

Perpetual Investment Management Limited

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# Perpetual Ethical SRI Fund

## Notice of meeting of unitholders

To be held on 20 September 2021



# NOTICE OF MEETING OF UNITHOLDERS

This notice is issued by Perpetual Investment Management Limited ABN 18 000 866 535 (**Perpetual**) as responsible entity of the Perpetual Ethical SRI Fund ARSN 099 975 041 (**Fund**) to the members of the Fund (**Unitholders**).

Notice is given that a meeting of Unitholders will be held at:

**Time: 2:30pm (Sydney time)**

**Date: Monday, 20 September 2021**

**Place: Virtual meeting through an online platform by accessing [www.web.lumiagm.com/372041067](http://www.web.lumiagm.com/372041067)**

(the **Meeting**).

**IMPORTANT:** In response to the uncertainty arising from the COVID-19 pandemic and in the interests of health and safety of Unitholders and the broader community, the Meeting will be held virtually via an online platform.

Further instructions and information on attending and voting at the Meeting are set out in the enclosed Notice of Meeting, Explanatory Memorandum and Online Platform Guide. If it becomes necessary for Perpetual to give further updates about the Meeting, then information will be sent to Unitholders and made available on Perpetual's website at <https://www.perpetual.com.au/resources-and-documents/continuous-disclosure-and-important-information/wholesale-funds-updates>.

## **Business:**

The business of the Meeting will consist of the following Resolution:

### **Resolution – Amendments to the Constitution of the Fund ("Constitution")**

To consider, and if thought fit, to pass the following resolution as a special resolution of the Unitholders:

*"THAT, the constitution of the Perpetual Ethical SRI Fund ARSN 099 975 041 be modified in accordance with the provisions of the "Amending Deed" tabled at the meeting and signed by the Chairperson of the meeting for the purposes of identification and that Perpetual Investment Management Limited be authorised to:*

- (a) execute the Amending Deed and lodge it with the Australian Securities and Investments Commission; and*
- (b) implement and give effect to the actions and other matters contemplated in the Amending Deed and the Explanatory Memorandum accompanying this notice of meeting."*

By order of the Board of Perpetual Investment Management Limited.



Sylvie Dimarco  
Company Secretary  
Perpetual Investment Management Limited ABN 18 000 866 535  
18 August 2021

# NOTES ON THE NOTICE OF MEETING

## Quorum

The Meeting must satisfy the quorum requirements of the *Corporations Act 2001* (Cth) (**Corporations Act**) and the Constitution, which is at least two Unitholders present in person or by proxy or body corporate representative and the quorum must be present at all times during the Meeting.

This Notice of Meeting is also a notice that if the quorum required under the Corporations Act and Constitution is not met within 30 minutes after the time notified for the commencement of the Meeting, the Meeting is at the discretion of the Responsible Entity dissolved or adjourned to such other date, time and place as the Responsible Entity specifies.

## Voting requirements

For the Resolution to be implemented, the Resolution will be validly passed as a special resolution if at least 75% of the total votes cast on the Resolution are cast in favour of the resolution by the Unitholders entitled to vote.

## Entitlement to vote

In the absence of any special circumstances, the register of Unitholders as at 5:00 pm (Sydney time) on Friday, 17 September 2021 will be taken as evidence of those Unitholders entitled to vote.

In accordance with section 253E of the Corporations Act, if Perpetual, as the responsible entity of the Fund, or its associates (as defined under the Corporations Act) have an interest in the Resolution other than as Unitholder, then Perpetual and its associates may not vote on the Resolution.

## How to vote

Since the Resolution must be passed as a special resolution, the Resolution must be decided by a poll under the Corporations Act. The Chairperson's declaration of the validity of any vote and the result of voting will be conclusive. Under section 253C(2) of the Corporations Act and the Constitution, on a poll each Unitholder has one vote for each dollar of the value of the total interests they have in the Fund. Under the Constitution, if the Unitholder's interest is held jointly, only the Unitholder first named in the register of Unitholders is entitled to vote. Under section 253F(b) of the Corporations Act, the value of an interest in the Fund will be the amount that would be paid for the interest under the withdrawal provisions in the Constitution on the business day immediately before the day on which the poll is taken.

All Unitholders are encouraged to vote on the Resolution. Perpetual has determined that the persons who are entitled to vote at the Meeting will be determined by reference to the Unitholders recorded on the Fund's register of Unitholders as at 5:00pm (Sydney time) Friday, 17 September 2021 and the exit price for Units on Friday, 17 September 2021 will be used to determine the number of votes each Unitholder has on the polls.

## Voting by proxy

You have the right to appoint a proxy to attend and vote for you even if you are present at the Meeting. They do not need to be another Unitholder. The Chairperson may act as your proxy if you wish. You may appoint two proxies. Please note that *in that case* you will need to specify what proportion or number of votes each proxy is appointed to exercise for you. If the proxy appointments do not specify the proportion of voting rights that each proxy may exercise, each proxy may exercise half of your votes. Fractions of votes will be disregarded. Perpetual encourages Unitholders to submit a proxy vote ahead of the Meeting.

If the Chairperson is nominated as your proxy (or so acts because no other person is nominated or your named proxy does not attend the Meeting) and you do not tell the Chairperson exactly how to vote, the Chairperson's intention is to vote for the Resolution at the Meeting. The notes on the Proxy Form describe how it should be completed. The Proxy Form must be completed, signed and received by Perpetual (if relevant, with a certified copy of the power of attorney under which the Proxy Form was signed) by:

- Online: By lodging the proxy appointment online through the [www.web.lumiagm.com/372041067](http://www.web.lumiagm.com/372041067). To use the online proxy appointment facility, you will need your account number
- Post to:  
Perpetual Ethical SRI Fund  
C/- Perpetual Investments  
GPO Box 4171 Sydney, NSW 2001
- Fax: 02 8256 1427
- Hand delivery to:  
Perpetual Ethical SRI Fund  
Office of Perpetual Investment Management Limited  
Angel Place  
Level 18, 123 Pitt Street  
Sydney, NSW 2000

**at least 48 hours** before the time of the Meeting for the proxy appointment to be effective. Given the uncertainty with the COVID-19 pandemic and delays in post, Perpetual encourages Unitholders to submit their proxy form online prior to the Meeting.

## Attending the Meeting and voting online

In response to the uncertainty arising from the COVID-19 pandemic and in the interests of health and safety of Unitholders and the broader community, the Meeting will be held virtually via an online platform. Unitholders may attend and participate in the Meeting by visiting [www.web.lumiagm.com/372041067](http://www.web.lumiagm.com/372041067) on your smartphone, tablet or computer. You will need the latest versions of Chrome, Safari, Edge or Firefox. Please ensure your browser is compatible.

The online platform will allow Unitholders to listen to the Meeting, vote and ask questions online in real time. Further information regarding participating in the Meeting online is contained in the Online Platform Guide annexed to this Notice of Meeting.

If you experience any technical issues during the Meeting, please call 02 8075 0100. In the case of technical issues experienced by Perpetual, the Meeting may need to be adjourned to a later date at the discretion of the Chairperson. Even if you plan to attend the Meeting online, we encourage you to submit a directed proxy vote so that your vote will be counted if for any reason you cannot attend (for example, if there is an issue with your internet connection on the day of the meeting).

## Corporations

Corporations wishing to attend and vote at the Meeting must appoint a representative who must submit an appropriate 'Certificate of Appointment of Corporate Representative'. A form of the certificate may be obtained from Perpetual. Perpetual encourages Unitholders to submit an appropriate 'Certificate of Appointment of Corporate Representative' prior to the day of the meeting by emailing [investments@perpetual.com.au](mailto:investments@perpetual.com.au).

## Chairperson

Perpetual will appoint Michael Lawson to chair the Meeting. Michael Lawson is a partner of MinterEllison. Perpetual will appoint another similarly qualified person to chair the Meeting if Michael Lawson becomes unable to chair the Meeting.

## Defined terms

Terms defined in the Explanatory Memorandum accompanying this Notice of Meeting have the same meaning in this Notice of Meeting unless the context otherwise requires.

## Important information

To enable you to make an informed decision on the Resolution, please read carefully the Explanatory Memorandum. If necessary, seek your own independent advice.

If you have any questions, please contact:

Perpetual  
T: 1800 022 033  
E: [investments@perpetual.com.au](mailto:investments@perpetual.com.au)

# EXPLANATORY MEMORANDUM

## Important Notices and Disclaimers

**Information contained in this Explanatory Memorandum and the Notice of Meeting is important. You should read this document carefully and if necessary seek your own independent advice.**

The Perpetual Ethical SRI Fund ARSN 099 975 041 (**Fund**) is a registered managed investment scheme and Perpetual Investment Management Limited ABN 18 000 866 535, AFSL 234426 (**Perpetual**) is the responsible entity of the Fund and has issued this document. This document is dated 18 August 2021.

The Explanatory Memorandum explains the Resolution proposed in the Notice of Meeting for the meeting of Unitholders to be held at 2:30pm (Sydney time) on Monday, 20 September 2021. Accordingly, the Explanatory Memorandum should be read in conjunction with the Notice of Meeting.

The Explanatory Memorandum is not an offer or an invitation to acquire Units in the Fund or any other financial products and is not a prospectus, product disclosure statement or other offering document under law of the Commonwealth of Australia or its states and territories or any other law. It is for information purposes only. The information in the Explanatory Memorandum remains subject to change without notice. Perpetual will notify you of any material changes. Updated information relating to the Explanatory Memorandum can be found at <https://www.perpetual.com.au/resources-and-documents/continuous-disclosure-and-important-information/wholesale-funds-updates>. The information in the Explanatory Memorandum is current as at 18 August 2021 unless otherwise stated.

All times and dates referred to in this Explanatory Memorandum are times and dates in Sydney, Australia, unless otherwise indicated. All times and dates referred to in this Explanatory Memorandum may change and, among other things, are subject to all necessary approvals from the ASIC (as applicable).

The information accompanying the Notice of Meeting should not be taken as the giving of investment advice by Perpetual as Perpetual are not aware of your investment objectives, financial position and particular needs. Before making any investment decision and decision on how to vote on the Resolution set out herein, you should consider your particular financial circumstances and investment objectives and consult with your professional adviser.

Perpetual is the issuer of Units in the Fund. A product disclosure statement (**PDS**) for the Fund is available on the Fund's website (<https://www.perpetual.com.au/resources-and-documents/continuous-disclosure-and-important-information/wholesale-funds-updates>). You should consider this PDS before deciding whether to acquire or continue to hold Units in the Fund.

## Key dates:

Event	
Date of this Explanatory Memorandum	<b>Wednesday, 18 August 2021</b>
Notice of Meeting and Explanatory Memorandum issued to Unitholders	<b>Wednesday, 25 August 2021</b>
Time and date by which Proxy Forms must be received	<b>2:30pm Saturday, 18 September 2021</b>
Voting Record Date	<b>5:00pm Friday, 17 September 2021</b>
Unitholder Meeting	<b>2:30pm Monday, 20 September 2021</b>

Any changes to the timetable will be made available on the website at <https://www.perpetual.com.au/resources-and-documents/continuous-disclosure-and-important-information/wholesale-funds-updates>

## 1. Overview

### 1.1 Purpose

The purpose of this Explanatory Memorandum is to provide members (**Unitholders**) of the Perpetual Ethical SRI Fund (**Fund**) with information about the resolution set out in the Notice of Meeting (**Resolution**). It is intended to help you decide how to vote on the Resolution to be put forward at the meeting of Unitholders on Monday, 20 September 2021 (**Meeting**).

The purpose of the Meeting is to seek Unitholder approval to amend the Constitution to:

- facilitate the establishment and operation of a class of units in the Fund to be quoted on the ASX as an exchange traded managed fund (**Quoted Class**);
- provide Perpetual, as responsible entity of the Fund, with the power to allocate the assets and liabilities of the Fund to a specific class; and
- provide Perpetual with the right to charge performance fees solely in relation to any new classes of units in the Fund.

### 1.2 Background

The Fund currently has one class of units on issue that is not quoted on any securities exchange: Class A. Perpetual considers that the introduction of a Quoted Class of units in the Fund as an exchange traded managed fund (**ETMF**) will provide existing and prospective unitholders with flexibility and choice in how they access the Fund. The ETMF is proposed to be admitted to trading status and quoted on ASX under Schedule 10A of the ASX Operating Rules (**AQUA Rules**).

For the avoidance of doubt, Perpetual is not proposing to have the existing class in the Fund (Class A) admitted to trading status and quoted on the ASX under the AQUA Rules. The quotation of the ETMF on the ASX will not impact or change the investment objective, investment approach or fees and costs of the existing class of units in the Fund.

