

U Ethical Australian Equities Trust

Constitution

Issued 15th April 2019

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Uniting Ethical Investors Limited trading as U Ethical ABN 46 102 469 821 AFSL 294 147, and is a social enterprise of The Uniting Church in Australia, Synod of Victoria and Tasmania.

Contents

1.	Definition and interpretation	2	9.4	Delegation by Trustee	8
1.1	Definitions.....	2	10.	Trustee's responsibilities and indemnities.....	8
1.2	Interpretation.....	3	10.1	Right of indemnity.....	8
2.	The Trust	4	10.2	Limitation of liability.....	8
2.1	Trustee	4	10.3	Indemnity in favour of the Trustee	8
2.2	Name of Trust.....	4	10.4	Interested dealings by Trustee	9
2.3	Vesting of assets in Trustee	4	11.	Remuneration of Trustee	9
3.	Interest of Unitholder	4	11.1	Trustee's remuneration	9
3.1	Division into Units	4	11.2	Management Fee.....	9
3.2	Splitting or consolidation	4	11.3	Remuneration review	9
3.3	Joint Unitholders	4	11.4	Waiver of remuneration	9
3.4	Classes.....	4	11.5	Reimbursement of GST	9
3.5	Rights and obligations of Unitholders	4	11.6	Expenses	9
3.6	No further liability.....	5	12.	Transfers	10
4.	Issue of Units	5	13.	Register.....	10
4.1	Number of Units issued.....	5	13.1	Recognition of Unitholder	10
4.2	Application for Units	5	13.2	Inspection	10
4.3	Trustee may refuse Application for Units	5	14.	Retirement or Removal of Trustee	10
4.4	Payments to the Trustee	5	14.1	Retirement and removal	10
4.5	Allotment.....	5	14.2	Return of documents.....	10
4.6	Certificates.....	5	14.3	Replacement deed.....	10
4.7	Restriction on issue and redemption of Units	5	14.4	Release	10
5.	Power to issue Units.....	5	15.	Alterations to Trust.....	10
5.1	Power to issue	5	16.	Termination	10
5.2	Issue at Unit Price	5	16.1	Term of Trust	10
5.3	Distribution reinvestment arrangement.....	6	16.2	Procedure on winding up of Trust.....	10
6.	Redemption of Units	6	16.3	Audit of accounts of Trust	11
6.1	Request for redemption.....	6	17.	Meetings.....	11
6.2	Redemption Price of Units	6	17.1	Meetings	11
6.3	Redemption proceeds	6	17.2	Trustee May Determine	11
6.4	Suspension of redemptions	6	17.3	Chairperson.....	11
6.5	Units repurchased by Trustee	6	17.4	Resolutions Binding	11
6.6	Cancellation of Units.....	7	18.	Complaints.....	11
7.	Valuation of the Assets.....	7	19.	General	11
7.1	Valuation of Assets	7	19.1	Service of notices.....	11
7.2	Currency conversion.....	7	19.2	Method of payment, repayment or redemption 12	
7.3	Trustee to determine Unit Price	7	19.3	Evidence required for payments.....	12
8.	Income and Distributions	7	19.4	Binding conditions.....	12
8.1	Determination of income and reserves	7	19.5	Governing law and jurisdiction	12
8.2	Distribution of income	7	19.6	Severability	12
8.3	Discharge of Trustee's obligation.....	7	19.7	Deemed provisions of this Deed.....	12
9.	Trustee's Powers.....	7			
9.1	Investment	7			
9.2	Investment Strategy	7			
9.3	General powers of Trustee	7			

U Ethical Australian Equities Trust Constitution

Date 15th April 2019

By Uniting Ethical Investors Limited 46 102 469 821 of Level 5, 130 Little Collins Street, Melbourne, Victoria (Trustee)

Background

- A. The Trust was originally constituted by a trust deed for a unit trust known as Uniting Growth Fund and now known as the U Ethical Australian Equities Trust (the Trust).
- B. It is now intended that the Trust be offered and administered as a registered scheme under the Corporations Act.
- C. This Constitution now sets out the terms of the Trust.

Operative Provisions

1. Definition and interpretation

1.1 Definitions

- a) In this Deed, unless the context otherwise requires:

Application means an application for Units;

Application Moneys means the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application for Units;

ASIC means the Australian Securities and Investments Commission;

Assets means all the cash, investments, rights and other property of the Trust or a Class;

Associate has the meaning given to that term in the Corporations Act;

Attribution Managed Investment Trust has the meaning attributed to that term in the Tax Act;

Business Day means a day on which banks are open for business in Melbourne excluding a Saturday, Sunday or public holiday;

Class means a particular class of Units within the Trust;

Corporations Act means the Corporations Act 2001 (Cth) and subordinate legislation as amended, supplemented and replaced from time to time;

Costs includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

Custody Fee means the fee payable to the Trustee pursuant to clause 11.2;

Deed means the trust deed for the Trust;

Distributable Income means the net income of the Trust determined in accordance with section 95 of the Tax Act less non-cash items;

Distribution Calculation Date means 30 June and 31 December each year or any other date the Trustee may determine to be a distribution calculation date from time to time;

