

Premium Income Fund

NSX Release: 5 September 2011



Consolidated Constitution

Wellington Capital Limited as responsible entity of the Premium Income Fund has lodged a consolidated constitution with the Australian Securities Investments Commission. A copy of which is annexed.

This presents in one document the constitution as it currently stands for ease of reference.

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PREMIUM INCOME FUND
ARSN 090 687 577
CONSOLIDATED CONSTITUTION

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PREMIUM INCOME FUND SUPPLEMENTARY DEED POLL

Made on

2011

BY **WELLINGTON CAPITAL LIMITED ACN 114 248 458** of Level 22, 307 Queen Street, Brisbane in the State of Queensland

(**'Responsible Entity'**)

BACKGROUND

- A. The Premium Income Fund ARSN 090 687 577 ('Scheme') was originally constituted as the MFS Capital Insured Income Fund under a deed poll dated 20 November 1999 and has been amended from time to time by the Responsible Entity ('Constitution').
- B. The Responsible Entity wishes to amend the Constitution as set out in this deed poll.
- C. In accordance with section 601GC(2) of the Corporations Act, the amendments to the constitution contained in this deed poll will take effect when a copy of this deed poll is lodged with the Australian Securities and Investments Commission ('ASIC').

1. AMENDMENTS TO THE CONSTITUTION

- (a) The Constitution is amended by inserting the provisions in the schedule to this supplemental deed in place of the existing Constitution, except for the following clauses which remain operative:
 - (i) Clause 1.1;
 - (ii) Clause 1.2
 - (iii) Clause 1.3;
 - (iv) Clause 1.5; and
 - (v) Clause 26.2.2.

2. TRUST NOT CONFIRMED

- (a) Nothing expressly or impliedly contained in this supplemental deed (including the recitals) is effective to confirm, declare or otherwise acknowledge the trust declared under the original constitution, or to impress any new or additional trusts upon property held on trust as at the date of this supplemental deed.
- (b) Nothing in this supplemental deed should be interpreted as creating any new or further trust and at all times, the Scheme remains a simple trust.

3. RESPONSIBLE ENTITY AND UNIT HOLDERS BOUND

The Responsible Entity and the Unit Holders are bound by the terms of the Constitution as amended by this supplemental deed.

SCHEDULE

1. THE SCHEME

The Scheme

- 1.1 [Not Altered not reproduced]

Establishment of Scheme

- 1.2 [Not Altered not reproduced]

Holder of Scheme Property

- 1.3 [Not Altered not reproduced]

Appointment of Custodian

- 1.4 The Responsible Entity may appoint a Custodian to hold Scheme Property for and on behalf of the Responsible Entity. The Responsible Entity shall have the same powers and discretions in respect of such Scheme Property as if it were registered in its own name.

Duration of the Scheme

- 1.5 [Not Altered not reproduced]

No interference by Unit Holders

- 1.6 A Unit Holder may not:
- 1.6.1 interfere with the powers of the Responsible Entity in its dealings with the Scheme Property or the Scheme;
 - 1.6.2 interfere with the powers of the Responsible Entity in managing the Scheme or the Scheme Property;
 - 1.6.3 exercise any rights, powers or privileges in respect of any part of the Scheme or the Scheme Property;
 - 1.6.4 lodge a caveat in respect of a Scheme Investment; or
 - 1.6.5 require the transfer to it of any Scheme Investment or Scheme Property.

2. UNITS

Beneficial interest in the Scheme

- 2.1 The beneficial interest in the Scheme is to be divided into Units.

Unit conferred

- 2.2 A Unit:
- 2.2.1 confers on its registered holder in the Register an undivided interest in the Scheme Fund and Scheme Property as a whole, subject only to any variances as between any classes of Units that may exist; and

- 2.2.2 does not confer any interest in any particular part of the Scheme Fund or in any Scheme Property but only such interest in the Scheme Fund and Scheme Property as a whole, subject to the Liabilities.

Joint Tenancy

- 2.3 Persons registered jointly as the holder of a Unit hold as joint tenants and not as tenants in common unless otherwise specified by an Applicant in the Application form.

3. APPLICATION FOR UNITS

Offering and Issue of Units

- 3.1 The Responsible Entity may, in accordance with the provisions of the Corporations Act and this Constitution, cause the issue of Units or issue a PDS in relation to Units.

Issue Price

- 3.2 The Issue Price of a Unit under the PDS shall be:
- 3.2.1 one dollar (\$1.00) for the first Quarter of the Scheme;
- 3.2.2 thereafter, the Issue Price shall be one dollar (\$1.00) per Unit unless the Responsible Entity considers the total net value of all Scheme Property, divided by the number of issued Units in the Scheme ('Variable Price') is less than one dollar and the Responsible Entity is unable to access further funds under the MFS Support Mechanism to increase the total net value of Scheme Property in which case the Issue Price of the Unit shall be the Variable Price.

Application

- 3.3 A Person who wishes to invest in the Scheme must make an Application, and pay the Application Moneys, to the Responsible Entity in the manner specified in the PDS.

Procedure upon Responsible Entity receiving Applications

- 3.4 If the Responsible Entity receives a properly completed Application and valid Application Money and the Responsible Entity decides to accept such an Application, the Responsible Entity will as soon as practically possible cause the Application Money to be deposited in the Asset Account. All Application Moneys placed in the Asset Account will be referred to as the pooled funds of the Scheme. The pooled funds remain in this account until such time as the funds can be invested in Authorised Investments as they become available and are approved by the Responsible Entity.

Issuing of Units

- 3.5 The Responsible Entity may decide, in its sole discretion, to either accept or reject an Application, in part or in whole. Within ten (10) Business Days from the time the Application Moneys are deposited in the Asset Account, the Responsible Entity will:
- 3.5.1 Notify in writing all Applicants whose Applications have been accepted either in part or in whole pursuant to this Clause (hereinafter referred to as the "approved applicants"), that his, her or its Application has in fact been accepted; and

- 3.5.2 Cause to be issued to each approved applicant, Unit(s) equating to the value of the Issue Price of those Units paid by an Applicant.

Date of Issue of Units

- 3.6 A Unit is to be taken to be issued to an approved applicant on the date when the name of the approved applicant is recorded in the Register as the holder of the Unit.

Asset Account

- 3.7 The Responsible Entity must establish and maintain a bank account in the name of the Custodian which is to be the Asset Account for the Scheme. The Asset Account must be established and operated in accordance with the requirements of the Corporations Act.

Invalid Application Moneys and/or Incomplete Applications

- 3.8 Where the Responsible Entity receives invalid Application Moneys and/or an incomplete Application it will, as soon as practicable:-
- 3.8.1 attempt to obtain a completed Application and/or valid Application Money from the Applicant; and
 - 3.8.2 any Application Money received pursuant to clause 3.8.1 shall be held in an applications account. The Responsible Entity must return to the Applicant within one (1) month of receipt any Application Money received and not accepted.

Responsible Entity may withdraw PDS

- 3.9 The Responsible Entity may in its sole discretion determine at any time to withdraw a PDS.

Unit Holder not entitled to dispose of Units

- 3.10 A Unit Holder is not entitled to dispose of Units except as otherwise provided in this Constitution.

Reviewing of Applications

- 3.11 The Responsible Entity shall be responsible for ensuring all Applications received by the Responsible Entity have been completed in full.

Foreign Offers

- 3.12 No offer is to be made in a jurisdiction where the offer would be illegal or unlawful. For the purpose of enabling the Responsible Entity to comply with the *Foreign Ownership of Land Register Act 1988 (Qld)* ('the Act'):
- 3.12.1 an Applicant, or transferee named in a transfer of Units, must advise the Responsible Entity if the Applicant is a Foreign Person;
 - 3.12.2 a Unit Holder must advise the Responsible Entity in writing immediately the Unit Holder becomes or ceases to be a Foreign Person; and
 - 3.12.3 an Applicant, a transferee named in a transfer of Units and a Unit Holder must within five (5) Business Days comply with a request in writing by the Responsible Entity for information required by the Responsible Entity for the purposes of the Act.

Classes of Units

- 3.13 The Responsible Entity may, in its discretion, issue different classes of Units with special rights or restrictions and those rights or restrictions prevail over any inconsistent provision of this Constitution.

Cooling off Period

- 3.14 Where a Unit Holder has been issued Units in the Scheme, the Unit Holder may (when permitted by law) by written request, seek a refund of their investment during the 14-day (or such other period required by law) cooling off period. The 14 days commences on the earlier of:
- 3.14.1 confirmation of the issue of the Units is received by the Unit Holder; or
- 3.14.2 five days after their investment is deposited in the Asset Account.

4. RIGHTS OF UNIT HOLDERS TO WITHDRAW FROM SCHEME

- 4.1 Where a Unit Holder has previously made any valid withdrawal request which remains unsatisfied at 18 September 2008 the withdrawal request is deemed to be retracted by the Unit Holder effective upon Unit Holder approval of the change to the Constitution.

5. TRANSFER OF UNITS

Transfer of Units

In the event of the Scheme being admitted to the Official List of SX subclauses 5.1 to 5.10 below will not apply for the period of such admission but the provisions of clause 6 will apply.

- 5.1 A Unit Holder may transfer their Units only in accordance with the provisions of this Constitution and, in particular:
- 5.1.1 the transferee must agree to be bound by the provisions of this Constitution;
- 5.1.2 a stamped transfer of the Units in the Scheme (if required) must be delivered to the Responsible Entity together with the certificate or certificates (if any) in respect of the Units to be transferred; and
- 5.1.3 the transferor must pay any fees of up to 1% of the value of the Units transferred or as disclosed or capped in the PDS.

Form of Transfer

- 5.2 A Unit may be transferred by an instrument in writing in such form as the Responsible Entity shall prescribe, or otherwise in any usual or common form, duly executed as provided for in this clause, provided the holder of the Unit obtains the Responsible Entity's prior written consent which may be withheld in its discretion without assigning any reason.

Further Requirements for Transfer of Units

- 5.3 Every instrument of transfer of Units when forwarded to the Responsible Entity must be duly stamped by the Office of State Revenue in the state where the Register is maintained and must be accompanied by such other evidence as the Responsible Entity may require to prove the title of the transferor, its

right to transfer the Units, and compliance by the transferor with the provisions of the Corporations Act.

Transferor holder whilst registered

- 5.4 Every instrument of transfer shall be signed by both the transferor and the transferee and the transferor shall be deemed to remain the holder of the Units the subject of the transfer until the name of the transferee is entered in the Register as the holder of the Units.

Transferor holder whilst registered

- 5.5 In the case of the death of a Unit Holder, the survivor where the deceased was a joint holder, and the legal personal representative of the deceased in all other cases, shall be the only Person recognised by the Responsible Entity as having any title to or interest in, the Units held by such Unit Holders.

Election by representative

- 5.6 Any Person becoming entitled to a Unit in consequence of the death, bankruptcy or liquidation of a Unit Holder, or as a result of the Unit Holder being incapable of managing his or her affairs, may, upon such evidence being produced as may from time to time be required by the Responsible Entity, elect either to be registered himself or herself as the holder of the Unit or with the consent of the Responsible Entity, which may be withheld in its discretion, to have some Person nominated by him or her registered as the transferee.

Rights on Transmission

- 5.7 A Person entitled to any Unit by transmission shall be entitled to receive and may give a good discharge for all money payable in respect of the Unit but, except as otherwise provided in this Constitution, shall not be entitled to any other rights or privileges of a Unit Holder unless and until he, she or it shall become registered in respect of the Unit.
- 5.8 The Responsible Entity may charge an administration fee of one percent (1%) of the value of the Units being transmitted to reimburse it for its costs in processing the transmission.

