

# **Consolidated Trust Deed Commonwealth Property Office Fund**

**Commonwealth Managed Investments Limited**

ACN 084 098 180

## **Including amendments made:**

- **by Amending Deed of 22 February 1999**
- **by Amending Deed of 20 June 2002**
- **pursuant to a resolution of members passed 30 September 2002**
- **by Amending Deed of 17 February 2003**
- **by Amending Deed of 13 September 2005**
- **by Amending Deed dated 21 September 2007**
- **by Deed Poll dated 22 January 2009**
- **Pursuant to a resolution of members passed 7 April 2009**
- **by Amending Deed dated 15 February 2010**
- **by Amending Deed dated 9 November 2010**
- **by Amending Deed dated 7 November 2011**

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## This trust deed

is made on 22 January 1999 by:

**Commonwealth Managed Investments Limited**

ACN 084 098 180

of Level 6, 309 George Street, Sydney New South Wales (Trustee)

## Recital

The Trustee intends that this trust deed will be the constitution for a managed investments scheme to be registered under section 601EB(1) of the Corporations Law and known as the Commonwealth Property Office Fund.

**This deed witnesses that:**

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## 1 Definitions and Interpretation

### 1.1 Definitions

(a) In this deed, unless the context otherwise requires:

**Application** means any of the following, as the case requires:

- an application for Units;
- a notification of the exercise of or application to exercise Options;  
or
- an application for Options;

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

**Approved Valuer** means a valuer appointed by the Trustee;

**Assets** means all the cash, investments, rights and other property of the Trust (including, but not limited to, each Instalment in respect of each Partly Paid Unit);

**ASX** means Australian Stock Exchange Limited and any successor to the stock exchange operated by it;

**Auditor** means the auditor from time to time appointed by the Trustee to audit the Trust;

**Business Day** has the meaning given to that term in the Listing Rules;

**Buy-Back Market Price** for a Unit on any Business Day means:

- (a) in the case of an on-market buy back, the average of the market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last 5 days on which sale in Units were recorded before the relevant Business Day; and
- (b) in all other cases, the volume weighted average traded price for all sales of Units on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day;<sup>1</sup>

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<sup>1</sup> New definition inserted by Amending Deed dated 7 November 2011

**CHES Approved Securities** means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved by the Minister as the securities clearing house under section 779B(1) of the Corporations Law, namely, ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532) in accordance with the SCH Business Rules;

**Compliance Committee** means the compliance committee for the Trust as required by section 601JA of the Corporations Law;

**Compliance Plan** means the compliance plan for the Trust as required by section 601HA of the Corporations Law;

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

**Current Unit Value** means the amount calculated as follows:

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

where:

CUV is Current Unit Value

NAV is Net Asset Value

NU is the number of Units on Issue;

**Distributable Amount** means the amount determined in accordance with clause 9.3(a);

**Distribution Calculation Date** means 30 June and 31 December in each year or such other dates as the Trustee may determine;

**Distribution Date** means a day two calendar months after the Distribution Calculation Date for the relevant Distribution Period;

**Distribution Entitlement** means the entitlement to the Distributable Amount determined in accordance with clause 9.3(c);

**Distribution Period** means:

- for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

**Exercise Price** in relation to a Unit issued on exercise of an Option, means the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with clause 5.6(c);

**Financial Year** means:

- (1) for the first Financial Year, the period ending on 30 June 1999 and commencing on the date determined by the directors of the Trustee;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and

- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

**Foreign Interests** means the Units or Options a Foreign Unit Holder would have been entitled to but for clause 4.7(a);

**Foreign Unit Holder** means a Unit Holder whose address appearing in the Register is in a country outside Australia;

**Forfeited Unit** means a Partly Paid Unit which is forfeited pursuant to clause 3.8(c) by non-payment of an Instalment;

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

**Gross Asset Value** means the sum of:

- (1) the value of all Assets; and
- (2) any other amounts which, in the opinion of the Trustee should be included for the purpose of making a fair and reasonable determination of the value of the Trust having regard to generally accepted accounting principles;

**Hedging Assets** means any assets of the Trust relating to derivative instruments used for hedging risks related to interest rates, foreign currencies or other like risks;<sup>2</sup>

**Hedging Liabilities** means any liabilities of the Trust relating to derivative instruments used for hedging risks related to interest rates, foreign currencies or other like risks;<sup>3</sup>

**Holder** means a Unit Holder or Option Holder (as the context may require);

**Instalment** means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue;

**Issue Price** in relation to a Unit or an Option means the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with the clause in part 5 pursuant to which the Unit or Option was issued and in respect of a Unit issued on the exercise of an Option, means the Exercise Price;

**Liabilities** means the liabilities in respect of the Trust and includes:

- (1) unpaid administrative costs and expenses including fees of the Trustee;
- (2) accrued charges in respect of or owing in relation to any Asset;
- (3) amounts required to meet present liabilities;
- (4) amounts of all borrowings;
- (5) any provision for Tax which in the opinion of the Trustee should be taken into account; and

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<sup>2</sup> Inserted by amending deed dated 13 September 2005.

<sup>3</sup> Inserted by amending deed dated 13 September 2005.

- (6) any other amounts required to meet liabilities or other expenditure (including deferred liabilities) which in the opinion of the Trustee should be taken into account in determining the amount of liabilities in any of the preceding paragraphs;

**Listing Rules** means the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

**Listed Issue Price** has the meaning given in clause 1.3;

**Meeting** means a meeting of Holders convened in accordance with this deed;

**month** means calendar month;

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

- (1) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Trustee determines, in consultation with the Auditor, should be made);
- (2) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the day on which the Net Asset Value is determined; and
- (3) any amount paid in advance of a call on a Partly Paid Unit;

**Official List** means the official list of ASX;

**Official Quotation** or **Officially Quoted** means official quotation by ASX of the Units or Options, as the case requires;

**Operating Income** means the gross income from operating activities calculated as income less expenses relating to earning rental, investment or development revenue, including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to:

- (1) property outgoings;
- (2) repairs and maintenance;
- (3) interest and other borrowing costs;
- (4) fees paid to the Trustee; and
- (5) any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust,

excluding, but not limited to:

- (6) any fair value movements of investment property assets and financial instruments,
- (7) finance costs to Unit Holders arising from their beneficial ownership in the Trust,
- (8) realised gains/losses on sale of investment property assets and investments; and

- (9) any other amount that the Trustee considers to be of a capital nature.<sup>4</sup>

**Option** means an option granted by the Trustee in respect of unissued Units;

**Option Holder** means the person for the time being registered as a holder of an Option, including any persons jointly registered;

**Paid-up Proportion** in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

**Partly Paid Unit** means a Unit in respect of which any portion of its Issue Price remains unpaid;

**Prospectus** means a prospectus lodged under Part 7.12 Division 2 of the Corporations Law in respect of an issue of Units or Options;

**Quarter** means each 3 month period ending on the last day of March, June, September and December in each year.

**Register** means the register of Unit Holders or Option Holders maintained by the Trustee pursuant to Chapter 2C of the Corporations Law, as the context requires;

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

**Tax Act** means the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997;

**Terms of Issue** in relation to a Unit or an Option means the terms and conditions upon which that Unit or Option is issued (other than those contained in this deed);

**Terms of Offer** in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

**Total Tangible Assets** means Gross Asset Value less the value of those Assets (if any) which the Trustee considers should properly be classified as intangible assets;

**Trust** means the trusts constituted under this deed;

**Trustee** means Commonwealth Managed Investments Limited or any other company named in the Commission's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust;

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

**Unit Holder** means a person registered as the holder of a Unit, including any persons jointly registered;

**Unit Holding** means the total number of Units held by a Unit Holder; and

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<sup>4</sup> Inserted by amending deed dated 20 June 2002 and amended by amending deed dated 13 September 2005.

