

# **ANZ Online Investment Account Unit Trust Supplemental Deed**

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**Australia and New Zealand Banking  
Group Limited**  
ABN 11 005 357 522

## **Blake Dawson**

Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia  
T 61 2 9258 6000  
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**Reference**  
LIS VB 02 2036 2318  
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## Supplemental Deed

DATE 22 DECEMBER 2011

### PARTIES

Australia and New Zealand Banking Group Limited  
ABN 11 005 357 522 (Trustee)

### RECITALS

- A. The Trustee executed a deed of trust to be the constitution of the ANZ Online Investment Account Unit Trust (Trust) by deed poll dated 10 September 2008 (Constitution).
- B. Clause 31 of the Constitution provides that the trustee of the Trust may amend the Constitution by a written document in any form it thinks fit, and that the trustee of the Trust must provide to all Unitholders no less than 30 days written notice prior to any amendments taking effect, except where it reasonably considers the change will not adversely affect the rights of the Unitholders.
- C. The Trustee wishes to amend the Constitution in accordance with this document on the basis that the Trustee will give Unitholders no less than 30 days written notice prior to the amendments contemplated by this document taking effect.
- D. The Trustee intends to retire as trustee of the Trust, and OnePath Funds Management Limited ACN 003 002 800 (OnePath) intends to be appointed as trustee of the Trust, in accordance with the provisions of the Constitution.
- E. Following its appointment as trustee of the Trust, OnePath intends to register the Trust with the Australian Securities and Investments Commission as a registered managed investment scheme.

### OPERATIVE PROVISIONS

#### 1. INTERPRETATION

A term defined in the Constitution has the same meaning in this deed unless it is defined differently in this document.

#### 2. AMENDMENT TO CONSTITUTION

The Constitution is amended by deleting the words that have a line through them and inserting the underlined words, as set out in Annexure A.

#### 3. NO RE-SETTLEMENT

This document does not constitute a re-settlement or re-statement of the trust established under the Constitution.

**4. BINDING PROVISIONS**

The provisions of this document are binding on the Trustee, each Unitholder and all persons claiming through them as if each were a party to this document.

**5. EFFECTIVE DATE**

The changes contemplated by this document take effect 30 days after the Trustee provides written notice to Unitholders of the amendments of the Constitution contemplated by this document is executed.

**6. GOVERNING LAW AND JURISDICTION**

This document is governed by the laws of the State of Victoria.


**EXECUTED** as a deed poll.

A person who executes this document on behalf of the Trustee under a power of attorney declares that he or she is not aware of any fact or circumstances that might affect his or her authority to do so under that power of attorney.

**EXECUTED for and on behalf of Australia and New Zealand Banking Group Limited ABN 11 005 357 522 under Power of Attorney dated 18/11/2002, and registered in New South Wales Book 4376 No: 411, by**  
who certifies that he is a Senior Executive and that he has not received notice of revocation of that Power in the presence of:



Signature of Attorney



Signature of Witness

Level 13 347 Kent St Sydney

Address of Witness

## **Annexure A**

### **ANZ ONLINE INVESTMENT ACCOUNT UNIT TRUST – AMENDED CONSTITUTION**

# **ANZ Online Investment Account Unit Trust Constitution**

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**Australia and New Zealand Banking  
Group Limited**  
ABN 11 006 357 522

## **Blake Dawson**

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**Reference**  
PGT SHDB 03

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**ANZ Online Investment Account Unit Trust Constitution**

**DATE** 10 September 2008

**DEED POLL by**

**Australia and New Zealand Banking Group Limited**  
ABN 11 005 357 522 (Trustee)

**1. INTERPRETATION**

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**1.1 Definitions**

These definitions apply in this document.

**Account** means an ANZ Online Investment Account operated in accordance with the PDS from time to time and includes the Deposit Account of the Account Holder that is operated as part of the Account Holder's ANZ Online Investment Account.

**Account Holder** means the holder of an Account.

**Accounting Standards** means:

- (a) all accounting standards and principles required by an Australian law to be complied with; and
- (b) except to the extent inconsistent with paragraph (a), generally accepted accounting principles.

**AEST** means Australian Eastern Standard Time as applicable in Victoria, and as adjusted at the relevant time in Victoria by Eastern Daylight Time when applicable in Victoria.

**Affiliate** of a body corporate means:

- (a) any related body corporate of that body;
- (b) each director of that body; and
- (c) any person who has a substantial holding in that body.

**ANZ** means Australia and New Zealand Banking Group Limited ABN 11 005 357 522 ~~not acting in its capacity as the trustee of the Fund.~~

**Available Funds** means, on any day for an Account Holder, the amount of cleared and available funds that are held in an Account Holder's Deposit Account and that ANZ determines are available for investment in the purchase of Units.

**ASIC** means the Australian Securities and Investments Commission or any regulatory body that replaces it or performs ~~takes over~~ its functions in relation to managed investment Funds.

**ASIC Instrument** means:

- (a) an exemption or modification granted by ASIC under Part 5C.11 of the Corporations Act; or
- (b) any other instrument issued by ASIC under a power conferred on ASIC which applies or relates to the Trustee or the Fund.

**ASX** means ~~the Australian Securities Exchange ASX Limited ACN 008 634 624 691 or, also called the Australian Securities Exchange (as applicable).~~

**available Distribution Amount** has the meaning given by clause 12.6.

**Available Funds** means, on any day for an Account Holder, the amount of cleared and available funds that are held in an Account Holder's Deposit Account and that ANZ determines are available for investment in the purchase of Units.

**Business Day** means a day when commercial banks are open for business in Melbourne, but not a Saturday, Sunday or Melbourne public holiday.

**Calendar Year** means a 12 month period ending 31 December.

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

**Compliance Committee** means a compliance committee for the Fund for the purposes of the *Corporations Act*.

**Compliance Committee Member** means a member of the Compliance Committee.

**Daily Withdrawal Total** means the "daily withdrawal total" as determined by ANZ ~~the Trustee in accordance with the requirements of the PDS.~~

**Deposit Account** means a deposit account operated by ANZ (in accordance with the Terms and Conditions of the PDS from time to time) for an Account Holder as part of their Account.

**Distribution Amount** of a Unitholder means its portion of the distributable income of the Fund which is worked out in accordance with clause 12.2.

**Distribution Period** means:

- (a) in respect of the first half of a Financial Year, the period commencing on 1 July and ending on 31 December (both dates inclusive); and
- (b) in respect of the second half of a Financial Year, the period commencing on 1 January and ending on 30 June (both dates inclusive);

except that:

- (c) ~~(e)~~ the first distribution period starts on the date the Fund is established and ends on the following 31 December or 30 June (which ever is the first to occur); and
- ~~(e)~~(d) ~~(d)~~ the last distribution period ends on the date of final distribution under clause 26.2(c).

**Encumbrance** means:

- (a) a mortgage, charge, pledge, lien, hypothecation or title retention arrangement;
- (b) a right of set-off or right to withhold payment of a deposit or other money;
- (c) a notice under section 255 of the *Income Tax Assessment Act 1936*, subdivision 260-A in schedule 1 to the *Taxation Administration Act 1953* or any similar legislation;
- (d) any third party interest (for example, a trust or an equity);

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- (e) an easement, restrictive covenant, caveat or similar restriction over property; or
  - (f) an agreement to create any of them or to allow any of them to exist.

**ETF Unit** means a unit in the Index Fund that has been issued in accordance with the procedures set out in the Index Fund's PDS.

**Financial Year** means a period of 12 month beginning on 1 July and ending on 30 June in the following Calendar Year.

**Fund** means the trust constituted by this document.

**Fund Liabilities**, as at a particular day, means the total, as at that day, of:

- (a) the amount of losses, liabilities for Taxes, fees and expenses, and other liabilities of the Trustee in relation to the Fund; and
- (b) amounts the Trustee determines, consistently with the Accounting Standards, to be reasonable provisions for contingent or future losses, expenses and other liabilities of the Trustee in relation to the Fund,

and includes accrued but unpaid Unitholder entitlements in connection with the Fund.

**Fund Property** means, at any time, the assets and property then held by or for the Trustee in connection with the Fund, which may include Investment Units, rights and income of the Fund and cash, but ~~which would does~~ not include any application money received by the Fund in respect of Units that have not been issued.

**Fund Value** means the value of the Fund Property calculated in accordance with clause 9.

**Government Agency** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST Law** means the same as "GST law" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Index Fund** means the SPDR S&P/ASX 200 Fund.

**Index Fund PDS** means the product disclosure statement issued by State Street Global Advisors, Australia Services Limited (ABN 16 108 671 441) (or its successor) from time to time in relation to the Index Fund, as amended and supplemented from time to time.

~~**Index Fund Website** means the website of the Index Fund, with the web address [www.spdr.com.au](http://www.spdr.com.au).~~

**Insolvency Event** means, in respect of the Trustee:

- (a) an application being made to a court for an order:
  - (i) for its winding up; or
  - (ii) to appoint an administrator, controller, provisional liquidator or analogous person to the Trustee or any of its property,

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unless the application is withdrawn or dismissed within seven days;

- (b) an order being made, or the Trustee passing a resolution, for its winding up;
- (c) the Trustee resolving to appoint an administrator, controller or analogous person to the Trustee or any of its property;
- (d) an appointment of the kind referred to in paragraph (a)(ii) being made (whether or not following a resolution or application);
- (e) the holder of a Security Interest taking possession of any of the Trustee's property;
- (f) ~~the person-Trustee~~ being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (g) the Trustee being unable to pay its debts or being otherwise insolvent;
- (h) the Trustee ceasing (or threatening to cease) to carry on all or a material part of its business;
- (i) the Trustee taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (j) any analogous event,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation.

