

Forsyth Barr Investment Funds

Master Unit Trust Deed

Forsyth Barr Investment Management Limited

Trustees Executors Limited

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Deed dated

9 August 2016

Between

- 1 **Forsyth Barr Investment Management Limited** at Dunedin (“**the Manager**”)
- 2 **Trustees Executors Limited** at Wellington (“**the Supervisor**”)

Background

- A Pursuant to a trust deed dated 27 September 2007, as amended on 27 February 2015 (“Existing Deed”) the Forsyth Barr Investment Funds (“Scheme”) was established, and the original trustee Perpetual Trust Limited was appointed as the trustee of the Scheme and the Funds and the Manager was appointed as the manager of the Scheme and the Funds. Under the provisions of the Existing Deed a range of separate and independent Funds was established, and the Fund Particulars for those Funds are set out in Establishment Deeds.
- B Corporate Trust Limited replaced Perpetual Trust Limited as trustee on 30 November 2012, and then by a deed of retirement and appointment dated 27 February 2015 the Supervisor was appointed as trustee of the Scheme and Funds. The Supervisor is a statutory trustee corporation licensed under the FMSA to act as the supervisor of registered managed investment schemes.
- C Clause 28.1e of the Existing Deed provides that the Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of the Existing Deed by means of a deed executed by the Supervisor and the Manager where (inter alia) such alteration, modification, variation or addition is effected no earlier than one month after notice of the same has been sent to every Unit Holder affected thereby.
- D The Manager and the Supervisor wish to amend the Existing Deed in order to comply with and to reflect the requirements of the FMCA, FMCR, and other enactments made pursuant to the FMCA, and to make a number of other amendments in connection with the Scheme becoming registered under the FMCA.
- E The Manager will provide at least one month's notice of the amendments to the Existing Deed that are recorded in this Deed to every Unit Holder affected by those amendments.
- F Accordingly, the Manager and the Supervisor have determined to enter into this Deed to record the terms and conditions under which the Scheme and the Funds shall be constituted and administered as from the Effective Date. The Manager and the Supervisor have further agreed, by way of separate deeds, to amend the Fund Particulars of the Funds by amending the Establishment Deeds.

It is agreed

In accordance with the power of amendment contained in clause 28.1e of the Existing Deed, it is declared that, with effect on and from the Effective Date, the Existing Deed is amended by substituting the provisions of the Existing Deed with all the provisions of this Deed so that on and from the Effective Date, the Scheme and Funds will be operated, administered, and governed in accordance with the provisions of this Deed.

Covenants

1 Interpretation

1.1 Defined Terms: In this Deed unless the context otherwise requires:

“**Administration Manager**” means any Person to whom the Manager has contracted part or all of the administration of the Scheme or any Fund;

“**Arrangements**” has the meaning in clause 10.6;

“**Associated Person**” has the meaning given to it by the FMCA;

“**Attributed Tax**” means the tax paid or payable by a Fund or the Manager (whether deferred or current) which is determined by reference to income allocated to Unit Holders at their Prescribed Investor Rates or is otherwise determined by the Manager to be attributable to Unit Holders;

“**Attributed Tax Credit**” means tax rebates paid or payable to a Fund which are determined by the Manager to be attributable to Unit Holders;

“**Auditor**” means the auditor of the Scheme appointed pursuant to clause 25.7 or 25.10;

“**Authorised Investments**” means those investments referred to or contemplated under clause 18.1;

“**Borrow**” means to borrow money, or to raise money by way of the drawing, acceptance, discount or sale of bills of exchange or promissory notes or other financial instruments, or otherwise howsoever, whether in New Zealand currency or any other currency and “**Borrowing**” and “**Borrowed**” have a corresponding meaning;

“**Business Day**” means a day (other than a Saturday or Sunday) on which registered banks are open for business in Auckland;

“**Cash**” includes cheques, bank cheques, bank deposits, bank transfers and bank drafts;

“**Commencement Date**” means, in relation to each Fund, the date which the Manager and the Supervisor agree as the date on which that Fund is to commence, or the date of the first invitation for subscriptions or applications for Units issued by the Manager in respect of that Fund;

“**Custodian**” means a person appointed to hold the Investments and other assets of the Scheme or a Fund under clause 18.6 and includes, where the context requires, a sub-custodian appointed by the Custodian under clause 18.7;

“**Debt Security**” has the meaning given to it by the FMCA;

“**Deed**” means this master trust deed, as amended from time to time;

“**Derivative**” has the meaning given to it by the FMCA;

“**Disclose Register**” means the register for offers of financial products and managed investment schemes under the FMCA;

“Disclosure Document” has the meaning set out in the FMCA and includes any PDS, Register Entry or Fund Update;

“Distribution Date” means, in respect of a Fund, such periodic date (if any) as the Manager may fix from time to time for the purpose of determining the appropriate attribution of Income of that Fund and the distribution of such Income to Unit Holders;

“Distribution Period” means the period from and including the Commencement Date of the relevant Fund to and excluding the first Distribution Date for the relevant Fund and thereafter the period from and including a Distribution Date to and excluding the next Distribution Date;

“Effective Date” means the date that the Manager elects under clause 19(1)(a) of Schedule 4 to the FMCA in respect of the Scheme;

“Electronic Communication” means a transmission of an instruction, request, notice or information by telephone, facsimile, computer, videophone or other electronic medium approved by the Manager, subject to such conditions as the Manager considers appropriate as to identification of the Person making the communication or verification of the content of the communication;

“Entitlement” in relation to a Unit means the amount to be distributed to a Unit Holder in respect of that Unit;

“Equity Security” has the meaning given to it by the FMCA;

“Establishment Deed” means a deed providing for the establishment of a Fund, containing in respect of that new Fund, such of the particulars set out in Schedule 1 as the Supervisor and Manager may consider necessary or appropriate for that Fund, subject to clause 4.7;

“Exchange” means any licensed market (as defined in the FMCA) in New Zealand and any other official or formally constituted share, security, unit or other equity ownership interest, futures or options exchange on which a relevant Investment is quoted in any other country;

“Financial Markets Legislation” has the meaning given in the FMCA;

“Financial Statements” has the meaning given in the FMCA;

“Financial Year” means the financial year determined by the Manager for the Scheme or a Fund;

“FMA” means the Financial Markets Authority established by Part 2 of the Financial Markets Authority Act 2011;

“FMCA” means the Financial Markets Conduct Act 2013;

“FMCR” means the Financial Markets Conduct Regulations 2014;

“FMSA” means the Financial Markets Supervisors Act 2011;

“Fund” means a separate fund established in accordance with clause 4.4;

“Fund Guidelines” means in respect of each Fund the particular terms and conditions applicable to that Fund set by the Manager pursuant to clause 4.4, as varied from time to time, and including, without limitation, the SIPO for the relevant Fund;

“Fund Particulars” means in respect of each Fund the particular terms and conditions applicable to that Fund specified in accordance with the Establishment Deed;

“Fund Update” has the meaning set out in regulation 5(1) of the FMCR;

“Fund Value” means, subject to clause 1.4, in relation to any Fund and as at any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Fund and that Valuation Day by deducting from the aggregate of:

- a. the amount of Cash forming part of the assets of the Trust Fund of that Fund;
- b. the Market Value of all of the other Investments of the Fund (including for the avoidance of doubt accrued net income of the Fund on that Valuation Day);
- c. the value of any other assets of the Fund, such value being fixed by the Manager having regard to generally accepted accounting principles; and
- d. the benefit of recoveries made from Unit Holders’ interests on account of Attributed Tax,

the aggregate of:

- e. the Liabilities of the Fund; and
- f. all costs, charges and other outgoings (other than those which in the opinion of the Manager are not material) incurred or accrued in connection with the Liabilities of the Fund or otherwise arising in connection with the Fund, which for the time being have not been paid (including an appropriate proportion of any such costs, charges or outgoings which relate to a period in which that Valuation Day falls but which have not yet fallen due for payment);

“Governing Legislation” means, as appropriate, all laws and regulations applicable to the Manager (including compliance by the Manager with the conditions of its market services licence under the FMCA), the Supervisor, and the Scheme at applicable points in time and which may include, without limitation, the Financial Markets Legislation and any frameworks or methodologies issued by the FMA under such legislation;

“Gross Income” means the income earned from the relevant Fund from its Investments;

“GST” means goods and services tax levied by the Goods and Services Tax Act 1985;

“Income” means in relation to any Fund the net income of that Fund determined in accordance with the provisions of clause 19.2;

“Investment” means in relation to any particular Fund, any investment including any Cash made or held by that Fund at the relevant time;

“Investment Manager” means any Person to whom the Manager has contracted the management of some or all of the Scheme Property of the Scheme or a Fund;

“Issue Price” means in relation to any Fund, subject to clause 1.4, the price for the issue of Units in that Fund determined in accordance with clause 8.1;

“Issuer Obligations” has the meaning given to that term by the FMCA;

“Joint Holder” has the meaning in clause 7.12;

“Liabilities” in relation to any Fund means each liability payable from that Fund which shall be classified as such by NZ GAAP but does not include a contingent liability (other than any fee or other charge properly accrued by the Manager and except to the extent the Manager, with the approval of the Auditor, decides that an allowance shall be made for contingent liabilities) or a Unit or Attributed Tax, except for Attributed Tax in respect of which a deduction has been made from a Distribution or Withdrawal Amount paid to a Unit Holder or in respect of which any Units have been redeemed by the Manager.

“Licensed” has the meaning given to that term by the FMCA;

“Managed Investment Product” has the meaning given to it by the FMCA;

“Manager” means the party to this Deed named as manager or such other Person for the time being appointed to act as manager of the Scheme pursuant to this Deed;

“Market Value” in relation to any Investment as at any Valuation Day means:

- g. in respect of Investments which are listed on an Exchange the value determined by the Manager, by reference to the price quoted for the last sale of that Investment on the relevant Exchange on or before that Valuation Day, or if there has been no such sale, or if the last sale is not considered by the Manager to be an accurate measure, the value determined by the Manager having regard to such information as the Manager considers appropriate, including without limitation the advice of a Valuer **provided that** the Manager may select some other form of appropriate determination as to value in respect of Investments which are listed on an Exchange, or any specific Investment listed on an Exchange, from time to time;
- h. in respect of Investments which are valued by the issuer of those Investments, the most recent valuation so made of which the Manager is aware, **provided that** the Manager may select some other form of appropriate determination as to value in respect of any specific Investment from time to time;
- i. in respect of real property Investments, the value of that property fixed by a Valuer as at a date not more than twelve months preceding that Valuation Day;
- j. in respect of any other Investment, the value fixed by the Manager according to proper prudent principles of valuation, or such other principles of valuation determined by a Valuer,

and where in respect of an Investment to which sub-paragraph (a.) or (b.) applies the relevant information as to value is not received prior to such time and date in respect of that Valuation Day determined by the Manager in consultation with the Supervisor from time to time for determination of the Fund Value, means the value of that Investment which applied on the preceding Valuation Day (“Adopted Value”), **provided that** an Adopted Value shall not be applied on more than two successive Valuation Days without the consent of the Supervisor;

“Minimum Value of Units” means in respect of a Fund or a class of Unit Holders holding Units in a Fund such aggregate Unit Value of Units (if any) as may be determined by the Manager from time to time in accordance with clause 4.4 as the minimum aggregate Unit Value which shall be held by a Unit Holder or which may be the subject of a Transaction;

“Non-Side-Pocketed Assets and Liabilities” has the meaning in clause 10.4;

“**NZ GAAP**” means generally accepted accounting practice as defined in the FMCA;

“**PDS**” has the meaning given to it by the FMCA;

“**Person**” means and includes a natural person, a company, a corporation, a corporation sole, a managed investment scheme, a government or a body of persons (whether corporate or unincorporated);

“**PIE**” means a portfolio investment entity as defined in the Tax Act;

“**Prescribed Investor Rate**” has the meaning adopted in section YA 1 of the Tax Act;

“**Record Date**” has the meaning in clause 10.4;

“**Register**” means a register referred to in clause 13;

“**Register Entry**” has the meaning given to it by the FMCA;

“**Registrar**” means the Registrar of Financial Service Providers;

“**Regulated Offer**” has the meaning given to that term by the FMCA;

“**Related Party**” has the meaning given to it by the FMCA;

“**Related Party Benefit**” has the meaning given to it by the FMCA;

“**S Units**” has the meaning in clause 10.4;

“**Scheme**” means the managed investment scheme governed by this Deed;

“**Scheme Property**” has the meaning given in the FMCA, in relation to each Fund;

“**Side-Pocketed Assets and Liabilities**” has the meaning in clause 10.4;

“**SIPO**” has the meaning given to it by the FMCR;

“**Special Resolution**” has the meaning given to it by the FMCA;

“**Standing Application**” means an application for the issue of Units on a regular and periodic basis;

“**Supervisor**” means the party to this Deed named as supervisor or other such Person for the time being appointed to act as supervisor of the Scheme pursuant to this Deed;

“**Suspension Notice**” means a notice given in accordance with clause 10.1;

“**Switch Fund**” and “**Switch Funds**” have the meaning in clause 11.1;

“**Switching Notice**” means a notice given pursuant to clause 11.1;

“**Tax Act**” means the Income Tax Act 2007;

“**Taxation**” means income tax, GST, and any other tax, levy or duty which is payable or becomes potentially payable and includes interest, additional tax and penalties, and for the avoidance of doubt includes Attributed Tax, and the term “tax” shall bear the same meaning;

“Taxing Acts” means the Tax Act, the Tax Administration Act 1994, the Goods and Services Tax Act 1985, New Zealand’s double tax treaties, and any other taxation legislation enacted;

“Transaction” means the:

- a. Issue of Units; or
- b. Withdrawal of Units; or
- c. Switching of Units between Fund,

or any one or more of those events, as is applicable in the context;

“Transaction Costs” means whichever of:

- a. the Manager’s estimate of the total cost of acquiring further Investments; and
- b. the Manager’s estimate of the total cost of selling Investments,

is relevant in the context of a Transaction, **provided that** the Manager may in any case, and subject to all Unit Holders being treated equally, treat Transaction Costs as a lesser amount or as zero, and may set a fixed percentage or amount as the notional Transaction Cost that will be deemed to apply in respect of any particular Transaction or type of Transaction for the purposes of this Deed;

“Trust Fund” has the meaning in clause 4.5;

“Unit” means an undivided part or share in a Fund as described in clause 5 and includes part of a Unit;

“Unit Holder” means, in relation to a Fund, a person for the time being entered on a Register as the holder of a Unit in that Fund;

“Unit Value” means, subject to clause 1.4, in relation to any Fund and as at any Valuation Day such amount as is ascertained by dividing the Fund Value of the Fund for that Valuation Day by the number of Units on issue in that Fund on that Valuation Day rounded down if necessary to the fourth decimal place of a dollar or such other denotation as the Manager may determine from time to time;

“Valuation Day” means, in respect of a Fund, a day, whether periodical or otherwise, specified by the Manager in the relevant Establishment Deed as a day in respect of which the Market Value of the Scheme Property of the Fund is determined or the Withdrawal Amount for the purposes of clauses 9.3 and 10.3 is determined;

“Valuer” means an appropriately qualified Person nominated by the Manager for the purposes of valuing or assisting in valuing certain Investments pursuant to this Deed;

“Withdrawal Amount” means an amount to be withdrawn from the Fund in accordance with clause 9.1;

“Withdrawal Fund” has the meaning in clause 11.1;

“Withdrawal Notice” means a withdrawal notice given in accordance with clause 9.1; and

“Withdrawal Value” means, subject to clause 1.4, the value of a Unit for the purpose of a withdrawal from a Fund, as calculated pursuant to clause 9.3.