**Units on Issue** means the number of Units created under this deed and not cancelled.

- (b) Unless otherwise specified in this deed, terms defined in the Corporations Law are used in this deed with the same defined meaning.

## **1.2 Interpretation**

In this deed, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any governmental or semi-governmental agency;
- (e) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (i) a reference to cash includes cheques and bank cheques;
- (j) references to sums of money are to amounts in Australian dollars; and
- (k) a reference to the proper performance of a duty is a reference to the proper performance of the duty after all available appeals from each judgment in respect of the matter have been exhausted.

### 1.3 Listed Issue Price

- (a) The Listed Issue Price for a Unit on any Business Day is:
  - (1) the weighted average traded price for a Unit for all sales on ASX for the period of 10 Business Days immediately preceding the relevant Business Day (whether or not a sale was recorded on any particular day); or
  - (2) if the Trustee believes that the calculation in paragraph (1) does not provide a fair reflection of the market price of a Unit, an amount as determined by an Approved Valuer, as being the fair market price of the Unit.
- (b) Notwithstanding clause 1.3(a):
  - (1) for the purposes of clause 5.6(b)(2), the Listed Issue Price for a Unit means an amount calculated in a manner which complies with the Corporations Law, which is set out in the Terms of Issue and which in the opinion of an Approved Valuer will approximate the market price of Units at or around the relevant date;
  - (2) for the purposes of clause 5.6(d)(4) and (5), the Listed Issue Price for a Unit is:
    - (A) the weighted average traded price for a Unit for all sales on ASX for the period of 10 Business Days immediately following the Business Day that is the record date for determining entitlements to income for the Distribution Period in relation to which the Units are to be issued (whether or not a sale is recorded on any particular day); or
    - (B) if the Trustee believes that the calculation in paragraph (A) does not provide a fair reflection of the market price of a Unit, an amount determined by an Approved Valuer as being the fair market price of the Unit.<sup>5</sup>
- (c) The Listed Issue Price of an Option on any Business Day must be determined in the same manner as the Listed Issue Price for a Unit is determined.

### 1.4 General compliance provision

- (a) A provision of this deed which is inconsistent with a provision of the Corporations Law does not operate to the extent of the inconsistency.
- (b) Clause 1.4(a) is subject to any declarations made by or exemptions granted by the Commission which are current in respect of or applicable to this deed.
- (c) This clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.

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<sup>5</sup> Clause 1.3(b) amended by amending deed dated 20 June 2002.

## **1.5 Inconsistency with the Listing Rules**

- (a) Notwithstanding anything to the contrary in this clause 1.5, this clause 1.5 has effect subject to clause 1.4
- (b) If the Trust is admitted to the Official List of ASX, the following clauses apply:
  - (1) notwithstanding anything contained in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
  - (2) nothing contained in this deed prevents an act being done that the Listing Rules require to be done;
  - (3) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
  - (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
  - (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and
  - (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency.

## **1.6 Additional Listing Rule requirements**

At all times that the Trust is admitted to the Official List:

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit except in any of the following cases:
  - (1) an Instalment which is due and payable on that Unit under Part 3 has not been paid;
  - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with Schedule 1;
  - (3) in the case of the voting right, the Holder became the holder of that Unit after the time determined under section 1109N of the Corporations Law as the specified time for deciding who held the Unit for the purpose of the meeting;
  - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
  - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
  - (6) the right is removed or changed under a court order;

- (b) a holder of a Unit must not be divested of that Unit except in any of the following cases:
  - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit is set out in the legislation or is approved by ASX as appropriate and equitable;
  - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
  - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
  - (4) the divestment is under a court order; or
  - (5) the divestment is under clause 3.9;
- (c) the Trustee must not divest a Holder of Units or forfeit Units while those Units are in a CHESS Holding as that term is defined in the SCH Business Rules. Without limitation to clause 1.5, at all times that the Trust is admitted to the Official List the Trustee must comply with SCH Business Rule 8.13.

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## **2 The Trust**

### **2.1 Trustee**

As at the date of registration of the Trust as a Registered Scheme, Commonwealth Managed Investments Limited is and agrees to act as Trustee of the Trust.

### **2.2 Name of Trust**

The name of the Trust is Commonwealth Property Office Fund. The Trustee may change the name of the Trust.

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## **3 Interest of Unit Holder**

### **3.1 Division into Units**

- (a) The beneficial interest in the Assets is divided into Units. No Unit confers an interest in a particular part of the Trust or the Assets.
- (b) A Holder may not:
  - (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
  - (2) claim or exercise any right in respect of any Asset or lodge any caveat or other notice affecting any Asset; or
  - (3) require that any Asset be transferred to a Holder.
- (c) Holders may not give any directions to the Trustee (whether at a meeting convened pursuant to sections 252B, 252C and 252D of the Corporations Law or otherwise) if it would require the Trustee to do or omit doing anything which may result in:

- (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 4.7; or
- (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

### 3.2 Fractions and splitting

- (a) Units may be issued in fractions at the discretion of the Trustee, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate such fractions.
- (c) The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:
  - (1) immediately amend the Register to record the consolidation or split;
  - (2) notify the Unit Holder within 30 days of the consolidation or split; and
  - (3) ensure that each Unit is consolidated or split on the same basis as each other Unit.

### 3.3 Issue of Partly Paid Units

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue and in accordance with this deed.

### 3.4 Joint Holders

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

- (a) the Trustee is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;

- (d) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

### **3.5 Classes of Units**

- (a) The Trustee may at any time issue Units in two or more classes.
- (b) The Trustee may convert any class of a Unit Holder's Units from one class to another class or reclassify Units from one class to another.
- (c) The Trustee must enter on the Register the class or Terms of Issue of Units held by a Unit Holder.

### **3.6 Benefits and obligations of Unit Holders and Option Holders**

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations contained in this deed apply for the benefit of and bind each Unit Holder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations contained in this deed bind each Option Holder to the extent provided in this deed. The benefits contained in this deed only apply for the benefit of Option Holders where expressly provided in this deed.
- (c) Subject to the Corporations Law, where the interests of Option Holders and Unit Holders conflict, the Trustee must prefer the interests of Unit Holders.

### **3.7 No further liability**

- (a) This clause 3.7 is subject to any separate agreement between a Unit Holder and the Trustee and to any call on Partly Paid Units which the Trustee is entitled to make under clauses 3.3 and 3.8 to 3.15.
- (b) The liability of each Holder in its capacity as such is limited to investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the Assets of the Trust.
- (e) Except as provided in clauses 3.9(a) and 3.13(h), nothing in or under this deed makes either the Trustee the agent of a Unit Holder nor does it create any relationship other than that of beneficiary and Trustee.