**Investment Unit** means an ETF Unit or a Substitute Unit, as the case requires at the relevant time.

**Issue Price** of a Unit on any Trading Day, means the Issue Price as determined by the Trustee in accordance with clause 7.5(b).

**Liquid** has the same meaning as in section 601KA of the Corporations Act ~~as if the Fund were a registered Fund.~~

**Market Price:**

- (a) where the Trustee is required to determine the Market Price of an Investment Unit for the purposes of clause 7.4, means the market price at which an Investment Unit was last sold on the ASX (or any other applicable market in the case of a Substitute Unit); or
- (b) where the Trustee is required to determine the Market Price of an Investment Unit that was bought or sold on the relevant Trading Day for the purposes of clause 7.5, means the price at which the Trustee bought or sold the relevant Investment Unit on that day; ~~or~~  
~~(c) as otherwise determined by the Trustee, where this is necessary;~~

**Meeting** means a meeting of Unitholders.

**Net Fund Value** means the Fund Value less the Fund Liabilities.

**PDS** means the Product Disclosure Statement dated on or after the date of this document and issued by ANZ in relation to the ~~ANZ Online Investment Account~~, as later amended

and supplemented from time to time, or such other disclosure document that is issued by ANZ in relation to the Account which sets out the Terms and Conditions.

**Record Date** means the day on which a Unitholder's entitlement to any Distribution Amount is determined by the Trustee in accordance with clause 12.2.

**Redemption Amount** means the total of the Redemption Values applicable to each Unit of a Unitholder that is redeemed on a Trading Day.

**Redemption Request** means a request for the redemption and cancellation of Units of a Unitholder, that is made on any Trading Day to the Trustee by ANZ (on behalf of the Unitholder) following ANZ's receipt of a Withdrawal Request from that Unitholder (and includes a request by ANZ to the Trustee for the redemption of sufficient Units to raise a specified Redemption Amount that is required by ANZ to meet a Withdrawal Request made by the Unitholder).

**Redemption Value** of a Unit on any Trading Day means the Redemption Value as determined by the Trustee in accordance with clause 7.5(b).

**Register** means the register of Unitholders kept as required by clause 17.1.

**Registered** means registered as a managed investment scheme by ASIC under Chapter 5C of the Corporations Act.

**Resolution** means:

- (a) a resolution passed at a Meeting:
  - (i) on a show of hands, by the required majority of Unitholders present in person or by proxy and voting on the show of hands; or
  - (ii) on a poll, by the required majority of votes cast by Unitholders present in person or by proxy and voting on the poll; or
- (b) unless the law requires otherwise, a resolution in writing signed by Unitholders holding the required majority of the Units in the Fund.

**Security Interest** means an Encumbrance that secures the payment of money or the performance of an obligation, or any other interest or arrangement of any kind that gives a creditor priority over other creditors in relation to any property.

**Securities System** means a securities title settlement or custody system that operates by any physical means, by an electrical medium or by custom (whether in Australia or not), and includes a clearing agency that acts as a securities depository or a book entry system for the central handling of investments.

**Special Resolution** ~~has the same meaning as in the Corporations Act as if the Fund were a registered Fund.~~

**Substitute Investment** means an investment that, like the Index Fund, seeks to match its investment return to the performance of the S&P/ASX 200 Index or comparable index and that has fees or costs (if any) applicable to an investment in the substitute investment that are considered by the Trustee to be similar to those applicable to the operation of the Index Fund, or otherwise acceptable in terms of the usual expected cost for such an investment.

**Substitute Unit** means the minimum or smallest unit of investment in the Substitute Investment that may be bought and sold (or made and redeemed) by the Trustee.

**Tax** means a tax, levy, duty, charge, deduction or withholding (however it is described) that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

**Terms and Conditions** means the terms and conditions governing the operation of the ~~ANZ Online Investment Accounts, as set out in the PDS.~~

**Trading Day** means a "Business Day" as that term is defined in the ~~ASX Market Operating Rules~~, essentially being a day on which the ASX is open for the trading and settlement of transactions.

**Transaction Cost** means the "transaction cost" described in the PDS and has the same meaning as that term when used in the PDS.

**Trustee** means:

- ~~(a) Australia and New Zealand Banking Group Limited ABN 11 005 357 522, acting in its capacity as the trustee of the Fund; or~~
- ~~(b) if another body corporate holds holding office as Trustee trustee of the Fund, that body corporate.~~

**Unit** means a unit issued in the Fund in accordance with clause 8 and includes a partial unit.

**Unitholder** means a person whose name is entered in the Register as the holder of a Unit.

**Units on Issue** means the total number of Units that have been issued to Unitholders at the relevant time, and not been redeemed or cancelled.

**Valuer** means a valuer appointed by the Trustee that is independent of the Trustee and has at least five years experience in valuing the particular kind of asset or property.

**Withdrawal Request** means a request for the withdrawal of funds from the Account of an Account Holder that is received by ANZ from the Account Holder ~~and where the request is made by the Account Holder in accordance with the requirements of the PDS.~~

## 1.2 Rules for interpreting this document

Headings and footnotes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
  - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and



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- (v) anything (including a right, obligation or concept) includes each part of it.
  - (b) A singular word includes the plural, and vice versa.
  - (c) A word which suggests one gender includes the other genders.
  - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
  - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
  - (g) A power to do something includes a power, exercisable in like circumstances, to revoke or undo it.
  - (h) A reference to a power is also a reference to authority or discretion.
  - (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
  - (j) A word (other than a word defined in clause 1.1) which is defined by the Corporations Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Corporations Act.
  - (k) A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Corporations Act.
  - (l) A reference to **GST** includes any other Commonwealth, State or Territory goods and services tax, or any Commonwealth, State or Territory tax applying to a transaction in a way similar to GST.
  - (m) Words defined in the GST Law have the same meaning in clauses 1.2(n) and (o) and clause 29 of this document.
  - (n) If a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.
  - (o) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

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## **2. CONSTITUTION OF THE ~~TRUST~~FUND**

### **2.1 Constitution binds Unitholders and Trustee**

This document operates as a deed and binds the Trustee and each Unitholder as well as any person who claims through any of them.

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## **2.2 Confirmation of appointment**

The appointment of the Trustee of the Fund is hereby confirmed and the Trustee agrees to manage the Fund upon and subject to the terms contained in this document.

## **2.3 Benefits and obligations**

This document is made with the intention that the benefits and obligations may enure not only to the Trustee but also to the extent provided in this document to each Unitholder. The Units will be held upon and subject to the provisions contained in this document.

## **2.4 No agency or partnership created**

None of the following:

- (a) this document;
- (b) a trust created under this document;
- (c) a trust associated with this document; and
- (d) except so far as the agreement expressly provides otherwise, an agreement entered into in connection with the Fund,

creates a relationship of principal and agent, or of partnership, between the Unitholders and the Trustee, or between the Unitholders themselves.

## **3. NAME OF THE FUND**

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### **3.1 Initial name**

The name of the Fund is ANZ Online Investment Account Unit Trust.

### **3.2 Change of name generally**

The Trustee may change the Fund's name.

### **3.3 Change of name on the Trustee's retirement or removal**

If the Trustee retires or is removed and the name of the Fund implies an association with the Trustee or its business, or the banking business of ANZ, the new Trustee must, unless otherwise approved by the Trustee, change the Fund's name to a name that does not imply the association.

## **4. FUND**

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### **4.1 Declaration of Trust ~~Unitholders~~**

- (a) The Trustee holds the Fund Property on trust for the Unitholders on the terms contained in this document.
- (b) The Fund commences on the date that Units are first issued.

### **4.2 Term of the Fund**

The Fund will end on the earlier of:

- 
- (a) the date specified by the Trustee as the date of termination of the Fund in a notice given to Unitholders; and
  - (b) the date on which the Fund terminates in accordance with any other provision of this document, the Corporations Act or in accordance with any law.

#### **4.3 Holding of Fund Property**

All Fund Property must be held:

- (a) by the Trustee; or
- (b) if required by law, or the Trustee thinks it necessary or appropriate, by a custodian or nominee appointed by the Trustee.

#### **4.4 Custodian or nominee holding Fund Property**

A custodian or nominee of any Fund Property must hold it either:

- (a) directly in its name; or
- (b) indirectly by any asset title, transfer or holding system (including a Securities System) approved by the Trustee.

#### **4.5 Fund Property to be clearly identified and held separately**

The Trustee, as well as its custodians and nominees (if any), must:

- (a) clearly identify the Fund Property as property of the Fund; and
- (b) hold it separately from their own assets and from the assets of any other trust or scheme.

### **5. INVESTMENT STRATEGY OF THE FUND**

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#### **5.1 Permitted investments**

Subject to clause 5.4, the only investments to be made by the Fund will be the purchase of Investment Units and the disposal of Investment Units and the holding or deposit of cash.

#### **5.2 Investment in ETF Units**

Except as otherwise permitted or required by this clause 5, all moneys received by the Fund and available for investment by the Trustee on behalf of the Fund will be invested in the purchase of ETF Units.

