units and take any other action necessary so that it has the absolute ability to issue to itself, and vest title in, the corresponding number of Units.
- (f) Without limiting [paragraph clause 12.4\(e\)](#), any Units that the Responsible Entity has sold on-market (other than Units sold on-market during that Business Day in respect of which the Responsible Entity has previously issued and/or vested title in pursuant to [paragraph clause 12.4\(e\)](#) in excess of Units acquired on market by the Responsible Entity (on a particular Business Day) will be issued by the Responsible Entity to itself as soon as reasonably practicable for the purposes of enabling the Responsible Entity to fulfil its obligations under settlement of the sale of those Units.

13. Savings plan

- (a) Subject to clause 13(b), a Holder may acquire Units under any savings plan the Responsible Entity elects to offer, by lodging an application in a form approved by, and a

direction for future amounts to be subscribed in a manner acceptable to, the Responsible Entity and (unless the Responsible Entity otherwise decides) for reinvestment of distributions into the Trust. The Responsible Entity may at any time terminate any savings plan or a Holder's participation in a savings plan.

- (b) While the Trust is Quoted, the Responsible Entity will comply with the [AQUA-Operating Rules](#) applicable to the issue and the conditions and restrictions in any applicable ASIC Relief.

14. Redemption of Units

14.1 Holder may redeem Units

- (a) If the Responsible Entity determines to allow Redemption Requests, a Holder may request the Responsible Entity to redeem the Holder's Units. The Redemption Request must be made in writing (including electronically) and must contain such information as required by the Responsible Entity, and is subject to the provisions of this clause 14. [The Responsible Entity may require a Holder who holds their Units on a CHESSE sub-register to have their Units the subject of a Redemption Request on an issuer sponsored sub-register and to provide such information as the Responsible Entity determines prior to processing a Redemption Request.](#)
- (b) Subject to the Corporations Act and any ASIC Relief, the Responsible Entity may, in its discretion, determine to allow and/or accept Redemption Requests from certain types of Holders or Holders of certain classes of Units.
- (c) Subject to this clause 14, the Responsible Entity may reject a Redemption Request without giving a reason.

14.2 Redeeming via on-market disposal

- (a) While the Trust is Quoted and subject to the [AQUA-Operating Rules](#), Holders have the right to withdraw their investment in Units in the Trust where they contract to sell their Units on-market to the Responsible Entity.
- (b) Where the Responsible Entity acquires Units on-market to facilitate a Holder's withdrawal as specified in paragraph (a) immediately above, the Responsible Entity will honour any contract to buy Units it enters into in accordance with [ASX-any applicable](#) settlement procedures under the Listing Rules, [Settlement Rules](#) and [AQUA-Operating Rules](#).
- (c) Subject to the Corporations Act, the price at which the Responsible Entity transacts on-market [in accordance with clause 14.2\(a\)](#) will be based on the Responsible Entity's assessment of market conditions at the time it transacts.
- (d) Any bids for the Units the Responsible Entity places on-market will be subject to:
 - (i) the Listing Rules, [AQUA-Operating Rules](#) and; and
 - (ii) interventions by ~~ASX as market operator~~ [the Market Operator](#), including, for example, suspensions and trading halts.
- (e) Any Units that the Responsible Entity has acquired on-market in excess of Units sold on-market by the Responsible Entity (on a particular Business Day) will be cancelled by the Responsible Entity as soon as reasonably practicable upon settlement of those Units.
- (f) Subject to the [AQUA-Operating Rules](#) and Corporations Act, the Responsible Entity will make a market and provide liquidity in respect of the Units for so long as the Responsible Entity is required to do so under the Operating Rules. The Responsible Entity may make a market and provide liquidity in respect of the Units thereafter, but is not obliged to do so.

14.3 Redemption Price

- (a) Subject to clauses 14.3(b) and 14.3(c), the Redemption Price per Unit shall be:
 - (i) the Operational Net Trust Value as at the first Valuation Time after the next applicable Specified Time following communication to the Responsible Entity of a Redemption Request; minus
 - (ii) any redemption transaction costs described in clause 14.4; divided by the number of Units on issue at that Valuation Time.
- (b) Subject to clauses 14.3(c), where the Responsible Entity acquires Units on-market in circumstances set out in clause 14.2, the Redemption Price per Unit shall be:
 - (i) the Operational Net Trust Value as at the Valuation Time immediately prior to the next applicable Specified Time following communication to the Responsible Entity of a Redemption Request; minus
 - (ii) any redemption transaction costs described in clause 14.4; divided by the number of Units on issue at that Valuation Time,
- (c) While the Trust is Quoted, the Responsible Entity will comply with the [AQUA-Operating Rules](#) applicable to the redemption (including, [but not limited to](#), Rule 10A.3.4 of the [AQUA Rules](#) and [Rule 14.36 of the Chi-X Operating Rules](#)) and the conditions and restrictions in any applicable ASIC Relief.

14.4 Redemption transaction costs

The redemption transaction costs are:

- (a) an estimate by the Responsible Entity of the total transaction costs the Trust would incur to sell the Trust Property;
- (b) if appropriate having regard to the actual cost which would be incurred because of the redemption, the Responsible Entity's estimate of a portion of the total transaction costs, which may be zero; or
- (c) if the Responsible Entity does not make an estimate, zero.

14.5 Determination of Minimum Redemption Amount

Subject to the [AQUA-Operating Rules](#) (while the Trust is Quoted) and the conditions and restrictions in any applicable ASIC Relief, the Responsible Entity may from time to time determine or vary the Minimum Redemption Amount.

14.6 Redemption Requests for less than the Minimum Redemption Amount

Subject to the [AQUA-Operating Rules](#) (while the Trust is Quoted) and the conditions and restrictions in any applicable ASIC Relief, the Responsible Entity may reject a Redemption Request if the amount payable to the Holder is less than the Minimum Redemption Amount for the Trust (unless the Redemption Request is for all Units held by the Holder).

14.7 Deemed Redemption Request for all Units

Subject to the [AQUA-Operating Rules](#) (while the Trust is Quoted) and the conditions and restrictions in any applicable ASIC Relief, if a Redemption Request would leave a holding worth, at the Redemption Price, less than the current Minimum Balance, the Responsible Entity may treat the Redemption Request as applicable to all Units held by that Holder.