### **3.8 Failure to pay instalment on Partly Paid Unit**

- (a) The Trustee must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days prior to the due date for payment of an Instalment. The omission to give such notice by the Trustee or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (b) If a Unit Holder does not pay an Instalment on the due date, the Trustee must serve the Unit Holder with a notice not later than 7 days after the due date containing:
- (1) a demand for payment of all Instalments due and payable in respect of the Partly Paid Units and any interest payable;
  - (2) a statement that interest:
    - (A) runs from the due date of the Instalment until the date the Trustee receives payment of the overdue amount in full; and
    - (B) is payable at a fair market rate determined by the Trustee;
  - (3) a further due date for payment which may not be earlier than the expiration of 7 days after the date of service of the notice; and
  - (4) a warning that if payment in full is not received by the due date specified in the notice:
    - (A) the Partly Paid Unit is forfeited;
    - (B) the Trustee may offer the Forfeited Unit for sale; and
    - (C) all Costs associated with the forfeiture and any proceedings that may be necessary to recover the amount due from the Unitholder will lie with the Unitholder.

The omission to give such notice by the Trustee or the non-receipt of such notice by the Unit Holder does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.

- (c) If payment in full is not received by the due date specified in the notice issued under clause 3.8(b), the Partly Paid Unit is forfeited and the Trustee may offer the Forfeited Unit for sale.

### **3.9 Sale of Forfeited Unit**

- (a) Notwithstanding clause 3.7(e), if the Trustee offers a Forfeited Unit for sale it does so as agent for the Holder of the Forfeited Unit.
- (b) Subject to clause 3.9(c), if the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Trustee.
- (c) The Trustee must ensure that the auction is in accordance with section 254Q of the Corporations Law (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unit Holder for any loss suffered by the Unit Holder as a result of the sale.

### **3.10 Income and Capital of a Forfeited Unit**

Distribution of income and capital under part 9:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder prior to forfeiture,

must be applied in accordance with clause 3.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

### **3.11 Notice of sale of Forfeited Unit**

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.9(b), the Trustee must give notice of the sale of a Forfeited Unit:

- (a) to all Unit Holders in writing; and
- (b) by placing an advertisement in a daily newspaper circulating generally throughout Australia.

### **3.12 Cancellation of Forfeiture**

The Trustee must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Trustee the full amount of the Instalment due together with interest on that Instalment calculated under clause 3.8(b) and any other amount payable in respect of the forfeiture, including any amounts paid or payable by the Trustee in respect of the forfeiture.

### **3.13 Consequences of sale and continuing liability**

- (a) On completion of the sale of the Forfeited Unit, the Holder ceases to be the Holder of that Unit but remains liable to the Trustee for the total amount set out in the notice served under clause 3.8(b).
- (b) The Unit Holder's liability under this clause ceases as soon as the Trustee receives:
  - (1) payment in full of the amount set out in the notice under clause 3.8(b) (excluding any amount paid by an underwriter pursuant to an underwriting agreement entered into under clause 5.2);
  - (2) the Costs associated with the forfeiture; and
  - (3) the Costs of all proceedings instituted against the Unit Holder to recover the amount due.
- (c) A statement signed by a director or secretary of the Trustee setting out:
  - (1) that a Partly Paid Unit has been forfeited; and
  - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 3.14.
- (e) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must register the transferee as the Holder of the Forfeited Unit.
- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

**3.14 Proceeds of sale of Forfeited Unit**

- (a) If a Forfeited Unit is sold under clause 3.9, the Trustee must apply the proceeds of the sale in the following order and manner:
  - (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
  - (2) by paying any Costs incurred by the Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit to recover unpaid Instalments;
  - (3) by holding as an Asset, the interest accrued in respect of the outstanding Instalments calculated under clause 3.8(b);
  - (4) by holding as an Asset, the balance of all Instalments due and payable in respect of the Forfeited Units; and
  - (5) by paying the balance to the Unit Holder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the expenses listed in clause 3.14(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
- (c) Joint Holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

**3.15 Lien for Amounts Owing**

The Trustee has a first and paramount lien over Units for any amounts owing to the Trustee in respect of Units registered in the name of a Unit Holder, including any fees or unpaid calls which are payable to the Trustee in respect of those Units and also for such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unit Holders. The lien extends to distributions from time to time declared in respect of such Units but if the Trustee registers any transfer of any Units upon which it has a lien, those Units are freed and discharged from the lien.

**4 Issue of Options and Units****4.1 Number of Units issued**

- (a) If the Trustee accepts an Application for Units in whole or in part, the number of Units issued is the number determined by the Trustee by dividing the relevant Application Moneys by the Issue Price.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Moneys by the amount of the Issue Price for a Unit which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

## 4.2 Application for Units or Options

A person who wishes to subscribe for Units or Options must:

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

## 4.3 Payments to the Trustee

- (a) The Trustee must hold the payment received or property to be transferred to the Trustee on an Application on trust for the applicant until the Trustee has accepted or rejected the Application.
- (b) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
  - (1) an effective transfer of the title to the property in favour of the Trustee; and
  - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (c) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Trustee prior to the Trustee accepting the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 4.1.
- (d) If Units or Options are issued and:
  - (1) the Trustee has not received the Application Moneys in accordance with the Terms of Issue; or
  - (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee,

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Moneys for the Units or Options.
- (e) All income in respect of the payment or property received on an application for Units or Options (which has been accepted by the Trustee) prior to the issue of those Units or Options forms part of the Assets of the Trust.
- (f) Applications Moneys for Units or Options issued pursuant to a Prospectus must be paid to the Trustee, to be placed by the Trustee in an special trust account until the earlier of:
  - (1) the minimum subscription, if any (to be specified in the Prospectus) has been reached and the Trustee decides to proceed to allotment of Units; or
  - (2) the date by which the Application Moneys would need to be repaid under the Corporations Law.

Until the Trustee decides to proceed to the allotment of Units in accordance with this Part 4, it holds such Application Moneys upon bare trust for the applicant and the Trustee must comply with all obligations imposed on it in the same manner as it would be required to do if it were a company offering shares for subscription or purchase. Where Application Moneys are repayable under section 1031(1) of the Corporations Law, no interest is payable on that money and an interest rate of nil is hereby specified for the purpose of section 1031(2) of the Corporations Law.

#### 4.4 Allotment

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

#### 4.5 Trustee's discretion on Application

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

#### 4.6 Certificates

If it is not contrary to the Listing Rules, the Trustee may determine:

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

#### 4.7 Foreign Unit Holders

- (a) The Trustee may determine that Foreign Unit Holders are not to be offered Units or Options under clauses 5.6(b), (c) and (d) where it reasonably considers that:
  - (1) it would be in the best interests of the Holders; and
  - (2) not be unfair to the Foreign Unit Holders.
- (b) If the Trustee makes a determination under clause 4.7(a), the Trustee must sell the Foreign Interests and pay to each Foreign Unit Holder the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$

where:

AF is the amount to be paid to that Foreign Unit Holder;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Trustee by any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and

- (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;
- N is the aggregate number of Foreign Interests; and
- NF is the number of Foreign Interests to which that Foreign Unit Holder would otherwise have been entitled.
- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unit Holder the amount calculated in accordance with the formula in, clause 4.7(b).
- (d) The Trustee must take reasonable steps to maximise the amount payable to each Foreign Unit Holder under clause 4.7(b).