#### **5.3 Circumstances in which investment in ETF Units may cease**

In certain circumstances it may no longer be possible or appropriate for the Trustee to continue to invest moneys in the Index Fund. Accordingly, if:

- (a) it is not practical or possible for the Trustee to purchase ETF Units for any reason and that reason continues for more than 14 days, or
- (b) the Trustee, acting reasonably, has determined that it is no longer in the best interests of Unitholders for the Fund to continue to invest in the Index Fund,

and, in either case, provided the Trustee has identified a suitable Substitute Investment in which to invest Fund Property, the Trustee may give not less than 14 days notice of its

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intention to cease investing in the Index Fund (to the extent that that remains possible) and to commence (as soon as practical) to invest the Fund Property available assets of the Fund in the Substitute Investment.

#### **5.4 Arrangements applicable to any investment in a Substitute Investment**

- (a) Following the expiry of a notice that is given to Unitholders in accordance with clause 5.3, the Trustee will:
  - (i) in an orderly manner, take all reasonable steps to realise and collect in all money invested in the Index Fund and to then reinvest it in the Substitute Investment; and
  - (ii) thereafter continue to invest the available investment funds of the Fund in the Substitute Investment.
- (b) At the time of reinvesting any money recovered from the Index Fund (including from any assets of the Index Fund distributed to the Trustee), the Trustee will exercise its powers under clause 6.4 to consolidate or divide the Units on Issue at that time (to the extent required) to match:
  - (i) the value of a Unit to the value of a Substitute Unit in the Substitute Investment; or
  - (ii) the number of Units on Issue to the number of Substitute Units held, or expected to be held, by the Trustee following the investment of the available investment funds in the Substitute Investment,

as the Trustee determines is most appropriate at the time. However, nothing in this clause is intended to limit the wider powers of the Trustee under clause 6.4.

- (c) Pending the reinvestment of Fund Property collected or recovered from the Index Fund, the Trustee may take such steps as are necessary or required to best preserve those assets (pending their reinvestment in the selected Substitute Investment), including by means of entering into any necessary derivative contracts to protect the value of any shares distributed to the Fund by the Index Fund – for example, pending the orderly sale of those shares by the Trustee.
- (d) The provisions of this clause 5 will also apply, with such modifications as are necessary, to allow the Trustee to later cease investing in one Substitute Investment and permit the reinvestment of the assets of the Fund in a new Substitute Investment.

#### **5.5 Discretion not to redeem Units**

The Trustee has the discretion not to redeem any Units between the time that commences 14 days after the Trustee has given a notice under clause 5.3 and the time that all of the funds available for investment that are held by the Fund are invested in the Substitute Investment.

#### **5.6 Investment objective**

- (a) The investment objective of the Fund is to hold, at any time, the same number of Investment Units as the number of Units on Issue. Where the Trustee is required to issue new Units or to redeem and/or cancel any Units on a Trading Day, the Trustee will (as soon as practicable) take all steps reasonably possible to adjust the number of Investment Units held by the Fund so that

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following the issue and/or redemption of the relevant Units, the Fund continues to meet its investment objective. For these purposes the Trustee will sell or buy Investment Units as the case requires.

- (b) The Trustee may, at any time, hold more Investment Units than the number of Units on Issue at that time.

## **6. UNITS**

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### **6.1 Rights attaching to a Unit**

The Trustee, in accordance with the provisions of this document, may issue Units. Each Unit issued entitles the Unitholder to an equal undivided share in the distributable income of the Fund, where the Unit is held on a Record Date. The manner of determining the distributable income that will apply to a Unit is set out in clause 12.

### **6.2 Nature of a Unitholder's interest in Fund Property**

- (a) Each Unit confers on a Unitholder an equal undivided interest in the Fund as a beneficiary of the Fund.
- (b) A Unit does not confer on a Unitholder any legal or equitable interest in the Fund Property as a whole or any interest in, or rights over, any particular Fund Property.

### **6.3 Rights attached to Units**

All Units have the same rights attached to them.

### **6.4 Consolidation, division and reclassification of Units**

The Trustee may consolidate, divide or reclassify Units, as it thinks fit.

### **6.5 Fractions of Units**

- (a) The Trustee may issue a fraction of a Unit.
- (b) If fractions of a Unit are issued, then the provisions of this document that relate to Units and Unitholders apply in the proportion which the fraction bear to the Unit.
- (c) The Trustee may consolidate or divide Units or fractions of Units of the same class on terms it determines.

## **7. ISSUING AND REDEEMING UNITS**

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### **7.1 Trustee may Issue Units**

- (a) The Trustee may create Units and issue them to Account Holders in accordance with the procedures and requirements set out in this document.
- (b) Units may only be issued to Account Holders on a Trading Day that is a Business Day and may only be issued after the Issue Price of each Unit that is to be issued on that Trading Day has first been determined by the Trustee in the manner required by this clause 7.

## 7.2 Trustee may redeem and cancel Units

- (a) The Trustee may redeem and cancel one or more Units on Issue to an Account Holder in accordance with the procedures and requirements set out in this document.
- (b) Units may only be redeemed on a Trading Day that is a Business Day and may only be redeemed after the Redemption Value of each Unit that is to be redeemed and cancelled on that Trading Day has first been determined by the Trustee in the manner required by this clause 7.

## 7.3 The need to first determine whether the Trustee will be a buyer or seller of Investment Units on the relevant Trading Day

Before the Trustee is able to determine either the Issue Price or the Redemption Value of a Unit on a given Trading Day, the Trustee must first determine the number of Investment Units it will need to buy or sell on that day.

The Trustee must make this determination in the manner described in clause 7.4 below and after having had regard to the investment objectives of the Fund.

## 7.4 Manner in which the Trustee is to determine whether it is required to be a buyer or a seller of Investment Units on a Trading Day

- (a) On each Trading Day that is a Business Day, the Trustee will determine, ~~or request sufficient information from ANZ to determine:~~
  - (i) the total of the Available Funds held at 12.45 pm AEST on that day in each Deposit Account that is maintained by ANZ as part of an ANZ Online Investment Account and that ANZ is authorised to invest in the Fund;
  - (ii) the Daily Withdrawal Total required to be paid to Account Holders under all outstanding Withdrawal Requests that ANZ has received from Account Holders before 12.45 pm AEST on that day; and
  - (iii) the Market Price of an Investment Unit, at a time determined by the ~~trustee~~ Trustee on that day.
- (b) The Trustee will then determine the change to the number of Units on Issue in the Fund that is expected to occur on that day. The Trustee must do this in the following manner.
  - (i) The Trustee must first determine the number of Units on Issue at the beginning of the Trading Day.
  - (ii) The Trustee must then ~~estimate~~ determine the number of additional Units that would need to be issued on that Trading Day if the total of the Available Funds held by ANZ at 12.45 pm AEST on that day were applied to purchase new Units issued at an Issue Price for each whole Unit that is determined (for the purposes of making the ~~estimated determination~~ estimated determination) as the Market Price of an Investment Unit as identified by the Trustee immediately before the Trustee's ~~estimate determination~~ estimated determination is made on that Trading Day, plus a margin of that Market Price to allow for the Transaction Cost that is separately payable to ANZ.
  - (iii) The Trustee must then ~~estimate~~ determine the total number of Units that would need to be redeemed and cancelled on that Trading Day to fund the payment by ANZ of the Daily Withdrawal Total. For the purposes of making this ~~estimated determination~~ estimated determination, the Trustee is required to assume that



the Redemption Value of a Unit on that Trading Day will be the Market Price of an Investment Unit as identified by the Trustee immediately before the Trustee's ~~estimate determination~~ is made on that Trading Day, less a margin of that Market Price to allow for the Transaction Cost that is separately payable to ANZ.

On the basis of the information and ~~estimated determinations~~ described in subparagraphs (i) to (iii) above, the Trustee must then determine the expected net change between the number of Units on Issue at the beginning of that Trading Day, and the number of Units expected to be on issue at the end of that day.

- (c) Following the Trustee's ~~estimation determination~~ of the expected net change between the number of Units on Issue at the beginning of that Trading Day, and the number of Units expected to be on issue at the end of that day, the Trustee must ~~estimatedetermine~~ as soon as possible:

- (i) the number of Investment Units (if any) that will need to be purchased; or
- (ii) the number of Investment Units (if any) that would need to be sold,

by the Trustee on that Trading Day in order to continue to hold, or to hold and have purchased, at least an equivalent number of Investment Units in the Fund to the number of Units that would be on issue at the end of the day, as a result of:

- (iii) the investment of Available Funds in the acquisition of Units during that day; and
- (iv) the redemption of Investment Units during that day to fund the Daily Withdrawal Total,

in each case, calculated by reference to the ~~information and assumptions set out in~~ sub-paragraph (b) above.

In this manner, the Trustee will determine whether it needs to be a seller or a buyer (or a net buyer or seller) of Investment Units on the relevant Trading Day.

- (d) Subject to clause 7.6, once the Trustee has made the determination referred to in sub-paragraph (c) above, and where the Trustee has concluded that there will be a need to purchase and/or sell Investment Units on that Trading Day, the Trustee must take all reasonable steps to make at least the required number of purchases or sales of Investment Units before the close of the Trading Day. In doing so, the Trustee must seek to ensure that as far as possible, the actual number of Investment Units purchased or sold continues to reflect the investment objectives of the Fund, and continues to take account of the Units that the Trustee expects to issue and redeem on that day. The Trustee may, however, elect to both sell and buy Investment Units on the relevant day where it considers it appropriate to do so for any reason.