Issue of New Statement

- 5.9 Upon production to the Responsible Entity of an instrument of transfer duly stamped and executed, the Responsible Entity shall, if it consents to the transfer, enter the transferee in the Register as the holder of the Units so transferred, and issue a new statement to the transferee for the Units transferred in accordance with Clause 6 herein.
- 5.10 The Responsible Entity may charge an administration fee of up to one percent (1%) of the value of the Units sought to be transferred to reimburse it for its costs in processing the transfer.

6. TRANSFER AND TRANSMISSION OF UNITS WHERE SCHEME LISTED

Instrument of transfer

- 6.1 Subject to these rules, a Unit Holder may transfer all or any of the Unit Holder's Units:
 - 6.1.1 in any manner required or permitted by the Listing Rules or the ASTC Settlement Rules applying in relation to any computerised or electronic system established or recognised by the Listing Rules or the Law for the purpose of facilitating dealings in Units or other securities, including a transfer that may be effected pursuant to the ASTC Settlement Rules or other electronic transfer process; and
 - 6.1.2 by any instrument in writing in any usual or common form or in any other form that the Board approves.

Registration procedure

- 6.2 Where an instrument of transfer referred to in rule 6.1 is to be used by a Unit Holder to transfer Units the following provisions apply:
 - 6.2.1 it must be executed by or on behalf of both the transferor and the transferee unless it is a sufficient transfer of marketable Units within the meaning of the Law;
 - 6.2.2 the instrument of transfer must be left for registration at the registry of the Responsible Entity, accompanied by the certificate for the Units to which it relates (if any) and such information as the Board properly requires to show the right of the transferor to make the transfer, and in that event, the Responsible Entity must, subject to the powers vested in the Board by these rules, register the transferee as a Unit Holder;
 - 6.2.3 the Responsible Entity must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without charge except in the case the Responsible Entity issues a certificate for Units where the issue of a certificate is to replace a lost or destroyed certificate;
 - 6.2.4 on registration of a transfer of Units, the Responsible Entity must cancel the old certificate (if any).

Completion of registration

- 6.3 Except in the case of a proper ASTC transfer, a transferor of Units remains the holder of the Units transferred until the transfer (if any) is registered and the name of the transferee is entered in the Register in respect of the Units. The right to any distributions declared on any Units subject to a transfer will be determined by reference to the record date for the purposes of that distribution and the date of registration of the transfer.
- 6.4 The Responsible Entity must comply with such obligations as may be imposed on it by the Listing Rules and ASTC Settlement Rules in connection with any transfer of Units.

Right to refuse registration

- 6.5 Notwithstanding any other provisions contained in these rules, the Responsible Entity may in the Board's absolute discretion and without

assigning any reason therefore, refuse to register or prevent or interfere with the registration of a transfer of Units in the Scheme while it is not admitted to the Official List of SX, and when it is admitted to the Official List of SX the Responsible Entity may only refuse to register or prevent or interfere with the registration of a transfer of Units in the Scheme where permitted or required by any of the Listing Rules or ASTC Settlement Rules.

Transmission by death

- 6.6 The trustee, executor or administrator of a deceased Unit Holders (who is not one of several joint holders) is the only person recognised by the Responsible Entity as having any title to Units registered in the name of the deceased Unit Holder provided that the Board may, subject to compliance by the transferee with these rules, register any transfer signed by a Unit Holder prior to the Unit Holder's death notwithstanding that the Responsible Entity has notice of the Unit Holder's death.

Transmission by operation of law

- 6.7 A person ('transmittee') who establishes to the satisfaction of the Board that the right to any Units has devolved on the transmittee by will or by operation of law may be registered as a Unit Holder in respect of the Units or may (subject to the provisions in these rules relating to transfers) transfer the Units provided that the Board has the same right to refuse to register the transmittee as if the transmittee was the transferee named in an ordinary transfer presented for registration.

Computerised trading

- 6.8 Notwithstanding any other provision in these rules, when the Scheme is admitted to the Official List of the SX the Board may determine not to issue a certificate for any security or may determine to cancel such a certificate without issuing any certificate in its place, if that determination is not contrary to the Corporations Act or the Listing Rules or the ASTC Settlement Rules or is required by Listing Rules or the ASTC Settlement Rules.
- 6.9 Where the Board of the Responsible Entity has pursuant to rule 6.8 determined not to issue certificates for Units or to cancel existing certificates, a Unit Holder has the right to receive such statements of the holdings of the Unit Holder as are required to be distributed to a Unit Holder under the Corporations Act, the Listing Rules or the ASTC Settlement Rules.
- 6.10 The board of the Responsible Entity may do anything it considers necessary or desirable and which is permitted under the Law, the Listing Rules and the ASTC Settlement Rules to facilitate the involvement by the Scheme in any computerised or electronic system established or recognised by the Law or the Listing Rules for the purposes of facilitating dealings in Units.

Fund Compliance

- 6.11 If the Scheme is involved in a system of the kind described in 6.8, the Scheme must comply with and give effect to the Listing Rules and the ASTC Settlement Rules applying in relation to that system.

Statements

- 6.12 A Unit Holder has the right to receive such statements of the holdings of the Unit Holder as are required to be distributed to a Unit Holder under the Law, the Listing Rules or the ASTC Settlement Rules.

Restricted Securities

- 6.13 Restricted Securities
- 6.13.1 Restricted Securities may not be disposed of during the escrow period except as permitted by the Listing Rules or the SX.
- 6.13.2 If the Scheme at any time has on issue any Restricted Securities, the Responsible Entity must, except as permitted by the Listing Rules or SX, refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of any of such Restricted Securities which is or might be in breach of the Listing Rules or any escrow agreement entered into by the Responsible Entity under the Listing Rules in relation thereto.
- 6.13.3 In the event of a breach of the Listing Rules or of any escrow agreement entered into by the Responsible Entity under the Listing Rules in relation to Restricted Securities, the Member holding the Units in question, notwithstanding any rights attached to such Units, ceases to be entitled to any dividend or distribution and to any voting rights in respect of those Units for so long as the breach subsists.

7. STATEMENTS**Issue of Statements**

- 7.1 Each Unit Holder shall be entitled to be issued with a statement in respect of Units registered in its name but where Units are held jointly, the Responsible Entity shall not be bound to issue more than one statement and delivery of a statement to one of several joint Unit Holders shall be sufficient delivery to all such holders.

Form of Statement

- 7.2 Each statement shall be in such form as the Responsible Entity may from time to time prescribe, signed for or on behalf of the Responsible Entity and shall specify the name of the Unit Holder(s), the number of Units held by the Unit Holder(s), the name of the Scheme and any other information the Responsible Entity sees fit to include.

Surrender of Delivery

- 7.3 The statement will be issued to Unit Holders following the entering of the Unit Holders details in the Register referred to in Clause 8 hereof.

8. REGISTER OF UNIT HOLDERS**Details of Register**

- 8.1 The Responsible Entity shall keep and maintain an up-to-date Register of the Unit Holders in which shall be entered the following information:
- 8.1.1 the names and addresses of the Unit Holders;

- 8.1.2 the number of Units in respect of which each Unit Holder is registered;
- 8.1.3 the complete terms of any special rights restrictions or conditions affecting or attaching to Units which are classified;
- 8.1.4 the date of acquisition and disposal of Units by a Unit Holder;
- 8.1.5 the transfer and/or transmission of Units;
- 8.1.6 the date that a Unit Holder is removed from the Register. A Unit Holder will only be removed from the Register in the following circumstances:
 - (1) a Unit Holder transfers their Units; or
 - (2) a transmission of Units occurs;
- 8.1.7 any other details the Responsible Entity considers appropriate.

Consequence of registration

- 8.2 Except to the extent provided in this Constitution, the Person from time to time entered in the Register as the holder of a Unit shall be the only Person required to be recognised by the Responsible Entity as entitled to such Unit or to exercise or enjoy the rights and privileges attaching thereto.

No recognition of trust

- 8.3 No Person shall be recognised by the Responsible Entity as holding any Unit upon any trust and the Responsible Entity shall not be bound by or be compelled in any way to recognise, even when having notice, any equitable, contingent, future or partial interest in any Unit therein or, except only as the provisions of this Constitution otherwise provide, any other rights in respect of any Unit except an absolute right to the entirety thereof in the Unit Holder.
- 8.4 Notwithstanding the terms of Clause 8.3, the Responsible Entity may at the request of a Unit Holder note in the Register that the Unit is held by the Unit Holder on a particular trust but no liability shall be created by any such note and the Responsible Entity shall not be affected with notice of any trust noted in the Register.

Register available for inspection

- 8.5 The Responsible Entity will comply with its obligations at Law with respect to access and inspection of Registers.

9. GENERAL MEETINGS

General meetings

- 9.1 General meetings of the Scheme may be called by the Board and held in the manner determined by the Board. Except as permitted by the Law, no other person may convene a general meeting of the Scheme. By resolution of the Board, any general meeting (other than a general meeting which has been requisitioned or called by Unit Holders or by a single Director if permitted by the Law) may be cancelled or postponed prior to the date on which it is to be held.
- 9.2 The Chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

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- 9.2.1 in possession of a pictorial-recording or sound-recording device;
 - 9.2.2 in possession of a placard or banner;
 - 9.2.3 in possession of an object considered by the Chairman to be dangerous, offensive or liable to cause disruption;
 - 9.2.4 who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 - 9.2.5 who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - 9.2.6 who is not:
 - (1) a Unit Holder or a proxy, attorney or representative of a Unit Holder;
 - (2) a Director; or
 - (3) an auditor of the Responsible Entity.
- 9.3 A person, whether or not a Unit Holder, who is requested by the Board or the Chairman to attend a general meeting, is entitled to be present.

Notice of general meeting

- 9.4 Not less than 21 days' notice of a general meeting, or such other period prescribed by the Law, may be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes or these rules require that an election of Directors be held. Notice of meetings shall be given to the Unit Holders, the Directors, SX and to such persons as are entitled to receive notice under these rules, the Law or the Listing Rules. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.
- 9.5 If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Law in relation to the use of such technology.

10. PROCEEDINGS OF MEETINGS

Business of general meetings

- 10.1 The business of an annual general meeting is to receive and consider the financial and any other reports required by the Law to be laid before each annual general meeting, to elect Directors in the place of those retiring under these rules, when relevant to appoint an auditor, and to transact any other business which, under these rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chairman or pursuant to the Law, no person may move at any meeting either:
- 10.1.1 in regard to any special business of which notice has been given, any resolution or any amendment of a resolution; or

- 10.1.2 any other resolution which does not constitute part of special business of which notice has been given.

The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the Unit Holders, as a whole, about the audit.

Quorum

- 10.2 Except as provided for at subclause 10.3 below, two Unit Holders present constitute a quorum for a general meeting. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.
- 10.3 The quorum for a meeting at which any resolution is proposed (whether ordinary or Extraordinary) to remove the Responsible Entity of the Scheme, is a minimum of four persons holding or representing in person, by proxy or attorney at least 51% of Units on issue in the Scheme by number.
- 10.4 The quorum for a meeting at which any resolution is proposed (regardless of the type of resolution) to amend clause 10.2 or clause 10.3 is at least four persons holding or representing in person, by proxy or attorney at least 51% of the Units by number.
- 10.5 If at any time the scheme has only one Unitholder, that Unitholder or his or her representative or proxy constitutes a quorum.

Adjournment in absence of quorum

- 10.6 If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition by Unit Holders or called by Unit Holders, is to be dissolved, and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

Chairman

- 10.7 The Chairman of the Board is entitled to take the chair at every general meeting.
- 10.8 If at any general meeting:
- 10.8.1 the Chairman of the Board is not present at the specified time for holding the meeting; or
- 10.8.2 the Chairman of the Board is present but is unwilling to act as Chairman of the meeting,
- the deputy Chairman of the Board is entitled to take the chair at the meeting.
- 10.9 If at any general meeting:
- 10.9.1 there is no Chairman of the Board or deputy Chairman of the Board;

10.9.2 the Chairman of the Board and deputy Chairman of the Board are not present at the specified time for holding the meeting; or

10.9.3 the Chairman of the Board and the deputy Chairman of the Board are present but each is unwilling to act as Chairman of the meeting,

the Directors present may choose another Director as Chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairman of the meeting, a Unit Holder chosen by the Unit Holders present is entitled to take the chair at the meeting.