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## **5 Power to issue Units and Options**

### **5.1 Powers Cumulative**

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

### **5.2 Underwriting of Issue**

- (a) The Trustee may arrange for:
  - (1) an offer for sale, subscription or issue of Units or Options;
  - (2) the payment of Instalments in respect of Partly Paid Units; or
  - (3) the exercise of Options,to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may:
  - (1) be the Trustee or a Related Body Corporate of the Trustee; and
  - (2) take up any Units or Options not subscribed for.
- (c) The Trustee may issue Units and Options pursuant to this clause 5.2 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

### **5.3 Issues of Options**

The Trustee may offer Options for subscription in accordance with the Terms of Offer and Terms of Issue.

### **5.4 Issue of Units pursuant to Options**

The Trustee may issue a Unit or Units in accordance with the Terms of Offer and Terms of Issue of an Option.

## 5.5 Issue at fixed price

In addition to any other power the Trustee has to issue Units under this deed, the Trustee may issue Units or Options at any time to any person as follows:

- (a) before the Trust has been admitted to the Official List, at \$1.00 per Unit;<sup>6</sup>
- (b) where the Trust has been admitted to the Official List and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), Units at the Listed Issue Price on the Business Day prior to the day on which the offer or issue is made;
- (c) where the Trust has been admitted to the Official List and Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), Options at the consideration for the issue of the Option in accordance with the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to those Options are to be issued at the Listed Issue Price of a Unit immediately prior to the date upon which the Option is issued, and Units pursuant to any such Option; and
- (d) where Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust has been removed from the Official List, Units at a price not less than the Current Unit Value on the Business Day prior to the day the offer to issue the Units is made.

## 5.6 Other issues of Units and Options

The Trustee may issue Units or Options (including Units on the exercise of an Option) at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2 and 5.5, in the following cases:

- (a) Units while the Trust is included in the Official List or listed on an approved foreign exchange as defined in sub-regulation 1.2A.02(2) of the Corporations Regulations and the Units or, if the Units to be issued are in a class of Units, Units of that class have not been suspended from Official Quotation provided that:
  - (1) the issue is not to the Trustee or any person associated with the Trustee; and
  - (2) if either
    - (A) the issue (together with any other issue of Units up to one year previously, at a price determined by the Trustee, other than an issue approved or ratified by Holders or an issue pursuant to clauses 5.6(b), 5.6(c), 5.6(d) or 5.6(e))<sup>7</sup> of Units that would, immediately after the issue, comprise more than 10% of either all of the Units in the Trust or the Units on issue in the Trust in the same class as the Units comprised in the issue; or
    - (B) the amount by which the Issue Price is less than the Listed Issue Price for the Units (if applicable, of that class) exceeds 10%,

then the following requirements are also satisfied:

<sup>6</sup> Inserted by amending deed dated 22 February 1999.

<sup>7</sup> Inserted pursuant to Resolution of Members passed 30 September 2002.

- (C) the Holders approve the issue;
  - (D) if the Units to be issued are in a particular class, Holders in that class approve the issue;
  - (E) unless the Trustee reasonably considers that the issue will not adversely affect the interests of Holders in another class, Holders in that other class approve the issue;
  - (F) any notice convening a Meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;
  - (G) an approval for the purposes of clauses 5.6(a)(2)(C) to (H) is given by special<sup>8</sup> resolution of the Holders where Holders with at least 25% of the total value of all the Units of Holders entitled to vote on the question vote on the question at the Meeting; and
  - (H) if in making the calculations referred to in clause 5.6(a)(2)(G) any vote of a person to whom the interests are to be issued or any vote of any associate of that person were not counted, the resolutions would be passed;
- (b) Units offered to Unit Holders on a date not more than 20 business days before the date of the offer in proportion to the value of each Unit Holder's Units in the Trust at that date if:
- (1) the Trustee offers the Units to all Unit Holders except those foreign Unit Holders (if any) it has excluded under section 601GAA(11) of the Corporations Act;
  - (2) all the Units offered are in the same class;
  - (3) the price of all the Units offered is the same;
  - (4) the amount by which the price of a Unit is less than the Listed Issue Price determined in accordance with clause 1.3(a)(i) does not exceed 50%;
  - (5) the Trustee offers the Units to the Unit Holders at substantially the same time (provided that Units offered to, but not acquired by, Unit Holders may be issued to other persons); and
  - (6) the Trustee only issues Units to its associates as Unit Holders or in accordance with section 601GAA(12A) of the Corporations Act;<sup>9</sup>
- (c) Options and Units on the exercise of the Options, if the Options are issued pursuant to offers made at substantially the same time to only and all the then Unit Holders in proportion to the value of their Unit Holding if:
- (1) all the Options offered are in the same class;
  - (2) the Issue Price of all the Options offered is the same;
  - (3) the Exercise Price of all the Units to be issued on exercise of the Options is the same;
  - (4) the means of calculating the Exercise Price is set out in the Terms of Issue; and

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<sup>8</sup> Amended by amending deed dated 20 June 2002.

<sup>9</sup> Amended by Amending Deed dated 9 November 2010

- (5) the Exercise Price on the date of exercise of the Options is not less than 50% of the Issue Price determined in accordance with clause 5.5(b);
- (d) Units under a distribution reinvestment arrangement referred to in clause 9.8 where:
  - (1) the whole or part of a Unit Holder's Distribution Entitlement is applied in payment for the subscription for Units;
  - (2) each Unit Holder may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the Distribution Entitlement which is or would otherwise be, payable to that Unit Holder;
  - (3) all the Units issued under the arrangement are of the same class;
  - (4) the Issue Price of each Unit issued pursuant to that arrangement at substantially the same time is the same; and
  - (5) the Issue Price is not less than 50% of the Listed Issue Price of a Unit as calculated in accordance with clause 1.3(b)(2).
- (e) Units while the Trust is included in the Official List of the ASX and the Units are in a class which is quoted on the financial market operated by the ASX and trading in the class is not suspended, under an arrangement where:
  - (1) an offer for the issue of Units is made to each Unit Holder of Units in that class;
  - (2) each offer is made on the same terms and conditions and on a non-renounceable basis;
  - (3) the Issue Price is less than the Listed Issue Price during a specified period in the 30 days prior to either the date of the offer or the date of the issue; and
  - (4) no Unit Holder may be issued with Units with an application price totalling more than \$5,000 in any consecutive 12 month period, provided that an offer need not be made to any Unit Holder whose address is in a place where the Trustee reasonably considers that it is not lawful or not practical for the Trustee to offer and issue Units to the person under the arrangement.<sup>10</sup>

## 5.7 Interpretation<sup>11</sup>

For the purposes of paragraph 5.6(e):

- (a) if a trustee or nominee is expressly noted on the Register as holding Units on account of another person (**beneficiary**):
  - (1) the beneficiary is taken to be the Unit Holder in relation to those Units; and
  - (2) any issue of Units to the trustee or nominee is taken to be an issue to the beneficiary;
- (b) a reference to an offer for the issue of Units includes a reference to inviting an application for the issue of the Unit.

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<sup>10</sup> Clause 5.6(e) amended by amending deed dated 17 February 2003.

<sup>11</sup> Inserted by amending deed dated 17 February 2003.