14.8 Redemption while Trust is liquid

- (a) Subject to clauses 14.10, 14.11(a), 14.11(b) and 14.11(d) and 15, the Responsible Entity may redeem Units the subject of a Redemption Request at the Redemption Price from the Trust Property.
- (b) The Responsible Entity must reject the Redemption Request if accepting the Redemption Request would cause the Responsible Entity to breach any law, regulation or obligation under which the Responsible Entity operates. If the Responsible Entity does not satisfy a Redemption Request, it must tell the relevant Holder who submitted the Redemption Request.
- (c) If Units the subject of a Redemption Request are to be redeemed:
 - (i) the Redemption Request must be satisfied by paying the Redemption Price;
 - (ii) subject to clause 15.1, the payment referred to in clause 14.8(c)(i) must be made within 7 Business Days of receipt of the Redemption Request; and
 - (iii) the Units the subject of the Redemption Request are deemed to be redeemed at the time at which both the applicable Redemption Price is calculated and the Redemption Request is processed, and from that time until payment, the former Holder of the redeemed Units ceases to be a Holder in respect of those Units and is a creditor of the Trust in respect of the redemption proceeds.

14.9 Situation where Trust is not liquid

- (a) If the Trust is not liquid, a Holder may request the Responsible Entity to redeem the Holder's Units only in accordance with the terms of any current withdrawal offer made by the Responsible Entity in compliance with the provisions of the Corporations Act (including any ASIC Relief) regulating offers of that kind. If there is no withdrawal offer currently open for acceptance by Holders, a Holder has no right to make a Redemption Request.
- (b) The Responsible Entity does not have to make a withdrawal offer.
- (c) The Responsible Entity will determine whether or not the Trust is liquid in its absolute discretion.

14.10 Situation where Trust has been suspended from Quotation

While the Trust is Quoted and without limiting clauses 14.1 or 14.9, where the Trust is liquid and trading in the Units on the ~~ASX AQUA market~~ Securities Exchange has been suspended, for any reason, for five (5) consecutive Business Days, then the Responsible Entity will facilitate direct redemptions of Units the subject of a Redemption Request at the Redemption Price.

14.11 Compulsory redemption

The Responsible Entity may in its absolute discretion, upon a minimum of three Business Days' notice to a Holder, redeem all or a portion of Units held by such Holder in its absolute discretion:

- (a) if the Responsible Entity believes that the Units are held in breach of prohibitions contained in this constitution;
- (b) if the Responsible Entity believes that the Units are held in circumstances which might result in a violation of an applicable law or regulation, or subject the Trust to taxation or otherwise adversely affect the Trust in any material respect;
- (c) if the Responsible Entity determines that the Trust is uneconomical to operate;

- (d) if a Holder made a misrepresentation in acquiring its Units;
- (e) if the Responsible Entity determines that the continued participation of a Holder might cause the Responsible Entity or any Holder to violate any law or if any litigation is commenced or threatened against the Responsible Entity or any Holder arising out of the participation of the Holder in the Trust; or
- (f) subject to the Corporations Act and the AQUA-Operating Rules, for any other reason that the Responsible Entity determines in its absolute discretion.

14.12 Transfer of assets on redemption

Except in relation to a redemption contemplated under clause 14.2, the Responsible Entity may satisfy the amount payable on a redemption of Units (partly or fully) by transferring those assets in specie as the Responsible Entity in its discretion may select, to be credited at asset values consistent with the range of ordinary commercial practice for valuing assets of the relevant type determined as at the same time the Redemption Price is determined, without deduction for any costs or Taxes payable by the Holder in respect of the transfer.

14.13 Character of Redemption price and notification to Holder

- (a) The Responsible Entity may determine the portion of the Redemption Price for a Unit to be Distributable Income to which the Holder is entitled, for the Accounting Period in which the Unit was redeemed. Any remaining amount of the Redemption Price will represent a return of Trust capital attributable to that Unit.
- (b) Where the Responsible Entity has made a determination under clause 14.13(a), the Responsible Entity must advise the Holder the extent to which the Redemption Price represents a return of Trust capital attributable to that Unit and a distribution of Distributable Income.

14.14 Application of proceeds to units in another class of Units or trust

Where this facility is offered by the Responsible Entity, a Holder may request the Responsible Entity, in a manner acceptable to the Responsible Entity, to apply proceeds from a Redemption Request to subscribe for units in another class of Units in the Trust or another trust, in which case any application money for the units in the other class of Units in the Trust or other trust is taken to be paid to the Responsible Entity or responsible entity of the other trust (as applicable) when the relevant Units in this Trust are redeemed in accordance with this constitution.

15. Suspension of redemption

15.1 Responsible Entity may suspend redemption

Subject to any cooling off rights under the Corporations Act and any other provision of this Constitution, the Responsible Entity at any time may suspend the redemption, issue or Switching of Units in the Trust or the payment of the proceeds of redemptions for up to 28 days, if:

- (a) it is impracticable for the Responsible Entity to calculate the Operational Net Trust Value, for example because of an inability to value Trust Property, of closure of, or trading restrictions or suspensions on any stock, commodities, futures or securities exchanges or over-the-counter market on which any significant portion of the investments of the Trust is listed, quoted, traded or dealt, an emergency or other state of affairs;
- (b) where redemption would cause the Responsible Entity to breach any law, regulation or obligation under which the Responsible Entity operates;
- (c) quotation of Units is suspended, halted or revoked;

- (d) the approval of the Responsible Entity as an ~~AQUA-Product-Issuer~~ issuer is suspended or revoked by the Market Operator;
- (e) the Trust's investments suspend, delay or restrict the redemption, issue or payment of redemption proceeds (as applicable), or are unable to provide a withdrawal price;
- (f) the realisation of assets cannot be effected at prices which would be obtained if assets were realised in an orderly fashion over a reasonable period in a stable market;
- (g) the Responsible Entity reasonably estimates that it must sell 5% or more (by value) of all Trust Property to meet current unmet Redemption Requests;
- (h) there have been, or the Responsible Entity anticipates that there will be, Redemption Requests that involve realising a significant amount of the Trust Property and the Responsible Entity considers that if those Redemption Requests are all met immediately, Holders who continue to hold Units may bear a disproportionate burden of capital gains tax or other expenses, or the meeting of those Redemption Requests would otherwise be to the existing Holders' disadvantage including a material diminution in the value of the Trust Property or departure from the investment strategy of the Trust;
- (i) the Responsible Entity reasonably considers that it is in the interests of the Holders;
- (j) it is allowed by any form of ASIC Relief; or
- (k) it is otherwise legally permitted.

15.2 Redemption timing

If a Holder is to be redeemed and for some reason cannot be paid proceeds of the redemption within 21 days, that Holder's interest in the Trust will not be redeemed until redemption proceeds can be paid to the redeeming Holder within 21 days.

15.3 Payment of cash proceeds

The Responsible Entity will pay cash proceeds it receives in relation to a specific redemption to a Holder within 21 days of the redemption of that Holder's interest in the Trust.