The differences between how investors would access the proposed Quoted Class and unquoted class are outlined below:

	Quoted class of the Fund	Unquoted class of the Fund
Investing in the Fund	<ul style="list-style-type: none"><li>• Investors may buy and sell units in the Quoted Class on the ASX through a stockbroker, in the same way as other ASX listed securities.</li></ul>	<ul style="list-style-type: none"><li>• Apply or redeem units in the unquoted class of the respective Fund by completing an Application Form (electronic or hard copy), customer identification form, and providing a cheque or direct debit details for your investment amount.</li></ul>
Entering and exiting the Fund	<ul style="list-style-type: none"><li>• Buy/sell units at the prevailing market price on the ASX at the time of transaction.</li><li>• Perpetual will provide liquidity in the market for units in the Quoted Class. The price at which Perpetual will, through the market making agent, buy or sell units in an ETMF will reflect its view of the net asset value (NAV) per unit (as referenced by the indicative net asset value (<b>iNAV</b>)), market conditions and the supply and demand for units during the ASX trading day.</li><li>• Investors may also incur brokerage or other transaction costs when they purchase units on ASX.</li></ul>	<ul style="list-style-type: none"><li>• Application or redemption price is based on adding a buy/sell spread to the NAV.</li><li>• Application or redemption unit price is received after the investor makes an application or redemption.</li><li>• Perpetual must receive and accept an application electronically or otherwise, switch or withdrawal request by 3:00pm on any business day, for the unitholder to receive that day's entry and/or exit price (as applicable).</li></ul>

Minimum investment amount	There is no minimum number or value of units that Perpetual requires an investor to purchase in the ETMF.	<ul style="list-style-type: none"> <li>The minimum investment amount in the Class A units is generally \$25,000.</li> </ul>
Cooling off rights	Do not apply	Apply
Access to holdings	Investors will access and view investment information and update personal details on the ETMF Registry's investor portal.	Investors access and view investment information, transact on their account and updated personal details on MyPerpetual.

### 1.3 Proposed quotation of the ETMF on the ASX

As at the date of this Explanatory Memorandum, Perpetual has applied to the ASX for the quotation of the ETMF on the ASX under the AQUA Rules. Subject to Perpetual receiving approval from the ASX for the ETMF to be quoted and traded on the ASX, investors will be able to buy and sell units in the ETMF on the ASX at the prevailing market price at the time of transacting.

An investor's money in the Quoted Class will be pooled together with investments from other investors from the same class or Class A to buy assets for the Fund. Therefore, the same investment strategy will be employed for the Quoted Class and Class A. Importantly, the introduction of the ETMF does not impact or change the investment objective or investment approach of the Fund.

ASX requires Perpetual to have a mechanism for sufficient liquidity in the ETMF. It is proposed that Perpetual will satisfy this requirement by having an internal market making arrangement for the ETMF. Perpetual in its capacity as responsible entity for the Fund intends to act as market maker to the ETMF to provide liquidity to investors on the ASX by acting as a buyer and seller of the ETMF. Perpetual propose to appoint a market making agent to carry out its market making functions relating to the ETMF.

The proposed allocation power in the constitution will enable Perpetual to allocate any liabilities related to operating the ETMF and any losses from market making solely to the net asset value of the ETMF so that such liabilities and losses should not borne by Unitholders in Class A subject to class risk which is explained in section 1.6. Perpetual also proposes to pay the establishment and day to day costs associated with operating the ETMF and any change will be notified to unitholders of the Quoted Class. Therefore, these costs should not be borne by Unitholders in Class A.

### 1.4 Proposed amendments to the Constitution

The current provisions of the constitution for the Fund dated 18 March 2002, as amended from time to time (**Constitution**) do not presently facilitate the establishment, offer and operation of a new class of units in the Fund as an ETMF on the ASX.

Perpetual is proposing to amend the Constitution to facilitate the establishment, offer and operation of the ETMF on the ASX. A summary of the proposed material amendments to the Constitution (including references to the relevant clauses in the Constitution) is set out below:

1. permit a new class of units to be admitted to trading status and quoted on the ASX under the AQUA Rules;
2. facilitate the operation of a new class of units as an ETMF on the ASX, including inserting:
  - (a) the following powers and mechanisms required to enable Perpetual to utilise internal market making for that class:
    - i. the power to implement an internal market making mechanism for purposes of providing liquidity in respect of units in that class (clauses 12.12, 12.13 and 13.2); and

- ii. Perpetual selling and acquiring units on-market to facilitate the provision of liquidity by the ETMF (clauses 7.9 - 7.14 and 8.14 - 8.18);
  - (b) a direct withdrawal right while trading in the units of a class on ASX is suspended for five consecutive business days (clause 8.19);
  - (c) suspension powers for an ETMF where the quotation of the ETMF is suspended, the trading of any units in an ETMF is halted, interrupted or restricted by ASX, units in the ETMF cease to be quoted or removed from trading status or Perpetual's AQUA Product Issuer approval is suspended or revoked (clause 8.3(f));
  - (d) expense items related to the establishment, operation and maintenance of quoting units on an exchange and regulatory fees charged in relation to an ETMF (clauses 15.3(w) and 15.3(x));
  - (e) transfer and holding lock provisions for an ETMF (clauses 16.2 to 16.7);
  - (f) a modified definition of 'Distribution Date' for a quoted class and modifications to the distribution provisions which solely apply to a class that is quoted (clauses 1.1 and 10.2); and
  - (g) an AQUA Rules inconsistency provision and provisions related to participation in CHESS (clauses 1.6 - 1.10);
3. provide for certain existing provisions in the Constitution to apply subject to the Corporations Act and the AQUA Rules for units in a class that is quoted (clause 1.2(j) and various provisions);
  4. insert a power permitting Perpetual to determine the assets and liabilities properly referable to a class and this determination may be on a different basis between classes (clause 5.3);
  5. clarify certain provisions operate on a class basis, including rights on termination, application procedures, redemption procedures, valuation, and meeting provisions (clauses 4.6, 6.1 to 6.2, 8.1, 9.4 and 17.1);
  6. provide Perpetual with the right to charge performance fees calculated in accordance with Schedule 1 solely in relation to any new classes issued in the Fund (clause 15.2(c) and Schedule 1); and
  7. make consequential amendments related to the above amendments.

The proposed amendments to the Constitution will be implemented by way of the amending deed set out in Annexure A which will be tabled and signed by the Chairperson at the Meeting (**Amending Deed**). This Amending Deed sets out the proposed amendments to the Constitution in full.

### **1.5 Board Recommendation**

The Board of Perpetual (**Board**) considers that the proposed amendments to the Constitution as summarised in section 1.4 above and set out in Annexure A of this Explanatory Memorandum are in the best interests of Unitholders.

As a result, the Board believes that the anticipated benefits for Unitholders outweigh the potential disadvantages and risks. Accordingly, the Board unanimously recommends that Unitholders vote in favour of the Resolution.

### **1.6 Summary of key benefits, risks and disadvantages**

Below is a summary of the expected benefits, as well as the potential risks and disadvantages to Unitholders.

### **Benefits:**

- Potential for increased flexibility and choice for Unitholders as they would have the option to access the Fund as they do currently or alternatively on the ASX<sup>1</sup> while having the access to the same investment objective and investment approach.
- Enhanced disclosure and transparency for Unitholders as Perpetual will need to comply with the disclosure requirements imposed by the ASX and the Corporations Act for the ETMF. For example, Perpetual intend to disclose full portfolio holdings of the Fund every quarter with a two month lag on the Perpetual website. As there is one investment strategy and one pool of assets for the Fund, the portfolio holdings disclosure will apply to the ETMF class and Class A.
- Perpetual proposes to pay the establishment costs of the ETMF and therefore these costs will not be borne by Unitholders in Class A.
- Perpetual intends to pay for the day-to-day costs associated with operating the ETMF out of its management fee. If Perpetual commences recovering normal operating expenses from the ETMF, these expenses will be allocated solely to the net asset value of the ETMF and those unitholders will be notified. Therefore, these costs will not be borne by Unitholders in Class A subject to class risk which is explained below.
- The proposed allocation power in the Constitution will enable Perpetual to allocate any liabilities related to operating the ETMF and any losses from market making solely to the net asset value of the ETMF so that such liabilities and losses are not borne by another class of unitholders subject to class risk.
- The proposed right to charge performance fees will only apply to new classes issued in the Fund. Therefore, there is no impact to Unitholders in Class A.

### **Risks / Disadvantages**

Issue/Risk	Explanation	How Perpetual proposes to mitigate this risk
Class risk	Separate classes of a Fund are not separate legal entities and the assets referable to each class will not be segregated. All of the assets of a Fund are available to meet all of its liabilities, regardless of the class to which such assets or liabilities are attributable. There is a risk that investors of different classes of a Fund may be exposed to liabilities of another class of units and these investors could lose some or all of their investment in a Fund. Also, there is a risk that in the event of an insolvency, the assets of a Fund could be made available to creditors of another class of units of a Fund.	The proposed allocation power in the constitution will enable Perpetual to allocate any liabilities related to operating the ETMF and any losses from market making solely to the net asset value of the ETMF so that such liabilities and losses are not borne by Unitholders in Class A.  PIML has also developed ETMF Operating Guidelines which sets out how it will comply with ASIC, ASX and Corporation Act requirements and minimise the impact to Unitholders in Class A of the Fund, and the Fund as a whole, suffering material financial loss with the use of internal market making.
Operational risks	There are increased operational risks if the Fund establishes and operates an ETMF. For example, PIML or its appointed service providers conducting internal market making activities and calculating and publishing an iNAV for the ETMF.	PIML has developed ETMF Operating Guidelines which sets out the roles and responsibilities of each service provider, the internal compliance and supervision arrangements PIML will have in place and how PIML will manage any conflicts of interest that may arise as a result of acting as market maker.

<sup>1</sup> Subject to approval from the ASX and ASIC



## **1.7 Resolution – Amendments to the Constitution**

Perpetual as responsible entity of the Fund is required to convene a meeting of Unitholders to allow Unitholders to consider, and if thought fit, pass the Resolution to give effect to the proposed amendments to the Constitution. Section 601GC(1)(a) of the Corporations Act 2001 (Cth) (**Corporations Act**) permits the constitution of a registered scheme to be modified by special resolution of the members of a scheme. The Resolution is a special resolution, and it will be validly passed if at least 75% of the total votes cast on the Resolution are cast in favour of the Resolution by Unitholders. The proposed amendments to the Constitution will take effect when the modification to the constitution is lodged with ASIC.

If the Resolution is passed, the Amending Deed will be signed and lodged with ASIC. The proposed amendments do not take effect until the signed Amending Deed is lodged with ASIC. However, since the provisions of the Constitution applicable to the ETMF only apply when the ETMF is quoted on the ASX, these provisions will not apply until the ETMF is quoted and traded on the ASX.

If the Resolution is not passed by Unitholders at the Meeting:

- the Constitution will not be amended and the current provisions under the Constitution will continue to apply;
- Perpetual will also not be able to seek quotation and trading of the Quoted Class as an ETMF on the ASX under the AQUA Rules;
- the Quoted Class as an ETMF will not commence trading on the ASX; and
- Unitholders may not obtain the anticipated benefits set out in section 1.6.

## **1.8 What you need to do**

You should:

- a) read the Notice of Meeting, Explanatory Memorandum and Online Platform Guide; and
- b) consider and vote on the Resolution by attending the Meeting or completing the Proxy Form.

**Annexure A – Proposed Amending Deed**

**Perpetual Investment Management Limited**  
ABN 18 000 866 535

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**PERPETUAL ETHICAL SRI FUND**  
**AMENDING DEED**

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Perpetual 

Perpetual Legal Services  
Level 18, Angel Place  
123 Pitt Street  
Sydney NSW 2000

## AMENDING DEED

**THIS DEED** is made

**BY**

**Perpetual Investment Management Limited** ABN 18 000 866 535 of Level 18, Angel Place, 123 Pitt Street, Sydney NSW 2000 (**Responsible Entity**).

### RECITALS:

- A. The Perpetual Ethical SRI Fund ARSN 099 875 041 (the **Fund**) was established by a deed dated 18 March 2002, as amended (the **Constitution**).
- B. The Responsible Entity is proposing to establish, offer and operate a new class of Units in the Fund (**Class E**) as an exchange traded managed fund (**ETMF**). Class E is proposed to be admitted to trading status and quoted on ASX under Schedule 10A of the ASX Operating Rules (**AQUA Rules**).
- C. The current provisions of the Constitution currently do not facilitate the operation of Class E as an ETMF. Accordingly, the Responsible Entity is proposing to amend the Constitution to facilitate Class E's operation as an ETMF, clarify the operation of certain provisions in relation to Class E and provide the Responsible Entity with the power to allocate Assets and Liabilities properly referable to a specific class.
- D. Clause 19 of the Constitution provides that the Responsible Entity may by deed modify, repeal or replace the Constitution subject to the Corporations Act 2001 (the **Act**).
- E. Section 601GC(1)(a) of the Act permits the Responsible Entity to amend the Constitution by a special resolution of Members.
- F. The Members have passed a special resolution approving the amendments to the Constitution in accordance with this deed and authorising the Responsible Entity to execute this deed.
- G. Pursuant to clause 19 of the Constitution and section 601GC(1) of the Act, the Responsible Entity proposes to amend the Constitution as set out in this deed.