## **7.5 Determining the Issue Price and Redemption Value on a Trading Day**

- (a) At or immediately after 4.00 pm on each Trading Day that is a Business Day, the Trustee will determine the average Market Price at which it purchased Investment Units on that Trading Day and the average Market Price at which it sold Investment Units on that day.
- (b) The Trustee will then determine the Issue Price that is applicable to the issue and purchase of a Unit on that Trading Day and the Redemption Value that is

applicable to the redemption and cancellation of a Unit on that Trading Day. It will do so in the following manner.

(i) Where the Trustee was both a buyer and a seller of Investment Units on the day

If the Trustee was both a buyer and a seller of Investment Units on the Trading Day:

- (A) the Issue Price of a Unit on that day will be the average Market Price at which the Trustee purchased Investment Units on that Trading Day; and
- (B) the Redemption Value of a Unit on that day will be the average Market Price at which the Trustee sold Investment Units on that Trading Day.

(ii) Where the Trustee was only a buyer or a seller of Investment Units on the day

If the Trustee was only a buyer or a seller of Investment Units on the Trading Day:

- (A) the Issue Price of a Unit on that day will be the average Market Price at which the Trustee bought or sold Investment Units on that Trading Day; and
- (B) the Redemption Value of a Unit on that day will be the average Market Price at which the Trustee bought or sold Investment Units on that Trading Day.

- (c) In each case, where the unit purchased or redeemed is a partial Unit, the Issue Price or Redemption Value is calculated as the equivalent proportion of the relevant average Market Price of an Investment Unit at the relevant time.

## **7.6 Refusal to issue new Units**

The Trustee may refuse to issue new Units on a Trading Day:

- (a) if the Trustee is not able to buy any, or a sufficient number of, Investment Units on that day in order to ensure that the number of Investment Units held (or to be held) by the Fund following the issue of new Units on that day will continue to reflect or match the number of Units on Issue at that time;
- (b) if, for any reason, the Fund or Trustee cannot buy (or is not permitted to buy) any or sufficient Investment Unit on that day (including by reason of a suspension of the trading market for Investment Units, or a lack of liquidity in the trading market for Investment Units that would prevent the purchase by the Trustee of the required or desired number of Investment Units); or
- (c) if the Trustee, acting reasonably, has determined that it is no longer in the best interests of Unitholders for the Fund to continue to invest in the applicable Investment Units and the Trustee has given a notice to Unitholders as contemplated by clause 5.3.

In addition, the Trustee must refuse to issue new Units on any Trading Day where it would ordinarily be required to buy or sell Investment Units in compliance with clause 7.3 and 7.4 but where it is not able to do so for any reason and, as a consequence, cannot set the Issue Price for a Unit on that Trading Day.

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## 8. PROCEDURE FOR ISSUE OF UNITS

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### 8.1 Application procedure

An application by an Account Holder for the issue of Units must be made by the Account Holder instructing ANZ to arrange for the issue of Units to the Account Holder by:

- (a) depositing funds into the Deposit Account of the Account Holder in accordance with the provisions of the PDS and its Terms and Conditions; and
- (b) by the Account Holder having Available Funds in their Deposit Account at 12.45 pm AEST on a Trading Day that is a Business Day,

or in such other manner as the Trustee may from time to time require or approve.

### 8.2 Number of Units to be issued

Subject to the terms of this document, the Trustee is entitled to treat an advice from ANZ about the amount of the Available Funds held in the Deposit Account of an Account Holder at 12.45 pm AEST on a Trading Day as a request from the Account Holder (made by ANZ on behalf of the Account Holder) for the issue to the Account Holder of the maximum number of new Units in the Fund that can be purchased by the Account Holder on that Trading Day with their Available Funds:

- (a) at the Unit Price that is applicable on that Trading Day for the issue of a Unit in the Fund (as that Issue Price is determined by the Trustee in accordance with clause 7.5); and
- (b) after allowing for the Transaction Costs that would be payable to ANZ by the Account Holder in connection with the purchase of the new Units.

### 8.3 Payment for Units issued

At the time of issuing any Units to the Account Holder, the Trustee is to request ANZ to make payment to it from the Account Holder's Deposit Account of the amount required for the purchase of the Units issued to the Account Holder on that Trading day and the Trustee may accept and apply a transfer of funds from the Deposit Account of the Account Holder in or towards satisfaction of the Account Holder's liability to pay the Issue Price of the Units issued to the Account Holder on that day.

### 8.4 When Units are issued

A Unit is taken to be issued to an Account Holder when the name of the person to whom it is issued is entered in the Register as the holder of the Unit, or upon the ~~Fund's Trustee's~~ receipt of the Issue Price consideration for the acquisition of a Unit from the Account Holder's Deposit Account (if that occurs before the required entry is made to the Register). A unit is taken to be issued even though the Issue Price and the number of Units to be issued is not actually calculated until after the entry is made in the Register or the consideration for the acquisition of a Unit is received by the Trustee.

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## 9. VALUING FUND PROPERTY

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### 9.1 Valuation record to be kept

The Trustee must set up and keep a valuation record which records the value of the Fund Property.

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## **9.2 When the Fund Property is to be valued**

The Trustee:

- (a) may have the Fund Property valued by a Valuer at any time; and
- (b) may have it done at regular intervals appropriate to the nature of the Fund Property.

## **9.3 Method for valuing Fund Property**

The Trustee may determine the valuation methods and policies for each category of Fund Property and change them from time to time.

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# **10. FUND VALUES**

## **10.1 When the Fund Value and Net Fund Value is to be worked out**

The Trustee:

- (a) must work out the Fund Value and the Net Fund Value each time it is necessary to do so, but at least annually; and
- (b) may work them out at any other times it thinks fit.

## **10.2 Effect of determination**

The Trustee's determination of a Fund Value or Net Fund Value binds all the Unitholders.

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# **11. PAYING LIABILITIES AND EXPENSES**

Any extraordinary or unexpected liabilities and expenses of the Fund for a Distribution Period are to be paid:

- (a) first, out of the income of the Fund for that Distribution Period; and
- (b) then, if that is not enough, out of the balance of the Fund Property.

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# **12. DISTRIBUTIONS**

## **12.1 Working out distributable income**

The Trustee must work out the distributable income of the Fund for each Financial Year. Unless the Trustee decides otherwise before the end of the Financial Year, the distributable income for a Distribution Period will be:

- (a) calculated in accordance with the Accounting Standards; and
- (b) at least the net income of the Fund as defined in section 95 of the *Income Tax Assessment Act 1936* (Cth).

## **12.2 Working out a Unitholder's Distribution Amount**

A Distribution Amount in respect of a Unitholder means an amount calculated by the Trustee as follows:

- (a) in respect of a Distribution Period ending on a date other than 30 June in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

- A is the total number of Units held by the Unitholder at the end of the Record Date for that Distribution Period;
- B is the total number of Units on Issue as at the end of the Record Date for that Distribution Period;
- C is the distributable income for the Distribution Period; and
- (b) in respect of a Distribution Period ending on a date that is 30 June in any year, an amount calculated as follows:

$$\frac{A \times C}{B}$$

where

- A is the total number of Units held by the Unitholder at the end of the Record Date for that Distribution Period;
- B is the total number of Units on Issue as at the end of the Record Date for that Distribution Period; and
- C is the amount (if any) by which the distributable income for the Financial Year exceeds the distributable income calculated for the previous Distribution Periods of that Financial Year for the purposes of item C in paragraph (a) above, and
- (c) in each case, the Record Date for the purposes of the relevant Distribution Period will be the earlier of:
- (i) the date in the Distribution Period that is one Trading Day immediately before the date when the Investment Units then held by the Trustee are first quoted as "ex-distribution" or "ex-dividend" in respect of that Distribution Period, or
  - (ii) 31 December in the case of a Distribution Period ending in the month of December, or 30 June in the case of a Distribution Period ending in the month of June.

### 12.3 Unitholders' present entitlement to Distribution Amount

Unitholders are presently and irrevocably entitled to the distributable income of the Fund for a Financial Year as determined under this clause 12, including the Distribution Amounts (if any) for the Unitholders in respect of a Financial Year, as determined in accordance with clause 12.2.

### 12.4 When Distribution Amount is paid

If a Unitholder is entitled to a Distribution Amount, the Trustee must pay or credit the available Distribution Amount to the credit of the Unitholder's Deposit Account within 60 days after the relevant Distribution Period or any longer period allowed by law.

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## **12.5 Transfer of Distribution Amounts to the Unitholder's Deposit Account**

Once an available Distribution Amount is paid or transferred by the Trustee to the credit of a Unitholder's Deposit Account, the present entitlement of the Unitholder to the amount transferred is satisfied.

## **12.6 Deductions that may be made from Distribution Amount**

The Trustee may (in its sole and absolute discretion) deduct from a Unitholder's Distribution Amount:

- (a) the amount of (or the amount it reasonably determines to be required for) any Taxes relating to the Unitholder or the Unitholder's investment in the Fund; and
- (b) any ~~fees or other~~ amounts payable by the Unitholder to the Trustee ~~(in its capacity as trustee)~~ that are then due and outstanding,

before transferring the balance of the Distribution Amount (the "available Distribution Amount") to the Unitholder's Deposit Account.