16. Responsible Entity's powers

16.1 General powers

- (a) The Responsible Entity has within and outside Australia all the powers in relation to the Trust, its Trust Property and Trust Liabilities, that it is legally possible for a natural person, corporation, trustee or responsible entity to have, including to:
 - (i) invest in real or personal property of any nature (including all financial instruments, derivatives and forward rate and currency exchange agreements for speculative or other purposes) (and may vary any investment at any time in its absolute discretion);
 - (ii) borrow or raise money;
 - (iii) hold and transact Units, including for, but not limited to, the purpose of conducting market making activities in respect of the Trust;
- (iv) do all such acts and things which it considers necessary, desirable or reasonably incidental to give effect to:
- (A) the Trust being listed or quoted on a financial market, including an exchange; and

~~(A)(B)~~ any class of Units being traded on that financial market and Units in that class being able to be issued or redeemed under this constitution;

~~(v)~~ secure by mortgage or otherwise (in whatever proportion to Trust Property);

~~(vi)~~ give guarantees and incur liabilities and obligations of any kind; and

~~(vii)~~ fetter its own discretion, as if it were the absolute and beneficial owner of all Trust Property.

- (b) Without limiting this clause 16.1 and subject to the Corporations Act, the Responsible Entity has power to mix and mingle Trust Property with the property of other co-investors (in which case it must keep appropriate records of the Trust's interests in the co-investments).

16.2 Investment policy for the Trust

For so long as the Trust is Quoted or to be Quoted, the Responsible Entity will not acquire any property unless it reasonably believes the property is and will be likely to remain a "liquid" asset as the Corporations Act defines that term.

16.3 Responsible Entity may delegate powers

The Responsible Entity, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including holding any Trust Property and executing documents on its behalf.

17. Discretion

The Responsible Entity may determine whether to exercise, and the manner, mode and time of exercise of, its powers, authorities and duties conferred on it under this constitution, the Corporations Act or the ~~AQUA-Operating~~ Rules, in its absolute discretion. However, any discretions exercisable in relation to the Trust Income must be determined before the end of the relevant Accounting Period.

18. Management of the Trust

18.1 Responsible Entity to manage Trust

The Responsible Entity must manage the Trust and its Trust Property and Trust Liabilities while any remain.

18.2 Responsible Entity may engage advisers and agents

The Responsible Entity may, as it sees fit, in connection with performance of its duties, engage (whether or not related to or associated with the Responsible Entity) investment managers, administrators, custodians and any advisers, agents, brokers, contractors, underwriters or other persons.

19. Indemnity

- (a) To the extent permitted from time to time by the Corporations Act, the Responsible Entity is indemnified out of the Trust Property for any liability incurred by it in performing properly any of its duties including, further to such duties, exercising any of its powers in relation to the Trust or attempting to do so.
- (b) The Responsible Entity is not required to do anything for which it does not have a full right of indemnity out of Trust Property available for that purpose.

- (c) Any indemnity to which the Responsible Entity is entitled under this constitution is in addition to any indemnity legally permitted.
- (d) When calculating the amount of any liability incurred or to be incurred by the Responsible Entity for which it is entitled to be reimbursed or indemnified under this constitution, the Responsible Entity must deduct an amount equal to any input tax credit (as defined in the GST Act) to which the Responsible Entity is entitled in connection with the liability.

20. Register

20.1 Unit register

The Responsible Entity must establish a unit register in accordance with the Corporations Act and the [AQUA-Operating Rules](#).

20.2 Branch registers

The Responsible Entity may establish branch unit registers anywhere in Australia.

20.3 Notice of trust

The Responsible Entity need not enter notice of any trust on the Register.

20.4 Registered Holder is owner

The Responsible Entity may treat the registered Holder as the holder and absolute owner of Units registered in the Holder's name and is not bound to take notice of any trust or equity affecting a Unit. Entry on the Register is conclusive evidence of a Holder's title to Units.

21. Holding statements

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

22. Transfers of Units

22.1 Transfer

- (a) While the Trust is Quoted, this clause 22 is subject to the operation of the Corporations Act, CHESS and the [AQUA-Operating Rules](#) (as applicable).
- (b) Subject to this constitution, a Holder may transfer Units in the manner as the Responsible Entity from time to time prescribes.
- (c) While the Trust is Quoted, an instrument of transfer of Units must be accompanied by such evidence (if any) as the Responsible Entity, CHESS or the [ASX-Market Operator](#) requires to prove the transferor's title or right to transfer the Units.
- (d) A transfer of Units takes effect only when recorded in the Register ~~or~~and, while the Trust is Quoted and Units in a class of Units are approved for settlement by CHESS in accordance with the ~~ASX~~ Settlement Rules, are dealt with as CHESS contemplates and the [AQUA-Operating Rules](#) make such transfer effective.
- (e) The Responsible Entity is not obliged to register a transfer where the transferee does not meet the Responsible Entity's criteria for a Holder, the Responsible Entity considers the proposed transaction is not in the interests of Holders on the whole, the transfer is not duly stamped (where required), or any amount payable by the transferee to the Responsible Entity in respect any of the transferor's Units remains unpaid.

22.2 Holding Lock

While the Trust is Quoted and subject to the [AQUA-Operating Rules](#), the Responsible Entity may request a Holding Lock be applied to any Units where:

- (a) the Responsible Entity has a lien on the Units the subject of the transfer;
- (b) the Responsible Entity is served with a court order that restricts a Holder's capacity to transfer the Unit;
- (c) registration of the transfer may break an Australian law and the [ASX-Market Operator](#) has agreed in writing to the application of a Holding Lock (which must not breach the Settlement Rules) or that the Responsible Entity may refuse to register a transfer;
- (d) if the transfer is paper-based, either a law related to stamp duty prohibits the Responsible Entity from registering it or the Responsible Entity is otherwise allowed to refuse to register it under the [AQUA-Operating Rules](#);
- (e) the transfer does not comply with the terms of any employee incentive scheme of the Trust;
- (f) if the transfer is paper-based, registration of the transfer will create a new holding which at the time the transfer is lodged is less than a 'marketable parcel' as defined in the [AQUA-Operating Rules](#);
- (g) the relevant Holder has agreed in writing to the application of a Holding Lock (which must not breach the Settlement Rules) or that the Responsible Entity may refuse to register a transfer; or
- (h) it is otherwise permitted under the [AQUA-Operating Rules](#), and the Responsible Entity must do so if the [AQUA-Operating Rules](#) require, but must tell the Holder or the broker as the Corporations Act or the [AQUA-Operating Rules](#) require.

23. Mortgage

23.1 Recording of mortgagee

On the Holder's written request, the Responsible Entity may, but is under no obligation to, record a mortgagee (sole or joint) of Units in the Register and on the mortgagee's written request may delete that record.

23.2 Payments to mortgagees

Where a mortgagee of Units has been recorded in the Register under clause 22.1, redemption proceeds of Units, capital distributions (not representing part of Distributable Income) and distributions after termination of the Trust must be paid to the recorded mortgagee of the Units in the Register (or as it otherwise directs in writing).