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**5A Buy-Back of Units<sup>12</sup>**

- (a) Where the Trust has been admitted to the Official List and the Units are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), the Trustee may buy-back Units, subject to and in accordance with the Corporations Act (including any modifications of the Corporations Act) and any requirements under the Listing Rules.
- (b) Immediately following the registration of a transfer of a Unit following a buy-back under this clause 5A, the Unit is cancelled.
- (c) The purchase price payable under this clause 5A for a Unit will be determined by the Trustee (or its nominee) as follows:
  - (1) during any period in which a purchase may be made, the Trustee (or its nominee) may set a range of prices at which purchases can be made during all or part of that period in the ordinary course of trading on ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day can not exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess, if any, to be determined by the Trustee (or its nominee); and
  - (2) the purchase price must otherwise satisfy the conditions of any relief or modification of the Corporations Act

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**6 Trustee's Powers****6.1 General powers of Trustee**

- (a) Subject to this deed, the Trustee has all the powers that it is possible to confer on a trustee, and has all the powers that are incidental to ownership of the Assets as though it were the absolute and beneficial owner of the Assets.
- (b) In the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property and borrow or raise money, encumber any Asset, incur any liability, enter into joint venture arrangements or fetter any power.

**6.2 Delegation by Trustee**

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

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<sup>12</sup>Clause 5A inserted by amending deed dated 21 September 2007

### **6.3 Limitation on Liabilities<sup>13</sup>**

The Trustee must ensure that the Liabilities less any Hedging Liabilities of the Trust do not exceed sixty per cent (60%) of the Total Tangible Assets less any Hedging Assets.

### **6.4 Small Holdings**

- (a) This clause 6.4 applies while the Units are Officially Quoted.
- (b) Subject to the provisions of this clause 6.4, the Trustee may in its discretion from time to time sell any Units held by a Unit Holder without request by the Unit Holder where the Units held by a Unit Holder comprise less than a marketable parcel as provided in the Listing Rules. The Trustee may only sell Units on one occasion in any 12 month period.
- (c) The Trustee must notify the Unit Holder in writing of its intention to sell Units under this clause 6.4, and give the Unit Holder at least 6 weeks from the date of the notice in which to tell the Trustee that the Unit Holder wishes to retain the Units.
- (d) The Trustee will not sell the relevant Units before the expiry of 6 weeks from the date of the notice given under clause 6.4(c); or at all if, within the 6 weeks allowed by clause 6.4(c):
  - 1. The Unit Holder advises the Trustee that the Unit Holder wishes to retain the Units; or
  - 2. The market value of the Units held by the Unit Holder increases to at least a marketable parcel as provided in the Listing Rules.
- (e) The power to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of offers made under the takeover.
- (f) The Trustee or the purchaser of the Units must pay the costs of the sale as the Trustee decides.
- (g) The Trustee is entitled to execute on behalf of a Unit Holder any transfer of Units under this clause 6.4.

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## **7 Trustee's responsibilities and indemnities**

### **7.1 No limitation of other undertakings**

This Part 7 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

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<sup>13</sup> Amended by amending deed dated 13 September 2005.

## **7.2 Limitation of liability**

- (a) Except where the Corporations Law expressly provides otherwise:
  - (1) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee; and
  - (2) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the Assets actually vested in the Trustee in respect of the Trust.

## **7.3 Indemnities**

- (a) The Trustee is not responsible for:
  - (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
  - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
  - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,  
except where the Corporations Law provides otherwise.
- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
  - (1) any provision of any present or future law or statute of Australia or any State or Territory; or
  - (2) of any decree, order or judgement of any competent court,  
the Trustee is prevented, forbidden or hindered from doing or performing.

## **7.4 Trustee may rely on advice**

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statements or information.

## **7.5 Interested dealings by Trustee**

The Trustee or an officer or employee or Associate of the Trustee may:

- (a) be a Holder;

- (b) act in any capacity including without limitation as a representative, delegate or agent of the Trustee or any Holder;
  - (c) have an interest in or enter into a contract or transaction with:
    - (1) the Trustee or an Associate of the Trustee;
    - (2) any Holder; or
    - (3) any other person, including one whose shares or other securities form an Asset; or
  - (d) hold or deal in or have any other interest in an Asset,
- and may retain and is not required to account for any benefit derived by doing so.

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## **8 Valuation of Assets**

### **8.1 Valuation of assets**

- (a) The Trustee may at any time, cause the valuation of any Asset.
- (b) In determining whether a valuation accurately reflects the current value of an Asset, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of Assets.
- (c) Each Asset must be valued at its market value unless the Trustee determines:
  - (1) there is no market in respect of the Asset; or
  - (2) the market value does not represent the fair value of the Asset.
- (d) Where the Trustee makes a determination under clause 8.1(c), the Trustee must at the same time determine the method of valuation of the Asset.
- (e) Where any Asset is to be valued or the Gross Asset Value or Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Trustee.
- (f) Where the calculation of the Issue Price is to be made as at a particular date, the Trustee need not cause a valuation of the Assets to be performed as at that date but may rely on the most recent valuations for the purposes of that calculation.

### **8.2 Currency Conversion**

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

### **8.3 Trustee to determine Current Unit Value**

The Trustee may determine the Current Unit Value at any time.

## 9 Income and Distributions

### 9.1 Determination of income and reserves

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

### 9.2 Distribution of income

For each Distribution Period the Trustee must calculate and distribute each Unit Holder's Distribution Entitlement.

### 9.3 Distribution Entitlement<sup>14</sup>

- (a) The **Distributable Amount** for a Distribution Period is to be determined in accordance with the following formula:

$$DA = OI + C$$

Where:

DA is the amount of Distributable Amount.

OI is Operating Income.

C is any additional amount (including capital) that the Trustee has determined is distributable.

- (b) Subject to the Terms of Issue for any class of Units, each Unit Holder's Distribution Entitlement is to be determined in accordance with the following formula:

$$DA \times \frac{UH}{UI}$$

where:

DA is the Distributable Amount

UH is the aggregate of the Paid-up Proportion of each relevant Unit Holding of the Unit Holder at the close of business on the Distribution Calculation Date

UI is the aggregate Paid-up Proportion of Units on issue in the Trust at the close of business on the Distribution Calculation Date.

### 9.4 Distribution of Entitlement

- (a) The Trustee must pay to each Unit Holder its Distribution Entitlement on or before the Distribution Date.
- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution Period:
- (1) for the last Distribution Period in each Financial Year, the persons who are Unit Holders at close of business on the last day of the Distribution Period are presently entitled to the Distributable Amount of that Distribution Period;

<sup>14</sup> Amended by amending deed dated 20 June 2002.

- (2) for any other Distribution Period in each Financial Year, the persons who are Unit Holders on the books close date for that Distribution Period are presently entitled to the Distributable Amount of that Distribution Period.
- (c) The Trustee must retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Trustee under this deed or are required to be deducted by law.

### **9.5 Discharge of Trustee's obligation**

The Distributable Amount for each Distribution Period shall be distributed to persons who are Unit Holders on the books close date for that Distribution Period. It is acknowledged by Unit Holders that such payments of Distributable Amounts shall be good and complete discharge to the Trustee in respect of any liability to any person in respect of an entitlement to such Distributable Amount.

### **9.6 Change in Tax Act**

Notwithstanding clause 9.3 and 9.4, in the event that in the Financial Year commencing 1 July 2000 and subsequent Financial Years, the Trustee becomes taxable as such as if it were a company under the Tax Act then:

- (a) the Trustee shall have complete discretion as to how much, if any, of:
  - (1) the Distributable Amount for that Financial Year; or
  - (2) in years subsequent to the Financial Year commencing 1 July 2000, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unit Holders on the Distribution Date.
- (b) Each Unit Holder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 9.6(a)) shall be determined in accordance with clause 9.3(c).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 9.6(b)) to the persons who are Unit Holders on the books close date for that Distribution Period.