## **12.7 Separate accounts**

The Trustee must keep separate accounts or records of different categories or sources of income, or deductions or credits for Tax purposes, and may allocate income, deductions or credits from a particular category or source to particular Unitholders.

## **12.8 Transfer of Units**

After a Distribution Amount is determined, the person registered as the Unitholder at 5.00pm AEST on the Record Date for the relevant Distribution Period remains entitled to the Distribution Amount, even if the Units are transferred or redeemed before the Distribution Amount is paid.

## **12.9 Transfer of capital to enable minimum distribution of net income**

The Trustee may transfer capital to the distribution account to enable distribution to Unitholders of at least the net income of the Fund as defined in section 95 of the *Income Tax Assessment Act 1936* (Cth).

## **12.10 Interim distributions of income**

The Trustee may at any time make an interim distribution of income of the Fund to the Unitholders. If it does:

- (a) the Trustee must specify a date as the Interim Record Date; and
- (b) this clause 12 applies to the interim distribution as if it were a distribution of distributable income.

## **12.11 Other distributions**

The Trustee may at any time distribute any amount of capital or income attributable to Unitholders pro rata according to the number of units held as at a time decided by the Trustee (for example, to avoid the Trustee becoming assessable to pay Tax under the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth)). The capital or income may be distributed by way of additional Units.



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### 12.12 Determination whether capital or income

The question of whether an amount is capital or income is to be determined by the Trustee.

### 12.13 Distribution statements to be sent out

The Trustee must cause a distribution statement for each Distribution Period to be sent to the Unitholders.

## 13. RESERVES

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### 13.1 Establishing reserves

The Trustee may establish any reserve it thinks fit.

### 13.2 Crediting net capital gains and losses to a reserve

The Trustee may:

- (a) separate net realised and unrealised capital gains and losses of the Fund from other receipts, profits and gains of the Fund; and
- (b) credit them to a reserve.

### 13.3 Distributing reserves

The Trustee may distribute reserves to the Unitholders in the same way as distributable income.

## 14. WITHDRAWING FROM THE FUND

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### 14.1 Right to withdraw

- (a) A Unitholder may request a redemption of Units held by the Unitholder by making a Withdrawal Request to ANZ ~~in accordance with the PDS and its Terms and Conditions~~. The Trustee must not accept a request for the redemption of Units that is made in any other manner.
- (b) ~~In accordance with the Terms and Conditions of the PDS, the~~ amount of funds ordinarily required to be paid to an Account Holder who has made a Withdrawal Request is to be determined ~~in the manner set out in these Terms and Conditions by ANZ~~. ANZ will calculate the amount of funds that are ~~(in accordance with the Terms and Conditions)~~ required to be raised by the redemption of Units held by the Account Holder in meeting the Account Holder's Withdrawal Request and will then advise the Trustee of the Redemption Amount that is required.
- (c) In some cases, however, the Redemption Amount required may be advised by ANZ as a request for the Redemption Amount that will arise from the redemption of all Units held by the Unitholder at that time.
- (d) Subject to the terms of this document, the Trustee is entitled to treat an advice from ANZ about the Redemption Amount required to meet the Withdrawal Request of an Account Holder as a request from the Account Holder (made by ANZ on behalf of the Account Holder) for the redemption and cancellation of the minimum number of Units that would need to be redeemed and cancelled by the Trustee on that Trading Day to realise sufficient funds to meet the

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Withdrawal Request (after deduction from the Redemption Amount of all costs and fees payable to ANZ).

- (e) To the extent required, when determining the number of Units to be redeemed at any time following its receipt of a Redemption Request, the Trustee may have regard to any information available about:
- (i) the amount then available in the Unitholder's Deposit Account to meet the relevant Withdrawal Request (as that amount is advised to the Trustee);
  - (ii) the costs and fees that would be recovered by ANZ from the Redemption Amount; and
  - (iii) the minimum number of Units that would consequently need to be redeemed and cancelled by the Trustee on that Trading Day, to fund the amount required (or the balance of the amount required) to be paid to the Account Holder pursuant to the Withdrawal Request.

## **15. REDEMPTION PRICE**

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### **15.1 Calculation of Redemption Value**

A Unit may only be redeemed on a Trading Day at its Redemption Value. The Redemption Value of a Unit on any Trading Day is the Redemption Value applicable on that day as calculated in the manner described in clause 7.5 of this document.

### **15.2 ~~Deducting redemption fees and other amounts from Redemption Amount~~**

The Trustee may deduct from the Redemption Amount payable to a Unitholder any amounts owing by the Unitholder to the Trustee on the date the Units are redeemed.

### **15.3 Payment of Redemption Amount**

The Trustee will pay the available Redemption Amount to the credit of the Unitholder's Deposit Account, or in such other manner as the Trustee may determine (including to ANZ to reimburse it for any amount paid in advance to an Account Holder pending receipt of the available Redemption Amount), within 3 Business Days of the Trading Day on which the Redemption Value is determined.

## **16. REDEMPTION WHILE THE FUND IS LIQUID**

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### **16.1 When this clause 16 applies**

~~This clause applies while the Fund:~~

- (a) is Registered and Liquid; or
- (a)(b) is not Registered but is Liquid as if the Fund was Registered.

### **16.2 Procedure for redemption of Units**

The procedure for redeeming a Unit is as follows.

- (a) Upon receiving advice from ANZ on a Trading Day as to the Redemption Amount required in respect of a Withdrawal Request, the Trustee must first determine whether it has the ability to accept and act upon a Redemption

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Request at that time. The Trustee must make this determination after considering the factors and requirements set out in clause 16.3.

- (b) Where the Trustee accepts a Redemption Request, the Trustee must satisfy the Redemption Request by:
  - (i) determining the number of Units of the Unitholder that will need to be redeemed by the Trustee to meet the Redemption Request;
  - (ii) calculating the Redemption Amount that will be payable the Unitholder upon the cancellation of the relevant Units;
  - (iii) cancelling the relevant number of Units by making an appropriate entry in the Register; and
  - (iv) after deducting any amounts payable under clause 15.2, transferring the available Redemption Amount in respect of the cancelled Units to the Unitholder's Deposit Account or by paying it ~~to ANZ~~ in accordance with clause 15.3.

### **16.3 Refusal to redeem Units**

The Trustee may refuse to accept or satisfy a request to redeem and cancel Units:

- (a) if the Trustee is not able to sell any or a sufficient number of Investment Units held by the Fund on that day in order to fund all requests for Redemption Amounts (whether directly or indirectly);
- (b) if the Trustee is not able to sell any or a sufficient number of Investment Units held by the Fund on that day in order to ensure that the number of Investment Units held by the Fund following the requested redemption will continue to reflect or match the number of Units on Issue that time;
- (c) if, for any reason, the ~~Fund or~~ Trustee cannot sell (or is not permitted to sell) any or sufficient Investment Units then held by the Fund on that day (including by reason of a suspension of the trading market for Investment Units, or a lack of liquidity in the trading market for Investment Units that would prevent the sale by the Trustee of the required or desired number of Investment Units); or
- (d) in exercising a discretion to do so that is given to the Trustee under this document.

In addition, the Trustee must refuse to accept a Redemption Request on any Trading Day where it would ordinarily be required to buy or sell Investment Units in compliance with clause 7.3 and 7.4 but where it is not able to do so for any reason and, as a consequence, cannot set the Redemption Value for a Unit on that Trading Day.

### **16.4 Discretionary redemption**

If the Trustee is not required to satisfy a Redemption Request, it may (at its sole and absolute discretion) redeem all or some of the Units the subject of the request.

### **16.5 Cannot withdraw Redemption Request**

A Unitholder cannot withdraw a Redemption Request, unless the Trustee agrees.

### **16.6 Disposal of Fund Property to satisfy Withdrawal Request**

The Trustee may, in its absolute discretion, dispose of Fund Property to satisfy the Redemption Request.

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#### **16.7 While Fund is not Liquid**

While the Fund is Registered and not Liquid, a Unitholder may withdraw from the Fund in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with the provisions of the Corporations Act regulating offers of that kind. The Trustee is not at any time obliged to make a withdrawal, however, if it decides to make (or cancel) a withdrawal offer it may do so at any time and in such a way as it considers appropriate to bring the withdrawal offer to the attention of all Unitholders which may include the Trustee:

- (a) publishing it by any means (for example in a newspaper or on the internet); or
- (b) giving a copy to all Unitholders.

### **17. REGISTER**

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#### **17.1 Keeping Register**

The Trustee must set up and maintain a register of Unitholders.

#### **17.2 Information in Register**

Subject to the Corporations Act, ~~T~~the Trustee must enter in the Register:

- (a) the name and address of each Unitholder; and
- (b) the number of Units held by each Unitholder.

The Trustee may include in the Register any other matters it thinks fit.

#### **17.3 Changes to details in Register**

The Trustee must note any change to the name or address of a Unitholder that is advised to it by ANZ on behalf of a Unitholder and the Trustee must update the Register to reflect the change.

#### **17.4 Non-beneficial holders of Units**

Subject to this document, the Trustee:

- (a) may treat the person named in the Register as the holder of the Unit as the absolute owner of it; and
- (b) need not recognise any equitable or other claim or interest in a Unit by any person except the registered holder,

unless otherwise ordered by a court of competent jurisdiction or required by statute.

#### **17.5 Register to be evidence**

The Register is admissible in evidence in any proceeding and is prima facie evidence of the Units held by a Unitholder.