Distribution Date means either:

- i) a day not more than one month after the Distribution Calculation Date for the relevant Distribution Period; or
- ii) if the Trustee determines that it is in the interests of Unitholders to delay the Distribution Date for a particular Distribution Period, the date determined by the Trustee as being the appropriate Distribution Date for that Distribution Period;

Distribution Entitlement means the amount (if any) of Distributable Income that the Trustee has determined is to be distributed to a Unitholder in accordance with clause 8.2 (a);

Distribution Period means:

- i) for the first Distribution Period, the period beginning on 7 July 2003, being the date the Trust commenced trading and ending on the next occurring Distribution Calculation Date;
- ii) for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- iii) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

Financial Year means:

- i) for the first Financial Year, the period beginning on 7 July 2003, being the date the Trust commenced trading and ending on 30 June of the following year;
- ii) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- iii) in all other circumstances, the 12 month period ending on 30 June in each year;

Governmental Agency means any government or governmental, semi- governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

Gross Asset Value means the sum of:

- i) the value of the Assets; and any other amounts which in the opinion of the Trustee should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles;

Issue Price in relation to a Unit means the dollar value of the total consideration payable at any time in respect of the issue of that Unit determined in accordance with clause 5.2(a) of this Deed;

Liabilities means all present liabilities of the Trust or a particular Class, as the case may be, including any

provision which the Trustee decides should be taken into account in determining the liabilities of the Trust having regard to generally accepted accounting principles;

Management Fee means the fee payable to the Trustee pursuant to clause 11.3;

Meeting means a meeting of Unitholders convened in accordance with this Deed;

Minimum Holding means the minimum aggregate value of a Unit Holding as the Trustee may determine generally or in any particular case from time to time and notified to Unitholders;

Month means calendar month;

Net Asset Value means the Gross Asset Value less the following:

- i) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Trustee determines should be made having regard to generally accepted accounting principles); and
- ii) following any Distribution Calculation Date, the aggregate amount of any Distribution Entitlement or net realised capital gain payable in accordance with this Deed but not paid to Unitholders on the day on which the Net Asset Value is determined;

Redeeming Unitholder means a Unitholder that has submitted a valid Redemption Notice to the Trustee;

Redemption Notice means a redemption notice signed by a Unitholder and submitted to the Trustee, in the form approved by the Trustee from time to time, requesting redemption of some or all of the Unitholder's Units;

Redemption Price means the price calculated by the Trustee in accordance with clause 6.2(a);

Register means the register of Unitholders maintained by or on behalf of the Trustee;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

Tax Act means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth) as the context requires;

Transaction Costs means:

- i) in relation to a Unit being issued, the estimated cost to the Trustee of purchasing or acquiring any Assets with the Application Moneys and any other costs reasonably incurred by the Trustee associated with the issue of the Unit; and
- ii) in relation to a Unit being redeemed, the estimated cost to the Trustee of selling, disposing of or realising any Assets to fund

the redemption of the Unit and any other costs reasonably incurred by the Trustee associated with the redemption of the Unit,

determined in accordance with the Trustee's policy for estimating Transaction Costs;

Trust means the U Ethical Australian Equities Trust;

Trustee means the trustee for the time being of the Trust;

Unit means an undivided interest in the Trust as provided for in this Deed;

Unitholder means a person who holds an interest in the Trust;

Unit Holding means the total number of Units held by a Unitholder;

Units on Issue means the number of Units created under this Deed and not cancelled;

Unit Price means the amount calculated as follows: UP

$$= \frac{\text{NAV}}{\text{NU}}$$

where:

UP is Unit Price;

NAV is Net Asset Value of the Trust or a Class; and

NU is the number of Units on Issue in the Trust or a Class;

Valuation Point means the time selected by the Trustee as the appropriate time to establish Asset values for the purpose of determining the Net Asset Value of the Trust or a Class; and

Valuer means a person competent to make a required valuation, recommendation or report having regard to the particular type of Asset the subject of such valuation, recommendation or report and who is independent from the Trustee and approved by the Trustee (having first satisfied itself on reasonable grounds of the qualification of such person).

- b) **Unless otherwise specified in this Deed, terms defined in the Corporations Act are used in this Deed with the same defined meaning.**

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- a) the singular includes the plural and vice versa;
- b) a gender includes the other genders;
- c) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- d) other grammatical forms of defined words or expressions have corresponding meanings;
- e) a reference to a document includes the document as modified from time to time and any document replacing it;

- f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
 - g) the word "person" includes a natural person and anybody or entity whether incorporated or not;
 - h) the word "month" means calendar month and the word "year" means 12 months;
 - i) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
 - j) a reference to a thing includes a part of that thing;
 - k) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
 - l) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
 - m) money amounts are stated in Australian currency unless otherwise specified;
 - n) a reference to time is to Australian Eastern Standard Time; and
 - o) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body that performs most closely the functions of the defunct body.
- iii) require that any of the Assets be transferred to a Unitholder.
 - c) Unitholders may not give any directions to the Trustee if it would require the Trustee to do or omit doing anything which may result in the exercise of any discretion expressly conferred on the Trustee by this Deed or the determination of any matter which under this Deed requires the agreement of the Trustee.