### **9.7 Categories and sources of income**

For any category or source of income the Trustee may keep separate accounts and allocate the income from any category or source to any Unit Holder.

## **9.8 Distribution Reinvestment Arrangements**

The Trustee may advise Unit Holders from time to time in writing that Unit Holders may on terms specified in the notice participate in an arrangement under which Unit Holders may request that all or a proportion of specified distributions due to them be satisfied by the issue of further Units.

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## **10 Remuneration of Trustee**

### **10.1 Trustee's remuneration<sup>15</sup>**

- (a) The Trustee is entitled to receive out of the Assets of the Trust a Base Fee and a Performance Fee.
- (b) The Base Fee is:
  - (1) calculated at the rate of 0.45% per annum of the Gross Asset Value less any Hedging Assets;<sup>16</sup>
  - (2) calculated and accrued on a monthly basis on the last day of each month;
  - (3) payable in arrears on a quarterly basis.
- (c) The Performance Fee is calculated at the end of each Performance Fee Period in accordance with clause 10.7 and accrued on that date. The Performance Fee is payable within 2 months of the last day of each Performance Fee Period by way of an issue of Units in accordance with clause 10.7(c) or, where a Trigger Event has occurred, in accordance with clause 10.7(d).

### **10.2 Waiver of remuneration**

To the maximum extent permitted by law, the Trustee may waive the whole or any part of the remuneration to which it would otherwise be entitled.

### **10.3 Priority of Trustee's remuneration**

The remuneration of the Trustee has priority over the payment of all other amounts payable from the Assets of the Trust.

### **10.4 Indemnity**

In addition to any other right of indemnity which it may have under this deed or at law, the Trustee is indemnified and entitled to be reimbursed out of or have paid from the Assets for all Costs incurred in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

### **10.5 Proper performance of duties**

The rights of the Trustee to be paid fees out of the Assets of the Trust, or to be indemnified out of the Assets of the Trust for liabilities or expenses incurred in relation to the performance of its duties, are available only in relation to the proper performance of those duties.

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<sup>15</sup> Amended pursuant to Resolution of Members passed on 30 September 2002.

<sup>16</sup> Amended by amending deed dated 13 September 2005.

**10.6 Reimbursement of GST<sup>17</sup>**

If a goods and services tax or similar value added tax (GST) is levied or imposed on or in respect of any supply made under or in connection with this deed, the recipient of that supply must pay to the supplier (or, the representative member if the supplier is a member of a GST group), in addition to any consideration provided for under the Trust Deed such amount as is necessary to ensure that the supplier (after payment of any GST which is imposed or levied in respect of the supply) is in the same financial position it would have been in had the GST not been imposed or levied.

**10.7 Performance Fee<sup>18</sup>**

- (a) Subject to clause 10.7(b), the Performance Fee is calculated in accordance with the following formula:

$$PF = ((0.05 \times P_1) + (0.15 \times P_2)) \times GAV$$

where:

PF is the Performance Fee for the Performance Fee Period;

GAV is the average Gross Asset Value of the Trust during the Performance Fee Period;

For the Performance Fee Period ending 31 December 2002,  $P_1$  is calculated in accordance with the following formula:

$$P_1 = \begin{cases} \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} \right) & \text{if this amount is positive and less than or equal to} \\ 0.01 & \\ 0.01 & \text{if } \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} \right) \text{ is greater than } 0.01; \\ 0 & \text{otherwise} \end{cases}$$

In each subsequent Performance Fee Period,  $P_1$  is calculated in accordance with the following formula:

$$P_1 = \begin{cases} \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} + A_{t-1} \right) & \text{if this amount is positive and less than or} \\ \text{equal to } 0.01 & \\ 0.01 & \text{if } \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} + A_{t-1} \right) \text{ is greater than} \\ 0.01 & \\ 0 & \text{otherwise} \end{cases}$$

<sup>17</sup> Inserted by amending deed dated 22 February 1999.

<sup>18</sup> Inserted pursuant to Resolution of Members passed on 30 September 2002.

For the First Performance Fee Period ending 31 December 2002,  $P_2$  is calculated in accordance with the following formula:

$$P_2 = \begin{cases} \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} - 0.01 \right) & \text{if this amount is positive} \\ 0 & \text{otherwise} \end{cases}$$

In each subsequent Performance Fee Period,  $P_2$  is calculated in accordance with the following formula:

$$P_2 = \begin{cases} \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} + A_{t-1} - 0.01 \right) & \text{if this amount is positive} \\ 0 & \text{otherwise} \end{cases}$$

where:

$T_1$  is the Trust Index at the end of the Performance Fee Period;

$T_0$  is the Trust Index at the end of the most recent previous Performance Fee Period for which PF was not zero. For the First Performance Fee Period ending 31 December 2002,  $T_0$  commences at 100;

$B_1$  is the Benchmark Index at the end of the Performance Fee Period;

$B_0$  is the Benchmark Index at the end of the most recent previous Performance Fee Period for which PF was not zero. For the First Performance Fee Period ending 31 December 2002,  $B_0$  commences at 100; and

$A_{t-1}$  is the value of  $A_t$  as calculated in the previous Performance Fee Period in accordance with clause 10.7(b).

Where, for any Performance Fee Period, PF would be greater than  $(0.0015 \times \text{GAV})$  then, the Performance Fee for this period will equal  $(0.0015 \times \text{GAV})$ .

- (b) For the First Performance Fee Period ending 31 December 2002,  $A_t$  is calculated in accordance with the following formula:

$$A_t = \begin{cases} \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} - 12/3\% \right) & \text{if this amount is positive} \\ 0 & \text{otherwise} \end{cases}$$

In each subsequent Performance Fee Period,  $A_t$  is calculated in accordance with the following formula:

$$A_t = \begin{cases} \left( \frac{T_1 - T_0}{T_0} - \frac{B_1 - B_0}{B_0} - 12/3\% + A_{t-1} \right) & \text{if this amount is positive} \\ 0 & \text{otherwise} \end{cases}$$

where:

$T_1$  is the Trust Index at the end of the Performance Fee Period;

$T_0$  is the Trust Index at the end of the most recent previous Performance Fee Period for which PF was not zero. For the First Performance Fee Period ending 31 December 2002,  $T_0$  commences at 100;

- $B_1$  is the Benchmark Index at the end of the Performance Fee Period;
- $B_0$  is the Benchmark Index at the end of the most recent previous Performance Fee Period for which PF was not zero. For the First Performance Fee Period ending 31 December 2002,  $B_0$  commences at 100; and
- $A_{t-1}$  is the value of  $A_t$  as calculated in the previous Performance Fee Period

(c) Where:

- (1) A Performance Fee is payable for a particular Performance Fee Period; and
- (2)  $T_1 - T_0$  as those terms are defined in clause 10.7(a) is negative,

the Fee payable to the Trustee will be accrued in that Performance Fee Period and paid in the next Performance Fee Period in which  $T_1$  exceeds  $T_0$ .

