



# **Fisher Funds Fisher Funds Investment Series Scheme Governing Document**

Fisher Funds Management Limited  
Trustees Executors Limited

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## FISHER FUNDS INVESTMENT SERIES SCHEME GOVERNING DOCUMENT

Date: 10 July 2023

### PARTIES

**Fisher Funds Management Limited** (the Manager)

**Trustees Executors Limited** (the Supervisor)

### BACKGROUND

- A The Fisher Funds Investment Series Scheme (the Scheme) consists of the following Funds:
- (a) The Fisher Funds Trans Tasman Equity Trust established by a trust deed dated 13 November 1985 (as amended) (the Trans Tasman Equity Trust Trust Deed);
  - (b) The Fisher Funds BondPlus Fund established by trust deed dated 26 September 1990 (as amended) (the BondPlus Fund Trust Deed);
  - (c) The Fisher Funds Global Fund established by a trust deed dated 13 November 1985 (as amended) (the Global Fund Trust Deed);
  - (d) The Fisher Funds CashPlus Fund established by an amendment deed dated 28 April 2008 to the consolidated Master Group Investment Funds Trust Deed dated 10 September 2007 (as amended) (the CashPlus Fund Trust Deed); and
  - (e) The Fisher Funds New Zealand Fixed Income Trust established by the Fisher Funds Master Unit Trust Trust Deed and the Conditions of Establishment of the Fisher Funds New Zealand Fixed Income Trust dated 30 May 2011 (the NZ Fixed Income Trust Trust Deed).
- B The Manager and the Supervisor amended the Trans Tasman Equity Trust Trust Deed, the BondPlus Fund Trust Deed, the Global Fund Trust Deed, the CashPlus Fund Trust Deed and the NZ Fixed Income Trust Trust Deed (together the Existing Deeds) in order to:
- (a) comply with the requirements of the Financial Markets Conduct Act 2013 (FMCA), and all other Relevant Law; and
  - (b) make a number of other minor amendments to the Existing Deeds for the more efficient operation of the Scheme as a consequence of the introduction of the FMCA; and
  - (c) consolidate the Existing Deeds into one governing document,

by substituting the Existing Deeds for a governing document dated 18 October 2016 (the Existing Governing Document).

- C The Manager and the Supervisor now wish to amend the Existing Governing Document and replace it with this deed in order to provide for several new liquidity management tools, the Trusts Act 2019 and make updating changes.
- D The Manager and the Supervisor are satisfied that these amendments will comply with the amendment provisions of the Existing Governing Document. Accordingly, the Manager and the Supervisor are satisfied that all of the amendments as contained in this deed do not have a material adverse effect on Unitholders and the Supervisor has certified to that effect as required by section 139(2) of the FMCA.

### **This Deed witnesses**

The Existing Governing Document is amended by revoking all its provisions and replacing them with the provisions set out below, so that from the date of this deed, the Scheme and the Funds will be operated, administered, and governed in accordance with the provisions of this Governing Document.

## **1 DEFINITIONS**

1.1 In this Governing Document, the following definitions apply:

*Applicant* means any person who has applied to the Manager to acquire Units in the relevant Fund including pursuant to a Switch Request issued in terms of this Governing Document.

*Application* means an application for Units in the relevant Fund made in the form from time to time prescribed by the Manager which upon completion and delivery to the Manager shall, for the purposes of a Switch, be deemed to be an Application in writing under clause 3.14(a) for Units in any of the Funds that may be selected by (or on behalf of) a Unitholder pursuant to a Switch Request.

*Assets* means, in respect of each Fund, the aggregate of the Investments of that Fund.

*Associated Person* has the meaning given to it by the FMCA. *Attributed PIE Income* has the meaning given to it in the Tax Act. *Attributed PIE Loss* has the meaning given to it in the Tax Act.

*Attribution Period* has the meaning given to it in the Tax Act.

*Auditor* means the person or persons for the time being holding the office of Auditor of the Scheme.

*Business Day* means any day, other than a Saturday or Sunday, or a public holiday (as defined in the Holidays Act 2003) as observed in Auckland or Wellington.

*Buy Spread* means the Buy Spread referred to in clause 3.30.

*Cash* includes cheque and bank cheque and where appropriate amounts directly credited from a bank account with sufficient cleared balances to fund the relevant payment to a nominated bank account.

*Commissioner* means the Commissioner of Inland Revenue.

*Custodian* means a person appointed by the Supervisor to hold all or part of the Scheme Property under clause 2.16, and includes, to the extent the context permits, any sub custodian appointed by a Custodian to hold all or part such Scheme Property under clause 2.18.

*Disclosure Document* has the meaning given to it by the FMCA and includes any PDS, Register Entry or Fund Update.

*Distribution Amount* means, in respect of a Distribution Period, the gross income of the Fund during that Distribution Period less all expenses of the Fund during that period, determined in each case on an accruals basis, or such other amount as the Manager may determine for that Distribution Period.

*Distribution Date* means 31 March or such other day the Manager shall determine.

*Distribution Period* means in relation to each Fund such period or periods as the Manager from time to time determines for the distribution of Entitlements.

*Effective Date* means in relation to the Scheme, the date that the Manager elects under clause 19(1)(a) of Schedule 4 to the FMCA to be the date the Scheme is treated as a registered scheme under FMCA.

*Entitlement* means in relation to a Unit, the amount of income to be distributed to a Unitholder in respect of that Unit.

*Entry Fee* means the fee payable to the Manager on the issuing or selling of Units referred to in clause 3.22(a).

*Establishment Deed* means, in respect of a new Fund, a deed executed by the Manager and the Supervisor by which that Fund is established in the form set out in the Schedule or such other form as the Supervisor and the Manager may agree.

*Exchange* means any recognised market in New Zealand or any other country, which brings buyers and sellers of investments together including without limitation any stock exchange market, futures market or other market in which bargains are made by whatever manner at prices at which persons are willing to buy or sell investments. Provided that in the event that an Investment is quoted on more than one Exchange, the Exchange means the Exchange nominated for the time being by the Manager.

*Existing Fund* means each Fund listed in paragraphs (a) to (e) of Background A.

*Exit Amount* means, in respect of each Fund, the aggregate price for those Units in that Fund which are being repurchased or redeemed determined in accordance with clause 5.6.



*Exit Fee* means the fee charged by the Manager for issuing Units in the Global Fund and Trans Tasman Equity Trust determined in accordance with clause 5.11.

*Exit Request* means a request by (or on behalf of) a Unitholder to the Manager that the Manager repurchase or redeem any Units in the manner specified in clauses 5.1 to 5.5 (inclusive).

*Financial Statements* has the meaning given to it in the FMCA.

*Financial Year* means in relation to the Scheme and each Fund the Financial Year determined by the Manager for the Scheme or that Fund.

*Fisher Funds Group* means Fisher Funds Management Limited and its Associated Persons.

*FMA* means the Financial Markets Authority, or any successor entity.

*FMCA* means the Financial Markets Conduct Act 2013.

*FMC Regulations* means the Financial Markets Conduct Regulations 2014.

*Fractional Unit* means that part of a Unit in respect of which there is contributed by the Applicant for the Unit an amount which is less than the amount of the full Unit Price (adjusted in accordance with clause 3.28) applicable at the time the Unit is issued.

*Fund* means an Existing Fund and each new fund established under this Governing Document.

*generally accepted accounting practice* has the meaning given in the FMCA.

*Governing Document* means this trust deed and any Establishment Deed, as amended from time to time.

*GST* means goods and services Tax chargeable in accordance with the Goods and Services Tax Act 1985.

*Holding* means in relation to each Fund at any particular time the total number of Units registered in the name of the Unitholder.

*Instalment Application* means an Application for Units in respect of all monies from whatever source paid to a Fund from time to time by or on account of a Unitholder until he or she ceases to be a Unitholder or withdraws the Application by notice in writing.

*Investment* means in respect of each Fund, any part of the Scheme Property held on trust by the Supervisor in respect of that Fund.

*Investor Class* has the meaning given to it in the Tax Act.

*Investor Interest* has the meaning given to it in the Tax Act.

*Liabilities* means debts and other obligations of the Supervisor (acting in its capacity as trustee of that Fund) payable from the Fund and the liability of the Supervisor as drawer or acceptor of a bill of exchange including all Tax payable from the Fund but excluding:

- (a) in the case of a Fund which is a PIE, where the Manager in its complete discretion considers it appropriate to do so, any liability for PIE Tax; and
- (b) contingent Liabilities or any amount which results from treating units in a Fund as a liability except to the extent the Manager decides an allowance should properly be made therefor.

*Licensed Manager* means a person who holds a licence to act as a manager of a managed investment scheme under the FMCA.

*Licensed Supervisor* means a person who holds a licence to act as a supervisor of a managed investment scheme under the Financial Markets Supervisors Act 2011.

*Manager* means Fisher Funds Management Limited or such other Licensed Manager which is appointed as the Manager for the time being of a Fund, whether original, additional or substituted.

*Minimum Application Amount* means in relation to each Fund the minimum amount of an initial investment for a Fund determined by the Manager in respect of that Fund pursuant to clause 3.18.

*Minimum Holding Amount* means in relation to each Fund the minimum amount for an investment balance in the Fund determined by the Manager in respect of that Fund pursuant to clause 5.3.

*Minimum Instalment Amount* means in relation to each Fund the minimum amount that may be invested by regular instalments determined by the Manager in respect of that Fund.

*month* means calendar month.

*Net Value* means in respect of a Fund in the Scheme, the aggregate net value of the Assets of the Fund calculated in accordance with clause 4.2.

*Net Value Per Unit* means, in respect of each Fund and on any day, the Net Value of the Assets relating to that Fund on that day divided by the Number of Units on Issue in that Fund on that day.

*Notified Investor Rate* has the meaning given to it in the Tax Act.

*Number of Units on Issue* means the total of all Units issued in respect of a Fund which have not been redeemed or cancelled after all Fractional Units have been consolidated as far as possible into whole Units.

*Office* means the registered office from time to time of the Manager.

*PDS* means, in relation to a Fund, the most recent product disclosure statement or PDS for that Fund, as defined in the FMCA.

*person* includes bank, company, corporation, corporation sole, firm, government or body of persons (incorporated or unincorporated) as well as an individual.

*PIE Tax Liability* means in respect of a Fund that is a PIE, the Tax liability of the Fund, calculated under the Tax Act.

*PIP Investor* means a person who has provided funds to be invested in a Fund on the basis that a PIP Investor Proxy will be registered as the holder of the applicable Units on that person's behalf.

*PIP Investor Proxy* means a proxy for PIE investors under the Tax Act.

*Portfolio Investment Entity* or *PIE* means a portfolio investment entity as that term is defined in the Tax Act.

*Prescribed Investor Rate* has the same meaning as defined in the Tax Act.

*Qualified Auditor* has the meaning given in the FMCA.

*Register* means the register of Unitholders of a Fund maintained in accordance with the FMCA.

*Register Entry* has the meaning given to it in the FMCA.

*Registrar* means the Manager or a person for the time being appointed to that office by the Manager to keep the Register.

*Regulated Offer* has the meaning given to it by the FMCA.

*Related Party* has the meaning given to it by the FMCA.

*Related Party Benefit* has the meaning given to it by the FMCA.

*Relevant Instructions* means instructions or directions from (or on behalf of) a Unitholder:

- (a) in relation to the acquisition or disposal of Units;
- (b) in relation to the exercise of any voting or other rights attached to Units;
- (c) in connection with any other matter relating to Units.

*Relevant Interest* means:

- (a) the beneficial owner of Units or any other beneficial interest therein whether present or future or vested or contingent; or
- (b) the power (whether direct or indirect) to exercise or control the exercise of the right to vote in respect of Units or to dispose of or to control the exercise of the right to dispose of Units.

Where a person has a Relevant Interest in a Unit by virtue of the definition set out above and:

- (c) that person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the wishes of any other person in relation to:
  - (i) the exercise, or the control of the exercise, of any right to vote in respect of the Unit;
  - (ii) the acquisition or disposition of the Unit;
  - (iii) the exercise of the power to control the acquisition or disposition;
- (d) another person has the right to exercise, to control the exercise of, to acquire or dispose of or to control the acquisition or disposition of 25% or more of the voting securities of that person,

that other person also has a Relevant Interest in the Unit.

A body corporate has a Relevant Interest in a Unit in which another body corporate that is related to that body corporate has a "Relevant Interest".

*Relevant Law* means, as appropriate, all laws applicable to the Manager (including compliance with the terms of its manager licence from the FMA), the Supervisor, the Scheme or a Fund at applicable points in time and which may include, without limitation, the FMCA and the FMC Regulations, and any frameworks or methodologies issued by the FMA under such legislation, and the Trusts Act.

*Scheme* means the Fisher Funds Investment Series.

*Scheme Property* has the meaning given in the FMCA.

*Security* means any interest or right to participate in any income, capital, assets, earnings or other property of any person.

*Sell Spread* means the Sell Spread referred to in clause 5.9.

*SIPO* has the meaning given to it by the FMC Regulations.

*Special Resolution* has the meaning given to it by the FMCA.

*Supervisor* means Trustees Executors Limited or such other Licensed Supervisor who is appointed as trustee and supervisor for the time being of the Scheme and, where the context requires or allows, this term includes any Custodian.

*Switch* means in relation to a Unitholder the repurchase or redemption of Units held by such Unitholder and the immediate Application of the proceeds (subject to clause 26.7(g)) in or towards the purchase or subscription of Units in another Fund.

*Switch Fee* means any fee the Manager may charge for issuing or selling Units paid to the Manager pursuant to a Switch Request calculated in relation to the value of the amount obtained on the repurchase or redemption of the Units.

*Switch Request* means a request by (or on behalf of) a Unitholder that the Manager give effect to a Switch.

*Tax* includes all taxes, duties, deductions, levies, imposts and other charges imposed by a government or quasi-government authority, and including penalties

and interest including, in the case of a Fund that is a PIE, the Fund's PIE Tax Liability which is attributable to a Unitholder.

*Tax Act* means the Income Tax Act 2007, and where relevant, the Tax Administration Act 1994.

*Tax Credits* means a credit against a person's Tax liability provided for in the Tax Act or any other similar credit, including in the case of a Fund that is a PIE, a refund or rebate payable to the Fund in respect of losses or excess Tax credits which is attributable to a Unitholder.

*Tax File Number* has the same meaning as in the Tax Act.

*Trusts Act* means the Trusts Act 2019.

*Unit* means an undivided part or share in the beneficial interest in the relevant Fund and includes a Fractional Unit unless in the context otherwise requires.

*Unitholder* means in relation to each Fund each person for the time being registered in the Register under the provisions of this Governing Document as the holder of a Unit and includes persons jointly or deemed jointly so registered.

*Unit Price* means, in respect of each Fund and on any day, the Net Value per Unit of that Fund on that day.

*Valuation Day* means a day on which the Assets of a Fund are valued under clause 4, being each Business Day or at such other intervals (not exceeding 31 days) as the Manager may determine.

- 1.2 The index to and headings in this Governing Document are used for convenience only and do not affect in any way its interpretation.

### **Interpretation**

- 1.3 In the interpretation of this document, the following provisions apply unless the context otherwise requires:
- (a) Words importing any gender include the other genders and the plural includes the singular and vice versa.
  - (b) Unless otherwise defined herein, a word which is given a special meaning by the FMCA shall have the same meaning in this Governing Document.
  - (c) All references herein to clauses, sub-clauses, recitals, schedules and paragraphs are to clauses, sub-clauses, schedules and paragraphs of this Governing Document and include modifications thereto from time to time in accordance with this Governing Document.
  - (d) References to statutes and regulations include all amendments re-enactments and replacements thereof.