Acting Chairman

10.10 If during any general meeting the Chairman acting pursuant to rule 10.7 is unwilling to act as chairman for any part of the proceedings, the Chairman may withdraw as Chairman during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting Chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings the acting Chairman is to withdraw and the Chairman is to resume acting as Chairman of the meeting.

General conduct of meeting

10.11 Except as provided by the Law, the general conduct of each general meeting of the Responsible Entity and the procedures to be adopted at the meeting are as determined by the Chairman. The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting, demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Unit Holders present. The Chairman may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Responsible Entity, whether on a show of hands or on a poll.

Adjournment

10.12 The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting pursuant to this rule, the Chairman has the sole discretion to decide whether to seek the approval of the Unit Holders present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the Unit Holders present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

Voting

10.13 Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Unit Holders present and entitled to vote. In the case of an equality of votes, the Chairman, both on a show of hands and

at a poll, has no casting vote in addition to the vote or votes to which the Chairman may be entitled as a Unit Holder or as a proxy, attorney or duly appointed representative of a Unit Holder.

- 10.14 On a show of hands, where the Chairman has 2 or more appointments that specify different ways to vote on a resolution, the Chairman must not vote as a proxy.

Declaration of vote on a show of hands; when poll demanded

- 10.15 At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Responsible Entity signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:

10.15.1 before a vote is taken;

10.15.2 before the voting results on a show of hands are declared; or

10.15.3 immediately after the voting results on a show of hands are declared.

- 10.16 A poll may be demanded by:

10.16.1 the Chairman;

10.16.2 at least 5 Unit Holders present entitled to vote on the resolution;

10.16.3 by a Unit Holder or Unit Holders present with at least 5% of the votes that may be cast on the resolution on a poll.

- 10.17 No poll may be demanded on the election of a Chairman of a meeting.

Taking a poll

- 10.18 If a poll is demanded as provided in rule 10.16, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

Continuation of business

- 10.19 A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

11. SPECIAL MEETINGS

- 11.1 All the provisions of these rules as to general meetings apply to any special meeting of any class of Unit Holders which may be held pursuant to the operation of these rules or the Law.

12. VOTES OF UNIT HOLDERS

Voting rights

- 12.1 Subject to the restrictions on voting from time to time affecting any class of Units:
 - 12.1.1 on a show of hands, each Unit Holder present has one vote;
 - 12.1.2 where a Unit Holder has appointed two persons as proxies for that Unit Holder, neither proxy may vote on a show of hands;
 - 12.1.3 where a person is entitled to vote in more than one capacity, that person is entitled only to one vote on a show of hands; and
 - 12.1.4 if the person appointed as proxy has two or more appointments that specify different ways to vote on a resolution, the proxy must not vote on a show of hands; and
 - 12.1.5 on a poll, each Unit Holder present:
 - (1) has one vote for each fully paid Unit held; and
 - (2) has for each Unit which is not fully paid a fraction of a vote equivalent to the proportion which the amount paid up or credited as paid up on that Unit (but excluding any amount paid in advance of a call) bears to the total of the amounts paid up or credited as paid up on that Unit.

Voting rights of personal representatives, etc

- 12.2 Any person entitled under rules 6.6 or 6.7 to transfer any Units may vote at a general meeting in the same manner as if the person were the registered holder of the Units provided that at least 48 hours before the time of holding the meeting at which the person proposes to vote the person has satisfied the Board of the person's right to transfer the Units, unless the Board has previously admitted the person's right to vote at the meeting in respect of the Units.

Appointment of proxies

- 12.3 Any Unit Holder entitled to vote at a general meeting may appoint a proxy. Any Unit Holder who is entitled to cast 2 or more votes at a general meeting may appoint not more than 2 proxies to vote at a general meeting on that Unit Holder's behalf and may, but need not, direct the proxy or proxies how to vote in relation to each or any resolution.
- 12.4 The Responsible Entity must record in the minutes of a general meeting, in respect of each resolution in the notice of meeting, the total number of proxy votes exercisable by all proxies validly appointed and:
 - 12.4.1 if the resolution is decided on a show of hands - the total number of proxy votes in respect of which the appointment specified that:
 - (1) the proxy is to vote for the resolution;
 - (2) the proxy is to vote against the resolution;
 - (3) the proxy is to abstain on the resolution;
 - (4) the proxy is to vote at the proxy's discretion.

- 12.4.2 if the resolution is decided on a poll - the total number of votes cast on the poll:
- (1) in favour of the resolution;
 - (2) against the resolution;
 - (3) abstaining on the resolution.
- 12.5 A proxy need not be a Unit Holder in the Scheme.
- 12.6 Where a Unit Holder appoints two proxies and each proxy is not appointed to represent a specified proportion of the Unit Holder's voting rights, then each proxy may exercise half of the Unit Holder's voting rights.
- 12.7 The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the office, faxed to the office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting at least 48 hours (or a lesser period as the Board may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- 12.8 No instrument appointing a proxy is, except as provided in this rule, valid after the expiration of 12 months after the date of its execution. Any Unit Holder may deposit at the office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Responsible Entity.

Voting by corporation

- 12.9 Any corporation, being a Unit Holder and entitled to vote, may by resolution of its directors or other governing body or by an instrument of proxy authorise any person, though not a Unit Holder of the Scheme, or any person occupying a particular office from time to time, to act as its representative at meetings, and such representative is, in accordance with their authority and until their authority is revoked by the corporation which they represent, entitled to exercise the same powers on behalf of the corporation which they represent as that corporation could exercise if it were a natural person who was a Unit Holder.

Validity of vote

- 12.10 A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney or transfer of the Units in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind, revocation or transfer has been received at the office of the Responsible Entity before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

Form and execution of instrument of proxy

- 12.11 An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its common seal or signed by a duly authorised officer and in the form

which the Board may from time to time prescribe to accept. The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.

- 12.12 An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and the Board may authorise completion of the proxy by the insertion of the name of any member of the Board as the person in whose favour the proxy is given.

Board to issue forms of proxy

- 12.13 The Board may issue with any notice of general meeting of Unit Holders or any class of Unit Holders forms of proxy for use by the Unit Holders. Each form shall make provision for the Unit Holder to write in the name of the person or persons to be appointed as proxy and may provide that, if the Unit Holder does not so write in one or more names, the proxy shall be one or more persons named on the form. The form may include the names of any of the Directors or of any other persons as suggested proxies. The forms are to be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

Attorneys of Unit Holders

- 12.14 Any Unit Holder may, by duly executed power of attorney, appoint an attorney to act on the Unit Holder's behalf at all or certain specified meetings of the Responsible Entity. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the office of the Responsible Entity or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Unit Holder granting the power of attorney.

Rights of Unit Holder indebted to Responsible Entity in respect of other Units

- 12.15 Subject to any restrictions from time to time affecting the right of any Unit Holder or class of Unit Holders to attend any meeting, a Unit Holder holding a Unit in respect of which for the time being no call is due and payable to the Responsible Entity is entitled to be present at any general meeting and to vote and be reckoned in a quorum notwithstanding that any call is then due and payable to the Responsible Entity by the Unit Holder in respect of any other Unit held by the Unit Holder provided that, upon a poll, a Unit Holder is only entitled to vote in respect of Units held by the Unit Holder upon which, at the time when the poll is taken, no call is due and payable to the Responsible Entity.

13. POWERS OF RESPONSIBLE ENTITY

Natural Person

- 13.1 The Responsible Entity shall have all the powers in respect of the Scheme that is legally possible for a natural person or corporation to have and as though it

were the absolute owner of the Scheme Property and acting in its personal capacity.

Additional Powers

- 13.2 In the administration of the provisions of this Constitution, and the Corporations Act, in relation to the Scheme and the Scheme Property, the Responsible Entity shall have the following powers. These powers shall be in addition to the powers, authorities and discretions vested in it by any other provision of this Constitution or by the Corporations Act and which shall not limit or be limited by, or be construed so as to limit or be limited by the powers, authorities and discretions otherwise by this Constitution or by the Corporations Act vested in the Responsible Entity, that is to say:
- 13.2.1 acquire or make Authorised Investments;
 - 13.2.2 to institute, join in and defend proceedings at Law or by way of mediation or arbitration and to proceed to the final end and determination or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Responsible Entity may decide;
 - 13.2.3 execute or join with any Person in executing any mortgage, guarantee, indemnity, contract or other document to secure the payment or performance of any liability, contract, guarantee or other engagement incurred or to be entered into by the Responsible Entity whether alone or jointly or jointly and severally with another or others, or entered into by another or others where the Responsible Entity forms the opinion that execution of this document is in the best interests of the Units of or for the benefit of Unit Holders;
 - 13.2.4 draw, accept, endorse, discount, sell, purchase and otherwise deal with bills of exchange either alone or jointly or jointly and severally with another or others;
 - 13.2.5 acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, let, grant, release or vary any right or easement or otherwise deal with Scheme Property as if the Responsible Entity were the absolute and beneficial owner;
 - 13.2.6 appoint a Person as property manager to manage the Scheme Property on such terms and conditions as the Responsible Entity may determine, and from time to time remove and replace such property manager and to vary the terms and conditions of this appointment;
 - 13.2.7 appoint a Custodian to hold Scheme Property whether or not the Responsible Entity itself has met the Custodial Standards as set by the Corporations Act where the Responsible Entity requests such appointment;
 - 13.2.8 enter into, carry out, the terms of and exercise any rights under any contract or deed to acquire and hold Authorised Investments or deal with Scheme Property for Cash or upon terms;
 - 13.2.9 to raise or borrow moneys either alone or jointly with another or others, from any Person, firm or company, either bearing or free of interest and on such terms and conditions and for such purposes as the

Responsible Entity may decide to secure the repayment of any such monies or other indebtedness of the Responsible Entity by mortgage, charge, or other security or encumbrance over the whole or any part of the Scheme Property, as the Responsible Entity in its discretion may decide;

- 13.2.10 to open in the name of the Responsible Entity or in the name of any Person or corporation as nominee of the Responsible Entity, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Responsible Entity thinks fit, with full power to operate on any such account including, but without limiting the generality of the foregoing, power to sign, draw and endorse cheques and other negotiable or transferable instruments on any account to close the same;
- 13.2.11 to pay out of the Scheme Fund or the income thereof all costs charges and expenses incidental to the management of the Scheme or to the exercise of any power authority or discretion herein contained or in carrying out or performing the trusts of this Constitution which the Responsible Entity considers appropriate;
- 13.2.12 to set aside out of the income or capital of the Scheme Fund from time to time such money as may in the opinion of the Responsible Entity be sufficient to meet any debt or obligation due or accruing;
- 13.2.13 to determine whether real or personal property, or any increase or decrease in amount, number or value of any Scheme Property, or any receipts or payments from, for or in connection with the Scheme Property, shall be treated as and credited or debited to capital or to income of the Scheme Fund. Generally to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the Scheme and powers of the Scheme. Every determination of the Responsible Entity in relation to any of these matters, whether upon a question formally or actually raised or implied in any of the facts or proceedings of the Responsible Entity in relation to the Scheme Fund, shall bind all interested parties and shall not be objected to or questioned on any ground whatsoever;
- 13.2.14 to employ or engage agents or professionals in the execution of the Scheme and the powers provided herein in this Constitution, and instead of acting personally from time to time to employ or engage and pay out of the Scheme Fund such managements, agents, advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other Persons to transact any business or to do any act required to be done in connection with the administration of the Scheme and Scheme Fund declared in this Constitution and to act upon the opinion or advice of any such Person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- 13.2.15 the Responsible Entity must use its best endeavours to ensure that all Scheme Investments are kept in good repair, that all valid notices from and requirements of authorities (government or otherwise) are complied with and that the Scheme Property is let, invested, managed and otherwise dealt with to the best advantage. The Responsible Entity may appoint managing agents, brokers, accountants, solicitors

or other qualified Persons to assist it in the conduct of its obligations under this sub-clause;

13.2.16 to contract another entity to act as investment manager of the Scheme so as to provide the Responsible Entity with advice regarding investments for the Scheme and to permit that investment manager to carry out delegated functions of the Responsible Entity in approving the making of Authorised Investments;

13.2.17 to issue Units, options or financial instruments as consideration for the acquisition of any investment or in the discharge of any expense. The Responsible Entity may, in addition to Units and options, issue any other interests, rights or instruments relating to the Trust (including so far as the law and the Licence permit derivatives, debentures convertible notes or other instrument of debt, equity, quasi-debt, quasi equity or hybrid nature). Financial interests may be issued:

- (1) for no consideration or at a consideration as determined by the Responsible Entity;
- (2) on such other terms as the Responsible Entity determines.