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## **18. INTERESTS OF UNITHOLDERS**

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### **18.1 Joint holders**

Where two or more persons are registered as the holder of a Unit, they hold it as joint tenants and not as tenants in common, unless the Trustee otherwise agrees.

### **18.2 Things a Unitholder has no right to do**

Except as otherwise provided by this document or the Corporations Act, a Unitholder has no right or power, merely because it is a Unitholder:

- (a) to interfere with, or question the exercise or non-exercise of, any power, duty or right of the Trustee;
- (b) to exercise a right in respect of the Fund Property;
- (c) to lodge, in respect of the Fund Property, a caveat or other document that prohibits (whether conditionally or not) an action, or the registration of a dealing, in respect of the Fund Property;
- (d) to claim an interest in the Fund Property; or
- (e) to require the Fund Property (or any part of the Fund Property) to be transferred to the Unitholder.

### **18.3 Unitholder's liability limited**

- (a) If there is not enough Fund Property to meet the liabilities of the Trustee in relation to the Fund, a Unitholder does not have to:
  - (i) make up the difference; or
  - (ii) indemnify or make a payment to the Trustee or any of its creditors.
- (b) A Unitholder has no liability to the creditors of the Trustee.

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## **19. TRUSTEE**

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### **19.1 First Trustee**

The Trustee agrees to act as the first Trustee of the Fund.

### **19.2 Trustee may retire**

While the Fund is not Registered, the Trustee may retire at any time, but only if:

- (a) it gives Unitholders at least one month's notice in writing;

- 
- (b) before the Trustee retires, it appoints another body corporate to be Trustee of the Fund; and
  - (c) that other body corporate is entitled to act as the Trustee of the Fund.

While the Fund is Registered, the Trustee may retire as the trustee of the Fund as permitted by law. If permitted by law or by an ASIC Instrument, the Trustee may appoint its successor by deed.

### **19.3 When Trustee must retire**

The Trustee must retire, or terminate this trust if:

- (a) the law requires it;
- (b) an Insolvency Event occurs in respect of it; or
- (c) it commits a breach of this document or the Corporations Act that is materially detrimental to the Unitholders.

### **19.4 New Trustee to consent and be qualified**

A body corporate appointed to be the new Trustee of the Fund under this clause 19 must:

- (a) be qualified to be Trustee; and
- (b) have consented to the appointment.

### **19.5 What the Trustee must do on its retirement or removal**

On its retirement or removal, the Trustee must:

- (a) cause the Fund Property to be vested in the new Trustee (or its custodian or nominee);
- (b) give to the new Trustee all books, documents, records and other property relating to the Fund in the Trustee's possession or control; and
- (c) give any other reasonable assistance to the new Trustee to facilitate the change of Trustee.

### **19.6 Release for retiring or removed Trustee**

- (a) On the Trustee's retirement or removal:
  - (i) the Trustee is released from all obligations, duties and liabilities in respect of the Fund that arise after its retirement or removal; and
  - (ii) the new Trustee:
    - (A) may then exercise all the powers and enjoy all the rights; and
    - (B) will be subject to all the obligations and duties, of the Trustee under this document in respect of the Fund.
- (b) A release under sub-paragraph (a)(i) does not affect a liability of the Trustee arising before its retirement or removal.



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### **19.7 Indemnity for retiring or removed Trustee**

The new Trustee must execute a deed under which it assumes the powers, rights, obligations and duties referred to in clause 19.6(a)(ii). The deed must include provisions under which the new Trustee indemnifies the Trustee for future liabilities of the Fund.

### **19.8 Expenses of Trustee's retirement or removal**

All expenses associated with the retirement or removal of the Trustee are expenses of the Fund.

## **20. TRUSTEE'S POWERS**

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### **20.1 General powers**

Subject to this document, the Trustee has:

- (a) all the powers in respect of the Fund Property that it is possible under the law to confer on a trustee;
- (b) all the powers it would have if it were the absolute owner of the Fund Property and were acting in its personal capacity; and
- (c) all the powers necessary or desirable for the performance or exercise of its powers, duties and rights in respect of the Fund (including its obligations under this document).

The other provisions of this clause 20 do not limit the Trustee's general powers under this clause.

### **20.2 Power to borrow and use Fund Property as security**

The Trustee may:

- (a) borrow, raise money or otherwise obtain financial accommodation for the purposes of the Fund, on terms it thinks fit; and
- (b) use Fund Property as security, but only in relation to borrowing, raising money or obtaining financial accommodation for the purposes of the Fund.

### **20.3 Investment Power**

The Trustee may invest or apply the Fund Property in accordance with the investment objectives of the Fund and as otherwise provide for in this document.

### **20.4 Exercise of discretions by Trustee**

The Trustee has an unfettered discretion whether or not to exercise, and how and when to exercise, its powers, duties and rights under this document.

### **20.5 Management Power**

The Trustee may do whatever it thinks proper in the management and operation of the Fund.

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## 20.6 Delegation power

- (a) The Trustee may appoint an agent or delegate to perform any act or exercise any power that the Trustee can in relation to the Fund, including the power to appoint a sub-agent or sub-delegate.
- (b) Paragraph (a) includes:
  - (i) the power to appoint an attorney in respect of a dealing with Fund Property, on terms the Trustee thinks fit (including a provision authorising the attorney to appoint a sub-attorney); and
  - (ii) the power to appoint a person to act as a custodian of Fund Property, with the powers, duties and rights specified in the appointment document - for example, the appointment may authorise the custodian:
    - (A) to act within or outside Australia;
    - (B) to act in the name of the Trustee or, at its direction, in its own name or in a name nominated by the custodian and approved by the Trustee;
    - (C) to act as nominee for the Trustee; or
    - (D) to appoint sub-custodians.
- (c) The appointment may be joint, in which case the agents or delegates may act or exercise a power jointly and severally.
- (d) The agent or delegate may be an Affiliate or employee of the Trustee.
- (e) In the document appointing the agent or delegate, the Trustee may include any provisions for the protection and convenience of those who deal with the agent or delegate that the Trustee thinks fit.

## 21. TRUSTEE'S RIGHTS

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### 21.1 Trustee may hold Units

- (a) The Trustee and its Affiliates may hold and deal with Units in any capacity.
- (b) Unless otherwise expressly provided by this document or the Corporations Act, the Trustee and its Affiliates, as Unitholders, have all the rights of a Unitholder in relation to the Units they hold.

### 21.2 Trustee may deal etc with itself in other capacities

Subject to the Corporations Act, the Trustee (or any of its Affiliates to the extent applicable) may:

- (a) deal with itself (in any capacity), an Affiliate or a Unitholder, including by:
    - (i) buying Fund Property; or
    - (ii) selling property into the Fund,
- in its own right, as trustee of another trust or in another capacity;

- 
- (b) be interested in any contract or transaction with itself (in any capacity), an Affiliate or a Unitholder; or
  - (c) act in the same or similar capacity in relation to another managed investment Fund or trust.

### **21.3 Trustee not accountable**

The Trustee and its Affiliates do not have to account for, and may retain for their own benefit, any profit or benefit arising from anything referred to in clause 21.2.

## **22. EXPENSES**

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### **22.1 Trustee's expenses**

Any extraordinary or unexpected expenses incurred or payable by the Trustee in relation to the proper performance of its duties in respect of the Fund are payable out of, or can be reimbursed out of, the Fund Property to the extent that the payment or reimbursement is not prohibited by the Corporations Act. Extraordinary or unexpected expenses of the Trustee include the expenses, Taxes and liabilities listed in paragraph 2 of Schedule 1.

## **23. LIMITATION ON TRUSTEE'S LIABILITY**

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### **23.1 Limitation on liability to Unitholders generally**

If the Trustee acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Unitholders for any loss or damage suffered in any way relating to the Fund.

### **23.2 Trustee not liable for certain loss or damage**

Except as otherwise provided by law, the Trustee is not liable for any loss or damage:

- (a) caused by it relying on:
  - (i) the Register; or
  - (ii) information or a document given to it by its agent, delegate or adviser, unless it has reason to suspect that it is incorrect;
- (b) caused by it relying on a document as authentic, unless it has reason to suspect that it is not authentic;
- (c) caused by it relying on an opinion or information from an expert, unless it has reason to suspect that the expert does not have the appropriate expertise;
- (d) caused by it relying on an opinion or information from a banker or the Fund auditor (if any);
- (e) caused by it complying with a law or an order or direction of a court, Government Agency or government official;
- (f) that arises because Fund Property which is auctioned does not attract a particular price; or
- (g) something the operator of an asset title, transfer or holding system (including a Securities System) does or does not do.

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This clause 23.2 does not limit clause 23.1.

### **23.3 Trustee may limit liability**

The Trustee is not required to do anything (for example, enter into a contract) that may involve it incurring a liability unless its liability is limited in a way that the Trustee (acting reasonably) thinks appropriate and the Trustee may limit its liability in this way.

### **23.4 Other obligations and duties excluded**

All obligations and duties of the Trustee which might otherwise be implied or imposed at law or in equity are expressly excluded to the extent the law allows it.

## **24. INDEMNITIES**

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### **24.1 Trustee to be indemnified out of Fund Property**

The Trustee is to be indemnified out of the Fund Property for any loss, damage, expense or other liability incurred by it in properly performing or exercising any of its powers, duties or rights in relation to the Fund.