- (e) References to currency are to the lawful currency of New Zealand.
- 1.4 The schedules to this Governing Document form part of it.
- 1.5 Where for the purposes of any provision of this Governing Document it is necessary to determine the New Zealand currency equivalent of any amount expressed in a non-New Zealand currency for the purposes of this Governing Document, such amount will be converted to New Zealand currency on a basis fixed from time to time by the Manager.
- 1.6 Where there is provision in this Governing Document for the issue or dealing in or the redemption or repurchase of Fractional Units the Manager shall in its sole discretion determine whether and how Fractional Units shall be issued or redeemed or repurchased or otherwise dealt with, as the case may be, and in the event the Manager determines in any instance to deal only in whole Units then in respect of any redemption or repurchase of Units where a Unitholder requests the redemption or repurchase of sufficient Units held by him or her to realise a specified amount their Exit Request will be deemed to relate to so many whole Units of that Unitholder as will realise at least that specified amount.
- 1.7 Notwithstanding any provision of this Governing Document, where a matter is to be or may be interpreted pursuant to any provision of this Governing Document by reference to generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets, liabilities or net assets for any other purpose), the Manager may elect not to follow such generally accepted accounting practice or the New Zealand equivalents to international financial reporting standards.
- 1.8 Footnotes used in this Governing Document do not form part of this Governing Document, are a guide only and, where they refer to legislative provisions, they are not intended to incorporate those provisions in this Governing Document or affect the interpretation of this Governing Document. However, often they will refer to the legislative provisions which have prompted the inclusion of the reference in this Governing Document to comply with a particular Act or legislation generally.
- 1.9 Where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA, which would be applicable to a Fund and are inconsistent with this Governing Document, this Governing Document shall be deemed to be modified to the extent necessary to be consistent with such frameworks or methodologies in respect of that Fund.
- 1.10 Terms implied into this Governing Document under the FMCA will apply for so long as they are implied in this Governing Document under the FMCA despite anything to the contrary in this Governing Document, and any provision in this Governing Document that is contrary to any such implied term will be void to the extent that it is contrary.

### **Trusts Act 2019**

- 1.11 The provisions of the Trusts Act are modified or excluded as follows:

- (a) Section 31 (duty not to exercise power for own benefit) is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.
- (b) Section 34 (duty to avoid conflict of interests) is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.
- (c) Section 36 (duty not to profit) is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.
- (d) Any provision of the Trusts Act or rule of law restricting the remuneration of the Manager or Supervisor including but not limited to section 37 (duty to act for no reward) of the Trusts Act is excluded from the provisions of this Governing Document and the provisions of this Governing Document are modified accordingly.

## 2 CREATION OF FUNDS

### Creation of the Scheme

- 2.1 The Scheme is established under this Governing Document, and shall be known as the "Fisher Funds Investment Series".

### Continuation of trusts

- 2.2 The Existing Funds established in accordance with the Existing Trust Deeds are part of the Scheme and continue after the Effective Date on the terms contained in this Governing Document.

### Continued appointment of Supervisor

- 2.3 The Supervisor continues as the trustee of the Funds, and agrees to act as the Supervisor of the Scheme for the purposes of the FMCA, and hold the Assets of each Fund in trust for the relevant Unitholders on the terms and conditions contained in this Governing Document.

### Continued appointment of Manager

- 2.4 The Manager continues to act as the Manager of the Scheme for the purposes of the FMCA and agrees to act as the Manager for each Fund on the terms and conditions contained in this Governing Document and Relevant Law.

### Establishment of Funds

- 2.5 The Existing Funds are set out in paragraphs (a) to (e) of Background A.
- 2.6 The Manager may at any time give notice to the Supervisor of its intention to constitute a new Fund. Each new Fund shall be established by an Establishment Deed, which will include:

- (a) a provision for the constitution of the new Fund upon the lodgement of a specified sum by way of subscription by any person for a specified number of Units in the new Fund;
- (b) the name of the new Fund;
- (c) the date of commencement of the new Fund;
- (d) any amendment to this Governing Document in respect of the new Fund approved by the Supervisor; and
- (e) any different classes of Units (if any),

in each case, to the extent applicable, together with any other specific matters relating to the Fund as the Supervisor and the Manager think fit.

2.7 Each new Fund shall come into existence upon the later of:

- (a) the commencement date stated in the Establishment Deed of the Fund; and
- (b) the lodging by the Manager with the Supervisor of the sum of \$100 to be held for the relevant Fund.

#### **Constitution of the Funds**

2.8 The Assets for each Fund shall consist of all of the Investments for the time being held by the Supervisor upon the applicable Fund including:

- (a) the proceeds of sale of any Investments;
- (b) all additions or accretions (if any) to the Assets of the Fund which arise by way of dividend, interest, premium or distribution, or which are otherwise received and are for the time being retained;
- (c) all income therefrom held pending distribution or reinvestment; and
- (d) the proceeds of any borrowing in respect of the Assets of the Fund and any Investments acquired with those proceeds.

2.9 Each Fund shall be a separate and distinct trust fund with its separate Assets and Liabilities governed by the terms and conditions of this Governing Document. All Investments made for a Fund shall be held by the Supervisor as the exclusive property of the relevant Fund and such Investments shall be held exclusively for the benefit of the Unitholders of the relevant Fund. Likewise all Liabilities incurred by the Supervisor in relation to a Fund shall be the exclusive liability of the relevant Fund.

2.10 No Unitholder in one Fund shall by virtue of being a Unitholder in such Fund have any claim on any other Fund.

2.11 The establishment of a new Fund shall not in any way vary or affect a Fund previously constituted nor give rise to any re-settlement of any such Fund.



- 2.12 Each Fund shall be known by such name as the Manager may from time to time determine.

### **Conflicts between this Governing Document and the Establishment Deed**

- 2.13 An Establishment Deed may specify provisions which are to apply to the Fund constituted under it in addition to, in place of, or by way of amendment to, the provisions of this Governing Document. Any such additions, replacements or amendments apply only to the Fund constituted under that Establishment Deed.
- 2.14 In the event of any inconsistency between the terms of this Governing Document and the terms of the Establishment Deed for a Fund, the Establishment Deed will prevail for the purposes of that Fund.
- 2.15 The provisions of the relevant Establishment Deed and this Governing Document, read together shall constitute the terms and conditions for the relevant Fund.

### **Appointment of Custodians**

- 2.16 The Supervisor may, from time to time (having consulted with the Manager), appoint in writing, any one or more persons (other than the Manager or an Associated Person of the Manager) to be Custodians in which any of the Scheme Property is to be vested.
- 2.17 The Custodian must meet the external custodianship requirements for such person under the FMCA. The Supervisor shall be jointly and severally liable with the Custodian for the performance and observance by the Custodian of all the duties and obligations imposed on it pursuant to this clause and otherwise by Relevant Law.
- 2.18 If authorised in writing by the Supervisor, subject to the Supervisor giving the Manager prior written notice, a Custodian appointed under clause 2.16 may itself appoint one or more sub-custodians (other than the Manager or an Associated Person of the Manager) in which any of the Scheme Property is to be vested. Any sub-custodian appointed under this clause 2.18 must meet the external custodianship requirements for such a person under the FMCA. The Supervisor and the Custodian shall be jointly and severally liable with the appointed sub-custodian for the performance and observance by the sub-custodian of all the duties and obligations imposed on it pursuant to this clause 2.18 and otherwise by Relevant Law.
- 2.19 Where the Supervisor appoints a Custodian, the Supervisor shall take all reasonable steps to ensure that the custodial functions for the Scheme are performed by the Custodian in the same manner and subject to the same duties and restrictions as if the Supervisor were performing the custodial functions itself and in a manner which complies with all of the obligations relating to holding the Assets as supervisor or custodian expressed or implied in this Governing Document and Relevant Law.
- 2.20 The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to clause 2.16 or 2.18 (as applicable), the fees that may be charged and the extent to which expenses will be reimbursed provided that such fees and expenses are no more than usual commercial rates.

### 3 UNITS

#### **Nature of Units**

- 3.1 The beneficial interests in a Fund shall be divided into Units.
- 3.2 Every Unit other than a Fractional Unit shall confer an equal interest in the relevant Fund and be of equal value.
- 3.3 A Fractional Unit shall confer a proportional interest in the relevant Fund but shall not confer any voting rights on the holder.
- 3.4 A Unit shall not confer any interest in any particular part of the Fund to which it relates or of any Investment and no Unitholder shall be entitled to require the transfer to them of any of the Investments comprised in a Fund.
- 3.5 Subject to the rights of Unitholders created by this Governing Document and by Relevant Law, no Unitholder shall be entitled to:
- (a) interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the Funds, powers, authorities or discretions conferred upon them or either of them by this Governing Document or in respect of a Fund; or
  - (b) by virtue of holding Units, attend meetings whether of shareholders, Unitholders or otherwise or vote or take part in or consent to any action concerning any Scheme Property or corporation in which the Scheme holds an interest.
- 3.6 The Manager may with the approval of the Supervisor determine that all Holdings of Units as at the close of business on a Business Day shall be consolidated or divided proportionately so as to alter the numbers of Units on issue with effect from the close of business on that Business Day.

#### **Creation of initial and additional Units**

- 3.7 The beneficial interest in each Fund, as originally constituted by the payment to the Supervisor of the sum of \$100, shall be divided into 100 Units or such other number as may be specified in the relevant Establishment Deed, which Units shall be held by the Manager.
- 3.8 As and when addition is made to a Fund by payment for Units, additional Units shall automatically be issued as specified in clauses 3.14 to 3.25 (inclusive).
- 3.9 The Manager, in consultation with the Supervisor, may at any time determine that no further Units will be issued in respect of a Fund or all Funds under this Governing Document either over any specified period or until the Fund is terminated.

#### **Offer of Units**

- 3.10 The Manager must not make a Regulated Offer of Units in a Fund unless:
- (a) the Scheme is registered under the FMCA;

- (b) a PDS has been prepared and lodged on the Disclose Register in respect of the Scheme and the Fund; and
  - (c) all of the information that the Register Entry is required to contain under the FMCA has been lodged on the Disclose Register with respect to the Scheme and the Fund.
- 3.11 Each Disclosure Document must comply with Relevant Law at the time and, subject to clause 3.13 otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 3.12 The Manager must use reasonable commercial endeavours to ensure that the Disclosure Documents for the Scheme and each Fund at all times comply with Relevant Law.
- 3.13 The Manager shall, unless otherwise agreed, provide to the Supervisor, with reasonable notice, drafts of all proposed Disclosure Documents (other than Fund Updates, drafts of which shall be provided to the Supervisor on request) in respect of the Scheme and each Fund so as to allow the Supervisor to review and provide comments on the draft (which the Supervisor will do in a timely manner or, if a reasonable timeframe for response has otherwise been agreed between the Manager and the Supervisor, within that timeframe).

#### **Application for and issue of Units**

- 3.14 Every person wishing to apply for or acquire Units in a Fund:
- (a) shall, in the first instance, complete and lodge with the Manager an Application signed by (or on behalf of) the Applicant in the form from time to time prescribed by the Manager;
  - (b) shall pay with the Application the Application monies, being comprised of Cash, or transfer to the Supervisor or a Custodian on account of the Fund the Investments agreed to be acquired by the Fund or such combination of them as the Manager may determine from time to time in its absolute discretion, in accordance with this Governing Document and the PDS; and
  - (c) may, if the Manager agrees, in respect of subsequent Applications make such Application by telephone or in writing or by electronic transmission.

#### **Acceptance of application**

- 3.15 The Manager shall on the date of receipt of an Application (or such other date as the Manager determines):
- (a) decide whether to accept or reject that Application in whole or in part in its absolute discretion; and
  - (b) if an Application is rejected, immediately refund or arrange for the Supervisor to refund Application monies received in respect of that rejected application,
- and, pending the Manager's decision, all Application monies (whether in cash or in Investments) must be held in a trust account by the Manager on behalf of the

relevant prospective Unitholder in accordance with Relevant Law and this Governing Document.

- 3.16 The Manager may in its absolute discretion accept or refuse to accept in whole or in part any Application (including one made by virtue of an Instalment Application) and the Manager shall not be required to give any reason or ground for such refusal.
- 3.17 On acceptance of an Application, the Manager shall:
- (a) enter, or cause to be entered the name of the relevant Unitholder on the Register of the relevant Fund, or
  - (b) where the Unitholder is already on the Register, cause the Register to be altered accordingly.
- 3.18 A Fund may have a Minimum Application Amount determined by the Manager in respect of that Fund.

### **Unit Price**

- 3.19 The Unit Price shall be determined on each Valuation Day by dividing the Net Value of the relevant Fund by the Number of Units on Issue on that day in respect of that Fund, and rounding the product in the manner, and to the number of decimal places, as the Manager may decide in its absolute discretion. For the avoidance of doubt, the Net Value used to determine the Unit Price shall not include amounts received for which Units are to be but have not been issued, and shall include amounts debited, transferred or withdrawn from Unit Holdings for which Units are to be but have not been cancelled, at the time of such determination.
- 3.20 The Manager shall be entitled to the benefit of any surplus and be liable for any deficiency of the Unit Price of a Unit owned by the Manager and sold pursuant to an Application over or below the Unit Price at which the Unit was issued to or repurchased or otherwise acquired by the Manager and the Manager shall not be obliged to account to the Supervisor the Fund or any Unitholder nor shall the Supervisor, the Fund or any Unitholder be obliged to recompense the Manager for any such surplus or deficiency over or below the Unit Price.

### **Manager's fees**

- 3.21 The Manager is entitled to receive and retain for the Manager's own benefit the Unit Price of Units owned and sold by the Manager.
- 3.22 The Manager shall be entitled to charge and retain for its own benefit:
- (a) an Entry Fee (of up to 1.5% of the Unit Price for the BondPlus Fund and New Zealand Fixed Income Trust; and up to 5.0% of the Unit Price for the CashPlus Fund, Trans Tasman Equity Trust and Global Fund) on the Application monies or value of the Investments agreed to be acquired by the Manager regardless of whether the Units are purchased from the Manager or issued from a Fund; and
  - (b) a Switch Fee.

- 3.23 Any Entry Fee shall be paid to the Manager by the Applicant at the time Units are sold or issued for Cash. Where the Application amount received is paid by the transfer of Investments, the Fund shall pay the Manager any Entry Fee in Cash, having deducted an amount equal to such Entry Fee from the application amounts before calculating the number of Units to be sold or issued at the relevant Unit Price. Where the application amount is received in Cash and the transfer of Investments, the Manager may elect either of the above methods of payment of any Entry Fee or a combination of them which would result in the same amount being deducted from the application amount and the same Entry Fee being received by the Manager as would have occurred if the Manager elected either alternative solely.
- 3.24 The Manager shall be entitled to waive from time to time the whole or any part of any Entry Fee or Switch Fee or to increase or reduce such fees. An increase of any fees shall be effective at least three (3) months after written notice has been given to existing Unitholders.
- 3.25 The Manager will not charge any Entry Fee or Switch Fee where the Units issued in a Fund arise solely in respect of a consolidation of Fractional Units or are Units issued pursuant to clauses 13.1 or 13.13.

#### **Issue or purchase of Units**

- 3.26 An Application accepted by the Manager may at the option of the Manager be treated as:
- (a) a subscription for Units to be issued from the relevant Fund; or
  - (b) a request for the purchase from the Manager of Units owned or to be acquired by the Manager in the relevant Fund,
- provided that, regardless of the alternative adopted by the Manager, the purchase or subscription price payable by Unitholders must always be the Unit Price.
- 3.27 If any payment of Application monies fails for any reason, any Units issued in relation to those Application monies will be void.

#### **Number of Units**

- 3.28 The number of Units sold or issued pursuant to an Application shall be that number of Units that have an aggregate Unit Price, as at the most recent Valuation Day, that is an amount determined by the Manager as being equal to:
- (a) the Application monies received and accepted, or in the case of the acquisition of an Investment, the purchase price or consideration for the Investment agreed by the Manager, less
  - (b) any applicable Entry Fee and any other applicable fee with fractions rounded to four (4) decimal places (or such other decimal place as the Manager determines); less
  - (c) the Buy Spread (if any) referred to in clause 3.30.
- 3.29 For the purposes of calculating the number of Units to be issued in respect of:

- (a) the first issue of Units under any Fund, the Unit Price per Unit of that Fund shall be deemed to be \$1.00;
  - (b) a Switch, the Manager will apply the Exit Amount payable to the Unitholder on the redemption or repurchase of the old Units in payment of the Application monies due in respect of the acquisition of the new Units and will pay any excess of the aggregate Exit Amount to the Unitholder.
- 3.30 The Buy Spread shall be such sum, if any, as the Manager may from time to time determine, either generally or in relation to a particular proposed issue of Units, to be a fair amount, in relation to the Units to be issued, to provide for the likely cost of purchasing or developing Assets for the Fund. The amount of the Buy Spread payable on the issue of the Units shall be applied by the Manager in payment of purchase and development costs and expenses on behalf of the relevant Fund.
- 3.31 All Application monies shall immediately be credited or paid into the bank account established by the Supervisor under clause 12.33 for the relevant Fund subject to deduction or payment therefrom of all amounts the Manager is expressly entitled by this Governing Document to receive and retain for its own benefit. The balance of the Application monies shall be paid by the Manager to the Supervisor in accordance with Relevant Law.