14. THE RIGHTS AND DUTIES OF THE RESPONSIBLE ENTITY

Responsible Entity may act in relation to other Schemes

- 14.1 Nothing in this Constitution prevents the Responsible Entity from establishing or acting as responsible entity, manager, or trustee for trusts, schemes whether of a similar nature to, or different from, the Scheme.

Dealings with Associates

- 14.2 Subject to the Corporations Act, the Responsible Entity and its Associates, may without any liability to account to any Unit Holder or the Scheme:
- 14.2.1 hold Units;
 - 14.2.2 deal with the Scheme and any Unit Holder;
 - 14.2.3 be interested in any contract or transaction with the Scheme and any Unit Holder and may retain for its own benefit any profits or benefits derived from any such contract or transaction; and
 - 14.2.4 act in the same or a similar capacity in relation to any other Registered Scheme.

Management of Property

- 14.3 The Responsible Entity will manage the Scheme and the Scheme Property in accordance with the provisions of this Constitution with full and complete powers of management including all powers reasonably necessary or incidental to the performance by the Responsible Entity of its obligations and the observance by the Responsible Entity of all the terms and conditions of this Constitution.

Delegates of the Responsible Entity

- 14.4 The Responsible Entity may pursuant to Section 601FB(2) of the Corporations Act appoint an agent, or otherwise engage a Person, or Persons

(whether or not being Persons related to, or associated with, the Responsible Entity), to do anything that the Responsible Entity may do, including to hold Scheme Property and to execute documents on its behalf. If the Responsible Entity appoints a Custodian to hold Scheme Property, the Custodian acts as the agent of the Responsible Entity.

Confidentiality

- 14.5 Except as otherwise required by any applicable law, the contents of all Scheme records, reports, accounts and other documents must be treated as confidential and the Responsible Entity must take reasonable precautions to prevent the disclosure thereof to any Person other than its Unit Holders, employees or advisers.

Scheme registration to be maintained

- 14.6 The Responsible Entity must ensure that the Scheme is a Registered Scheme at all times during the period of the Scheme.

Best interests of Unit Holders paramount

- 14.7 The Responsible Entity:
- 14.7.1 will perform its functions and exercise its powers under this Constitution in the best interest of all Unit Holders and not in the interests of the Responsible Entity if those interests are not the same as those of Unit Holders generally; and
 - 14.7.2 subject to sub-clause 14.7.1, will treat the Unit Holders of the same class equally and will treat Unit Holders of different classes fairly.

Responsible Entity's Specific Duties

- 14.8 The Responsible Entity must use its best endeavours to ensure that all valid notices from and requirements of authorities (government or otherwise) are complied with and that the Scheme Property are let, invested, managed and otherwise dealt with to the best advantage.
- 14.9 The Responsible Entity may appoint managing agents, brokers, accountants, solicitors or other qualified Persons to assist it in the conduct of its obligations under this Clause 14.
- 14.10 Notwithstanding anything else in this Constitution but subject to the Corporations Act functions to be performed by the staff, employees or officers of the Responsible Entity may be performed by the staff, employees or officers or contractors to the Responsible Entity or a related entity of the Responsible Entity.

15. INSURANCE

- 15.1 The Responsible Entity will ensure that such insurances as it considers appropriate are effected in the name of the Responsible Entity for and on behalf of this Scheme.

Professional Indemnity Insurance

- 15.2 The Responsible Entity must ensure that all times professional indemnity insurance required as a condition of the Responsible Entity's Licence is effected and maintained in the name of the Responsible Entity with a respectable and responsible insurance company.

Compliance Committee

- 15.3 The members of the Compliance Committee may request the Responsible Entity to pay for them from the Scheme Property for such insurance that they and the Responsible Entity together consider appropriate against liability arising from their activities as members of the Compliance Committee of the Scheme.

Review of Insurance

- 15.4 The Responsible Entity must at least once each year review all insurances and may make any amendments, alterations or additions thereto or change the insurer where it considers it is in the best interest of the Scheme and Unit Holders to do so.

16. INCOME OF THE SCHEME

Determination of Income and reserves

- 16.1 The Responsible Entity is to determine, according to generally accepted accounting principles and practices which apply to trusts:
- 16.1.1 the Income of the Scheme, and in particular, whether any receipts or outgoings of the Responsible Entity are on income account or capital account; and
 - 16.1.2 the extent to which the Scheme needs to make reserves or provisions.

Distribution of Distribution Entitlement

16.2

16.2.1 *Calculating the entitlement*

After each Distribution Calculation Date the Responsible Entity must calculate for the relevant Distribution Recipient each Unit Holder's Distribution Entitlement.

16.2.2 *Determining who has the entitlement*

At the end of each Distribution Period each Unit Holder at the end of the day on the Distribution Calculation Date is presently entitled to its Distribution Entitlement.

16.2.3 *Payment of entitlement to a person entitled to it*

For each Distribution Recipient the Responsible Entity must pay to each Distribution Recipient its Distribution Entitlement on or before that date being 10 days after the Distribution Calculation Date.

Calculation of Distribution Entitlement

16.3

16.3.1 *Calculation of Distributable Amount*

The 'Distributable Amount' for a Distribution Period is to be determined in accordance with the following formula:

$$DA = I + C$$

Where:

- DA is the amount of Distributable Amount;
- I is the Income of the Scheme for the Distribution Period minus any amount of the Income that is set aside during the Distribution Period as reserves or provisions under sub-clause 16.1; and
- C is any additional amount (including capital, previous reserves or previous provisions) that the Responsible Entity has determined during the Distribution Period is to be distributed.

16.3.2 Calculation of Distributable Entitlement

The Distributable Entitlement of each Distribution Recipient is the total of the Unit Entitlement in relation to each Unit held by the Distribution Recipient at the end of the day on the Distribution Calculation Date, as determined in accordance with paragraph 16.3.3.

16.3.3 Calculation of Unit Entitlement

The Unit Entitlement in relation to a Unit is to be determined in accordance with the following formula:

$$UE = \frac{DA}{\Sigma U}$$

Where:

- UE is the Unit Entitlement
- DA is the Distributable Amount

ΣU is the total number of Units on issue in the Scheme

- Means of Payment**
- 16.4 The Distributable Amount shall be paid to a Unit Holder by depositing into an account with a bank or other financial institution nominated by the Unit Holder and approved by the Responsible Entity or by being reinvested in the Scheme or otherwise as directed by the Unit Holder.

Payment to Joint Unit Holders

- 16.5 If two or more Persons are entered in the Register of Unit Holders as joint Unit Holders of any Units then the receipt of one of these Persons for the monies, from time to time payable in respect of the Units, shall be as effective a discharge to the Responsible Entity as if the Person signing the receipt was the sole Unit Holder of such Units.

17. DEDUCTION OF TAX

Deductions

- 17.1 The Responsible Entity may deduct from any amount payable or distributable to a Unit Holder, or received from a Unit Holder any amount of *Taxes* (or estimate or instalment of it), which it is required or authorised to deduct in respect of that payment or receipt by Law, or by this Constitution or which the Responsible Entity considers should be deducted. Without limiting the generality of this, this could include, any amount of Tax which may be

payable on, or in respect of, the issue of Units to, or cancellation of Units of, or distributions to, that Unit Holder.

Payments

- 17.2 The Responsible Entity may make a payment in respect of any amount of Taxes that the Responsible Entity reasonably believes are payable or anticipated to become payable by the Responsible Entity being Taxes which are referable to a Unit Holder or the Scheme or for which a Unit Holder or the Scheme are primarily liable.

Notification

- 17.3 The Responsible Entity must advise the Unit Holder, or cause the Unit Holder to be advised, of any payment or deduction made under this clause as soon as possible after the time the payment or deduction is made.

Application

- 17.4 The Responsible Entity may apply the deduction towards:-
- 17.4.1 reimbursement of the Scheme for any corresponding amount paid or reimbursed out of the Scheme;
 - 17.4.2 reimbursement of the Responsible Entity for payment of the amount; or
 - 17.4.3 the payment of Taxes to the Person or authority entitled to it.

Indemnity

- 17.5 The Responsible Entity is entitled to be indemnified out of the Scheme Property in relation to any amount of Taxes referred to in Clause 17.1 or 17.2 paid (whether or not the amount was due or payable) or payable by it.

Application of GST

- 17.6 The Responsible Entity may determine any amounts that are directly payable by, or directly attributable to, or indirectly payable by or attributable to, the Scheme, or a Unit Holder, by application of the GST. For this purpose, the Responsible Entity may have regard to:
- 17.6.1 the provisions of the Tax Act;
 - 17.6.2 the advice of an accountant instructed by the Responsible Entity or the Auditor.
- 17.7 The Responsible Entity will prepare and lodge all applications and returns relevant to or otherwise associated with GST. For this purpose, the Responsible Entity may engage the services of an accountant to assist the Responsible Entity in this task.
- 17.8 Any excess input tax credits that are refunded to the Responsible Entity on behalf of the Scheme or Unit Holders, will form part of the Scheme Property.
- 17.9 The Responsible Entity is entitled to be reimbursed out of the Scheme Property for any Taxes paid by it on behalf of the Scheme or Unit Holders, including GST, as specified in Clause 23 of this Constitution.

18. FINANCIAL RECORDS, AUDITS AND VALUATION

Financial records and statements

- 18.1 The Responsible Entity will comply with its obligations at Law in respect of preparing, auditing and issuing the financial statements and reports of the Scheme.

19. INVESTMENT

- 19.1 It is the role of the Responsible Entity to seek and invest the funds of the Scheme in Authorised Investments.
- 19.2 Subject to any exceptions contained in the Corporations Act or any ASIC Relief (including any ASIC class orders) the Responsible Entity may only invest Scheme Property, or keep Scheme Property, in another managed investment scheme or prescribed interest scheme, if that other scheme is registered under the Corporations Act.
- 19.3 The Responsible Entity shall implement practices, systems and procedures to monitor the performance of Authorised Investments made by it and shall where considered prudent and appropriate take whatever action as may be necessary to protect the capital value of the Authorised Investments of the Scheme including institution of any recovery actions under securities held in respect of Authorised Investments made in order to recover or maximize recovery of the capital and any unpaid income component of any Authorised Investment.

20. BROKERAGE AND COMMISSION

Payment

- 20.1 The Responsible Entity will not pay brokerage or commission in respect of a subscription for Units to a Person who is an Australian resident unless the Person is authorised at Law to accept commissions or brokerage.