### OPERATIVE PROVISIONS

#### 1. Interpretation

- 1.1 A word or phrase (except as otherwise provided) defined in the Constitution has the same meaning when used in this deed.
- 1.2 Clause 1.2 of the Constitution applies to this deed.

#### 2. Amendment

The Constitution is modified in the form of Schedule 1 to this deed, so that the words, numbers and symbols which are:

- (a) underlined are inserted into the Constitution; and

(b) struck through are deleted from the Constitution.

3. **Operation of this deed**

The amendments made by this deed are effective on and from the date on which a copy of this deed is lodged with the Australian Securities and Investments Commission.

4. **No resettlement**

The Responsible Entity confirms that it is not, by this deed, resettling or redeclaring the trust or causing the transfer, vesting or accrual of property in any person, and the Constitution continues in effect as amended by this deed.

5. **Binding conditions**

This deed is binding on the Responsible Entity and all Members and any other person claiming through them as if each was a party to this deed.

6. **Governing Law**

This deed is governed by the laws of New South Wales.

**EXECUTED** as a deed

Executed by **Perpetual Investment Management Limited**

.....  
Director

.....  
Director/Secretary

.....  
Name

.....  
Name

# Schedule 1 – Amendments to Constitution

**PERPETUAL INVESTMENT MANAGEMENT LIMITED**

**ABN 18 000 866 535**

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**PERPETUAL ETHICAL SRI FUND  
CONSTITUTION**

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**PERPETUAL LEGAL**

Level 18, Angel Place, 123 Pitt Street  
Sydney NSW 2000  
Ph: 9229 9000

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### Optional requirements

<i>Source</i>	<i>Requirement</i>	<i>Constitution clause</i>
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# PERPETUAL ETHICAL SRI FUND CONSTITUTION

DATE: 18 March 2002

## OPERATIVE PROVISIONS

This deed poll is declared by Perpetual Investment Management Limited ABN 18 000 866 535 to be the Constitution of Perpetual Ethical SRI Fund.

### 1. DEFINITIONS AND INTERPRETATION

#### Definitions

1.1 In this Constitution, the following words and phrases have the meanings set out below unless a contrary intention appears:

**Act** The *Corporations Act* 2001 (Cth) and regulations made under it, as modified in their application to the Fund by any subsisting declaration, modification or exemption granted by ASIC.

**AMIT** An Attribution Managed Investment Trust as defined in section 276-10 of the *Income Tax Assessment Act* 1997.

**Application** An application for Units.

**Application Amount** In respect of an Application, the amount paid by the applicant being the Application Price (plus any Entry Fee) for the Units the subject of the Application.

**Application Date** The Pricing Day applicable to an Application being:

- (a) if the Application is accepted by the Responsible Entity on a Pricing Day on or before the Prescribed Application Time, that Pricing Day; or
- (b) otherwise, the next Pricing Day.

**Application Price** The price of Units in the Class the subject of an Application, being the amount calculated as at the close of business on the Application Date as follows:

Application Price =  $\frac{\text{Net Asset Value Class NAV} + \text{Transaction Costs}}{\text{number of Units in the Class on issue}}$

provided that the Application Price of the Units issued:

(a) on establishment of the Fund or a Class that is not Quoted may be set at \$1.00 by the Responsible Entity;

(b) on establishment of a Class that is Quoted may be set at \$3.30 by the Responsible Entity; and

(b) by the Responsible Entity to itself in accordance with clause 7.9(b), the application price of a Unit in the Class shall be the amount calculated by the Responsible Entity as follows:

Application Price =  $\frac{\text{Class NAV} + \text{Transaction Costs}}{\text{number of Units in the Class on issue}}$

provided that each of the variables must be determined as at the close of business on the Pricing Day immediately prior to the Prescribed Application Time.

**AQUA Products** Has the meaning given to it in the Operating Rules.

**AQUA Product Issuer** Has the meaning given to it in the Operating Rules.

**AQUA Rules** Means:

(a) Schedule 10A of the Operating Rules and their associated Procedures;

(b) the Listing Rules that apply to AQUA Products; and

(c) the other rules that govern the transfer of AQUA Products,

as amended from time to time.

**ASIC** The Australian Securities and Investments Commission (or its successor body having regulatory authority over the Fund).

**Assets** All assets, capital, income, property and rights of the Fund.

**Associate** As defined in the Act.

**ASX** As the context requires, ASX Limited (ACN 008 624 691) or the financial market that it operates.

**Attribution Income**

**Tax Liability** An income tax liability under the *Income Tax Assessment Act 1997* that results from the Fund being operated as an AMIT.

**Auditor** The current auditor of the Fund, from time to time.

**Business Day** For:

(a) a Class that is not Quoted, a day, other than a Saturday or Sunday, on which trading banks are open for general banking business in Sydney; and

(b) a Class that is Quoted, the meaning given to it in the Operating Rules.

**Chairperson** The chairperson of a meeting of Members, as appointed in accordance with this Constitution.

**CHESS** Has the meaning given to it in the Listing Rules.

**Class** A class of Units.

**Class Distributable Income** For a Class the amount representing the proportion of the Distributable Income referable to that Class determined under clause 10.2(b).

**Class NAV** For a Class on a Pricing Day means the Class Net Asset Value for that Class on the preceding Pricing Day adjusted by the amount of that portion of the change in the Net Asset Value from the Net Asset Value on the preceding Pricing Day that the Responsible Entity properly determines as being referable to that Class. The Responsible Entity will determine the amount of the change in the Net Asset Value referable to a Class by reference to:

- (a) the daily accrual of the Management Fee and Performance Fee allocated to the Class;
- (b) the expenses of the Fund referable to the Class as determined by the Responsible Entity;
- (c) the amount of the daily investment return or loss for the Fund which is allocated to the Class by reference to the Class NAV for the Class as at the preceding Pricing Day;
- (d) any distribution referable to the Class made under this Constitution;
- (e) at the end of a Distribution Period, the Class Distributable Income for the Class; and
- (f) the Application Amounts for Units of that Class and the Withdrawal Price for Units redeemed from that Class.

provided that no amount is to be included in more than one paragraph above (so as to avoid double-counting).

The initial Class Net Asset Value for a Class is the Application Price of Units issued on commencement of the Class multiplied by the number of Units issued.

**Class Rights** In respect of a class of Units, the rights attaching to that class of Units in accordance with clause 5.2.

**Compliance Plan** The compliance plan for the Fund required under the Act.

**Constitution** This deed poll, as modified from time to time.

**Cost** Any cost, charge, disbursement, expense, outgoing, fee, Tax or commission.

**Determined Member Component** Has the meaning set out in section 276-205 of the *Income Tax Assessment Act 1997*.

**Distributable Income** In respect of a Distribution Period, the net income of the Fund for the Distribution Period determined in accordance with Generally Accepted Accounting Principles as they apply to managed investment schemes and being at least either the minimum amount that the Responsible Entity estimates it must distribute if it is not to be assessable (or liable to pay more than the minimum amount of tax properly assessable) under the *Income Tax Assessment Act 1936* or 1997 as applicable, or where the Fund is an AMIT, any amount determined by the Responsible Entity.

**Distribution Date** In respect of a Distribution Period:-

(a) for a Class that is not Quoted, the last day of the Distribution Period; and

(b) for a Class that is Quoted, the record date determined by the Responsible Entity in accordance with the Listing Rules and AQUA Rules.

**Distribution Period** A period, determined by the Responsible Entity, in respect of which income of the Fund is to be distributed to Members in accordance with this Constitution, provided that immediately following one Distribution Period, another Distribution Period must commence and in each calendar year

one Distribution Period must end at midnight on 30 June in the relevant calendar year.

<b>Entry Fee</b>	In respect of a Unit, the fee (if any) payable to, and determined by, the Responsible Entity of up to 5% of the Application Price.
<b>Exit Fee</b>	In respect of a Unit, the fee (if any) payable to, and determined by, the Responsible of up to 5% of the proceeds of redemption of the Unit.
<b>Financial Year</b>	A year ending on 30 June, or on the commencement of the Fund the period from commencement to the first 30 June occurring and on the termination of the Fund the period commencing on the most recent 1 July occurring before termination to the date of termination.
<b>Fund</b>	The trust constituted under this Constitution.
<b>Generally Accepted Accounting Principles</b>	<u>M</u> means, for the purposes of the operations of the Fund other than the preparation of accounts of the Fund, the accounting standards in force immediately prior to 1 January 2005. For avoidance of doubt, the financial reporting in the accounts of the Fund (being the accounts subject to audit) will be prepared in accordance with the relevant accounting standards in force and applicable to those accounts.
<b>GST</b>	The tax payable under GST law.
<b>GST law</b>	Has the meaning given under section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> <u>(Cth)</u> .
<b><u>Holding Lock</u></b>	<u>A facility permitted by ASX that prevents securities from being deducted from, or entered into, a holding pursuant to a transfer or conversion.</u>
<b>Income Entitlement</b>	In respect of a Member for a Distribution Period, the Member's share of the Distributable Income for the Distribution Period calculated in accordance with this Constitution.
<b>Liabilities</b>	All liabilities of the Fund, including liabilities accrued and unpaid and provisions which the Responsible Entity reasonably believes, in accordance with Generally Accepted Accounting Principles, should be made when determining the liabilities of the Fund.
<b><u>Liquid</u></b>	Has the same meaning as in section 601KA(4) of the Act.
<b><u>Listing Rules</u></b>	<u>The listing rules of the ASX as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.</u>
<b><u>Management Fee</u></b>	<u>The fee payable under clause 15.2(a).</u>
<b>Member</b>	A person entered on the Register as the holder of Units including persons registered as joint tenants or, with the Responsible Entity's consent, tenants in common.
<b>Member Component</b>	Has the meaning given in Subdivision 276-D of the <i>Income Tax Assessment Act 1997</i> .
<b>Net Asset Value</b>	The value of the Assets less the Liabilities excluding application money in respect of Applications that have not been accepted by the Responsible Entity.
<b><u>Operating Rules</u></b>	<u>The operating rules of the ASX as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.</u>
<b><u>Performance Fee</u></b>	<u>The fee payable under clause 15.2(c).</u>

<b>Prescribed Application Time</b>	3:00 pm (Sydney time) on a Pricing Day or any other time as the Responsible Entity may prescribe, from time to time <a href="#">for each Class</a> .
<b>Prescribed Withdrawal Time</b>	3:00 pm (Sydney time) on a Pricing Day or any other time as the Responsible Entity may prescribe, from time to time <a href="#">for each Class</a> .
<b>Pricing Day</b>	The day (or days) of the week prescribed by the Responsible Entity from time to time as the day (or days) as at which the Net Asset Value is determined for the purposes of calculating the Application Price and the Withdrawal Price and where such day (or days) have not been prescribed by the Responsible Entity means each Business Day.
<b><u>Procedures</u></b>	<a href="#">The procedures to the Operating Rules as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.</a>
<b><u>Quoted</u></b>	<a href="#">Officially quoted for trading on the ASX under the AQUA Rules.</a>
<b><u>Redeem</u></b>	Redeem out of the Assets and, in respect of Units the subject of a withdrawal request that the Responsible Entity elects to purchase or buy-back, includes purchase or buy-back.
<b>Register</b>	The register of Members maintained by, or on behalf of, the Responsible Entity.
<b>Responsible Entity</b>	The responsible entity for the time being of the Fund.
<b><u>Settlement Rules</u></b>	<a href="#">Has the meaning given to it in the Operating Rules.</a>
<b>Supply</b>	Has the meaning given under GST law.
<b>Tax</b>	Every kind of tax, duty, levy, impost, rate, charge and deduction imposed by any fiscal, national, state or local authority, entity or governmental or quasi-governmental body at any time applying and any interest, penalties or fines imposed in connection with them.
<b>Termination Date</b>	The date the Fund terminates as provided for in clause 4.2.
<b>Transaction Costs</b>	When calculating, as at any date: <ul style="list-style-type: none"> <li>(a) the Application Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total Costs that would be incurred to buy the entire investments of the Fund <a href="#">referrable to the Class</a> on that date (excluding the purchase price of the investments); and</li> <li>(b) the Withdrawal Price, the amount (which may be calculated as a percentage of the value of the Assets) calculated and fixed by the Responsible Entity from time to time to represent the Responsible Entity's estimate of the total Costs that would be incurred to sell the entire investments of the Fund <a href="#">referrable to the Class</a> on that date.</li> </ul>
<b>Trust Component</b>	Has the meaning given in Subdivision 276-E of the <i>Income Tax Assessment Act 1997</i> .
<b>Under or Over Distribution</b>	Has the meaning given in Subdivision 276-F of the <i>Income Tax Assessment Act 1997</i> .