### **Confirmations**

- 3.32 Where required by and in accordance with Relevant Law, the Manager shall issue confirmations recording the issue of Units in a Scheme, in such form and within such time frames as the Manager shall determine.

### **Instalment Application**

- 3.33 An Application may be designated by the Applicant as an Instalment Application. The Manager may decline any Instalment Application or may from time to time refuse to accept Instalment Applications in general for any period or periods.
- 3.34 In respect of BondPlus Fund, NZ Fixed Income Trust and the CashPlus Fund, with any Instalment Application the Manager may from time to time determine:
- (a) an administration fee payable by (or on behalf of) the Unitholder in respect of each instalment payment agreed to be paid by (or on behalf of) the Unitholder to the Manager;
  - (b) a sum to be charged by the Manager as a penalty in any case where a Unitholder fails to make payment of the agreed instalment at any time during the period of twelve (12) months after the date of payment by (or on behalf of) the Unitholder of the first agreed instalment.
- 3.35 The Manager shall disclose the amount of any such administration fee and penalty to the Unitholder concerned in the PDS so as to comply with Relevant Law and such fee and penalty may only be altered by the Manager in respect of subscriptions made pursuant to that PDS at intervals of not less than one (1) year.

### **Termination of the Fund**

- 3.36 No Unit in a Fund may be issued or sold by the Manager after receipt by the Supervisor of a notice of termination for that Fund given by the Manager pursuant to clause 25.2 except with the prior consent in writing of the Supervisor.

### **Commission**

- 3.37 The Manager is entitled, at its own cost and not that of any of the Funds, to pay such commission or brokerage to any person for subscribing for, or obtaining purchases of, or subscriptions for, any Units as the Manager may from time to time determine.

## **4 VALUATIONS**

- 4.1 The market value of each Asset of or to be acquired by a Fund shall be such of the following as the Manager determines from time to time:
- (a) the latest sale price, or such other market convention, of the Asset on any recognised exchange at the time of valuation;
  - (b) the amount certified by an independent or suitably qualified person to be the fair value of the Asset; and
  - (c) the amount agreed upon between the Manager and the Supervisor on the basis of an agreed methodology as the fair value after taking account of the most recent material sales, valuations, and other information that the Manager and the Supervisor consider to be appropriate.
- 4.2 On each Valuation Day in respect of each Fund, the Manager shall calculate the Net Value of the Assets of each relevant Fund by adding the aggregate of the market value of that Fund on the relevant Valuation Day and the amount of any income that is due to be received by the Fund and deducting the aggregate of all Liabilities of that Fund determined on an accruals basis up to the time of day determined by the Manager on the relevant Valuation Day. The amount determined by the Manager must be calculated in accordance with generally accepted accounting practice where it is appropriate and reasonable to do so.
- 4.3 The Net Value shall be calculated by using a methodology determined by the Manager (after consulting with the Supervisor) from time to time, details of which are set out in a separate document lodged on the Disclose Register.
- 4.4 The Net Value per Unit of a Fund ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor and any Applicant or subscriber for, or purchaser of, Units, and all Unitholders.

## **5 REPURCHASE AND REDEMPTION OF UNITS**

### **Covenant to repurchase or redeem Units**

- 5.1 Subject to clauses 5.3, 5.4, 5.20 to 5.30, the Manager covenants with the Supervisor (for the benefit of the Unitholders as well as the Supervisor) that the Manager will at its option upon receiving an Exit Request from (or on behalf of) a Unitholder and upon compliance with the terms of this Governing Document:

- (a) either repurchase each Unit to which such request relates; or
  - (b) redeem each Unit to which such request relates.
- 5.2 Regardless of the alternative adopted by the Manager, the price payable to the Unitholder for each Unit shall always be the Exit Amount.
- 5.3 The Manager may from time to time fix a reasonable minimum number of Units that may be held, repurchased or redeemed or a minimum value for Units held, repurchased or redeemed.
- 5.4 Where the Manager receives an Exit Request, the Manager may in its sole discretion:
- (a) Unless the Exit Request relates to all the Units in a Fund held by (or on behalf of) a Unitholder, refuse to repurchase or redeem the Units to which the Exit Request relates in any case where the repurchase or redemption is of less than the minimum determined pursuant to clause 5.3 is requested; and
  - (b) If the number of Units in a Fund held by (or on behalf of) the requesting Unitholder is less than the Minimum Holding Amount for the relevant Fund, repurchase or redeem the balance of Units in that Fund held by (or on behalf of) that Unitholder as if the request relates to all the Units in that Fund held by (or on behalf of) that Unitholder.
- 5.5 An Exit Request shall be made in a form and manner (and including by electronic means or orally) that is acceptable to the Manager.

### **Exit Amount**

- 5.6 The Exit Amount of each Unit shall be the Unit Price in respect of the relevant Fund less:
- (a) any Exit Fee in respect of the Global Fund and Trans Tasman Equity Trust only; and
  - (b) the Switch Fee (if applicable); and
  - (c) the Sell Spread (if any) referred to in clause 5.9,
- calculated as at the next Valuation Day after the Exit Request is accepted.
- 5.7 The Exit Amount shall be calculated to four decimal places of a dollar (or such other decimal place as the Manager determines).
- 5.8 The amount payable on repurchase by the Manager or on redemption in respect of each Unit shall be paid to the Unitholder within a reasonable time not exceeding seven Business Days of the relevant Valuation Day.
- 5.9 The Sell Spread shall be such sum, if any, as the Manager in its discretion may determine (either generally or in relation to particular Units) to be a fair amount payable in relation to the relevant Units having regard to the Manager's estimate of the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual payments which would likely be incurred in respect of the



sale or disposal of the Assets on the date of calculation of the Unit Price for the relevant Fund.

- 5.10 An Exit Request shall be effective only on a Business Day, and shall be irrevocable once given, subject to clause 5.30.

#### **Exit Fee**

- 5.11 The Manager shall be entitled to charge and retain for its own benefit an Exit Fee in respect of the Global Fund and Trans Tasman Equity Trust on all Units issued from the relevant Fund. The Manager shall be entitled to waive from time to time the whole or any part of the Exit Fee or to increase or reduce such fee.

#### **Funds for Exit Amount**

- 5.12 Where Units relating to an Exit Request by (or on behalf of) a Unitholder are repurchased, the Manager shall pay to the Unitholder the Exit Amount out of the Manager's own funds.
- 5.13 Where the Units referred to in an Exit Request by a Unitholder are to be redeemed, the Manager shall request the Supervisor to release the Exit Amount from the relevant Fund. The Manager may pay the Unitholder the Exit Amount out of the Manager's own funds and shall be entitled to retain for its own benefit the moneys released by the Supervisor from the Fund.
- 5.14 Units are repurchased by the Manager for its own benefit and the Manager shall be entitled then or at any time thereafter to sell any or all of those Units or to have them redeemed in accordance with this Governing Document. Notwithstanding any other provision of this Governing Document, if the Manager elects at or before the time of repurchasing any Units to have the Units immediately redeemed, the Exit Amount for such redemption shall be the same as the Exit Amount at which the Manager repurchases the Units.
- 5.15 Where a Unitholder requests the repurchase of sufficient Units held by them to realise a specified amount the Exit Request shall relate to as many of the Units that will realise at least that specified amount. Any amount realised in excess of the required amount may be re-invested by the Manager on behalf of the Unitholder in a new Unit or Units or Fractional Units as if applied for immediately before the repurchase date or may be refunded to the Unitholder.
- 5.16 The Manager shall, in respect of any Fund that is a PIE from time to time, monitor and manage ongoing satisfaction of PIE eligibility criteria in such manner as it determines appropriate.
- 5.17 Unless the Manager decides otherwise, the first Units issued to a Unitholder are the first redeemed or repurchased.
- 5.18 Where the consideration for Units has not been received or cleared or transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not repurchase or redeem the Units so applied for until such payment is received by, transferred to, or such retrieved or reversed amount is repaid to the Manager.

- 5.19 For any proceeds of redemption or repurchase paid in Cash, payment in accordance with the Unitholder's instructions or, in the absence of any instructions, by direct credit to the nominated bank account specified in the relevant Register shall constitute valid payment and shall discharge the Manager and the Supervisor from any further payment obligation.

### **Suspension of repurchase and redemption**

- 5.20 This clause 5.20 applies in respect of all Funds other than the Global Fund and the Trans Tasman Equity Trust (and in respect of deferral, other than the CashPlus Fund and the NZ Fixed Income Trust) if, notwithstanding anything contained in this Governing Document,

- (a) by reason of:
- (i) a decision to terminate the Fund; or
  - (ii) financial, political or economic conditions applying in respect of any relevant market relating to the Investments of the relevant Fund; or
  - (iii) the nature of any Investment; or
  - (iv) the liquidity of the relevant Fund and the number of Exit Requests received by the Manager; or
  - (v) the occurrence or existence of any other circumstance or event;
- (b) and the Manager in good faith determines that the Manager's obligation to repurchase or redeem any Units in one or more of the Funds:
- (i) is not practicable or desirable; or
  - (ii) would be prejudicial to the interests of Unitholders of the Fund or Funds generally; or
  - (iii) would threaten the Fund's eligibility for PIE status,

then the Manager may give a repayment suspension notice (a "Suspension Notice") to any Unitholder or Unitholders and the Supervisor.

- 5.21 A Suspension Notice shall have the effect of suspending the operation of all Exit Requests relating to the relevant Fund or Funds until:
- (a) the Manager gives to the relevant Unitholders and the Supervisor notice to the effect that the Suspension Notice is cancelled; or
  - (b) 90 days after the date of the Suspension Notice or such other date that is approved by the Supervisor,

whichever is the earlier.

- 5.22 The Manager shall notify the Supervisor of its intention to issue a Suspension Notice or to cancel such notice before giving effect to the suspension or cancellation.

- 5.23 If the circumstances in clause 5.20 apply, then the Manager may, at its discretion:
- (a) determine that such Units the subject of the relevant Exit Request may be repurchased or redeemed by instalments on Valuation Days falling in a period determined by the Manager or in total at the expiration of a period determined by the Manager and in any such case the Exit Amount is determined as if the Exit Request was made on the first Business Day after the period of suspension; or
  - (b) after having consulted with the Supervisor, and regardless of whether a Suspension Notice has been given, defer the repurchase or redemption of all or any Units in any Fund (including in respect of any Exit Requests that have been received but not yet processed by the Manager as at the date of the deferral), and shall notify the Supervisor and the relevant Unitholders accordingly.
- 5.24 While there is any deferral or suspension in operation pursuant to clauses 5.20 or 5.23, the Manager shall not:
- (a) be entitled to redeem any Units held by it, or
  - (b) be obliged to repurchase Units not able to be redeemed.
- 5.25 A partial suspension may be defined by reference to proportions of Units held, or by fixing maximum dollar amounts receivable by way of Exit Amount. Transfers and Switches may be prohibited or limited in conjunction with a suspension, to ensure that its intent is not circumvented.
- 5.26 The terms for full or partial revocation of a Suspension Notice, and the period or periods of suspension may correspond to or reflect (with such adjustments as the Manager thinks fit):
- (a) the constraints of liquidity in, and realisation of, Assets of the relevant Fund; and
  - (b) the judgement of the Manager after consultation with the Supervisor as to equitable treatment of Unitholders seeking redemption or repurchase at different times, and in different amounts, or not seeking repayment.
- 5.27 In respect of the Global Fund and the Trans Tasman Equity Trust only, if the Manager determines that it is desirable for the protection of the Fund or in the interest of the Unitholders that whilst:
- (a) any relevant Exchange is closed,
  - (b) trading on such an Exchange is restricted,
  - (c) an emergency (including an emergency caused by an energy mechanical or electronic failure or malfunction) exists as a result of which it is not reasonably practicable for the Supervisor to acquire or dispose of the Investments or for the Manager to determine fairly the Unit Price or the Exit Amount; or

- (d) any moratorium is declared by the New Zealand Government or by the Government of any other country,

Units should not be repurchased or redeemed for any specified period which does not exceed 30 continuous days and where the Manager so notifies the Supervisor, the Manager shall not be obliged to repurchase or redeem Units pursuant to an Exit Request for the period so specified by the Manager.

5.28 In respect of the Global Fund, the Trans Tasman Equity Trust and the NZ Fixed Income Trust only if:

- (a) an Exit Request is received or a series of Exit Requests are received within a period of seven Business Days that relate to more in total than 2.5% of the Number of Units on Issue in the relevant Fund at the time of the request or last request; and
- (b) the Manager and the Supervisor both agree it is in the general interests of all Unitholders in that Fund to defer immediate redemption or repurchase of the total Units requested,

then such Units in the Global Fund, the Trans Tasman Equity Trust or the NZ Fixed Income Trust (as applicable) may be repurchased or redeemed by instalments over a period approved by the Supervisor or in total at the expiration of a period approved by the Supervisor. In any such case the Exit Amount shall be calculated at the Business Day or respective Business Days on which such Units are repurchased or redeemed.

5.29 If the Manager during any 21 day period receives Exit Requests in respect of the CashPlus Fund, which the Manager believes involves an amount which could detrimentally affect the interests of Unitholders in that Fund then the Manager may give a deferral notice to the relevant Unitholders and the Supervisor deferring payment. A deferral notice shall have the effect of deferring the rights of those Unitholders to whom notice has been given to have Units redeemed or purchased until the earlier of:

- (a) the date the Manager gives notice to Unitholders and the Supervisor that the deferral notice is cancelled; or
- (b) the expiration of three (3) months or such other period the Supervisor determines in good faith is in the interest of Unitholders.

5.30 Where payment is deferred under clauses 5.23 or 5.29 the Manager may in its discretion satisfy any payment due in whole or in part on an equitable basis at any time during the deferral period. Where Exit Requests are suspended:

- (a) any Unitholder who has issued an Exit Request in respect of the relevant Fund may revoke the Exit Request at any time prior to the last day of the period of suspension; and
- (b) any unrevoked Exit Request shall be processed as if the Exit Request was received on the last day of the period of suspension.

### **Requirement to maintain Minimum Holding Amount**

- 5.31 Notwithstanding anything contained elsewhere in this Governing Document, where:
- (a) the total Holding of a Unitholder in any Fund, valued with the reference to the Unit Price, is valued at less than the Minimum Holding Amount;
  - (b) the Manager gives to that Unitholder not less than 30 days' notice in writing that the Manager intends at the expiration of that period to require the repurchase or redemption of all the Units to which that Unitholder is entitled; and
  - (c) at the expiration of that period that Unitholder holds less than the Minimum Holding Amount,

then the Manager shall have the right to purchase or redeem that Unitholder's Holding with effect as at the date of expiry of the Manager's notice as if an Exit Request has then been received from the Unitholder.

### **Compulsory Redemptions**

- 5.32 The Manager may, in consultation with the Supervisor, compel the redemption of all or some of the Units held by (or on behalf of) a Unitholder, if the holding, or continued holding, of Units by (or on behalf of) that Unitholder (whether on its own or in conjunction with any other circumstances the Manager considers relevant) might in the Manager's opinion result in a legal, pecuniary, regulatory, Tax or material administrative disadvantage for the Scheme, the Fund or to the Unitholders in a Scheme or a Fund as a whole.
- 5.33 Units that are compulsorily redeemed by the Manager will be redeemed at the Exit Amount calculated at the Valuation Day on which the Units are redeemed and subject to any other deduction or adjustment the Manager may make in accordance with this Governing Document as it considers appropriate.
- 5.34 The Manager may in its discretion charge any Unitholder any legal, accounting or administrative costs associated with a compulsory redemption of their Units.

### **Redemption of Units by Manager**

- 5.35 The Manager shall be entitled at any time to redeem relevant Units held by the Manager from a Fund and the Supervisor shall, in accordance with a request to do so from the Manager, release from the Fund the aggregate Exit Amount of the Units to be redeemed. Any such redemption shall be effected at the next Valuation Day after the request is accepted.
- 5.36 All redeemed Units shall be cancelled and shall not thereafter be reissued but this shall not restrict the creation and issue of additional or new Units.
- 5.37 The Manager shall be entitled to the benefit of any surplus and be liable for any deficiency of the Exit Amount of a Unit owned by the Manager and redeemed under this clause over or below the Unit Price at which that Unit was issued to or otherwise acquired by the Manager and the Manager shall not be obliged to account to the Supervisor, the Fund or any Unitholder nor shall the Supervisor, the Fund or any

Unitholder be obliged to recompense the Manager for any such surplus or deficiency over or below the Exit Amount.