(d) Where no Trigger Event has occurred in a Performance Fee Period, the Performance Fee for that Performance Fee Period must be applied as application monies for an issue of Units to the Trustee or its nominee at an issue price equal to the greater of:

- (1) weighted average traded price for a Unit for all sales on ASX for the period of 10 Business Days immediately following the Business Day that is the record date for determining entitlements to income for the Distribution Period that coincides with the Performance Fee Period in relation to which Units are to be issued (whether or not a sale is recorded on any particular day); and
- (2) the net tangible asset backing per Unit on the final day of the Performance Fee Period, which is equal to the Total Tangible Assets, less the following:
  - (A) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Trustee determines, in consultation with the Auditor, should be made);
  - (B) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the final day of the Performance Fee Period; and
  - (C) any amount paid in advance of a call on a Partly Paid Unit, divided by the number of Units on Issue.
- (e) Where a Trigger Event has occurred in a Performance Fee Period, the Performance Fee for that Performance Fee Period is payable in cash to the Trustee or its nominee.

## 10.8 Definitions<sup>19</sup>

In this clause 10:

**Base Fee** means the fee calculated in accordance with clause 10.1(b);

**Benchmark Index** means the accumulation index utilising the securities included in the S&P ASX 200 Commercial Accumulation Index, excluding the Trust, as calculated by S&P Index Services, or other comparable index as selected by the Trustee from time to time using closing price series data except for the closing price at the end of the Performance Fee Period which shall be replaced by the

<sup>19</sup> Inserted pursuant to Resolution of Members passed on 30 September 2002.

weighted average trading price for all sales on ASX for the period of 20 Business Days ending on the final day of the Performance Fee Period. This closing VWAP value will be adopted as the opening value for the following Performance Fee Period. The Benchmark Index for the First Performance Fee Period will commence at 100 using the closing prices on the ASX on 1 July 2002.

**Performance Fee** means the fee calculated in accordance with clause 10.7;

**Performance Fee Period** means the 6 month period ending each 30 June and 31 December;

**Trigger Event** means any of the following:

- (a) a resolution being passed at a Meeting removing or replacing the Trustee without the recommendation of the existing Trustee;
- (b) the termination of the Trust pursuant to clause 16;
- (c) the Trust ceasing to be Officially Listed;
- (d) the Units being subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A of the Corporations Act;
- (e) Unit Holders approving a formal or informal scheme of arrangement whereby:
  - (1) the Trust is to merge with another entity; or
  - (2) there is a material change in the ownership or control of the Trust;
 and

**Trust Index** means the accumulation index for the Trust as calculated by S&P Index Services, except for the closing price at the end of the Performance Fee Period which shall be replaced by the weighted average trading price (VWAP) for the Trust for the period of 20 Business Days ending on the final day of the Performance Fee Period. This closing VWAP value will be adopted as the opening value for the following Performance Fee Period. The Trust Index for the First Performance Fee Period will commence at 100 using the closing prices for the Trust on the ASX on 1 July 2002.

## 11 Indemnity and insurance

### 11.1 Persons to whom clauses 11.2 and 11.4 apply

Clauses 11.2 and 11.4 apply to each person who is or has been a member of the Trust's Compliance Committee.

### 11.2 Indemnity

The Trustee must, from the Assets of the Trust indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 11.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Law.

### **11.3 Extent of indemnity**

The indemnity in clause 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 11.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **11.4 Insurance**

The Trustee may, from the Assets of the Trust and to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 11.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **11.5 Savings**

Nothing in clauses 11.2 or 11.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.

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## **12 Transfers**

### **12.1 Transfer**

- (a) All transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 12.1(a) unless the instrument of transfer:
  - (1) is duly stamped; and
  - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor.
- (b) While the Trust is admitted to the Official List all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options.

### **12.2 Transaction advice after transfer**

If the Trustee accepts a transfer under this part, the Trustee may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and

- (b) the balance of any Units which were not transferred.

### **12.3 No General Restriction on Transfer**

- (a) There is no restriction on the transfer of Units and, subject to clause 12.4, the Trustee may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 12.1(b).
- (b) Except as otherwise set out in this part 12, there is no restriction on any other transfer of Units or Options.

### **12.4 Restricted Securities**

Notwithstanding any other provisions of this deed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the SCH Business Rules in respect of CHES Approved Securities, the Trustee must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) in the event of a breach of the Listing Rules in relation to Units which are restricted securities, the Holder holding the Units in question ceases to be entitled to any distributions and to any voting rights in respect of those Units for so long as the breach subsists.

**12.5 Death, legal disability**

If a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the survivor (in the case of joint Holders), legal personal representative or the person entitled to Units as a result of bankruptcy or liquidation, will be recognised as having a claim to Units or Options registered in the Holder's name. The Trustee need not register any transfer or transmission pursuant to this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.

**12.6 Recognition of Holder**

- (a) The Trustee:
  - (1) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
  - (2) except as required by law or this deed, need not recognise any claim or interest in any Unit or Option by any other person.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.

**12.7 Participation in Transfer Systems**

The Trustee may determine that Units or Options which are Officially Quoted will participate in the Clearing House Electronic Sub-register System or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this part 12.

**13 Options****13.1 Terms and Subscription**

- (a) This part 13 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

**13.2 Nominees**

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Option Holder unless the Terms of Issue provide otherwise.

**13.3 Exercise**

- (a) An Option Holder may only exercise an Option in accordance with the Terms of Issue.

- (b) On the termination of or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Option Holder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.

#### **13.4 Option Holder's Rights and Interest**

- (a) An Option does not confer on the Option Holder any interest in the Assets. Option Holders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules.
- (b) Option Holders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Option Holders are entitled:
  - (1) to inspect any document which may be inspected by; and
  - (2) to be sent any document which is sent to, Unit Holders in similar circumstances.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

#### **13.5 Redemption or Repurchase**

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Trustee must make any payment to an Option Holder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 13.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 13.5(a) will form part of the Assets and the Trustee must be recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee will retain title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

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## **14 Retirement or Removal of Trustee**

### **14.1 Retirement of Trustee**

- (a) Despite any other law, the Trustee may only retire as responsible entity of the Trust in accordance with section 601FL of the Corporations Law.
- (b) On retirement or removal the Trustee must give the new responsible entity all books, documents and records relating to the Trust.

## **14.2 Name of Trust to be changed**

- (a) If Commonwealth Managed Investments Limited has retired or is removed as the Trustee, the new Trustee must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with Commonwealth Bank of Australia (ACN 123 123 124) or any of its Associates from the title of the Trust and this deed and such letters, words or expressions must not be used in any connection with the Trusts and this deed.
- (b) Clause 14.2(a) does not apply if the new Trustee obtains the consent of Commonwealth Bank of Australia not to take the action set out in that clause.

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## **15 Alterations to Trust**

Subject to section 601GC of the Corporations Law and any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

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## **16 Term of Trust and termination of Trust**

### **16.1 Term of Trust<sup>20</sup>**

The term of the Trust ends on the earlier of:

- (a) the date determined by the Trustee as the date on which the Trust is to be terminated; and
- (b) the date on which the Trust is terminated under this deed or by law.

### **16.2 Procedure on winding up of Trust**

- (a) In winding up the Trust the Trustee must:
  - (1) realise the Assets;
  - (2) pay any amount due to it under clause 16.2(c);
  - (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unit Holder who is a creditor of the Trust; and
  - (4) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unit Holders, distribute the net proceeds of realisation among the Unit Holders pro rata in accordance with the Paid-Up Proportion of Units held by Unit Holders.
- (b) The Trustee may distribute an asset of the Trust to a Unit Holder in specie. The Trustee must determine the value of the Asset to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unit Holders before the distribution is made.
- (c) The Trustee is entitled to:

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<sup>20</sup> Amended by amending deed dated 13 September 2005.