21. LIABILITY OF RESPONSIBLE ENTITY

Liability limited to amount recovered

- 21.1 In the absence of fraud, negligence or breach of this Constitution or as otherwise provided under the Corporations Act on the part of the Responsible Entity, the Responsible Entity is not liable to one or more of the Unit Holders or the Scheme, for any amount beyond the amount to which it is entitled to recover and is actually indemnified for, through its right of indemnity in respect of the Scheme.

Contractual limitation of liability

- 21.2 Subject to the Corporations Act, but without limiting any other clause, the Responsible Entity is not required to do anything which involves the Responsible Entity incurring a liability (actual or contingent) unless it is satisfied, in its absolute discretion, that its liability is satisfactorily limited.

Limitation of Liability

- 21.3 Without limiting any other clause, to the extent permitted under the Corporations Act, except in the case of fraud, negligence or breach of this

Constitution on the part of the Responsible Entity, the Responsible Entity is not liable beyond the Scheme Property actually vested in it for any loss or damage to any Person in acting or omitting to act in good faith where:

- 21.3.1 it relied upon information or the authenticity of any document, signature or marking provided that it had no reason to believe that the information was not correct or the document, signature or marking was not authentic;
- 21.3.2 it relied upon the advice, services or opinion of any Person, consultant or adviser (including lawyers, accountants and other professional advisers), provided that the Responsible Entity believed the Person to have relevant expertise;
- 21.3.3 it paid or retained money in good faith or to meet liability to a duly empowered fiscal authority;
- 21.3.4 it acted under the compulsion of a law of the Commonwealth, a State or Territory, or in accordance with the terms of an order or judgment of any competent court; or
- 21.3.5 a Person (other than a company under its control) failed to carry out any agreement with the Responsible Entity or any of its agents in connection with the Scheme.

Other obligations excluded

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

Indemnification

- 21.5 Without limiting any other clause, to the extent permitted under the Corporations Act, except in the case of fraud, negligence or breach of this Constitution on the part of the Responsible Entity, the Responsible Entity shall be entitled to be indemnified out of the Scheme Fund in respect of all Liabilities incurred by the Responsible Entity relating to the execution of any powers, duties, authorities or discretions vested in it by virtue of the provisions of this Constitution, and in respect of all actions, proceedings, costs, claims and demands in relation to any matter or thing done or omitted to be done concerning the Scheme, provided that the right of the Responsible Entity to be indemnified in respect of any liability incurred by the Responsible Entity or arising in or about:
 - 21.5.1 the investment and administration of the Scheme;
 - 21.5.2 in the conduct and management of any business forming part of the Scheme;
 - 21.5.3 in the acquisition of any Authorised Investment under any contract entered into by the Responsible Entity;
 - 21.5.4 or by reason of the execution of any power, duty, authority or discretion vested in the Responsible Entity,

shall be limited always to Scheme Property of the Scheme in the hands of the Responsible Entity for the time being and shall not extend to enable the Responsible Entity to recover any loss or obtain reimbursement for any liability incurred from any Unit Holder or other Person beneficially entitled to any Unit.

- 21.6 Subject to the Law, the indemnity of the Responsible Entity under this clause 21 is in priority to the interests of Unit Holders.

22. RETIREMENT OR REPLACEMENT OF RESPONSIBLE ENTITY

Voluntary Retirement

- 22.1 The Responsible Entity will comply with its obligations at Law in respect of its retirement and replacement.

23. REMUNERATION OF RESPONSIBLE ENTITY

Remuneration

- 23.1 The Responsible Entity is entitled to be paid out of Scheme Property a management fee equal to the sum of 0.7% per annum of the value of the total funds under management as determined with reference to the preceding month and the most recent audited accounts. This fee will be calculated and payable monthly in advance.
- 23.2 The fee payable after 15 October 2008 to the Responsible Entity under clause 23.1 will only be paid for a period of 2 years commencing on the date Unitholders are in receipt of cash payments totalling 3 cents per unit. After that period the Responsible Entity will no longer be entitled to the remuneration set out in clause 23.1

Fee upon removal of Responsible Entity

- 23.3 In the event that Wellington Capital Limited is appointed as Responsible Entity to the Scheme and is subsequently removed without its consent for any reason other than negligence or fraud, Wellington Capital Limited will be entitled to receive payment of removal fee of 2% of the gross value of the Scheme (as determined in the most recent audited accounts) which fee is payable immediately prior to replacement of Wellington Capital Limited as Responsible Entity of the Scheme. This fee will only be payable on removal of Wellington Capital Limited as Responsible Entity of the Scheme and may not otherwise be claimed by Wellington Capital Limited in any other circumstances.
- 23.4 In the event that clause 23.3 is declared or determined to be invalid or unenforceable, or otherwise at the discretion of Wellington Capital Limited, where removed as Responsible Entity, may declare that the following provisions alternatively apply in the event of its removal as Responsible Entity of the Scheme:
- 23.4.1 if the Responsible Entity is removed (for reasons other than for a breach of its duties or the Law) as the Responsible Entity of the Scheme, the replacement Responsible Entity will cause to be valued the assets of the Scheme as at the date of removal and within 60 days of the removal cause the removed Responsible Entity to be paid out of the Scheme the fee referred to in clause 23.3

- 23.4.2 if Wellington Capital Limited becomes entitled to a payment pursuant to this clause then its successors as Responsible Entity are not entitled to any payment of the performance fee referred to in this clause 23.3
- 23.5 Subclauses 23.3 and 23.4 have effect on the basis that they consist of separate covenants. If subclause 23.3 becomes invalid or unenforceable for any reason, then the invalidity or unenforceability does not affect clause 23.4. Only one or either of subclauses 23.3 or 23.4 may apply at any one time.

Proper Performance

- 23.6 The Responsible Entity's rights to be paid a fee out of Scheme Property, or to be indemnified out of Scheme Property, or to be indemnified out of Scheme Property for Liabilities or expenses incurred in relation to the performance of its duties, are only available in relation to the proper performance of those duties.

Remuneration to accrue from day to day

- 23.7 The Responsible Entity's Remuneration under clause 23 accrues from day to day.

Waiver or reduction of remuneration

- 23.8 The Responsible Entity may waive remuneration for any period, or to reduce the amount of remuneration, or defer payment of remuneration, to which it is entitled under this clause.

Costs and Expenses payable out of the Scheme

- 23.9 Subject to Clauses 23.1, 23.10, 23.11 and 23.12, and the Corporations Act, the Responsible Entity is entitled to be paid or reimbursed out of the Scheme Property in respect of all remuneration, expenses, outgoings, fees, losses, damages, charges, Taxes, costs and disbursements which it may pay or incur, including but not limited to:
- 23.9.1 the Responsible Entity's Remuneration as calculated in accordance with Clause 23.1;
 - 23.9.2 the Scheme, the Scheme Fund, the Scheme Property or the Liabilities;
 - 23.9.3 the formation, administration, management, promotion, listing or restructuring of the Scheme, or of its Scheme Property and Liabilities;
 - 23.9.4 the preparation, execution and stamping of this Constitution and any deeds or proposed deeds supplemental to this Constitution;
 - 23.9.5 the cost of auditing Accounts and all other services of the Auditor required by this Constitution or the Corporations Act and all systems for the purposes of the Scheme, including in calculating the value of any item or amount for the purposes of this Constitution;
 - 23.9.6 the cost of establishing and maintaining the Register (including the fees and expenses of a registry manager notwithstanding that it may be the Responsible Entity's agent);
 - 23.9.7 disbursements incurred in connection with the actual, attempted or proposed acquisition or sale of Scheme Property, the investment, development, maintenance, registration, custody, disposal of or other

-
- dealing with any Scheme Property or Liabilities, including legal fees, stamp duties, brokerage and commission;
- 23.9.8 valuation fees payable in relation to Scheme Property;
- 23.9.9 disbursements incurred in connection with any re-arrangement of the capital structure of the Scheme;
- 23.9.10 expenditure made on the Scheme Property for the purpose of maintaining or enhancing their value;
- 23.9.11 disbursements incurred in connection with convening or holding any meeting of Unit Holders and implementing any resolutions passed by Unit Holders and communications with Unit Holders;
- 23.9.12 any auditor, valuer, actuary, attorney, banker, lawyer, manager, accountant, real estate agent, computer Expert or other Expert from time to time instructed by the Responsible Entity, including legal costs and expenses on either a full indemnity basis or solicitor/client basis whichever is the higher and audit costs and disbursements relating to the audit of the Compliance Plan for the Scheme and audit of financial reports and accounts in respect of the Scheme;
- 23.9.13 disbursements incurred in connection with any Modification of this Constitution;
- 23.9.14 costs and disbursements incurred in any issue or offer of Units including, without limitation, costs and disbursements incurred in the preparation, verification, registration, printing, distribution and promotion of a PDS;
- 23.9.15 underwriting fees payable to an underwriter of any issue of Units pursuant to an underwriting agreement and commission, trailing commission, procuration or other fees or brokerage as the Responsible Entity may determine to any Person subscribing or obtaining subscriptions for or underwriting the issue or purchase of Units;
- 23.9.16 borrowings or raisings and other financial accommodation (including capital repayments, Units and discount and other bank fees) and any bank account or services offered by any financial institution (including electronic funds transfer and other electronic banking or payment services) including for the avoidance of doubt, any method of making payments to Unit Holders;
- 23.9.17 all income tax, capital gains tax, good and services tax, stamp duties, financial institutions duties and bank account debit taxes and fines and penalties relating to any of these and any other tax duty, or imposition payable by, or paid by, the Responsible Entity on account of or on behalf of the Scheme or Unit Holders;
- 23.9.18 costs of preparing, printing and posting and despatching of all statements, cheques, Accounts, notices, reports, distribution statements and other documents sent to Unit Holders (whether or not expressly required to be sent by law of this Constitution);
- 23.9.19 costs and disbursements incurred by or on behalf of the Responsible Entity in connection with its retirement and the appointment of a substitute, including costs associated with the preparation, execution

and stamping of any deed of retirement and release, and including the vesting of property in a new Responsible Entity;

23.9.20 the termination or winding up of the Scheme;

23.9.21 except where the court otherwise directs, costs and disbursements incurred in the initiation, conduct and settlement of any court proceedings (including any negotiations, conferences and demands) made or brought by the Responsible Entity in respect of any breach or default under this Constitution;

23.9.22 costs and disbursements incurred by the Responsible Entity in the initiation, conduct and settlement of any court proceedings (including any negotiations, conferences and demands) to enforce any provision of this Constitution, in respect of the Scheme or any part of it or otherwise to protect the interest of Unit Holders;

23.9.23 rates, taxes, charges, assessments and impositions, whether parliamentary, governmental, municipal or otherwise, assessed, charged, levied or imposed in respect of the Scheme Property;

23.9.24 premiums and other disbursements incurred in insuring a Scheme Investment or Scheme Property as specified in this Constitution;

23.9.25 that proportion of the premium for professional indemnity insurance taken out by the Responsible Entity that the value of Scheme Property bears to the total value of property in relation to which the Responsible Entity is the responsible entity or manager and in relation to which the activities of the Responsible Entity are covered under the policy;

23.9.26 costs and disbursements incurred in preparing and lodging returns, notices or statements under the Corporations Act or the Corporations Regulations or any other statute binding on the Responsible Entity;

23.9.27 the costs of acquiring, establishing, maintaining and developing computer hardware and computer software systems required for the administration of the Scheme;

23.9.28 all costs and disbursements incurred by or in relation to the Compliance Plan (including maintaining and auditing), the fees, remuneration and expenses of members of any Compliance Committee in respect of the Scheme and the expenses of the committee;

23.9.29 all Liabilities;

23.9.30 the fees, remuneration, costs and expenses of agents of the Responsible Entity not otherwise provided for, which would normally fall outside the normal expertise of a responsible entity of a Scheme similar to the Scheme; and

23.9.31 all other costs and disbursements in connection with the management and administration of the Scheme, the management and administration of the Scheme Property, researching property and securities markets, the performance of the functions and duties of the Responsible Entity under this Constitution and under the Law and the

performance of the Custodian together with all related costs and disbursements of the Custodian.