## 6 SIDE-POCKETING

### Supervisor and Manager may side-pocket

- 6.1 Where the Manager considers that it is in the interests of the Unitholders in a Fund generally to do so (for example, but without limitation, to address liquidity or pricing issues in relation to a particular Asset that might lead to the suspension of Exit Requests relating to Units in a Fund under clause 5.20), the Manager may with the approval of the Supervisor, with effect from a particular date (**Side-Pocket Record Date**), without the agreement of or consultation with Unitholders:
- (a) determine that particular Assets and Liabilities of a Fund should be quarantined in accordance with this clause 6 (the **Side-Pocketed Assets and Liabilities**); and
  - (b) reclassify, divide or otherwise reconstruct the Unit holdings of Unitholders in that Fund as at the Side-Pocket Record Date so that those holdings consist of:
    - (i) Units that relate to the Assets and Liabilities that have not been side-pocketed (the **Non-Side-Pocketed Assets and Liabilities**); and
    - (ii) Units that relate to the Side-Pocketed Assets and Liabilities.

### Notice to Unitholders

- 6.2 The Manager shall give written notice to the Unitholders of a Fund in relation to which side-pocketing has occurred under clause 6.1 as soon as reasonably practicable after the Side-Pocket Record Date stating that side-pocketing has occurred in relation to the Fund and including such other information as the Manager and the Supervisor may consider necessary (including details of any arrangements in respect of the items set out in clause 6.3).

### Side-Pocketed Assets and Liabilities

- 6.3 The provisions of this Governing Document will apply, with such modifications as are necessary, to the Side-Pocketed Assets and Liabilities and the Units relating to the Side-Pocketed Assets and Liabilities as if the relevant Fund consisted solely of the Side-Pocketed Assets and Liabilities and the related Units provided that the Manager and the Supervisor may agree special arrangements relating to the Side-Pocketed Assets and Liabilities and the related Units. Without limiting the generality of the proviso to the previous sentence, those special arrangements may include:
- (a) arrangements for how Exit Requests should be treated (including, without limitation, preventing Unitholders from making Exit Requests or cancelling any Exit Requests as necessary);
  - (b) arrangements preventing the issue of any further Units relating to the Side-Pocketed Assets and Liabilities;

- (c) arrangements for the realisation/discharge of the Side-Pocketed Assets and Liabilities;
- (d) arrangements relating to the distribution or application of the net proceeds of realisation of the Side-Pocketed Assets to or for the benefit of Unitholders holding Units relating to the Side-Pocketed Assets and Liabilities;
- (e) arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of Units relating to the Side-Pocketed Assets and Liabilities);
- (f) arrangements relating to the fees and expenses associated with, and any further liabilities that may be incurred in respect of, the Side-Pocketed Assets and Liabilities and the related Units;
- (g) arrangements relating to the recovery of PIE Tax Liability from Unitholders holding Units relating to the Side-Pocketed Assets and Liabilities (including where applicable the recovery of a PIE Tax Liability relating to Side-Pocketed Assets and Liabilities from such Unitholders by way of arrangements relating to Units (if any) held by such Unitholders that relate to the Non-Side-Pocketed Assets and Liabilities) and the payment of Tax liabilities in respect of the Fund;
- (h) arrangements that the Manager and the Supervisor consider appropriate in relation to the Fund's or the Scheme's status as a PIE; and
- (i) such other arrangements as the Manager and the Supervisor consider to be appropriate and in the interests of Unitholders of the relevant Fund generally in relation to the side-pocketing arrangements contemplated by this clause 6.

### **No new Fund**

- 6.4 For the avoidance of doubt, the side-pocketing arrangements contemplated by this clause 6 operate within the affected Fund and do not create a new and separate Fund. Unless required by law, the Manager need not prepare separate financial statements relating to the Non-Side-Pocketed Assets and Liabilities and the Side-Pocketed Assets and Liabilities provided that the Manager must prepare accounts in such form as the Supervisor considers necessary to provide adequate disclosure to Unitholders.

## **7 SWITCHING UNITS BETWEEN FUNDS**

- 7.1 The Manager covenants with the Supervisor (for the benefit of the Unitholders as well as the Supervisor) that the Manager will:
- (a) upon accepting a Switch Request from (or on behalf of) a Unitholder, but subject to clauses 5.20 to 5.30, treat such a request as though it were both:
    - (i) an Exit Request given under clause 5.5 in respect of the Fund; and
    - (ii) an Application for Units in another Fund or Funds specified the Switch Request; and

- (b) apply the Exit Amount payable to the relevant Unitholder on the repurchase or redemption of the old Units (after deduction of any Tax) in payment of the Application monies due in respect of the acquisition of the new Units.

7.2 Every Switch will at all times be effected in accordance with the relevant provisions of this Governing Document.

7.3 The Manager may, at its discretion, not apply Exit or Entry Fees and/or any Buy Spread and/or any Sell Spread in the case of all Switches or Switches meeting criteria specified by the Manager.

7.4 The Manager may reject any Switch Request. The Manager will notify the Unitholder of any rejection within seven (7) days of receipt of the Switch Request.

## 8 JOINT UNITHOLDERS

8.1 Where two or more persons are registered as the Unitholders of any Unit (joint Unitholders), they are (for the purposes of the administration of the relevant Fund and not otherwise) deemed to hold the Unit as joint tenants with benefit of survivorship subject to the following provisions:

- (a) the Registrar is not bound to register more than two persons as the Unitholders of any Unit;
- (b) the joint Unitholders of any Unit are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Unit;
- (c) on the death of any joint Unitholder, the survivor or survivors of them is or are the only person or persons recognised by the Supervisor, the Manager or the Registrar as having any title to the Unit, but the Registrar may require such evidence of death as it may deem fit;
- (d) any one of such joint Unitholders may give effectual receipts for any distribution payable to such joint Unitholders;
- (e) at any meeting of Unitholders, any one of the joint Unitholders may vote either personally or by duly authorised representative, or by attorney or proxy, in respect of the relevant Unit as if that joint Unitholder were solely entitled thereto. If more than one joint Unitholder is present personally or by representative, attorney or proxy, then the joint Unitholder so present whose name stands first in the relevant Register in respect of the relevant Unit shall alone be entitled to vote as a holder of that Unit;
- (f) only the person whose name stands first in the relevant Register as one of the joint Unitholders may:
  - (i) require delivery of any confirmation or any statement relating to the Unit;
  - (ii) be entitled to receive notices, payments or other communications from the Manager or the Supervisor; or



- (iii) give valid instructions relating to the relevant Units or effectual receipts for any distribution payable to such joint Unitholders,

and any statement, notice or communication given to such person shall be deemed to have been given to all the joint Unitholders, and the payment to and/or receipt from such person shall constitute a valid discharge to the Supervisor and the Manager for the proceeds so paid or delivered.

- 8.2 For the purposes of calculating the relevant Fund's PIE Tax Liability and attributing such liability to Unitholders and for all other purposes relating to the application of the Tax Act to the Fund as a PIE, the Manager may in its absolute discretion either treat the Unitholders as separate Unitholders (in equal shares), or treat the joint Unitholders as a single person Unitholder with a Notified Investor Rate equal to the highest Notified Investor Rate of the joint Unitholders or such other rate as the Manager thinks fit in its complete discretion.

#### **Registered holder absolute owner**

- 8.3 Save as otherwise provided in this Governing Document and subject to the provisions of the FMCA, the Manager, the Registrar, and the Supervisor shall be entitled to treat the registered holder of a Unit as the absolute owner thereof and accordingly shall not, except as ordered by a court of competent jurisdiction or as required by statute, be bound to recognise (even when having notice thereof) any equitable or other claim to or interest in the Unit on the part of any other person. The Registrar need not mark any Unit in the Register in such a way as to identify it as being held in respect of a particular Fund.

## **9 TRANSFER OF UNITS**

### **Transfer of Units**

- 9.1 Subject to the provisions of this Governing Document, a Unit in a Fund may be transferred.
- 9.2 The Manager may register a transfer of Units in a Fund from a Unitholder to another person by:
- (a) cancelling the number of Units sought to be transferred without any payment to the Unitholder; and
  - (b) issuing to the transferee such number of Units as are cancelled pursuant to paragraph (a) above (less any Units cancelled for Tax purposes), treating the transferee as having satisfied payment of the Unit Price by the cancellation of the Units referred to in paragraph (a) above.

### **Form of instrument of transfer**

- 9.3 The instrument of transfer of any Unit must be in writing in form and execution satisfactory to the Registrar and shall comply with Relevant Law and other requirements as the Manager may from time to time specify.

### **Execution of instrument of transfer**

- 9.4 Subject to Relevant Law, the instrument of transfer of any Unit shall be signed by both the transferor and the transferee. The transferor is deemed to remain the Unitholder until the transfer of such Unit is entered in the Register.

### **Refusal to register transfers**

- 9.5 The Registrar shall refuse to register any transfer:
- (a) unless the Unitholder has paid all duties, Tax (including GST) and other commissions, fees and charges in respect of the transfer of the relevant Units;
  - (b) if the transfer does not comply with Relevant Law, the Disclosure Documents, the provisions of this Governing Document;
  - (c) if the transfer would result in the transferor or transferee holding less than the Minimum Holding Amount for that Fund;
  - (d) without limiting clause 24.2, if any liability falls on the Unitholder in respect of the Units and the Manager is not satisfied that:
    - (i) the transferee acknowledges or is otherwise bound by the liability; and
    - (ii) the transferee is appropriately credit-worthy in relation to the liability; or
    - (iii) where allowing the transfer the transfer would threaten the Fund's eligibility as a PIE; or
  - (e) until the Manager has received in respect of the transferor such information as is usually required of an applicant to buy or subscribe for such Units from or through the Manager (including payment instructions and customer verification).
- 9.6 Prior to any transfer of units, the manager may adjust a Unitholder's interest in accordance with clause 26.7.

### **Retention of instruction of transfer**

- 9.7 Every instrument of transfer of a Unit that is registered, shall for such period as the Manager may determine, be retained by the Manager after which (subject to Relevant Law or this Governing Document to the contrary) the Manager may destroy it.

## **10 TRANSMISSION OF UNITS**

- 10.1 The following persons may be registered as the Unitholder in respect of Units or may validly transfer Units:
- (a) the executor or administrator of a deceased Unitholder (not being one of several joint Unitholders), and (in the case of the death of one or more joint Unitholders) the survivor or survivors of those Unitholders;

- (b) the property manager of a Unitholder who is subject to a Court Order under the Protection of Personal and Property Rights Act 1998 or attorney under an enduring power of attorney; or
  - (c) any person becoming entitled to Units in consequence of insolvency, bankruptcy, liquidation, arrangement or composition with creditors, assignment for the benefit of creditors or scheme of arrangement of any Unitholder or otherwise than by transfer.
- 10.2 Any person becoming entitled to any Units in consequence of the death of any Unitholder, or pursuant to clause 10.1 must produce such evidence of capacity or of title as the Manager may think sufficient to establish that person's entitlement to such Units. This provision shall not apply in the case of a person who becomes entitled as a survivor of persons registered as joint holders.
- 10.3 Registration of a transmission of Units to any person may be refused by the Registrar in the same circumstances that would apply to a transfer.

## 11 REGISTER OF UNITHOLDERS

- 11.1 The Manager shall ensure there is kept and maintained in New Zealand in respect of each Fund an up-to-date Register of Unitholders in manual, electronic or other form as is approved by the Manager. Such Register shall:
- (a) be kept in the manner;
  - (b) contain the content;
  - (c) be audited or reviewed; and
  - (d) be available for inspection; as required by the FMCA.
- 11.2 The Registrar shall be the Manager, or any delegate selected by the Manager, and may include the Supervisor or its Associated Persons.
- 11.3 The Supervisor and the Manager are entitled to rely upon entries in the Register as being correct if it reasonably believes that the Register has been adequately maintained.

### **Unitholders to notify changes**

- 11.4 Any change of name or address, Tax File Number or Prescribed Investor Rate of any Unitholder shall be notified by (or on behalf of) the Unitholder, in writing or in any other manner approved by the Manager, to the Manager or any Registrar who shall alter the relevant Register or cause the relevant Register to be altered accordingly.

## 12 MANAGEMENT OF THE FUNDS

### **Powers of the Manager**

- 12.1 The Manager, in performing its functions as the manager of the Scheme, must comply with the general duties applicable to it under the FMCA, and in exercising any

powers or performing any duties as Manager, comply with the relevant professional standard of care under the FMCA.

- 12.2 Subject to Relevant Law and the powers reserved to the Supervisor by this Governing Document, each Fund shall be managed and administered by the Manager and without limiting the generality of the foregoing the Manager is empowered to (in each case in accordance with the SIPO which covers the Fund):
- (a) manage Investments and determine the terms of sales, purchases and other dealings with Investments;
  - (b) make all decisions relating to Investments including acquisition and sale decisions, the acceptance or rejection of takeover offers and Cash and other issues, the Investment of dividends and the exercise of voting rights in respect of Investments;
  - (c) make all decisions relating to lending or borrowing by a Fund (including stock lending) and the terms of such lending, borrowing and any securities relating to such borrowing;
  - (d) determine the terms of all contracts, rights and other matters relating to each Fund's Investments or Liabilities;
  - (e) appoint and engage solicitors and other consultants and advisors, investment managers, and administration managers, and the Auditor, subject to the terms in clause 20.4, on such terms as the Manager determines;
  - (f) enter into any contract for the purpose of hedging against or providing for or spreading or reducing the risk of any loss in respect of any Investment or class of Investment or liability which might result from any circumstance whatsoever including fluctuations in any currency or currencies or interest rates or other financial risks;
  - (g) without limiting clause 12.2(f) grant or take up options to purchase or sell any Investment;
  - (h) elect that the Fund is a PIE, or, where an election has previously been made for a Fund, elect that the Fund will no longer be a PIE; and
  - (i) enter into any underwriting, agreement to underwrite, sub underwriting or agreement to sub underwrite any issue of securities which when issued would constitute an Investment and, subject to the terms of this Governing Document and Relevant Law, the Supervisor shall give effect to all such decisions or the exercise of all such powers.

### **Manager's duties**

- 12.3 The Manager shall perform each of the following specific duties in relation to the Scheme:
- (a) establishing and maintaining the Register, and maintaining accounting records, in accordance with the requirements of the FMCA and this Governing Document;

- (b) providing Unitholders with information, notices and disclosures required to be given to them under the FMCA;
- (c) discharging all functions and duties with respect to unitisation and valuations;
- (d) ensuring compliance by the Scheme with the requirements of Relevant Law;
- (e) use its reasonable endeavours to ensure that, if a Fund is a PIE, that the Fund meets the eligibility requirements for PIEs in the Tax Act;
- (f) maintaining all accounting records for the Scheme and allowing for inspection of those records to the extent required by the FMCA;
- (g) arranging for the preparation, audit and lodgement of the Financial Statements for the Scheme and each Fund, and the preparation of the
- (h) Scheme's annual reports in accordance with the requirements of the FMCA;
- (i) making available to the Supervisor or to the Custodian or the Auditor the whole of the records of the Manager kept pursuant or in relation to this Governing Document whether kept at the Manager's registered office or elsewhere;
- (j) without limiting sections 147 to 151 of the FMCA, giving the Supervisor or the Custodian or the Auditor such oral or written information and such reports and certificates as may be agreed from time to time between the Manager and the Supervisor or as required by Relevant Law or requested by the Supervisor under Relevant Law in order for the Supervisor to perform its duties under the FMCA (such agreement shall not be unreasonably withheld);
- (k) at the request of the Supervisor, giving the Supervisor or the Custodian or the Auditor such oral or written information as may be required with respect to matters relating to the Manager as the manager of the Scheme provided that the Supervisor shall only request such information in the following circumstances:
  - (i) after consultation with the Manager; and
  - (ii) if the Supervisor believes that the Manager is unable or is likely to become unable to carry out its obligations under this Governing Document and the Supervisor certifies its belief and the reasons for such request in writing to the Manager;
- (l) providing to the Supervisor on request such information or access to employees or board members of, and (where practical) service providers to, the Manager as the Supervisor reasonably requires;
- (m) notifying the Supervisor if it becomes aware of any issue or circumstance which a reasonable person would believe or anticipate may have a material adverse effect on the interests of Unitholders or the Manager's licence under the FMCA; and

- (n) exercising all such other powers, authorities, functions, duties and discretions as are incidental to the above.

12.4 In performing the above functions and duties, the Manager shall act in accordance with the terms of this Governing Document, and the Relevant Law applying to the Manager.