<b>Unit</b>	<u>In respect of a Class, A</u> n undivided beneficial interest in the Assets (subject to the Liabilities) as provided for in this Constitution.
<b>Valuation Method</b>	The method used to value an Asset as set out in clause 9.3.
<b>Valuer</b>	A qualified valuer independent of the Responsible Entity who is appointed by the Responsible Entity.
<b>Withdrawal Date</b>	Subject to clauses 8.3 and 8.11, the Pricing Day applicable to Units the subject of a withdrawal request being: <ul style="list-style-type: none"> <li>(a) if the withdrawal request is accepted by the Responsible Entity on a Pricing Day on or before the Prescribed Withdrawal Time, that Pricing Day; or</li> <li>(b) otherwise, the next Pricing Day.</li> </ul>
<b>Withdrawal Price</b>	The price of Units <u>in the Class</u> the subject of a withdrawal request, being the amount calculated as at the close of business on the Withdrawal Date as follows:

$$\text{Withdrawal Price} = \frac{\text{Net Asset Value Class NAV} - \text{Transaction Costs}}{\text{number of Units in the Class on issue}}$$

provided that the Withdrawal Price of the Units:

(a) acquired by the Responsible Entity on-market in accordance with clause 8.14, the withdrawal price of a Unit in the Class to be redeemed shall be the amount calculated by the Responsible Entity as follows:

$$\text{Withdrawal Price} = \frac{\text{Class NAV} + \text{Transaction Costs}}{\text{number of Units in the Class on issue}}$$

provided that each of the variables must be determined as at the close of business on the Pricing Day immediately prior to the Prescribed Withdrawal Time.

## Interpretation

- 1.2 Unless the contrary intention appears, in this Constitution:
- (a) terms defined in the Act are used as defined;
  - (b) a reference to a statute, ordinance, code or other law includes reference to the corresponding regulations and instruments, in both instances as amended, supplemented, re-enacted, rewritten or replaced;
  - (c) the singular includes the plural and vice-versa;
  - (d) 'person' includes a firm, body corporate, an unincorporated association or an authority;
  - (e) 'prescribe' and 'determine' and any variations of them means as prescribed or determined from time to time;
  - (f) where a word or phrase is defined, another part of speech or grammatical form of the word or phrase has the corresponding meaning;
  - (g) where the Responsible Entity has the power or discretion to 'prescribe' a matter it may do so, without limitation, by:

- (i) giving notice to Members; or
  - (ii) prescribing the matter in an offer document for Units;
- (h) when preceding a list of items, 'include' and any variation of it does not exclude a reference to other items, whether of the same class or genus or not; ~~and~~

(i) headings have been inserted only for convenience and do not affect any interpretation of this Constitution; ~~and~~.

(i) where a rule in this Constitution is stated to apply:

(i) 'subject to the AQUA Rules and while a Class is Quoted'; or

(ii) 'while a Class is Quoted'.

it applies in respect of a class of Units, only while the units in that class are Quoted.

1.3 This Constitution is governed by the law of New South Wales.

1.4 A provision of this deed which is inconsistent with a provision of the law, including the Act, does not operate to the extent of the inconsistency.

1.5 This deed poll is the constitution of the Fund for the purposes of the Act at any time that the Fund is a registered managed investment scheme under the Act.

#### AQUA Rules

1.6 While a Class is Quoted, the Responsible Entity must comply with the AQUA Rules in relation to providing holding statements, the transfer and transmission of Units and the establishment and maintenance of a Register in respect of that Class.

1.7 While a Class is Quoted and subject to the Act:

(a) despite anything contained in this Constitution, if the AQUA Rules prohibit an act being done, the act shall not be done;

(b) nothing contained in this Constitution prevents an act being done that the AQUA Rules requires to be done;

(c) if the AQUA Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);

(d) if the AQUA Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;

(e) if the AQUA Rules require this Constitution not to contain a provision and it contains such provision, this Constitution is deemed not to contain that provision; and

(f) if any provision of this Constitution is or becomes inconsistent with the AQUA Rules, this document is deemed not to contain that provision to the extent of the inconsistency,

in respect of that Class.

1.8 Subject to ASIC Corporations (Chapter 5C – Miscellaneous Provisions) Instrument 2017/125 or its equivalent and for so long as it applies to the Fund, a change in the text of this Constitution because of the operation of clauses 1.6 to 1.8 is not a modification of, or the repeal or replacement of the Constitution for the purposes of subsections 601GC(1) and 601GC(2) of the Act.



## Participation in CHES

1.9 Subject to the AQUA Rules and while a Class is Quoted, the Responsible Entity may at any time resolve that the Fund will participate in CHES in respect of that Class.

1.10 If a Class is granted participation in CHES:

(a) the Responsible Entity must comply with the Settlement Rules if any of the Units in that Class are CHES approved securities. In particular, the Responsible Entity must comply with the requirements of the Settlement Rules regarding the maintenance of Registers, the issuing of holding statements and transfers in relation to the CHES approved securities of that Class;

(b) if the Units in that Class are CHES approved securities, in addition to the CHES subregister, the Responsible Entity must provide for an issuer sponsored subregister, or a certificated subregister, or both (at least if the Fund has restricted securities on issue) in respect of that Class; and

(c) the Responsible Entity must not in any way prevent, delay or interfere with the generation of a proper transfer of Units in that Class in accordance with the Settlement Rules or the registration of a paper-based transfer in registrable form (which satisfies the requirements of clauses 16.3 to 16.7), except as permitted by clause 16.7, the AQUA Rules or the Settlement Rules.

## **2. RIGHTS AND OBLIGATIONS OF MEMBERS**

2.1 This Constitution:

- (a) is executed as a deed poll and for the benefit of the Members; and
- (b) is legally enforceable as between the Members and the Responsible Entity.

2.2 Each Member has the benefit of, and is entitled to enforce, this Constitution even though the Member is not a party to, or may not be a Member at the time of execution and delivery of, this Constitution.

2.3 Each Member (and all persons claiming through the Member) will be bound by this Constitution as if they were a party to this Constitution.

## **3. THE FUND**

3.1 The Fund formed under this Constitution is called "Perpetual Ethical SRI Fund" or such other name as the Responsible Entity determines from time to time.

3.2 Perpetual Investment Management Limited is appointed, and agrees to act, as the responsible entity of the Fund.

3.3 The Responsible Entity declares that it will hold the Assets, subject to the Liabilities, upon trust for all the Members on, and subject to, the provisions of this Constitution.

3.4 The Assets vest in the Responsible Entity during the continuance of the Fund.

## **4. COMMENCEMENT, DURATION AND WINDING-UP**

4.1 The Fund commences on the date when, following execution of this Constitution by the Responsible Entity, Assets are first vested in the Responsible Entity in respect of the Fund.

4.2 The Fund will terminate on the earliest to occur of the following:

- (a) two days before the 80th anniversary of the date of this Constitution;

- (b) the date on which an event occurs which under the Act or this Constitution obliges the Responsible Entity to wind up the Fund; or
  - (c) a date determined by the Responsible Entity, being a date of which at least a month's prior written notice has been given to the Members.
- 4.3 The Fund may be wound up in accordance with the Act.
- 4.4 The Responsible Entity must realise the Assets:
- (a) if practicable and in the best interests of the Members, within 180 days of the termination of the Fund; or
  - (b) otherwise, as soon as reasonably practicable after the termination.
- 4.5 Notwithstanding termination, the Responsible Entity retains all its rights, discretions and powers under this Constitution including any entitlement to remuneration, indemnification and reimbursement and any right of recovery. The Responsible Entity may retain funds for the purpose of discharging Liabilities.
- 4.6 Subject to any Class Rights and Members' Income Entitlements (if any), the net proceeds of realisation [for a Class](#) are to be distributed pro rata to Members according to the number of Units held [in that Class](#) following discharge of all outstanding Liabilities, including those associated with the termination. [The net proceeds of realisation after deduction of the amounts described in this clause 4.6 for a Class is the amount that the Responsible Entity properly determines is referable to the Class by reference to the Class NAV for that Class.](#) The final accounts of the Fund after termination must be audited by a registered company auditor who is independent of the Responsible Entity.
- 4.7 On final distribution of the net proceeds of realisation in accordance with clause 4.6, the Responsible Entity is, subject to the Act, discharged from all duties and obligations imposed by, or arising under, this Constitution and by law.

## 5. INTERESTS OF MEMBERS

- 5.1 The beneficial interest of the Fund is divided into Units. A Unit does not confer any interest in any particular part of the Fund or any Asset but only an equal undivided interest in the Fund and the Assets as a whole, subject to [any Class Rights and](#) the Liabilities.

[5.2](#) The Responsible Entity may issue classes of Units and determine the rights, liabilities, obligations and restrictions which attach to each [eClass](#). A Member holds a Unit subject to this Constitution and the liabilities, obligations and restrictions attaching to that Unit.

[5.2.5.3](#) [Subject to the Act, the Responsible Entity may determine, from time to time, the Assets and Liabilities properly referable to a Class, which may be different to those Assets and Liabilities properly referable to another Class. While a Class is Quoted, this clause 5.3 is subject to the AQUA Rules in respect of that Class.](#)

[5.3.2A](#) The Responsible Entity must treat Members who hold Units in the same class equally and Members who hold units in different classes fairly.

[5.3.5.4](#) The Responsible Entity may:

- (a) determine and issue fractions of Units; and
  - (b) consolidate or divide Units,
- provided that the proportions of unitholdings are maintained.

[5.5](#) [While a Class is Quoted and subject to the AQUA Rules:](#)

- (a) [the Responsible Entity may determine not to create and issue a fraction of a Unit in a Class that is Quoted;](#)

(b) where any calculation performed under this Constitution results in the issue, redemption or holding of a part of one Unit in a Class that is Quoted, the number of Units to be issued, redeemed or held may be rounded up or down to the nearest number of whole Units as the Responsible Entity determines. Any excess subscription for other money or property which results from rounding shall become an Asset referable to that Class; and

(c) where any fractions of Units in a Class that is Quoted are on issue, the Responsible Entity may, in its discretion, cancel the fractions of Units on issue or a particular fraction of a Unit on issue in that Class and any money or property attributable to the cancelled fractions of Units shall become an Asset referable to that Class.

~~5.4~~5.6 Subject to the Act, a Member must not:

- (a) interfere with any discretions, rights or powers of the Responsible Entity or any dealing or proposed dealing with an Asset or a Liability; or
- (b) exercise, or purport to exercise, a right in respect of, lodge a caveat affecting, or otherwise claim an interest in, any Asset.

~~5.5~~5.7 On the request of a Member, the Responsible Entity may record in the Register a mortgage or other security interest (collectively **mortgage**) over the Member's Units. Withdrawal proceeds, capital distributions and distributions on termination of the Fund may be paid to the mortgagee. Any transfer of or other dealing in relation to Units is subject to any mortgage and the consent of the mortgagee. The Responsible Entity, however, is not taken to have notice of the terms of any mortgage and has no liability under any circumstances to any mortgagee of Units.

## 6. APPLICATION FOR UNITS

6.1 A person may apply for Units in any manner determined by the Responsible Entity from time to time and, while a Class is Quoted, this clause 6.1 is subject to the Act and the AQUA Rules in respect of Units in that Class.

6.2 The Responsible Entity may, for any Class, prescribe a minimum level (by number or value):

- (a) of Units to be applied for or of the application amount; and
- (b) of additional investments which may be made in the Fund,

provided that the Responsible Entity may waive the minimum level in respect of an Application, in its absolute discretion. While a Class is Quoted, this clause 6.2 is subject to the Act and the AQUA Rules in respect of Units in that Class.

6.3 The Responsible Entity may determine not to accept all, or part of, an Application and need not provide any reasons for its determination.

6.4 Subject to the Act, ~~a~~Application ~~Amounts~~payments are to be made to, or vested in, the Responsible Entity or a custodian appointed by the Responsible Entity.

6.5 If an ~~a~~Application ~~Amount~~payment is in the form of property:

- (a) subject to clause ~~7.37.2~~, prior to the issue of Units, the Responsible Entity may request a valuation of the property, as if the property was an Asset, at the applicant's expense;
- (b) no Units will be issued until the Responsible Entity is satisfied that the property has effectively been vested in the Responsible Entity (or its custodian) under clause 6.4; and
- (c) any Costs that the Responsible Entity may incur in connection with vesting the property in accordance with clause 6.5(b) are to be deducted from the value of the property in determining the amount of the application payment when the number of Units to be issued to the applicant is calculated and the application payment will become the property of the Fund.

## 7. ISSUE OF UNITS

### Issue of Units following acceptance of Applications

7.1 While a Class is Quoted, clauses 7.2 to 7.8 apply subject to the Act and the AQUA Rules in respect of Units in that Class.

~~7.4~~7.2 Subject to clauses 8.3 and 10A.8, Units the subject of an Application accepted by the Responsible Entity will be issued:

- (a) at the Application Price; and
- (b) subject to clauses 7.13 and 7.14 where the Responsible Entity issues a Unit to itself in accordance with clause 7.9(b), as at the Business Day immediately following the Application Date of the Units.

~~7.2~~7.3 The Responsible Entity has a discretion to determine whether to issue Units before an application payment is cleared or effectively vested in it (or its custodian) under clause 6.4.

~~7.3~~7.4 If an ~~a~~Application ~~Amount~~payment is not cleared or effectively vested in the Responsible Entity (or its custodian) under clause 6.4, the Units issued in respect of that ~~a~~Application ~~Amount~~payment may be cancelled by the Responsible Entity and deemed not to have been issued and the Responsible Entity may make any consequential or necessary entries in, or changes to, the records of the Fund.

~~7.4~~7.5 The Responsible Entity alone may determine the holder of a Unit. A Unit is deemed to be issued when the Member's name is entered in the Register. Until then no rights attach to the Unit.

~~7.5~~7.6 No certificates for Units will be issued unless the Responsible Entity determines otherwise. The entry of a Member's name in the Register is prima facie evidence of ownership.

~~7.6~~7.7 If a Member dies or becomes subject to a legal disability, only the survivor (in the case where the deceased was a joint tenant either in their own right or as a co-trustee) or the legal personal representative (in any other case) will be recognised as having any claim to the Units registered in the Member's name.

7.8 Upon a Member exercising his or her right to return Units in accordance with the Act, the Responsible Entity must pay to the Member the amount required under the Act in respect of the return of those Units.

### On-market sale of Units by Responsible Entity

7.9 Subject to the AQUA Rules and while a Class is Quoted, the Responsible Entity may:

- (a) offer and/or agree to sell Units in that Class on-market; and
- (b) issue Units in that Class to itself as determined by the Responsible Entity for the purposes of fulfilling the sale of Units in that Class on-market in accordance with clause 7.9(a).

7.10 Where the Responsible Entity sells Units on-market as specified in clause 7.9(a), the Responsible Entity will honour any contract to sell Units it enters into in accordance with ASX settlement procedures under the Listing Rules and AQUA Rules.

7.11 The price at which the Responsible Entity offers or agrees to sell Units on-market in accordance with clause 7.9(a) is at the absolute discretion of the Responsible Entity subject to its obligations under the Act and the AQUA Rules.

7.12 Any offers for the sale of Units the Responsible Entity places on-market pursuant to clause 7.9(a) will be subject to:

- (a) the Listing Rules and AQUA Rules; and

(b) interventions by ASX as market operator, including, for example, suspensions and trading halts.

7.13 Where the Responsible Entity offers and/or agrees to sell Units on-market pursuant to clause 7.9(a), it has a presently exercisable and unconditional power and right to issue to itself, and vest title in, the corresponding number of Units and take any other action necessary so that it has the absolute ability to issue to itself, and vest title in, the corresponding number of Units.

7.14 Without limiting clause 7.13, any Units that the Responsible Entity has sold on-market (other than Units sold on-market during that Business Day in respect of which the Responsible Entity has previously issued and/or vested title in pursuant to clause 7.13) in excess of Units acquired on market by the Responsible Entity (on a particular Business Day) will be issued as at that Business Day and issued by the Responsible Entity to itself as soon as reasonably practicable for the purposes of enabling the Responsible Entity to fulfil its obligations under settlement of the sale of those Units.

## **8. WITHDRAWALS**

### Off-market withdrawals

8.1 Subject to clauses 8.3 and 8.12:

(a) while a Class is Quoted, if the Responsible Entity determines to permit withdrawal requests in that Class, a Member may request that the Responsible Entity redeem Units of the Member in that Class the subject of a withdrawal request given to the Responsible Entity; and

(b) for any other Class, a Member may request that the Responsible Entity redeem Units of the Member the subject of a withdrawal request given to the Responsible Entity.

A withdrawal request must be made in the form and manner acceptable to the Responsible Entity. While a Class is Quoted, prior to processing a withdrawal request, the Responsible Entity may require a Member to hold their Units in that Class on an issuer sponsored sub-register, provide any such information determined by the Responsible Entity to facilitate the withdrawal request and determine not to process a withdrawal request until the Responsible Entity receives all such information to its satisfaction.

~~8.1~~ 8.2 Subject to clauses 8.3, 8.11 and 8.12, the Responsible Entity must:

- (a) redeem Units the subject of the withdrawal request with effect as at the Business Day immediately following the Withdrawal Date applicable to the Units; and
- (b) pay to the relevant Member, out of the Assets, the Withdrawal Price (less the Exit Fee) for each Unit that is redeemed within a reasonable time (being not more than 30 days) after the Withdrawal Date.

~~8.2~~ 8.3 Notwithstanding anything expressed or implied to the contrary in this Constitution, if the Responsible Entity determines that it is desirable for the protection of the Fund or in the interests of the Members that whilst:

- (a) any relevant stock market or foreign exchange market is closed;
- (b) trading on any such market is restricted;
- (c) an emergency (including an emergency caused by a mechanical or electronic malfunction) exists as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Application Price or the Withdrawal Price;
- (d) during the existence of any state of affairs as a result of which it is not reasonably practicable for the Responsible Entity to acquire or dispose of the Assets or to determine fairly the Application Price or the Withdrawal Price; ~~or~~

(e) any moratorium declared by a government of any country with which a significant proportion of the Fund is invested exists; or

(f) a Class is Quoted:

(i) the quotation of any Units in that Class is suspended or the trading of any Units in that Class is otherwise halted, interrupted or restricted by ASX, or the trading of any Units in that Class on ASX is subject to a period of deferred settlement trading, or there is a period during which Units are subject to a consolidation or division;

(ii) any Units in that Class cease to be Quoted or the Units in that Class are removed from trading status on the ASX; or

(iii) the approval of the Responsible Entity as an AQUA Product Issuer is suspended or revoked;

Units should not be issued, or the price at which Units shall be issued or redeemed should not be calculated, or the proceeds of any withdrawal need not be paid for any period determined by the Responsible Entity, the Responsible Entity shall not issue Units or calculate the price at which Units shall be issued or redeemed or make any payment for the redemption of Units for the period so determined and the Application Price and the Withdrawal Price for the Fund for that period shall be the Application Price and the Withdrawal Price next determined.

~~8.3~~8.4 The Responsible Entity may, with the consent of a Member, transfer Assets to that Member in lieu of cash in satisfaction of its obligations under clause 8.2. The Assets being transferred must be valued as at the Withdrawal Date and such value must equal the total of the Withdrawal Price (less the Exit Fee) of the Units being redeemed and any Costs associated with the transfer (which must be paid for out of, or deducted from, the Assets being transferred).

~~8.4~~8.5 Unless the Responsible Entity determines otherwise, the Units first issued to a Member are the Units to be first redeemed.

~~8.5~~8.6

- (a) The Responsible Entity may from time to time, in its sole discretion, specify a minimum Unit holding (by number or value).
- (b) If, as a result of the redemption of Units the subject of a withdrawal request, the relevant Member's Unit holding in a Class would fall below the minimum holding, the Responsible Entity may treat the withdrawal request as applying to the Member's entire Unit holding in the Class.
- (c) If a Member's Unit holding in a Class falls below the minimum Unit holding at any time, the Responsible Entity may cause the redemption of the Member's entire Unit holding in the Class as if the Member had given a withdrawal request in respect of the entire Unit holding in the Class.

~~8.6~~8.7 A Member may not withdraw a withdrawal request unless the Responsible Entity agrees.

~~8.7~~8.8 The Responsible Entity may, at its discretion, decide to purchase or buy-back, out of its own funds, Units of a Class the subject of a withdrawal request, in which case:

- (a) the provisions relating to redemptions will operate with such modifications as are necessary;
- (b) the Responsible Entity may elect to treat the withdrawal request as a transfer from the relevant Member to the Responsible Entity and a withdrawal request by the Responsible Entity in respect of the relevant Units;
- (c) it is not a condition precedent to the transfer of the right, title and interest in the Units to the Responsible Entity that the Responsible Entity has paid the Member the Withdrawal Price; and

- (d) the Responsible Entity may deduct from the Withdrawal Price for the Units transferred all Costs, losses and damages of whatever kind incurred or payable by the Responsible Entity, in any capacity, in connection with or as a consequence (direct or indirect) of the purchase or buy-back.

~~8.8~~8.9 Clauses 8.1 to 8.8 (inclusive) apply whilst the Fund is liquid. If the Fund is not liquid, the Responsible Entity may only offer Members the opportunity to withdraw in accordance with the Act.

~~8.9~~8.10 Upon receipt of a withdrawal request from a Member:

- (a) the Responsible Entity may, at its sole discretion:
  - (i) determine what portion of the Withdrawal Price to be paid to that Member for each Unit the subject of the withdrawal request represents a share of the Income Entitlement and what portion represents a share of the realised capital gains for the relevant Distribution Period to which the Member is entitled in relation to a Unit redeemed during that Distribution Period; or
  - (ii) where the Fund is an AMIT for a Financial Year, determine on a fair and reasonable basis what portion of the Withdrawal Price to be paid to a Member for each Unit in a class represents a Member Component; and
- (b) where the Responsible Entity makes a determination under clause 8.10(a), the Responsible Entity must notify the Member of the composition of the Withdrawal Price so determined.

~~8.10~~8.11 Notwithstanding anything expressed or implied to the contrary in this Constitution, where:

- (a) In respect of any single Business Day a Member requests the withdrawal of a number of Units of a Class that represents more than 5% of the number of Units of the Class in issue, the Responsible Entity may determine that such withdrawal request shall be and be deemed to be 5 separate withdrawal requests each for a one-fifth portion of the total number of Units of the Class in the original withdrawal request, one of which 5 separate withdrawal requests are received by the Responsible Entity on each of the 5 successive Business Days commencing with the Business Day on which the Responsible Entity received the original withdrawal request.
- (b) In respect of any period of 5 consecutive Business Days Members, including any Member mentioned in paragraph (a), request the withdrawal of a number of Units of a Class that in aggregate represent more than 10% of the number of Units of the Class in issue, the Responsible Entity may in its discretion:
  - (i) determine that each withdrawal request made in that period (each an **"original withdrawal request"**) shall be and be deemed to be 5 separate withdrawal requests (each a **"deemed withdrawal request"**) each for a one-fifth portion of the total number of Units of the Class in the relevant original withdrawal request; and
  - (ii) one of each of the deemed withdrawal requests shall be deemed to be received by the Responsible Entity on each of the following days:
    - (A) the Business Day on which the aggregate representing more than 10% of the number of Units in issue was reached;
    - (B) the fifth Business Day after the Business Day referred to in paragraph (A) above;
    - (C) the fifth Business Day after the Business Day referred to in paragraph (B) above;
    - (D) the fifth Business Day after the Business Day referred to in paragraph (C) above;

- (E) the fifth Business Day after the Business Day referred to in paragraph (D) above.

~~8.11~~8.12 On the earlier of:

- (a) the termination of the Fund;
- (b) the receipt by Members of a notice of termination sent by the Responsible Entity; or
- (c) the passing of a resolution (in accordance with the Act) to terminate the Fund at a meeting of Members,

the Responsible Entity may suspend the withdrawal of any Units.

~~8.12~~8.13 Where the Fund is an AMIT for a Financial Year and the Responsible Entity is or will become liable to pay an amount of Tax under Division 276 of the *Income Tax Assessment Act*, 1997 in connection with a Member, the Responsible Entity may, in its absolute discretion:

- (a) redeem Units of the Member equal to the amount of Tax that the Responsible Entity is or will become liable to pay in connection with that Member without the need for a redemption request; and

(b) deduct the amount of Tax from the proceeds of redemption of the Units.

#### Withdrawing via on-market disposal

8.14 Subject to the AQUA Rules and while a Class is Quoted, Members have the right to withdraw their investment in the Units in that Class where they contract to sell their Units on-market to the Responsible Entity.

8.15 Where the Responsible Entity acquires Units on-market to facilitate a Member's withdrawal under clause 8.14, the Responsible Entity will honour any contract to buy Units it enters into in accordance with ASX settlement procedures under the Listing Rules, Settlement Rules and AQUA Rules.

8.16 Subject to the Act, the price at which the Responsible Entity transacts on-market in accordance with clause 8.14 will be based on the Responsible Entity's assessment of market conditions at the time it transacts.

8.17 Any bids for the Units in that Class the Responsible Entity places on-market in accordance 8.14 will be subject to:

- (a) the Listing Rules, AQUA Rules and the Act; and
- (b) interventions by ASX as market operator, including, for example, suspensions and trading halts.

8.18 Any Units in that Class that the Responsible Entity has acquired on-market in excess of Units sold on-market by the Responsible Entity (on a particular Business Day) will be cancelled as at that Business Day and cancelled by the Responsible Entity as soon as reasonably practicable upon settlement of those Units.

#### Withdrawals where a Class is suspended from Quotation

8.19 While a Class is both:

- (a) Quoted; and
- (b) Liquid,

where trading in the Units of that Class on the ASX under the AQUA Rules has been suspended, for any reason, for five consecutive Business Days, the Responsible Entity must facilitate direct redemptions of Units in that Class the subject of a withdrawal request at the Withdrawal Price.



## 9. VALUATION

- 9.1 The Responsible Entity may value Assets at any time, and must do so in accordance with the Compliance Plan and when required by the Act.
- 9.2 A valuation may be undertaken either by the Responsible Entity or a Valuer pursuant to a Valuation Method.
- 9.3 Assets must be valued at their market value (other than mortgages which must be valued at the amount of outstanding principal) unless:
- (a) there is no market for an Asset; or
  - (b) the Responsible Entity or Valuer (as the case may be) reasonably believes that the valuation does not represent the fair value of the Asset,
- in which case, the Responsible Entity or Valuer (as the case may be) may use another valuation method or policies in respect of the Asset provided that they must be capable of resulting in an independently verifiable calculation of the Application Price or Withdrawal Price [for each Class](#).
- 9.4 Unless the Responsible Entity otherwise prescribes, the value of Assets as at a specified day is to be determined using the values as at the close of business on the day [and in any event, the value must be reasonably current at the time that it is used to determine the Class NAV for the purposes of determining the Application Price or Withdrawal Price](#).
- 9.5 The Responsible Entity may make and act upon estimates of the value of any Assets or of the amount of any Liabilities where actual valuations or authenticated figures are not available and the Responsible Entity considers there will be no significant detriment to any Member.
- 9.6 The Responsible Entity's determination of the market value of the Fund, of any Asset and of any part of the Fund shall, in the absence of fundamental error, be final and binding on all Members.

## 10. INCOME AND CAPITAL DISTRIBUTIONS

Clauses 10.1 to 10.7 (inclusive) apply in respect of any Financial Year, in which the Fund is not an AMIT.

- 10.1 The Responsible Entity must
- (a) collect, or cause to be collected, all income in respect of the Fund;
  - (b) determine the Distribution Periods for the Fund, provided that immediately following one Distribution Period, another Distribution Period must commence and in each calendar year one Distribution Period must end at midnight on 30 June in the relevant calendar year;
  - (c) determine the Distributable Income for each Distribution Period; and
  - (d) determine the classification of an item as being on income or capital account, and the extent to which the income of the Fund is to be adjusted by allocating such amount as it considers proper in accordance with Generally Accepted Accounting Principles to a provision or reserve account for the purpose of meeting anticipated expenses or obligations of the Fund.
- 10.2
- (a) The total amount to be distributed in respect of a Distribution Period ceases to be an Asset as at midnight on the ~~Distribution Date~~ [last day of the Distribution Period](#) and must be transferred to a distribution account or dealt with in accordance with the Responsible Entity's reinvestment facility:
    - (i) as soon as reasonably practicable after the ~~Distribution Date~~ [last day of the Distribution Period](#); and

- (ii) in any event, within 90 days after the ~~Distribution Date~~ last day of the Distribution Period.
  - (b) Members on the Register at midnight on each Distribution Date have an absolute, vested and indefeasible interest in the Distributable Income for the relevant Distribution Period. Subject to any Class Rights and any determination made under clause 8.10(a), the Income Entitlement of each Member is the Member's pro rata proportion of the Distributable Income, for the relevant Distribution Period calculated according to the number of Units held by the Member compared to the total number of Units in issue, as at midnight on each Distribution Date, less amounts:
    - (i) specified in clause 10.2(c); and
    - (ii) required to be deducted under this Constitution or by law including all Taxes;
  - (c) Any Income Entitlement which it is impractical to distribute in a Distribution Period becomes an Asset and is deemed to accrue to the next Distribution Period including any balance representing a fraction of one cent arising as a consequence of the rounding off of the Income Entitlement to whole cents.
- 10.3 The Responsible Entity must notify Members of the composition of their Income Entitlement and the types of income and capital.
- 10.4 In addition to any Income Entitlement and subject to any Class Rights, the Responsible Entity may, at any time, distribute any amount (capital or income) by way of cash, in specie or bonus Units to Members pro rata to the number of Units held as at a time determined by the Responsible Entity.
- 10.5
- (a) The Responsible Entity may offer a reinvestment facility under which Members may elect to reinvest all or a proportion of their Income Entitlement in subscriptions for further Units on each Distribution Date.
  - (b) If clause 10.5(a) applies, the Responsible Entity is taken to have received an Application to reinvest distributions at the time the relevant Member becomes presently entitled to the Income Entitlement which is to be reinvested.
  - (c) The procedure for reinvestment of distributions and the Application Price payable for the further Units by a Member is to be determined by the Responsible Entity and is to be notified to Members as and when the facility is offered.
  - (d) A request for cancellation of the operation of the reinvestment facility by a Member in respect of a distribution for a particular Distribution Period and those Distribution Periods following, is effective only if the Responsible Entity receives written notice of this request at least 21 days prior to the end of a Distribution Period.
  - (e) The Responsible Entity may withdraw or suspend the operation of a reinvestment facility at any time.
  - ~~(e)~~ (f) While a Class is Quoted, this clause 10.5 is subject to the AQUA Rules in respect of Units in that Class.
- 10.6 The Responsible Entity must arrange for, and prepare, the payment of the Income Entitlements and any capital distributions to Members. If an attempted deposit is rejected, the deposit will be cancelled and the Income Entitlement or capital distribution reinvested in Units at the Application Price prevailing at the time the deposit is cancelled.
- 10.7 Income Entitlements must be paid to Members out of the distribution account as soon as practicable after the Distribution Date.

## 10A INCOME AND CAPITAL DISTRIBUTIONS WHERE THE FUND IS AN AMIT

- 10A.1 This clause 10A applies in respect of any Financial Year in which the Fund is an AMIT.
- 10A.2 The Responsible Entity may make a distribution of any amount, whether of income or capital, or otherwise according to such terms, as are prescribed by the Responsible Entity in accordance with this clause 10A.
- 10A.3 The Responsible Entity must:
- (a) collect or cause to be collected all income in respect of the Fund; and
  - (b) determine the classification of an item as being on income or capital account, and the extent to which the income of the Fund may be adjusted by allocating such amount as it considers proper in accordance with Generally Accepted Accounting Principles to a provision or reserve account for the purpose of meeting anticipated expenses or obligations of the Fund.
- 10A.4 With respect to any distribution:
- (a) subject to clause 10A.7, the total amount to be distributed in respect of a Distribution Period must be transferred to the relevant distribution account or dealt with in accordance with the Responsible Entity's reinvestment facility as soon as practicable after the last day of the Distribution Period ~~Distribution Date~~ (and in any event within 90 days after the last day of the Distribution Period ~~Distribution Date~~) and ceases to be an Asset of the Fund as at midnight on the last day of the Distribution Period ~~Distribution Date~~;
  - (b) the Members on the register at midnight on each Distribution Date have an absolute, vested and indefeasible interest in the Distributable Income for the relevant Distribution Period (other than as specified in clause 10A.4(c)) allocated among each class as determined by the Responsible Entity. The Distributable Income for a class shall be calculated by allocating to a class those components of income or expenses, or appropriate proportions of the components of income and expenses, which are referable to that class. The Distributable Income shall be allocated pro rata to the Members of a class according to the number of Units held in that class; and
  - (c) any Income Entitlement which it is impractical to distribute in a Distribution Period becomes an Asset of the Fund and is deemed to accrue to the next Distribution Period including any balance representing a fraction of one cent arising as a consequence of rounding off the Income Entitlement to whole cents.
- 10A.5 Where the Responsible Entity is or will become liable to pay any Tax in relation to an Income Entitlement due to a Member, the Responsible Entity may deduct the amount of the Tax from the Income Entitlement payable to that Member. A deduction under this clause is not to be taken to reduce the Member's Income Entitlement but is a reimbursement by the Member to the Responsible Entity for the Tax payable.
- 10A.6 Subject to clause 10A.8, Income Entitlements must be paid to Members out of the distribution account as soon as practicable after the Distribution Date. If an attempted deposit is rejected, the deposit will be cancelled and the Income Entitlement will be reinvested in Units in the relevant class at the Application Price for the class prevailing at the time the deposit is cancelled.
- 10A.7 For each Financial Year the Responsible Entity holds any Income Entitlements of Members that have not been distributed by the end of the Financial Year on trust for the Members.
- 10A.8 The Responsible Entity may:
- (a) make a determination to distribute, accumulate or cause the reinvestment of some or all of the Fund's income and the procedure for distribution, accumulation or reinvestment will be determined by the Responsible Entity; and
  - (b) where the Responsible Entity determines to reinvest some or all of the income of the Fund, include this amount in Distributable Income and reinvest the amount so determined in further Units in the relevant class. The Responsible Entity is deemed to have received and accepted

an Application from the Member for the amount to be reinvested at midnight on the relevant Distribution Date.

10A.9 The Responsible Entity must, in accordance with the *Income Tax Assessment Act 1997*:

- (a) determine the Trust Components in respect of the Fund and, if applicable, each class;
- (b) take into account any Under or Over Distribution when determining the Trust Components pursuant to paragraph (a) (any Under or Over Distribution will be adjusted for in the discovery year except in unusual circumstances where the Responsible Entity forms the view that it is fair and reasonable to Members as a whole that the Under or Over Distribution is adjusted for in the base year);
- (c) calculate each Member Component on a fair and reasonable basis and notify each Member of the Determined Member Component attributed to them for the Financial Year.

## **11. ACCOUNTS AND AUDIT**

11.1 The Responsible Entity must:

- (a) prepare, or cause to be prepared, accounts of the Fund in accordance with Generally Accepted Accounting Principles as they apply to managed investment schemes; and
- (b) ensure that the accounts are maintained, audited and reported on as prescribed by the Act.

11.2 The Responsible Entity must appoint an independent registered company auditor to audit the accounts of the Fund. Subject to the Act, the Responsible Entity may remove and subsequently replace any Auditor.

## **12. POWERS OF RESPONSIBLE ENTITY**

12.1 Without limiting any other clause, the Assets may be invested in, or represented by, any form of investment and the Responsible Entity may determine, in its discretion, the types of investments into which the Fund is to be invested. The Responsible Entity may vary its investment policy by giving notice to the Members.

12.2 The Responsible Entity has all the powers in relation to, in respect of, and in connection with, the Fund, the Assets and the Liabilities that it is legally possible for a natural person, trustee or corporation to have including all and any powers:

- (a) to acquire, develop, maintain, deal with, invest in and sell any property;
- (b) which it could exercise if it were the absolute and beneficial owner of the Assets and the Liabilities;
- (c) to incur liabilities and obligations of any kind (including to grant indemnities and guarantees, to make representations, to give warranties and undertakings and enter into any sort of futures, derivative, swap, option contract or arrangement or instrument or combination of any of these) and including of a speculative nature;
- (d) to borrow, procure financial accommodation and raise money for the purposes of the Fund whether or not on the security of the Assets;
- (e) to issue debentures, grant mortgages and grant or give any security over, create any interests in (including security interests), or encumber, the Assets;
- (f) to carry on any business;
- (g) to fetter future discretions; and

- (h) sell, transfer, encumber or otherwise deal with, any of the Assets or any interests in the Assets as part of any securitisation or repurchase arrangement undertaken in connection with the Fund.
- 12.3 The Responsible Entity may decide how and when to exercise its powers in its absolute discretion.
- 12.4 The Responsible Entity may authorise any person or persons to act as its delegate or agent (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Responsible Entity's power. The delegate or agent may be an Associate of the Responsible Entity.
- 12.5 The Responsible Entity may engage or appoint any agent, investment manager, adviser, valuer, broker, underwriter or other contractor ("Adviser") to assist it in managing the Fund, exercising any power, discharging any duty or obligation or dealing with any Asset or Liability. An Adviser may include an associate of the Responsible Entity. Subject to the Act, the Responsible Entity is not liable for the acts or omissions of an Adviser provided that the Responsible Entity has exercised care in the selection of the Adviser. Where the Responsible Entity or its associates provide such services the Responsible Entity or the associate will be entitled to fees in accordance with clause 15.2(b) in addition to the Responsible Entity's remuneration payable under clause 15.2(a).
- 12.6 Subject to the Act, the Responsible Entity may retire at such time as it thinks fit and may appoint another company to be the new Responsible Entity.
- 12.7 For the purpose of section 601FL of the Act, the Responsible Entity is entitled to nominate another company that meets the requirements of section 601FA of the Act for submission to the Members' meeting.
- 12.8 When it retires or is removed, the Responsible Entity is released from all obligations in relation to the Fund arising after the time it retires or is removed.
- 12.9 When the Responsible Entity retires, it may require the name of the Fund to be changed to a name which does not include the current (or any former) name of the Responsible Entity (including the word "Perpetual") and which is not substantially or deceptively similar to those names.
- 12.10 None of the clauses in this clause 12 limit or restrict the operation of any other clause in this clause 12 or any other clause of this Constitution.
- 12.11 The powers, discretions and rights of the Responsible Entity under this clause 12 must be exercised subject to any duties imposed under the Act.
- 12.12 While a Class is Quoted and subject to the AQUA Rules and the Act, the Responsible Entity will make a market and provide liquidity in respect of the Units in that Class for so long as the Responsible Entity is required to do so under the Operating Rules. The Responsible Entity may make a market and provide liquidity in respect of the Units in that Class thereafter, but is not obliged to do so.
- ~~12.14~~12.13 While a Class is Quoted, the Responsible Entity may engage or appoint service providers (including market participants and security registrars) to facilitate the execution and settlement of its market making activities for that Class under clauses 7.9 to 7.14, 8.14 to 8.18 and 12.12.

### **13. RIGHTS AND LIABILITIES OF RESPONSIBLE ENTITY**

- 13.1 Subject to the Act, the Responsible Entity and its Associates may hold Units.
- ~~13.4~~13.2 While a Class is Quoted and subject to the AQUA Rules and the Act, the Responsible Entity and its Associates may trade any Units held in that Class as they determine.
- ~~13.2~~13.3 Nothing in this Constitution restricts the Responsible Entity or its Associates from:

- (a) dealing with their Associates, the Fund or any Members including acquiring or dealing with any interest in, or an asset of, a trust of which the Responsible Entity or any of its Associates is the manager, trustee or responsible entity;
- (b) dealing with itself in relation to the Fund where, in respect of such dealing, it is acting in different capacities;
- (c) being interested in any contract or transaction with its Associates, the Fund or any Member and retaining for its own benefit any profits or benefits derived from any such contract or transaction;
- (d) acting as investment manager in relation to the Fund; or
- (e) acting as responsible entity, trustee, investment manager or a similar capacity in relation to any other Fund or scheme,

subject to its acting at all times in accordance with its duties under the Act. The Responsible Entity and its aAssociates are authorised and permitted to do any of the things referred to in paragraphs (a) to (e) (inclusive) of this clause.

~~13.3~~13.4 The Responsible Entity and its aAssociates may retain and are not liable to account to the Members or any other person for any profits or benefits or benefits arising from or in connection with any action, contract or transaction referred to in clause ~~13.3~~13.2.

~~13.4~~13.5 Subject to the Act, when the Responsible Entity is a Member, the Responsible Entity is entitled to all of the benefits and rights of any other Member under this Constitution and the Act.

~~13.5~~13.6 To the extent permitted by the Act and in addition to any indemnity allowed by Act, the Responsible Entity is entitled to be indemnified in full out of the Assets for any liability incurred by it in the proper performance of its duties or powers in relation to the Fund.

~~13.6~~13.7 Subject to the Act, the Responsible Entity is not liable to the Members in contract, tort or otherwise for any loss suffered in relation to the Fund except to the extent to which the loss is caused by the fraud, negligence or breach of trust of the Responsible Entity.

~~13.7~~13.8 Subject to the Act, the liability of the Responsible Entity to any person (including a Member) in respect of the Fund is limited to the extent to which the Responsible Entity is actually indemnified out of the Assets for that liability.

~~13.8~~13.9 The Responsible Entity is not required to do anything

- (a) unless the Responsible Entity is satisfied that its liability is satisfactorily limited; or
- (b) for which it does not have a full right of indemnity out of the Assets available for that purpose and in respect of which there are, in the Responsible Entity's opinion, sufficient Assets to fully discharge any such liability.

~~13.9~~13.10 Where the Fund has issued different classes, the Responsible Entity may make a choice to treat one or more class as a separate AMIT for the purpose of Division 276 of the *Income Tax Assessment Act 1997* and to the extent necessary, or appropriate, reflect this in the Fund's accounting and tax records.

## 14. LIABILITY OF MEMBERS

14.1 The liability of a Member is limited to the value from time to time of the Member's Units. A Member need not indemnify the Responsible Entity or any creditor of the Fund or Responsible Entity, if the Assets are not sufficient to discharge the Liabilities or meet the claim of any creditor of the Fund or the Responsible Entity in respect of the Fund.

14.2 Except as provided in this Constitution, the recourse of the Responsible Entity and any creditor is limited to the Assets.

14.3 The Responsible Entity is entitled to be indemnified and is to be kept indemnified on a full indemnity basis and is entitled to pay or be paid or reimbursed out of the Assets of the Fund in respect of, or in connection with any liability, which it may pay or incur, in properly performing any of its duties which:

- (a) is an Attribution Income Tax Liability; or
- (b) results from a Member or former Member making a claim against the Responsible Entity in relation to an Attribution Income Tax Liability of the Member or former Member that results from attribution by the Responsible Entity under section 276-10 of the *Income Tax Assessment Act* 1997 to interests held by the Member or former Member.

## 15. REMUNERATION AND EXPENSES

15.1 Notwithstanding any other provision of this Constitution, the right of the Responsible Entity to be paid fees out of the Assets, or to be indemnified out of the Assets for the Liabilities or any liabilities or expenses incurred in relation to the performance of its duties is available only in relation to the proper performance of those duties.

15.2 Subject to clause 15.1, the Responsible Entity is entitled to receive and retain the following fees for its own use being fees which are to be paid out of the Assets:

### Management Fee

- (a) ~~For each Class, the~~ Responsible Entity is entitled to a fee equal to 3% per annum of the gross value of the Assets referrable to the Class calculated and accruing daily and payable within 10 days of the end of each month or such other times as the Responsible Entity decides. The Responsible Entity may determine whether this fee is payable out of income or out of the capital of the Fund or both.
- (b) Where the Responsible Entity or an Associate of the Responsible Entity provides services in accordance with clause 12.4 or 12.5, it or the Associate is entitled to be paid fees (charged at its usual commercial rates) as if such fees were expenses incurred in accordance with clause 15.3. Those fees are in addition to those payable to it under clause 15.2(a).

### Performance Fee

- (c) For any new Class issued under clause 5.2 only, the Responsible Entity is entitled to a performance fee calculated as set out in Schedule 1. The Responsible Entity may determine whether this fee is payable out of income or out of the capital referrable to that Class or both.

### Entry Fee

- ~~(d)~~(d) An Entry Fee payable from the relevant application payments.

### Exit Fee

- ~~(d)~~(e) An Exit Fee payable from the relevant redemption proceeds.

### Other Fees

- ~~(e)~~(f) Such fees as the Responsible Entity may charge at its standard hourly charge-out rate applicable from time to time for specific work required to be undertaken by the Responsible Entity in relation to Members' meetings, amendments to this Constitution and any other matter not normally or routinely arising in the normal course of administration of the Fund.

### Expenses

15.3 Subject to clauses 15.1 and 15.4, in addition to the remuneration payable to the Responsible Entity, the Responsible Entity is indemnified, and is to be kept indemnified, out of the Assets for all Costs, liabilities, damages and losses reasonably and properly incurred by the Responsible Entity in connection with the Fund, the Assets and the Liabilities or in performing its duties and

obligations including in connection with (and if referable to more than one trust, apportioned in a manner determined by the Responsible Entity):

- (a) this Constitution and the formation of the Fund, any modification, repeal or replacement of this Constitution and lodgment with the ASIC;
- (b) the preparation, review, printing, distribution and promotion of any prospectus, product disclosure statement or offering memorandum in respect of Units and any material supplemental, or in replacement of, such document;
- (c) the sale, purchase, insurance, custody of (including the fees of a related body corporate of the Responsible Entity), and any other dealing with, Assets including commission to mortgage brokers who introduce borrowers to the Fund;
- (d) any proposed or actual investment;
- (e) the operation, administration, management, investment or promotion (including in connection with any proposed or actual issue of Units) of the Fund, the Assets or the Liabilities, including investment management, property and project management Costs;
- (f) the preparation, printing and postage of distribution statements or any other communications with Members;
- (g) convening and holding meetings of, and dealings with, Members (other than expenses payable under section 252C(4) of the Act), and the implementation of any resolutions and communications with Members;
- (h) all Taxes (provided the Tax is not income tax on the personal account of the Responsible Entity) including any goods and services tax or value added tax payable in respect of the fees payable to the Responsible Entity or another person and bank fees and other Costs;
- (i) the engagement of delegates, underwriters, investment managers, agents, valuers, asset consultants, advisers and contractors of all kinds including legal Costs and expenses (charged at the usual commercial rates of the relevant legal services provider);
- (j) preparation and audit of the taxation returns and accounts of the Fund;
- (k) computer and other facilities relating to the matters in paragraphs (c), (e) and (j);
- (l) termination of the Fund and the retirement or removal of the Responsible Entity and the appointment of a new Responsible Entity;
- (m) any court proceedings, arbitration or other dispute concerning the Fund or any Asset including proceedings against the Responsible Entity (except to the extent that the Responsible Entity is found by a court to be in breach of trust, fraudulent or to have been negligent);
- (n) any Costs incurred in connection with, or as a result of, any agreement in connection with the Fund to which the Members are parties and any Costs which any such agreement provides are to be borne by the Fund or paid for out of the Assets;
- (o) the establishment, operation and maintenance of the Register, including without limitation, any Costs of any person employed or appointed by the Responsible Entity in connection with that Register (notwithstanding it may be the Responsible Entity's agent);
- (p) preparing, changing and auditing the Responsible Entity's compliance with, the Compliance Plan;
- (q) fees of external directors (including insurance premiums) of the Responsible Entity, or external members of the Responsible Entity's compliance committee;
- (r) the preparation and lodgment of accounts, applications and returns with the ASIC;



- (s) the Liabilities;
- (t) any amounts payable by the Responsible Entity pursuant to any agreement entered into by it for the benefit of, otherwise relating to or in connection with, the Fund;
- (u) any Costs in connection with borrowings or raisings and other financial accommodation (including capital repayments, interest and discount and other bank fees) and any other bank account or services offered by any financial institution (including electronic funds transfer and other electronic banking or payment services or any other method of making payments to Members) in connection with the Fund; and
- (v) any Costs (including an apportionment of such Costs) in connection with the Responsible Entity being a member of an external complaints handling scheme to which a dispute may be referred under clause 18.2(e) (including as required by the terms of the Responsible Entity's licence, in applying for membership, application and ongoing membership fees, in maintaining membership and any Costs in connection with any complaints or matters to or to be, or proposed to be, dealt with by, the manager of such a scheme in accordance with the terms of such a scheme);
- (w) any fees, Costs or expenses in connection with the establishment, operation and maintenance of quoting Units on an exchange; and
- ~~(x)~~ any fees, charges or levies payable to ASIC or any other regulatory authority in relation to the Fund, the Units or the Responsible Entity.

The Responsible Entity may pay any items referred to in this clause directly out of the Assets or it may pay them itself and be reimbursed out of the Assets.

15.4 For the items referred to in clause 15.3(w) and clause 15.3(x), the Responsible Entity may only pay these items or be reimbursed for these items out of the Assets referable to the Classes that are Quoted and Classes that are not Quoted will not bear the cost of these items.

#### Waiver

~~15.4~~ 15.5 The Responsible Entity may waive or take a lower fee than it is entitled to under this Constitution, and may defer payment for any period. Where payment is deferred, the fee still accrues daily until paid.

~~15.5~~ 15.6 Subject to the Act, and without limiting clauses 5.2 or ~~15.10~~ 15.9 the Responsible Entity may charge one or more Members' lower fees and charges (including, without limitation, under clause 15.2) than those applying to other Members holding Units of the same ~~Class~~ or of different Classes on such terms and conditions as the Responsible Entity determines.

#### GST

~~15.6~~ 15.7 The fees payable to the Responsible Entity under this clause 15 are inclusive of GST.

~~15.7~~ 15.8 Despite any other provision of this Constitution, where the Responsible Entity is satisfied that owing to changed economic circumstances (as defined below), it is reasonable to vary the fees and charges payable to the Responsible Entity under this clause 15, the fees may be varied by a deed supplemental to this Constitution by stipulating such other percentage amount as the Responsible Entity determines, and any variation of the fees must be notified by notice of variation despatched not more than three Business Days after the date of the notice to each Member on that day provided that any variation of the fees will not become effective prior to the expiration of reasonable notice (being not more than one month after the date of the notice of variation).

In this clause "**changed economic circumstances**" includes, without limitation, any change in economic or commercial circumstances affecting the Responsible Entity or the Fund (whether or not the circumstances are general or specific) or in the rate of ~~goods and services tax~~ GST payable on the supply of the Responsible Entity's services, any amendment to the GST Law, including the *A New Tax System (Goods and Services Tax) Regulations*, any movement in any

consumer price index and any reassessment by the Responsible Entity of the fee structure under this Constitution.

~~15.8~~ 15.9 The Responsible Entity may, in its absolute discretion, pay from the remuneration and fees it receives in accordance with this clause 15, fees or commissions to its advisers, agents and employees or any licensed or authorised dealer, broker or adviser.

~~15.9~~ 15.10 The Responsible Entity may, in its absolute discretion, to the extent permitted under the Act, agree with a Member, or a class of Members, to rebate a percentage of the remuneration or fees charged to the account of a Member or class of Members. The Responsible Entity may either pay such rebated amounts to the Member in such manner as determined by the Responsible Entity or reinvest the rebated amounts into additional Units for the benefit of the relevant Member as elected by the Member.

## 16. ADMINISTRATION AND REPORTING

### Transfers for a Class that is not Quoted

16.1 While a Class is not Quoted, Members may transfer Units in that Class by completing a transfer form as prescribed by the Responsible Entity and paying any relevant Costs. The Responsible Entity may refuse to register a transfer and need not provide any reasons. Where the Responsible Entity refuses to register a transfer, it may compulsorily redeem those Units in accordance with clause 8 as if a redemption request had been lodged in respect of them.

### Transfers for a Class that is Quoted

16.2 Clauses 16.3 to 16.7 only apply to Units in a Class that is Quoted and are subject to the operation of the Act, CHESS and the AQUA Rules (as applicable).

16.3 Subject to this Constitution, Members may transfer Units by completing an instrument of transfer in any form prescribed by the Responsible Entity and paying any relevant Costs and Taxes.

16.4 Subject to the Act and the AQUA Rules, the Responsible Entity may refuse to register a transfer and need not provide any reasons. Where the Responsible Entity refuses to register a transfer, it may compulsorily redeem those Units in accordance with clause 10 as if a withdrawal request had been lodged in respect of them.

16.5 Subject to the AQUA Rules, an instrument of transfer of Units must be accompanied by such evidence (if any) as the Responsible Entity, CHESS or the ASX requires to prove the transferor's title or right to transfer the Units.

16.6 A transfer of Units takes effect only when recorded in the Register or, while a Class is Quoted and Units in that Class are settled by CHESS in accordance with the Settlement Rules, when the transfer is dealt with as CHESS contemplates and the AQUA Rules make such transfer effective.

16.7 Subject to the AQUA Rules, the Responsible Entity may request a Holding Lock be applied to any Units where:

- (a) the Responsible Entity has a lien on the Units the subject of the transfer;
- (b) the Responsible Entity is served with a court order that restricts a Member's capacity to transfer the Unit;
- (c) registration of the transfer may break an Australian law and the ASX has agreed in writing to the application of a Holding Lock (which must not breach the Settlement Rules) or that the Responsible Entity may refuse to register a transfer;
- (d) if the transfer is paper-based, either a law related to stamp duty prohibits the Responsible Entity from registering it or the Responsible Entity is otherwise allowed to refuse to register it under the AQUA Rules;
- (e) the transfer does not comply with the terms of any employee incentive scheme of the Fund;

- (f) if the transfer is paper-based, registration of the transfer will create a new holding which at the time the transfer is lodged is less than a 'marketable parcel' as defined in the AQUA Rules;
- (g) the relevant Member has agreed in writing to the application of a Holding Lock (which must not breach the Settlement Rules) or that the Responsible Entity may refuse to register a transfer; or
- (h) it is otherwise permitted under the AQUA Rules, and the Responsible Entity must do so if the AQUA Rules require, but must tell the Member or the broker as the Act or the AQUA Rules require.

### Payments to Members

~~16.2~~16.8 Money payable to a Member by the Responsible Entity will be in such form and manner as approved by the Responsible Entity. Only whole cents are to be paid and any fractions of a cent remaining after rounding become an Asset.

~~16.3~~16.9 The Responsible Entity may deduct from any money payable to a Member any Taxes which it is required or authorised to deduct or which it considers should be deducted.

### Notices

~~16.4~~16.10 A notice given under this Constitution may be given in any form and manner as prescribed by the Responsible Entity from time to time. Where that notice is in writing, a notice is deemed to be received as follows:

- (a) if posted, within 2 Business Days from the date of postage;
- (b) if sent by facsimile to the correct facsimile number, on receipt of a message from the machine from which it was sent confirming that the notice was sent in its entirety; or
- (c) if sent by electronic mail, within 1 Business Day from the date of sending provided that no error message has been received.

### Joint holders

~~16.5~~16.11 When two or more persons are registered as the holders of a Unit (in this paragraph 16.5 called "joint holders"):

- (i) any one of the joint holders may give effectual receipts for any distribution; and
- (ii) only the person whose name stands first in the Register as one of the joint holders of a Unit is entitled to delivery of any certificate or confirmation that may be issued relating to the Unit or to receive notices, cheques or other communications from the Responsible Entity and any certificate, confirmation, notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

## **17. MEMBERS' MEETINGS**

17.1 The Responsible Entity may convene a meeting of Members or a Class of Members at any time in the manner prescribed by the Act and, while a Class is Quoted, the AQUA Rules in respect of that Class. A meeting of Members of a Class is to be convened and held in the same manner as a meeting of Members.

17.2 The Responsible Entity must convene a meeting pursuant to the Act upon receipt of a Member's request made in accordance with the Act.

17.3 Unintentional omission to give notice to, or non-receipt of notice by, a Member does not invalidate a meeting or resolution passed at a meeting, of Members.

17.4 The Responsible Entity, its agents, representatives and advisers are entitled to attend and speak at a meeting of Members.

- 17.5 A Member may appoint a proxy in the manner provided by the Act to attend and vote at a meeting. An appointment is valid even if it does not contain all the information required by section 252Y(1) of the Act. A proxy and any authority under which it may be made must be received by the Responsible Entity at a place, facsimile number or electronic address specified in the notice of meeting at least 48 hours, or such shorter time specified by the Responsible Entity in the notice of meeting, before the time of the meeting.
- 17.6 A body corporate may be represented at a meeting by an individual appointed pursuant to the Act. The appointed person may, subject to the terms of the appointment, exercise all of the powers of the body corporate that the body corporate could exercise at a meeting or in voting for a resolution.
- 17.7 A meeting of Members will be chaired by a person appointed by the Responsible Entity or otherwise in accordance with the Act.
- 17.8 The quorum for a meeting is at least 2 Members of the relevant Class in person or proxy. The quorum must be present at all times during the meeting.
- 17.9 If a quorum is not present within 30 minutes of the scheduled commencement time of the meeting, the meeting is:
- (a) if convened pursuant to clause 17.2, dissolved; or
  - (b) otherwise, adjourned to such date, time and place as the Responsible Entity specifies.
- 17.10 If a quorum is not present at the resumed meeting within 30 minutes of the scheduled commencement time of the meeting, the meeting is at the discretion of the Responsible Entity dissolved or adjourned to such other date, time and place as the Responsible Entity specifies.
- 17.11 At any meeting of Members or all Members of the relevant Class convened pursuant to the provisions of this Constitution, unless the Act otherwise provides or the express terms of this Constitution otherwise require, a resolution shall be duly passed if a majority of the Members of the relevant Class attending the meeting vote in favour of the motion.
- 17.12 Subject to this Constitution and the Act, a proposed resolution may be decided by a percentage of Units or in writing executed by Members holding the requisite majority of Units. Voting is by a show of hands where each Member in person or by proxy is entitled to one vote on a show of hands. If more than one proxy has been appointed by a Member, only one vote is to be recorded on a show of hands in respect of that Member. If a proxy is acting as proxy for more than one Member, only one vote is to be recorded on a show of hands in respect of that proxy.
- 17.13 A poll may be demanded on any resolution before a vote is taken, and before or on declaration of the result of a show of hands by:
- (a) the Chairperson;
  - (b) Members present in person or by proxy, collectively holding at least 5% or more of the votes that may be cast on the resolution on a poll; or
  - (c) at least 5 Members of the relevant Class present in person or by proxy entitled to vote on the resolution.
- On a poll each Member in person or by proxy is entitled to 1 vote for each dollar of the value of whole Units held.
- 17.14 The joint Member first named in the Register is entitled to exercise the voting rights of jointly held Units.
- 17.15 A Resolution duly passed at a meeting of Members or all Members of the relevant Class duly convened and held in accordance with the Act and this Constitution binds as applicable, all Members or all Members of the relevant Class (in that capacity) and each Member is bound to give effect to the resolution, whether or not the Member was present at a meeting.

17.16 Any objection made to a vote cast must only be made at the meeting.

17.17 Minutes of a meeting executed by the Chairperson constitutes conclusive evidence of the business transacted at a meeting.

## **18. COMPLAINTS HANDLING**

18.1 A Member who is dissatisfied with the Fund or a service provided by the Responsible Entity in relation to the Fund is entitled to complain to the Responsible Entity.

18.2 The Responsible Entity must apply the following procedure in relation to complaints:

- (a) the Responsible Entity will from time to time designate certain of its officers, employees or agents to be responsible for handling complaints;
- (b) the Responsible Entity will ensure that a complaint is acknowledged in writing as soon as possible (and in any case within 5 Business Days of receipt) and a Member making the complaint (~~“Complainant”~~) is treated courteously;
- (c) the Responsible Entity will ensure that a complaint is considered, and, if possible, resolved, within a reasonable time and in a manner that is fair to the Complainant and Responsible Entity or its officers or employees against whom it is made;
- (d) the Responsible Entity will develop and implement policies on remedies for complaints in accordance with its legal obligations and industry practice with the outcome that a resolution of a complaint results in a remedy appropriate to the nature of the complaint. Such policies may include:
  - (i) payment of any moneys due to, and refunds of any moneys paid by, a Complainant;
  - (ii) reasonable compensation for any loss suffered by a Complainant; and
  - (iii) provision of information or apology; and
- (e) where the Fund is a registered scheme under the Act, if a complaint is not resolved within the time contemplated in paragraph 18.2(c), or the Complainant is not satisfied with its resolution, the Responsible Entity or Complainant (as the case may be) must be referred to an external complaints resolution scheme approved by the ASIC of which the Responsible Entity is a member.

## **19. AMENDMENTS TO THE CONSTITUTION**

The Responsible Entity may by deed modify, repeal or replace this Constitution subject to the Act.

## **20. SUBJECT TO THE ACT**

Any provision of this Constitution which would otherwise conflict with the Act shall be read down to the extent necessary to eliminate any conflict. The Responsible Entity covenants with each Member and each Member covenants with the Responsible Entity in terms of, and to comply with, any conditions of, and any covenants required to be contained in this Constitution as a condition of, any declarations made and exemptions granted by the Commission (including class orders) which are applicable to the Fund at any time and for so long as they continue in force. This clause prevails over all other provisions of this Constitution (including any which purport to prevail).

**EXECUTED** as a deed poll.

**EXECUTED BY PERPETUAL INVESTMENT  
MANAGEMENT LIMITED:**

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Director

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Director/Secretary

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Name

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Name

## SCHEDULE 1

### Performance Fee

1. The Responsible Entity is entitled to receive and retain for its own use a Performance Fee for each Class, calculated and accrued as set out in this Schedule.

2. For the purposes of this Schedule:

**Performance Fee Period** means the period prescribed by the Responsible Entity from time to time for the purpose of calculating the Performance Fee or where no period has been prescribed means each calendar quarter;

**Benchmark** means the S&P/ASX 300 Accumulation Index (howsoever named) or if that index ceases to be published or made available to the Responsible Entity, such other index that is substantially similar and notified to Members of the Class.

3. For each Performance Fee Period, the Performance Fee in respect of a Class is the positive amount (if any) that is the sum of the daily Performance Fees for each Business Day in the Performance Fee Period, calculated as followed:

$$P = 30\% \times (A - B) \times \text{Net Adjusted Class NAV}$$

Where for a Business Day:

**P** is the daily Performance Fee for the Business Day

**A** For:

(a) a new Class that is not Quoted, is the percentage change in the sum of the Withdrawal Price calculated as at the close of that Business Day plus any amount per Unit distributed, or to be distributed, to Members since calculating the Withdrawal Price as at the close of the previous Business Day, from the Withdrawal Price as at the close of the previous Business Day. In calculating the Withdrawal Price for this purpose, the Net Asset Value is deemed to be equal to the Net Adjusted Class NAV, and

(a) a new Class that is Quoted, is the percentage change in the sum of the NAV Price calculated as at the close of that Business Day plus any amount per Unit distributed, or to be distributed, to Members since calculating the NAV Price as at the close of the previous Business Day, from the NAV Price as at the close of the previous Business Day. In calculating the NAV Price for this purpose, the Net Asset Value is deemed to be equal to the Net Adjusted Class NAV.

**B** is the percentage change of the Benchmark as at the close of business on the Business Day from the close on the previous Business Day.

**NAV Price** is the Class NAV of the Class divided by the number of Units in the Class on issue.

**Net Adjusted Class NAV** is the Class NAV of the Class, except that in determining the Liabilities any accrued Performance Fee is to be disregarded.

4. The following provisions apply to the calculation, accrual and payment of the Performance Fee:

(a) For each Business Day in a Performance Fee Period, the sum of the daily Performance Fees for each Business Day in the Performance Fee Period which have elapsed is to accrue as a Liability provided that the sum is a positive amount.

- (b) If the sum of the daily Performance Fees for each Business Day in a Performance Fee Period is a negative amount, no Performance Fee for the Performance Fee Period is payable to the Responsible Entity and, subject to paragraph (d), the negative amount is to be subtracted from the daily Performance Fee for the first Business Day in the next Performance Fee Period.
- (c) If the sum of the daily Performance Fees for each Business Day in a Performance Fee Period is a positive amount, a Performance Fee equal to the positive amount is payable to the Responsible Entity. The Performance Fee is to be paid within 10 days after the end of the relevant Performance Fee Period.
- ~~(a)~~(d) The Responsible Entity may reset the accrual of the Performance Fee at the start of a Performance Fee Period.