23.3 Transfer of mortgaged Units

A transfer of Units is subject to any existing mortgagee record so that Units in respect of which a mortgagee is recorded on the Register cannot be transferred without the written consent of the mortgagee.

23.4 Responsible Entity not have notice of mortgage or charge

The Responsible Entity is not taken to have notice of the terms of any mortgage or charge and has no liability to a mortgagee of Units.

24. Death and insolvency

The Responsible Entity only recognises the following persons as having an interest in a Holder's Units in the following circumstances:

- (a) if a Holder dies, or becomes subject to a legal disability, the Holder's legal personal representative;
- (b) if a joint Holder dies, the surviving joint Holder or Holders; and
- (c) if a Holder becomes bankrupt or enters into liquidation, the person legally entitled to the Holder's Units consequent on bankruptcy or liquidation.

25. Termination and winding up

25.1 Responsible Entity may terminate

Subject to the Corporations Act, the Responsible Entity at any time may terminate the Trust by written notice to the Holders with effect from the Termination Date specified in the notice.

25.2 Issue, switching and redemption stops

From the date on which the notice is given, the issue, switching and redemption of Units ceases.

25.3 Action on termination

The Responsible Entity must:

- (a) either realise all Trust Property or transfer those assets in specie as the Responsible Entity in its discretion may select;
- (b) pay, discharge or provide for all Trust Liabilities (except Redemption Liabilities) and expenses of Termination from the Trust Property; and
- (c) distribute the net proceeds or transfer the relevant Trust Property in specie among Holders pro rata to the number of Units held on the Termination Date.

25.4 Realisation of Trust Property

The Responsible Entity may postpone realising Trust Property and is not responsible for any resulting loss unless caused by its negligence or breach of trust.

25.5 Distributable Income

Each Holder registered on the Termination Date continues to be entitled to their proportionate share of Distributable Income during the winding up period. The Responsible Entity may make partial distributions of Trust proceeds during the winding up period.

25.6 Winding up

Winding up must be consistent with Part 5C.9 of the Corporations Act (including any ASIC Relief) and the [AQUA-Operating Rules](#) (while the Trust is Quoted).

25.7 Auditing of winding up accounts

The Responsible Entity must, if ASIC policy or the Corporations Act (including any ASIC Relief) so requires, cause the final accounts to be independently audited by a registered company auditor or firm of chartered accountants of which at least one partner is a registered company auditor.

26. Restructure

Subject to this constitution, the Corporations Act (including any ASIC Relief) and the [AQUA-Operating Rules](#), the Responsible Entity may convene a Meeting to consider special resolutions to amend this constitution or approve other proposed actions for the purpose of

facilitating a restructure of the Trust by merging or combining the Trust with one or more other managed investment schemes, including:

- (a) for the Trust to acquire assets of other schemes;
- (b) to issue Units to holders of units in other schemes at a price different from the price then provided for in the constitution;
- (c) to authorise the Responsible Entity on behalf of each Holder to subscribe for units in other schemes;
- (d) to cancel or redeem some or all existing Units;
- (e) to terminate the Trust (but without limiting any other rights of the Responsible Entity in respect of termination); or
- (f) otherwise to authorise actions that the Responsible Entity proposes in order to facilitate the proposed restructure, including treating Holders resident outside Australia on a different basis where it is impractical or unduly expensive to treat them on the same basis as other Holders.

27. Independent rights

27.1 Other rights and capabilities

Subject to the Corporations Act, the Responsible Entity, and any related company or associate of the Responsible Entity, may, subject always to acting in good faith to Holders:

- (a) hold Units;
- (b) represent or act for, or contract with, individual Holders;
- (c) deal in any capacity with the Responsible Entity or with any related body corporate or associate of the Responsible Entity or with any trust;
- (d) act in any capacity in relation to any other trusts, including subscribing for units in other trusts on behalf of Holders; or
- (e) receive and retain profits or benefits of any nature, in connection with the Trust or otherwise, including buying or selling Trust Property from or to itself in another capacity,

without being liable to account to the Trust, to the Responsible Entity, or to a Holder.

28. Responsible Entity's liability

To the extent legally permitted (and in no way limiting or purporting to exclude, or reduce liability under, the Corporations Act in particular), where the Responsible Entity acts without fraud, negligence or a breach of trust involving a failure to show the degree of care and diligence required of it having regard to the powers, authorities or discretions conferred on it by this constitution, the Responsible Entity is not liable to any future responsible entity, any Holder or any other person:

- (a) for loss caused by:
 - (i) the Responsible Entity's acts or omissions in reliance on:
 - (A) the Register;
 - (B) the authenticity of any document;

(C) the opinion, advice or information of any barrister, solicitor, accountant, valuer or other expert instructed by the Responsible Entity; or

(D) information from any banker or the auditor of the Trust,

if the Responsible Entity has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise;

(ii) any act, omission, neglect or default of another person;

(iii) any act or omission required by law or by a court of competent jurisdiction;

(iv) any particular price or reserve not having been realised;

(v) any unnecessary payment having been made to a fiscal authority;

(vi) any act or omission of an operator of a securities title, transfer or holding system; or

(vii) another reason; or

(b) in any event, to a greater extent than the investments, cash and other property to which the Responsible Entity is entitled and does recover through its right of indemnity from Trust Property actually vested in the Responsible Entity in accordance with this constitution.

29. Management Fee

29.1 Amount

Before and after termination of the Trust, the Responsible Entity is entitled to a Management Fee of up to 1.00% (exclusive of GST) per annum of the total value of the Portfolio Value, calculated daily and payable monthly or otherwise payable at such other times as the Responsible Entity in its discretion may determine.

For the purposes of clause 29, a reference to 'Portfolio Value' shall be a reference to the Operational Net Trust Value determined as at the close of each market on a particular Business Day, exclusive of any accruals for Management Fees.

29.2 Responsible Entity may receive less

The Responsible Entity may, from time to time:

(a) determine that it is entitled to a fee that is less than the fee referred to under clause 29.1 in respect of any Holder or all or any Units (whether determined by reference to a minimum balance or on another basis and whether for the life of a particular offer document or otherwise) and may change that determination at any time; and

(b) pay (from its own resources) a Holder any amount which in its discretion it determines by way of offset or rebate of fees.

30. Proper Performance of Duties

30.1 Proper Performance of duties

The Responsible Entity's entitlement to be paid fees or to be indemnified out of the property of the Trust under this constitution is subject to the Responsible Entity's proper performance of its duties under the provisions for fees and indemnities.

31. GST

31.1 Defined terms

In this clause 31, a word or expression defined in the GST Act has the meaning given to it in that Act.