#### **Unit pricing errors**

12.5 Where there has been an error in the calculation of a Unit Price, the Manager has the power to alter a Unitholder's Holding to the extent reasonably practicable in the circumstances to address partly or entirely the impact of the error in the calculation of the Unit Price provided such alteration does not adversely affect the relevant Unitholder's Holding or the position of other Unitholders, as compared with the position such Unitholder would have been in had the error in the calculation of the Unit Price not occurred.

12.6 The Manager must report to the Supervisor in relation to any material error in the calculation of a Unit Price or material non-compliance with any methodology for pricing Units in a Fund set out in this Governing Document or notices issued by the FMA, and must correct such error or non-compliance and take prescribed steps to the extent required by the FMCA.

12.7 If, under Relevant Law, a reimbursement and compensation is payable to a Unitholder or a former Unitholder, the Manager must comply with all its obligations under those requirements except that the Manager may, in consultation with the Supervisor, choose not to pay any reimbursement or compensation to a Unitholder or a former Unitholder for an amount less than \$20 or such other amount as the Manager and the Supervisor may agree from time to time.

#### **Manager's power to delegate**

12.8 The Manager may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) on notice to the Supervisor to perform any act, or exercise any discretion within the Manager's power under this Governing Document and Relevant Law (including, for the avoidance of doubt and without limitation, all or any investment management, registry or other administrative powers, authorities, functions or discretions) with the same power to sub-delegate. The Manager may include provisions to protect and assist those dealing with the delegate in the authorisation as the Manager thinks fit. The delegate may be an Associated Person of the Manager or the Supervisor. The Manager may appoint brokers or dealers appropriate for the purpose of carrying out transactions in relation to Assets of a Fund. Any delegation by the Manager must be in writing.

12.9 The Manager may appoint in respect of the Scheme:

- (a) one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of the Scheme;
- (b) one or more investment managers (including any Associated Person of the Manager) to manage the Scheme Property;
- (c) any other experts for the provision of services relevant to the Scheme;

and (subject to clause 12.27 in relation to Related Party Benefits) agree with such party the fees that may be charged and the extent to which expenses will be reimbursed.

12.10 The Manager shall:

- (a) take all reasonable steps to ensure that the delegated functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly; and
- (b) take all reasonable steps to monitor the performance of those functions; and
- (c) at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to clause 12.8.

12.11 The Manager may agree with the delegate the fees that may be charged and the extent to which expenses will be reimbursed as the Manager may consider suitable having regard to normal commercial terms.

#### **Supervisor's powers**

12.12 The Supervisor in performing its functions as the trustee and supervisor of the Scheme, must comply with the general duties under the FMCA, and in exercising its powers and performing its duties as supervisor, comply with the professional standard of care under the FMCA.

#### **Supervisor's power to delegate**

12.13 In addition to any other powers granted under this Governing Document or by Relevant Law, but subject to the FMCA and to the limitations set out in clause 2.16, the Supervisor may:

- (a) appoint and remove any person (including the Manager or an Associated Person of the Manager) as an advisory trustee or agent on such terms and conditions and with such powers, duties, discretions, indemnities and remuneration as are agreed by the Supervisor and the other person (provided that where the appointee is not the Manager or an Associated Person of the Manager the Supervisor shall give the Manager reasonable prior written notice of the appointment and all relevant terms); and
- (b) engage an expert as set out in the FMCA.

#### **Borrowing powers**

12.14 Subject to clauses 12.15 and 12.25, the SIPO and Relevant Law, the Supervisor shall have power to and shall if so directed by the Manager:

- (a) borrow or raise money from any person (including a Unitholder); or
- (b) enter into any form of credit facility or other accommodation or sell discount and deal with bills of exchange, promissory notes and other securities; or

- (c) charge the Investments of a Fund or any of them as Security for any monies borrowed or raised for the purpose of acquiring further capital Investments for that Fund.
- 12.15 All borrowings, raising of money, charging of Investments or other transactions entered into or undertaken pursuant to clause 12.14 (*Security Transactions*) shall only be entered into or made where the Manager in good faith determines that the Security Transactions are necessary or desirable in the general interests of the Unitholders or for the purposes of conducting the investment or management or other operation of the Fund pursuant to this Governing Document including the repayment or redemption of any Units from time to time AND the Supervisor or any lender may rely upon a certificate given by the Manager as to any determination made by the Manager in respect of any Security Transaction.
- 12.16 The Manager shall (subject to any limitation in the SIPO) determine and give notice to the Supervisor of the amounts and name of the lender and other terms and conditions of all borrowings and financings to be undertaken by the Supervisor and all securities to be entered into. The Supervisor shall subject to clause 12.18 enter into and execute all loan documents and securities and will take all other steps necessary to give effect to any such borrowing or the giving of such securities.
- 12.17 The Manager will ensure that the entry into of any borrowing or financing arrangement does not breach any limitations in the SIPO at the time of the borrowing or financing.
- 12.18 There shall be no obligation upon the Supervisor to comply with any direction given pursuant to clauses 12.14 or 12.16 or to complete any loan or Security documents unless the Supervisor is satisfied that:
- (a) the Supervisor's liability is restricted to the Investments from time to time comprising the relevant Fund;
  - (b) any loan Security or other obligation binding on the Fund does not impose any unreasonable obligation upon the Supervisor in any capacity other than in its capacity as Supervisor; and
  - (c) the repayment of all borrowings and the payment of all interest can be met on the relevant due dates.
- 12.19 No person lending or advancing monies to the Supervisor in respect of a Fund or completing loan documents or securities in respect thereof shall be concerned to enquire as to whether or not any limitation or requirement in this Governing Document or the SIPO.

#### **Establishment of the SIPO**

- 12.20 The Manager shall, in consultation with the Supervisor, establish, and may, on prior notice to the Supervisor, at any time change, a SIPO for the Scheme that covers each Fund and in accordance with the requirements of the FMCA.



### **Effect of SIPOs**

- 12.21 Each Fund shall be invested by the Manager in accordance with the SIPO. This requirement shall modify the general power to invest under section 58 of the Trusts Act.
- 12.22 Subject to Relevant Law, neither the Supervisor nor the Manager shall be responsible to the Fund or any Unitholder for the investment performance of a Fund arising as a result of the SIPO of a Fund or otherwise.
- 12.23 Subject to clause 12.25 and the SIPO of the Fund, the Manager may direct the Supervisor in respect of:
- (a) the Investment and management of the Investment;
  - (b) the purchase, acquisition, sale, transfer, replacement and disposition of Investments;
  - (c) the amendment or modification of any Investments; and
  - (d) the entering into any commitments or Liabilities.
- 12.24 The Manager alone shall be authorised from time to time to cause to be effected any contracts or transactions in relation to Investments by the Fund which the Manager considers in the interests of the Unitholders and will ensure that all acquisitions resulting from such contracts or transactions are acquired in the name of the Supervisor or the Custodian. The Supervisor will from time to time enter into such contracts and to the extent of the Fund in its hands or control effect and pay for such contracts or transactions Investments or other commitments or Liabilities as shall be directed in writing by the Manager and will sign all documents and do all things necessary on its part to give effect to such directions.

### **Supervisor's limited duty to refuse to act**

- 12.25 The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on any direction of the Manager under clauses 12.23 and 12.24 in the circumstances where such refusal is required by the FMCA, and the Supervisor (and any Custodian, where applicable) shall not be liable to Unitholders or the Manager for refusing to act (or directing any Custodian to refuse to act on a direction of the Manager) on any such direction by the Manager.
- 12.26 If the Supervisor refuses pursuant to clause 12.25 to act on a direction from the Manager (or directs any Custodian to refuse to act), the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for the refusal or direction to refuse.

### **Related Party Benefits**

- 12.27 The Manager and any Related Party must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the FMCA.
- 12.28 The Manager must give notice to the Supervisor in respect of the transaction which provides for a Related Party Benefit.

- 12.29 Neither the Manager nor any such Related Party is liable to account to the Supervisor or any Unitholder for any profit arising from any such transaction.
- 12.30 A failure to comply with clause 12.27 does not affect the validity of a transaction (subject to any Court order to the contrary).
- 12.31 Subject to Relevant Law, nothing in this Governing Document shall prohibit the Supervisor, the Manager or any Associated Person of the Manager or the Supervisor or their directors or officers from being a Unitholder or from:
- (a) acting in any representative capacity in relation to any issuer or issue of Investments; or
  - (b) acting any representative capacity for a Unitholder and in particular without in any way limiting the generality of the above statement may act as executor, administrator, trustee, receiver, attorney or agent or any other fiduciary or professional capacity for a Unitholder.
- 12.32 Subject to Relevant Law, the Supervisor, the Manager or any Associated Person shall not by reason of acting in any such fiduciary capacity:
- (a) be in any way precluded from entering into any transaction with or otherwise being interested in any such issuer or issue referred to in clause 12.31 above or with itself in the ordinary course of its business with any other person or itself in another capacity or the acceptance of any office of profit from any issuer or issue referred to in clause 12.31; or
  - (b) be deemed to be in breach of its obligations arising out of any fiduciary relationship created by this Governing Document or imposed or implied by law.

### **Bank accounts**

- 12.33 A bank account in the name of the Supervisor or a Custodian shall be opened and maintained for the Scheme and each Fund. All monies belonging to the Scheme or a Fund and coming into the hands of the Supervisor or the Manager howsoever shall be paid to the credit of the bank account for the Scheme or the Fund (as applicable) in accordance with Relevant Law.<sup>34</sup> The Supervisor shall authorise the Manager to operate such bank accounts.

### **Investment procedure**

- 12.34 The Manager shall give notice to the Supervisor of any transaction or type of transaction required to be entered into by the Supervisor in relation to borrowing, the giving of security or the sale, purchase, leasing or dealing in any manner whatsoever with Investments in a form which is reasonably acceptable to the Supervisor. The Supervisor may request any additional information which it may reasonably require regarding such transaction.
- 12.35 The Manager shall have the full and absolute power to make all investment decisions in relation to the Fund and, subject to compliance with the SIPO and the terms of this Governing Document, may determine the terms of all sales, purchase or other dealings with Investments, and all contracts, rights and other matters relating to such

Investments or Liabilities, and acquire and sell Investments on behalf of the Fund for Cash or upon terms.

- 12.36 Any shares or other assets or rights received by the Supervisor in lieu of or in satisfaction (in whole or in part) of a dividend in respect of any Investment or from amalgamation or reconstruction of any corporation in which part of any Fund is invested may either be retained as part of such Fund, or sold or retained as to part and sold as to the balance as determined by the Manager.
- 12.37 The Supervisor may before entering into any transaction, Security or liability require that its liability is to its satisfaction restricted or limited to the Investments for the time being in the Supervisor's hands as Supervisor of the relevant Fund.
- 12.38 Subject to the provisions of this Governing Document, all voting rights conferred by the Investments shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Supervisor shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise or act in relation to such voting rights.
- 12.39 Subject to the provisions of this Governing Document and Relevant Law, neither the Manager, the Supervisor, nor any holder of any proxy or power of attorney referred to in clause 12.38 shall be liable or responsible for any vote cast or not cast.

#### **Investment records**

- 12.40 The Supervisor or Custodian must keep, or ensure that there are kept, complete, accurate and separate records of all Investments constituting each of the Funds in accordance with the applicable requirements of Relevant Law.
- 12.41 The Supervisor or Custodian must keep the investment records, or ensure that they are kept, in a manner that enables those records to be conveniently inspected by the Manager and the Supervisor or its agents and conveniently and properly audited and reviewed without charge at any time on any Business Day and otherwise in accordance with the applicable requirements of Relevant Law.
- 12.42 The Manager shall be entitled to assume that the Supervisor's or Custodian's records of Investments are complete and accurate and to rely upon them accordingly.

### **13 DISTRIBUTIONS**

#### **Capitalisation of income**

- 13.1 The Manager may at any time capitalise and retain as an Asset of a Fund the whole or any part of the income of the relevant Fund provided that this shall not impact on the nature of that income for Tax purposes.

#### **Determination of Distribution Period and Entitlements**

- 13.2 The length of each Distribution Period and the method of calculation of Entitlements in respect of any Fund shall be those specified in this Governing Document or as subsequently varied by the Manager.

### **Allocation and distribution**

- 13.3 Subject to the terms of this Governing Document, the Manager will determine each Unitholder's Entitlement and distribute the Entitlements by payment in cash to each such Unitholder.
- 13.4 A Unit deemed to be on issue on the last day of the relevant Distribution Period entitles the relevant Unitholder to participate in the distribution for the period in full irrespective of the number of days it has been on issue.
- 13.5 The Manager shall pay Entitlements within 60 days after the last day of the Distribution Period to which they relate.

### **Calculation on Distribution Date**

- 13.6 On each Distribution Date, the Manager will (if applicable):
- (a) determine the Distribution Amount of the Fund during the Distribution Period ending on that Distribution Date; and
  - (b) attribute that Distribution Amount as the Manager determines in its absolute discretion, to the Unitholders in the Fund as at that Distribution Date.

### **Expenses to be taken into account**

- 13.7 In determining the Distribution Amount of the Fund for any period, the Manager may take into account all income due and receivable and all costs, charges and expenses due or accrued, including:
- (a) all fees, costs and disbursements payable hereunder to the Manager and the Supervisor;
  - (b) valuation fees payable in respect of any valuation made pursuant to this Governing Document;
  - (c) all costs and expenses incurred in respect of Investments;
  - (d) all costs and expenses incurred in repairing and maintaining Investments;
  - (e) all depreciation of Investments (if the Manager determines such should be charged against income) of an amount determined by the Manager;
  - (f) all costs and disbursements incurred in connection herewith or in connection with the Fund or the administration thereof and chargeable against income;
  - (g) due allowance for prepayments, doubtful debts and bad debts;
  - (h) where the Fund is not a PIE, or the Manager considers it appropriate to do so, any Tax paid or payable by or in respect of the Fund;
  - (i) such other provisions as the Manager deems necessary to bring to account in order that the net income for the particular period may fairly represent the results of the Fund for that period; and

- (j) the reasonable fees and expenses of the Auditor in connection with the audit of the Fund.

### **Allowable expenses**

- 13.8 If any question shall arise as to whether any money or property constitutes income or not, or whether any expense is chargeable against income or not, such question shall be determined by the Manager who shall do so by construing this Governing Document and having regard to generally accepted accounting practice in New Zealand (other than the requirement to treat Units as liabilities).

### **Adjusted price**

- 13.9 Immediately following the Distribution Date, the Exit Amount for Units will reflect the calculation of the Distribution Amount and reduce by the income accrued and to be distributed to Unitholders.

### **Special distributions**

- 13.10 Notwithstanding any other provision of this Governing Document, the Manager may make a special distribution of income from the Fund to Unitholders where the Manager determines that such a special distribution is in the best interests of the Unitholders.
- 13.11 The Entitlement per Unit shall be determined by dividing the total amount to be distributed by way of special distribution by the Number of Units on Issue at the date of the special distribution and shall be distributed to Unitholders in proportion to the number of Units they hold.
- 13.12 No advance notice of a special distribution need be given to Unitholders.

### **Reinvestment of Entitlements**

- 13.13 Unitholders may elect to reinvest their Entitlements by purchasing further Units in the relevant Fund by making a request in that respect to the Manager in their initial Application or in such other form or manner as may from time to time be determined by the Manager. Any request in such other form or manner must be submitted to the Manager at least one month before the end of the relevant Distribution Period (or such later date as the Manager shall decide). Any request (whether in an initial Application or at a later date) may be varied or terminated by written notice to the Manager not later than one month before the end of a Distribution Period.
- 13.14 The Manager will treat such a request as though it were an application to purchase or subscribe for further Units in the relevant Fund with the relevant Entitlement (less any applicable Tax) and accordingly the provisions of clause 13.16, with such changes as are necessary, apply to the Units issued in accordance with clause 13.13. No Entry Fee or Buy Spread is to be charged in respect of such transaction.
- 13.15 Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving any reason.

### **Disclosure of information to Commissioner**

- 13.16 The Manager and the Supervisor are authorised to make such disclosure as may be required by the Commissioner of the details of Unitholders, any distributions to Unitholders or any other details or information arising out of any of the Funds.

### **PIE**

- 13.17 The amount to be distributed to Unitholders of a Fund that is a PIE may differ as between Unitholders as a result of the exercise of the Manager's discretion in clause 26.7 to adjust Unitholders Entitlements to reflect the effect of a Unitholder's Prescribed Investor Rate, Attributed PIE Income, Attributed PIE Loss and all allocated Tax Credits on the Fund's PIE Tax Liability.