23.9.32 all other legal fees associated with the management and operation of the Scheme, including but not limited to legal fees associated with any default procedures that are implemented by the Responsible Entity pursuant to loan documentation prepared, during the term of the Scheme.

Personal liability of Responsible Entity

23.10 An amount referred to in Clause 23.9 which is incurred or payable as a direct result of neglect, fraud or breach of this Constitution on the part of the Responsible Entity, shall not be paid out of the Scheme.

Costs and expenses to be reasonable

23.11 An amount referred to in Clause 23.9 is not to be paid out of the Scheme, unless it has been reasonably and properly incurred or charged.

GST

23.12 The Responsible Entity shall be entitled to increase its fee or remuneration to take into account the GST portion payable on its fee or remuneration.

Charge to borrowers

- 23.13 In addition to the remuneration the Responsible Entity is entitled to receive pursuant to this Clause 23, the Responsible Entity will be entitled to charge borrowers establishment fees and rollover fees of the type generally charged by many lenders.
- 23.14 Notwithstanding anything else in this Constitution the Responsible Entity may in lieu of fees, remuneration or the reimbursement of expenses and costs may accept Units in the Scheme, provided those Units are issued at an Issue Price that does not exceed the current Issue Price of Units of that class.
- 23.15 Subject to the law, the entitlement to indemnification and reimbursement under this clause 23 is in priority to the interests of Unit Holders.
- 23.16 Where the base rate or warranted rate of return provided in the PDS is not paid to investors, then notwithstanding any other provision in this Constitution the Responsible Entity may still be paid a management fee (in priority to distributions to investors) (and whether in units or cash) up to a maximum as disclosed in the PDS.
- 23.17 Because the Wholesale Premium Income Fund ARSN 107 973 071 acts as a feeder fund to the Scheme, the Responsible Entity on behalf of the Scheme has agreed (subject to the Corporations Act) to pay the fees, costs and operating expenses (excluding Borrowings) of Wholesale Premium Income Fund ARSN 107 973 071 from the assets of the Premium Income Fund ARSN 090 687 577.
- 23.18 For the purpose of clause 23.17 only and notwithstanding any other provision in this Constitution:
- 23.18.1 'Borrowings' includes all costs, expenses, interest and any liability arising from or in connection with any financial accommodation obtained by the responsible entity of the Wholesale Premium Income Fund ARSN 107 973 071;

23.18.2 clause 23.17 is not an indemnity by the Responsible Entity in favour of either the Wholesale Premium Income Fund ARSN 101 973 071 or its responsible entity;

23.18.3 the Responsible Entity may at any time terminate the arrangement referred to in clause 23.17; and

23.18.4 Clause 23.17 only applies where the responsible entity of the Wholesale Premium Income Fund ARSN 107 973 071 remains the same as the Responsible Entity of the Scheme.

24. MEETINGS OF UNIT HOLDERS

Convening a meeting

24.1 The Responsible Entity may whenever it thinks fit convene a meeting of Unit Holders.

24.2 All Unit Holders' meetings will be conducted in accordance with the procedures contained in the Corporations Act and if no procedure is prescribed, accepted meeting practice.

25. THE COMPLAINTS PROCEDURE

Introduction

25.1 This section outlines the procedure that will be undertaken to resolve a Complaint under the Responsible Entity's IDR Program. The procedure comprises the following steps:

25.1.1 making a Complaint;

25.1.2 acknowledgement of receipt of Complaint;

25.1.3 dealing with the Complaint;

25.1.4 determining the likely outcome of the Complaint and negotiating a resolution with the Complainant;

25.1.5 notifying the Complainant of the decision and seeking the Complainant's acceptance;

25.1.6 review of the Complaints process;

25.1.7 monitoring the Complaints Register.

Step 1 – making a Complaint

25.2 Complaints may be made by customers/clients, investors/advisers ('the Complainant') in the following ways, by way of example:

25.2.1 to the Complaints Officer – Caroline Snow, in any of the following forms:

(1) by telephone – (07) 3009 9800;

(2) by written letter – GPO Box 694, Brisbane, Queensland 4001;

(3) by facsimile – (07) 3009 9893; or

(4) by email – csnow@wellcap.com.au,

25.2.2 to individual staff members (with whom the Complainant has had dealings), in any of the following forms:

- (1) by telephone;
- (2) by written letter;
- (3) by facsimile; or
- (4) by email,

25.2.3 to the Responsible Entity generally, in any of the following forms:

- (1) by telephone;
- (2) by written letter;
- (3) by facsimile; or
- (4) by email.

25.2.4 Where a Complaint is received verbally, the person receiving the Complaint should:

- (1) record the particulars of the Complainant;
- (2) record the relevant facts relating to the Complaint;
- (3) if not received by the Complaints Officer, advise the Complainant that the Complaint will be referred to the Complaints Officer; and
- (4) advise the Complainant that they will receive acknowledgement of their Complaint from the Complaints Officer within five Business Days.

25.2.5 Where a Complaint is received verbally, the person receiving the Complaint should not:

- (1) attempt to resolve the Complaint over the telephone;
- (2) be defensive, argumentative, derogatory or offensive; and
- (3) discuss with the Complainant any matter which would be contradictory to the IDR Program, including discussing confidential information.

Step 2 – acknowledgement of Complaints

25.3 The Responsible Entity must write to the Complainant within **five Business Days** of receipt of the Complaint. The written notification must contain:

- 25.3.1 acknowledgement that the Complaint has been received;
- 25.3.2 a description of the process which the Complaint will then be subject to (including further notifications and relevant time frames for resolution of the Complaint);
- 25.3.3 the relevant contact details of the Complaints Officer;
- 25.3.4 the relevant contact details of the person(s) investigating the Complaint;
- 25.3.5 acknowledgement that the Complainant's details and the Complaint will be dealt with confidentially and only by the persons specified in

the acknowledgement will have access to such information. The following paragraph should be inserted:

‘If you feel there is an issue relating to your privacy, which remains unresolved, or you wish the Privacy Commissioner to further investigate your Complaint, you can contact the Office of the Privacy Commissioner as detailed below:

Office of the Privacy Commissioner

GPO Box 5218
SYDNEY NSW 1042

Telephone: 1300 363 992 (local call anywhere in Australia)

Email: privacy@privacy.gov.au

- 25.3.6 an undertaking that no fee will be charged for the resolution of the Complaint;
- 25.3.7 any remedies that may be available to the Complainant; and
- 25.3.8 a reference to the Responsible Entity’s External Dispute Resolution service and that the Complainant may refer the dispute to this service at any time, if they are not satisfied that it is being dealt with appropriately, this should be done by inserting the following paragraph:

‘The Responsible Entity is a member of an independent dispute resolution scheme, the Financial Ombudsman Service (‘COS’). If, at any time, you feel your Complaint remains unresolved or you wish COS to further investigate your Complaint, you can contact COS as detailed below:

Credit Ombudsman Service Limited

Case Management Team
PO Box A252
SYDNEY SOUTH NSW 1235

Telephone: 1800 138 422

Facsimile: (02) 9273 8440

Internet: <http://www.cosl.com.au>

The acknowledgement must be in writing and may be sent to the Complainant through any of the following means:

- (1) by written letter;
- (2) by facsimile; or
- (3) by email.

Annexure A to the IDR Program is a Specimen Form Letter for acknowledgement of receipt of a Complaint, which is intended to provide guidance.

Step 3 – dealing with the Complaint

- 25.4 All Complaints (whether received verbally or in writing) should be referred to the Complaints Officer who should:
 - 25.4.1 record the Complaint in the Complaints Register;

- 25.4.2 acknowledge receipt of the Complaint in accordance with section 25.3 of the IDR Program;
- 25.4.3 investigate the Complaint either personally, or refer the investigation to a staff member who has had appropriate training in dispute resolution and has not previously had contact with the Complainant ('Independent Staff Member'); and
- 25.4.4 where the Compliance Officer is not investigating and resolving the Complaint, they must supervise the ongoing investigation and resolution of the Complaint.

Step 4 – resolving the Complaint

- 25.5 The Complaints Officer, or Independent Staff Member should investigate the Complaint. This will involve (where necessary):
 - 25.5.1 giving all parties an opportunity to present their case (including the Complainant and all relevant staff members);
 - 25.5.2 talking to relevant staff members (who may have further facts relating to the Complaint);
 - 25.5.3 clarify any factual issues with the Complainant (this may be done either in writing or verbally – in person or by telephone);
 - 25.5.4 formulate a report to be included in the Complaints Register and provided to the head of the department/division of the Responsible Entity, who form the basis for the Complaint. This report should detail all relevant facts and information relating to the Complaint and the steps taken to resolve the Complaint including a negotiation strategy for resolving the Complaint; and
 - 25.5.5 attempt to resolve the Complaint, liaising where necessary with Senior Management.
- 25.6 Throughout the resolution process, the confidentiality of all persons must be maintained and only Senior Management, the Compliance Committee, the Compliance Manager, the Complaints Officer and the Independent Staff Member should have access to confidential information. The person designated as Independent Staff Member is expected to be a person to whom the Complaints Officer can refer Complaints for processing.
- 25.7 Annexure B to the IDR Program comprises a Specimen Letter which can be used as guidance. This version presupposes that an offer is made to the Complainant as a means of procuring resolution of the Complaint.

Step 5 – communicating and documenting resolution of the Complaint

- 25.8 A resolution should be determined and communicated to the Complainant within **30 Business Days** of receipt of the Complaint. If this will not be possible, at the earliest time practicable, the Complainant should be notified in writing that there will be a delay in the resolution of their Complaint, and reasons for the delay should be given. Depending on the authority of the Complaints Officer and the nature of the resolution proposed, Senior Management may need to approve the means of resolving the Complaint before any offer is put to the Complainant.

Once a resolution is reached, the Complaints Officer should:

- 25.8.1 in writing, notify the Complainant of the result of the Complaint, which as a minimum should include:
 - (1) the details of the resolution of the Complaint;
 - (2) the reasons for the decision made;
 - (3) any remedies or redress available to the Complainant; and
 - (4) a referral to the Responsible Entity's External Dispute Resolution service (as discussed at section 25.3(h)) should the Complainant be unsatisfied with the resolution of the Complaint;
- 25.8.2 prepare a final report to be recorded in the Complaints Register;
- 25.8.3 notify the relevant department/division of the result of the Complaint and suggest any action that can or should be taken to avoid similar Complaints in the future; and
- 25.8.4 notify the Compliance Manager and Senior Management of the Complaint's resolution or the outcome.

Step 6 – unresolved Complaints

- 25.9 Where a Complaint remains unresolved (but recognising that a decision has been made), after 30 Business Days of receipt of the Complaint, the Complaints Officer should refer the Complaint to the Compliance Manager and Senior Management. Note that the Complainant should have received notice in accordance with section 25.6.

Step 7 – reviewing the Complaints process

- 25.10 The Complaints Officer must maintain a Complaints Register which must record details of all Complaints received, it should, at a minimum:
 - 25.10.1 categorise Complaints and group them under relevant headings (to facilitate review);
 - 25.10.2 record all particulars of the Complainant;
 - 25.10.3 provide all information relevant to the Complaint from both the Complainant and the relevant staff/department/division;
 - 25.10.4 include copies of all correspondence relating to the Complaint (including all emails, letters and facsimiles sent and received and file notes detailing particulars of conferences, telephone calls, meetings and actions); and
 - 25.10.5 any reports prepared by the Complaints Officer, or relevant investigating staff member (including any reports made to Senior Management).
- 25.11 The Complaints Officer is responsible for the maintenance and currency of the Complaints Register and should conduct a monthly audit of the Complaints Register.
- 25.12 The Complaints Officer should prepare a Quarterly Report to the Compliance Manager, Senior Management and the Compliance Committee. The report should disclose:

- 25.12.1 all Complaints received by the Responsible Entity for that quarter;
- 25.12.2 the details of the resolution of those Complaints;
- 25.12.3 the number of Complaints outstanding and proposed timeframes and progress reports;
- 25.12.4 recommendations to the Responsible Entity which seek to address issues discovered through the investigation and resolution of Complaints; and
- 25.12.5 recommendations relating to the improvement of the IDR Program.
- 25.13 The Compliance Manager, Senior Management and the Compliance Committee should review the Quarterly Reports and amend the Responsible Entity's practices and the IDR Program as they deem necessary.
- 25.14 **(internal review)** The IDR Program will be subjected to an annual Internal Review by Senior Management. This Internal Review should be a comprehensive review of the IDR Program, measuring its effectiveness against the relevant ASIC benchmarks and other law and policy and taking into account any changes in the Responsible Entity's business.
- 25.15 **(external review)** The IDR program will be subject to an External Review, to be conducted by lawyers appointed by Senior Management, held at least every five years.

26. WINDING UP OF SCHEME

Section 601NC(2)

- 26.1 The Responsible Entity must not resolve to wind up the Scheme unless the Responsible Entity has complied with the provisions of Section 601NC(2) of the Corporations Act.

Termination Event

- 26.2 Upon the happening of one of the following events, (identified as a '**Termination Event**'), the Scheme shall be wound up:
 - 26.2.1 the Unit Holders by *Special Resolution*, direct the Responsible Entity to wind up the Scheme;
 - 26.2.2 **[Not Altered not reproduced]**;
 - 26.2.3 the Court makes an order directing the Responsible Entity to wind up the Scheme pursuant to Section 601ND of the Corporations Act;
 - 26.2.4 the Unit Holders pass an Extraordinary Resolution to remove the Responsible Entity and do not appoint a new Responsible Entity;
 - 26.2.5 the Responsible Entity gives at least three (3) months' notice of termination of the Scheme to Unit Holders;
 - 26.2.6 the Responsible Entity gives notice under Section 601NC(2) of the Corporations Act and no meeting of Unit Holders is called pursuant to Section 601NC(2)(b).

Realisation

- 26.3 As soon as practicable after a Termination Event, the Responsible Entity must realise the Scheme Property and satisfy the Liabilities.

Final distribution to Unit Holders

- 26.4 Only after all Liabilities have been discharged, and all expenses of termination - including anticipated expenses - have been met or accounted for, is the net proceeds of realisation to be distributed to the Unit Holders in proportion to the paid up value of the Units they hold. The net proceeds of realisation may be distributed in instalments. The final distribution to Unit Holders must occur prior to the 80th anniversary of the date of this Constitution.

Final Accounts

- 26.5 The Responsible Entity must arrange for the final accounts to be audited by an independent registered company or auditor or firm of chartered accountants of which at least 1 partner is a registered company auditor.

Retention of Scheme Property

- 26.6 Subject to this Clause 26, and the Corporations Act, the Responsible Entity may retain in its hands, or under its control, any Scheme Property as may be required in its reasonable opinion, to meet any Liabilities or any of the investments of the Scheme provided that any Scheme Property so retained to the extent that they are ultimately found not to be required, will remain subject to the Scheme for conversion and distribution pursuant to this Constitution.

Unclaimed money to be paid to ASIC

- 26.7 If, on completion of the winding up of a registered scheme, the Person who has been winding up the Scheme has in their possession or under their control any unclaimed or undistributed money or other property that was part of the Scheme Property, the Person must, as soon as practicable, pay the money or transfer the property to the ASIC to be dealt with under Part 9.7 of the Corporations Act.

27. LIMITATION OF LIABILITY OF UNIT HOLDERS

- 27.1 Notwithstanding any other provision of this Constitution or provision deemed to be included herein or any rule of Law to the contrary, no Unit Holder shall, by reason thereof, or by reason of the relationship created with the Responsible Entity, be under any obligation personally to indemnify the Responsible Entity or any creditor of the Responsible Entity in the event of there being any deficiency of the Scheme Property or the Scheme Fund as compared with the Liabilities of the Responsible Entity. The only rights, if any, of indemnity of the Responsible Entity or of such creditor shall be limited to recourse to the Scheme Property of the Scheme Fund.
- 27.2 A Unit Holder shall not be liable for any loss or damage howsoever incurred or suffered by the Responsible Entity in acting as manager of the Scheme or otherwise in connection with the Scheme to the extent to which the same exceeds so much of the consideration (if any) payable for the issue of Units to the Unit Holder as may be unpaid and outstanding.
- 27.3 The Responsible Entity expressly waives, releases, forfeits and abandons all rights and remedies which it otherwise might have at Law or in equity to recover from a Unit Holder's monies by reason of any right of indemnity or subrogation notwithstanding that any such right may not be able to be

satisfied or discharged in whole or in part out of the Scheme Property comprising the Scheme Fund.

28. MODIFICATION OF CONSTITUTION

- 28.1 The Constitution may be modified, or repealed and replaced with a new Constitution as authorised by the Corporations Act.

29. NOTICES

Giving of Notices

- 29.1 Any notice required to be given to a Unit Holder under this Constitution or the Corporations Act or to the Responsible Entity will, if posted, be deemed to have been duly given if it be in writing and either delivered to, or sent by pre-paid post addressed to the Unit Holder at the Unit Holder's last known address appearing in the Register.

Service of Notice

- 29.2 Service of a notice or demand shall be sufficient and effective if:

Service on a company

- 29.2.1 Where service is to be made on a company, the notice or demand is:

- (1) delivered to the registered office of that company;
- (2) served personally upon any director of that company;
- (3) posted by ordinary prepaid post or by security mail in an envelope addressed to the company at its registered office or place of business last known to the Person serving the notice or demand in which event the notice or demand shall be deemed to have been received on the second Business Day following the date upon which the envelope containing the same was posted.

Service on an individual

- 29.2.2 Where service is to be made upon a natural Person, the notice or demand is:

- (1) served personally upon that Person;
- (2) delivered to the home or place of business of that Person;
- (3) posted by ordinary prepaid post or by security mail in an envelope addressed to the party at his place of residence or business last known to the Person serving the notice or demand in which event the notice or demand shall be deemed to have been received on the second Business Day following date upon which the envelope containing the same was posted.

Reservations regarding service

- 29.3 Notwithstanding the provisions of the two previous Clauses:

- 29.3.1 Service of a notice or document on any one of several joint Unit Holders shall be deemed effective service on the other joint holders.

- 29.3.2 Any notice or document delivered at or posted to the registered address of a Unit Holder shall, notwithstanding that such Unit Holder be deceased and whether or not the Responsible Entity has notice of his death, be deemed to have been duly served and such service shall be deemed a sufficient service on the legal personal representative of the deceased Unit Holder and all Persons (if any) registered as joint Unit Holders with him in respect of the Units.

Other Methods of Giving Notices Acceptable

- 29.4 Subject to the Corporations Act, the Responsible Entity may determine other methods of providing notice, including electronic methods, and may also determine corresponding rules relating to deemed service and proof of service.

30. GENERAL

Severability

- 30.1 If any provision of this Constitution is illegal or invalid because it offends any applicable law:
- 30.1.1 if the offending provision can be read down so as to give it a partially valid operation, it must be read down to the extent necessary to achieve that result; and
- 30.1.2 in any other case, the offending provision must be severed in which event the remaining provisions will operate as if the severed provision had not been included.

Governing Law

- 30.2 This Constitution is governed by the law of Queensland.

Bound by Constitution

- 30.3 This Constitution is executed for the benefit of Unit Holders and is legally enforceable as between the Unit Holders and the Responsible Entity.
- 30.4 Each Person upon becoming registered as the holder of a Unit (and all Persons claiming through them), shall be entitled to the benefit of, and be bound by the terms and conditions of this Constitution (as amended), as if each Person had been a party to this Constitution, and the conditions (if any) of the issue of the Unit from time to time.
- 30.5 Notwithstanding any other clause in this replacement constitution, if a new clause has the effect of adversely affecting the rights of existing members or Unit Holders then that clause shall be of no effect as between the Responsible Entity and the members and Unit Holders.

31. IMPACT OF ACCOUNTING STANDARDS

31.1 Applicable Accounting Standards

- (a) Notwithstanding anything to the contrary contained in or implied by this Constitution, from 1 July 2005 any reference to:
- (i) Issue Price;
- (ii) Liabilities;

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- (iii) the value of Units;
 - (iv) Scheme Property (including the value of Scheme Property);
 - (v) the distributable amount of the Scheme;
 - (vi) the gross amount of the Scheme; or
 - (vii) similar terms or phrases (the 'Items')
 - (b) for the purpose of calculating or determining:
 - (i) the subscription of the Units;
 - (ii) the interest of a Unit in the Scheme Fund or in the Scheme Property;
 - (iii) any administration fee payable to the Responsible Entity as reimbursement for its costs in processing a transfer of Unites or a transmission of Units;
 - (iv) the amount of Scheme income or capital available to distribute to Unit Holders and a Unit Holder's entitlement to a distribution of income or capital of the Scheme;
 - (v) the Responsible Entity's entitlement to be indemnified out of the Scheme Fund for liabilities incurred in accordance with clause 21.5;
 - (vi) the Responsible Entity's entitlement to be paid or reimbursed out of the Scheme Property for any Liabilities and borrowings incurred in accordance with clause 23.9;
 - (vii) the application of any gross amount, be it capital or income, to any reserve or provision or to retention in the Scheme Fund;
 - (viii) the discharge of Liabilities in preparation for a distribution of net proceeds to Unit Holders upon a winding up of the Scheme; and
 - (ix) the remuneration or fees payable to the Responsible Entity, any agent of the Responsible Entity or any Custodian,

the Items are to be calculated or determined by reference to generally accepted accounting principles or accounting standards as generally accepted or in force immediately before 1 January 2005.

32. LISTING RULES

Scheme not admitted to official list of NSX

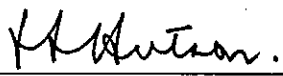
- 32.1 Notwithstanding any of these rules the Responsible Entity and its Directors and other officers are not required to comply with any rule insofar as it may specifically relate to SX, the Listing Rules or the ASTC Settlement Rules until the Scheme is admitted to the Official List of SX.

Fund admitted to official list of SX

- 32.2 If the Scheme is admitted to the Official List of SX, the following clauses apply:
 - 32.2.1 Notwithstanding anything contained in these rules, if the Listing Rules prohibit an act being done, the act shall not be done.
 - 32.2.2 Nothing contained in these rules prevents an act being done that the Listing Rules require to be done.
 - 32.2.3 If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
 - 32.2.4 If the Listing Rules require these rules to contain a provision and they do not contain such a provision, these rules are deemed to contain that provision.
 - 32.2.5 If the Listing Rules require these rules not to contain a provision and they contain such a provision, these rules are deemed not to contain that provision.
 - 32.2.6 If any provision of these rules is or becomes inconsistent with the Listing Rules, these rules are deemed not to contain that provision to the extent of the inconsistency.

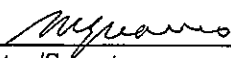
Executed as a deed poll.

SIGNED SEALED AND DELIVERED
by WELLINGTON CAPITAL LIMITED ACN
114 248 458
on 5 / 9 /2011 by:

▲ 
Director

JENNIFER JOAN HUTSON

▲ _____
Full name of Director

▲ 
Director/Secretary

MARY-ANNE GREAVES

▲ _____
Full name of Director/Secretary

SCHEDULE 1**1. DEFINITIONS**

In this Constitution except to the extent that the context otherwise requires, the following words have these meanings:

"Applicant" means a Person who has completed and lodged with the Responsible Entity an Application forming part of the PDS and has paid its Application Moneys for a Unit(s) in the Scheme.

"Application" means a duly completed and signed application form approved by the Responsible Entity, to invest in the Scheme under the PDS, lodged with the Responsible Entity and accompanied by payment of the Application Moneys.

"Asset Account" means a Scheme account.

"ASTC Regulated Transfer" has the same meaning as in the ASTC Settlement Rules.

"ASTC Settlement Rules" means the ASX Settlement and Transfer Corporation Pty Limited Settlement Rules, being the operating rules of the Settlement Facility for the purposes of the Corporations Act.

"Application Moneys" means money paid by each Applicant in respect of an Application.

"Approved Valuer" means any person who is duly qualified to value a particular type of Scheme Property.

"ASIC" means the Australian Securities and Investments Commission.

"Associate" has the same meaning as given to it in Division 2 of the Corporations Act.

"Authorised Investment" includes (subject to the Licence held by the Responsible Entity):

- (a) Mortgage Investments being a loan secured by a registered mortgage over Land;
- (b) deposits at call or for a term with any Bank;
- (c) bills of exchange (including commercial bills) issues, drawn accepted or endorsed by any Bank or negotiable certificates of deposit issued by any Bank;
- (d) subject to any exceptions contained in the Corporations Act or any ASIC Relief (including any ASIC class orders) any managed investment scheme that is a registered managed investment scheme, including a managed investment scheme of which the Responsible Entity is the responsible entity; or
- (e) any investment authorised under section 21 of the *Queensland Trusts Act 1973* which the Responsible Entity considers a prudent investment for the Scheme.

"Bank" means any authorised deposit taking institution authorised to undertake banking business as those terms are defined in Section 5 of the Banking Act 1959 and includes any bank constituted by or under a law of a State or Territory.

"Board" means the directors of the Responsible Entity.

"Business Day" means a day other than a Saturday, Sunday or public holiday in Queensland and in the event the Scheme is listed, a business day as defined in the Listing Rules.

"Cash" Includes a cheque, bank cheque, payment order or electronic transfer of funds.

"Complaints Officer" means the person responsible for:

- (a) The maintenance of the Complaints Register; and
- (b) (where practicable) the investigation, resolution and communication of all Complaints received under the IDR Program and unless a specific officer has been appointed to perform all of these functions, the Complaints Officer for the Schemes will have this role.

"Compliance Committee" means the Compliance Committee appointed by the Responsible Entity pursuant to the Compliance Plan for the Scheme.

"Compliance Plan" means the compliance plan for the Scheme signed by the Responsible Entity in accordance with the Corporations Act.

"Constitution" means this deed poll (as amended from time to time).

"Corporations Act" means the Corporations Act or any other statutory modification, amendment, or re-enactment thereof for the time being in force, and subject to any applicable ASIC relief referred to in Clause 2.2 of Schedule 1 under 'Interpretations'.

"Corporations Regulations" means the Corporations Regulations 1990 as amended from time to time and subject to any applicable ASIC relief referred to in Clause 2.2 of Schedule 1 under 'Interpretations'.

"Custodial Standards" means the requirements laid down by the ASIC from time to time in respect of what standards must be met by a Person who holds Scheme Property in a managed investment scheme of the same kind as the Scheme.

"Custodian" means the custodian appointed by the Responsible Entity pursuant to a custody agreement.

"Distribution Calculation Date" means the last day of each month in each year, or such other dates as the Responsible entity may determine.

"Distribution Entitlement" means the entitlement to the Distributable Amount determined in accordance with sub-clause 16.3

"Distribution Period" means each quarter and ends on the last day of the quarter in which the date of determination falls and the last of which will end on the date of termination of the Scheme.

"Distribution Recipient" means the person determined in paragraph 16.2.2 who is entitled to receive its Distribution Entitlements.

"Expert" Includes solicitors, barristers, accountants, bankers, financial advisers and other professionally qualified consultants.

"External Complaints Resolution Scheme" means the Financial Industry Complaints Services Limited, or such other approved external complaints scheme of which the Responsible Entity is, or has applied to become, a member.

"Financial Year" means a financial year in respect of the Scheme and unless the Responsible Entity otherwise determines:

- (1) for the first Financial Year, is the period commencing on the date on which the Scheme commences, to next 30 June;
- (2) for the last Financial Year, is the period commencing on 1 July immediately before the date the Scheme terminates to the date the Scheme terminates; and
- (3) for all other periods, is the 12 month period ending 30 June in each year.

"Foreign Person" has the meaning given to it under the *Foreign Ownership of Land Register Act 1988* (Qld).

"GST" means a goods and services tax, value added tax, purchase tax, receipt tax or any similar tax, impost or duty imposed at the point of sale or time of acquisition or payable on goods, services or other things.

"IDR Program" means the internal dispute resolution procedural program adopted by the Responsible Entity.

"Includes" means includes, without limitation.

"Issue Price" of a Unit means the issue price of a Unit determined by reference to Clause 3.2.

"Land" means a freehold estate or interest in real property in any part of the Commonwealth of Australia or any State or Territory thereof and including buildings, fixtures and fittings (including furnishings) and other improvements erected or installed thereon. Land may also include other property including licences, chattels, leases, choses in action and personal property.

"Law" means the *Corporations Act 2001* and the *Corporations Regulations 2001*.

"Liabilities" means all Liabilities of the Scheme, including all Taxes, Liabilities accrued but not yet paid, borrowings, unpaid costs, charges, expenses, outgoings, fees, contingent Liabilities, unpaid amounts due to a Unit Holder, unpaid remuneration due to the Responsible Entity and any provision which the Responsible Entity determines should be taken into account in determining the Liabilities of the Scheme.

"Licence" means a securities dealer's licence or Australian Financial Services Licence issued to the Responsible Entity by the ASIC to operate the Scheme.

"Listed" when referred to in relation to the Scheme means where the Scheme is admitted to the Official List of SX.

"Listing Rules" means the Listing Rules of SX and any other rules of SX which are applicable while the Scheme is admitted to the Official List of SX, each as amended or replaced from time to time, except to the extent of any express waiver by SX.

"Members" means in relation to a managed investment scheme a Person who holds a Unit or Units in the Scheme, i.e. Unit Holders.

"MFS Support Mechanism" is the contractual arrangement between the Responsible Entity and MFS Limited ACN 107 863 436 entered into on or around 23 June 2006.

"Modification" Includes amendment, variation, alteration, deletion, addition and substitution.

"Month" means calendar month.

"Official List" has the meaning specified in the Listing Rules.

"Paid-up Proportion" means in relation to a Unit the fraction determined by dividing the amount to which the Unit has been paid by the Issue Price of the Unit.

"Person" Includes a company, corporation, firm or body of persons.

"PDS" means the Product Disclosure Statement issued by the Responsible Entity in respect of the Scheme.

"Quarter" means each period of three Months ending on the last days of March, June, September and December in each year.

"Register" means the Register of Unit Holders to be established and kept by the Responsible Entity under Clause 8.

"Registered Scheme" means a managed investment scheme that is registered under section 601EB of the Corporations Act.

"Responsible Entity" means Wellington Investment Management Limited ACN 101 634 146 or any other Person for the time being acting as Responsible Entity of the Scheme, including all references to 'Manager' and 'MFS' contained in the PDS.

"Responsible Entity's Remuneration" means the remuneration to be paid to the Responsible Entity under clause 23 and Includes any part of that remuneration, including all references to 'Manager's Remuneration' contained in the PDS.

"Restricted Security" has the meaning specified in the Listing Rules.

"Scheme" means the Premium Income Fund established by this Constitution being a Registered Scheme, including all references to 'Trust' that may be contained in the PDS.

"Scheme Constitution" means the Scheme Constitution for the Scheme.

"Scheme Fund" means all of the Scheme Property for the time being of the Scheme Fund but subject to the Liabilities at that time of the Scheme, including all references to 'Trust Fund' that may be contained in the PDS.

"Scheme Investment" means an Authorised Investment made under this Constitution using funds of the Scheme.

"Scheme Property" means all the Cash, mortgages and other investments of the Scheme (including the Authorised Investments) for the time being held by the Responsible Entity for the Unit Holders.

"Settlement Facility" has the meaning specified in the ASTC Settlement Rules.

"State or Territory" means State or Territory of Australia.

"SX" means Australian Stock Exchange Limited or NSX Limited or any other public securities exchange established or based in Australia or any other jurisdiction.

"Taxes" means every kind of tax, duty, rate, levy, deduction and charge, (including GST), imposed by any fiscal, national, state or local authority or entity and whether presently imposed or novel, together with Unit and penalties.

"Tax Act" means the provisions of the Income Tax Assessment Act 1936 and 1997; A new Tax Systems (Goods and Services Tax) Act 1999; other current taxation legislation; taxation rulings and other relevant taxation determinations.

"Termination Event" means an event described in Clause 26.2.

"Terms of Issue" means in relation to a Unit the terms and conditions upon which that Unit is issued (other than those contained in the Constitution).

"Unit" means an undivided unit in the Scheme as provided in Clause 2.1.

"Unit Holder" means a Person whose name is for the time being entered in the Register as the holder of a Unit(s) and Includes Persons jointly so registered.

"Units on Issue" means Units for the time being created and issued and not cancelled.

2. INTERPRETATION

General

2.1 In these rules unless it is inconsistent with the subject or context in which it is read:

- any reference to any function or incident of listing or quotation on SX (such as the Official List) includes reference to the equivalent or corresponding function or incident (by whatever name known) of listing or quotation ASX Limited or National Stock Exchange of Australia Limited or other public securities exchange on which the Scheme is listed or seeking listing;
- words importing the singular include the plural and vice versa and words importing a gender include other genders;
- where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;

- references to a recital, clause, schedule or annexure shall be construed as references to a recital or clause of or schedule or annexure to this Constitution and references to this Constitution include its schedules and any annexure;
- where a party comprises two or more Persons an agreement or obligation to be performed or observed by that party binds those Persons jointly and severally and a reference to that party Includes a reference to any one or more of those Persons;
- expressions and terms expressly used in this Constitution which are defined as at the date of this Constitution in the Corporations Act or Corporations Regulations for the purposes of Chapter 5C or Part 7.12 of the Corporations Act or Chapter 5C or Part 7.12 of the Corporations Regulations have the same meanings as have been ascribed to them in the Corporations Act as at the date of this Constitution;
- a reference to a party to this Constitution or any other document or agreement Includes its successors and permitted assigns;
- a reference to a party shall be construed as a reference to a party to this Constitution;
- a reference to a document or agreement including this Constitution Includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- for the interpretation of this Constitution, headings shall be disregarded;
- references to "\$A", "dollar", "\$" and to any amount not otherwise designated shall be construed as references to Australian currency;
- a reference to writing Includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words in a permanent and visible form; and
- if any day appointed or specified by this Constitution for the payment of any money or the doing of any act, matter or thing falls on a Saturday, Sunday or on a public holiday in the State of Queensland (a "Non Business Day"), the day so appointed or specified shall be deemed to be the next day which is not a Non Business Day.

ASIC relief

- 2.2 Notwithstanding any other provision of this Constitution, including any provision of this Constitution which purports to apply notwithstanding other provisions of this Constitution, the Responsible Entity and the Unit Holders each covenant with the others, with effect throughout the duration of the Scheme, to comply with the requirements of Chapter 5C of the Corporations Act as applicable in relation to this Constitution, subject to any relief granted by the ASIC.