### **24.2 Trustee's indemnity includes liability of its agents etc**

To the extent permitted by the Corporations Act, and otherwise without limitation, the indemnity under clause 24.1 includes any loss, damage, expense or other liability incurred as a direct or indirect result of any act or omission of an agent or delegate appointed by the Trustee.

### **24.3 Trustee's indemnity additional to those at law etc and is a continuing one**

The indemnity under clause 24.1 is:

- (a) in addition to any indemnity the Trustee may have at law or in equity; and
- (b) a continuing indemnity and it applies to the Trustee after it retires or is removed as Trustee of the Fund.

## **25. TERM OF THE FUND**

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### **25.1 Establishing the Fund**

The Fund is established when the Trustee accepts the first application for the issue of a Unit.

### **25.2 Termination**

The Fund terminates on the earlier of:

- (a) **(rule against remoteness)** the day before 80 years after the Fund is established;
- (b) **(by the Trustee)** the date specified by the Trustee as the date of termination of the Fund in a notice given to Unitholders; and
- (c) **(another provision of this document or law)** the date on which the Fund terminates in accordance with another provision of this document or an order of a court or by law.

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## **26. WINDING UP THE FUND**

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### **26.1 Winding up**

On termination of the Fund, the Trustee must wind it up in accordance with this clause 26.

### **26.2 Procedure**

To wind up the Fund, the Trustee must liquidate the Fund Property and:

- (a) first, pay the expenses of the winding up;
- (b) next, pay all other fees, expenses and liabilities of the Fund; and
- (c) next, distribute the balance to Unitholders in proportion to the number of Units held by them.

### **26.3 Distribution by instalments**

The Trustee may make a distribution under clause 26.2(c) in instalments.

### **26.4 Receipt and discharge**

The Trustee may require each Unitholder to give it a receipt and discharge (in a form approved by the Trustee) before it makes a payment or distribution under clause 26.2.

### **26.5 Timing for liquidation of Fund Property**

As far as reasonably practical having regard to the interests of Unitholders, the Trustee must liquidate the Fund Property within 180 days after the termination of the Fund, but the Trustee may extend that period if it thinks it is in the interests of Unitholders to do so.

### **26.6 Provisions continue after termination of Fund**

The provisions of this document continue to apply after the date of termination of the Fund until the date of final distribution under clause 26.2(c), but during that period the Trustee must not accept any applications for Units or Redemption Requests or make any withdrawal offers.

### **26.7 Audit on winding up**

After the Fund is wound up, to the extent ASIC policy so requires, the Trustee must arrange for an independent audit of the Fund's final accounts by a registered company auditor. This clause 26.7:

- (a) applies only if the Fund is Registered immediately before it is terminated; and
- (b) despite clause 26.6, continues to apply from the date of termination of the Fund until the audit is finished.

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## **27. FINANCIAL RECORDS**

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The Trustee must keep written financial records that:

- (a) correctly record and explain transactions concerning the Fund as well as the Fund's financial position and performance; and
- (b) are prepared in accordance with the Accounting Standards.

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## **28. PAYMENT AND DISCHARGE**

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### **28.1 How payments can be made**

The Trustee may pay money to a Unitholder by paying it into the Unitholder's Deposit Account or in any other way it thinks fit.

### **28.2 Whole cents**

The Trustee will only pay whole cents, and any remaining fraction of a cent becomes Fund Property.

### **28.3 Discharge of Trustee**

- (a) A payment to a Unitholder or, in the case of joint holders of a Unit, to any of them in accordance with clause 28.1 will discharge the Trustee in respect of that payment.
- (b) A discharge or release by a Unitholder or, in the case of joint holders of a Unit, by any of them to the Trustee is a good discharge of the liability concerned.

### **28.4 Deductions for Tax**

The Trustee may deduct from any money to be paid to a Unitholder, or received from a Unitholder, any amount of Tax (or an estimate of it) that the Trustee:

- (a) is required or authorised to deduct by law; or
- (b) in its reasonable opinion, thinks should be deducted.

### **28.5 Unclaimed money**

Subject to the Corporations Act, the Trustee must deal with any unclaimed money under this document in accordance with the law relating to unclaimed money in Victoria~~New South Wales~~.

## **29. GST**

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### **29.1 Amounts exclusive of GST**

Any amount referred to in this document which is relevant in determining the amount of any payment to be made to or by the Trustee is exclusive of GST unless indicated otherwise.

### **29.2 GST indemnity**

If the Trustee is or becomes liable to pay GST on any supply under or in connection with this document made in the proper performance or exercise of any of its powers, duties or rights in relation to the Fund, the Trustee may recover the amount of that GST out of the Fund Property.

### **29.3 Refund to Fund for GST overpaid**

The Trustee must refund to the Fund any over recovery of GST by it out of the Fund Property. The Trustee need not refund to the Fund any amount for GST paid to the Commissioner of Taxation unless the Trustee is entitled to a refund or credit for that amount.



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#### **29.4 GST on expenses**

Where an expense is paid from the Fund to the Trustee or ANZ, the payment shall comprise part of the consideration for a supply by the Trustee or ANZ to the Trust treated as separate entities in accordance with Division 184 of the GST Law and for the purposes of the GST Law. This does not affect the character of the payment as an exercise of the Trustee's right of indemnity from the Fund for other purposes of this document and the Corporations Act.

### **30. NOTICES**

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#### **30.1 How to give a notice**

A notice, consent or other communication under this document is properly given if it is:

- (a) in writing;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
  - (ii) sent by fax to the fax number (if any) nominated by that person and the machine from which it is sent produces a report that states that it was sent in full; or
  - (iii) in the case of a notice, consent or other communication given by the Trustee, sent by electronic message to the electronic address (if any) nominated by that person.

A notice, consent or other communication given by the Trustee need not be signed unless the law requires it.

#### **30.2 When a notice is given**

Subject to the Corporations Act, As notice, consent or other communication that complies with this clause 30 is regarded as given and received:

- (a) if it is delivered or sent by fax or electronic message:
  - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail to the Trustee - on actual receipt; and
- (c) if it is sent by mail to any other person:
  - (i) within Australia - three Business Days after posting; or
  - (ii) to a place outside Australia - seven Business Days after posting.

### **30.3 Trustee's address for notices**

~~The Trustee's address and fax number are those set out below or another address or fax number notified (in writing) to the Unitholders by the Trustee:~~

~~Address: Level 15, 100 Queen Street, Melbourne, Victoria, 3000~~

~~Fax number: (03) 9273 5806~~

~~Attention: Product Manager, ANZ Online Investment Account~~

### **30.430.3 Unitholder's address for notices**

A Unitholder's address is that set out in the Register, but if the address is not in Australia, the Unitholder may notify the Trustee of an address in Australia to which notices or other communications may be sent.

### **30.530.4 Joint holders**

A notice or other communication to joint holders of a Unit must be given to the joint holder named first in the Register.

### **30.630.5 Person entitled to a Unit**

Every person who becomes entitled to a Unit is bound by every notice in respect of that Unit which was properly given to the person registered as the holder of the Unit before the transfer or transmission of the Unit was entered in the Register.

### **30.730.6 Signature on notices**

The Trustee may sign a notice or other communication by original or printed signature or in any other way it determines.

### **30.830.7 Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day the notice is given nor the day the action is to be taken is to be counted in working out the period.

### **30.930.8 Certificate of director or secretary**

A certificate signed by a director or secretary of the Trustee stating that a notice or other communication was given by the Trustee is admissible as evidence, and is conclusive evidence, that the notice or other communication was given.

### **30.1030.9 Notices to "lost" Unitholders**

If:

- (a) on two or more consecutive occasions a notice served on a Unitholder in accordance with this clause 30 is returned and unclaimed or with an indication that the Unitholder is not known at the address to which it was sent; or
- (b) the Trustee believes on other reasonable grounds that a Unitholder is not at the address set out in the Register or notified to the Trustee under clause 30.3,

the Trustee may give effective notice to that Unitholder by exhibiting the notice at the Trustee's registered office for at least 48 hours.

This clause 30.9 ceases to apply if the Unitholder notifies the Trustee of a new address.

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## 31. AMENDMENT

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The Trustee may amend this document by a written document, in any form it thinks fit. Subject to the Corporations Act, the Trustee must provide to all Unitholders no less than 30 days written notice prior to any amendments taking effect, except where the Trustee reasonably considers the change will not adversely affect the rights of the Unitholders.

In this clause, **amend** includes supplement and replace.

## 32. GENERAL

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### 32.1 Governing law

- (a) This document is governed by the law in force in ~~Victoria~~New South Wales.
- (b) The Trustee and the Unitholders:
  - (i) submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in ~~Victoria~~New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document; and
  - (ii) waive any right they may have to claim that those courts are an inconvenient forum.

### 32.2 Waiver of rights by Trustee

The Trustee only waives a right it has under this document by notice in writing, and:

- (a) no other conduct of the Trustee (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right by the Trustee on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right by the Trustee does not prevent any further exercise of that right or of any other right.

### 32.3 Severance

Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

### 32.4 Consents

Where this document contemplates that the Trustee may agree or consent to something (however it is described), the Trustee may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (b) agree or consent subject to conditions,

unless this document expressly contemplates otherwise.

In this clause 32.4, **agree** includes approve.

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### **33. COMPLIANCE COMMITTEE**

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#### **32.533.1 Indemnity for Compliance Committee Members**

While the Fund is Registered, if any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Fund Property in respect of that liability to the extent permitted by the Corporations Act.

### **34. COMPLAINTS**

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#### **34.1 Complaints handling procedures**

While the Fund is Registered, if a Unitholder makes or submits a complaint to the Trustee in relation to the Fund, then the Unitholder must provide all further information and assistance that the Trustee requires to enable the Trustee to understand the nature of the complaint and to the extent to which the Unitholder's rights have been adversely affected. The Trustee must:

- (a) acknowledge the complaint in writing as soon as reasonably practicable and in any event within 14 days from receipt;
- (b) use reasonable endeavours to deal with the complaint appropriately and within a reasonable timeframe having regard to the nature of the complaint;
- (c) as soon as practicable and in any event not more than 45 days after receipt by the Trustee of the complaint communicate to the Unitholder in writing:
  - (i) the remedies which the Trustee may make available to the Unitholder which may include compensation, an apology or information; and
  - (ii) the decision of the Trustee and any further avenue for complaints.

### **35. MEETINGS OF UNITHOLDERS**

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#### **35.1 Convening Meetings**

The Trustee may convene a Meeting at any time and must do so when required by the Corporations Act.

#### **35.2 Unitholders' request for Meeting – Fund not Registered**

While the Fund is not Registered:

- (a) the Trustee must call and arrange to hold a Meeting to consider and vote on a proposed Resolution on the request of Unitholders with at least 15% of the votes that may be cast on the Resolution; and
- (b) sections 252B(2), 252B(3), 252B(6), 252B(7) and 252B(8) of the Corporations Act apply to the calling of a Meeting referred to in sub-paragraph (1) as if the Fund were Registered.

#### **35.3 Members request for Meeting – Fund Registered**

While the Fund is Registered, the provisions of the Corporations Act apply to determine the circumstances if any in which a Meeting must be convened on the request of Unitholders.

#### **35.4 Notice period**

While the Fund is not Registered, at least 10 days' notice of a Meeting must be given to Unitholders, or such shorter notice as they agree.

#### **35.5 Notice while Fund Registered**

While the Fund is Registered, the requirements for notice of Meetings are governed by the Corporations Act.

#### **35.6 Trustee may determine**

Subject to this clause 35 and the Corporations Act, the Trustee may determine the time and place at which a Meeting will be convened and the manner in which the Meeting will be conducted, including a Meeting at two or more venues using any technology that gives the Unitholders as a whole a reasonable opportunity to participate.

#### **35.7 Quorum**

The quorum of a Meeting is at least two Unitholders present in person or by proxy together holding or representing at least 10% of all Units, and:

- (a) if one or more of those Unitholders is excluded from voting on any Resolution proposed at the Meeting they may still be counted towards the quorum; and
- (b) if the Fund has only one Unitholder, that one Unitholder may appoint two proxies each to exercise a proportion of the Unitholder's votes at the Meeting, and those two proxies will constitute a quorum.

#### **35.8 No quorum**

If a quorum is not present within 15 minutes after the scheduled time for the Meeting, the Meeting is:

- (a) if convened on the requisition of the Unitholders – dissolved; or
- (b) otherwise – adjourned to such place and time as the Trustee decides.

At any adjourned Meeting, those Unitholders present in person or by proxy constitute a quorum.

#### **35.9 Chairman**

Subject to the Corporations Act, the Trustee may appoint a person to chair a Meeting.

#### **35.10 Conduct of Meeting**

The decision of the chairman on any matter relating to the conduct of the Meeting is final.

#### **35.11 Adjournment**

The chairman has the power to adjourn a Meeting for any reason to a place and time as the chairman thinks fit.

#### **35.12 Postponement or cancellation of Meeting**

The chairman has the power to cancel a Meeting or postpone a Meeting for any reason to a place and time as the chairman thinks fit.



### **35.13 Voting – Fund not Registered**

- (a) While the Fund is not Registered, voting is by a show of hands, unless a poll is duly demanded or the Resolution passed is required by this deed or by law to be decided by a percentage of all Units.
- (b) Subject to the rights, obligations and restrictions attaching to any particular Units, each Unitholder who is present in person or by proxy has:
  - (i) on a show of hands, one vote; and
  - (ii) on a poll, one vote for each Unit held.
- (c) In the case of joint Unitholders, only the first name in the Register may vote unless the Trustee otherwise agrees.

### **35.14 Voting – Fund is Registered**

While the Fund is Registered, subject to clause 35.17, the provisions of the Corporations Act governing voting for meetings of members of registered schemes apply to the Fund.

### **35.15 Proxies**

Subject to clause 35.16, the provisions of the Corporations Act governing proxies for meetings of members of registered schemes apply to the Fund.

### **35.16 Validity of proxy**

The Trustee may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

### **35.17 Demand for a poll**

A poll may be demanded by the chairman, or by Unitholders present in person or by proxy holding at least 5% of Units.

### **35.18 Resolutions binding**

A Resolution by Unitholders bind all Unitholders whether or not they voted or were present at the Meeting (in the case of a Resolution passed at a Meeting) or whether or not they signed the Resolution (in the case of a Resolution in writing).

### **35.19 Objection at Meeting**

No objection may be made to any vote cast unless the objection is made at the Meeting.

### **35.20 Non-receipt**

If a Unitholder does not receive a notice (including if notice was accidentally omitted to be given to them) the Meeting is not invalidated.



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# Schedule 1

(clause 22.1)

## TRUSTEE'S EXPENSES

**1. The following expenses are not extraordinary or unexpected expenses of the Trustee**

Expenses connected with:

- (a) setting up the Fund, this document and any amendments to it (for example, drafting and stamping them);
- (b) making offers or invitations in respect of Units, including costs of preparing, distributing, advertising and promoting any Information memorandum;
- (c) marketing and promoting the Fund;
- (d) underwriting arrangements in respect of the Fund;
- (e) any actual or proposed purchase, sale or other dealing with Fund Property (including investigating and making inquiries into property intended to be acquired for the Fund);
- (f) the insurance, custody, valuation, maintenance and improvement of Fund Property;
- (g) any contract or proposed contract relating to the Fund;
- (h) the administration or management of the Fund and the Fund Property (including financial institution fees and expenses associated with the use of computers for the Fund);
- (i) appointing or engaging any agent, delegate, custodian, nominee, adviser or other person in relation to the Fund (including legal expenses on a full indemnity basis);
- (j) preparing and auditing Tax returns and accounts of the Fund;
- (k) regulatory and legislative compliance in respect of the Fund (including complying with any request or requirement of the ASIC).

**2. The following expenses would be treated under this document as extraordinary or unexpected expenses of the Trustee**

- (a) Taxes imposed on the Fund or the Trustee in relation to the Fund or its operation (but not Taxes on the Trustee's own personal income).
- (b) Expenses connected with any court proceedings, arbitration or other dispute concerning the Fund (including proceedings against the Trustee), but to the extent that the Trustee is found by a court to be in breach of trust or to have been grossly negligent, the Trustee must repay any expenses paid or reimbursed to it under this item.

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- (c) Any liability arising in respect of the Fund Property (for example, calls on shares).
  - (d) Costs of terminating or winding up the Fund.

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**EXECUTED** as a deed poll.

A person who executes this document on behalf of the Trustee under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

**EXECUTED** for and on behalf of )  
**AUSTRALIA AND NEW ZEALAND BANKING** )  
**GROUP LIMITED** )  
**ABN 11 005 357 522** under Power of Attorney )  
dated 18/11/2002, and registered in Victoria )  
Permanent Order Book No 277 Page 19 Item 7, )  
by [Geoff Cohen] who certifies that he is a Senior )  
Executive and that he has not received notice of )  
revocation of that Power in the presence of: )

[Sgd Geoff Cohen]

Signature of Attorney

[Sgd George Goyl]

Signature of Witness

28/100 Queen St

Melbourne Vic 3000

Address of Witness

## **Corporations Act Requirements**

This list is included to assist ASIC in identifying the provisions in this constitution which satisfy the requirements of the Corporations Act for constitutions of registered managed investment scheme.

| <b><u>Corporations Act</u></b>   | <b><u>Constitution</u></b> |
|--|----------------------------|
| <u>Section 601GA(1)(a) – the consideration that is to be paid to acquire an interest in the Fund</u>   | <u>Clause 7.5</u>          |
| <u>Section 601GA(1)(b) – the powers of the Trustee in relation to making investments of, or otherwise dealing with, Fund Property</u>  | <u>Clause 5</u>            |
| <u>Section 601GA(1)(c) – the method by which complaints made by members in relation to the Fund are to be dealt with</u>   | <u>Clause 34</u>           |
| <u>Section 601GA(1)(d) – winding up of the Fund</u>  | <u>Clause 26</u>           |
| <u>Section 601GA(2) – any rights the Trustee has to be paid fees out of Fund Property, or to be indemnified out of Fund Property for Fund Liabilities and expenses incurred in performing its duties. These rights must be available only in relation to the proper performance of the Trustee</u> | <u>Clauses 22 and 24</u>   |
| <u>Section 601GA(3) – any powers the Trustee has to borrow or raise money for the purposes of the Fund</u>   | <u>Clause 20.2</u>         |
| <u>Section 601GA(4) – rights of members to withdraw from the Fund</u>  | <u>Clauses 14 and 16</u>   |
| <u>Section 601GB – the constitution of a registered scheme must be contained in a document that is legally enforceable as between the members and the Trustee</u>  | <u>Clause 2.1</u>          |