### **Manager's discretion to distribute**

- 13.18 Notwithstanding any provision of this Governing Document, the Manager may distribute any amount (including capital) pro rata (as to value) to Unitholders in a Fund at any time in its discretion, in cash or in specie or by way of bonus Units.

## **14 COVENANTS BY THE SUPERVISOR AND THE MANAGER**

### **Covenants by Supervisor**

- 14.1 The Supervisor covenants with the Manager (with the intent that the benefit of such covenant shall ensure not only to the Manager but to the Unitholders jointly and to each of them severally) that the Supervisor:
- (a) will perform, in respect of the Scheme, the functions of a supervisor of a registered scheme under the FMCA and comply with the duties applicable to the Supervisor under the FMCA, unless otherwise stated in this Governing Document;
  - (b) is a Licensed Supervisor and has power to act continuously as trustee and Supervisor of the Scheme and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Supervisor under this Governing Document or Relevant Law or which might prevent it from so acting until such Scheme has been wound up or until it has retired or been removed from office;
  - (c) will ensure that each Investment is held in safe custody;
  - (d) will keep each Fund separate from the other Funds and from all other assets, investments and other property vested or held by the Supervisor, any Custodian or any Related Party of a Scheme for their own account;
  - (e) except as provided in this Governing Document or as authorised by Relevant Law, will not sell, mortgage, charge or otherwise part with the possession of any of the Investments of any Fund;
  - (f) will without delay forward to the Manager all notices and other information relevant to the Manager and received by (or on behalf of) the Supervisor in connection with the Scheme and each Fund;

- (g) subject to Relevant Law, whenever the Manager redeems a Unit the Supervisor will if necessary borrow monies as directed by the Manager or realise Investments comprised in the relevant Fund as directed by the Manager; and
- (h) subject to the terms of this Governing Document and Relevant Law, the Supervisor shall execute all such proxies, powers of attorney and other instruments, deal with the Assets, and exercise any discretion conferred on the Supervisor under this Governing Document, to enable the Manager or any person nominated by the Manager to exercise the powers of management or other rights of the Manager in relation to this Governing Document.

### **Covenants by Manager**

- 14.2 The Manager covenants with the Supervisor (with the intent that the benefit of such covenant shall ensure not only to the Supervisor but to the Unitholders jointly and to each of them severally) that the Manager will:
- (a) maintain its status as a Licensed Manager and has the power to act continuously as Manager in respect of the Scheme and each Fund until the Scheme or such Fund is wound up in accordance with this Governing Document or until the Manager has retired or been removed from office;
  - (b) when acting as manager of the Scheme, the manager shall comply with the duties applicable to the Manager as manager of the Scheme under the FMCA;
  - (c) pay into the Fund bank account operated by the Supervisor or the Custodian any monies that, under this Governing Document, are received by the Manager in respect of a Fund in accordance with Relevant Law;
  - (d) not redeem or repurchase a Unit or issue or sell a Unit in any Fund otherwise than at the Unit Price or for the Exit Amount calculated in accordance with the provisions of this Governing Document;
  - (e) promptly forward to the Supervisor all notices of events which would have a material adverse effect on the Fund or the Supervisor and received by the Manager in connection with any Fund;
  - (f) forward to the Supervisor all notices, reports, circulars and other documents sent by it to Unitholders at the same time as such material is sent to Unitholders;
  - (g) forward without delay to the Supervisor copies of all notices, reports, circulars and other documents received by it relating to the Supervisor;
  - (h) retain in safe keeping all Applications, Exit Requests, Switch Requests and instruments of transfer and transmission, and will make those documents available for inspection by (or on behalf of) the Supervisor at any time during normal business hours, but on the expiration of 7 years from the date of any such document the Manager may in its discretion (subject to Relevant Law to the contrary and first obtaining the Supervisor's approval) destroy the document;

- (i) report to the Supervisor if the Manager has reasonable grounds to believe that it may have contravened or is likely to contravene any Issuer Obligations in a material respect; and
- (j) use its reasonable endeavours to ensure that, if a Fund is a PIE, that the Fund meets the eligibility requirements for PIEs in the Tax Act.

## 15 APPOINTMENT AND REMOVAL OF MANAGER

15.1 The Scheme must have a manager, who:

- (a) must not be an Associated Person of the Supervisor; and
- (b) must be a Licensed Manager.

15.2 The Manager shall be removed from office in the circumstances set out in the FMCA.

15.3 If the Manager ceases to hold office, the Manager and its delegates shall immediately desist from all activities related to the Fund.

15.4 The Manager may retire as Manager of the Scheme at any time without assigning any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a new Manager has been appointed and has executed the deed referred to in clause 15.9.

15.5 The Manager may retire at any time and appoint an Associated Person in its place subject to such Associated Person entering into a deed under clause 15.9 of this Governing Document.

15.6 The power of appointing a temporary Manager under the FMCA shall apply where a vacancy in the Office of Manager arises. No person shall be appointed as a new Manager unless that person is a Licensed Manager.

15.7 Subject to Relevant Law, the power of appointing a new permanent manager of the Scheme shall be vested in the retiring manager, provided that no new manager shall be so appointed without the written approval of the Supervisor (which shall not be unreasonably withheld).

15.8 Where the Manager does not exercise its power to appoint a new permanent manager within 10 Business Days of a vacancy in the office of Manager of the Scheme occurring, the Supervisor may exercise the power to appoint a new permanent manager of the Scheme.

15.9 Any new Manager shall forthwith upon such appointment execute a deed in such form as the Supervisor may reasonably require whereby the new Manager undertakes to the Supervisor and the Unitholders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and, subject to Relevant Law from such date the retiring Manager shall be absolved and released from all covenants under this Governing Document (save in respect of any antecedent breach) and the new Manager shall from that date exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager under this Governing Document in all respects as if such Manager had been originally named as a party to this Governing Document.



- 15.10 Nothing in clause 15.9 shall prevent the Manager from receiving payment or a benefit which has accrued to the Manager pursuant to the terms of this Governing Document prior to the date of or arising on the Manager's retirement or removal from office.
- 15.11 The former Manager must hand over records and give reasonable assistance to the new Manager in accordance with the requirements of the FMCA.
- 15.12 No person (other than Fisher Funds Management Limited) whether the Supervisor, the Auditor, a Unitholder, a new or temporary Manager, or any other person shall be deemed to have acquired by reason of an interest in the Fund or otherwise any right to the use of or any goodwill in the name of Fisher Funds Management Limited. Notwithstanding any other provision of this Governing Document, if Fisher Funds Management Limited or any other company nominated by Fisher Funds Management Limited ceases for any reason to be the Manager of the Scheme then (except to the extent that it otherwise agrees in writing):
- (a) the name of the Scheme and each Fund shall be a name arrived at by removing the word 'Fisher Funds'; and
  - (b) if on the date of such cessation the name of a Custodian or a nominee company includes the word 'Fisher Funds', the Supervisor shall forthwith after that date change the name of that Custodian or a nominee company so that the word 'Fisher Funds' ceases to appear therein;
  - (c) the Supervisor and the Manager shall each ensure that as soon as practicable after the date of such cessation, the word "Fisher Funds" does not appear in any documents, publications, or advertisements relating to the Scheme or the Fund, and that all registers and records are amended to record such change.
- 15.13 It is hereby declared, for the purposes of the Contract and Commercial Law Act 2017, that clause 15.12 shall be enforceable by any member of the Fisher Funds Group. However, the benefit extended to members of the Fisher Funds Group is intended to be limited by, and enforceable subject to, the rights of parties to this Governing Document to vary or discharge benefits or obligations as provided in this Governing Document, without the consent of members of the Fisher Funds Group other than Fisher Funds Management Limited.

## 16 APPOINTMENT AND REMOVAL OF SUPERVISOR

- 16.1 The Scheme shall have a single Supervisor who:
- (a) must not be an Associated Person of the Manager; and
  - (b) must be a Licensed Supervisor whose licence covers the Scheme.
- 16.2 The Supervisor is responsible for the functions for which responsibility is attributed to it as supervisor of the Scheme under the FMCA.
- 16.3 Subject to clause 16.6, the Manager may remove the Supervisor from office as trustee and supervisor of the Scheme with the FMA's prior consent:
- (a) with immediate effect, by giving the Supervisor written notice of such removal, if the Manager reasonably believes that the Scheme will be adversely affected

if the Supervisor continues to hold office (such notice to specify the grounds on which the Manager has formed this belief); and

- (b) otherwise upon giving the Supervisor no fewer than 90 Business Days' prior written notice of such removal,

and in either case the Manager shall ensure that a replacement Supervisor is appointed with effect immediately following that Supervisor's removal from office.

- 16.4 The Supervisor may be removed from office of Supervisor of the Scheme otherwise in the circumstances prescribed in the FMCA.
- 16.5 The Supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention so to do.
- 16.6 No removal or retirement will take effect until a new Licensed Supervisor has been appointed pursuant to clause 16.7 who has executed the deed referred to in clause 16.8 and all of the Investments of all of the Funds have been transferred to the new supervisor (or Custodian) and the requirements of the FMCA.
- 16.7 The power of appointing a new Supervisor of the Scheme (in place of a Supervisor which has retired or been removed from office) shall be vested in the Manager, provided that no person shall be appointed as a new supervisor unless qualified for appointment under clause 16.1. If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution.
- 16.8 Any new Supervisor shall forthwith upon such appointment execute a deed in such form as the Manager may require whereby the new Supervisor undertakes to the Manager and the Unitholders of the Scheme to be bound by all the covenants on the part of the Supervisor hereunder from the date of such appointment and from such date the retiring Supervisor shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Supervisor shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Supervisor hereunder in all respects as if such Supervisor had been originally named as a party hereto.

## 17 REMUNERATION

### Supervisor fees

- 17.1 The Supervisor shall be entitled to be paid out of each Fund in respect of its ongoing services hereunder from the date of establishment of the relevant Fund up to the earlier of the date of removal or retirement of the Supervisor or the date of termination of such Fund, an annual fee as agreed in writing with the Manager (including any time and attendance fees), and on the basis agreed with the Manager.
- 17.2 In respect of the BondPlus Fund, Global Fund and Trans Tasman Equity Trust, on the termination the Fund, the Supervisor shall be paid from the relevant Fund a fee to be agreed upon between the Supervisor and the Manager to be no greater than 0.5% of the market value of the relevant Fund at the date of termination.

- 17.3 The Supervisor and the Manager may at any time and from time to time agree to alter the amount of the annual fee, in respect of a Fund by giving at least three months' notice to that effect to all Unitholders of the relevant Fund.
- 17.4 The Supervisor shall be entitled to receive, in addition to such fees, an amount equal to any GST or similar Tax payable in respect of such fee.

### **Manager fees**

- 17.5 The Manager shall be paid out of a Fund the following fees, as determined from time to time by the Manager and disclosed in any PDS:
- (a) a management fee; and
  - (b) in respect of the NZ Fixed Income Trust and the Global Fund, a performance fee (if any).
- 17.6 The Manager shall be entitled subject to the approval of the Supervisor (such approval not to be unreasonably withheld) at any time and from time to time to increase the amount of the management fee and the performance fee (if applicable) under this Governing Document, in respect of a Fund.
- 17.7 The Manager shall give three (3) months' prior notice of any increase of such fees to all Unitholders of the relevant Fund in accordance with this Governing Document in compliance with Relevant Law.
- 17.8 The Supervisor or the Manager may accept a lower fee than it is entitled under the Fund, and may defer payment for any period. Where payments are deferred the fee accrues daily until paid.

### **GST**

- 17.9 Each of the Manager and the Supervisor is entitled to receive, in addition to the fees referred to in this clause 17, any GST or similar Tax payable in respect of such fees.

## **18 REIMBURSEMENT OF EXPENSES**

- 18.1 All expenses incurred by the Supervisor or the Manager in connection with each Fund, or in performing their respective obligations under this Governing Document are payable or reimbursable from the relevant Fund. This includes without limitation expenses connected with:
- (a) the formation of the Fund, the acquisition, registration, custody, ownership, disposal of or other dealing with Investments of the Fund, including legal costs, bank charges and stamp duty, valuation fees, search and enquiry fees, brokerage, commission, registration fees, the expenses of any agents both within and outside New Zealand, and other outgoings of or in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement or other dealing with or disposition of an Investment but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred (by deduction or otherwise) by the Manager or the Supervisor;

- (b) the fees, costs and expenses of any Custodian, administration manager or investment manager;
  - (c) the fees and expenses of the Auditor;
  - (d) all Taxes charged to or payable by the Supervisor or Manager (whether to the Commissioner or any other Tax authority) in connection with the Scheme or a Fund on any account whatsoever;
  - (e) interest and other expenses relating to borrowings and discounts and acceptance and other fees in respect of bill facilities and Security transactions;
  - (f) convening and holding any meeting of Unitholders;
  - (g) mailing and postage costs in respect of all Financial Statements, distribution statements, transaction statements, Tax statements, Disclosure Documents or any notices, quarterly and other reports and other documents posted to all or any Unitholders in accordance with the provisions of this Governing Document;
  - (h) any solicitor, barrister, valuer, accountant or other person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties under this Governing Document;
  - (i) the preparation and printing of Disclosure Documents, confirmations, Financial Statements, annual reports, distribution statements and notices;
  - (j) the keeping of the Register including the costs of establishing and maintaining any computer equipment and services or a fair contribution towards such a Cost where the equipment and services are shared or used for other purposes not related to the Fund;
  - (k) all other costs or expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this Governing Document.
- 18.2 Without limiting clause 18.1, in respect of the BondPlus Fund, the Manager and the Supervisor shall also be reimbursed out of the Fund (whether from income or capital or both) for and in respect of the costs (including by way of example internal administration costs) and expenses incurred by the Supervisor or the Manager in connection with the consideration, preparation for and carrying out of any proposal transaction or other matter in relation to the Fund that is exceptional or additional to the usual management and administration responsibilities of the Supervisor or the Manager.
- 18.3 Where any costs, charges, fees or expenses referred to in clause 18.1 relate to more than one of the Funds then such costs, charges, fees or expenses shall be apportioned between each of the Funds on such fair and equitable basis as may be agreed between the Manager and the Supervisor.
- 18.4 The Manager may, in accordance with generally accepted accounting practice in New Zealand, provide for and anticipate the expenses of the Fund for the purpose of

determining the Net Value of the Fund, including providing for expenses at a fixed percentage amount during the Financial Year.

- 18.5 Any legal and other costs and expenses incurred in establishing a Fund or any part thereof may be amortized by being written off against the Fund in equal instalments over the first five (5) Financial Years.

## 19 LIMITATION OF RESPONSIBILITIES

### **Supervisor's and Manager's Indemnity – NZ Fixed Income Trust**

- 19.1 In respect of the NZ Fixed Income Trust, subject to the limits on permitted indemnities under the FMCA, the Supervisor and the Manager (including their respective directors, officers and employees) shall be indemnified out of the Fund from and against any losses, expense or liability (including Tax or PIE Tax Liability) that may be incurred in performing any of their respective duties or exercising any of their respective powers in relation to the Fund or otherwise relating to the Fund, including any liability arising in respect of any Disclosure Document in respect of Units in the Fund, and may recover any liability from Unitholders which has arisen in respect of their Units.

### **Supervisor's and Manager's indemnity – BondPlus Fund, Global Fund and Trans Tasman Equity Trust**

- 19.2 In respect of the BondPlus Fund, Global Fund and Trans Tasman Equity Trust, subject to the limits on permitted indemnities under the FMCA, the Supervisor and the Manager shall be indemnified out of the Fund from and against any expense and liability that may be incurred in prosecuting or defending any action or suit in respect of the provisions of this Governing Document and the terms of any Disclosure Document in respect of the Units or in respect of the Fund and may recover any loss suffered by Unitholders in respect of their Units.

### **Supervisor's and Manager's indemnity – CashPlus Fund**

- 19.3 In respect of the CashPlus Fund, subject to the limits on permitted indemnities under the FMCA, the Supervisor and the Manager shall:
- (a) be indemnified out of the Fund against all liabilities (including Tax and PIE Tax Liability) and expenses incurred by them in the exercise or attempted exercise of the trusts, powers and discretions vested in the Supervisor and the Manager under this Governing Document and in respect of any matter or thing done or omitted to be done in any way relating to this Governing Document and the Fund; and
  - (b) not be liable for:
    - (i) any losses or damages except losses or damages arising from the Manager's or the Supervisor's (as applicable) own wilful default or wilful breach of trust;
    - (ii) any act or acts or attempted act done in exercise of or pursuant to any trust, power or discretion vested in it by this Governing Document; or

- (iii) any omission or omissions in respect of any trust, power or discretion of the Manager or the Supervisor under this Governing Document.