1.2 **General construction:** In this Deed unless the context otherwise requires:

- a. words importing the singular number include the plural and vice versa and the masculine gender includes the feminine gender and vice versa;
- b. references to statutes, regulations, other legislative instruments, sections of statutes, or clauses of regulations or other legislative instruments include all amendments, re-enactments and replacements thereof and any additions thereto covering the same subject matter;
- c. reference to any statute includes statutory regulations or legislative instruments promulgated or otherwise made from time to time and in force under that statute and, in the case of the FMCA, includes any framework or methodology issued by FMA under the FMCA;
- d. footnotes used in this Deed do not form part of this Deed, are a guide only and where they refer to legislative provisions, are not intended to incorporate those provisions in this Deed or affect the interpretation of this Deed. However, often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Deed to comply with a particular Act or legislation generally;
- e. headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed;
- f. references to clauses are to clauses to this Deed;
- g. a reference in this Deed to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
- h. where under or pursuant to this Deed or anything done hereunder the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing shall be done on the following Business Day;
- i. references to the amounts of any fees payable to the Manager or Supervisor are references to those amounts exclusive of GST (if any);
- j. if it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may select; and
- k. where the Manager is satisfied that a Person is legally entitled to exercise any of the rights of a Unit Holder, any reference to the Unit Holder in this Deed shall be deemed to include a reference to such Person in relation to any such exercise, and the receipt by or sending to such Person of any notice or other communication required to be given to the Unit Holder pursuant to this Deed shall be deemed to constitute receipt by or sending to the Unit Holder.

1.3 **Terms implied by law**

Any statutory provisions or other terms implied in this Deed under the Governing Legislation apply for so long as they are implied in this Deed despite anything to the contrary in this Deed, and any provision in this Deed that is contrary to any such implied term is void to the extent that it is contrary.

1.4 **Frameworks or methodologies**

Where FMA has published frameworks or methodologies under the FMCA that require certain matters to be calculated, determined, fixed, or carried out in a particular way, the Manager and the Supervisor (as applicable) shall comply with the requirements of those frameworks or methodologies. Any such frameworks or methodologies shall apply notwithstanding, and prevail over, anything to the contrary in this Deed and the provisions of this Deed shall be construed accordingly.

2 **Purpose**

- 2.1 **Purpose:** This Deed governs a scheme whereby persons may acquire interests in a variety of different and independent Funds.

3 **Relationship with Governing Legislation**

- 3.1 **Effect of Inconsistencies:** If there is any inconsistency between the provisions of this Deed and any Governing Legislation, the provisions of the relevant Governing Legislation shall prevail and this Deed shall be construed accordingly.

4 **Constitution of the Scheme and Funds**

- 4.1 **Continuation of trusts:** The continuation of the trusts established in accordance with the Existing Deed is confirmed, on the basis of the amendments contained in this Deed and the Fund Particulars.

4.2 **Names:**

- a. The Scheme is known as the Forsyth Barr Investment Funds. Subject to compliance with the Governing Legislation and any other relevant regulatory requirement, the Scheme shall be known by such other name as the Manager may from time to time determine and notify to the Supervisor and the regulatory body responsible for registering managed investment schemes under the Governing Legislation at that time.
- b. Each Fund shall be known by the name set out in the relevant Establishment Deed provided that, subject to compliance with the Governing Legislation and any other relevant regulatory requirement, a Fund shall be known by such other name as the Manager may from time to time determine and notify to the Supervisor and the regulatory body responsible for registering managed investment schemes under the Governing Legislation at that time.

- 4.3 **Registration as managed investment scheme:** The Scheme will pursuant to clause 22 of Schedule 4 to the FMCA be treated on the Effective Date as a scheme that is registered on the register of managed investment schemes under the FMCA.

4.4 **Establishment of Funds:** The Manager may at any time give notice to the Supervisor of its desire to establish a Fund under this Deed. If the Supervisor agrees to act as Supervisor of the Fund, then the Supervisor and the Manager shall enter into an Establishment Deed. Subject to the relevant Fund Particulars, the provisions of this Deed shall govern that Fund. The Scheme Property of each Fund shall be held on the trusts of this Deed, provided that in respect of each Fund the Manager may from time to time, subject to compliance with the Governing Legislation and the relevant Establishment Deed, prescribe:

- a. in the SIPO for the relevant Fund, the types of Authorised Investments (if any) that may be held in relation to the Fund;
- b. in the SIPO for the relevant Fund, the investment strategy and objectives that will apply to the Fund;
- c. the Minimum Value of Units for the Fund or each class of Unit Holder holding Units in the Fund (either alone or as an aggregate value across one or more specified Funds) (**provided that** where it is an express or implied requirement of the Governing Legislation in respect of a class of Unit Holders or Fund there shall be no Minimum Value of Units);
- d. the level of fees that will apply in respect of the Fund or each class of Unit Holder holding Units in the Fund; and
- e. such other matters not inconsistent with the terms of this Deed, the relevant Establishment Deed, or the Governing Legislation as the Manager considers necessary or desirable for the appropriate administration of the Fund or as are otherwise required by the Governing Legislation.

4.5 **Trust Funds:** The Trust Fund of each Fund shall consist of all Scheme Property for the time being held by the Supervisor and/or Custodian in respect of that Fund upon the trusts of this Deed and the relevant Fund Particulars including:

- a. the proceeds of sale or realisation of any Investments of that Fund pending distribution or reinvestment; and
- b. all additions or accretions thereto; and
- c. all Income therefrom held pending distribution or reinvestment.

4.6 **Separate Trusts:** Each Fund shall constitute a separate and independent trust with separate property and liabilities, and the Supervisor and the Manager shall in all respects act so as to give effect to this intention. Without prejudice to the generality of the foregoing:

- a. the assets of a Fund shall not be available to meet the Liabilities of any other Fund;
- b. all Investments made with the moneys of a Fund shall be held by the Supervisor and/or Custodian as the exclusive property of that Fund and for the exclusive benefit of the Unit Holders who have an interest in that Fund pursuant to this Deed;
- c. the Supervisor and the Manager shall keep separate records and accounts in respect of each Fund, and shall not permit the Scheme Property or Liabilities of any Fund to become intermingled with that of any other Fund provided that subject to clause 15.10 nothing in this sub-clause shall prevent the assets of any Fund being lent to, deposited with or invested in another Fund; and

- d. the creation of a Fund shall not in any way vary or affect any other Fund nor give rise to any resettlement of any other Fund.
- 4.7 **Restrictions on Fund Particulars:** No Fund Particulars for a Fund shall contain any provision which affects the rights or interests of Unit Holders of any other Fund in existence at the time of establishment of that Fund unless:
- a. it is authorised by a Special Resolution of the Unit Holders of every Fund so affected; or
 - b. the same is considered by the Manager, in consultation with the Supervisor, not to be or likely to become prejudicial to the interests of Unit Holders of any Fund then in existence; or
 - c. the same is effected no earlier than one month after notice has been sent to every Unit Holder affected thereby.
- 4.8 **Contrary Intention:** The choice of a Fund by a Unit Holder shall be a direction given with respect to the investment of trust funds for the purposes of section 13G of the Trustee Act 1956. However, any direction by a Unit Holder in terms of this clause will not exempt the Manager and the Supervisor from their functions and duties under the Governing Legislation and pursuant to this Deed.
- 4.9 **Choice of Fund:** The Manager shall invest application monies in accordance with a direction by a Unit Holder.
- 4.10 **Variation and Merger of Funds:** Unless the Manager determines that to do so would materially prejudice the interests of Unit Holders generally, and subject to any express provision in this Deed, any express term or condition set out in a Disclosure Document relating to the Fund in question, and compliance with the Governing Legislation, the Manager may:
- a. by notice in writing to the Supervisor vary all or any of the terms of any Fund prescribed by the Manager under clause 4.4, if the Manager, in consultation with the Supervisor, determines that the variation is not material; and/or
 - b. by notice in writing to the Supervisor and the affected Unit Holders vary all or any of the terms of any Fund prescribed by the Manager under clause 4.4; or
 - c. by giving at least one month's notice in writing to the Supervisor and the affected Unit Holders, terminate or merge any one or more Funds with any other Fund where the Manager considers that doing so would be beneficial for the more convenient, economical or advantageous working, management or administration of the Funds and would not materially prejudice the interests of Unit Holders holding Units in the relevant Fund or Funds in general, with the terms of the affected Funds varied accordingly.
- 4.11 **Bank Accounts:** Notwithstanding any other provisions of this Deed but subject to the Governing Legislation and any determination of the Supervisor to the contrary, and to any restrictions on the operation of bank accounts relating to the Funds that may be imposed from time to time by the Supervisor, the Manager shall have the power to establish and operate on behalf of the Supervisor or the Custodian such bank account or accounts in respect of each Fund as it determines may be necessary or desirable for the purpose of processing the flow of monies to or from any Fund.

5 Units

- 5.1 **Beneficial Interest in Funds:** The beneficial interest in each Fund shall be divided into Units.
- 5.2 **Equal but not specific interests:** Each Unit shall confer an equal interest in the Fund to which it relates, but shall not confer an interest in the Scheme Property of any Fund or in any particular Investment (or part thereof) and no Unit Holder shall be entitled to require the transfer to the Unit Holder of any of the Scheme Property of any Fund.
- 5.3 **No Interest in other Trust Funds:** A Unit of one Fund shall not confer any right or interest in the Trust Fund of any other Fund.
- 5.4 **No interference in management etc:** Subject to the rights of the Unit Holders created by this Deed, or by law, no Unit Holder shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities or discretions conferred upon them or either of them by this Deed or in respect of a Fund or any part or parts thereof, or to exercise any right, power or privilege in respect of any Investment.
- 5.5 **Provisions benefit and bind Unit Holders:** Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to enure for the benefit of and bind Unit Holders) contained in this Deed, enure for the benefit of and bind each Unit Holder.
- 5.6 **Part Units:** Parts of a Unit may be created and can exist under this Deed and be denoted by figures up to four decimal places or such other denotation as the Manager may determine from time to time.
- 5.7 **Values binding:** Subject to the Governing Legislation, Unit Values, Issue Prices and Withdrawal Values determined pursuant to this Deed are, in the absence of manifest error, final and binding on all Unit Holders and any other Persons claiming a beneficial interest in the Fund.
- 5.8 **Consolidation and Division:** Units may at any time and from time to time be consolidated or divided as determined by the Manager.

6 Issue of Units

- 6.1 **Offers of Units:** Subject to compliance with the Governing Legislation (including the Manager's obligations under Part 3 of the FMCA), a person may become a Unit Holder of a Fund by application to the Manager for Units in that Fund upon and subject to the terms and conditions contained in or pursuant to this Deed and the relevant Fund Guidelines and Establishment Deed and otherwise in such manner and upon such terms and conditions as the Manager shall from time to time determine (not being inconsistent with the Governing Legislation) and the Manager accepting that application.
- 6.2 **Regulated Offers**
- a. The Manager must not make a Regulated Offer of Units unless:
- i. the Scheme is registered under the FMCA;
 - ii. a PDS has been prepared and lodged on the Disclose Register in respect of the relevant Fund; and

- iii. Register Entries containing all information required by the Governing Legislation have been uploaded on the Disclose Register in respect of the relevant Fund.
 - b. Each Disclosure Document must comply with the Governing Legislation and, subject to clause 6.2c, otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
 - c. The Manager shall provide to the Supervisor, giving such prior notice as has been agreed with the Supervisor (or if none has been agreed, with reasonable notice), drafts of all proposed Disclosure Documents in respect of the Scheme and Funds that the Supervisor has identified in writing as requiring its pre-review, so as to allow the Supervisor to review and provide comments on the draft (which the Supervisor will do in a timely manner or, if a reasonable timeframe for response has otherwise been agreed between the Manager and the Supervisor, within that timeframe).
- 6.3 **Cessation of Issues:** Unless precluded by the Governing Legislation, and otherwise in a manner consistent with the requirements of the Governing Legislation, the Manager may at any time or times by notice in writing to the Supervisor determine that from a date specified in the notice given to the Supervisor no further Units shall be issued pursuant to this Deed to some or all classes of Unit Holders or in relation to a specified Fund or Funds either for any specified period or until the relevant Fund or Funds or the Scheme is terminated. In such event the Manager will not after the date specified in the notice issue any further Units under this Deed to affected Unit Holders or in relation to such Fund or Funds (as may be applicable) for the specified period or until the relevant Fund or Funds or the Scheme is terminated, whichever situation applies. .
- 6.4 **Entry Fee:** The Manager may deduct an entry fee for purchase of any Units of up to 5% of the Cash or other consideration forwarded to meet the Issue Price for those Units, in each case that complies with the Governing Legislation, as it may determine from time to time in respect of a Fund, class of Unit Holders investing in a Fund, or type or nature of the consideration received.

7 Application for Units

- 7.1 **Application procedure:** Every person wishing to apply for Units shall:
- a. complete and lodge with the Manager an application for Units in a specified Fund or Funds in writing, by verbal communication (subject to the Governing Legislation and including by telephone) or by Electronic Communication in such form or to such specification as is from time to time prescribed by the Manager. An application shall be signed, authorised or authenticated by or on behalf of the applicant in such manner as the Manager may from time to time prescribe; and
 - b. forward or credit to the Supervisor, or to the Manager or any Associated Person for payment in accordance with clause 8.3, sufficient Cash to meet payment of the Issue Price in respect of the Units applied for. The Manager may, in its discretion, permit consideration for applications to be provided in a form other than Cash (including by way of authorisation to the Manager to initiate direct debits from a bank account nominated by the applicant for that purpose), on such basis as the Manager and the Supervisor may from time to time agree.

An application shall be deemed to be received by the Manager when the person applying for Units has complied with both subclauses (a) and (b) of this clause.

- 7.2 **Standing Application:** An application may be designated as a Standing Application for an amount per month (or such other period as the Manager shall determine) at least equal to any applicable Minimum Value of Units for Standing Applications, and may include an authorisation to the Manager to initiate direct debits from a bank account nominated by the applicant for relevant application amounts to be credited to the relevant bank account of the Manager or the Supervisor.
- 7.3 **Method of payment of consideration:** Consideration for Units applied for or other amounts to be credited to a Fund in respect of a Unit Holder shall be made and received by the Supervisor and the Manager in any manner provided for in the Governing Legislation or in such other manner as the Manager may from time to time approve, subject to the Governing Legislation.
- 7.4 **Applications received:** An application pursuant to clause 7.1 received by the Manager prior to 5.00pm on a Valuation Day (or such other time and date agreed by the Manager and the Supervisor from time to time) shall be effective for that Valuation Day. For the purposes of this clause, an application received by the Manager at or after 5.00pm on a Valuation Day (or such other time and date agreed by the Manager and the Supervisor from time to time) or on a day which is not a Valuation Day shall be effective for the immediately following Valuation Day.
- 7.5 **Issue or purchase of Units:** Applications for Units may at the option of the Manager be treated as:
- a. a subscription for Units to be issued from the relevant Fund or Funds at the Issue Price on the Valuation Day for which the application is effective as determined in accordance with clause 7.4 and Units shall be issued by the Manager accordingly; or
 - b. a request for the purchase from a Unit Holder nominated by the Manager of Units in the relevant Fund or Funds at the Issue Price on the Valuation Day for which the application is effective as determined in accordance with clause 7.4.
- 7.6 **Acceptance of applications:** Unless precluded by the Governing Legislation, the Manager may in its discretion refuse to accept in whole or in part any application and shall not be required to give any reason or ground for such refusal.
- 7.7 **Uncleared funds:** Subject to the Governing Legislation, Units issued against funds which do not clear are void.
- 7.8 **Units issued in error:** Units that the Manager determines have been issued in error are also void, unless any Person in good faith has altered their position to their detriment in reliance on the validity of those Units in circumstances where the Governing Legislation does not require the Units to be treated as void.
- 7.9 **Refunds and void allotments:** Unless the Supervisor and the Manager agree otherwise, the Manager shall promptly notify the Supervisor of the acceptance or rejection of each application pursuant to clause 7.6 or voidance of Units pursuant to clause 7.8, in such manner as is from time to time agreed between the Supervisor and the Manager, and shall refund or arrange for the Supervisor or Custodian to refund any application moneys received in respect of that rejected application or those voided Units (as applicable) as soon as practicable (and, in any event, no later than 1 month after the obligation to repay arises). Subject to compliance

with the Governing Legislation and the maintenance of equity as between Unit Holders, the Manager shall have all powers necessary to restore the relevant Fund to the position it would have been in if the rejected application moneys had never been received or if Units determined to be void had never been issued. Where a Unit Holder's Units are determined to be void the Unit Holder's Units shall be refunded at the Withdrawal Value calculated in accordance with clause 9.3.

- 7.10 **Registration of Units:** On acceptance of an application and issue of Units, the Manager shall enter the name of the Unit Holder on the appropriate Register (or, where the Unit Holder is already on such Register, cause such Register to be altered accordingly) and issue to the Unit Holder any confirmation information required by the Governing Legislation.¹
- 7.11 **Minimum Value of Units:** The Manager may from time to time determine a Minimum Value of Units in respect of applications for Units in any Fund.
- 7.12 **Joint Holders of Units:** The Manager may, but shall not be bound to, register multiple persons as holders of any Unit (together, "**Joint Holders**" and each a "**Joint Holder**"). Where multiple persons are registered as the holders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:
- a. Joint Holders shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit held by them;
 - b. on the death of a Joint Holder, the survivor or survivors shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
 - c. any one of such Joint Holders may give Withdrawal Notices, or Switching Notices, execute a transfer of Units or give effectual receipts for any Withdrawal Amount or distribution payable to such Joint Holders, but the Manager may require from time to time in respect of any Fund, as disclosed in any Disclosure Documents for that Fund, that all Joint Holders complete such documentation;
 - d. a notice from the Supervisor or Manager given to any one of the Joint Holders shall be deemed notice to all the Joint Holders;
 - e. at any meeting of Unit Holders only the Person whose name stands first in the Register or their duly authorised nominee shall be entitled to vote either personally or by duly authorised representative or by attorney or proxy in respect of such Unit, to the exclusion of the votes of the other Joint Holders; and
 - f. for the purposes of calculating a Fund's PIE tax liability and attributing such liability to Joint Holders and the allocation of PIE income or losses and Attributed Tax Credits, the Manager may in its absolute discretion either treat the Joint Holders as separate Unit Holders (in shares reflecting their legal interests), or treat the Joint Holders as a single Unit Holder with a Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the Joint Holders if they are different or at the rate of one of the Joint Holders if they have the same rate.

¹ s 100 FMCA, 65 – 68 FMCR

8 Issue Price and Issue of Units

- 8.1 **Issue price:** Subject to clause 1.4, the Manager shall arrange that each Unit in any Fund shall be issued in accordance with the relevant Fund Particulars at the Issue Price for the Valuation Day for which the application is effective as determined in accordance with clause 7.4. The Issue Price of a Unit shall be the Unit Value on that Valuation Day plus Transaction Costs (if any) at the relevant time, adjusted to the extent appropriate to reflect an equitable proportion of the management fees, Supervisor fees and other fees accrued or otherwise payable at the relevant time and that have not otherwise been incorporated into the relevant Unit Value, **provided that** Units issued in respect of the first Valuation Day in respect of a Fund shall be issued at a price of \$1.00.
- 8.2 **Number of Units:** The number of Units sold or issued pursuant to an application shall be that number of Units (rounded down if necessary to four decimal places) that have an aggregate Unit Value equal to the application moneys (less applicable fees and Transaction Costs).
- 8.3 **Application moneys subject to trusts:** Monies received by or on behalf of the Manager in payment of the Issue Price for Units pursuant to clause 8.1 shall:
- a. be held in trust and subsequently applied or repaid in accordance with the Governing Legislation; and²
 - b. be promptly paid into a separate bank account of the relevant Fund in the name of the Supervisor or Custodian that is designated as a trust account.
- 8.4 **Pricing Errors:** The Manager:³
- a. must report to the Supervisor in relation to any material pricing error or material non-compliance (in terms of section 168 of the FMCA);
 - b. must correct such error or non-compliance and take any prescribed steps, to the extent required by the Governing Legislation; and
 - c. may, in consultation with the Supervisor, choose not to pay any reimbursement or compensation to a Unit Holder or former Unit Holder if the reimbursement or compensation is less than \$20 or such other amount as has been agreed between the Manager and the Supervisor, or as otherwise determined on a case-by-case basis by the Manager after consultation with the Supervisor based on any relevant industry guidelines taking into account the size, type, and /or frequency of the issue and the costs of reimbursement or compensation.

For the purpose of this clause whether or not a pricing error or non-compliance is “material” shall be determined in accordance with the Governing Legislation, or in the absence of any authority set out in the Governing Legislation, in accordance with such principles as the Manager and the Supervisor otherwise agree from time to time.

9 Withdrawals

- 9.1 **Withdrawal Notice:** Any Unit Holder who wishes to effect a withdrawal from a Fund, shall give notice in writing, by verbal communication (including by telephone) or by Electronic

² s 87 FMCA, 49 FMCR

³ s 168 FMCA, 97-99 FMCR

Communication (“**Withdrawal Notice**”) to the Manager to that effect. Such Withdrawal Notice:

- a. shall specify either a monetary amount or the number of Units in respect of which the Unit Holder wishes to effect withdrawal, adjusted for such number of Units as is required for the purpose of clause 15.9a, as well as the Fund or Funds from which the withdrawal is to be effected;
- b. shall be in such form or comply with such specification (if any) as may be prescribed by the Manager from time to time;
- c. is made subject to the terms and conditions of this Deed and the Governing Legislation; and
- d. unless the Manager agrees otherwise, shall be irrevocable once given.

9.2 Minimum Value of Units:

- a. No Withdrawal Notice shall be given in respect of less than the Minimum Value of Units applying to the relevant Unit Holder and Fund, and except where all Units held by a Unit Holder in a particular Fund are to be redeemed, no Withdrawal Notice shall be given if the effect of the withdrawal would be that the Unit Holder who gave the same would hold less than the Minimum Value of Units applying to the relevant Fund and Unit Holder. The Manager may at any time waive the requirements of this clause 9.2, either generally or in a particular case or cases.
- b. The Manager may from time to time, determine a Minimum Value of Units applicable to a Fund or any Unit Holder within a Fund and where the number or value of Units drops below that minimum, the Unit Holder is deemed to have made a Withdrawal Notice for those Units in accordance with clause 9.1.

9.3 Withdrawal Values: A completed Withdrawal Notice which complies with clauses 9.1a to 9.1d received by the Manager prior to 5.00pm on a Valuation Day (or such other time and date determined by the Manager from time to time) shall be effective for that Valuation Day or such later Valuation Day as is determined by the Manager in accordance with the Fund Particulars for the relevant Fund. For the purposes of this clause, a Withdrawal Notice received by the Manager at or after 5.00pm on a Valuation Day (or such other time and date agreed by the Manager and the Supervisor from time to time) or on a day which is not a Valuation Day shall be effective for the immediately following Valuation Day or such later Valuation Day as is determined by the Manager in accordance with the Fund Particulars for the relevant Fund. The Withdrawal Value of a Unit shall be the Unit Value on the Valuation Day for which the Withdrawal Notice is effective less the Transaction Costs at the relevant time, adjusted to the extent appropriate to reflect an equitable proportion of the management fees, Supervisor fees and other fees accrued or otherwise payable at the relevant time that have not otherwise been incorporated into the relevant Unit Value.

9.4 Redemption of Units: In connection with redemption of Units under clause 9.5 the Manager shall have the right:

- a. to direct the Supervisor pursuant to clause 18.4 to realise Investments of the relevant Fund; and/or
- b. subject to clauses 16.2, 16.3 and 18.3, to direct the Supervisor to Borrow on behalf of the relevant Fund pursuant to clause 16.1,

to provide the Withdrawal Amount in respect of the Units to be redeemed. Upon receipt of such a direction, subject to clause 18.3, the Supervisor shall forthwith realise Investments and/or Borrow moneys and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the relevant Fund.

9.5 **Payments of Withdrawals:** Subject to clauses 10.1, 10.6, and clause 13.6 the Manager shall, upon a Withdrawal Notice becoming effective and in accordance with the relevant Fund Particulars:

- a. Either:
 - i. repurchase the number of Units or Units of aggregate Withdrawal Values equal to the Withdrawal Amount as specified in that Withdrawal Notice; or
 - ii. procure that the number of Units or Units of aggregate Withdrawal Values equal to the Withdrawal Amount as specified in that Withdrawal Notice are redeemed; and
- b. procure the payment to the Unit Holder concerned or Unit Holder's personal representative (as applicable) of the amount equal to the aggregate Withdrawal Values of those Units less any Taxation which the Manager determines is applicable to the Withdrawal Amount and any exit fee payable under clause 9.9.

Regardless of the alternative adopted by the Manager, but subject to any Taxation which the Manager determines is applicable to the Withdrawal Amount and clause 9.9, the price payable to the Unit Holder for each Unit shall always be the Withdrawal Value.

The Manager is not obliged to repurchase Units at any time.

9.6 **Manager's Obligation:** Without limiting the generality of clauses 9.5 and 17.1 it is declared that the obligation of the Manager pursuant to clause 9.5 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 17.1. However, any Units repurchased by the Manager shall be acquired for its own benefit and, upon repurchase, subject to Governing Legislation the Manager shall have the rights of an ordinary Unit Holder under this Deed in respect of those Units, including the right to sell or have redeemed any or all of those Units.

9.7 **Cancellation of Units redeemed:** Units redeemed pursuant to this clause 9 shall cease to exist from the date of redemption and shall be deemed to be cancelled. The Manager shall make an appropriate entry on the relevant Register in respect of such cancellation.

9.8 **Order of Redemption:** Unless the Manager determines to the contrary, in respect of any particular Fund or Funds, or in respect of any particular Withdrawal Notice, if:

- a. a Unit Holder gives a Withdrawal Notice which requires redemption of less than all of the Units held by the Unit Holder in that Fund; and
- b. the Unit Holder does not specify particular Units to be redeemed,

the Units which are first redeemed by that Unit Holder shall be deemed to be those of the Units held by that Unit Holder which were earliest issued to the Unit Holder.

- 9.9 **Exit Fee:** The Manager may charge a fee of up to 5% of the Withdrawal Amount, in each case that complies with any Governing Legislation, as it may determine from time to time in respect of a Fund, class of Unit Holders investing in a Fund, or type or nature of transaction.
- 9.10 **Power to decline to maintain PIE status:** Subject to the Governing Legislation the Manager may decline to process a withdrawal that could or would result in a Fund losing its status as a PIE.

10 **Suspension**

10.1 **Suspension Notice:** If by reason of:

- a. a decision to terminate any one or more of the Funds;
- b. the suspension of trading on any Exchange (whether generally or in respect of any specific Investment);
- c. financial, political or economic conditions applying in respect of any financial market;
- d. the nature of any Investment; or
- e. the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally,

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of Unit Holders generally or to the Unit Holders of a particular Fund, for the Manager to give effect to Withdrawal Notices in respect of any Fund or Funds, then the Manager may, unless precluded by the Governing Legislation, give notice (“**Suspension Notice**”) to that effect to the Supervisor (which shall be prior notice unless it is not practicable in the circumstances) and any Unit Holder of the relevant Fund who gives a Withdrawal Notice or has given a Withdrawal Notice or a Switching Notice that has not already been given effect to by the Manager. A Suspension Notice in respect of a Fund shall have the effect of suspending the operation of all Withdrawal Notices given in respect of Units in that Fund until such time as the Manager gives to the Supervisor and the Unit Holders who gave those Withdrawal Notices or Switching Notices notice that the Suspension Notice is cancelled.

10.2 **Cancellation of Suspension Notice:** The Manager shall, unless the Supervisor otherwise agrees (such agreement not to be unreasonably withheld), give notice of cancellation of a Suspension Notice not later than 90 days after the date upon which that Suspension Notice is given. Unless extended in accordance with the provisions hereof, a Suspension Notice shall be deemed to be automatically cancelled upon the expiration of that 90 day period.

10.3 **Calculation of Units to be redeemed:** If a Suspension Notice is given and is later cancelled, then where a Withdrawal Notice or Switching Notice affected by the Suspension Notice specifies a Withdrawal Amount the number of Units to be redeemed in respect of the Withdrawal Notice or Switching Notice shall be calculated as if the reference in clause 9.3 (read together with clause 11.3 in the case of a Switching Notice) to the effective date of the notice were a reference to the next Valuation Day following the cancellation of that Suspension Notice.

- 10.4 **Supervisor and Manager may side-pocket:** Where the Manager considers that it is in the interests of the Unit Holders in a Fund generally to do so (for example, but without limitation, to address liquidity or pricing issues in relation to a particular Investment that might lead to the Manager giving a Suspension Notice in respect of that Fund), the Manager may with the prior written consent of the Supervisor, with effect from a particular date (“**Record Date**”), without the agreement of, or consultation with, Unit Holders:
- a. determine that particular Scheme Property and Liabilities of a Fund should be quarantined in accordance with this clause 10.4 and clauses 10.5 to 10.9 (“**Side-Pocketed Assets and Liabilities**”); and
 - b. reclassify, divide or otherwise reconstruct the holdings of Unit Holders in that Fund as at the Record Date so that those holdings consist of:
 - i. Units that relate to the Scheme Property and Liabilities that are not Side-Pocketed Assets and Liabilities (such Scheme Property and Liabilities, the “**Non-Side-Pocketed Assets and Liabilities**”); and
 - ii. Units that relate to the Side-Pocketed Assets and Liabilities (“**S Units**”),
all on a pro rata basis.
- 10.5 **Notice to Unit Holders:** The Manager must give written notice to the Unit Holders of a Fund in relation to which side-pocketing has occurred under clause 10.4 as soon as reasonably practicable after the Record Date stating that side-pocketing has occurred in relation to the Fund and including such other information as the Manager, in consultation with the Supervisor, may consider necessary (including details of any arrangements in respect of the items set out in clause 10.6).
- 10.6 **Side-Pocketed Assets and Liabilities:** The provisions of this Deed and the relevant Establishment Deed will apply, with such modifications as are necessary, to the Side-Pocketed Assets and Liabilities and the S Units as if the relevant Fund consisted solely of the Side-Pocketed Assets and Liabilities and the S Units provided that the Manager, with the prior written consent of the Supervisor, may prescribe special arrangements relating to the Side-Pocketed Assets and Liabilities and the S Units (“**Arrangements**”). Without limiting the generality of the proviso to the previous sentence, the Arrangements may include:
- a. arrangements preventing Unit Holders from giving Withdrawal Notices, Switching Notices, or an instrument of transfer in relation to the S Units;
 - b. arrangements for the treatment of Withdrawal Notices and instruments of transfer that remain outstanding as at a Record Date (including, without limitation, the cancellation of any such Withdrawal Notices, Switching Notices, or instruments of transfer);
 - c. arrangements preventing the issue of any further Units relating to the Side-Pocketed Assets and Liabilities;
 - d. arrangements for the realisation or discharge (as applicable) of the Side-Pocketed Assets and Liabilities;
 - e. arrangements relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Assets;

- f. arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of the S Units);
 - g. arrangements relating to the fees and expenses associated with, and any further Liabilities that may be incurred in respect of, the Side-Pocketed Assets and Liabilities and the S Units;
 - h. arrangements relating to the recovery of Attributed Tax from Unit Holders holding S Units (including, where applicable, the recovery of Attributed Tax relating to Side-Pocketed Assets and Liabilities from those Unit Holders by way of arrangements relating to Units (if any) held by such Unit Holders that relate to the Non-Side-Pocketed Assets and Liabilities) and the payment of the relevant Fund's tax liabilities;
 - i. approval for treating S Units held by Unit Holders as a different class of Unit;
 - j. arrangements that the Manager, in consultation with the Supervisor, considers appropriate in relation to the relevant Fund's status as a PIE; and
 - k. such other arrangements as the Manager, in consultation with the Supervisor, considers to be appropriate and in the interests of Unit Holders of the relevant Fund generally in relation to the side-pocketing arrangements contemplated by these clauses 10.4 to 10.9.
- 10.7 **Conflicts:** Where any conflict arises between the Arrangements and any other provision of this Deed or the relevant Establishment Deed, the Arrangements will prevail (other than those provisions setting out the Manager's duties to act in the interests of the Unit Holders generally and corresponding liability provisions).
- 10.8 **No new Fund:** For the avoidance of doubt, while the side-pocketing arrangements contemplated by these clauses 10.4 to 10.9 may involve the creation of a different class of Unit, they operate within the affected Fund and do not create a new and separate Fund. Unless required by law, the Manager need not prepare separate Financial Statements relating to the Non-Side-Pocketed Assets and Liabilities and the Side-Pocketed Assets and Liabilities provided that the Manager must prepare accounts in such form as necessary to provide adequate disclosure to Unit Holders.
- 10.9 **Fund's PIE status:** Where a Fund is a PIE, these clauses 10.4 to 10.9 will take effect subject to clauses 26 and 27 and must be read accordingly. In addition, these clauses 10.4 to 10.9 will not apply to any adjustment of Units under clause 26.

11 Switching of Funds

- 11.1 **Switching Notice:** Any Unit Holder may at any time give a notice in writing, by verbal communication (subject to the Governing Legislation and including by telephone) or by Electronic Communication ("**Switching Notice**") to the Manager to the effect that the Unit Holder wishes to withdraw Units of a certain number or Units having a certain aggregate of Unit Values from one Fund ("**Withdrawal Fund**") and invest the proceeds of such withdrawal in another Fund or Funds ("**Switch Fund**" or "**Switch Funds**").
- 11.2 **Contents of Switching Notice:** A Switching Notice shall:

- a. specify either a monetary amount or the number of Units in the Withdrawal Fund in respect of which the Unit Holder desires to effect withdrawal (adjusted, where necessary, for such number of Units as is required for the purpose of clause 15.9a);
- b. specify the Switch Fund or Switch Funds, and, if more than one Switch Fund is specified, specify the proportions in which it is desired to invest in those Switch Funds;
- c. unless otherwise agreed by the Manager, not be able to be revoked by the Unit Holder by whom it has been given;
- d. not be for less than the applicable Minimum Value of Units or for a number of Units that would reduce the holding of the Unit Holder in the Withdrawal Fund to less than the applicable Minimum Value of Units unless the Switching Notice relates to all of the Units held by the Unit Holder in the Withdrawal Fund;
- e. provide for investment in a Switch Fund of not less than the Minimum Value of Units applicable to the relevant Unit Holder and Fund from time to time; and
- f. be in such form or comply with such specification as may be prescribed by the Manager from time to time;

and the applicable provisions of clause 9 shall apply to a Switching Notice with any necessary modifications as if it were a Withdrawal Notice in respect of Units in the Withdrawal Fund.

11.3 **Switching:** The Manager shall, subject to clauses 10.1 and 10.6:

- a. procure that the number of Units, or Units in the Withdrawal Fund of aggregate Unit Values equal to the Withdrawal Amount, as specified in that Switching Notice, are dealt with in accordance with clause 9 as if the Switching Notice was a Withdrawal Notice given under that clause; and
- b. that the proceeds are applied in the acquisition of Units in the Switch Fund or Switch Funds in accordance with clause 8 (as if the Switching Notice were an application in respect of those Units) and (if more than one Switch Fund is involved) in the proportions specified in the Switching Notice.

11.4 **Power to Decline:** The Manager may decline to process a Switching Notice which could or would result in a Fund losing its status as a PIE.

12 **Transfer of Units**

12.1 **Transfers Generally:** All or any of the Units held by a Unit Holder may be transferred by an instrument in writing in such form as the Manager may approve from time to time and shall be signed by both the transferor and (unless the transfer is made pursuant to a products transfer under section 372 of FMCA) the transferee.

12.2 **Minimum Value of Units:** No transfer shall be given in respect of less than the Minimum Value of Units and no transfer shall be given if the effect of giving the same would be that the transferor or the transferee Unit Holder would hold less than the Minimum Value of Units in the relevant Fund.

- 12.3 **Registration of transfers:** The instrument of transfer shall be submitted to the Manager and on being satisfied that the provisions of this clause 12 and all Governing Legislation have been complied with and subject to clause 13.6 the Manager will register the transfer in the Register. No transfer shall be effective until registered in the relevant Register.
- 12.4 **Release of Amounts to Comply with Legislation:** A Unit Holder's interest in a Fund may be released, assigned, charged or passed to another person if required by the provisions of any enactment or by the order of a court under any enactment.
- 12.5 **Suspension of registration:** Registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine provided that the Manager may not suspend registration of transfers for a period exceeding thirty (30) Business Days in any calendar year without the approval of the Supervisor (such approval not to be unreasonably or arbitrarily withheld).
- 12.6 **Transmission of Units:** The executors or administrators of a deceased Unit Holder (not being one of several Joint Holders) shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders. However, if that Unit Holder has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of such Units and the transfer of Units is not registered before the death of the deceased Unit Holder, the Manager may register that transfer notwithstanding that the Manager at the time of such registration has notice of that Unit Holder's death.
- 12.7 **Transfer by operation of law:** Any person having authority to administer the estate of a mentally disordered person and any person becoming entitled to any Units in consequence of the death, bankruptcy or liquidation of any Unit Holder may upon producing such evidence of capacity or of title as the Manager shall think sufficient be registered as the holder of such Units and subject to the provisions as to transfer contained in this clause 12 may transfer such Units. This provision shall apply in the case of a person who becomes entitled as a survivor of persons registered as Joint Holders.

13 Registers

- 13.1 **The Register:** The Manager shall:
- a. keep and maintain or cause to be kept and maintained a separate Register of Unit Holders in respect of each Fund in the form and manner required by the Governing Legislation⁴, which together shall form the Register of Unit Holders for the Scheme in such form and compiled in such manner as the Manager sees fit; and
 - b. at the request of the Supervisor provide the Supervisor with a copy of each Register.
- 13.2 **Details to be entered in Registers:** There shall be entered in each Register such matters as prescribed by the Governing Legislation which may include:
- a. the name, tax file number (as defined in the Tax Act) and Prescribed Investor Rate of each Unit Holder holding Units in the relevant Fund;
 - b. the address of each Unit Holder, or in the case of Joint Holders the address of the Unit Holder first named in the Register of the relevant Fund;

⁴ s 215-217 FMCA

- c. the number and type of Units held by each Unit Holder in the relevant Fund;
- d. the date on which the name of every person was entered in the Register as a Unit Holder;
- e. the date on which any person ceased to be a Unit Holder; and
- f. any other particulars that the Manager may consider to be desirable or that are required by the Governing Legislation to be kept.

Unless permitted or required by the Governing Legislation, no notice of any trust, expressed, implied, or constructive, may be entered on a Register. Each Register is prima facie evidence of the matters required by the Governing Legislation to be entered in it.

- 13.3 **Audit of the Register:** The Manager shall cause the Register of Unit Holders for the Scheme to be audited by the Auditor in accordance with the Governing Legislation (being at annual intervals or as otherwise required by the Governing Legislation). The Auditor, in completing its audit of the Register, shall perform any other functions required by the Governing Legislation, and comply with any obligations it has under the Governing Legislation.⁵ The Supervisor may, on not more than one other occasion in a Financial Year and for a specified and reasonable purpose, request the Manager to cause such Register or one or more of them to be audited.
- 13.4 **Changes of name or address:** Any change of name or address of any Unit Holder shall be notified in writing or by Electronic Communication to the Manager who shall alter the Register accordingly and shall be in such form or comply with such specification (if any) as may be prescribed by the Manager from time to time.
- 13.5 **Reliance upon Register:** Each of the Manager and the Supervisor shall, subject to the Governing Legislation, be entitled:
- a. to rely absolutely on the Register as being correct;
 - b. for all purposes to treat a person whom it believes to be the person entered on the Register as the holder of any Units as the legal and beneficial owner of those Units without further enquiry; and
 - c. to effect transfers, redemptions or other dealings of any nature with Units on the basis of the information recorded in the Register without requiring production or surrender of any form of certificate or other evidence of ownership that may have been issued from time to time in respect of those Units.
- 13.6 **Evidence of entitlement:** Notwithstanding clause 13.5, the Manager shall, unless to do so would be inconsistent with the Governing Legislation, be entitled, at its absolute discretion before giving effect to any transfer, redemption or other dealing with any Units, to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in the relevant Register as the holder of the Units in question. If certificates have been issued in respect of the Units in question, such evidence may (but need not) be the production by that person of a certificate relating to those Units.

⁵ s 218-219 FMCA, 108-110 FMCR.

13.7 **Confirmation Information:** The Manager shall provide Unit Holders with such confirmation information as may be required by the Governing Legislation from time to time.

13.8 **Right to inspect and request copy:** The Register shall be open for inspection in the manner and to the extent required by the Governing Legislation. Any person may, for so long as the Governing Legislation requires and upon payment of any prescribed fee, obtain a copy of the Register.⁶

14 **Supervisor's Responsibilities, Powers and Duties**

14.1 **Supervisor's responsibilities:** The Supervisor is designated as the trustee and as the supervisor of the Scheme and each Fund for the purposes of the FMCA and is responsible for the following functions⁷:

- a. acting on behalf of Unit Holders in relation to:
 - i. the Manager;
 - ii. any matter connected to this Deed, an Establishment Deed, or the terms of any Regulated Offer of Units;
 - iii. any contravention or alleged contravention of the Issuer Obligations; and
 - iv. any contravention or alleged contravention of the FMCA by any other person in connection with the Scheme;
- b. supervising:
 - i. the Manager's performance of its functions (as set out in clause 15.1a to 15.1d of this Deed) and Issuer Obligations; and
 - ii. the financial position of the Manager and the Scheme in respect of Units to ascertain that it is adequate;
- c. holding the Scheme Property, or ensuring that the Scheme Property is held, in accordance with Governing Legislation;⁸ and
- d. performing or exercising any other functions, powers and duties conferred or imposed on it by or under the FMCA, the FMSA, this Deed, or an Establishment Deed.

14.2 **Supervisor unable to delegate certain responsibilities:** The Supervisor must not delegate its functions described in clause 14.1, (except as expressly permitted by clause 18.6 in relation to its function under clause 14.1c and otherwise by the FMCA or as permitted by, and then subject to, the FMSA).

14.3 **Supervisor's duties:** The Supervisor must⁹:

- a. act honestly in acting as Supervisor;

⁶ s 221-224 FMCA

⁷ s 152 FMCA

⁸ s 156-158 FMCA

⁹ s 153 FMCA

- b. in exercising its powers and performing its duties as Supervisor, act in the best interests of the Unit Holders;
- c. exercise reasonable diligence in carrying out its functions as Supervisor;
- d. in exercising its powers and performing its duties as a supervisor, exercise the care, diligence, and skill that a prudent person engaged in the business of acting as a Licensed Supervisor would exercise in the same circumstances;
- e. do all the things it has the power to do to cause any contravention referred to in clause 14.1a to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Unit Holders); and
- f. subject to any order of the High Court made under section 210 of the FMCA, act in accordance with any direction given by a Special Resolution that is not inconsistent with any enactment, rule of law, or this Deed or the relevant Establishment Deed in relation to:
 - i. seeking a remedy to a contravention referred to clause 14.1a; and
 - ii. any other matter connected with the Supervisor's functions.

14.4 **Supervisor's liability:** The Supervisor has the same duties and liability in the performance of its functions as supervisor as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or inconsistent with the FMCA)¹⁰. The Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction to it by Unit Holders.

14.5 **Experts:** The Supervisor is entitled, in the performance of the Supervisor's functions, to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the Supervisor considers, on reasonable grounds, that it requires the assistance of the expert to:

- a. determine the financial position of the Manager or the Scheme; or
- b. review the business, operation, or management systems, or the governance, of the Manager or the Scheme.

If the Supervisor engages an expert under this clause 14.5 then the Manager must provide reasonable assistance to the expert to allow the expert to provide the required assistance, pay the fees and expenses of the expert (which must be reasonable in the circumstances) and, subject to clause 17.7, is entitled to be indemnified for those fees and expenses out of the Investments and other Scheme Property¹¹ of the relevant Fund or Funds.

15 **Manager's Responsibilities, Duties and Powers**

15.1 **Manager's responsibilities:** The Manager is designated as the manager of the Scheme and the Funds for the purposes of the FMCA and is responsible for performing the following functions:

- a. offering Units;

¹⁰ s 153 (4) FMCA

¹¹ s 155 FMCA

- b. issuing Units;
- c. managing the Scheme Property and Investments of the Funds; and
- d. administering the Scheme.

15.2 **Manager's Duties:** The Manager must¹²:

- a. act honestly in acting as Manager;
- b. in exercising any powers or performing any duties as the manager of the Scheme and Funds:
 - i. act in the best interests of the Unit Holders;
 - ii. treat the Unit Holders equitably; and
 - iii. exercise the care, diligence, and skill that a prudent person engaged in the profession or business of acting as a manager of a registered scheme (as defined in the FMCA) would exercise in the same circumstances;
- c. not make use of any information acquired through being the Manager in order to:
 - i. gain an improper advantage for itself or any other person; or
 - ii. cause detriment to the Unit Holders; and
- d. carry out the functions of a manager in accordance with this Deed, each Establishment Deed, each SIPO, and all other Issuer Obligations.

15.3 **Manager's liability:** The Manager has the same duties and liability in the performance of its functions as Manager as it would if it performed those functions as a trustee (except to the extent that those duties are altered by or inconsistent with the FMCA)¹³.

15.4 **Manager's Powers:** Without in any way limiting the responsibilities and duties of the Manager outlined in clauses 15.1 to 15.3, the Manager shall manage and administer each Fund for the benefit of the Unit Holders holding Units in that Fund with full and complete power of management. In particular, the Manager shall take all steps which in its discretion are necessary or desirable in relation to each Fund, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the Scheme Property and Liabilities of each Fund. The Manager shall, without limiting the Manager's discretion and full powers of management and administration, but subject to clause 15.2 and the SIPO of the relevant Fund, have full and absolute power to do the following:

- a. acquire and sell Authorised Investments upon such terms as it sees fit;
- b. attend and vote at meetings relating to any Investment;
- c. lend money;

¹² s 143-144 FMCA

¹³ s 143(3) FMCA

- d. instruct solicitors to act in relation to an Authorised Investment or proposed acquisition or disposal of an Authorised Investment;
- e. participate in any takeover proposal, offer or invitation;
- f. promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager considers fit;
- g. create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over all or any assets for any purpose whatsoever, subject to clauses 16.2, 16.3 and 18.3 where Borrowings of the Supervisor are involved, and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- h. initiate or agree to any one or more of the following:
 - i. the release, modification or variation of any rights, privileges or liabilities of or in relation to any Investments;
 - ii. the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
 - iii. the amalgamation or merger of any corporation with any other corporation;
 - iv. the sale or other disposition of all or any part of the property or undertaking of any corporation;
 - v. the sale or other disposition of all or any part of the property or undertaking of any corporation;
- i. enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out, exercise and comply with any of the same;
- j. acquire and accept for any Fund any equity of redemption;
- k. participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
- l. enter into, perform and enforce agreements;
- m. institute, prosecute, compromise and defend legal proceedings;
- n. pay all outgoings connected with any Fund or this Deed which are not otherwise payable by the Manager; and
- o. take all steps necessary to convert a Fund to a PIE (or terminate a Fund's PIE status as the case may be) and conduct all necessary administration to that end and consequent upon it, where the Manager, with the consent of the Supervisor, has determined that a Fund should become or cease to be a PIE.

15.5 **Delegation by Manager:** Without in any way limiting the responsibilities and duties of the Manager outlined in clauses 15.1 and 15.2, the Manager may in carrying out and performing the responsibilities, duties and obligations on its part which are contained in this Deed and subject to the Manager remaining liable for the performance of the functions by any delegate whether or not the delegate is acting within the terms of its delegated authority (and whether or not the delegate holds a market services licence under the FMCA covering management of the Scheme):

- a. delegate all or any of its powers, authorities, functions and discretions exercisable under this Deed whether or not requiring the Manager's judgment and discretion, to its officers and employees or to any other Person nominated by the Manager;
- b. by Power of Attorney appoint any Person in any part of the world to be attorney or agent of the Manager for such purposes and with such powers authorities and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers authorities or discretions; and
- c. appoint any Person in any part of the world to be an agent, Investment Manager, sub-manager or co-ordinator, arranger or supervisor of any Investment Manager or sub-manager in respect of the Investments or any of them of any Fund or any part thereof and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this Deed or in respect of any Fund (including power for such Person to sub-delegate). Any such appointment shall be upon such terms as the Manager may in its discretion determine, and the Manager may enter into agreements or deeds on such terms as it determines recording the terms of any such appointment.

Any delegation of the Manager's management functions under this clause 15.5 must comply with the Governing Legislation, including for the avoidance of doubt any requirements relating to the entry into a transaction providing for a Related Party Benefit¹⁴.

The Manager must take all reasonable steps to ensure that all delegated functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager was performing them directly, and the Manager must monitor the performance of those functions¹⁵.

15.6 **Power to indemnify Investment Managers:** The Manager may appoint one or more Investment Managers to manage Investments in accordance with clause 15.5, and, subject to clause 17.7, the Manager may indemnify and reimburse out of the assets of the relevant Fund or Funds such Investment Manager in respect of any debt, liability, obligation incurred by or on behalf of that Investment Manager in respect of the relevant Fund or Funds or any action taken or omitted for or in connection with the Fund or Funds, including, without limitation, legal fees and disbursements¹⁶.

15.7 **Power to indemnify Administration Managers:** The Manager may appoint one or more Administration Managers to assist with the administration and management of the Scheme in accordance with clause 15.5, and, subject to clause 17.7, the Manager may agree to limit the Administration Manager's liability in connection with the Scheme and/or indemnify and reimburse out of the assets of the relevant Fund or Funds such Administration Manager in

¹⁴ s 173 FMCA

¹⁵ s 146 FMCA

¹⁶ s 135(1)(f) and 136 FMCA

respect of any debt, liability, obligation incurred by or on behalf of the Administration Manager in respect of the Fund or Funds or any action taken or omitted to be taken in connection with the Fund or Funds, including without limitation, legal fees and disbursements¹⁷.

- 15.8 **Exercise of voting rights by Manager:** All rights of voting conferred by the Investments shall be exercised in such manner as the Manager may determine and neither the Supervisor nor any Unit Holder shall have any right to interfere therein and, subject to clause 18.3, the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. The Manager shall not be under any liability or responsibility in respect of any vote or action taken or consent given by the Manager in person or by proxy or by power of attorney and neither the Manager nor the Supervisor shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Manager or by the holder of such proxy or power of attorney and the Manager shall be under no obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.
- 15.9 **Taxation:** The Manager shall ensure that all Attributed Tax, Attributed Tax Credits and taxes payable out of a Fund are attributed to all Unit Holders of that Fund on an equitable basis. For the purposes of giving effect to the foregoing, the Manager may:
- a. at any time adjust the interests of Unit Holders in a Fund by way of cancellation of Units in that Fund to make payment for Attributed Tax or by the issue of Units in that Fund to pass on the benefit of an Attributed Tax Credit, and where permitted by, and in accordance with, the Governing Legislation,¹⁸ make any other required adjustment to the financial benefits of Unit Holders in that Fund;
 - b. from time to time make provision (which shall include making any withholding or deduction) in relation to any Fund, or any asset of the Fund for any tax (including deferred tax or any withholding tax) but not Attributed Tax (unless the Manager has been unable to recover this from a Unit Holder) which is or is expected to be a Liability of, or to become payable:
 - i. out of the relevant Fund; or
 - ii. by the Supervisor in respect of any asset of the relevant Fund.

Each such provision shall be of the amount which the Manager determines is appropriate and (except where the amount is determined by law) equitable and shall be made in the manner determined by the Manager from time to time.

15.10 **Related Party Benefits:**

- a. The Manager (and any Investment Manager, Administration Manager, or other person to whom the Manager has contracted out some or all of its functions as manager), must not enter into a transaction that provides for a Related Party Benefit to be given.
- b. Clause 15.10a does not apply to a transaction or a series of transactions if the Manager notifies the Supervisor of the transaction or transactions, including the

¹⁷ s 135(1)(f) FMCA

¹⁸ s170 FMCA

Related Party Benefits given under the transaction or transactions, and the key terms of the transaction or transactions, and either:

- i. the Manager obtains the Supervisor's consent to the transaction or transactions and the Supervisor certifies in accordance with the FMCA;
 - ii. section 174 of the FMCA applies to the transaction or transactions or all Related Party Benefits to be given, and the Manager certifies to that effect in accordance with the requirements of the FMCA; or
 - iii. any other exemption under the FMCA applies to the transaction or transactions or all Related Party Benefits to be given.
- c. Neither the Manager nor any Related Party is liable to account to a Fund or any Unit Holder for any profit arising from any transaction that provides for a Related Party Benefit, except to the extent required by the FMCA¹⁹.

15.11 **Limit breaks:** The Manager must report to the Supervisor any limit break (within the meaning of section 167 of the FMCA) in respect of the Scheme or a Fund to the extent required by the FMCA, and take any other action as prescribed therein, or in the absence of any prescribed requirements, as agreed between the Manager and the Supervisor²⁰.

15.12 **Manager to provide information and reports**

The Manager will:

- a. make available to the Supervisor (or any person authorised by the Supervisor to exercise its powers under this clause) the whole of the records of the Manager kept pursuant to or in relation to this Deed and whether kept at the Manager's registered office or elsewhere;
- b. without limiting sections 147 to 151 of the FMCA, give the Supervisor (or any person authorised by the Supervisor to exercise its powers under this clause) such oral or written information and such reports and certificates as may be agreed from time to time between the Manager and the Supervisor or as required by any relevant law or requested by the Supervisor under the Governing Legislation with respect to all matters relating to the Scheme, the Manager and the Scheme Property of the Funds and the management and administration of the Scheme;²¹
- c. at the request of the Supervisor, give the Supervisor (or any person authorised by the Supervisor to exercise its powers under this clause) such oral or written information as may be required with respect to all matters relating to the Manager provided that the Supervisor shall only request such information in the following circumstances:
 - i. after consultation with the Manager; and
 - ii. if the Supervisor believes on reasonable grounds that the Manager is unable or is likely to become unable to carry out its Issuer Obligations and the Supervisor certifies its belief in writing to the Manager;

¹⁹ s 172-175 FMCA

²⁰ s 167 FMCA, regulations 94 to 96 FMCR

²¹ S 135 FMCA, regulation 83(1)(a) FMCR

- d. use reasonable endeavours to provide to the Supervisor on request access to such employees and board members of, and service providers to, the Manager as the Supervisor reasonably requires in connection with any matter relevant to the performance of the Supervisor's functions; and
- e. notify the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Unit Holders or its market services licence as a manager of a registered scheme under the FMCA.

16 **Borrowing Powers**

16.1 **Borrowing powers:** Subject to clauses 16.2, 16.3 and 18.3 and unless prohibited by the relevant Establishment Deed or the relevant SIPO, the Supervisor has power to, and must, if so directed by the Manager:

- a. Borrow money from any Person for the purposes of any Fund;
- b. for the purpose of such Borrowing, enter into loan documentation or securities, sell, discount, endorse or deal with bills of exchange, promissory notes and other securities and take all other steps necessary to give effect to any such Borrowing; and
- c. mortgage, charge, pledge or otherwise create a security interest over all or any of the assets of the relevant Fund as security for any moneys Borrowed by that Fund.

16.2 **Limitation on Borrowings:** The Supervisor must not Borrow if at the time of the proposed Borrowing the aggregate of the principal moneys Borrowed and outstanding in respect of the relevant Fund or secured against the assets of the relevant Fund together with the amount proposed to be borrowed would exceed the limitation on Borrowings set out in the relevant Establishment Deed or SIPO.

16.3 **Conditions of Borrowing/Supervisor's limitation of liability:** There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 16.1 or to complete any loan or security documents unless the Supervisor is satisfied that:

- a. the Supervisor's liability is restricted to the Scheme Property from time to time of the relevant Fund;
- b. the Investments of any Fund shall not be or become liable in respect of Borrowing made by or on behalf of another Fund;
- c. any loan security or other obligations binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor;
- d. there will be compliance with clause 16.2. In satisfying itself whether clause 16.2 will be complied with in any instance the Supervisor may rely upon a certificate of the Manager as conclusive evidence to that effect unless the Supervisor had actual knowledge that the requirements of clause 16.2 will not be satisfied; and
- e. doing so is not contrary to the provisions of this Deed or the Governing Legislation.

16.4 **Third parties need not enquire:** No Person lending or advancing moneys to the Supervisor or completing documents or securities in respect of any such Borrowing need to enquire as to

whether or not the limitations set out at clauses 16.2 and 16.3 have been observed or complied with.

17 **Supervisor's and Manager's Indemnities**

- 17.1 **Supervisor and Manager in representative capacity:** Subject to clause 17.7, the Supervisor and the Manager, in incurring any debts, liabilities or obligations or in taking or omitting any other action pursuant to this Deed for or in connection with the affairs of the Scheme and each Fund, are each, and shall each be deemed to be, acting for and on behalf of the Unit Holders and not in their own respective capacities.
- 17.2 **No personal liability:** Subject to clause 17.7, neither the Manager nor the Supervisor shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of the Scheme or a Fund, and the Scheme and Funds only shall be liable or subject to execution.
- 17.3 **Indemnity:** If contrary to the provisions of clause 17.1 and 17.2 either the Manager or the Supervisor shall be held personally liable to any other Person in respect of any debt, action taken or omitted, or liability or obligation incurred by or on behalf of a Fund or any Unit Holder or Unit Holders, including in respect of the establishment of a Fund, then, unless the liability falls within clause 17.4 and subject to clause 17.7, the Manager or the Supervisor (as the case may be) shall be entitled to be indemnified out of the relevant Trust Fund, to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined.
- 17.4 **Liability for default:** The Manager and the Supervisor shall each be liable for any loss arising out of wilful default or wilful breach of trust but otherwise and subject to clause 17.7 neither the Manager nor the Supervisor shall be liable to the Scheme or to any Fund or Unit Holder as a result of acting as Manager or Supervisor (as the case may be) under this Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of the Scheme or a Fund.
- 17.5 **Reimbursement:** Without limiting the generality of the indemnity provided at clause 17.3 and their other powers, but subject to clause 17.7, the Manager and the Supervisor shall each be entitled to be reimbursed out of the particular relevant Fund or Funds for all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Manager or Supervisor (as the case may be) under this Deed. Without prejudice to the generality of the foregoing the Manager and the Supervisor shall (subject to the Governing Legislation) be indemnified against:
- a. any expense or liability which may be incurred by the Manager or the Supervisor (as the case may be) in bringing or defending any action or suit in respect of any Fund or the provisions of this Deed;
 - b. all costs, charges, disbursements and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealing with an Investment, including commission, bank charges and stamp duty;
 - c. all Taxation, financial institutions duties and bank account debits, or any other duty, or impost properly charged to or payable by the Manager or the Supervisor (whether by any taxing authority or any other Person) in connection with the Funds or the Unit Holders;

- d. costs of postage in respect of all cheques, accounts, distribution statements, notices, reports and other documents posted to all or any Unit Holders;
- e. costs of convening and holding any meeting of Unit Holders;
- f. costs of preparing and printing accounts, distribution statements, cheques and all other documents required to be prepared in connection with any Trust Fund, pursuant to this Deed or any Governing Legislation;
- g. the costs of the preparation and execution of this Deed including the fees of solicitors and other advisers;
- h. fees and expenses of the Auditor or any solicitor, actuary, barrister, computer expert or other Person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties and the exercise of their powers under this Deed including (without limitation) any Custodian, Administration Manager, Investment Manager, or other Person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clause 15.5c but, for the avoidance of doubt, this indemnity shall not extend to the Manager's own internal costs for acting as manager of any Fund;
- i. expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Registers;
- j. the costs of complying with legislative requirements, including (but not limited to) the Governing Legislation;
- k. all costs, charges and expenses incurred in the advertising and promotion of the Scheme and each Fund; and
- l. any underwriting commission, brokerage, expenses, costs and disbursements in respect of the underwriting of an issue of Units.

17.6 **Limitation on liability:** Without prejudice to the generality of clauses 17.1 to 17.4 but subject to the Governing Legislation and clause 17.7:

- a. the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to check any information, document, form or list supplied to it by the Manager;
- b. the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form or list supplied to it by the Supervisor;
- c. the Manager and the Supervisor may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, auditor, broker or other Person believed by the Supervisor or the Manager to be expert in relation to the matters on which that Person is consulted (whether by the Manager or the Supervisor) and neither the Supervisor nor the Manager shall be liable for anything done or not done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;

- d. whenever pursuant to any provision hereof any certificate, notice, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any director, secretary, officer or responsible employee of the Manager or by any other Person or Persons appearing to be authorised by the Manager;
- e. except insofar as herein otherwise expressly provided the Manager and the Supervisor shall as regard all the trusts, powers, authorities and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of or time for the exercise thereof;
- f. subject to clause 15.10, nothing in this Deed shall be deemed to prohibit the Supervisor or any Associated Person of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Associated Person of the Manager or any shareholder or officer of the Manager (“**Relevant Persons**”) from being a Unit Holder or from acting in any representative capacity for a Unit Holder. In particular and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney or agent or in any other fiduciary, vicarious or other professional capacity for a Unit Holder and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law; and
- g. the Unit Holders holding Units in a Fund may by Special Resolution further release the Supervisor or the Manager or both from any liability incurred in relation to the relevant Fund and indemnify the Supervisor or Manager or both from and against any such liability either with respect to specific acts or omissions, whether past or proposed, or on the Supervisor or Manager ceasing to act in relation to the relevant Fund.

17.7 **Statutory limitations on indemnification:**

- a. No provision of this Deed has the effect of relieving or exempting the Supervisor or the Manager from, or indemnifying the Supervisor or the Manager against, any liability to the extent that doing so would be void under the Governing Legislation.
- b. Any rights of the Manager or the Supervisor set out in this Deed to be relieved or exempted from or indemnified for liabilities and expenses incurred in relation to the performance of the Manager's Issuer Obligations or the Supervisor's licensee obligations (as defined in the FMSA) are available only in relation to the proper performance of the duties under:
 - i. in the case of the Manager, sections 143(1) and 144 of FMCA; or
 - ii. in the case of the Supervisor, sections 153(1) and 154 of FMCA.
- c. Any rights of an Investment Manager of a Fund to be relieved or exempted from or indemnified for liabilities and expenses incurred in relation to the performance of its contracted functions set out in this Deed or in the contract between that Investment

Manager and the Manager are only available in relation to the proper performance of the duty under section 144 of the FMCA²².

17.8 **Apportionment:** If, in the opinion of the Supervisor or the Manager, any expense, cost or liability is incurred on behalf of more than one Fund, then that expense, cost or liability shall be apportioned amongst those Funds in such equitable manner as the Manager may in its discretion determine. The Supervisor or the Manager may at any time elect not to seek reimbursement from the assets of any particular Fund for any expense, cost or liability, without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost or liability (whether or not of a similar nature).

17.9 **Best endeavours:** The Manager and the Supervisor shall use their respective best endeavours to ensure that the Scheme and each Fund is carried on in a proper and efficient manner.

18 Investments

18.1 **Authorised Investments:** Subject to the relevant SIPO, the Governing Legislation and clause 18.3, each Fund may be invested in any investment, interest or estate, whether in New Zealand or any other country and whether legal or equitable, corporeal or incorporeal, freehold, leasehold or some other tenure, in or in relation to any or all of:

- a. any Equity Security or like interest in any company, partnership, or other Person;
- b. Cash deposits with or loans to (with or without security) any Person;
- c. any Debt Security or similar obligations (with or without security) issued by any Person;
- d. bills of exchange or promissory notes made, drawn, or accepted by any Person;
- e. mortgages or submortgages of any real property;
- f. Cash, foreign currencies, foreign exchange contracts;
- g. any interest of any nature in any real or personal property of any nature whatsoever;
- h. any Derivative;
- i. Units, sub-units, Managed Investment Products, or other interests in any managed investment scheme, group investment fund, superannuation scheme, workplace savings scheme, or other form of collective investment vehicle;
- j. stocks, bonds, mortgages, or securities of, or deposits with, any government, public, municipal or local body or authority in any part of the world;
- k. interests in any of the foregoing including interests and assets held by custodians or nominees or in collective or pooled investment schemes but excluding legal title to such assets for so long as they are so held;
- l. any right or option to acquire, take up, sell or put any of the above; and

²² s 136 FMCA

- m. any other investment, right, interest, obligation or property of any nature whatsoever permitted by the applicable SIPO.

18.2 Statement of Investment Policy and Objectives: The Manager must:

- a. develop, in consultation with the Supervisor, a written SIPO for the Scheme and each Fund that complies with the requirements of the FMCA²³, which SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA²⁴ and on notice to the Supervisor, and all moneys available for investment in a Fund must be invested in accordance with the relevant SIPO;
- b. provide a copy of the SIPO for the Scheme or any Fund (or any alteration to that SIPO) to the Supervisor within such period prior to the SIPO or alteration taking effect as is agreed with the Supervisor (or, if no such period is agreed, within a reasonable period), and must lodge the SIPO or alteration (as applicable) with the Registrar to the extent required by the FMCA²⁵; and
- c. only invest the assets of a Fund in accordance with the applicable SIPO.

18.3 Supervisor's limited duty to refuse to act:

- a. The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on a direction of the Manager in circumstances where such a refusal is required by the FMCA and the Supervisor (and any Custodian) shall not be liable to Unit Holders or the Manager for so refusing to act (or for directing any Custodian to so refuse to act) on any such direction.
- b. If the Supervisor refuses pursuant to this clause to act (or directs any Custodian to refuse to act) on a direction from the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for the refusal or the direction to refuse.²⁶

18.4 Manager directs Supervisor: The Manager will manage each Fund and as and when required may, from time to time, in relation to any Fund and having regard to the relevant Establishment Deed and Fund Guidelines but subject to the Governing Legislation, direct the Supervisor or any Custodian in respect of:

- a. the investment and management of any Investments;
- b. the purchase, acquisition, sale, transfer, replacement and disposition of Investments;
- c. the amendment or modification of any Investments; and
- d. the entering into of any commitments or liabilities that are related to Authorised Investments,

²³ s 164 FMCA

²⁴ s 165 FMCA

²⁵ s 166 FMCA

²⁶ s 160 FMCA

and the Supervisor and any Custodian will, from time to time and subject to clause 18.3, to the extent of the relevant Trust Fund available at the time, act as directed in writing by the Manager.

18.5 **Vesting and Custody of Investments:** Any Investments shall as soon as reasonably practicable after acquisition by the Supervisor be vested in the Supervisor or Custodian, and the documents (if any) evidencing the Investments shall be held in safe custody by the Supervisor or by some Person appointed in accordance with clauses 18.6 or 18.7, and shall remain so vested and held until the same shall be sold or disposed of pursuant to the provisions of this Deed.

18.6 **Appointment of Custodian:** The Supervisor must itself hold the Scheme Property of each Fund or it may, following prior consultation with the Manager, from time to time appoint in writing a Custodian to hold all or any of the Scheme Property of a Fund provided that²⁷:

- a. the Custodian must meet all the external custodianship requirements for such a person under the FMCA and comply with the obligations applying to a custodian under the FMCA²⁸;
- b. if in the reasonable opinion of the Manager, the appointment of the Custodian would be likely to have the effect of materially:
 - i. reducing the remuneration of the Manager payable under clause 22; or
 - ii. increasing the costs or expenses of the Manager (other than costs or expenses recovered under clause 17),

the Supervisor must obtain the Manager's prior written approval to the appointment (not to be unreasonably withheld);

- c. the Supervisor will be jointly and severally liable with the Custodian for the performance by the Custodian of the function of holding the Scheme Property of each Fund in accordance with clause 18.6d;
- d. the Supervisor must take all reasonable steps to:
 - i. ensure that the custody function is performed by the Custodian in the same manner and subject to the same duties and restrictions as would be required if the Supervisor were performing that function directly; and
 - ii. monitor the performance of that function²⁹; and
- e. the Manager may instruct the Supervisor to review the performance of any Custodian at any time.

18.7 **Appointment of Sub-Custodian:** If authorised in writing by the Supervisor, a Custodian appointed under clause 18.6 may, following prior consultation with the Manager, itself appoint one or more sub-custodians to hold all or any of the Scheme Property of a Fund provided that:

²⁷ s 156 FMCA

²⁸ s 127(1)(f), 156-159 FMCA, 85-88 FMCR

²⁹ s 156(5)FMCA

- a. any sub-custodian appointed under this clause must meet the external custodianship requirements for such a person under the FMCA and comply with the obligations applying to a custodian under the FMCA³⁰;
- b. if in the reasonable opinion of the Manager, the appointment of a sub-custodian would be likely to have the effect of materially:
 - i. reducing the remuneration of the Manager payable under clause 22; or
 - ii. increasing the costs or expenses of the Manager (other than costs or expenses recovered under clause 17),

the Supervisor must obtain the Manager's prior written approval to the appointment (not to be unreasonably withheld);
- c. the Supervisor and the Custodian which appointed that sub-custodian will be jointly and severally liable with the sub-custodian for the performance of the function of holding the Scheme Property of each Fund in accordance with clause 18.7d; and
- d. the Custodian must take all reasonable steps to:
 - i. ensure that the function is performed by the sub-custodian in the same manner and subject to the same duties and restrictions as if the Custodian were performing it directly; and
 - ii. monitor the performance of that function³¹.

18.8 **Investment records:**

- a. The Supervisor or Custodian must keep, or ensure that there are kept, complete, accurate and separate records of all Scheme Property of each Fund in accordance with the Governing Legislation.
- b. The Supervisor or Custodian must keep the records required by clause 18.8a, or ensure that they are kept, in a manner that enables those records to be conveniently inspected by the Manager and the Supervisor and conveniently and properly audited and reviewed without charge at any time on any Business Day and otherwise in accordance with the Governing Legislation.
- c. The Manager shall be entitled to assume that the Supervisor's or Custodian's records of Investments are complete and accurate and to rely upon them accordingly.

18.9 **Power to indemnify Custodian:** Provided that it has obtained the Manager's approval, the Supervisor may agree to limit any Custodian's liability in connection with its custodial services in respect of a Fund and/or indemnify and reimburse out of the assets of the relevant Fund such Custodians in respect of any debt, liability, obligation incurred by or on behalf of the Custodian in respect of that Fund or any action taken or omitted to be taken in connection with the relevant Fund, including without limitation, legal fees and disbursements.³²

³⁰ s 156-159 FMCA, 85-88 FMCR

³¹ s 156(5) FMCA

³² s 135(1)(f) FMCA

19 Distributions

- 19.1 **Income Determination:** On each Distribution Date the Manager shall determine the Gross Income for the Distribution Period ending on that date, and in respect of each Unit Holder, the Unit Holder's Entitlement calculated in accordance with this clause 19.
- 19.2 **Determination of Distributable Income:** Except where the Manager determines otherwise from time to time, in determining Income of each Fund to be distributed to Unit Holders for any period there shall be taken into account all Income due and receivable and all costs charges and expenses due or accrued charged or chargeable against Income.
- 19.3 **Distribution:** All distributable Income calculated in accordance with clause 19.2 shall be distributed to the Unit Holders at such time or times and in such manner as may be nominated by the Manager from time to time. Unless the Manager determines some other manner of distribution is appropriate from time to time in respect of the relevant Fund and notifies affected Unit Holders accordingly, such distributable Income shall be distributed amongst Unit Holders in proportion to the number of such Units held by them, and the number of days the Units have been on issue with the amount distributed by the Unit Holder's Entitlement in each case.
- 19.4 **Reinvestment of Entitlements:** Unit Holders may, if reinvestment of Entitlements is permitted by the Manager from time to time in its absolute discretion and subject to the Governing Legislation, elect to reinvest their Entitlements (less any tax which the Manager is obliged or permitted to deduct, but subject to such relief in relation to Transaction Costs as the Manager sees fit, if at all) by purchasing further Units in the relevant Fund by making a written request in that behalf to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including Electronic Communication.

20 Remuneration of the Supervisor

- 20.1 **Remuneration basis:** For its services as Supervisor of the Scheme, the Supervisor shall be paid out of the relevant Trust Fund, in respect of each Fund or class of Unit Holders investing in a Fund, a fee of such amount or such percentage of another amount, in each case that complies with any Governing Legislation, as is agreed with the Manager from time to time provided that:
- a. the aggregate of such fees for all Funds within the Scheme shall not exceed 0.10% per annum of the aggregate Fund Value of those Funds, provided that the Supervisor shall be entitled to an aggregate fee of a minimum of \$15,000 per annum; and
 - b. subject to the maximum fee set out in clause 20.1a, the Supervisor shall be entitled to review its fee on an annual basis, and to increase its fee with the agreement of the Manager by giving at least one month's prior notice to that effect to all Unit Holders.
- 20.2 **Reimbursement of taxes:** The Supervisor shall be entitled to receive, in addition to such fee, any GST or similar tax or duty payable in respect of such fee.
- 20.3 **Calculation and Payment of Fee:** The fee referred to in clause 20.1 shall be calculated on such basis as the Manager and the Supervisor may from time to time agree, and paid quarterly in arrears, or on such other basis as the Manager and Supervisor may from time to time agree.
- 20.4 **Supervisor's expenses:** Notwithstanding clauses 20.1 and 20.2, and without limiting any other provision of this Deed, in consideration of the Supervisor agreeing to act as trustee and

supervisor of the Scheme, but except to the extent such expenses are reimbursed to the Supervisor directly by the Manager, the Supervisor shall be entitled to deduct from each Trust Fund on an equitable basis in accordance with clause 17.5:

- a. the Supervisor's reasonable legal expenses in respect of ongoing advice in respect of this Deed; and
- b. the Supervisor's reasonable expenses in respect of work of an unusual or onerous nature outside the attendances of the Supervisor reasonably contemplated by this Deed,

including, without limitation, modification of this Deed, waiver of breaches, and winding up or amalgamation of any of the Funds.

21 **Removal, Retirement and Appointment of Supervisor**

21.1 **Supervisor requirements:** The Scheme shall have one Supervisor, who:

- a. must be a body corporate that is incorporated in New Zealand;
- b. must not be the Manager or an Associated Person of the Manager; and
- c. must be a Licensed Supervisor whose licence covers supervision of the Scheme.

21.2 **Removal:** Subject to the Governing Legislation and clause 21.4, the Supervisor shall cease to hold office as Supervisor of the Scheme if³³:

- a. the Supervisor is removed by the FMA if it is satisfied that the Manager and the Supervisor are the same or Associated Persons;
- b. the Supervisor is removed by the FMA or the Manager under Part 2 of the FMSA;
- c. the Supervisor is removed by a Special Resolution;
- d. the Manager gives not less than 90 days' notice in writing to the Supervisor (or such lesser period as the Manager and the Supervisor agree), with such removal not being effective until the FMA has given its consent to such a removal; or
- e. the Supervisor is removed with immediate effect by the Manager giving notice in writing to the Supervisor, with the FMA's consent, in the event that a resolution is passed or an order made for the dissolution of the Supervisor or the Supervisor is placed in receivership or statutory management, provided that any requirements under law have been met.

21.3 **Retirement:** Subject to the Governing Legislation and clause 21.4, the Supervisor may retire without giving any reason upon giving 90 days' notice in writing to the Manager of its intention to do so (or such lesser period as the Manager and the Supervisor agree).

21.4 **Restrictions on Removal/Retirement:** The Supervisor may not be removed under clause 21.2c, 21.2d, or 21.2e, or resign under clause 21.3, unless³⁴:

³³ s 193 FMCA

- a. all the functions and duties of the position have been performed;
- b. another supervisor has been appointed to the position who is a Licensed Supervisor whose licence covers the supervision of the Scheme, and that supervisor has accepted the appointment; or
- c. the High Court consents.

21.5 **Appointment of new Supervisor:** The power of appointing a new Supervisor of the Scheme (in place of a Supervisor which has retired pursuant to clause 21.3 or been removed from office pursuant to clause 21.2) shall be vested in the Manager. In accordance with the requirements of the FMCA, the Manager must ensure that notice of change of the Supervisor is lodged with the Registrar³⁵, and the existing Supervisor and the Manager shall use their respective reasonable endeavours to facilitate such appointment.

21.6 **Retiring Supervisor Released:** A new Supervisor appointed pursuant to clause 21.5 shall forthwith upon such appointment execute a deed in such form as the Manager may require whereby the new Supervisor undertakes to the Manager and Unit Holders to be bound by all the covenants on the part of the Supervisor hereunder from the date of such appointment and from such date the retiring Supervisor shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Supervisor shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Supervisor hereunder in all respects as if such new Supervisor had been originally named as a party hereto.

21.7 **Appointment not exclusive:** Nothing contained in this Deed shall be construed to prevent the Supervisor from establishing, or acting as supervisor in relation to, another managed investment scheme.

22 Remuneration of the Manager

22.1 **Management Fees:** For performing the services described in clauses 15.1 and 15.2, the Manager shall be paid out of the relevant Trust Fund, in respect of each Fund or class of Unit Holders investing in a Fund, a fee or fees not exceeding 2% per annum of the Fund Value of the relevant Fund, in each case that complies with any Governing Legislation, as are determined by it from time to time.

22.2 **Manager's entitlements:** The Manager shall be entitled:

- a. at any time and from time to time to increase the amount of the fees referred to in clause 22.1 in respect of any Fund by giving at least one month's prior notice to that effect to all Unit Holders of that Fund;
- b. at its sole discretion at any time and from time to time to waive or reduce any of the fees referred to in clause 22.1, or any other fee payable under this Deed other than the fee payable to the Supervisor under clause 20.1, either generally or in relation to a particular Fund or Unit Holder or class of Unit Holders or type or nature of transaction; and

³⁴ s 193 FMCA

³⁵ s 194 FMCA

- c. to receive, in addition to those fees, any GST or similar tax or duty payable in respect of such fees.

22.3 **Calculation and Payment of Fees:** The fees referred to in clause 22.1 shall be calculated on such basis as the Manager and the Supervisor may from time to time agree, and paid monthly in arrears on the last Business Day of each month, or on such other basis as the Manager and the Supervisor may from time to time agree.

23 **Removal, Retirement and Appointment of Manager**

23.1 **Manager appointment:** The Scheme shall have one manager, who:

- a. must not be the Supervisor or an Associated Person of the Supervisor;
- b. must be a Licensed Manager whose licence covers management of the Scheme.

23.2 **Removal:** Subject to the Governing Legislation, the Manager shall cease to hold office as Manager of the Scheme if the Manager:

- a. shall have a receiver or statutory manager appointed or if an order is made or a resolution passed for the liquidation of the Manager; or
- b. is removed pursuant to the FMCA³⁶.

If the Manager ceases to hold office under this clause 23.2, the Manager and any delegate of the Manager must immediately desist from all activities relating to the Scheme unless the Supervisor agrees to the contrary.

23.3 **Retirement:** Subject to the Governing Legislation, the Manager may retire without giving any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so (or such lesser period as the Manager and the Supervisor agree).

23.4 **Temporary Manager:**

- a. The power of appointing a temporary Manager of the Scheme where a vacancy in the office of Manager arises shall be vested in the Supervisor. No person shall be appointed as a new Manager of the Scheme unless that person complies with any legal requirements for appointment, including under the FMCA.
- b. Where the Scheme does not have a manager and where the Governing Legislation so requires, the Supervisor shall appoint a new or temporary manager which satisfies any legal requirements for such appointment, including under the FMCA.³⁷
- c. Where the Supervisor appoints a temporary manager, the Supervisor must take all reasonable steps to appoint a permanent manager for the Scheme which satisfies any legal requirements for such an appointment.³⁸
- d. If the Supervisor has not appointed a temporary manager or the Supervisor requests the FMA to do so, the FMA may, where the Governing Legislation so requires,

³⁶ s 185 and 209 FMCA

³⁷ Section 186(3)(a) of the FMCA.

³⁸ Sections 186(2) and (3)(a) and section 189 of the FMCA.

appoint a temporary Manager that satisfies any legal requirements.³⁹ The FMA's costs and expenses incurred in connection with any such appointment of a temporary Manager will be reimbursed out of the Trust Funds.⁴⁰

- e. A temporary manager has all of the powers and duties of the Manager under this Deed or the Governing Legislation.⁴¹

23.5 **Replacement Manager:** Subject to the Governing Legislation,⁴² the power of appointing a new manager of the Scheme shall be vested in the retiring manager, but no new manager shall be so appointed without the approval of the Supervisor (such agreement not to be unreasonably withheld). In accordance with the requirements of the FMCA, the new Manager of the Scheme must ensure that notice of change of the Manager is lodged with the Registrar⁴³. A former manager must hand over records and give reasonable assistance to the new manager in accordance with the FMCA⁴⁴.

23.6 **Retiring Manager released:** A new Manager appointed pursuant to clause 23.5 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Unit Holders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such new Manager had been originally named as a party hereto.

23.7 **Appointment not exclusive:** Nothing contained in this Deed shall be construed to prevent the Manager from establishing, or acting as manager in relation to, another managed investment scheme.

24 Unit Holders' limitation of Liability

24.1 **Limitation:** Subject to clauses 7.12, 17.6g and 27.4 but notwithstanding anything else contained in this Deed or any rule of law:

- a. no Unit Holder shall in any circumstances be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of the Scheme or any Fund;
- b. nothing in this Deed or in the relationship between the Unit Holders shall be deemed to create a partnership amongst Unit Holders; and
- c. neither the Supervisor nor the Manager shall be or act as agent for the Unit Holders in respect of Units in any Fund, and neither shall have power to incur liabilities on behalf of any Unit Holder or pledge the credit of any Unit Holder beyond the extent of their investment in the Scheme.

³⁹ Section 186 of the FMCA.

⁴⁰ Section 188 of the FMCA.

⁴¹ Sections 186 and 187 of the FMCA.

⁴² s 186-189 FMCA

⁴³ s 192 FMCA

⁴⁴ s 190 FMCA

25 **Records, Accounts and Audit**

25.1 **Records:**

- a. The Manager shall keep or cause to be kept in accordance with the FMCA:⁴⁵
 - i. proper accounting records of or relating to the Scheme and each Fund;
 - ii. true accounts of:
 - A. all sums of money received and expended by or on behalf of each Fund;
 - B. the matters in respect of which such receipt and expenditure takes place;
 - C. all the sales, purchases and other transactions relating to the Investments and the Liabilities of each Fund;
 - D. the issue or transfer of Units;
 - E. all matters in respect of which records are required by the Governing Legislation to be kept; and
 - F. all other matters for which accounting records should properly be kept.

The Supervisor shall provide from time to time to the Manager any information it holds necessary for this purpose.

- b. In keeping or causing to be kept the Manager's proper records or accounts under clause 25.1a:
 - i. the Manager must have systems of control and oversight that it considers appropriate;
 - ii. the Manager must keep such records or accounts at a location that it considers suitable; and
 - iii. the Manager must comply with the applicable provisions of Part 7 of the FMCA.

25.2 **Annual financial statements:** The Manager shall cause to be prepared annual Financial Statements in respect of the Scheme and each Fund for each Financial Year in accordance with any requirements in the FMCA,⁴⁶ together with such other Financial Statements in respect of each Fund as the Manager and the Supervisor may agree from time to time.

25.3 **Annual information to be sent to Unit Holders:** The Manager must cause to be sent annually to every Unit Holder in accordance with the applicable requirements of the

⁴⁵ s 455-459 FMCA

⁴⁶ s 460-461A FMCA

Governing Legislation, a copy of the annual report for the Scheme or a notice containing the statements required by the FMCR.

- 25.4 **Fund Update:** The Manager shall:
- a. prepare quarterly Fund Updates as required by the Governing Legislation;
 - b. provide a final draft of all Fund Updates to the Supervisor for its review within such timeframe as has been agreed with the Supervisor, or if none has been agreed a reasonable time prior to finalisation; and
 - c. arrange for the Fund Updates to be lodged on the Disclose Register, made publicly available and sent to the Supervisor in the time and manner required by the Governing Legislation.
- 25.5 **Required statutory filings:** The Manager must in every year, by the date specified in the FMCA, file or cause to be filed with any person in relation to the Scheme and every Fund any information required by the Governing Legislation.
- 25.6 **Audit:** The Manager shall ensure that the Financial Statements for the Scheme and each Fund are audited and reported on by the Auditor, and that a copy of the Financial Statements and the Auditor's Report thereon are forwarded promptly to the Supervisor, in accordance with the FMCA and within any timeframe prescribed by the Governing Legislation.⁴⁷
- 25.7 **Appointment of Auditor:** The Manager shall, following consultation with the Supervisor in accordance with the FMCA, appoint an auditor or auditors of the Scheme who must be a qualified auditor in terms of the FMCA who is not precluded by the FMCA from acting as Auditor of the Scheme approved by the Supervisor and otherwise entitled by law to act as such. The terms of appointment of the Auditor, including the services to be performed by the Auditor and their scope and the remuneration of the Auditor, are to be determined by the Manager following consultation with the Supervisor and in the manner required by Schedule 13 of the FMCR and must meet the requirements of the Governing Legislation, including by:
- a. including any matters required by the FMCA; and
 - b. requiring the Auditor to, in addition to its functions as set out in this Deed, perform any other functions required by the FMCA and comply with any obligations it has under the FMCA.⁴⁸
- 25.8 **Remuneration of Auditor:** The remuneration of the Auditor shall be fixed by the Manager and shall be paid out of the Trust Funds and apportioned between the various Funds in accordance with clause 17.8.
- 25.9 **Removal of Auditor:** The Auditor may at any time be removed from office by the Manager with the approval of the Supervisor or if the Supervisor believes it to be in the best interests of the Scheme and/or the Unit Holders it may instruct the Manager to remove the Auditor. The Auditor may retire upon the expiration of not less than 90 days' notice in writing to the Manager, or such other period as may be agreed between the Manager and the Auditor, after consultation with the Supervisor.

⁴⁷ s 461D-461G FMCA

⁴⁸ s 461E FMCA, cl 1-3 Schedule 13 FMCR

25.10 **Vacancy in Office of Auditor:** Any vacancy in the office of the Auditor occurring under clause 25.9 shall be filled by the Manager (after consultation with the Supervisor in accordance with the FMCA) appointing an auditor qualified for appointment in terms of clause 25.7.

26 **PIE Compliance**

26.1 **Redemption of Unit Holder's interest:** Notwithstanding anything contained elsewhere in this Deed and if permitted by the Governing Legislation, where:

- a. the interest of a Unit Holder in a Fund (whether alone or taken together with the interest of other Unit Holders) is such that the Manager reasonably considers that the interest causes, or would be likely to cause, the Fund to cease to be eligible for PIE status;
- b. the Manager gives to that Unit Holder 7 days' notice in writing that the Manager intends at the expiration of that period of notice to require redemption of some or all of that Unit Holder's Units, being the portion of the Unit Holder's Units reasonably considered by the Manager to be required to be redeemed to prevent the relevant Fund from ceasing to be, or being likely to cease to be, eligible for PIE status; and
- c. at the expiration of that period of notice the Manager continues to consider that the interest of that Unit Holder causes, or would be likely to cause, the relevant Fund to cease to be eligible for PIE status,

the Manager shall be entitled within 21 days from the expiry of that period of notice to cause redemption of such portion of the Unit Holder's interest as the Manager considers to be necessary to enable the relevant Fund to maintain its status as a PIE and to pay to the Unit Holder that portion of the Unit Holder's Units. The Unit Holder shall be deemed to have authorised the Manager to act on the Unit Holder's behalf and to execute all necessary documents for the purpose of this clause. Except as required by the Governing Legislation, the Manager shall not be liable to the Unit Holder in connection with the exercise or purported exercise of powers arising under this clause.

26.2 **Unit Holder's interest to be declared void ab initio:** Notwithstanding anything contained elsewhere in this Deed, where:

- a. the interest of a Unit Holder in a Fund (whether alone or taken together with the interest of other Unit Holders) is such that the Manager reasonably considers that the interest causes, or would be likely to cause, the Fund to cease to be eligible for PIE status;
- b. the Manager gives to that Unit Holder 7 days' notice in writing that the Manager intends at the expiration of that period of notice to deem some or all of that Unit Holder's Units to be void ab initio (to the maximum extent permitted by the Governing Legislation), being the portion of the Unit Holder's Units reasonably considered by the Manager to be required to be deemed to be void ab initio to prevent the relevant Fund from ceasing to be, or being likely to cease to be, eligible for PIE status; and
- c. at the expiration of that period of notice the Manager continues to consider that the interest of that Unit Holder causes, or would be likely to cause, the relevant Fund to cease to be eligible for PIE status,

the Manager shall be entitled within 21 days from the expiry of that period of notice to declare such portion of the Unit Holder's interest as the Manager considers to be necessary to enable the relevant Fund to maintain its status as a PIE to be void ab initio (to the maximum extent permitted by law) and to refund the relevant consideration to the relevant Unit Holder together with such compensation as the Manager considers to be appropriate. Where a Unit Holder's Units are determined to be void the Unit Holder's Units shall be refunded at the Withdrawal Value calculated in accordance with clause 9.3. The Unit Holder shall be deemed to have authorised the Manager to act on the Unit Holder's behalf and to execute all necessary documents for the purpose of this clause. Except as required by the Governing Legislation, the Manager shall not be liable to the Unit Holder in connection with the exercise or purported exercise of powers arising under this clause.

27 **Taxation Liability**

27.1 **Definitions:** In this clause 27:

“**Relevant Person**” means a Unit Holder and the Unit Holder's personal representatives or successors;

“**Tax**” includes all taxes, duties levies and other charges including penalties and interest;

“**Taxation Amount**” means, in relation to a Relevant Person:

- a. any Tax payable by or on account of that person or in respect of that person's Units;
- b. any withholding Tax or similar amounts required to be withheld or deducted by the Manager or the Supervisor in respect of a Unit Holder.

27.2 **Deductions:** The Supervisor or the Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person an amount equal to the Taxation Amount of that Relevant Person where such amount is payable or anticipated to become payable by the Supervisor or the Manager or from any relevant Trust Fund.

27.3 **Application of deduction:** Amounts deducted under clause 27.2 shall be applied in:

- a. payment of the Taxation Amount to the Person entitled thereto, or
- b. reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds; and
- c. any balance shall be refunded to the Relevant Person.

27.4 **Indemnity:** Subject to clause 17.7, each Relevant Person shall indemnify the Supervisor and the Manager in respect of any Taxation Amount paid or payable by the Manager or the Supervisor in respect of that Relevant Person including any Attributed Tax referable to that Relevant Person which has not been recovered under clause 15.9.

27.5 **Interest:** Any Taxation Amounts paid on behalf of a Relevant Person shall carry interest calculated on a daily basis at such rate as the Manager may determine and such interest shall be paid on demand by the Relevant Person to the Supervisor or the Manager as the case requires.

28 Notices

- 28.1 **To Unit Holder:** Any notice to be given to any Unit Holder may be given either personally or by sending it by post to the address of the Unit Holder shown in the relevant Register or by Electronic Communication. A notice may be given to the Joint Holders of a Unit by giving the notice to any Joint Holder. Where a notice is sent by:
- a. post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice, and to have been effected on the third day following the day of posting; or
 - b. fax or email, service of the notice shall be deemed to be effected at 9:00 am on the next Business Day after transmission.
- 28.2 **Notice to manager, legal representative etc:** A notice may be given by the Manager to the manager of a mentally disordered person, or the Persons entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder, by sending it by post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.
- 28.3 **Notice where no address:** If any Unit Holder has no registered address and has not supplied to the Manager an address for the giving of notices, or if any two notices posted to a Unit Holder are returned to the Supervisor or the Manager (as applicable) on consecutive occasions, then, notwithstanding anything contained elsewhere in this Deed, until the Unit Holder shall give notice in writing to the Manager of some other address, the address of the Unit Holder for all purposes of this Deed shall be deemed to be the address of the Manager's principal place of business in New Zealand from time to time.
- 28.4 **Calculation of notice period:** Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.
- 28.5 **Notice to Supervisor or Manager:** Any notice, communication, certificate or information required by this Deed to be given:
- a. to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice **provided that** the Manager and the Supervisor may agree from time to time as to certain notices or communications that may be given by Electronic Communication; and
 - b. to the Supervisor or Manager by any other Person shall be in writing and may be given in person, by post at the principal place of business in New Zealand of the intended recipient or such other address as the recipient may have notified **provided that** the Manager or Supervisor may agree that certain notices or communications may be given by Electronic Communications to such address and in such manner as the intended recipient may have specified.

- 28.6 **Receipt of notice to Supervisor or Manager:** Where a notice under clause 28.5 is sent by:
- a. post, service of the notice shall be deemed to be effected by properly addressing pre-paying and posting a letter containing the notice, and to have been effected on the third day following the date of posting; or
 - b. fax or email, service of the notice shall be deemed to be effected at 9:00 am on the next Business Day after transmission.
- 28.7 **Copy of notice to Unit Holders:** A copy of any notice given to all Unit Holders under this Deed shall be given, at the same time at which it is given to the Unit Holders, to the Supervisor.
- 28.8 **Prescribed Investor Rate:** Unit Holders must provide information to the Manager sufficient to meet the requirements of the Tax Act as to the rate of Attributed Tax payable by them, both when investing in a Fund and when their Prescribed Investor Rate changes. Failure to provide the information will result in the adoption of a rate prescribed by the Tax Act.
- 29 **Meetings**
- 29.1 **Manager to call meetings when required:** When required by the Governing Legislation, the Manager must call a meeting of Unit Holders in the manner and on the basis set out in the FMCA and the FMCR⁴⁹.
- 29.2 **Manager may convene meeting:** The Manager may at any time of its own volition convene a meeting of Unit Holders.
- 29.3 **Conduct of meetings:** A meeting of Unit Holders must be conducted in accordance with the Governing Legislation.
- 29.4 **Restrictions on voting:** Except where permitted by the FMCA, the Manager and its Associated Persons are not entitled to, and must not, vote their interest on a resolution of Unit Holders if they have an interest in the resolution or matter other than as a Unit Holder.
- 29.5 **Powers of Unit Holders at meetings:** A meeting of Unit Holders of a Fund shall have the following powers exercisable by Special Resolution:
- a. power to sanction the exchange of Units of the relevant Fund for, or the conversion of such Units into shares, stock, debentures, debenture stock or other obligations or securities of any company formed or to be formed;
 - b. power to sanction any alteration, release, modification, waiver, variation or compromise or any arrangement in respect of the rights of the Unit Holders of the relevant Fund howsoever such rights shall arise;
 - c. power to sanction the exchange of Units of the relevant Fund for, or the conversion of Units of the relevant Fund into, units or interests in any other unit trust or other managed investment scheme (whether established in New Zealand or elsewhere) on such basis as may be approved by the Special Resolution;
 - d. the powers given to Unit Holders under clauses 4.7a, 14.3f, 17.6g and 21.2c; and

⁴⁹ s 161 to 163 FMCA, regulations 83 and 89-91 FMCR

- e. the powers given to Unit Holders by the Governing Legislation that are expressed as being exercisable by Special Resolution,

provided that no such sanction, assent, release or waiver shall be effective if it materially and adversely affects the interests of one Fund in a manner different from that in which it affects the interest of Unit Holders of other Funds, without the approval of a separate Special Resolution of the Unit Holders of the first mentioned Fund.

30 Amendments to Deed

30.1 **Power to amend:** The Supervisor and the Manager may at any time make any alteration, modification, variation or addition to the provisions of this Deed or any Establishment Deed (by means of a deed executed by the Supervisor and the Manager), subject to the provisions of the Governing Legislation⁵⁰.

30.2 **Procedural requirements:** Before an amendment is made to this Deed or an Establishment Deed, the Supervisor and Manager (as applicable) will comply with the procedural requirements of the FMCA.⁵¹

31 Winding Up

31.1 **Winding up of a Fund:** A Fund shall determine and be wound up upon the occurrence of the earliest of the following events:

- a. if the Manager resolves to wind up that Fund or to wind up every Fund and gives notice to the Supervisor accordingly (**provided that** the Manager may not so resolve if to do so would be contrary to the Governing Legislation);
- b. the expiration of a period of eighty (80) years from the Commencement Date for the relevant Fund; or
- c. if the Scheme is wound up.

31.2 Procedure for winding up Fund:

- a. Within 14 days of the winding up of a Fund under clause 31.1, the Manager must give to each Unit Holder holding Units in the affected Fund or Funds notice of the winding up and of the intention of the Manager to distribute the assets of the relevant Fund or Funds. Subject to paragraph b, from the date of the giving of such notice no Withdrawal Notices or Switching Notices shall be given in respect of Units relating to that Fund or those Funds.
- b. Except where the Scheme is to be wound up pursuant to clause 31.5, a notice given by the Manager pursuant to paragraph a may invite the Unit Holders affected to give a Switching Notice in accordance with clause 11.1 within such period as the Manager may prescribe. Following the expiration of such period, or in the absence of such an invitation by the Manager, the relevant Fund shall be dealt with in accordance with clause 31.3.

⁵⁰ s 139-140 FMCA

⁵¹ s 139 and 141 FMCA

- c. A notice given by the Manager pursuant to this clause will contain such requirements and be in such form as the Manager determines from time to time.

31.3 **Cashing up of Fund:** Following the expiration of the notice period prescribed in clause 31.2, the Manager shall as soon as is practicable and in respect of each Fund in question:

- a. sell, call in and convert into Cash the whole of the Scheme Property of that Fund; and
- b. pay out, discharge or otherwise make proper provision for the Liabilities of that Fund.

31.4 **Reinvestment of Fund:** Unless the Scheme is to be wound up, the Cash held in respect of each relevant Unit Holder following the cashing up of a Fund in accordance with clause 31.3 shall be:

- a. reinvested by the Manager in accordance with any Switching Notice given by that Unit Holder following an invitation under clause 31.2; or
- b. in the absence of a Switching Notice, distributed to the relevant Unit Holder .

31.5 **Winding up of the Scheme:** The Scheme shall determine and be wound up upon the occurrence of the earliest of the following events (“the **Closure Date**”):

- a. if the Manager resolves to wind up the Scheme and gives notice to the Supervisor accordingly, the date of the resolution;
- b. if pursuant to any statutory power (including section 211 of the FMCA) a court or regulatory authority orders that the Scheme be wound up, the date of the order of the court or regulatory authority; or
- c. if it is otherwise required by any provision of the Governing Requirements that the Scheme be wound up, the date provided by that section or provision or if no date is provided, the date provided in a resolution of the Manager,

and upon the occurrence of any of those events, the Supervisor and the Manager shall take such actions as are required in order to wind up the Scheme and shall comply with all obligations imposed upon them by the Governing Legislation as a consequence of the winding up of the Scheme.

31.6 **Advice to FMA:** The Supervisor must, on the winding up of the Scheme, comply with the requirements of the FMCA, including:⁵²

- a. giving a copy of any order by the High Court that the Scheme be wound up or winding-up resolution, and any other required information, to the FMA within the required timeframes;
- b. ensuring that the final Financial Statements of the Scheme and each Fund are prepared and audited in accordance with the FMCA and within the required timeframes;

⁵² s 212-213 FMCA

- c. ensuring that copies of the final audited Financial Statements, and any other required information, are sent to the FMA and Unit Holders within the required timeframes; and
- d. informing the FMA of the date on which the final distribution of the Scheme's assets is complete.

31.7 **Procedure:** After the Closure Date:

- a. no further persons shall be admitted as Unit Holders;
- b. no Withdrawal Notices or Switching Notices shall be accepted;
- c. no further applications for Units shall be accepted;
- d. the Manager shall cause all the Scheme Property to be realised; and
- e. all net proceeds of the realisation as determined by the Manager as representing the interests of Unit Holders in the Scheme shall be applied in accordance with the following priority:
 - i. first, in providing for the payment of the costs of winding up and in discharging all Liabilities of the Scheme and each Fund and any fees payable to the Manager and the Supervisor; and
 - ii. second, in providing for the payment in one or more instalments to or for the benefit of each remaining Unit Holder of an amount equal to the aggregate Withdrawal Value of all Units held by the Unit Holder as at the Closure Date **provided that** if the amount available is insufficient for the appropriate provision in respect of all Unit Holders then all amounts payable shall be reduced pro rata; and
 - iii. third, (if there is any money remaining) in augmenting the amounts payable under clause 31.7ei and clause 31.7eii on a pro rata basis.

32 **Governing Law**

32.1 **New Zealand Law:** This Deed shall be governed by, interpreted and administered in accordance with the law of New Zealand.

33 **Unit Holders bound by Deed**

33.1 The terms and conditions of this Deed are for the benefit of and binding on the Supervisor, the Manager and each Unit Holder and all persons claiming through them respectively and as if each Unit Holder had been party to and had executed this Deed.

34 **Counterparts**

34.1 **Counterparts:** This Deed may be executed in two or more counterpart copies each of which will be deemed an original and all of which together will constitute one and the same instrument. A party may enter into this Deed by signing a counterpart copy and sending it to the other parties (including by facsimile or email). Each of the parties shall promptly sign the original copies of this Deed (such copies to be signed by all the parties) after the execution of counterparts.

Execution

Signed on behalf of **Forsyth Barr
Investment Management Limited** by:

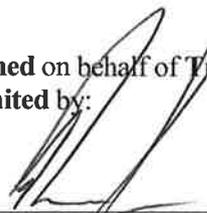


Director



Director

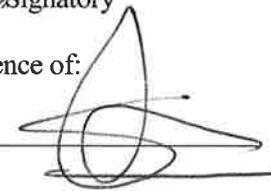
Signed on behalf of Trustees Executors Limited by:



Robert P Russell

Authorised Signatory

in the presence of:



Witness

Occupation Sean Roberts
Client Services Manager
Wellington

Address



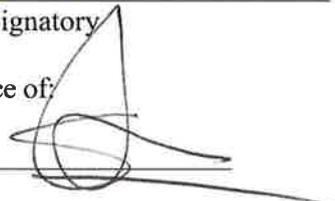
CTS 2016-084 (1/2)



Stuart McLaren

Authorised Signatory

in the presence of:



Witness

Occupation Sean Roberts
Client Services Manager
Wellington

Address

Schedule 1

Fund Particulars (Clauses 4.4 and 4.7)

1. The Authorised Investments for the Fund.
2. The investment strategy and objectives of the Fund.
3. Valuation Day/Issue/Redemption.
4. The Distribution Dates and the date or dates for distribution of Entitlements.
5. Any variation of the Deed expressly applicable to the Fund.
6. Any other matters which the Manager and the Supervisor deem appropriate or necessary in respect of the Fund.