31.2 Responsible Entity reimbursed for GST

If the Responsible Entity is liable for GST on any supply made under or in connection with this constitution (including the supply of any goods, services, rights, benefits or things), the Responsible Entity is entitled to receive, unless the consideration for the supply is specifically described in this constitution as being inclusive of GST, in addition to any consideration for that supply, or any other fee, amount or consideration, an additional amount on account of GST, equal to the GST payable by the Responsible Entity, and the Responsible Entity is entitled to be reimbursed or indemnified for the amount out of the relevant Trust Property.

31.3 Tax invoice

The Responsible Entity is not entitled to be reimbursed or indemnified under clause 31.2 until it issues a tax invoice for the supply.

31.4 GST inclusive supply

Where the consideration for a supply made under or in connection with this constitution is specifically described as being inclusive of GST and:

(a) the Supply is not subject to GST, and the GST rate is the same as at the date of this constitution, the consideration to be provided for that Supply is reduced by one-eleventh; or

(b) there is a change to the prevailing rate of GST, the consideration is increased or decreased in proportion to the change in the rate of GST.

31.5 Input tax credits

When calculating the amount of any costs, charges, expenses or outgoings incurred by the Responsible Entity for which it is entitled to be reimbursed out of the Trust Property, the Responsible Entity must deduct an amount equal to any input tax credit to which the Responsible Entity is entitled in its personal capacity in connection with the costs, charges, expenses or outgoings sought to be reimbursed.

32. Outgoings

All costs, charges, expenses and outgoings reasonably and properly incurred by the Responsible Entity in the proper performance of its duties, including in connection with the following matters or of the following nature in relation to the Trust, are payable or reimbursable out of Trust Property (and if referable to more than one trust, apportioned in a manner determined by the Responsible Entity):

(a) preparation, approval, stamping, execution and printing of this constitution and any deed amending this constitution;

(b) retirement and appointment of the Responsible Entity and any custodian;

(c) institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to this constitution or the Trust (but the Responsible Entity must repay to the Trust any amount it has been advanced in respect of outgoings in connection with proceedings in which it is found by a court to be liable for its own negligence, fraud, breach of trust or breach of duty);

- (d) convening and holding a meeting of Holders and implementing a resolution of the meeting;
- (e) bank fees, interest, discount and acceptance fees for bill facilities and like amounts;
- (f) all Taxes;
- (g) any actual or proposed investment, acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Trust Property;
- (h) costs, fees, charges or spreads in relation to the engagement of agents, including in relation to the provision of liquidity and market making conduct;
- (i) foreign exchange transactions and foreign exchange hedging transactions;
- (j) fees payable to a person authorised by the Responsible Entity to hold Trust Property;
- (k) admission of the Trust to the ~~ASX or any other securities exchange~~ Securities Exchange, its continuing compliance with the rules of ~~any such securities exchange~~ the Securities Exchange, or in relation to any removal of the Trust from the official list of the ~~ASX or any other securities exchange~~ Securities Exchange or the suspension of any Units from trading by the ~~ASX or any other securities exchange~~ Market Operator;
- (l) all expenses in connection with the ongoing compliance costs in respect of the Trust, including, where established, the costs and expenses associated with the establishment and conduct of any compliance committee and the compliance officer including:
 - (i) remuneration, fees and expenses and insurance premiums in relation to the committee members and the compliance officer;
 - (ii) the expenses of independent legal, accounting or other professional advice or assistance properly commissioned by the compliance committee; or
 - (iii) to the extent permitted by the Corporations Act, directly or indirectly, indemnifying or insuring a person who has been a compliance committee member for or against any liability, including costs, expenses and liabilities incurred by the person in defending civil or criminal proceedings;
- (m) any membership fees payable to an external dispute resolution scheme in relation to the Trust;
- (n) establishing and maintaining the Register, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (o) fees payable to ASIC, ~~ASX the Securities Exchange~~ or another regulatory authority in relation to the Trust, the Units or the Trustee;
- (p) preparing and printing reports, notices, accounts, cheques and documents, posting them to Holders, or paying Holders;
- (q) any offer or invitation in respect of Units, including preparation, lodgement, registration, distribution and promotion of Trust prospectuses, information memoranda or product disclosure statements;
- (r) investor or potential investor promotion tours, publications, research reports and other promotional costs, whether in relation to the establishment of the Trust or any subsequent offering of Units, and any other amounts payable to persons for marketing and promoting the Trust;
- (s) amounts payable to administrators, advisers, agents, brokers, contractors, custodians, investment managers, underwriters or other persons engaged by the Responsible Entity under the constitution (including legal costs on a full indemnity basis);
- (t) fees incurred by an auditor of the Trust or the compliance plan;
- (u) preparation, lodgement and audit of taxation returns and accounts, and other returns and reports for the Trust;
- (v) terminating and winding up of the Trust;
- (w) entering the Trust in a survey;
- (x) fees payable to a ratings organisation;
- (y) fees payable to a securities system authorised by the Responsible Entity to hold Trust Property;
- (z) performance of the Responsible Entity's duties, exercise of the Responsible Entity's rights or powers, compliance with the law or administration of the Trust;
- (aa) establishment, development, maintenance and operation of computer facilities, both software and hardware for the administration of the Trust;
- (bb) establishing a gearing facility;
- (cc) dealing with subscriptions for, issuances and redemption of Units, and determining the Issue Price and Redemption Price;
- (dd) any restructuring of the Trust; and
- (ee) in respect of any Controlled Entity of the Trust, as if the charges, expenses and outgoings described in clauses 32(a) to 32(dd) applied to a Controlled Entity with any necessary modification (including those charges, expenses and outgoings of any Controlled Entity itself).

33. Recoveries

33.1 Holders' liabilities

Each Holder is liable for:

- (a) all fees, Taxes and costs in relation to the Holder's entitlement to, or payment of, income or capital to the Holder;
- (b) any act requested by the Holder;
- (c) unpaid amounts owing by the Holder to the Responsible Entity in relation to the Trust; and
- (d) fees determined and chargeable by the Responsible Entity from time to time for any act or work carried out at the Holder's request which goes beyond the Responsible Entity's duties under the constitution, charged at market rates for the services provided.

33.2 Responsible Entity may withhold or recover

The Responsible Entity may:

- (a) withhold payment of any money payable to a Holder until the liability is discharged; or
- (b) meet the liability and recover the amount:
 - (i) from any money or property held for the Holder;

- (ii) from any distribution or other payment payable to the Holder; or
- (iii) by redeeming any or all of the Holder's Units.

34. Distributions

34.1 Distributions where not an AMIT

This clause 34 applies for each Accrual Period when the Trust (or the relevant class of Units) is not an AMIT.

34.2 Determination of Income and Reserves

The Responsible Entity must determine before the end of the relevant Accounting Period the classification of an item as being income or capital and the extent to which the income of the Trust is to be adjusted by allocating such amount as it considers proper in accordance with generally accepted accounting principles to a provision or any reserve account for the purpose of meeting anticipated expenses or obligations of the Trust.