- (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unit Holders all Costs incurred or which it establishes will be incurred:
  - (A) by it before the winding up of the Trust which it has not recouped;
  - (B) by it in connection with the winding up of the Trust and the realisation of the Assets of the Trust;
  - (C) by or on behalf of any creditor of the Trustee in relation to the Trust;
  - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;
- (2) an indemnity against the amounts referred to in clause 16.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 16.2(a)(4) is made; and
- (3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Part 10;
- (d) The Trustee may postpone the realisation of the Assets for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Trustee may retain for as long as it thinks fit any part of the Assets which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 16.2(c).
- (f) The Trustee must distribute among the Unit Holders in accordance with clause 18.2 anything retained under clause 16.2(e) which is subsequently not required.

### **16.3 Audit of accounts of Trust**

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

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## **17 Meetings**

### **17.1 Meetings**

- (a) The Trustee may convene a Meeting at any time.
- (b) Part 2G.4 of the Corporations Law, the Listing Rules and the provisions of Schedule 1 apply to a Meeting.

### **17.2 Resolution by Postal Ballot**

- (a) A resolution of Holders of the Trust may be passed by the Holders completing, signing and returning copies of a written resolution which has been sent by the Trustee within a period specified by the Trustee.

- (b) In respect of such a resolution a Holder has the number of votes determined in accordance with section 253C(2) of the Corporations Law. The value of a Holder's total interests must be determined at such time as the Trustee specifies.

### **17.3 Passing of resolution**

A resolution passed at a meeting of Holders held in accordance with this deed, the Corporations Law and the Listing Rules or by postal ballot under clause 17.2 is binding on all Holders.

## **18 Complaints**

### **18.1 Complaints handling**

The Trustee must establish and maintain a procedure for dealing with complaints by Holders in relation to a Trust which is consistent with AS4269 Australian Standard on Complaints Handling or such other standard which satisfy's the requirements (if any) of the Corporations Law or any Governmental Agency from time to time.<sup>21</sup>

### **18.2 Holder Complaints**

- (a) A Holder may by notice in writing to the Trustee (or by such other method as the Trustee may approve) lodge a complaint in relation to the Trust.
- (b) The Trustee must:
- (1) record the complaint and the date it was received in a register maintained for that purpose; and
  - (2) send the Holder an acknowledgment of receipt of the complaint.

### **18.3 Handling of Complaints<sup>22</sup>**

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 18.2 in accordance with this Part 18, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (c) The Trustee must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (d) The Trustee must inform the Holder by notice in writing of:
- (1) its decision in relation to the complaint;
  - (2) the remedies available to the Holder in relation to the complaint; and
  - (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.

<sup>21</sup> Inserted by amending deed dated 22 February 1999.

<sup>22</sup> Amended by amending deed dated 22 February 1999.

## 18.4 Assistance and Information

- (a) The Trustee must provide a Holder with all reasonable assistance and information that the Holder may require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Trustee.
- (b) A Holder lodging a complaint in relation to a Trust must provide the Trustee with all information the Trustee may require in order to properly deal with and resolve the complaint.

## 19 General

### 19.1 Service of notices

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
  - (1) must be in legible writing and in English addressed:
    - (A) if to the Trustee, to its registered office;
    - (B) if to a Holder, to the Holder's address specified in the register of Unit Holders or Option Holders,

or as specified to the sender by any party by notice and in the case of a Holder, with the Trustee's prior consent;
  - (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender;
  - (3) is regarded as being given by the sender and received by the addressee:
    - (A) if by delivery in person, when delivered to the addressee; or
    - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee; or
    - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 3 hours after transmission is received, the facsimile transmission is regarded as not given or received;
    - (D) if sent by electronic messaging system, when the electronic message is received by the addressee,

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 3.00pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and
  - (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A notice or other communication to joint Holders is validly given if it is given only to the joint Holder whose name appears first on the Register.

**19.2 Method of payment, repayment or redemption**

- (a) Any money payable by the Trustee to a Unit Holder under this deed may be paid by a crossed not negotiable cheque made payable to the Unit Holder and posted to the Unit Holder's registered address.
- (b) A Unit Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Unit Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque may be reinvested in Units. The reinvestment is deemed to be made on the day the cheque is cancelled.

**19.3 Binding conditions**

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

**19.4 Governing law and jurisdiction**

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of New South Wales.

**19.5 Severability**

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

**Signed for**  
**Commonwealth Managed Investments Limited**  
by its representative  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

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## Schedule 1 - Meetings of Holders (Part 17)

- 1 Notice of meeting
 

If the Trustee omits to give a Holder notice of a Meeting or if a Holder does not receive notice, the Meeting is still valid.
- 2 Who may attend and address meeting of Unit Holders
 

The Trustee, the directors of the Trustee, the Auditor, the auditor of the Trust's Compliance Plan, and any person invited by any of them is entitled to attend and address a Meeting or an adjourned Meeting.
- 3 Quorum<sup>23</sup>
  - (a) No business may be transacted at any Meeting unless a quorum of Holders is present at the time when the meeting proceeds to business.
  - (b) The quorum for any Meeting is 2 Holders present in person, by proxy or by representative.
  - (c) A Holder is counted towards a quorum even though the Holder may not be entitled to vote on the resolution at the Meeting.
  - (d) If a quorum is not present within half an hour from the time appointed for the meeting, the Meeting must be adjourned as the chairman directs.
- 4 Adjournments
 

The chairman may adjourn a meeting for any reason to such time and place as the chairman thinks fit.
- 5 Proxies
  - (a) Any person including a Holder may act as a proxy.
  - (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
  - (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
    - (1) under its common seal (if any);
    - (2) under the hand of an officer or attorney who has been authorised by the corporation;
    - (3) under the hand of any 2 directors or a director and a secretary; or
    - (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
    - (5) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 48 hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the meeting at which the proxy proposes to vote.
  - (d) If paragraph 5(c) is not complied with, the proxy is invalid.

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<sup>23</sup> Inserted by amending deed dated 15 February 2010

- (e) The Trustee is not obliged to enquire whether a proxy has been validly given.
- (f) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (g) Paragraph 5(f) does not apply if the Trustee has notice in writing of the death, insanity or revocation before the meeting at which the proxy is to be used.

## 6 Voting

- (a) A poll is to be conducted as directed by the Chairman at the meeting or any adjournment of the meeting.
- (b) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (c) The result of the poll is regarded as the resolution of the meeting.
- (d) A poll may not be demanded on any resolution concerning:
  - (1) the election of the chairman of a meeting; or
  - (2) the adjournment of a meeting.
- (e) If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or Trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting as if the committee, Trustee or other person were the Holder.

## 7 Joint Holders

Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a Meeting under section 252B(1) of the Corporations Law;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a Meeting under section 252L(1) of the Corporations Law;
- (c) requested that a statement be distributed to members under section 252N of the Corporations Law; or
- (d) demanded a poll under section 253L of the Corporations Law.

## 8 Class Meetings

The provisions of Part 2G.4 of the Corporations Law, part 18 of this deed and this Schedule 1 relating to Meetings apply so far as they can and with such changes as are necessary, to each separate meeting of Holders of Units or Options or in a class of Units or Options.