3.2 Splitting or consolidation

- a) The Trustee may consolidate or split the Units.
- b) The Trustee must in respect of any such consolidation or split:
 - i) immediately amend the Register to record the consolidation or split;
 - ii) notify the Unitholder within 30 days of the consolidation or split; and
 - iii) ensure that each Unit is consolidated or split on the same basis as each other Unit.

3.3 Joint Unitholders

Where two or more persons are registered as the Unitholders of a Unit (joint holders) they are, for the purposes of the administration of the Trust and not otherwise, deemed to hold the Unit as joint tenants, on the following conditions:

- a) the Trustee is not bound to register more than three persons as the joint holders of the Unit;
- b) the joint holders are jointly and severally liable in respect of all payments which ought to be made in respect of the Unit;
- c) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any, payment or distribution; and
- d) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

3.4 Classes

The Trustee may issue different Classes of Units. The terms of the Class will be determined upon such terms and conditions as the Trustee determines. At the time of issue of any Units the Trustee must identify the Class to which the Units belong and maintain that information in the Register. The Trustee may, but need not, require any application for Units to specify the Class of Units to which the application relates.

3.5 Rights and obligations of Unitholders

Except where expressly provided in this Deed to the contrary, all rights and obligations contained in this Deed apply to and bind each Unitholder to the extent provided in this Deed.

2. The Trust

2.1 Trustee

The Trustee agrees to act as trustee of the Trust.

2.2 Name of Trust

The name of the Trust is the U Ethical Australian Equities Trust. The Trustee may change the name of the Trust.

2.3 Vesting of assets in Trustee

The Assets are vested in, and are held by, the Trustee on behalf of the Unitholders.

3. Interest of Unitholder

3.1 Division into Units

- a) The beneficial interest in the Assets is divided into Units. No Unit confers an interest in a particular part of the Trust or the Assets.
- b) A Unitholder may not:
 - i) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
 - ii) claim or exercise any right in respect of any of the Assets or lodge any caveat or other notice affecting any of the Assets; or

3.6 No further liability

- a) This clause 3.6 is subject to any separate agreement between a Unitholder and the Trustee.
 - b) The liability of each Unitholder in its capacity as such is limited to the Unitholder's investment in the Trust.
 - c) Except as set out in clause 10.3, a Unitholder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
 - d) The recourse of the Trustee and any creditor of the Trustee is limited to the Assets.
 - e) Nothing in or under this Deed makes the Trustee the agent of a Unitholder nor does it create any relationship other than that of beneficiary and trustee.
- b) Unless the applicant has paid all amounts payable in respect of the transfer of property (if prior to the Trustee accepting the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 4.1.any) to the Trustee
 - c) If Units are issued and:
 - i) the Trustee has not received the Application Moneys; or
 - ii) any payment for Units is not cleared or property is not effectively transferred to the Trustee, the Units are void as from their date of issue or such other date as the Trustee determines.
 - d) All income in respect of the payment or property received on an Application for Units (which has been accepted by the Trustee) prior to the issue of those Units forms part of the Assets.

4. Issue of Units

4.1 Number of Units issued

If the Trustee accepts an Application for Units in whole or in part, the number of Units issued is the number (rounded down to the nearest whole number) determined by the Trustee by dividing the relevant Application Moneys by the Issue Price.

4.2 Application for Units

A person who wishes to subscribe for Units must:

- a) subscribe for at least the Minimum Holding (if applicable);
- b) complete or make an Application in the form or manner determined by the Trustee;
- c) lodge or make the Application at the place or address and in the manner determined by the Trustee; and
- d) include with the Application the Application Moneys in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee.

4.3 Trustee may refuse Application for Units

The Trustee may refuse to accept an Application for Units in whole or in part and is not required to assign a reason for such refusal.

4.4 Payments to the Trustee

- a) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
 - i) an effective transfer of the title to the property in favour of the Trustee; and
 - ii) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.

4.5 Allotment

A Unit created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued.

4.6 Certificates

The Trustee may determine:

- a) not to issue a certificate for a Unit; or
- b) to cancel a certificate for a Unit and not to issue a replacement certificate.

4.7 Restriction on issue and redemption of Units

No Units may be issued or redeemed after the 80th anniversary of the commencement of the Trust where that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity.

5. Power to issue Units

5.1 Power to issue

- a) The Trustee may issue Units only in accordance with and subject to this Deed.
- b) No part of this clause 5 (other than this clause 5.1) limits any other such clause.

5.2 Issue at Unit Price

- a) In addition to any other power the Trustee has to issue Units under this Deed, the Trustee may issue Units at any time to any person at an Issue Price equal to the Unit Price calculated by the Trustee at the Valuation Point on the relevant Business Day plus the Transaction Costs.
- b) Applications accepted by the Trustee which are received:
 - i) before 3.00 p.m. on a Business Day are processed the next Business Day at the Unit

- Price applicable on the date of receipt of the Application or as otherwise determined by the Trustee from time to time; or
- ii) after 3.00 p.m. on a Business Day are deemed to be received before 3.00 p.m. on the following Business Day.