34.3 Distributions

- (a) Except in any income year in which the Trust is taxed as a Corporate Tax Entity:
 - (i) before the termination of the Trust, the Responsible Entity may at any time elect that for an Accounting Period or Accrual Period, an amount (capital or income) be distributed from the Trust to Holders of Eligible Units. A distribution made by the Responsible Entity to a Holder of an Eligible Unit will be taken to be a distribution of Distributable Income of an Accounting Period or an Accrual Period to the extent the Responsible Entity determines the distribution constitutes a distribution of Distributable Income of that Accounting Period or Accrual Period;
 - (ii) except as otherwise provided by this deed, the distribution (whether of Distributable Income or otherwise) referable to a class for each Accounting Period or Accrual Period must be distributed to Holders of Eligible Units in that class pro rata to the number of Units they hold in that class at the end of the Accounting Period or Accrual Period;
 - (iii) each Holder of an Eligible Unit registered at midnight on the last day of each Accounting Period has a vested and indefeasible interest in and is presently entitled to a share of Distributable Income for that Accounting Period not previously distributed in any prior Accrual Period for each Eligible Unit held by that Holder in set out in [paragraph clause 34.3\(a\)\(ii\)](#) above; and
 - (iv) to the extent that Distributable Income for that Accounting Period has not been distributed on or before the end of the Accounting Period an amount equal to the shortfall must be distributed by the Responsible Entity to each entitled Holder as soon as reasonably practicable after the end of the Accounting Period
- (b) Where in any income year the Trust is taxed as a Corporate Tax Entity, then each Holder of an Eligible Unit registered at midnight on the last day of each Accounting Period does not have a vested and indefeasible interest in a share of the Distributable Income for that Accounting Period and the Responsible Entity may, at its discretion, choose to make distributions of after tax profits, income, capital or any related taxation or imputation credits provided that all Distributable Income is distributed at the final termination of the Trust.

34.4 Change in the law

If the law changes in respect of Taxes so that the Trust or the Responsible Entity becomes subject to Taxes on income and gains derived by the Trust even where all available income is distributed

to Holders of Eligible Units, or regardless of the present entitlement of the Holders of Eligible Units, then the Responsible Entity does not have to make distributions in accordance with clause 34 and instead the Responsible Entity, at its discretion, may choose when to make distributions of profits, income, capital or any taxation or imputation credits that have become available in relation to the Trust.

34.5 Income categories

The Responsible Entity may keep accounts of different categories and sources of income and allocate the income from any category or source to any Holder.

35. AMIT

35.1 Application

This clause 35 applies:

- (a) for each period in which the Trust (or the relevant class of Units) is an AMIT;
- (b) to Attribution Amounts relating to any period in which the Trust is or was an AMIT; and
- (c) at any other time required to ensure that clause 35.3 operates as intended.

35.2 Elections and other powers

- (a) Without limiting this clause 35 or clause 16, the Responsible Entity may:
 - (i) determine to make a choice for the purposes of subparagraph 276-10(1)(e)(i) of the Tax Act; and/or
 - (ii) determine to treat each class of Units as a separate AMIT.
- (b) In addition to any other powers provided for under this constitution, the Responsible Entity has all of the powers and rights which are necessary for or incidental to the Trust being able to be operated as an AMIT in the manner permitted in the Tax Act, including complying with the requirements of Division 276 of the Tax Act and the issue or amendment of any AMMA Statements.
- (c) The Responsible Entity may issue or amend AMMA Statements and Holders acknowledge that amended AMMA Statements may affect the rights or interests of Holders, including former Holders.

35.3 Validity of decisions of Responsible Entity

- (a) Any decision which the Responsible Entity purports to make in reliance on the powers in this clause 35 will not be invalid by reason of the fact that the Trust is not an AMIT in the relevant Accrual Period, provided that:
 - (i) the Responsible Entity was not aware that the Trust did not qualify as an AMIT in the relevant Accrual Period; and
 - (ii) the Responsible Entity was not grossly negligent in relying on the powers in this clause 35 in purporting to make the relevant decision.
- (b) The Responsible Entity has such powers to make any decisions and to take such actions to, as far as reasonably possible, put the Holders, former Holders and the Trust in the same position as if the decisions purported to have been made under the powers in this clause 35 had been validly made under this clause 35.

35.4 Attribution

- (a) The Responsible Entity will attribute an Attribution Amount during an Accrual Period to a Holder in accordance with this constitution and any other constituent documents of the Trust.
- (b) The Responsible Entity must attribute all of the Determined Trust Components of the Trust (or the relevant class of Units) in such a manner so as not to be liable for shortfall or excess taxation under subdivision 276-G of the Tax Act.
- (c) The Responsible Entity may attribute an amount to a Holder on redemption of a Unit.
- (d) Notwithstanding any other provision in this constitution, the attribution must:
 - (i) be worked out on a fair and reasonable basis in accordance with this constitution and any other constituent documents of the Trust; and
 - (ii) not be worked out because of the tax characteristics of the Holder or former Holder for the purposes of Division 276 of the Tax Act.
- (e) Where this clause 35.4 applies, clause 34 in relation to distributions does not apply

35.5 Distribution

Before the termination of the Trust, the Responsible Entity at any time may elect that any amount, including income or capital, be distributed from the Trust to Holders in accordance with the provisions of this constitution

35.6 Deemed payment

For the purposes of clauses 35.4 and 35.5, any amount the Responsible Entity has paid or remitted in accordance with clause 33.2 in relation to a Holder is taken to be made for that Holder.

35.7 Holder challenge

Where a Holder intends to choose, or chooses, a different Determined Member Component to that recorded in an AMMA Statement:

- (a) the Holder agrees to:
 - (i) provide the Responsible Entity with a notice of their intention to choose a different Determined Member Component at least 7 days prior to contacting the Commissioner of Taxation;
 - (ii) provide a summary of the reasons why the Holder considers the attribution in the AMMA Statement is inappropriate at least 7 days prior to contacting the Commissioner of Taxation;
 - (iii) provide any additional information requested by the Responsible Entity to assist the Responsible Entity in assessing the Holder's decision to choose a different Determined Member Component;
 - (iv) meet all costs and liabilities incurred by the Responsible Entity as a result of the Holder's decision to choose a different Determined Member Component; and
- (b) the Responsible Entity has no liability in respect of any act, matter or thing done by the Holder.

35.8 Unders and Overs

- (a) The Responsible Entity may make an allocation of an Under or Over notwithstanding that a Holder at the time of the allocation was not a Holder for the Accrual Period to which the Under or Over relates.

- (b) Holders acknowledge and agree that the choice of allocation of an Under or Over may result in a greater or lesser amount of any one or more of the following being attributed to the Holder in the Accrual Period in which it is discovered or to which it relates:
 - (i) assessable income; or
 - (ii) tax offset.