#### **Limitation on indemnity**

- 19.4 Nothing in this Governing Document has the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager from, or indemnifying the Supervisor or Manager or any such director or officer against, any liability to the extent that doing so would be void under the FMCA.

#### **Limitation of liability**

- 19.5 Subject to the indemnity limitations under the FMCA, the Supervisor shall not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager or any agent of the Manager or for checking any information, document, form or list supplied to it by the Manager or by any agent of the Manager that is reasonably believed by the Supervisor to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Supervisor in any step taken by it) except to the extent that the loss is attributable to the Supervisor's own negligent or wilful act or default.
- 19.6 Subject to the FMCA, neither the Supervisor nor the Manager shall incur any liability to anyone in respect of doing or performing or failing to do or perform any act or thing which, by reason of any provision of any present or future law of New Zealand or regulation or bylaw made pursuant thereto, or of any decree order or judgment of any court of competent jurisdiction, either the Supervisor or the Manager is required to do or perform or is hindered, prevented or forbidden from doing or performing.

#### **Reliance upon advice**

- 19.7 The Supervisor and the Manager may accept and act upon the opinion or advice of or information obtained from barristers and/or solicitors or other consultants in the employ of the Supervisor or the Manager, or instructed by the Supervisor or the Manager, and upon any statement of or information obtained from any bankers, stockbrokers, accountants, valuers or other persons appointed or approved by the Supervisor or the Manager and believed by the Supervisor or the Manager in good faith to be expert or suitably qualified in relation to the matters upon which they are consulted. The Supervisor and the Manager are not liable for anything done or suffered by it in good faith in reliance upon any such opinion, advice, statement or information.

#### **Reliance upon apparently genuine documents**

- 19.8 Whenever pursuant to any provision of this Governing Document any certificate, notice, instruction, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any one of its directors or by its secretary or by any other person or persons duly authorised by the Manager.
- 19.9 Neither the Manager nor the Supervisor is liable for any action taken or thing suffered by the Manager or the Supervisor in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor to be genuine.

### **Manager's and Supervisor's discretion and authority**

- 19.10 Except insofar as is otherwise expressly provided in this Governing Document the Manager and the Supervisor shall as regards all the powers, authorities and discretions vested in it by this Governing Document have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode of and time for the exercise thereof, subject in case of the Manager, the Manager giving a notice to the Supervisor and the approval or of supervision by the Supervisor wherever required.

### **Conflicts of interest**

- 19.11 Subject to Relevant Law, nothing in this Governing Document shall prevent the Manager, any Associated Person of the Manager or in their own right any officers of the Manager from subscribing for, purchasing, holding, dealing in or disposing of Units, or from otherwise at any time contracting or acting in any capacity as representative or agent or entering into any contract or transaction whatsoever with the Supervisor or with any Unitholder or from being interested in any such contract or transaction or otherwise, acting as manager of any other managed investment scheme or holding any Asset jointly with a Fund and none of them shall be in any way liable to account either to the Supervisor or to the Unitholders or any of them for any profits or benefits howsoever made or derived.
- 19.12 Subject to Relevant Law, nothing herein shall be deemed to prohibit the Supervisor or any Associated Person or any shareholder or officer of either (in this clause included in the expression 'the Supervisor') from being a Unitholder or from acting in any representative capacity for a Unitholder and in particular and without prejudice to the generality of the foregoing from acting on its own account or as executor, administrator, Supervisor, receiver, attorney or agent or in any other fiduciary vicarious or other professional capacity. Nor shall the acting in any such capacity as aforesaid be deemed a breach of any of the obligations arising out of the fiduciary relationship between the Supervisor and the Manager on the one hand or the Supervisor and the Unitholders on the other hand by this Governing Document established or otherwise imposed or implied by law.

### **Supervisor's and Manager's limited liability to Members**

- 19.13 Notwithstanding anything contained in this Governing Document and subject to Relevant Law, save and except in the case of fraud or of dishonesty or unless the Supervisor shall have failed to show the degree of care and diligence required of a Supervisor having regard to the powers, authorities and discretions conferred on the Supervisor by this Governing Document, in no event shall the Supervisor be bound to make any payment to the Unitholders except out of the relevant Fund or be liable to the Unitholders to any greater extent than the Investments, Cash and other property vested in or received by the Supervisor in accordance with this Governing Document for the relevant Fund.

### **Reliance by Manager or Supervisor**

- 19.14 The Manager is not liable for any act or omission of the Supervisor.
- 19.15 The Supervisor is entitled to rely on the Manager as to the validity of any signature on any document if such reliance is based on a reasonable belief that the signature is

genuine and any order by a court of competent jurisdiction against the Supervisor for damages in favour of any person who suffers loss as a result of a signature being forged or otherwise ineffective will, subject to any right of reimbursement from any other person, be borne by the relevant Fund except to the extent that such loss may be attributable to the Supervisor's own negligent or wilful act or default.

### **One Fund**

- 19.16 Save as may be required by this Governing Document the Supervisor is not bound to cause to be made any apportionment of or to keep separate accounts in respect of the Investments of a Fund and the Supervisor shall hold the whole of each Fund for the time being as one trust fund on the trusts contained in this Governing Document and Relevant Law.

### **Appointment of advisers**

- 19.17 In relation to the purchase, sale and other dealings with any Investments by the Supervisor, the Manager shall determine the time and mode and the consultants, agents, brokers and professional advisers (if any) for the purchase sale and other dealings.

### **Investment with a liability**

- 19.18 Should the Supervisor purchase or otherwise acquire any Investment in regard to which there is a liability, the Supervisor will have a right of indemnity out of the relevant Fund in respect of the liability except to the extent that such liability may be attributable to the Supervisor's own negligent or wilful act or default.

### **Supervisor's statutory duty**

- 19.19 Nothing in this Governing Document shall limit the Supervisor's duty of care, diligence and skill under the FMCA in carrying out its duties under this Governing Document and Relevant Law or shall prevent or restrict any determination as to whether there has been a breach of trust or shall affect the operation of the provisions of any statute prescribing the circumstances under which the Supervisor may obtain relief from breach of trust.

### **Power to indemnify investment managers and administration managers**

- 19.20 The Manager may agree (subject to the limits on permitted indemnities under the FMCA):
- (a) to limit the liability (in connection with its services in respect of one or more Funds) of; and/or
  - (b) to indemnify and reimburse out of the assets of a Fund,

any investment manager or administration manager appointed in respect of one or more Funds, in respect of any debt, liability or obligation incurred by (or on behalf of) the investment manager or administration manager in respect of a Fund or any action taken or omitted to be taken in connection with a Fund (including, without limitation, legal fees and disbursements).



### **Power to indemnify Custodians**

19.21 The Supervisor may agree (subject to the limits on permitted indemnities under the FMCA):

- (a) to limit the liability (in connection with its services in respect of one or more Funds), of: and/or
- (b) to indemnify and reimburse out of the assets of a Fund,

any Custodian appointed in respect of one or more Funds in respect of any debt, liability or obligation incurred by (or on behalf of) the Custodian in respect of a Fund or any action taken or omitted to be taken in connection with a Fund (including without limitation, legal fees and disbursements).

## **20 ACCOUNTS, AUDIT AND REPORTING**

### **Accounting records**

- 20.1 The Manager shall keep or cause to be kept such accounting records as are required by Relevant Law.
- 20.2 The Manager shall allow for inspection of the accounting records relating to the Scheme to the extent required by Relevant Law.
- 20.3 The Manager shall cause Financial Statements to be prepared, audited and lodged with the Registrar of Financial Service Providers in respect of each Fund and the Scheme in accordance with the Relevant Law.

### **Auditor**

- 20.4 A Qualified Auditor selected by the Manager in consultation with the Supervisor and entitled by Relevant Law to act as such shall be appointed as Auditor of the Scheme and each Fund. The Manager and the Supervisor shall agree upon the services to be performed by the Auditor and the scope thereof having regard to requirements under the FMCA. The remuneration of the Auditor shall be determined by the Manager on an arm's length basis and shall be paid out of the relevant Fund.
- 20.5 The Auditor may at any time and from time to time be removed by the Manager with notice to the Supervisor. The Auditor may retire upon giving the Manager and the Supervisor 30 days' notice in writing.
- 20.6 Any vacancy in the office of Auditor shall be filled by the Manager in consultation with the Supervisor in accordance with clause 20.4.
- 20.7 The Auditor may be the Auditor of the Manager or of the Supervisor or of an Associated Person of either of them, or of any other managed investment scheme whether of a similar nature to the Scheme or otherwise, but may not be a director, officer or employee (or the partner, employer or employee of a director, officer or employee) of the Manager or of the Supervisor.

### **Audit Reports**

- 20.8 The Manager will provide and procure such audit reports in such form and at such times as may be agreed from time to time between the Auditor, the Manager and the Supervisor.

### **Other reports**

- 20.9 The Manager will provide the Supervisor with such other reports on the Scheme and the Funds in such form and at such times as the Supervisor may from time to time agree with the Manager (including, for the avoidance of doubt, in relation to SIPO limit breaks, unit pricing errors and non-compliances with any unit pricing methodology for Units in a Fund) to the extent required by the FMCA.

## **21 MEETINGS**

- 21.1 The Manager may at any time and, when required by the FMCA, the Manager must call a meeting of Unitholders in the manner and on the basis set out in the Relevant Law. A meeting of Unitholders shall be conducted in accordance with the requirements of the FMCA.
- 21.2 The Unitholders of a Fund shall, by means of a Special Resolution passed at a meeting of Unitholders, have the power to give such directions to the Supervisor as they think proper concerning the Fund being directions that are consistent with the provisions of this Governing Document and Relevant Law.
- 21.3 Where any direction is given to the Supervisor pursuant to clause 21.2 in respect of any matter the Supervisor may comply with the direction, and shall not be liable for anything done or omitted by it by reason of following the direction. The Supervisor may also at its discretion in accordance with the FMCA apply to the High Court for directions in respect of any matter.

## **22 NOTICES**

### **Notices to Unitholders**

- 22.1 In any other case other than a notice of meeting, a notice may be given under this Governing Document to any Unitholder by:
- (a) leaving it at his or her address recorded in the Register; or
  - (b) sending it addressed to the Unitholder at his or her recorded address by ordinary prepaid post, or, if that address is outside New Zealand, by airmail or prepaid post; or
  - (c) sending it to the information system specified by (or on behalf of) the Unitholder for the purpose of receiving notices by electronic means; or
  - (d) sending it by electronic mail in accordance with Relevant Law; or
  - (e) advertisement with the prior written approval of the Supervisor.

- 22.2 A Unitholder is bound to notify the Manager of any change of the Unitholder's registered address and the Registrar shall alter the relevant Register accordingly.
- 22.3 Any notice sent by post will be deemed to have been given at the expiration of 48 hours after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted.
- 22.4 Any notice sent to the information system specified by (or on behalf of) the Unitholder for the purpose of receiving that notice by electronic means will be deemed to have been received once it has left the sender's information system. Any notice sent by email shall be deemed to have been served provided no non delivery answer back is received by the sender within one (1) hour of sending.
- 22.5 Any notice by advertisement will be deemed to have been given on the day of publication of the newspaper or other publication containing the advertisement.
- 22.6 The signature to any notice to be given by the Manager or the Supervisor may be written or printed.
- 22.7 Subject to Relevant Law, where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be reckoned in the number of days or other period.
- 22.8 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Units shall be bound by every notice which, prior to his name and address being entered in the Register in respect of the Units, has been given to the person from whom he derives his title to the Units.
- 22.9 Any notice or document delivered or sent by post or left at the registered address for service of any Unitholder in pursuance of the provisions of this Governing Document will (notwithstanding that the Unitholder is then deceased and whether or not the Manager has notice of his death) be deemed to have been duly given in respect of his Units, whether held by him solely or jointly with another person or persons, until some other person shall be registered in his stead as the holder or joint holder thereof.

### **Notice to Manager and Supervisor**

- 22.10 Any notice required by this Governing Document to be given by the Manager to the Supervisor, or by the Supervisor to the Manager, must be in writing (or such other manner as agreed to from time to time), signed by a duly authorised officer on behalf of the party giving it and addressed to the officer of the party to whom it is intended to be given at the following addresses (or such other address as may from time to time be notified by one party to the other as the address for service of notices pursuant to this Governing Document):
- (a) If to the Manager:
- |            |                                         |
|------------|-----------------------------------------|
| Address:   | Level 1, 67-73 Hurstmere Road, Takapuna |
| Telephone: | (09) 445 3377                           |
| Attention: | General Manager                         |

- (b) If to the Supervisor

Address: Level 11, 51 Shortland Street, Auckland  
Telephone: (09) 308 7100  
Attention: Business Manager

## 23 AMENDMENTS TO GOVERNING DOCUMENT

23.1 The Supervisor and the Manager may at any time and subject to Relevant Law make any alteration, modification, variation or addition to the provisions of this Governing Document (by means of a deed executed by the Supervisor and the Manager) in any of the following cases:

- (a) if in the opinion of the Supervisor the same is made to correct a manifest error or is of a formal or technical nature; or
- (b) if in the opinion of the Supervisor the same is necessary or desirable for the more convenient economical or advantageous working management or administration of the Funds or for safeguarding or enhancing the interests of the Funds or Unitholders and is not likely to become prejudicial to the interests of the Unitholders generally; or
- (c) if the same is authorised by a Special Resolution; or
- (d) if the same is required by or in consequence of any amendment or repeal and/or replacement of Relevant Law.

23.2 The Manager shall make available to every Unitholder a description of all material amendments to this Governing Document in the annual report prepared in accordance with Relevant Law.

## 24 OBLIGATIONS AND RIGHTS OF UNITHOLDERS

### Unitholders bound by this Governing Document

24.1 The terms and conditions of this Governing Document are binding on (and are legally enforceable between) the Supervisor, the Manager and each Unitholder and all persons claiming through them respectively and as if each Unitholder had been party to and had executed this Governing Document.

### Limitation of liability of Unitholders

24.2 Except as expressly provided by this Governing Document:

- (a) no Unitholder is, by reason alone of being a Unitholder or by reason alone of the relationship hereby created with the Supervisor or with the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of either of them in the event of there being any deficiency of Assets of a Fund as compared with the Liabilities to be met therefrom;

- (b) the rights (if any) of the Supervisor or Manager or of the creditor to seek indemnity are limited to having recourse to a Fund and do not extend to a Unitholder personally in his or her capacity as a Unitholder; and
- (c) the Supervisor covenants with the Manager and the Unitholders that (subject to any rights the Supervisor may have to recover monies paid in error) the Supervisor will not make any claim and will not take any action or legal proceedings against any Unitholder (in a Unitholder's capacity as such) by reason of there being any deficiency of Assets in a Fund.

## 25 PERIOD OF FUNDS AND WINDING UP OF THE FUND

### Period of Funds

- 25.1 Each Fund created under this Governing Document is to be deemed to have commenced on the date the Fund comes into existence in accordance with clause 2.7 and will continue during the period commencing on that date and terminating on the date:
- (a) specified by the Manager pursuant to clause 25.2; or
  - (b) falling 125 years less two (2) days from the commencement date specified in the fund's declaration of establishment.

### Termination

- 25.2 At any time after the commencement of a Fund the Manager may notify the Supervisor in writing that such Fund is to be terminated and three months after receipt of the notice by the Supervisor the Fund will terminate unless the Manager and the Supervisor reach an agreement to do otherwise. Notice of the receipt by the Supervisor of the notice shall forthwith be given to each Unitholder in that Fund by the Supervisor.

### Winding-up

- 25.3 The provisions of the FMCA relating to the winding up of the Scheme and each Fund shall apply to the winding up of a Scheme or its Funds.

### Procedure on winding up

- 25.4 Upon the termination of any Fund the rights of Unitholders to have their Units purchased or redeemed shall cease and the Supervisor shall sell and realise the Investments and Assets of the relevant Fund which are not to be distributed in specie as part of the termination, as directed by the Manager, as soon as reasonably practicable.
- 25.5 Upon the termination of any Fund the Supervisor shall at the direction of the Manager and subject to the right of retention contained in clause 25.6, distribute the whole or part or parts of the Fund to the Unitholders in that Fund in specie with the value of such Assets to be determined in accordance with clause 4 upon such Assets to be distributed.