5.3 Distribution reinvestment arrangement

- a) The Trustee may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in an arrangement under which Unitholders may request that all or a proportion of the Distribution Entitlement due to them under clause 8.2 be satisfied by the issue of further Units.
- b) If reinvestment is permitted and a Unitholder applies to reinvest, the Trustee is deemed to have received and accepted an Application to reinvest the Distribution Entitlement from that Unitholder on the Business Day following the Distribution Date or such other date as is specified by the Trustee in relation to the other distributions.
- c) Where a Unitholder has requested reinvestment pursuant to this clause 5.3, upon the issue of additional Units, the Trustee may provide the Unitholder with a notice to the effect that the whole or part of the Distribution Entitlement to which the Unitholder would have been entitled has been reinvested on the Unitholder's behalf.

6. Redemption of Units

6.1 Request for redemption

- a) A Unitholder wishing to redeem some or all of its Units while the Trust is liquid must complete and submit a Redemption Notice to the Trustee. A Redemption Notice, once submitted, cannot be withdrawn without the consent of the Trustee.
- b) If acting on a Redemption Notice would mean that the remaining Units held by the relevant Unitholder would be less than the Minimum Holding, the Trustee may treat that Redemption Notice as a request by the relevant Unitholder to redeem their entire Unit Holding.
- c) A Unitholder wishing to redeem some or all of its Units while the Trust is illiquid may only submit a Redemption Notice in response to a withdrawal offer made by the Trustee in accordance with Part 5C.6 of the Corporations Act or any instrument of relief granted by ASIC.

6.2 Redemption Price of Units

- a) The Redemption Price is equal to the Unit Price calculated by the Trustee at the Valuation Point on the relevant Business Day less the Transaction Costs.
- b) Redemption Notices accepted by the Trustee which are received:

- i) before 3.00 p.m. on a Business Day are processed the next Business Day at the Unit Price applicable on the date of receipt of the Redemption Notice or as otherwise determined by the Trustee from time to time; or
- ii) after 3.00 p.m. on a Business Day are deemed to be received before 3.00 p.m. on the following Business Day.

6.3 Redemption proceeds

- a) While the Trust is liquid, the proceeds of any redemption of Units shall be paid to the Redeeming Unitholder by the Trustee within 21 days of the Trustee receiving the Redemption Notice.
- b) The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.
- c) While the Trust is illiquid, the redemption proceeds shall be paid to each Redeeming Unitholder by the Trustee in accordance with the terms of the withdrawal offer (or proportionately if the amount of money is insufficient to satisfy all redemption requests) within 21 days after the offer closes.

6.4 Suspension of redemptions

The Trustee may suspend, for such period that it deems necessary, the redemption of Units in the Trust, where the Trustee considers that it is in the interests of Unitholders to do so or market circumstances are highly unusual. For example, the Trustee may determine that:

- a) it is impracticable to calculate the Net Asset Value because of the closure of, or trading restrictions on, stock or securities exchanges, on declaration of a moratorium in a country where the Trust invests or the fair value of the Assets cannot be determined or the disposal by the Trust of the Assets is not practically feasible due to conditions of market turmoil or market illiquidity, an emergency or such other state of affairs; or
- b) the proceeds of the sale or redemption of the Units cannot be transmitted to or from the Trust's bank account.

A Redemption Notice that has been lodged but not processed prior to the Trustee declaring a period of suspension or a Redemption Notice lodged during any such period of suspension is deemed to be received at 9:00am on the first Business Day occurring immediately after the end of the period of suspension unless the Redeeming Unitholder has withdrawn its Redemption Notice in writing before the period of suspension is terminated.

6.5 Units repurchased by Trustee

- a) The Trustee may repurchase, generally or in any particular case, any or all of the Units of the Trust

by giving one month's notice to a Unitholder of its intention to do so. The repurchase of Units will take place on the first Business Day after the expiry of the notice period at the Redemption Price.

- b) The Trustee in its sole discretion may satisfy any Redemption Notice by acquiring the Units the subject of the Redemption Notice and pay the redemption proceeds out of its own funds.
- c) Units acquired by the Trustee out of the Trustee's own funds in response to a Redemption Notice or otherwise will remain in existence and may be dealt with by the Trustee as the Trustee determines in its discretion.

6.6 Cancellation of Units

- a) Units which have been redeemed will be cancelled and the Trustee will record the cancellation in the Register.
- b) Once all of a Unitholder's Units have been redeemed and cancelled, the Unitholder will cease to be a Unitholder.

7. Valuation of the Assets

7.1 Valuation of Assets

- a) The Trustee may at any time cause the valuation of any of the Assets.
- b) In determining whether a valuation accurately reflects the current value of any part of the Assets, the Trustee is not to be regarded as having the knowledge of a Valuer or any other expertise in respect of the valuation of the Assets.
- c) Each part of the Assets must be valued at its market value unless the Trustee determines:
 - i) there is no market in respect of that part of the Assets; or
 - ii) the market value does not represent the fair value of that part of the Assets.
- d) Where the Trustee makes a determination under clause 7.1 (c), the Trustee must at the same time determine the method of valuation of that part of the Assets in accordance with ordinary commercial practice for valuing the particular type of Asset.
- e) Where any of the Assets are to be valued or the Net Asset Value of the Trust or a Class and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Trustee.
- f) Where the calculation of the Issue Price or Redemption Price is to be made as at a particular date, the Trustee need not cause a valuation of the Assets to be performed as at that date but may rely on reasonably current valuations for the purposes of that calculation.

7.2 Currency conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Trustee.

7.3 Trustee to determine Unit Price

The Trustee may determine the Unit Price at any time.

8. Income and Distributions

8.1 Determination of income and reserves

The Trustee must determine the Distributable Income of the Trust for each Distribution Period, as at the end of the relevant Distribution Period. The Trustee is to determine (according to generally accepted accounting principles and practices which apply to trusts) whether any item is income or capital and the extent to which reserves or provisions need to be made.

8.2 Distribution of income

- a) Persons who hold Units at the end of a Distribution Period according to the Register or other records of the Trustee are entitled to a proportionate distribution of the Distributable Income of the Trust derived during that Distribution Period based on the number of Units held by that person at the end of the relevant Distribution Period.
- b) Persons who hold Units at the end of each Financial Year according to the Register or other records of the Trustee (or at such other times as the Trustee may determine from time to time) are entitled to a proportionate distribution of the net realised capital gains derived by the Trust since the previous distribution of net realised capital gains, as determined by the Trustee, based on the number of Units held by that person at the end of the relevant period.
- c) The Trustee will pay to each Unitholder its Distribution Entitlement or any net realised capital gains payable in accordance with clause 8.2(b), on or before the relevant Distribution Date.

8.3 Discharge of Trustee's obligation

It is acknowledged by Unitholders that the payment of a Distribution Entitlement shall be a good and complete discharge by the Trustee in respect of any liability to any person in respect of an entitlement to such distributions.

9. Trustee's Powers

9.1 Investment

Subject to this Deed, the Trustee has an absolute discretion as to the investment of the Assets of the Trust including in other funds or companies owned or managed by the Trustee or an Associate of the Trustee.

9.2 investment Strategy

The Trustee must formulate one or more investment strategies for the Trust. The Trustee may review and change a strategy at any time. The Trustee must continually monitor the strategies to ensure that they remain appropriate.

9.3 General powers of Trustee

- a) Subject to this Deed, the Trustee has all the powers that it is possible to confer on a trustee and has all the powers that are incidental to ownership of the Assets as though it were the absolute and beneficial owner of the Assets.
- b) In the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property and borrow or raise money, encumber any of the Assets, incur any liability, provide a guarantee, enter into joint venture arrangements or fetter any power.
- c) Subject to this Deed and any applicable law, in the exercise of its powers under clauses 9.3(a) and 9.3(b) above, the Trustee may, without limitation:
 - i) mix Assets with assets of other people or trusts;
 - ii) vary, replace, encumber and deal with the Assets;
 - iii) give indemnities to any person; and
 - iv) give any guarantee and/or liability or otherwise become liable for the payment of money or the performance of any contract or other obligation by any person natural or corporate including the Trustee in its personal capacity or as a trustee of any other trust and if the Trustee thinks fit give security for any such guarantee and/or indemnity or other liability over all or any part of the Assets and to exercise all or any of these powers whether or not there is consideration or benefit to the Trust and either alone or jointly with any person or persons natural or corporate including a trustee of any other trust and to assume joint or joint and several or several liability in respect of any joint exercise of the said powers, as if it were dealing with its own property.
- d) Subject to this Deed and any applicable law, in the exercise of its powers under clauses 9.3(a) and 9.3(b) above, the Trustee has, without limitation, in its capacity as trustee of the Trust, the power to borrow or raise money (whether or not on security) and to incur all types of obligations and liabilities and if the Trustee thinks fit to give security for any such borrowing or raising of money over all or any part of the Assets and to exercise all or any of these powers either alone or jointly with any person or persons natural or corporate including a trustee for any other trust or the Trustee in its personal capacity or as trustee of any other trust and to assume joint and several or several liability in respect of any joint exercise of the said powers.
- e) Subject to this Deed, in the exercise of its powers under clauses 9.3(a) and 9.3(b) above, the Trustee may, without limitation (other than any limitations set out in the Corporations Act or otherwise at law), enter into agreements between:
 - i) itself, as trustee of the Trust; and
 - ii) itself, either in its own capacity or in its capacity as trustee of another fund.
- f) The Trustee may elect for the Trust and for any Class of Units to be treated as an Attribution Managed Investment Trust for the purposes of the Tax Act and, if an election is so made, the Trustee shall have power to calculate and determine components, attribute them to Unitholders in accordance with the Tax Act and do all other things necessary or desirable for the effective taxation of the Trust or Class as an Attribution Managed Investment Trust.

9.4 Delegation by Trustee

- a) The Trustee may appoint a person, including an Associate of the Trustee, as its delegate, attorney or agent to exercise its powers and perform its obligations.
- b) The Trustee may appoint an agent, custodian or other person, including an Associate of the Trustee (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with or manage any of the Assets on behalf of the Trustee and perform any action incidental or ancillary thereto or otherwise approved by the Trustee.

10. Trustee's responsibilities and indemnities

10.1 Right of indemnity

- a) The Trustee is entitled to be indemnified out of the Assets of the Trust for liabilities incurred by it in relation to the proper performance of its duties, including for any attribution income tax liability of the Trustee and for claims against the Trustee in relation to any attribution income tax liability of a Unitholder or former Unitholder resulting from an attribution made by the Trustee in exercise of its powers under clause 9.3(f).
- b) This clause 10 does not limit or affect any other indemnities given to the Trustee in this Deed or at law, unless the Corporations Act requires the Trustee's right of indemnity to be so limited or affected.

10.2 Limitation of liability

The Trustee and each director and officer of the Trustee are not personally liable to a Unitholder or any other person in connection with the office of the Trustee or director or officer of the Trustee except where the Trustee, director or officer has committed a fraudulent or grossly negligent breach of this Deed. In any event, the aggregate liability of the Trustee, its directors and officers and those agents and employees that act on behalf of the Trustee to the Unitholders is limited to the Assets of the Trust vested in the Trustee as trustee of the Trust.

10.3 Indemnity in favour of the Trustee

The Trustee is entitled to be indemnified by a Unitholder in respect of a liability for any Taxes that the Trustee or any of its agents incurs as a result of the action or inaction of a Unitholder.

10.4 Interested dealings by Trustee

The Trustee or any director, officer, employee or Associate of the Trustee may:

- a) be a Unitholder;
- b) act in any capacity including as a representative, delegate or agent of the Trustee or any Unitholder;
- c) have an interest in or enter into a contract or transaction with:
 - i) the Trustee or an Associate of the Trustee;
 - ii) any Unitholder;
 - iii) any other person, including one whose shares or other securities form part of the Assets;
- d) hold or deal in or have any other interest in the Assets,

and may retain and is not required to account for any benefit derived by doing so.

11. Remuneration of Trustee

11.1 Trustee's remuneration

The Trustee is entitled to receive a Management Fee out of the Assets in relation to the proper performance of its duties.

11.2 Management Fee

The Management Fee is calculated:

- a) subject to any adjustment in accordance with clause 11.4, at a rate of 1.15 per cent per annum of the Net Asset Value; and
- b) daily and payable to the Trustee monthly in arrears.

11.3 Remuneration review

On 1 July each year, the Trustee may decide to increase the Management Fee by no more than 10 basis points above the Management Fee charged on 1 July in the preceding year.

11.4 Waiver of remuneration

The Trustee may waive the whole or any part of the remuneration to which it would otherwise be entitled.

11.4 Reimbursement of GST

- a) Any reference in this clause to terms defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken to be a reference to that term as defined or used in that Act.
- b) Any amount referred to in this Deed which is relevant in determining a payment to be made to or by the Trustee is exclusive of any GST unless indicated otherwise.
- c) If GST is imposed on a supply made under or in connection with this Deed, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is, subject to the recipient having received a tax invoice, payable at the same

time and in the same manner as the consideration to which it relates.

- d) The supplier must issue a tax invoice in respect of a supply to the recipient before the end of the tax period in which the supply is made.
- e) If the Trustee is entitled to be reimbursed for an expense or outgoing incurred in connection with this Deed, the amount of the reimbursement will be net of any input tax credits which may be claimed by the party being reimbursed in relation to that expense or outgoing.

11.5 Expenses

All expenses incurred by the Trustee in relation to the proper performance of its duties in respect of the Trust are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act. This includes expenses connected with:

- a) the establishment of the Trust;
- b) the appointment of and fees payable to any agent appointed by the Trustee in connection with the Trust other than an investment manager, administrator or custodian;
- c) insurance premiums relating to any assets of the Trust or relating to insurance for persons acting as directors or officers of the Trustee (to the extent permitted by the Corporations Act);
- d) ensuring the Trust's ongoing compliance with ASIC Class Order 02/184 and the continued compliance by Trustee and the Trust with that class order or any class order that replaces it;
- e) the acquisition and disposal of investments;
- f) the audit and taxation returns of the Trust;
- g) communications with and documents for Unitholders and potential Unitholders in relation to the Trust;
- h) the holding of Meetings;
- i) any Taxes or fees payable to ASIC or any other Governmental Agency in connection with the Trust, including penalties;
- j) any amendments to the Deed;
- k) any financial accommodation, including interest on borrowings of the Trust;
- l) the termination of the Trust;
- m) the replacement or retirement of the Trustee as trustee of the Trust;
- n) any action or proceeding concerning the interpretation of this Deed or against the Trustee or any director, officer, employee or agent of the Trustee in connection with the Trust; and

- o) the costs and expenses incurred by any agent appointed by the Trustee in connection with the Trust, including an investment manager, administrator or custodian, that are reimbursed to the agent by the Trustee and would, if incurred by the Trustee directly, be reimbursable out of the Trust.

12. Transfers

Units are not transferable.

13. Register

13.1 Recognition of Unitholder

The Trustee:

- a) must treat the person entered on the Register as a Unitholder as the absolute owner of all rights and interests of the Unitholder; and
- b) except as required by law or this Deed, need not recognise any claim or interest in any Unit by any other person.

13.2 Inspection

The Register is available for inspection upon request. Other records of the Trust are not available for inspection, except:

- a) any filings, including audit reports, at ASIC; and
- b) as otherwise required by law.

An up to date copy of this Deed will be provided to a Unitholder upon written request to the Trustee.

14. Retirement or Removal of Trustee

14.1 Retirement and removal

The Trustee:

- a) may be removed as trustee of the Trust by an extraordinary resolution of Unitholders; and
- b) may retire on not less than one month's notice to the Unitholders, unless an applicable provision of the Corporations Act requires the Trustee to call a meeting of Unitholders, in which case the Trustee may only retire after a meeting of Unitholders has resolved by extraordinary resolution to appoint a new trustee and otherwise in accordance with the Corporations Act.

If a meeting of Unitholders is not required, then on retirement, the Trustee may appoint another person in writing to be the Trustee (thereafter that person shall be called the "Trustee"). The Trustee is entitled to obtain such indemnities from the incoming trustee out of the Assets of the Trust in its capacity as outgoing trustee as it considers appropriate.

14.2 Return of documents

On retirement or removal the Trustee must give the new trustee all books, documents and records relating to the Trust.

14.3 Replacement deed

Subject to any applicable provision of the Corporations Act to the contrary, any proposed replacement trustee must execute a deed by which it covenants to be bound by this Deed as if it has originally been a party to it.

14.4 Release

Subject to any applicable provision of the Corporations Act to the contrary, when it retires or is removed, the Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed.

15. Alterations to Trust

This Deed may be modified, or repealed and replaced with a new deed:

- a) by a majority of Unitholders (unless an applicable provision of the Corporations Act requires a special resolution as defined in the Corporations Act); or
- b) by the Trustee executing a supplemental deed, if the Trustee reasonably considers the change will not adversely affect the rights and interests of Unitholders.

If the Trustee convenes a Meeting to seek Unitholder approval to an amendment of this Deed, Unitholders who do not attend the Meeting or who do not vote will be disregarded in determining whether the proposed amendment has been approved by a majority of Unitholders (but, if a special resolution is required, the proposed amendment must be passed by at least 75 per cent of the votes cast by Unitholders entitled to vote on the resolution, after notice of the resolution as required by the Corporations Act has been given).

16. Termination

16.1 Term of Trust

The term of the Trust ends on:

- a) the date determined by the Trustee in a notice given to Unitholders as the date on which the Trust is to be terminated (being a date no less than 28 days from the date of the notice); or
- b) if the Corporations Act so requires, the date on which Unitholders pass an extraordinary resolution directing the Trustee to wind up the Trust.

No Units will be issued or redeemed from the termination date.

16.2 Procedure on winding up of Trust

- a) In winding up the Trust the Trustee must:
 - i) identify all Assets and Liabilities;
 - ii) realise the Assets;
 - iii) pay any amount due to it under clause 16.2(c);
 - iv) pay and discharge all Liabilities and other Costs of the Trustee in its capacity as trustee of the Trust including, but not limited to, liabilities owed to any Unitholder who is a creditor of the Trust; and
 - v) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unitholders, distribute the net proceeds of realisation among the Unitholders pro rata.
- b) The Trustee may distribute an asset of the Trust to a Unitholder in specie in full or partial satisfaction

of the Unitholder's pro rata share of the net proceeds.

The Trustee must determine the current value of that asset to be distributed in specie in accordance with ordinary commercial practice for that asset. Any costs payable on an in specie distribution must be paid by the Unitholder before the distribution is made.

- c) The Trustee is entitled to:
- i) be paid from the proceeds of realisation of the Trust before any payment is made to the Unitholders all Costs properly incurred or which it establishes will be properly incurred:
 - A) by it before the winding up of the Trust which it has not recouped;
 - B) by it in connection with the winding up of the Trust and the realisation of the Assets;
 - C) by or on behalf of any creditor of the Trustee in relation to the Trust; and
 - D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
 - ii) an indemnity against the amounts referred to in clause 16.2(c)(i) which may be satisfied out of those proceeds before any payment to third parties under clause 16.2(c)(i)(D) is made; and
 - iii) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 11.
- d) The Trustee may postpone the realisation of the Assets for as long as it considers appropriate in the interests of Unitholders and is not liable for any loss or damage attributable to the postponement.
- e) The Trustee may retain for as long as it thinks fit any part of the Assets which it reasonably considers may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this Deed, including but not limited to under clause 16.2(c).
- f) The Trustee must distribute among the Unitholders in accordance with clause 16.2(a) anything retained under clause 16.2(e) which is subsequently not required.

16.3 Audit of accounts of Trust

The Trustee must ensure that the final accounts of the Trust following the winding up are independently audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor.

17. Meetings

17.1 Meetings

The Trustee may convene a Meeting at any time and shall convene a Meeting if the Corporations Act so requires.

17.2 Trustee May Determine

The Trustee will convene and conduct any Meeting as it sees fit, but in doing so will apply to the extent required (and otherwise to the extent it reasonably can), the provisions in Part 2G.4 of the Corporations Act regarding the period of notice of the Meeting, the content of the notice, the quorum, the appointment and rights of proxies and representatives and the number of votes a Unitholder can cast.

17.3 Chairperson

- a) The Trustee may appoint a person to chair a meeting of Unitholders.
- b) The decision of the chairperson on any matter relating to the conduct of the Meeting and the outcome of voting is final.

17.4 Resolutions Binding

- a) A resolution binds all Unitholders, whether or not they were present at the Meeting.
- b) No objection may be made to any vote cast unless the objection is made at the Meeting.

18. Complaints

If the Corporations Act requires the Trustee to have a procedure for dealing with Unitholder complaints, the Trustee will follow the same procedures that it has put in place to comply with the dispute resolution requirements applicable to it as the holder of an Australian Financial Services Licence under the Corporations Act, whether complainant is classed as a retail or wholesale client for the purposes of the Corporations Act.

19. General

19.1 Service of notices

- a) Any application, notice or other communication to or by the Trustee or a Unitholder:
 - i) must be in legible writing and in English addressed:
 - A) if to the Trustee, to its registered office;
 - B) if to a Unitholder, to the Unitholder's address specified in the Register,or to the email or other electronic messaging system address of a party from time to time or as specified to the sender by any party by notice and in the case of a Unitholder, with the Trustee's prior consent;
 - ii) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender or, if the notice is sent by electronic messaging system, be otherwise able to be verified in such manner as the Trustee may prescribe from time to time;
 - iii) is regarded as being given by the sender and received by the addressee:
 - A) if by delivery in person, when delivered to the addressee; or
 - B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee; or
 - C) if by facsimile transmission, when transmitted to the addressee but where

the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 2 hours after transmission is received, the facsimile transmission is regarded as not given or received; or

- D) if sent by electronic mail, when the electronic message is received by the addressee,

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 5.00 p.m. (addressee's time) it is regarded as received at 9:00am on the following Business Day, and

iv) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

- b) A notice or other communication to joint Unitholders is validly given if it is given only to the joint Unitholder whose name appears first on the Register.
- c) A notice is deemed to be sent to a Unitholder if it is sent by mail (including electronic mail) forwarded to the last known address of the Unitholder according to the Register.

19.2 Method of payment, repayment or redemption

Subject to clause 19.3:

- a) Any money payable by the Trustee to a Unitholder under this Deed may be paid by a crossed "not negotiable" cheque made payable to the Unitholder and posted to the Unitholder's registered address.
- b) A Unitholder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this Deed be re-invested, paid by cheque or otherwise into a designated account of the Unitholder.
- c) A cheque issued to a Unitholder which is presented and paid, or where the payment is to a financial institution, payment to the institution, discharges the Trustee in respect of the payment.
- d) The Trustee may determine that any cheque not presented within 3 months is cancelled. If the Trustee so determines, the amount of the cheque may be reinvested in Units at the Issue Price on the Business Day prior to the reinvestment. The reinvestment is deemed to be made on the day the cheque is cancelled.
- e) Where the Trustee attempts to make a payment by electronic transfer of funds to a Unitholder and the transfer is unsuccessful, the money may be reinvested in Units at the Issue Price on the Business Day prior to the reinvestment. The reinvestment is deemed to be made on any

day nominated by the Trustee, provided that date is on or after the date of the failure of the payment attempt.

19.3 Evidence required for payments

- a) If a Unitholder dies, the Trustee reserves the right to require evidence of the identity of the personal representative of the deceased, and the completion of any other legal formalities, all to the satisfaction of the Trustee, before paying any money payable by the Trustee to the Unitholder under this Deed. In the interim, the Trustee may reinvest distributions in accordance with clause 5.3.
- b) If a Unitholder:
- becomes bankrupt or goes into liquidation; or
 - is under a legal disability,

the Trustee reserves the right to require evidence of the entitlement of another person to deal with the Unit Holding, all to the satisfaction of the Trustee, before paying any money payable by the Trustee to the Unitholder under this Deed. In the interim, the Trustee may reinvest distributions in accordance with clause 5.3.

19.4 Binding conditions

The terms and conditions of this Deed and any supplemental deed are binding on the Trustee, each present and future Unitholder and any person claiming through any of them as if each was a party to this Deed and each supplemental deed.

19.5 Governing law and jurisdiction

The rights, liabilities and obligations of the Trustee and the Unitholders are governed by the law of Victoria, Australia.

19.6 Severability

If any provision of this Deed is held or found to be void, invalid or otherwise unenforceable so much of that provision as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this Deed will remain in full force and effect.

19.7 Deemed provisions of this Deed

- a) If the Corporations Act or a condition of any relief from the provisions of the Corporations Act granted by the ASIC in respect of the Trust or the Deed requires that this Deed contain certain provisions, then those provisions are deemed to be incorporated into this Deed at all times at which they are required to be included and will override any inconsistent provision of this Deed to the intent that, notwithstanding any provision of this Deed which may be inconsistent with the incorporated provisions, the Trustee must act in accordance with those provisions so incorporated.
- b) Clause 15 does not apply to provisions deemed by this clause 19.7 to be incorporated in the Deed.