35.9 AMIT indemnity

- (a) Except in the case of fraud, negligence or breach of trust of or by the Responsible Entity, the Responsible Entity shall be indemnified from the Trust Property in relation to any income tax liability incurred under a Tax Act because the Trust (or a class of Units) is an AMIT.
- (b) The indemnity in this clause 35.9 is in addition to the indemnity in clause 19.

35.10 Change in law

If the law changes in respect of Taxes so that the Trust or Responsible Entity becomes subject to Taxes on income and gains derived by the Trust even where all available income is attributed to Holders, then the Responsible Entity, at its discretion, may choose when to attribute any of the profits, income, capital or any taxation or imputation credits that have become available in relation to the Trust and the amounts of those attributions.

36. Distribution Reinvestment

36.1 Discretion of Responsible Entity

- (a) The Responsible Entity may offer or require Distribution Reinvestment.
- (b) Pursuant to section 601GAD(5) of the Corporations Act, the Responsible Entity may set the amount of the consideration to acquire interests (including, but not limited to, a calculation based on the on-market volume weighted price of the Units) where the whole or part of any money payable to a Holder under the constitution, by way of distribution of capital or income, is applied in payment for the issue of interests in the scheme.

36.2 Distribution Reinvestment at Holder's request

If the Responsible Entity offers Distribution Reinvestment, a Holder may request the Responsible Entity to invest future income distributions wholly (or with the Responsible Entity's approval, partly) in subscriptions for additional Units at the Issue Price determined in accordance with clause 36.1.

A request or cancellation in respect of the distribution entitlement arising at that and subsequent Accrual Times must be received in a mode and by a time determined by the Responsible Entity.

36.3 Distribution Reinvestment by Responsible Entity for and on behalf of Holder

If the Responsible Entity requires Distribution Reinvestment:

- (a) at the Accrual Time each Holder of an Eligible Unit has an absolute vested and indefeasible interest in the share of Distributable Income to which the Holder is presently entitled;
- (b) that amount of Distributable Income will be applied by the Responsible Entity for and on behalf of the Holder in subscriptions for additional Units at the Issue Price as at the Valuation Time determined by the Responsible Entity in its discretion after the Accrual Time at which the entitlement arises; and

- (c) the Holder may lodge a Redemption Request in respect of Units acquired under this clause 36.3 where permitted to do so under clause 14.

37. Payments

37.1 Means of payment

Any money payable by the Responsible Entity to a Holder may be:

- (a) deposited into an account with a bank or other financial institution approved by the Responsible Entity and nominated by the Holder;
- (b) applied in another manner as the Responsible Entity is directed in writing by the Holder (if the Responsible Entity agrees); or
- (c) paid by cheque posted to the Holder.

The obligations of the Responsible Entity are fully discharged in respect of any money so paid.

37.2 If payment not effective

If a distribution cheque or a cheque issued in payment of a Redemption Request is returned unclaimed, or is not presented for payment within a reasonable period (which the Responsible Entity may determine from time to time), or an attempted deposit is rejected, the Responsible Entity must reinvest the relevant amount for the Holder in the Trust as from such date as the Responsible Entity selects as appropriate.

38. Auditor

The Responsible Entity must appoint and may at any time replace as auditor of the Trust either a registered company auditor, or a firm of chartered accountants of which at least one partner is a registered company auditor, or the Auditor-General of New South Wales.

39. Meetings

39.1 Convening Meetings

A Meeting may be convened and conducted in accordance with this constitution, the Corporations Act and the [AQUA Operating Rules](#).

39.2 Failure to give notice

Accidental omission to give notice to, or non-receipt of notice by, a Holder does not invalidate a Meeting nor a resolution passed at a Meeting.

39.3 Rights of proxy

A proxy may attend, speak and vote for a Holder even if the Holder is present at the Meeting.

39.4 Proxy appointments

An appointment of a proxy is valid even if it does not include the Holder's address or the Trust's name. An appointment of a proxy for a Meeting is effective if received by the Responsible Entity by a time before the time the Meeting is due to start that the Responsible Entity considers appropriate.

39.5 Other types of Units

Clause 39 applies, to the extent appropriate, to meetings of Holders of any type or class of Unit.

40. Conduct of Meetings

40.1 Closing of Register

When a Meeting is to be held the Responsible Entity must close the Register at an appropriate date and time to determine those Holders entitled to vote at the Meeting, and entitled to notification of the meeting.

40.2 Joint Holders

The first named of joint Holders shown in the Register (or if that person does not vote, the next named joint Holder, or if that person does not vote, the next named, and so forth) may exercise the voting rights of jointly-held Units.

40.3 Ordinary resolution

An ordinary resolution is passed if a simple majority of votes cast are in favour.

40.4 Validity of vote

The chairperson's declaration of the validity of any vote and the result of voting is conclusive.

40.5 Resolutions binding

A resolution duly passed binds all Holders, whether or not present at the Meeting.

40.6 Chairperson may adjourn Meeting

The chairperson may adjourn a Meeting to a time and place as the chairperson sees fit.

40.7 Chairperson may require person to leave meeting

The chairperson may refuse any person admission to, or require a person to leave and remain out of, a Meeting if that person, in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson.

40.8 Minutes

Minutes of a Meeting signed by the chairperson constitute conclusive evidence of the proceedings of the Meeting.

40.9 Postal ballot

A Meeting may be conducted by postal ballot in accordance with arrangements the Responsible Entity may determine reflecting, as closely as may be practicable, the provisions of this constitution.

40.10 Other types of Units

Clause 40 applies, to the extent appropriate, to meetings of Holders of any type or class of Unit, provided that such meetings shall comply with the Corporations Act and the [AQUA Operating Rules](#).

41. Responsible Entity's retirement

41.1 Responsible Entity may retire

Subject to the Corporations Act, the Responsible Entity may retire as Responsible Entity of the Trust by giving not less than one month's prior notice to the Holders, effective on the appointment of a replacement Responsible Entity.

41.2 Responsible Entity's indemnity

On the Responsible Entity retiring or being removed from the Trust or otherwise ceasing to be the Responsible Entity, 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 is completely released from this constitution as it affects the Trust and is indemnified out of Trust

Property against any claims arising out of its conduct as Responsible Entity of the Trust except claims in respect of gross neglect or default by the Responsible Entity and without limiting liability of the Responsible Entity to the Holders.

42. Liability of Holders

Subject to this constitution, the liability of each Holder is limited to the amount subscribed, or agreed to be subscribed by the Holder, for Units. Recourse of the Responsible Entity and Trust creditors is limited to Trust Property. Any relationship of partnership or agency between the Responsible Entity and a Holder in relation to the Trust, this constitution or anything done under this constitution, is expressly excluded.

43. Complaints

43.1 Complaints by retail clients

- (a) The Responsible Entity has adopted the definition of a complaint from Australian/New Zealand Standard AS/NZS 10002:2014 and ASIC RG 165:
- A complaint is an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.
- (b) While the Trust is Registered, if a Holder submits to the Trustee a complaint in relation to the Trust or its operations, the Responsible Entity must, if the Holder is a Retail Client, comply with the requirements of section 912A(2) of the Corporations Act applicable to the complaint.

43.2 Process for handling complaints

In respect of a complaint from a Holder who is not a Retail Client, the Responsible Entity must:

- (a) immediately acknowledge the receipt of any complaint received from a Holder and in any event within 14 days from receipt;
- (b) investigate, properly consider and decide what action (if any) to take or offer regarding the complaint;
- (c) within a maximum of 45 days, communicate its decision to the Holder, at the same time informing the Holder of remedies available to the Holder of which the Responsible Entity is aware and any available avenue of complaint against the decision to an external dispute resolution scheme or other body; and
- (d) include in any disclosure document an explanation of its procedures for handling complaints.

The Responsible Entity 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;
- (iii) compensation for loss incurred by the Holder as a direct result of the breach (if any); and/or
- (iv) such other remedies as the Responsible Entity considers appropriate.

For the avoidance of doubt, despite a Holder's Units being redeemed by the Responsible Entity in accordance with clause 14.2, the former Holder's rights under this clause 43 will continue until

such time that the Responsible Entity has satisfied the Redemption Request by paying the redemption proceeds to the former Holder in accordance with clause 14.2.

44. Changing the constitution

44.1 Responsible Entity may amend

- (a) Subject to the Corporations Act, the Responsible Entity may by supplemental deed modify, add to or delete from, this constitution.
- (b) Without limiting the generality of clause 44.1(a), the Responsible Entity may exercise its power under clause 44.1(a) to ensure that the Trust qualifies to participate in the specialised regime for the taxation of 'managed investment trusts' or any other similar regime introduced or amended from time to time.

44.2 Compliance with regulatory required provisions

If:

- (a) the Corporations Act or ASIC Class Order [CO 13/655] (or any other ASIC Relief on which the Responsible Entity has determined it wishes to rely or which is expressly applicable to the Trust and the Responsible Entity) requires that this constitution contain certain provisions or can only be relied upon if this constitution contains certain provisions (**Regulatory Required Provisions**); or
- (b) any part of this constitution (**Regulatory Required Part**) is included to comply with the requirements of the Corporations Act, [AQUA-Operating Rules](#), Listing Rules, ASIC or [ASX-the Securities Exchange](#) (if and as applicable) (**Regulatory Requirement**), and the Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows, the constitution is taken to be amended so that the Regulatory Required Provisions are included as separate provisions, or the Regulatory Required Part is deleted or amended to reflect the amended Regulatory Requirement. The Regulatory Required Provisions prevail over any other provisions of this constitution to the extent of any inconsistency.

44.3 Severance

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

44.4 Holders authorisation

The Holders:

- (a) authorise the Responsible Entity to make the amendments referred to in clause 44.2 in a deed and, if required, to lodge it with ASIC; and
- (b) agree that, subject to the Corporations Act, their rights under this constitution do not include or extend to a right not to have this constitution amended to comply with a Regulatory Requirement or to include Required Provisions.

45. Change of name

If Magellan Asset Management Limited is no longer the Responsible Entity then from that time the name of the Trust and relevant references in this constitution are taken to be amended to omit the words "Magellan", except if Magellan Asset Management Limited agrees otherwise.

46. Calculations

Any calculation for the purposes of this constitution must be to the fourth decimal place or, in any case, as otherwise determined by the Responsible Entity from time to time.

47. Notices and cheques

47.1 Notices

Any consent, notice, report or statement required to be in writing may be sent to a Holder or joint Holders:

- (a) by prepaid post to the address of the Holder or first named joint Holder shown in the Register, and is taken to be received on the next Business Day after posting; or
- (b) electronically or by facsimile to any electronic address or facsimile number given by the Holder or the first named joint Holder shown on the Register, from time to time, and is taken to be received:
 - (i) when it is sent; or
 - (ii) if it is sent not on a Business Day or after 5.00pm on a Business Day, at 9.00am on the next Business Day.

47.2 Cheques

Any cheque required to be sent to a Holder or joint Holders may be sent by prepaid post to the address of the Holder or first named joint Holder shown in the Register, and is taken to be received on the next Business Day after posting.

48. Application of accounting principles and standards

48.1 Application of Australian accounting standards in force before 1 January 2005

Notwithstanding any other provision of this constitution, where:

- (a) the effect of this constitution is that any of the amounts referred to in clause 48.1(b) are required to be calculated by reference to:
 - (i) the value of Trust Property, or
 - (ii) the amount of any liability that under the constitution may be discharged from Trust Property, or
 - (iii) the income of the Trust,and the effect of the constitution is that the value or amount is to be worked out by applying generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time, and
- (b) the relevant amounts are:
 - (i) the consideration to be paid to acquire a Unit;
 - (ii) the amount to be paid on a withdrawal from the Trust;
 - (iii) the remuneration or fees payable to the Responsible Entity, any agent of the Responsible Entity or any custodian who holds Trust Property;
 - (iv) the extent of any limitation on borrowing or on the investment of Trust Property; and

- (v) the amount of a distribution payable to Holders,

then, to the extent to which clause 48.1(a) applies to any of the relevant amounts referred to in clause 48.1(b), the amounts referred to in clause 48.1(b) may be calculated instead by applying generally accepted accounting principles or accounting standards as generally accepted or in force in Australia immediately before 1 January 2005.

48.2 Treatment of certain liabilities

Notwithstanding any other provision of this constitution, where:

- (a) the effect of current generally accepted accounting principles or methodology set out in an accounting standard (including Australian Accounting Standards) as generally accepted or in force from time to time is that the constitution should be interpreted (whether because of the existence of a perpetuities clause in the constitution or otherwise) on the basis that liabilities representing interests in, or rights attaching to, Units:
 - (i) at any time during the life of the Trust,
 - (ii) on termination of the Trust, or
 - (iii) on the vesting of any interest in the Trust,should be treated as a liability in the accounts of the Trust;
- (b) then, as from 1 January 2005, those liabilities continue to be treated for Trust operational purposes (but not for the purpose of financial reporting) in accordance with the accounting principles or methodology set out in accounting standards generally accepted or in force in Australia immediately before 1 January 2005.

49. Governing law

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

Signing page

Executed as a deed.

Signed sealed and delivered by Magellan Asset Management Limited in accordance with section 127(1) of the *Corporations Act 2001* (Cth)

Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)

Name of director/company secretary (print)