- 25.6 The Supervisor shall retain out of any money in its hands relating to the Fund to be terminated such amount as the Manager considers necessary or appropriate to meet all costs, charges, expenses, claims and Liabilities (including contingent Liabilities) and Tax incurred in connection with the Fund or arising out of the liquidation of the Fund including the Supervisor's fees, the Manager's fees and the fees of any agents, solicitors, bankers, accountants, Auditors or other persons (including the Manager) whom the Manager or the Supervisor may employ in connection with the winding up of the Fund. The Manager and the Supervisor shall be entitled to be indemnified in respect of the foregoing from the monies or assets retained by the Supervisor.
- 25.7 All monies and assets of the Fund to be wound up shall be held and applied by the Supervisor as follows:
- (a) first, in payment or retention of all amounts referred to in clause 25.6 above and all payments made by (or on behalf of) the Supervisor or the Manager and payable from the Fund and of all remuneration payable to the Supervisor and the Manager as herein provided;
  - (b) secondly, in payment or distribution to the Unitholders (including holders of Fractional Units) of the Fund in proportion to their respective Holdings of Units at the time of distribution (subject to clause 26.7);
- 25.8 If in the opinion of the Supervisor it shall be expedient to do so the Supervisor may make interim payments or distributions on account of the monies to be distributed in accordance with this clause.
- 25.9 Each distribution shall be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.

#### **Unclaimed benefits**

- 25.10 If the Manager is unable to locate a Unitholder, having used reasonable endeavours in accordance with Relevant Law, the Manager shall transfer the entitlements of that Unitholder in accordance with Relevant Law.

## **26 TAX**

- 26.1 In this clause:

*Relevant Person* means a Unitholder and their personal representatives or successors.

*Taxation Amount* means in relation to a Relevant Person:

- (a) any Tax payable by or on account of that person or in respect of that person's interest in a Fund;
- (b) any withholding Tax or similar amount required to be held or deducted by the Manager or the Supervisor in respect of a Unitholder's holding of Units; or
- (c) any PIE Tax Liability that is or may be assessed against or payable by or in respect of a Unitholder's holding of Units.

### **Withholding Taxes**

- 26.2 If the Manager or the Supervisor is obliged by law to make any deduction or withholding on account of Tax from any payment to be made to a Unitholder (including amounts which would be so paid if they were not being applied for a Switch or reinvested under this Governing Document) the Manager or Supervisor (as the case may be) shall make such deduction or withholding and:
- (a) pay such an amount to the Commissioner or other relevant Tax authority;
  - (b) reimburse the Supervisor or the Manager for any corresponding amount paid from their own funds; and
  - (c) refund any balance to the Relevant Person.
- 26.3 On payment or application of the net amount in respect of the Relevant Person and of the Taxation Amount to the Commissioner or other relevant Tax authority, the full amount payable or available to the relevant Unitholder shall be deemed to have been duly paid and satisfied. For the avoidance of doubt, notwithstanding any other provisions of this Governing Document, only the net amount will be available for the benefit of the Unitholder in the case of a transfer, Transmission, Switch or a reinvestment of Entitlements.

### **Rights of PIP Investors**

- 26.4 A PIP Investor shall have the same rights, benefits and entitlements as if the PIP Investor were the registered holder of the Units held by the PIP Investor Proxy on behalf of the PIP Investor, except that:
- (a) the PIP Investor Proxy shall be deemed to hold such rights, benefits and entitlements on behalf of the PIP Investor; and
  - (b) the PIP Investor Proxy is the only person able to exercise any such rights or entitlements or receive any such benefits.

### **Role of PIP Investor Proxy**

- 26.5 Notwithstanding anything else in this Governing Document:
- (a) the PIP Investor Proxy must comply, in respect of a Fund, with the obligations imposed on PIP investor proxies under the Tax Act;
  - (b) to the extent permitted by law none of the Fund, the Manager or the Supervisor shall have any obligation or liability of any nature:
    - (i) for any PIE Tax Liability or other Tax in respect of income attributed to the PIP Investor Proxy; or
    - (ii) for any matter for which the PIP Investor Proxy is responsible under paragraph (a) above; and
  - (c) neither the Manager nor the Supervisor shall have any liability or obligation to PIP Investors or the PIP Investor Proxy in connection with the PIP Investor

Proxy's failure to comply with, or any action or inaction of the PIP Investor Proxy in respect of, its obligations under paragraph (a) above.

### **Non-residents Taxation**

- 26.6 If the Fund is not a PIE, the Manager may (but is not obliged to), with the approval of the Supervisor, take all such actions as are permitted by law to provide compensation to Unitholders to mitigate the Tax liability of any Unitholders arising out of their ownership of any Units, in accordance with the procedure for the payment of supplementary dividends to non-resident Unitholders set out in the Tax Act, provided such actions, in the opinion of the Manager, are not prejudicial to any other Unitholder and are equitable having regard to the interests of all Unitholders.

### **Powers if a Fund is a PIE**

- 26.7 Notwithstanding any other provision of this Governing Document, the Manager shall have the following additional powers and discretions in respect of any Fund which is a PIE:
- (a) To elect that a Fund be a PIE, or cease to be a PIE.
  - (b) To determine, on such basis as the Manager thinks appropriate in its complete discretion, any matter which is necessary or desirable to be decided in order to operate a Fund as a PIE.
  - (c) To retain any amount to which a Unitholder otherwise would be entitled if that amount is required to be paid to Inland Revenue pursuant to the Tax Act.
  - (d) To make available to the Unitholder the benefit of any Tax Credit in such manner as the Manager considers appropriate in its complete discretion.
  - (e) To make any elections or exercise any options under the Tax Act as it thinks fit having regard to the interests of Unitholders generally and the rules in the Tax Act.
  - (f) To carry out any Tax calculations, allocations or attributions required by the Tax Act for a PIE.
  - (g) To adjust a Unitholder's Unit holding by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the redemption of the Unitholder's Units).
  - (h) To deduct any amount on account of a PIE Tax Liability or to credit any amount on account of a Tax Credit from or to any Distributable Amount or Withdrawal Price in respect of a Unitholder on such basis as the Manager considers necessary or desirable in its complete discretion, whether in accordance with the Tax Act or otherwise to the extent permitted by law, as the Manager thinks equitable in its absolute discretion, at any time (including immediately prior to the redemption of the Unitholder's Units).



- (i) To elect to offset Tax liabilities and Tax Credits in respect of more than one Unitholder and make such adjustments as the Manager thinks fit in its complete discretion to the extent permitted by the Tax Act.
- (j) To allocate the costs associated with being a PIE between Unitholders and Funds on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion.
- (k) To take all steps as the Manager considers necessary or desirable to ensure the Fund is eligible or continues to be eligible as a PIE, or otherwise to comply with the PIE rules in the Tax Act, including (in the Manager's complete discretion):
  - (i) rejecting applications for Units;
  - (ii) treating Units issued to a Unitholder as void (ab initio or from such other date as the Manager may decide in its complete discretion) and to the extent that the parties cannot legally achieve this outcome, then the Unitholder acknowledges that any Units issued which exceed the Investor Interest size requirement prescribed in the Tax Act, shall be deemed to be held by that Unitholder on trust for the Manager and the Manager shall have full powers of direction in relation to those Units including when, how and to whom they shall be disposed of; or
  - (iii) redeeming Units where the relevant Unitholder's Unit holding would threaten the Fund's eligibility as, or cause a Fund to be ineligible to be, a PIE, provided the Manager has given the Unitholder one month's notice or such shorter notice as is necessary in order to maintain the Fund's status as a PIE.
- (l) To require that before accepting an application for Units the applicant provides their Tax File Number, Prescribed Investor Rate, and any other information required by the Tax Act, and that at any time a Unitholder must confirm such details or provide such other information as required by the Tax Act on request from the Manager.
- (m) To disclose any information, including issuing any statements and providing any information to Unitholders as required by the Tax Act and in respect of their Tax position in relation to the Fund, and providing any information (including personal information) to Inland Revenue or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Fund's Tax obligations.
- (n) To value Tax losses of the Fund for the purpose of determining the Unit Price as the Manager thinks fit in its complete discretion having regard to the Tax Act and to the Fund's stated policies (if any) from time to time.
- (o) To take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to transition a Fund to and from being a PIE or to administer the Fund as a PIE.

### **Tax payments in good faith**

- 26.8 Neither the Supervisor nor the Manager shall be liable, to the maximum extent permitted by FMCA, to account to any Unitholder or otherwise for any payments made by the Supervisor or the Manager in good faith to any fiscal authority for Taxes in respect of the Scheme, a Fund, the Unitholders or with respect to any transaction under this Governing Document notwithstanding that any such payment need not have been made.

### **Provision of Information where a Fund is a PIE**

- 26.9 The Manager may request any Unitholder to provide information to the Manager to enable the Manager to determine whether a Fund continues to meet the PIE eligibility requirements and, in particular, the Manager may request any Unitholder to:
- (a) provide details of Units held by any associated person (as defined in the Tax Act) of the Unitholder (including any associated person who is a PIP Investor) where the associated person holds 5% or more of the Units in a class; and/or
  - (b) confirm that the Unitholder either is or is eligible to be a PIE.

If the Manager requests a Unitholder to provide information to the Manager pursuant to this clause, the Unitholder shall supply such information within 30 days of the request, or such shorter notice as is necessary in order to maintain the Fund's status as a PIE.

### **Indemnity for Tax**

- 26.10 Each Relevant Person shall indemnify the Supervisor and the Manager in respect of any Taxation Amount paid or payable by the Manager or the Supervisor in respect of a Relevant Person, including any shortfall if the value of a Unitholder's Units is insufficient to meet any liability for a Taxation Amount payable in respect of that Unitholder by a Fund or the Supervisor (whether current or deferred).

### **Fair Dividend Rate Powers**

- 26.11 Where the Manager considers it necessary or desirable in the Manager's complete discretion that a Fund should meet the requirements of the fair dividend rate periodic method as defined in the Tax Act, the Fund shall be treated as having assigned to each Unitholder an interest in a proportion of the net returns from investments of the Fund corresponding to the Unitholder's Unit holding in the Fund.

## **27 GENERAL**

### **Power of Manager to obtain information as to beneficial ownership of Units**

- 27.1 The Manager may, by notice in writing given to a Unitholder, or to a person whom the Manager considers may be an Associated Person of a Unitholder or otherwise may have a Relevant Interest in a Unit, require the recipient, to within 14 days after receiving the notice to give to the Manager a statement in writing setting out:
- (a) full particulars of that recipient's Relevant Interest in specified Units and of the circumstances by reason of which that recipient has that interest; and

- (b) so far as it lies within the recipient's knowledge:
  - (i) full particulars of the name and address of each other person (if any) who has a Relevant Interest in the Units or who is an Associated Person of the relevant Unitholder;
  - (ii) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
  - (iii) full particulars of the name and address of each person (if any) who has given Relevant Instructions in relation to any of the Units, details of those Relevant Instructions, and the date or dates on which those Relevant Instructions were given.

27.2 Where the Manager is satisfied that a Unitholder or a person described in clause 27.1 has failed to comply with any request made by the Manager pursuant to clause 27.1 the Manager may by notice in writing to the Unitholder registered as Holding the Units in respect of which the failure relates ('the specified Units') require the disposal in accordance with this Governing Document of the specified Units or any part thereof within such time as is specified in the notice. Any Unitholder disposing of specified Units shall not be entitled to make any claim upon the Manager or the Supervisor in respect of the acquisition or disposal of the specified Units or in respect of any other matter.

27.3 If the specified Units are not disposed of in accordance with the notice given by the Manager pursuant to clause 27.1 by the time specified in the notice, the Manager may itself purchase or sell or redeem or cause the specified Units to be sold or redeemed at the Exit Amount (as if the date of the notice were the date of the Exit Request) on a date or dates nominated by the Manager and approved by the Supervisor.

27.4 For the purposes of giving effect to clause 27.3, the Manager may appoint a person to execute as transferor a transfer or other instrument in respect of any Units sold or redeemed in accordance with the provisions of clause 27.3 and to receive and give good discharge of the purchase or redemption money therefor, and register the transfer or effect the redemption or purchase.

27.5 The purchase or redemption money less the expenses of any sale or redemption made in accordance with the provisions of clause 27.3 (and less any adjustment pursuant to clause 26.7) shall be paid to the Unitholder whose Units were sold or redeemed

### **Payments to Unitholders**

27.6 Any monies payable by the Supervisor or by the Manager to a Unitholder under the provisions of this Governing Document may be credited to any bank account nominated by (or on behalf of) the Unitholder. In respect of direct credits, the giving by the Manager of the encoded payment instructions to the paying bank, will be due satisfaction of the monies payable and will be good discharge to the Supervisor and to the Manager.

### **Law applicable**

- 27.7 This Governing Document shall be governed by the law of New Zealand. The courts of New Zealand shall have exclusive jurisdiction to hear and determine any claim or matter arising out of or in connection with this Governing Document.

### **Severance**

- 27.8 If a provision of this Governing Document is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal as aforesaid if it were read down and it is capable of being read down, it shall be read down accordingly.
- 27.9 Notwithstanding clause 27.8, if a provision of this Governing Document is still void or voidable or unenforceable or illegal:
- (a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and
  - (b) in any other case, the whole provision is hereby severed, and the remainder of this Governing Document has full force and effect.

### **Counterparts**

- 27.10 This Governing Document may be executed in two counterpart copies both of which, when taken together, shall constitute one and the same instrument. The parties may execute this Governing Document by signing either such counterpart copy.

### **Delivery**

- 27.11 For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this Governing Document will be delivered by each party on the earlier of:
- (a) physical delivery of an original of this Governing Document, executed by the relevant party, into the custody of the other party or the other party's solicitors; or
  - (b) transmission by the relevant party or its solicitors (or any other person authorised in writing by the relevant party) of a photocopied or scanned copy of an original of this Governing Document, executed by the relevant party, to the other party or the other party's solicitors.

## EXECUTION AND DATE

Executed as a deed.

Date: 10 July 2023

Signed by  
**Fisher Funds Management Limited**



Director



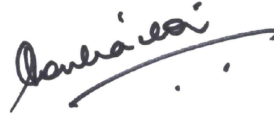
Director

Signed by  
**Trustees Executors Limited**  
in the presence of:



David Shaw  
Senior Client Manager

Authorised Signatory



Authorised Signatory

Witness signature:

Witness name:

Occupation:

Address:



Aditya Bhatli  
Operations Manager  
Auckland

Shahazad Contractor  
Head of Client Supervision

## SCHEDULE 1 FORM OF ESTABLISHMENT DEED

**DEED** dated

### **PARTIES**

[MANAGER] (Manager)

[SUPERVISOR] (Supervisor)

### **BACKGROUND**

- A. The Manager and the Supervisor are parties to a Governing Document dated [ ] (*Governing Document*), which sets out the terms and conditions applicable to funds established by the Manager and the Supervisor in the Fisher Funds Investment Series.
- B. The Governing Document provides that each new fund is to be established by the Manager and the Supervisor entering into an Establishment Deed setting out the specific terms and conditions relating to that Fund.
- C. The Manager has resolved to establish a fund (*Fund*) and the Supervisor and the Manager have entered into this Deed for the purpose of establishing that Fund and the terms and conditions applicable to it.

### **COVENANTS**

#### **1 INTERPRETATION**

##### **1.1 Governing Document definitions**

All terms defined in the Governing Document which are not separately defined in this Deed shall have the same meanings where used in this Deed.

#### **2 CREATION OF FUND**

##### **2.1 Deposit of monies**

Upon execution of this Deed, the Manager will deposit the sum of \$[ ] with the Supervisor to be held upon the trusts created by the Governing Document and, upon deposit of such sum, the Fund will be deemed to have been established. The Fund shall be part of the Fisher Funds Investment Series.

##### **2.2 Name of Fund**

The name of the Fund constituted under clause 2.1 shall be [ ].

### 3 GOVERNING DOCUMENT

Except as modified by the terms of this Deed, all the terms and conditions set out in the Governing Document shall apply to the Fund.

#### EXECUTION

Signed by  
**Fisher Funds Management Limited**  
in the presence of: )  
)  
)  
) \_\_\_\_\_  
Director  
\_\_\_\_\_  
Director

Witness signature:

Witness name:

Occupation:

Address:

Signed by  
**Trustees Executors Limited**  
in the presence of: )  
)  
)  
) \_\_\_\_\_  
Director/Authorised Officer  
\_\_\_\_\_  
Director/Authorised Officer

Witness signature:

Witness name:

Occupation:

Address: