



**Fisher Funds Premium Service Scheme
and Fisher Funds Managed Funds
Scheme Governing Document**

Fisher Funds Management Limited
Trustees Executors Limited

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FISHER FUNDS PREMIUM SERVICE SCHEME AND FISHER FUNDS MANAGED FUNDS SCHEME GOVERNING DOCUMENT

Date: 10 July 2023

PARTIES

Fisher Funds Management Limited (*Manager*)

Trustees Executors Limited (*Supervisor*)

BACKGROUND

- A The Fisher Funds Managed Funds (other than the Australian Growth Fund) were established pursuant to a Unit Trust Deed between the Manager and the Supervisor dated 28 July 1998 (as amended on 6 April 2005, 18 July 2007, 21 November 2008, 13 January 2011 and 18 June 2013) (the *Managed Funds Trust Deed*).
- B The Australian Growth Fund was originally established as the Coronet Equity Trust on 7 November 1994 and subsequently governed by a trust deed dated 8 August 2005 (as amended on 18 July 2007 and 18 June 2013) (the *Australian Growth Fund Trust Deed*).
- D The Fisher Funds Premium Funds were established under the Master Trust Deed executed between the Manager and the Supervisor on 14 March 2007 (as amended on 13 January 2011 and 18 June 2013) (the *Premium Funds Trust Deed*).
- E The Managed Funds Trust Deed, the Australian Growth Fund Trust Deed and the Premium Funds Trust Deed were called together the Existing Trust Deeds.
- F The Existing Funds listed in Schedule 1 are the unit trusts that have been established by the Manager to date, each by a separate establishment deed or a supplemental deed, as amended from time to time (together the *Existing Establishment Deeds*).
- G The Manager and the Supervisor amended the Existing Trust Deeds and the relevant Existing Establishment Deeds by substituting a deed dated 13 October 2016 for the Existing Trust Deeds and the Existing Establishment Deeds (the *Existing Governing Document*) to:
- (a) establish two Schemes:
 - (i) The Fisher Funds Premium Service Scheme (the *Premium Service Scheme*); and
 - (ii) The Fisher Funds Managed Funds Scheme (the *Managed Funds Scheme*);
- (each a *Scheme* and together the *Schemes*) which are each governed as a separate Scheme under the Existing Governing Document;

- (b) comply with the requirements of the Financial Markets Conduct Act 2013 (FMCA), and all other relevant legislation;
 - (c) make a number of other minor amendments to the Existing Deeds for the more efficient operation of the Schemes as a consequence of the introduction of the FMCA; and
 - (d) consolidate the Existing Trust Deeds and the relevant Existing Establishment Deeds into one governing document.
- H 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, consolidate further Establishment Deeds and make updating changes.
- I 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 Schemes and the Funds will be operated, administered, and governed in accordance with the provisions of this Deed.

1 INTERPRETATION

1.1 Defined Terms

In this Deed:

Alternative Fund has the meaning given in clause 27.10.

Application Monies means the aggregate monies paid by a prospective Unitholder in relation to an application for the purchase of Units in a particular Fund.

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, in the case of joint auditors, the persons) for the time being holding the office of auditors of each Scheme, appointed under clause 13.2.

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 4.8(d).

Commissioner means the Commissioner of Inland Revenue.

Contingent Liabilities means contingent liabilities which should be classified as such by generally accepted accounting practice.

Custodian means a person appointed to hold all or part of the Scheme Property under clause 2.6(a), 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 2.6(c).

Derivative Transaction means any currency, equity or interest rate swap transaction, foreign exchange transaction or other derivative transaction necessary or desirable for the purposes of, or in connection with, hedging any liability or asset of a Fund or converting any amount in one currency into an amount in another currency or generally for the management of the relevant Fund's interest rate or foreign exchange exposure.

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 and which has been notified to the Unitholders by not less than one month's notice.

Distribution Period means a period of twelve months (or such other period as the Manager may determine and which has been notified to the Unitholders by not less than one month's notice) commencing on the day following a Distribution Date or, in the case of the first Distribution Period, on the date of the Establishment Deed and ending on a Distribution Date.

Effective Date means, in relation to each 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, in respect of each Fund, the Manager's fee (if any) for selling or issuing Units in that Fund determined in accordance with clause 18.2.

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 Schedule 2 or such other form as the Supervisor and the Manager may agree.

Existing Fund means each Fund set out in Schedule 1.

Exit Amount means, in respect of each Fund, the price for those Units in that Fund which are being repurchased or redeemed determined in accordance with clause 84.

Exit Fee means, in respect of each Fund, the Manager's fee (if any) for repurchasing or redeeming Units in that Fund determined in accordance with clause 18.2.

Exit Request means, in respect of each Fund, a request that the Manager repurchase or redeem any Units of that Fund in the manner specified in clause 8.1 and includes a Switch Request.

Financial Statements has the meaning set out in the FMCA.

Financial Year means, in respect of each Scheme and each Fund, a period of 12 months ending on 31 March (or such other period or date as the Manager determines) in each year (or that Scheme's or Fund's Termination Date, if earlier) and includes the period commencing on the date on which a Fund is established and ending on the following 31 March.

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 (or on behalf of) the Unitholder for the Unit an amount which is less than the amount of the full Unit Price applicable at the time the Unit is issued.

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

Fund Update has the meaning set out in regulation 5 of the FMC Regulations.

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.

Gross Asset Value means, in respect of each Fund, the aggregate value of all Assets in the Fund.

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

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.

Issuer Obligations has the meaning given to it in the FMCA.

Liability means, in respect of each Fund, each debt, liability, provision for and other obligation of the Supervisor in respect of such Fund (including, for the avoidance of doubt and without limitation, in relation to Tax for a Fund that is not a PIE) but excluding:

- (a) any amount which results from treating Units as a liability;
- (b) in the case of a Fund which is a PIE where the Manager, in its absolute discretion considers it appropriate to do so, any PIE Tax Liability; and
- (c) contingent liabilities except to the extent that the Manager decides an allowance should properly be made for such contingent liabilities.

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 for the time being appointed as manager of the Schemes pursuant to this Governing Document, and includes any attorney, agent, and delegate of such person.

Managed Funds Scheme means the Scheme comprising the Managed Funds listed in paragraph 1 of Schedule 1 and established under clause 2.7.

Minimum Amount means, in respect of each Fund, the minimum amount of Application Monies to be accepted in relation to that Fund set by the Manager from time to time.

Minimum Holding means, in respect of a Unitholder of a Fund, the minimum amount or value of Units to be held by (or on behalf of) that Unitholder set by the Manager from time to time.

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 11.2.

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.

Office means the principal place of business of the Manager from time to time.

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

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.

Premium Service Scheme means the Scheme comprising the Premium Funds listed in paragraph 2 of Schedule 1 and established under clause 2.7.

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

Qualified Auditor has the meaning given in the FMCA.

Record Date means the date as at which are determined:

- (a) entitlements to benefits conferred by holding a Unit; or
- (b) the persons registered as Unitholders to whom a notice is to be sent or who will be entitled to vote on or otherwise exercise rights, irrespective of subsequent issues, transfers and registrations.

Register means the register of Unitholders maintained for each Fund pursuant to the FMCA.

Register Entry has the meaning given to it by the FMCA.

Registrar means, in relation to a Fund, the Manager or the person from time to time holding appointment from the Manager to maintain the Register for that Fund pursuant to clause 5.1(b).

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:

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

Relevant Interest means in respect of any Unit:

- (a) the beneficial ownership of that Unit or any other beneficial interest therein whether present or future or vested or contingent;
- (b) the power (whether expressed or implied, direct or indirect, legally enforceable

or not) to exercise or control the exercise of the right to vote in respect of that Unit or to dispose of or to control the exercise of the right to dispose of that Unit; or

- (c) the power (whether expressed or implied, direct or indirect, legally enforceable or not, actual or contingent) to direct, control or influence the Unitholder of that Unit.

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, a Scheme or a Fund at applicable points in time and which may include, without limitation, the FMCA, the FMC Regulations and any frameworks or methodologies issued by the FMA under such legislation, and the Trusts Act.

Scheme means the Premium Service Scheme or the Manager Funds Scheme and, together, they are the *Schemes*.

Scheme Property has the meaning given in the FMCA.

Sell Spread means the Sell Spread referred to in clause 8.4(d).

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

Special Resolution in relation to a Scheme, has the meaning given to it in relation to that type of scheme by the FMCA.

Standing Application means an application for the subscription of Units in a Fund on a regular and periodic basis, as described in clause 4.2(b).

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

Switch means the sale or issue of Units to a Unitholder in one or more Funds immediately following the repurchase or redemption of Units held by (or on behalf of) that Unitholder in another Fund.

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.

Termination Date means in respect of each Fund, the date determined in accordance with clause 27.2.

Trusts Act means the Trusts Act 2019.

Unit means in respect of a Fund, an undivided part or share in the beneficial interest in the Assets relating to that Fund and includes a Fractional Unit unless the context otherwise requires.

Unitholder means, in respect of a Fund, each person for the time being registered in the relevant Register as the holder of a Unit, and includes persons jointly 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 11, being each Business Day or at such other intervals (not exceeding 31 days) as the Manager may determine.

1.2 References

Unless the context otherwise requires, any reference in this Governing Document to:

- (a) a clause or a schedule is a reference to a clause of or a schedule to this Governing Document.
- (b) indebtedness includes any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) for the payment or repayment of money.
- (c) a law includes common or customary law and any constitution, decree, judgment, legislation, order, ordinance, regulation, by-law, statute, treaty or other legislative measure, in each case of any jurisdiction whatever.
- (d) a person includes an individual, firm, company, body corporate, corporation or unincorporated body of persons, organisation or trust, and any state, government or governmental agency, in each case whether or not having separate legal personality.
- (e) written and in writing include all means of reproducing words in a tangible and permanently visible form.

1.3 Miscellaneous

- (a) The introduction to, and headings in, this Governing Document are inserted for convenience only and shall be ignored in construing this Governing Document.
- (b) Unless the context otherwise requires, words denoting the singular number only include the plural and vice versa and words denoting any gender include all genders.
- (c) References to any legislation or to any provision of any legislation shall be deemed

to be references to that legislation or provision as from time to time amended, re-enacted or substituted and include any statutory instruments issued under any such legislation or provision.

- (d) References to any document (however described) include references to that document as modified, novated, supplemented, varied or replaced from time to time.
- (e) References to a party to a document include its successors and permitted assigns.
- (f) A reference to a month is to a calendar month.
- (g) A reference to including does not imply limitation.
- (h) Except where the context otherwise requires, anything which may be done at any time may also be done from time to time.
- (i) 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.
- (j) 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.

1.4 **Currency**

- (a) Unless the context otherwise requires, if all (or substantially all) of the Units in a Fund have been subscribed in a particular currency and all (or substantially all) of the Investments of that Fund are denominated in that same currency, references to an amount in money or a calculation in money are references to an amount or calculation in that particular currency.
- (b) Where, in respect of a Fund, 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.

1.5 **Manager's Discretion to follow Accounting Principles**

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.

1.6 Implied terms under the FMCA

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.

1.7 Trusts Act 2019

- (a) The provisions of the Trusts Act are modified or excluded as follows: 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 ESTABLISHMENT OF FUNDS

2.1 Creation of the Schemes

The Schemes are established under this Governing Document, and shall be known as the "Fisher Funds Premium Service Scheme" and the "Fisher Funds Managed Funds Scheme".

2.2 Continuation of trusts

The Existing Funds established in accordance with the Existing Trust Deeds and their respective Existing Establishment Deeds and the Schemes continue after the Effective Date on the terms contained in this Governing Document.

2.3 Continued appointment of Supervisor

The Supervisor continues as the trustee of the Funds and agrees to act as the Supervisor of the Schemes for the purposes of the FMCA, and to hold the Assets of each Fund in trust for the Unitholders of that Fund, upon and subject to the terms and conditions of this Governing Document.

2.4 Continued appointment of Manager

The Manager continues to act as the manager of each of the Schemes for the purposes of the FMCA and agrees to act as the manager on the terms and conditions of this Governing Document and Relevant Law and to observe and perform its obligations under this Governing Document and Relevant Law.

2.5 Name of Funds

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

2.6 Appointment of Custodians

- (a) 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.
- (b) 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 2.6 and otherwise by Relevant Law.
- (c) If authorised in writing by the Supervisor, subject to the Supervisor giving the Manager prior written notice, a Custodian appointed under clause 2.6(a) 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 2.6(c) 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 2.6 and otherwise by Relevant Law.
- (d) 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 Scheme Property as supervisor or custodian expressed or implied in this Governing Document and Relevant Law.
- (e) The Supervisor may agree with the Custodian or sub-custodian appointed pursuant to this clause 2.6, 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.

2.7 Establishment

- (a) The Existing Funds are set out in Schedule 1.

- (b) 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:
- (i) 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;
 - (ii) the name of the new Fund;
 - (iii) the date of commencement of the new Fund;
 - (iv) whether the new Fund is part of the Premium Service Scheme or the Managed Funds Scheme;
 - (v) any amendment to this Governing Document in respect of the new Fund approved by the Supervisor; and
 - (vi) 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.

2.8 Conflicts between this Governing Document and the Establishment Deed

- (a) 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.
- (b) 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.
- (c) The provisions of the relevant Establishment Deed and this Governing Document, read together in accordance with this clause 2.8, shall constitute the terms and conditions for the relevant Fund.

2.9 Each Fund is separate

The Supervisor and the Manager will at all times treat a Fund as a separate and distinct trust fund with its separate property and liabilities governed by the terms and conditions of this Governing Document.

2.10 Investments of a Fund are held exclusively for it

All Investments made with the monies of a Fund shall be held by the Supervisor as the exclusive property of that Fund and will not be used to meet any Liabilities of any other Fund. Such Investments shall be held exclusively for the benefit of the Unitholders of that Fund and no Unitholder in one Fund shall have any claim on any other Fund.

2.11 **New Funds do not affect existing Funds**

Except as may be expressly provided in the relevant Establishment Deed, the constitution of a new Fund shall not in any way vary or affect a Fund then constituted nor give rise to any resettlement of a Fund then constituted.

2.12 **Assets of Funds**

The Assets of each Fund will consist of all Investments for the time being held by the Supervisor in respect of the relevant Fund, including:

- (a) all income received from any such Investments pending distribution or reinvestment;
- (b) the proceeds of realisation, sale, redemption or repayment of any Investments of that Fund; and
- (c) all other additions and/or accretions (if any) which arise to the Fund by way of interest, premium, distribution or otherwise, received and for the time being retained by the Supervisor.

3 **UNITS AND THEIR RIGHTS**

3.1 **Fund divided into Units**

- (a) The beneficial interest in each Fund is divided into Units which shall each confer an undivided interest in that Fund's Assets.
- (b) A Fractional Unit shall confer a proportional interest in the relevant Fund but shall not confer any voting rights on the holder.

3.2 **Each Unit is equal**

Every Unit represents an equal beneficial interest in the Fund to which it relates, ranking equally with all other outstanding Units of that Fund, and shall not confer any interest in any particular part of that Fund or in any Asset of that Fund provided that:

- (a) there may be different classes of Units in any Fund; and
- (b) the value and rights of each such class and the obligations and responsibilities of the Supervisor and Manager will be set out in the relevant Establishment Deed.

3.3 **No interest in underlying Investments**

No Unit confers any interest in any particular part of the Fund to which it relates or of any Investment held by that Fund (other than the beneficial interest in the Fund described in clause 3.1). Subject to the rights of Unitholders created by this Governing Document or by Relevant Law, no Unitholder is entitled to:

- (a) require the transfer to that Unitholder (or any other person) of any of the Investments of that Fund;

- (b) compel any partition, division or distribution of the relevant Assets; or
- (c) interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the trusts, powers, authorities or discretions conferred upon them or either of them by this Governing Document or in respect of that Fund; or
- (d) by virtue of holding Units, to attend meetings whether of shareholders or otherwise or to vote or to take part in or consent to any action concerning any property or corporation in which a Fund holds an interest.

3.4 Unitholders bound by Governing Document

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

4 ISSUE OF UNITS

4.1 Offer of Units

- (a) The Manager must not make a Regulated Offer of Units in a Fund unless:
 - (i) the relevant Scheme is registered under the FMCA;
 - (ii) a PDS has been prepared and lodged on the Disclose Register in respect of the Scheme and the Fund; and
 - (iii) 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.
- (b) Each Disclosure Document must comply with Relevant Law at the time and, subject to clause 4.1(d), otherwise be in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- (c) The Manager must use reasonable commercial endeavours to ensure that the Disclosure Documents for each Scheme and each Fund at all times comply with the Relevant Law.
- (d) The Manager shall, unless agreed otherwise, 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).

4.2 Application procedure

- (a) Units may only be subscribed for (including pursuant to a Switch Request) by the applicant:

- (i) completing an application in the form and manner prescribed from time to time by the Manager; and
 - (ii) transferring to the Supervisor, to be held in respect of the relevant Fund, the Application Monies 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.
- (b) Applications to acquire Units in any Fund may be Standing Applications for a fixed amount per month (or such other period as the Manager may otherwise determine), and may include an authorisation for the Manager to initiate direct debits from a bank account nominated by the applicant for the respective Application Monies to be credited to the Manager or the Supervisor (as nominated by the Manager) on account of the Fund.
- (c) The Manager may, in its absolute discretion, accept or reject in whole or in part any application for Units in a Fund (including one made by virtue of a Standing Application), and the Manager is not required to give any reason for any such rejection.
- (d) If a credit given for the subscription of Units is dishonoured or reversed, and if the Manager has issued Units prior to such dishonour the Manager may, without prejudice to any other remedies or claims, cancel the Units, as the Manager thinks fit.

4.3 Underwritten offers of Units

- (a) If the Manager considers it desirable for the Fund to do so, any proposed issue of Units in a Fund may be underwritten.
- (b) The underwriter and its nominees (if any) or any of them may take up the Units not otherwise subscribed for, and charge underwriting commission and all costs and disbursements of the issue as may be agreed with the Manager, which may be payable out of that Fund as the Manager shall determine.
- (c) The underwriter may be the Manager, an Associated Person of the Manager, or any other person.
- (d) Such underwriting shall be on normal commercial terms for such underwriting.

4.4 Acceptance of application

The Manager shall on the date of receipt of an application for Units in the Fund (or such other date as the Manager determines):

- (a) decide whether to accept or reject each application for Units 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.

4.5 **Entry date and registration**

- (a) On acceptance of an application for Units in a Fund, the Manager shall:
 - (i) enter, or cause to be entered, the name of the relevant Unitholder on the relevant Register; or
 - (ii) where the Unitholder is already on the relevant Register, cause that Register to be altered accordingly.
- (b) Units in a Fund shall be issued by the Manager by the next Valuation Day after the acceptance of a valid application for Units in a Fund (as determined by the Manager).

4.6 **Number of Units**

- (a) There is no limit on the number or amount of Units to be issued under this Governing Document.
- (b) Without limiting any other provision of this Governing Document, the Manager may set and vary minimum and/or maximum amounts for subscriptions for Units in a Fund, whether by number of Units, dollar value and/or multiples thereof.

4.7 **Fractional Units**

- (a) The Manager may issue Fractional Units (rounded to 4 decimal places or such other decimal place as the Manager determines) where the amount contributed by (or on behalf of) a Unitholder is less than the Unit Price applicable at the time of issue of a Unit.

4.8 **Unit Price**

- (a) The Unit Price shall be determined on each Valuation Day by dividing the Net Value of the relevant Fund by the number of Units then on issue 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 on a Valuation Day 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.
- (b) If the Manager accepts an application to subscribe for Units in a Fund, the number of Units sold and/or issued is to 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:

- (i) the Application Monies received or, in the case of the acquisition of Investments, the purchase price or consideration for the Investments agreed by the Manager; less
 - (ii) the applicable Entry Fee and any other applicable fee, with fractions rounded to 4 decimal places (or such other decimal place as the Manager determines); less
 - (iii) the Buy Spread (if any) referred to in clause 4.8(d).
- (c) For the purposes of calculating the number of Units to be issued in respect of:
- (i) the first issue of Units under any Fund, the Unit Price per Unit of that Fund shall be deemed to be \$1.00;
 - (ii) 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.
- (d) 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.

4.9 Issue or purchase of Units

Applications for Units 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 in the relevant Fund owned by the Manager,

provided that, regardless of the alternative adopted by the Manager, the purchase or subscription price payable by Unitholders must always be the Unit Price.

4.10 Manager's fees

- (a) To the extent an application for Units is satisfied by:
 - (i) the sale of Units owned by the Manager, the Manager is entitled to receive and retain for its own benefit the whole of the aggregate Application Monies for those Units; and
 - (ii) the issue of Units, the Manager is entitled to receive and retain for its benefit the Entry Fee in respect of those Units, but may not retain for its benefit the Buy Spread (if any), which shall be retained in the relevant Fund.
- (b) Any monies due to the Manager under this clause 4.10 will be:

- (i) retained by the Manager from the Application Monies; or
 - (ii) if not so retained, paid to the Manager by the Supervisor on the date when the relevant Units are issued or sold (as the case may be) or on such later date (not being later than the date on which the monies are received by the Manager) as the Manager determines.
- (c) The Manager will not charge any Entry Fee where the Units issued in a Fund arise solely in respect of a consolidation of Fractional Units.

4.11 **Commission**

The Manager is entitled, at its own cost and not at that of any of the Funds, (but subject always to clause 4.3(b)) 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.

5 **REGISTERS, CONFIRMATIONS AND ADJUSTMENT OF UNIT HOLDINGS**

5.1 **Register of Unitholders**

- (a) 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:
- (i) be kept in the manner;
 - (ii) contain the content;
 - (iii) be audited or reviewed; and
 - (iv) be available for inspection;
- as required by the FMCA.
- (b) The Manager shall appoint and maintain the appointment of a Registrar (which may be the Manager itself or any other person appointed by the Manager to act as Registrar), and shall be responsible for causing the Registrar to establish and maintain each Register in accordance with this Governing Document and all Relevant Law, and shall have the power to remove such Registrar at any time.

5.2 **Registers conclusive**

The Supervisor and the Manager shall be entitled to treat the Register as being correct if it reasonably believes that the Register has been adequately maintained.

5.3 **Unitholders to notify changes**

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.

5.4 Joint Unitholders

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.

- (g) 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 complete 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.

5.5 Confirmations

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.

5.6 Power of Manager to obtain information as to beneficial ownership of Units

Without limiting any other provision of this Governing Document (including clause 5.2):

(a) Request for disclosure of interests

The Manager may, by written notice to a Unitholder, or to a person whom the Manager considers may be an Associated Person of a Unitholder or otherwise have a Relevant Interest in a Unit require the recipient, within 14 days after receiving the notice, to give to the Manager a statement in writing setting out:

- (i) 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
- (ii) so far as it lies within the recipient's knowledge:
 - (A) 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;
 - (B) full particulars of each such interest and of the circumstances by reason of which the other person has that interest; and
 - (C) 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.

(b) Disclosure of Relevant Interests

Any Unitholder may at any time be required by the Manager to furnish to the Manager a statement in writing setting out:

- (i) full particulars of any Relevant Interest that the Unitholder or any other person has in any specified Units and of the circumstances by reason of which that interest is held; and
- (ii) so far as it lies within the Unitholder's knowledge:
 - (A) full particulars of the name and address of every other person (if any) who has a Relevant Interest in any of the specified Units;
 - (B) full particulars of each such interest, and of the circumstances by reason of which the other person has that interest; and

- (C) full particulars of the name and address of any person who has given to any other person 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.

(c) **Register may contain Relevant Interests**

Where the Manager receives, pursuant to a notice given under clauses 5.6(a) and 5.6(b), information that a person other than the Unitholder has a Relevant Interest in Units on Issue, the Manager may enter in a separate part of the appropriate Register, in relation to the Units, the name and address of each other person who the Manager has been informed has a Relevant Interest in those Units and particulars of that interest and of the circumstances by reason of which the person has the interest and the date of entry in the Register.

(d) **Register may contain particulars of Instructions**

Where the Manager receives, pursuant to a notice given under clauses 5.6(a) or 5.6(b) information that a person other than the Unitholder has given Relevant Instructions in relation to any of the Units on Issue, the Manager may enter in a separate part of the appropriate Register in relation to such Unitholder, the name and address of each other person who, according to information received by the Manager, has given Relevant Instructions in relation to any of the Units, together with particulars of the Relevant Instructions and the date of entry in the Register.

(e) **Separate Parts of Register**

Any separate part of a Register kept pursuant to clauses 5.6(c) and 5.6(d) is open to inspection by the Supervisor, Manager, Auditor, and to inspection by (or on behalf of) the Unitholders in respect of whose Units entries have been made.

(f) **Penalties**

If a Unitholder or a person described in clause 5.6(a) fails to comply with any request made by the Manager under clause 5.6(a), the Manager may:

- (i) require, by written notice to the relevant Unitholder, the disposal in accordance with this Governing Document of the relevant Units within such time as is specified in the notice; and
- (ii) if the Unitholder does not comply with the requirements of a notice given by the Manager under this clause 5.6(f) by the time specified in the notice, either itself purchase the relevant Units or cause the relevant Units to be sold in such manner as the Manager may determine and at the Exit Price (as if the date of the notice were the date of the Exit Request), and, in this regard:
 - (A) the Manager shall appoint a person to execute as transferor a transfer or it shall act as the relevant Unitholder's agent in respect of such sale, and to receive and give a good discharge in respect of any purchase monies, and shall pay such purchase monies (less any expenses of the sale) to the relevant Unitholder; and

- (B) any such Unitholder shall have no right, remedy or claim on the Manager or Supervisor in respect of the disposal of the relevant Units.
- (iii) The purchase money less the expenses of any sale made in accordance with the provisions of this clause 5.6(f) shall be paid to the Unitholder whose Units were sold.
- (iv) Nothing in this clause shall render the Manager liable or responsible for issuing or not issuing any notice, or by reason of any person acquiring Units in the Fund in contravention of this clause or failing to comply with the obligations imposed by this clause.

5.7 Consolidation or division

- (a) The Manager may, at any time, on notice to the Supervisor, determine that, in respect of any Fund, all holdings of Units in that Fund as at the close of business on a Business Day (the *Operative Date*) are to be consolidated or divided proportionately (the *Ratio*) so as to alter the number of Units on issue in respect of that Fund with effect from the close of business on that Business Day.
- (b) As from the Operative Date, each Unitholder shall be deemed to hold a number of Units equivalent to the number held by (or on behalf of) the Unitholder before the Operative Date as multiplied or divided (as the case may be) by the Ratio.

5.8 Adjustment to Unit holdings

The Manager may redeem or repurchase (or require the redemption or repurchase of) or require a transfer or Switch of Units where the holding of such Units by (or on behalf of) the Unitholder would threaten or cause the Fund to become ineligible as a PIE.

6 TRANSFER AND TRANSMISSION OF UNITS

6.1 Transfer of Units

- (a) Subject to the provisions of this Governing Document, a Unit in a Fund may be transferred.
- (b) The Manager may register a transfer of Units by:
 - (i) cancelling the number of Units sought to be transferred without any payment to the Unitholder; and
 - (ii) 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.
- (c) 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 and, subject to Relevant Law, be signed by the transferor and transferee.

- (d) The transferor is deemed to remain the Unitholder until the transfer of such Unit is entered in the relevant Register.

6.2 Manager may purchase Units

The Manager may purchase Units which a Unitholder wishes to transfer upon the following terms and conditions:

- (a) the Unitholder shall give notice in writing to the Manager specifying the Units that the Unitholder wishes to transfer;
- (b) the Manager may within fifteen days after receipt of the notice give notice in writing to the Unitholder of the Manager's intention to purchase the Units;
- (c) if the Manager gives such a notice, the Unitholder will transfer the Units to the Manager within fifteen days of receipt of the Manager's notice in consideration of the Manager paying to the Unitholder the amount that would have been payable to the Unitholder pursuant to clause 4.9 if the Units had been repurchased pursuant to an Exit Request made at the time the Unitholder's notice was given to the Manager;
- (d) if the Manager does not within the period of fifteen days signify its intention to purchase the Units or if the Manager signifies its intention not to purchase the Units the Unitholder shall be at liberty to transfer the Units to any other person during the period of three calendar months following receipt of the Unitholder's notice by the Manager pursuant to clause 6.2(a);
- (e) the Unitholder shall not be entitled to transfer the Units at any time after the three calendar month period referred to in clause 6.2(d) without first giving to the Manager a further notice pursuant to clause 6.2(a) whereupon the provisions of this clause 6.2 shall apply again *mutatis mutandis*;
- (f) if the Manager exercises its right to purchase the Units the Unitholder must do all such things and execute all such documents as shall be necessary to enable the transfer to the Manager of the Units free of all encumbrances. The Manager may do such things on default by (or on behalf of) the Unitholder.

6.3 Transmission of Units

- (a) The following persons may be registered as the Unitholder in respect of Units or may validly transfer Units:
 - (i) 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.
 - (ii) The property manager of a Unitholder who is subject to a Court Order under the Protection of Personal and Property Rights Act 1988 or attorney under an enduring power of attorney.
 - (iii) 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.

- (b) Any person becoming entitled to any Units in consequence of the death of any Unitholder, or pursuant to clause 6.3(a) 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.

6.4 Refusal to register transfers and transmissions

The Registrar shall refuse to register any transfer or transmission of Units:

- (a) unless the Unitholder (or, in the case of a transmission, the person described in clause 6.3(a)) has paid all Tax (including GST) and other commissions, fees and charges in respect of the transfer of the relevant Units;
- (b) if the transfer or transmission does not comply with Relevant Law, the Disclosure Documents or the provisions of this Governing Document (including, in the case of a transfer, if the transfer would result in the transferee or transferor holding less than the Minimum Holding for that Fund);
- (c) without limiting clause 23, 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 would threaten the Fund's eligibility as a PIE;
or
- (d) 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).

6.5 Retention of instruments of transfer

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.

6.6 Entitlement on Transfer of Units

Upon the registration of any transfer or transmission of Units from any person other than the Manager the benefit of the Units shall be:

- (a) deemed to be transferred to the Unitholder into whose name the Units are registered, if this transfer is received before the Record Date for the entitlement to the relevant benefit; and
- (b) held by the transferor if the transfer is received after that Record Date.

7 MINIMUM HOLDINGS

7.1 Manager may prescribe restrictions

The Manager may from time to time, in respect of each Fund prescribe a Minimum Holding and alter such Minimum Holding.

7.2 Sale in breach of Minimum Holdings

The Manager may, at any time, in its sole discretion:

- (a) refuse any Exit Request which would, if implemented, cause that Unitholder's holding in the relevant Fund to fall below the Minimum Holding;
- (b) deem any Exit Request which would, if implemented, cause that Unitholder's holding in the relevant Fund to fall below the Minimum Holding to be an Exit Request in respect of that Unitholder's entire holding in that Fund; and
- (c) if the amount or value of Units held by (or on behalf of) a Unitholder in the relevant Fund falls below the Minimum Holding, make an Exit Request in respect of that holding on behalf of the Unitholder, after giving that Unitholder at least one month's written notice of its intention to do so.

7.3 Manager may aggregate amounts

For the purpose of determining a Unitholder's Minimum Holding, the Manager may, in its discretion, determine that a Unitholder's holding of Units in more than one Fund shall be aggregated.

7.4 Authority for withdrawal

In the event of the Manager exercising discretion under clause 7.2 to make an Exit Request on behalf of that Unitholder, or deem an Exit Request made by that

Unitholder to apply to that Unitholder's entire holding in the Fund:

- (a) that Unitholder shall be deemed to have authorised the Manager to act on the Unitholder's behalf in respect of that withdrawal and to execute all necessary documents for the purpose of that withdrawal; and
- (b) the Manager shall account to that Unitholder for the net proceeds of withdrawal of the Units (after deduction of reasonable expenses), which shall be held on trust for the Unitholder by the Manager and paid to the Unitholder on provision of such evidence as to identity and title as the Manager may require from time to time; and
- (c) the title of a purchaser of any Units sold pursuant to this clause 7 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

8 WITHDRAWAL OF UNITS

8.1 Exit Request

- (a) If a Unitholder wishes the Manager to effect the withdrawal of some or all of that

Unitholder's Units, that Unitholder must make an Exit Request on any Business Day, to the Manager.

- (b) Any such Exit Request shall be:
- (i) in such form and containing such information as is from time to time prescribed by the Manager;
 - (ii) delivered or given to the registered office of the Manager or such other place or manner as is from time to time prescribed by the Manager;
 - (iii) revocable with the approval of the Manager;
 - (iv) revoked and cease to have any effect in relation to any Units which have been transferred prior to their repurchase by the Manager or their redemption by the Supervisor, as the case may be; and
- (c) Without limiting the Manager's discretion under clause 8.1(b), the Manager may from time to time, in respect of each Fund, fix a minimum number or value of Units that may be withdrawn.

8.2 Undertaking to effect withdrawal

Upon receiving an Exit Request from (or on behalf of) a Unitholder and upon compliance with the terms of this clause 8, the Manager will, at its option, either:

- (a) repurchase each Unit to which such Exit Request relates; or
- (b) redeem each Unit to which such Exit Request relates,

in each case for an amount equal to the Exit Amount, as at the next Valuation Day as determined by the Manager.

8.3 Funds for Exit Amount

- (a) Where the Units referred to in an Exit Request by (or on behalf of) a Unitholder are purchased by the Manager, the Manager must pay to the Unitholder the Exit Amount relating to those Units out of the Manager's own funds within thirty days of the acceptance of the Exit Request.
- (b) Where the Manager redeems the Units referred to in an Exit Request under clause 8.1(b), subject to clause 8.9, the Supervisor shall at the direction of the Manager, following the Valuation Day referred to in clause 8.2:
 - (i) apply any cash held by the relevant Fund; or
 - (ii) transfer Investments to the relevant Unitholder by way of an in specie distribution of a pro rata portion of each Investment in order to satisfy payment of the Exit Amount; or
 - (iii) endeavour (having regard to the interests of all Unitholders in the relevant Fund) to realise Investments; or

- (iv) borrow in order to effect or procure the payment of the Exit Amount to the Unitholder before the date for processing the Exit Request.
- (c) Where a Unitholder requests the redemption or repurchase of sufficient Units held by such Unitholder 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 redemption or repurchase date or may be refunded to the Unitholder.
- (d) Where the Fund has not received cleared payment for the issue of Units to be redeemed or repurchased the Manager need not repurchase or redeem the Units until cleared funds have been collected for the credit of the Fund.

8.4 **Exit Amount**

- (a) Subject to clause 8.4(c) below, the Exit Amount of each Unit shall be the Unit Price in respect of the relevant Fund, less any Exit Fee (if applicable), and less the Sell Spread (if any) referred to in clause 8.4(d), calculated as at the Valuation Day the Exit Request is accepted.
- (b) The Exit Amount shall be rounded to 4 decimal places (or such other decimal place as the Manager determines).
- (c) Where there are different classes of Units in any Fund, the Exit Amount may be calculated on a different basis to the provisions of clause 8.4(a) in respect of one or more of such different classes and such different method of calculation shall be set out in the relevant Establishment Deed.
- (d) 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.
- (e) Subject to this Governing Document, the Exit Amount shall be paid as soon as practicable after the acceptance of the Exit Request by the Manager and, in any event, within 30 days after the acceptance of the Exit Request by the Manager. The Manager shall use its best endeavours to ensure that a sufficient amount of the Assets are available in cash to enable such payment to be made.
- (f) Upon receipt of a direction from the Manager to make a payment out of a Fund that is authorised under this Governing Document, the Supervisor shall use its best endeavours to procure payment in accordance with that direction.

8.5 **Manager's Statement on Redemption**

- (a) If there is insufficient cash in a Fund to enable the any Units in that Fund to be redeemed, the Manager must fully inform the Supervisor as to:

- (i) the amount of cash to be obtained to meet such redemption;
 - (ii) the Assets to be sold or the borrowings to be made (if authorised by the SIPO); and
 - (iii) the Net Value of the Fund and the total of all costs and other disbursements and expenses incurred or expected to be incurred by the Supervisor and the Manager in the sale of Assets recommended to be sold or in the borrowing to be made (as the case may be).
- (b) Subject to clause 17.2, if there is insufficient cash in a Fund to redeem any Units to be redeemed, the Manager may direct that the Supervisor either realise Assets of that Fund specified by the Manager for the purpose or borrow money on behalf of that Fund for such purpose and the Supervisor shall use reasonable endeavours to give effect to the relevant direction so that the Supervisor shall have sufficient cash to meet the obligations.

8.6 **Effect of repurchase and redemption on Units**

- (a) Where the Units referred to in an Exit Request are purchased by the Manager, the Units are repurchased by the Manager for its own benefit and the Manager is entitled then or at any time thereafter to sell any or all of those Units, or to have them redeemed, in either case in accordance with this Governing Document.
- (b) All Units which are redeemed are to be cancelled by the Manager and cannot thereafter be re-issued but any such redemption in respect of a Fund does not restrict the creation and issue of new Units in that Fund in accordance with this Governing Document. Details of all cancelled Units are to be entered in the relevant Register.

8.7 **Redemption of Manager's Units**

- (a) The Manager is entitled at any time to redeem Units held by the Manager.
- (b) If the Supervisor is satisfied that such a redemption by the Manager relates solely to the withdrawal of Units held by the Manager, the Supervisor shall:
- (i) subject to clause 8.9, effect the withdrawal of such Units as soon as is practicable after such request to do so is received by the Supervisor; and
 - (ii) release from the relevant Fund the aggregate Exit Amount (together with all other money payable on redemption of the Units) of the Units to be redeemed as soon as is practicable.
- (c) The Manager is entitled to the benefit of any surplus and is liable for any deficiency of the Exit Amount of a Unit owned by the Manager and redeemed under this clause 8.7 over or below the price at which that Unit was issued to or otherwise acquired by the Manager and the Manager is not obliged to account to the Supervisor, the relevant Fund or any Unitholder for any excess over the Exit Amount nor is the Supervisor, the relevant Fund or any Unitholder obliged to recompense the Manager, for any deficiency below the Exit Amount.

8.8 Entry on Register

On repurchase or redemption of Units, the Manager shall make an appropriate entry in the Register of the number of Units which have been repurchased or redeemed and on redemption shall produce to the Supervisor such evidence of payment as shall from time to time be required by the Supervisor.

8.9 Suspension of repurchase and redemption

- (a) This clause 8.9 applies if, notwithstanding anything contained in this Governing Document:
- (i) by reason of:
 - (A) a decision to terminate a Fund; or
 - (B) financial, political or economic conditions applying in respect of any relevant market relating to the Investments of the relevant Fund; or
 - (C) the nature of any Investment; or
 - (D) the liquidity of the relevant Fund and the number of Exit Requests received by the Manager; or
 - (E) the occurrence or existence of any other circumstance or event;
 - (ii) 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:
 - (A) is not practicable or desirable; or
 - (B) would be prejudicial to the interests of Unitholders of the Fund or Funds generally; or
 - (C) 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.
- (b) A Suspension Notice shall have the effect of suspending the operation of all Exit Requests relating to the relevant Fund or Funds until:
- (i) the Manager gives to the relevant Unitholders and the Supervisor notice to the effect that the Suspension Notice is cancelled; or
 - (ii) 90 days after the date of the Suspension Notice or such other date that is approved by the Supervisor,
- whichever is the earlier, not being more than 12 months after the date of the Suspension Notice, subject to extension by Special Resolution of the Unitholders.
- (c) If the circumstances in clause 8.9(a) apply, then the Manager may, at its discretion:

- (i) 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
 - (ii) 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.
- (d) While there is any deferral or suspension in operation pursuant to this clause 8.9, the Manager shall not:
 - (i) be entitled to redeem any Units held by it, or
 - (ii) be obliged to repurchase Units not able to be redeemed.
- (e) 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 may be prohibited or limited in conjunction with a suspension, to ensure that its intent is not circumvented.
- (f) 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):
 - (i) the constraints of liquidity in, and realisation of, Assets of the relevant Fund; and
 - (ii) 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.
- (g) Where Exit Requests are suspended:
 - (i) 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
 - (ii) any unrevoked Exit Request shall be processed as if the Exit Request was received on the last day of the period of suspension.

8.10 Compulsory Redemptions

- (a) 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.

- (b) Units that are compulsorily redeemed by the Manager will be redeemed at an 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.
- (c) The Manager may in its discretion charge any Unitholder any legal, accounting or administrative costs associated with a compulsory redemption of their Units.

9 SIDE-POCKETING

9.1 Supervisor and Manager may side-pocket

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 8.9), 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 9 (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.

9.2 Notice to Unitholders

The Manager shall give written notice to the Unitholders of a Fund in relation to which side-pocketing has occurred under clause 9.1 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 9.3).

9.3 Side-Pocketed Assets and Liabilities

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 9.

9.4 **No new Fund**

For the avoidance of doubt, the side-pocketing arrangements contemplated by this clause 9 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.

10 **INVESTMENTS**

10.1 **Establishment of SIPOs**

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

- (b) If a Fund is a PIE, the Assets of the Fund shall be invested in Investments as far as practically possible so the Fund continues to be eligible as a PIE.

10.2 **Effect of SIPOs**

- (a) 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.

10.3 **Manager's power of investment**

- (a) Subject to clause 10.4, the Manager will manage each Fund and as necessary may direct the Supervisor to:
 - (i) purchase, acquire, sell, transfer or dispose of Investments;
 - (ii) enter into any commitments or liabilities in respect of Investments (including any Derivative Transaction for the purpose of hedging);
 - (iii) execute and deliver such contracts, documents, bills, notes, deeds or other instruments as may be necessary in respect of the foregoing; and
 - (iv) take any other action which may be required in respect of Investments,and the Supervisor will from time to time to the extent of the respective Funds under its control act as directed in writing by the Manager.
- (b) The Supervisor may request any additional information which it may reasonably require regarding any transaction, including the obtaining of such valuations or other expert advice as the Supervisor deems necessary or desirable.

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

- (a) The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on any direction of the Manager under clause 10.3 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.
- (b) If the Supervisor refuses pursuant to clause 10.4(a) 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.

10.5 **Related Party Benefits**

- (a) 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.
- (b) The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit.

- (c) Neither the Manager nor any such Related Company is liable to account to the Supervisor or any Unitholder for any profit arising from any such transaction.
- (d) A failure to comply with clause 10.5(a) does not affect the validity of a transaction (subject to any Court order to the contrary).

10.6 **Costs**

All costs, Tax, and legal fees and other fees, disbursements and expenses incurred by the Supervisor, a Custodian or the Manager in connection with the investigation of, negotiation for and acquisition of any Investment, or in connection with any sale, transfer, exchange, replacement or other dealing with or disposal of any Investment shall be payable (as determined by the Manager) by the Fund for which the Investment was intended or to which the Investment belongs or belonged.

10.7 **Bank accounts**

A bank account or accounts in the name of the Supervisor or a Custodian must be opened and maintained for each Scheme and/or Fund, and all monies belonging to the relevant Scheme or a Fund and coming into the hands of the Supervisor or the Manager must be paid to the credit of such bank account in accordance with Relevant Law. The Supervisor shall determine the persons authorised to operate such bank accounts.

10.8 **Supervisor's right to limit liability**

The Supervisor may, before entering into any transaction, security or liability of a Fund, require that its liability is restricted or limited to its satisfaction to the Assets for the time being of that Fund.

10.9 **Investment records**

- (a) 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.
- (b) 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 and used 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.
- (c) The Manager is entitled to assume that the Supervisor's or Custodian's records of Investments are complete and accurate and may rely upon them accordingly.

10.10 **Voting Rights of Investments**

(a) ***Exercise of rights***

Subject to this Governing Document, all voting rights conferred by Investments of a Fund shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Supervisor shall, or shall cause each

relevant Custodian to, 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.

(b) ***Responsibility for voting***

Subject to this Governing Document, neither the Manager, the Supervisor, a Custodian, nor any holder of any proxy or power of attorney given by any of them shall be liable or responsible for any vote cast or not cast.

(c) ***Appointment of directors***

For the avoidance of doubt, where a company is wholly or partly owned directly or indirectly by the Supervisor or a Custodian as an Investment of a Fund, the Supervisor or the Custodian (as the case may be) will, if so directed by the Manager, exercise its rights as shareholder in order to appoint officers or employees of the Manager as directors of that company.

11 VALUATIONS

11.1 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.

11.2 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 the Assets 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 the 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.

11.3 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 is set out in a separate document lodged on the Disclose Register.

11.4 The Net Value per Unit ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor and applicant or subscriber for, or purchaser of Units in the relevant Fund, and all Unitholders of that Fund.

12 SWITCHING

12.1 Switch Requests

In respect of any Fund which gives Unitholders the right to make a Switch Request, the Manager will:

- (a) upon receiving a Switch Request from (or on behalf of) a Unitholder, treat such Switch Request as though it were both:
 - (i) an Exit Request given under clause 8.1 in respect of the Fund; and
 - (ii) an application for Units in another specified Fund on the terms set out in this Governing Document; and
- (b) subject to clause 12.2, apply the aggregate 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.

12.2 Requirements for a Switch

The Manager is not obliged to effect a Switch. If accepted, any Switch will be effected within 30 days of receipt of a Switch Request and otherwise in accordance with the relevant provisions of this Governing Document relating to issue or sale of Units and repurchase or redemption of Units.

12.3 Fees in relation to a Switch

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.

12.4 Form of Switch Request

- (a) A Switch Request must be made in such form and manner as the Manager may require from time to time.
- (b) The Switch Request shall specify the Fund from which the Unitholder wishes to switch Units, the number of Units required to be switched or the total Exit Amount desired and the Fund in which the Unitholder wishes to take up Units.
- (c) The Switch Request shall, if so required by the Manager, be accompanied by such evidence of the Unitholder's authority to deal with the Units and identity as the Manager may require.

13 FINANCIAL STATEMENTS, REPORTS AND CERTIFICATES

13.1 Accounting records

- (a) The Manager shall keep or cause to be kept such accounting records as are required by Relevant Law.

- (b) The Manager shall allow for inspection of the accounting records relating to each Scheme to the extent required by Relevant Law.
- (c) 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 each Scheme in accordance with the Relevant Law.

13.2 **The Auditor**

(a) ***Appointment***

A Qualified Auditor selected by the Manager in consultation with the Supervisor and entitled by Relevant Law to act as such must be appointed as Auditor of the Schemes. The Manager and the Supervisor must agree upon the services to be performed and reports to be provided by the Auditor and their scope having regard to requirements under the FMCA.

(b) ***Auditor may act for others***

The Auditor may also be auditor of the Supervisor or of the Manager or of an Associated Person of either of them and may be the auditor of any other managed investment scheme whether of a similar nature to the Schemes or otherwise but may not be an officer or employee (or the partner of an officer or employee) of the Manager or of the Supervisor.

(c) ***Remuneration***

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.

(d) ***Retirement or Removal***

The Auditor may at any time be removed from office by the Manager with notice to the Supervisor. If the Supervisor believes it to be in the interests of the Schemes and/or Unitholders, it may instruct the Manager to remove the Auditor. The Auditor may retire upon the expiration of not less than 30 days' notice in writing to the Manager and the Supervisor.

(e) ***Vacancy in office***

Any vacancy in the office of Auditor shall be filled by the Manager in consultation with the Supervisor in accordance with clause 13.2(a).

13.3 **Information to Auditor**

The Supervisor and the Manager shall give to the Auditor such information as the Auditor reasonably requires for the performance of its duties with respect to each Fund.

13.4 **Auditor's direct report**

The Manager shall furnish (or cause to be furnished directly by the Auditor) to the Supervisor within one month of the completion of the Scheme audit as at Financial

Year end a certificate prepared by the Auditor covering that Financial Year in such form as may be agreed from time to time between the Auditor and the Supervisor.

13.5 **Manager's reports to Supervisor**

The Manager shall give to the Supervisor such information, reports or certificates (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) as agreed with Supervisor from time to time and to the extent required by the FMCA.

14 **DISTRIBUTIONS**

14.1 **Determination of Distribution Period and Entitlements**

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. Notices of each variation shall be given to Unitholders of the relevant Funds not less than one month before the date on which the variation is to take effect.

14.2 **Allocation and distribution**

- (a) 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.
- (b) A Unit deemed to be on issue on the last day of the relevant Distribution Period entitles its Holder to participate in the distribution for the period in full irrespective of the number of days it has been on issue.
- (c) The Manager shall pay Entitlements within two months after the last day of the Distribution Period to which they relate.

14.3 **Calculation on Distribution Date**

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.

14.4 **Expenses to be taken into account**

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.

14.5 Allowable expenses

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).

14.6 Adjusted price

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.

14.7 Special distributions

- (a) 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.
- (b) 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.
- (c) No advance notice of a special distribution need be given to Unitholders.

14.8 Reinvestment of Entitlements

- (a) 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 for Units 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.
- (b) 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 14.9, with such changes as are necessary, apply to the Units issued in accordance with this clause 14.8. No Entry Fee or Buy Spread is to be charged in respect of such transaction.
- (c) Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving any reason.

14.9 Disclosure of information to Commissioner

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

14.10 PIE

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 28.6 to adjust Unitholders Entitlements to reflect the effect of a Unitholder's Notified Investor Rate, Attributed PIE Income, Attributed PIE Loss and all allocated Tax Credits on the Fund's PIE Tax Liability.

14.11 Manager's discretion to distribute

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.

15 PAYMENTS TO UNITHOLDERS

15.1 Payments

- (a) Any monies payable by the Supervisor or the Manager to a Unitholder under the provisions of this Governing Document shall be credited to any bank account nominated by (or on behalf of) that Unitholder.
- (b) 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.

- (c) If any amount has been deducted on behalf of Tax from a payment to a Unitholder, details of such deduction shall be provided to the Unitholder when the relevant payment is made.

16 MANAGER

16.1 General Powers

The Manager, in exercising its functions as the manager of each 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. The Manager shall, without limiting the Manager's discretion and full powers of management and administration, have full power to do the following:

- (a) acquire and sell Investments for each Fund in accordance with the SIPO which covers the Fund;
- (b) attend and vote at meetings held in respect of any Investments;
- (c) lend money;
- (d) borrow money unsecured or secured subject to the conditions contained in clause 17.2;
- (e) appoint and engage solicitors and other consultants and advisers, investment managers, and administration managers on such terms as the Manager determines in accordance with clause 16.4, and the Auditor, subject to the terms in clause 13.2;
- (f) make and carry out any takeover proposal, offer or invitation;
- (g) promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager considers fit;
- (h) guarantee the performance of any person in relation to any agreement, contract, undertaking or promise and secure any such guarantee by mortgage, charge or other encumbrance over the whole or any part of a Fund;
- (i) create, grant, renew, alter or vary any mortgage, charge, or other encumbrance over all or any Investments for any purpose whatsoever and upon such terms and conditions as the Manager may in its absolute discretion think fit;
- (j) initiate or agree to any one or more of the following:
 - (i) the release, modification or variation of any rights, privileges or liabilities of or in relation to any securities from time to time forming part of a Fund;
 - (ii) the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;

- (iii) the amalgamation or merger of any corporation with any other corporation; and/or
- (iv) the sale or other disposition of all or any part of the property or undertaking of any corporation;
- (k) enter into any arrangements with any government, public body or authority to obtain any rights, authorities or concession or clearances and to give any undertakings binding upon the Fund, the Schemes or the Manager either generally or on conditions as the Manager deems fit and to carry out exercise and comply with any of the same;
- (l) acquire and accept for a Fund any equity of redemption;
- (m) participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Investments or to act as the operator or one of the operators under any such agreement which relates to the Investments;
- (n) consolidate and divide all or any of the Units of a Fund into Units of a larger amount or subdivide all or any of a Fund into Units of a smaller amount;
- (o) enter into, perform and enforce agreements;
- (p) institute, prosecute, compromise and defend legal proceedings;
- (q) pay all outgoings connected with the Funds or this Governing Document which are not otherwise payable by the Manager; and
- (r) 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.

16.2 **Manager's duties**

The Manager shall perform each of the following specific duties in relation to each Scheme:

- (a) establishing and maintaining the Register, and maintaining records for all Accounts, in accordance with the requirements of the FMCA;
- (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 each Scheme with the requirements of Relevant Law;
- (e) doing all things necessary or desirable to ensure compliance by each Fund with all Taxation obligations and procedures and, while any Fund is a PIE, to ensure compliance with the Tax regime applicable to a PIE;
- (f) maintaining all accounting records for the Schemes 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 each Scheme and each Fund, and the preparation of the Schemes' annual reports in accordance with the requirements of the FMCA;
- (h) 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;
- (i) 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);
- (j) 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 reasonably 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;
- (k) 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;
- (l) 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
- (m) exercising all such other powers, authorities, functions, duties and discretions as are incidental to the above.

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

16.3 Unit pricing errors

- (a) 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.

- (b) 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.
- (c) 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.

16.4 Power to delegate

- (a) The Manager may delegate on notice to the Supervisor to any person or persons (including any Associated Person of the Manager) all or any of the powers, authorities and discretions exercisable by the Manager under the provisions of this Governing Document and the FMCA, with the same power to sub-delegate.
- (b) Any delegation by the Manager must be in writing.
- (c) The Manager may appoint in respect of the Schemes:
 - (i) one or more administration managers (including any Associated Person of the Manager) to assist with the administration and management of the Schemes;
 - (ii) one or more investment managers (including any Associated Person of the Manager) to manage the property of each Scheme;
 - (iii) any other experts for the provision of services relevant to the Scheme;

and (subject to clause 10.5 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.

16.5 Fees and expenses of delegates and agents

All reasonable and proper fees, charges and money payable to any person or persons engaged under clause 16.4 and all disbursements, expenses, duties and outgoings properly chargeable in respect thereto shall be paid by the Manager subject to its right of reimbursement pursuant to clause 19.1.

16.6 Liability for acts of delegates and agents

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 16.4.

16.7 Covenants by Manager

The Manager covenants with the Supervisor in relation to each Scheme and each Fund and with the intent that the benefit of these covenants shall ensure not only to the Supervisor but to the Unitholders of each Fund jointly and to each of them severally:

- (a) *Licensed Manager*: The Manager will maintain its status as a Licensed Manager and has the power to act continuously as Manager in respect of each Scheme and Fund until such Scheme or Fund is wound up in accordance with this Governing Document or until the Manager has retired or been removed from office.
- (b) *Comply with statutory duties*: When acting as manager of a Scheme, the manager shall comply with the duties applicable to the Manager as manager of the relevant Scheme under the FMCA.
- (c) *Make Information Available*: As the Supervisor may from time to time require, the Manager will make available to the Supervisor for inspection all the books of the Manager relating to the Schemes and the Funds held by the Manager.
- (d) *Brokerage*: Though the Manager may pay brokerage or commission to a person in consideration of subscribing or agreeing to subscribe, whether absolutely or conditionally, for Units or procuring or agreeing to procure subscriptions, whether absolutely or conditionally, for Units, no such brokerage or commission payment shall be paid to the Manager or to any Associated Person of the Manager except on a basis expressly approved by the Supervisor.
- (e) *Notices*: The Manager shall forward without delay to the Supervisor:
 - (i) all notices, reports, circulars and other documents received by it relating to the Supervisor; and
 - (ii) copies of any reports, notices or circulars issued to Unitholders by or on behalf of the Manager in relation to the Schemes and the Funds.
- (f) *Reporting*: The Manager shall 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.
- (g) *Meet PIE criteria*: The Manager will use its reasonable endeavours to ensure that, if a Fund is a PIE, that the Assets of that Fund are such that the Fund is eligible to be a PIE.

16.8 Removal and Retirement of Manager

- (a) *Criteria for removal*

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

(b) ***Manager to cease activities***

If the Manager ceases to hold office in relation to a Scheme pursuant to clause 16.8 the Manager and its delegates shall immediately desist from all activities related to that Scheme other than those it is requested to do by the Supervisor.

(c) ***Manager may retire***

Subject to the FMCA, the Manager may retire as Manager of a Scheme at any time without assigning any reason upon giving 90 days' notice in writing to the Supervisor of that intention. No such retirement shall take effect until a new Manager has been appointed in relation to that Scheme pursuant to clause 16.8(d) and has executed the deed referred to in clause 16.8(e).

(d) ***Appointment of a new Manager***

- (i) The power to appoint a temporary manager under the FMCA shall apply upon the occurrence of a vacancy in the office of manager of a Scheme.
- (ii) Subject to Relevant Law, the power of appointing a new permanent manager of a 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).
- (iii) 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.

(e) ***New Manager to execute deed***

A new Manager (other than a temporary manager) shall forthwith upon appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and the Unitholders to be bound by the terms of this Governing Document from the date of such appointment.

(f) ***Release of Manager***

Subject to Relevant Law, from the date of appointment of a new Manager, 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 duties and obligations of the Manager under this Governing Document in all respects as if such new Manager had been originally named as a party to this Governing Document.

(g) ***Manager's entitlements preserved***

Nothing in this clause 16.8 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.

(h) ***Settlement of amounts owing***

The Supervisor may settle with the Manager the amount of any sums payable by the Manager to the Supervisor or by the Supervisor to the Manager and may give to or accept from the Manager a discharge in respect thereof and any such settlement or discharge shall be conclusive and binding.

(i) ***Former Manager must hand over records and give reasonable assistance***

The former Manager must hand over records and give reasonable assistance to the new Manager in accordance with the requirements of the FMCA.

(j) ***Removal or retirement of Fisher Funds Management Limited***

Notwithstanding any other provision of this Governing Document, if Fisher Funds Management Limited (in this clause 16.8(j) called "Fisher Funds") ceases for any reason to be the Manager of a Scheme then (except to the extent that Fisher Funds otherwise agrees in writing):

- (i) if on the date of such cessation the name of the Scheme or a Fund includes the expression "Fisher", from that date the name of the Scheme or Fund shall be the name arrived at by removing the expression "Fisher" if lawful, and if not lawful, the name of the Scheme or Fund shall be a name without the expression "Fisher" agreed between the Supervisor and Fisher Funds;
- (ii) if on the date of such cessation the name of a Custodian or a nominee company includes the expression "Fisher Funds" the Supervisor shall to the extent that it has power to do so forthwith after that date change the name of that Custodian or a nominee company so that the expression "Fisher Funds" ceases to appear therein;
- (iii) the Supervisor and the Manager shall each use best endeavours to ensure that, as soon as is practicable after the date of such cessation, the expression "Fisher Funds" does not appear in any documents, publications, or advertisements relating to the Scheme or any Fund;
- (iv) if Fisher Funds has been removed from office as Manager by a Special Resolution of Unitholders, the Supervisor shall pay to Fisher Funds out of each Fund in the Scheme as compensation for loss of office an amount equal to the total fees (including any performance fee (if any)) received by Fisher Funds pursuant to this Governing Document during the 24 calendar months preceding the date of such removal. Such amount shall be paid by the Supervisor to Fisher Funds in full without deduction 14 days following receipt by the Supervisor of Fisher Funds' statement of the amount payable pursuant to this clause; and
- (v) it is hereby declared, for the purposes of the Contract and Commercial Law Act 2017, that this clause 16.8(j) 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.

17 SUPERVISOR

17.1 Supervisor's Powers

The Supervisor in performing its functions as the trustee and supervisor of the Schemes, 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.

17.2 Power to Borrow

(a) *Limit on borrowings*

Subject to clauses 17.2(b) to 17.2(d) in respect of any Fund and to any limitation on borrowing set out in the SIPO, the Supervisor shall have the power to and shall at the direction of the Manager raise or borrow any sum or sums of money or obtain credit, accommodation or finance for the purposes of a Fund, and may secure repayment of such money and interest, costs and other charges and expenses upon such terms and conditions in all respects as the Manager may think fit and in particular but without limiting the generality of the terms of this clause by becoming a party to a bill of exchange or guarantee or by charging or mortgaging all or any of the Assets from time to time constituting the Fund.

(b) *Borrowings to be in Unitholders' interests*

All borrowings, raising of money, charging of Investments, or other similar transactions entered into or undertaken pursuant to this clause 17 (*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 in the relevant Fund(s) or for the purposes of conducting the investment or management or other operation of the relevant 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.

(c) *Manager to notify extent of borrowings*

The Manager shall (subject to any limits in the SIPO) determine and give notice to the Supervisor of the amounts, name of the lender, and other terms and conditions of all borrowing, credit accommodation, or finance to be undertaken by the Supervisor and all securities to be entered into. The Supervisor shall subject to clause 17.2(d) enter into and execute all loan documents and securities and will take all other steps necessary to give effect to any such borrowing, credit accommodation, or finance or the giving of such securities.

(d) *Limit on Supervisor's liability*

There shall be no obligation upon the Supervisor to comply with any direction given pursuant to clause 17.2(a) or clause 17.2(c) or to complete any documents or

securities unless the Supervisor is satisfied that the Supervisor's liability is restricted to the Assets from time to time constituting the relevant Fund.

(e) ***Third parties not bound***

No person lending or advancing monies to the Supervisor in respect of a Fund or completing documents or securities in respect thereof shall be concerned to enquire as to whether or not the limitation set out in clause 17.2(a) or the SIPO has been observed or complied with.

17.3 Delegation by Supervisor

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 2.6, 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.

17.4 Underwriting Agreements

Subject to the terms of this Governing Document the Supervisor shall if so directed by the Manager enter into contracts for the underwriting or sub-underwriting of any issue of securities provided that all fees received by the Supervisor in respect of any such contract shall form part of the appropriate Fund. The Supervisor shall not enter into an underwriting agreement if the liabilities arising therefrom when added to the existing Liabilities would exceed fifty percent (50%) of the Assets of that Fund.

17.5 Undertakings by Supervisor

The Supervisor undertakes with the Manager (for the benefit of Unitholders as well as the Manager) that the Supervisor:

- (a) will perform, in respect of each 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;
- (b) is a Licensed Supervisor and has power to act continuously as trustee and Supervisor of each Scheme until such Scheme has been wound up in accordance with this Governing Document or until the Supervisor has retired or been removed from office;
- (c) 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;

- (d) will keep each of the Funds separate from each other and from all other assets, investments and other property vested in or held by the Supervisor, any Custodian or any Related Party of a Scheme for their own account;
- (e) subject to the terms of this Governing Document and Relevant Law, the Supervisor or a Custodian shall retain the Assets of each Fund in safe custody and shall hold them on trust for the Unitholders entitled thereto upon the terms of this Governing Document;
- (f) except as provided in this Governing Document or as authorised by Relevant Law, will not sell, mortgage, charge, grant a security interest over, or otherwise part with the possession of (or permit a Custodian so to do) any of the Investments of any Fund;
- (g) will, without delay, forward to the Manager all notices and other information relevant to the Manager and received by it or on its behalf in connection with each Scheme and each Fund;
- (h) whenever the Manager redeems the Units, will, if necessary and in compliance with clause 8.3(b)(iv), borrow monies as directed by the Manager or realise Investments comprised in the relevant Fund as directed by the Manager;
- (i) will (subject to it being satisfied that it is sufficiently indemnified) institute, prosecute, defend and compromise all such legal and arbitral proceedings related to its duties and obligations as Supervisor, and refer all such matters to arbitration and submit to arbitration, as the Manager may request in writing and in such places and jurisdictions as the Manager may so request (unless such action is manifestly not in the interests of Unitholders in the relevant Fund(s)); and
- (j) subject to the terms of this Governing Document and Relevant Law, may execute all such proxies, powers of attorney and other instruments and deal with the Assets of the Fund, 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.

17.6 Removal and Retirement of Supervisor

(a) *Removal by Manager*

Subject to clause 17.6(d), the Manager may remove the Supervisor from office as trustee and supervisor of either Scheme with the FMA's prior consent:

- (i) 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
- (ii) 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.

(b) ***Removal in other circumstances***

The Supervisor may be removed from office of Supervisor of either Scheme otherwise in the circumstances prescribed in the FMCA.

(c) ***Retirement***

- (i) The Supervisor may retire as a Supervisor of either Scheme at any time without assigning any reason upon giving 90 days' written notice to the Manager provided the requirements of the FMCA have been met.
- (ii) The Supervisor shall retire if the Supervisor itself (and, for the avoidance of doubt, not solely in its capacity as the supervisor or trustee of any other trust):
 - (A) becomes insolvent or is unable to pay its indebtedness as it falls due;
 - (B) stops or suspends, or threatens to stop or suspend, payment of any of its indebtedness, or begins negotiations or takes any proceedings to reschedule any of its indebtedness; or
 - (C) makes, or proposes to make, an assignment, arrangement or composition with, or for the benefit of, its creditors in respect of or affecting any of its indebtedness.

(d) ***Restrictions on removal/retirement***

No removal or retirement will take effect until a new Licensed Supervisor has been appointed pursuant to clause 17.6(e), and has executed the deed referred to in clause 17.6(f) and all of the Assets of all of the Funds have been transferred to the new supervisor (or Custodian) and the requirements of the FMCA have been met.

(e) ***New appointment***

The power of appointing a new supervisor of a Scheme (in place of a Supervisor which has retired or been removed from office) is vested in the Manager. The new supervisor must be a Licensed Supervisor whose licence covers the Scheme. If the Manager fails or refuses to appoint a new supervisor, such new supervisor may be appointed by Special Resolution of the Unitholders.

(f) ***New supervisor to execute a deed***

Any new supervisor must 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 to be bound by all the covenants on the part of the former supervisor under this Governing Document from the date of such appointment.

(g) ***Retiring Supervisor released***

From the date of execution by the new supervisor of a deed in accordance with clause 17.6(f):

- (i) the retiring Supervisor is absolved and released from all such covenants under this Governing Document (except in respect of any prior breach); and
- (ii) the new supervisor must thereafter exercise all the powers and enjoy and exercise all the rights and is subject to all the duties and obligations of the Supervisor under this Governing Document in all respects as if such Supervisor had been originally named as a party to this Governing Document.

18 REMUNERATION

18.1 Remuneration of Supervisor

- (a) The Supervisor is entitled to charge in respect of each Fund by way of remuneration for its services as Supervisor the annual or other fees calculated and payable as agreed in writing between the Manager and the Supervisor.
- (b) The Supervisor is entitled, subject to the approval of the Manager, to alter the amount and time for payment of the annual or other fees referred to in clause 18.1(a) from time to time. The Supervisor shall give at least one month's notice of an increase in such fees to all Unitholders in the relevant Fund.
- (c) If the Manager and the Supervisor are unable to agree on the amount of the Supervisor's fees, they will endeavour to resolve the dispute by the use of mediation. If the matter cannot be resolved within 14 days (or within such other agreed period) of written notice by one party to the other that they wish to mediate, the matter is to be referred to the arbitration of a single arbitrator if one can be agreed on by the parties or two arbitrators (one being appointed by each party) and an umpire (appointed by them before the arbitration), such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996.
- (d) In addition to any fees payable to the Supervisor under clauses 18.1(a) and 18.1(b), the Supervisor is entitled to charge, in respect of each Fund, reasonable special fees on a time (to be calculated on the basis of the normal hourly rates applicable to the relevant personnel of the Supervisor), costs and disbursements basis, as shall from time to time be agreed between the Manager and the Supervisor.
- (e) On the termination of a Scheme or a Fund, the Supervisor shall be entitled to receive and retain for its own use and benefit out of the Scheme or the Fund, a reasonable fee based on time spent by the Supervisor on matters relating to the termination of the Scheme or the Fund.

18.2 Remuneration of Manager

The Manager shall be entitled to receive for its own account in relation to each Fund the following fees, as determined from time to time by the Manager and disclosed in any PDS:

- (a) Upon the issue or sale of any Units or the redemption of Units, the Manager may charge the Unitholder an Entry Fee (not exceeding 4% of the Unit Price in respect of the Fisher Funds Premium Property & Infrastructure Fund or 5% of the Unit Price of any other Fund) and an Exit Fee.

- (b) From each Fund a management fee and a performance fee for its services as Manager of the relevant Fund.
- (c) The management fee shall not exceed 5% per annum (or such lesser limit as may be specified in the PDS) of the Gross Asset Value of a Fund in the Managed Funds Scheme on each day or at such other times as may be specified in the PDS.
- (d) The management fee shall accrue on a daily basis and, unless otherwise decided by the Manager, be payable in arrears on the last Business Day of each month.
- (e) On the termination of a Scheme or Fund, the Manager shall be entitled to receive and retain for its own use and benefit out of the Scheme or the Fund, a reasonable fee based on time spent by the Manager on matters relating to the termination of the Scheme or the Fund and approved by the Supervisor.
- (f) The Manager may, in respect of any Fund, waive or decrease part or all of any Entry Fee or Exit Fee (either generally or in respect of particular Unitholders or potential Unitholders) or management fee without giving notice to that effect to Unitholders in the relevant Fund and may:
 - (i) increase (subject to the maximum amount (if any) set out in this Governing Document) the fees payable to the Manager in respect of any Fund or by the relevant Unitholders; or
 - (ii) commence charging any such fee which is not currently being charged, by giving, in respect of the Managed Funds Scheme at least one month's, and in respect of the Premium Service Scheme at least 90 days', prior written notice in accordance with clause 26.1(e), to that effect to all Unitholders in the relevant Fund.

18.3 GST

Each of the Manager and the Supervisor is entitled to receive, in addition to the fees referred to in this clause 18, any GST or similar Tax payable in respect of such fees.

19 REIMBURSEMENT OF EXPENSES

19.1 Expenses of each Fund

The Manager and the Supervisor are entitled to be reimbursed out of the relevant Scheme or Fund (whether from income or capital or both) for and in respect of:

- (a) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the formation of that Fund, the preparation and registration of any Financial Statements, statements, Disclosure Documents, the acquisition, registration, custody, disposal of or other dealing with Investments of the Scheme or a Fund, including bank charges and stamp duty, and the expenses of any agents appointed by the Supervisor or the Manager both within and outside New Zealand 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) all costs, charges and expenses (including legal and valuation fees) incurred in connection with the investigation and negotiation for the acquisition for that Fund of any Investment permitted under the relevant SIPO in respect of that Fund, whether or not it is in fact acquired;
 - (c) the fees, costs and expenses of any Custodian, administration manager or investment manager;
 - (d) the fees and expenses of the Auditor relating to the audit of that Scheme or Fund;
 - (e) all Taxes charged to or payable by the Supervisor or Manager (whether to the Commissioner or any other Tax authority) in connection with that Scheme or Fund on any account whatsoever;
 - (f) interest, fees and other expenses relating to borrowings;
 - (g) interest, fees and other expense relating to the merger, takeover, amalgamation or reorganisation of a Scheme or a Fund;
 - (h) the costs of convening and holding any meeting of Unitholders;
 - (i) the costs of postage in respect of all confirmations, disclosure documents, accounts, distribution statements, notices, quarterly and other reports and other documents posted to all or any Unitholders in accordance with the provisions of this Governing Document;
 - (j) the fees and expenses of any solicitor, barrister, valuer, accountant, expert or other person from time to time engaged by the Manager or the Supervisor in the discharge of their respective duties under this Governing Document;
 - (k) the fees and expenses of the Registrar and the Manager in connection with the keeping of the relevant Register;
 - (l) the cost of the preparation and lodgement of returns pursuant to any Relevant Law; and
 - (m) any other expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this Governing Document including the costs of promoting and marketing the Scheme or a Fund.

19.2 Collective costs

Where any costs, charges, fees or expenses referred to in clause 19.1 relate to the Funds collectively rather than any one individual Fund then such costs, charges, fees or expenses are to be apportioned between each of the Funds on such fair and equitable basis as may be determined by the Manager.

19.3 Funds to assist management

Subject to this Governing Document:

- (a) the Supervisor may advance or otherwise make available to the Manager out of a Fund, or authorise the Manager to retain out of a Fund, such amount as the Supervisor considers to be reasonable to enable the Manager to exercise and perform its powers and obligations in the management of the Fund;
- (b) any such amount shall be on account only of costs, charges and expenses that are or would become or are anticipated by the Supervisor to be the subject of reimbursement to the Manager or to become owing in respect of Assets comprised in the Fund; and
- (c) the Manager shall, whenever so required by the Supervisor, furnish to the Supervisor such evidence as the Supervisor may require as to the utilisation of any such amounts and the purpose for which they have been or are intended to be applied by the Manager.

19.4 Auditor's certificate

The Supervisor may accept as satisfactory evidence of the amounts properly payable to the Manager under the provisions of this Governing Document, a certificate of the Auditor. Any amounts overpaid or over provided to the Manager, shall be repaid by the Manager to the Supervisor forthwith.

19.5 Manager to bear other outgoings

Except as otherwise specifically provided for in this Governing Document, all costs, charges, expenses and outgoings incurred by the Manager in relation to the management and administration of the Funds shall be borne and paid by the Manager.

20 SUPERVISOR'S AND MANAGER'S RESPONSIBILITIES AND INDEMNITIES IN RESPECT OF THE PREMIUM SERVICE SCHEME

20.1 Application

The provisions in this clause 20 apply to the Premium Service Scheme only.

20.2 No personal liability

- (a) In incurring any debts, liabilities or obligations or in taking or omitting any other action for or in connection with the affairs of any Fund, each of the Supervisor and (except as otherwise expressly provided in this Governing Document) the Manager, is, and is deemed to be, acting for and on behalf of each relevant Fund and not in their own respective capacities.
- (b) Subject to the limits on permitted indemnities under the FMCA, neither the Supervisor nor the Manager is under any personal liability, nor may resort be had to their private property, for the satisfaction of any obligation of the Funds, but the relevant Fund only is liable or subject to levy or execution.

20.3 Indemnity

Subject to the limits on permitted indemnities under the FMCA, if contrary to the provisions of clause 20.2, either the Supervisor or the Manager is held personally liable to any other person in respect of any debt, liability or obligation incurred by or on behalf of any Fund or any action taken or omitted in connection with any Fund, (other than in respect of the Supervisor's or Manager's negligence) then the Supervisor or the Manager (as the case may be) is entitled to indemnity and reimbursement out of the relevant Fund to the full extent of such liability and the costs of any litigation or other proceedings in which such liability has been determined including legal fees and disbursements.

20.4 Wilful breach

The Supervisor and the Manager are each liable to each Fund for any loss arising out of wilful default or wilful breach of trust but, subject to the limits on permitted indemnities under the FMCA, neither the Supervisor nor the Manager are liable to any Fund or to any Unitholder for any act or omission, or are subject to any liability whatsoever at law or in equity, in connection with the affairs of any Fund or as a result of acting as Supervisor or Manager (as the case may be) under this Governing Document.

20.5 Reinstatement

The Supervisor and (except as otherwise expressly provided in this Governing Document) the Manager are each entitled to be reimbursed out of each Fund for all expenses, costs or liabilities incurred by them respectively in or about acting as Supervisor or Manager (as the case may be) under this Governing Document, and, without prejudice to the generality of the foregoing and subject to the limits on permitted indemnities under the FMCA, are entitled to be indemnified against any expense or liability which may be incurred by the Supervisor or the Manager (as the case may be) in bringing or defending any action or suit in respect of any Fund or the provisions of this Governing Document.

20.6 Reliance on Manager by Supervisor

Subject to Relevant Law, the Supervisor is not and will not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager (including any decision of the Manager to invest any Fund or any part thereof in Derivative Transactions for the purpose of hedging) 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.

20.7 Reliance upon advice

The Supervisor and the Manager may accept and act upon the opinion or advice of or information obtained from barristers or solicitors or other consultants in the employment of the Supervisor and 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. Neither the Supervisor nor the Manager is liable, to the maximum extent permitted by the FMCA for anything done or suffered by either of them in good faith in reliance upon any such opinion, advice, statement or information.

20.8 Reliance upon documents by the Supervisor

Whenever, pursuant to any provision of this Governing Document or Relevant Law, 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 any other person or persons duly authorised by the Manager.

20.9 Waiver by Supervisor

Subject to Relevant Law and to any contrary direction given by Unitholders by Special Resolution, the Supervisor may at any time and from time to time by written notice to the Manager waive in part or in whole, for a specified period or completely, on such terms and conditions (if any) as it deems expedient, any breach or anticipated breach by the Manager of any of the provisions of this Governing Document or of the offer of Units, provided the Supervisor is satisfied that the interests of the Unitholders will not be materially prejudiced by that waiver.

20.10 No respective liabilities of Supervisor and Manager

Subject to Relevant Law, the Manager is not liable for any act or omission of the Supervisor and the Supervisor is not liable for any act or omission of the Manager.

21 SUPERVISOR'S AND MANAGER'S RESPONSIBILITIES AND INDEMNITIES IN RESPECT OF THE MANAGED FUNDS SCHEME

21.1 Application

The provisions in this clause 21 apply to the Managed Funds Scheme only.

21.2 Indemnity

Subject to the limits on permitted indemnities under the FMCA, the Supervisor and the Manager shall each be indemnified out of the relevant Fund from and against any and all losses, costs, and expenses incurred by the Supervisor or Manager in performing any of their respective duties or exercising any of their respective powers pursuant to this Governing Document and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing relating to the Fund.

21.3 Lien

Subject to any Relevant Law, the Supervisor and the Manager shall have a lien on and may use any, or any part of, any Asset of a Fund for the time being in the hands or coming into the hands of the Supervisor or the Manager for the indemnity referred to in clause 21.2 and also for the payment of all fees, charges, reimbursements and

other amounts which may be charged against or deducted from the Assets of the Fund under this Governing Document.

21.4 **Failure to perform**

Subject to the indemnity limitations under the FMCA, neither the Supervisor nor the Manager shall incur any liability to anyone in respect of any failure to perform or do any act or thing which, by reason of any provision of any present or future law or ordinance, rule, regulation or by-law made pursuant thereto or of any decree order or judgement of any competent Court, the Supervisor or the Manager shall be hindered prevented or forbidden from so doing or performing.

21.5 **Supervisor relying on advice**

Subject to the indemnity limitations under the FMCA, the Supervisor in relation to this Governing Document may rely on:

(a) **Advice**

The opinion or advice of or a certificate or any information obtained from any lawyer, accountant, surveyor, broker, auctioneer, banker or other expert in New Zealand or elsewhere (which may be an Associated Person of the Manager) (whether obtained by the Manager or the Supervisor).

(b) **Manager's Certificate**

A certificate signed by not less than two directors of the Manager on behalf of the Manager:

- (i) as to any fact or matter prima facie within their knowledge and which the Supervisor may, in the exercise of any of the trusts, powers, authorities and discretions and provisions hereof, require to be satisfied; or
- (ii) that any particular dealing, transaction, step or thing is expedient or commercially desirable and not detrimental or prejudicial to the interests of, or does not or is not likely to have a material adverse effect on, the Unitholders or any of them;

as sufficient evidence of such fact or matter or the expediency or desirability of such dealing, transaction, step or thing;

(c) **Certificates under this Governing Document**

- (i) The statements contained in any certificate or certificates or in any report or reports given pursuant to the provisions of this Governing Document, as conclusive evidence of the facts stated therein; and
- (ii) the Supervisor shall not be responsible for any loss occasioned by relying on any such opinion, advice, certificate or information so long as the Supervisor has no reason to believe that the opinion, advice, certificate or information is not authentic or correct. Any such opinion, advice, certificate or information may be sent or obtained by letter, telex, email, telegram or cable or other electronic means and the Supervisor

shall not be liable for acting thereon although the same may contain some error or may not be authentic.

21.6 Manager relying on advice

Subject to the indemnity limitations under the FMCA, the Manager may act on the opinion or advice of or a certificate or any information obtained from any person listed in clause 16.4(c) in New Zealand or elsewhere (which may be an Associated Person of the Manager) (whether obtained by the Manager or the Supervisor) and the Manager shall not be responsible for any loss occasioned by so acting so long as the Manager has no reason to believe that the opinion or advice is not authentic.

Any such opinion, advice, certificate or information may be sent or obtained by letter, telex, email, telegram or cable and the Manager shall not be liable for acting thereon although the same may contain some error or may not be authentic.

21.7 Communication

Whenever pursuant to any provision of this Governing Document any certificate, notice, instruction or other communication is to be given by the Manager to the Supervisor, or the Supervisor to the Manager, the Supervisor or the Manager, as the case may be, may accept as sufficient evidence thereof a document signed on behalf of the Manager or Supervisor by any one of their directors or by any other person or persons duly authorised by the Manager or Supervisor or any other form of communication as agreed.

21.8 Failure to carry out agreement

Subject to the provisions of this Governing Document and the limits on permitted indemnities under the FMCA, neither the Supervisor nor the Manager will be liable for the failure of any person or corporation to carry out any agreement with any Fund.

21.9 Signature

The Supervisor shall be entitled to rely on the Manager as to the validity of any signature on any transfer, form of application or other instrument so long as the Supervisor has no reason to believe that such signature is not genuine.

21.10 Dealings with instruments

The Manager and the Supervisor shall not be required to effect any transaction, transfer or other instrument on behalf of or for the benefit or at the request of any Unitholder unless such Unitholder shall first have paid in cash or otherwise provided to the Manager's and the Supervisor's satisfaction for all duties, Taxes, governmental charges, brokerage, transfer fees, registration fees and other charges (whether similar to the foregoing or not) whether in respect of the transfer or other instrument or otherwise (in this clause called collectively "duties and charges") which may have become or may be payable in respect of or prior to or upon the occasion of such transaction or dealing provided always that the Supervisor shall be entitled if it so thinks fit to pay and discharge all or any of such duties and charges on behalf of the Unitholder and to retain the amount so paid out of any money or property to which such Unitholder may be or become entitled

hereunder. This clause shall not affect the obligations of the Supervisor or the Manager elsewhere contained in this Governing Document relating to duties and other expenses in respect of Assets of a Fund.

21.11 Recovery of outstanding money

The Supervisor may bring legal proceedings:

- (a) to obtain or recover any monies that are payable to the Supervisor or any Investments that are to be vested in the Supervisor in accordance with the provisions of this Governing Document;
- (b) for damages against any person arising out of any loss suffered by Unitholders which the Supervisor or the Manager considers is recoverable; or
- (c) to secure compliance with the provisions of this Governing Document and the terms of any PDS.

21.12 Resolutions of Unitholders

Subject to Relevant Law, neither the Supervisor nor the Manager shall be held responsible for acting upon any resolution purporting to have been passed at any meeting of Unitholders of a Fund in respect whereof minutes have been made and signed even though it may subsequently be found that there was some defect in the constitution of the meeting or the passing of the resolution or that for any reason the resolution was not valid or binding upon the Unitholders of that Fund.

21.13 Reliance by Manager and Supervisor

Without limiting any other exclusion of liability or indemnity and subject to any Relevant Law:

- (a) the Manager shall not be responsible for any loss arising as a result of any act or omission of the Supervisor except to the extent that such loss is caused by the negligence or default of the Manager and the Supervisor shall not be responsible for any loss arising as a result of any act or omission of the Manager except to the extent that such loss is caused by the negligence or default of the Supervisor; and
- (b) the Manager shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Supervisor except to the extent that such loss is caused by the negligence or default of the Manager and the Supervisor shall not be responsible for any loss caused by its failure to check any information, document, form or list supplied or purported to be supplied to it by the Manager except to the extent that such loss is caused by the negligence or default of the Supervisor.

21.14 Disclosure of information

Subject to the terms of this Governing Document, neither the Manager nor the Supervisor shall (unless ordered to do so by a court of competent jurisdiction) be required to disclose to any Unitholder confidential financial or other information made available to it by the other in connection with this Governing Document.

21.15 Priority for remuneration

The Supervisor and the Manager may retain and pay in priority to any claim by Unitholders of a Fund their respective fees and reimbursement of expenditure out of any monies for the time being held in the Fund whether in the nature of income or in the nature of capital.

22 SUPERVISOR'S AND MANAGER'S RESPONSIBILITIES AND INDEMNITIES IN RESPECT OF BOTH SCHEMES

22.1 Limitation on indemnity

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.

22.2 Power to indemnify investment managers and administration managers

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).

22.3 Power to indemnify Custodians

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).

22.4 Reliance of Manager and Supervisor upon documents

Subject to the limits on permitted indemnities under the FMCA, neither the Supervisor nor the Manager shall incur any liability in respect of any action taken or thing suffered by the Supervisor or Manager in reliance upon any notice,

resolution, direction, consent, certificate, receipt, affidavit, statement, certificate of stock, plan of reorganisation or other paper or documents reasonably believed by the Supervisor or the Manager (as the case may be) to be genuine and to have been passed or signed by the proper parties.

22.5 Supervisor's discretion and authority

Except (and only to the extent) as is otherwise expressly provided in this Governing Document, the Supervisor, as regards all the trusts, powers, authorities and discretions vested in it by this Governing Document, has absolute and uncontrolled discretion as to their exercise or non-exercise whether in relation to the manner or as to the mode of and time for their exercise.

22.6 Manager's discretion and authority

Except insofar as is otherwise expressly provided in this Governing Document, the Manager, as regards all the powers, authorities and discretions vested in it by this Governing Document, has absolute and uncontrolled discretion as to their exercise or non-exercise, whether in relation to the manner or as to the mode of and time for their exercise subject to the giving of any notice to the Supervisor and the approval of or supervision by the Supervisor wherever required. Subject to the limits on permitted indemnities under the FMCA, the Manager shall have no liability for any loss suffered by (or on behalf of) a Unitholder on any action taken or adjustment made pursuant to clause 28.6.

22.7 Dealing in Units - the Manager

Subject to Relevant Law (to the extent that this clause applies to Units and Unitholders), nothing in this Governing Document is deemed to prohibit the Manager or any Associated Person of the Manager or any shareholder or officer of either 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 any other of them or with any Unitholder or from being interested in any such contract or transaction or otherwise and none of them are in any way liable to account either to any other of them or to the Unitholders or any of them for any profits or benefits howsoever made or derived.

22.8 Dealing in Units - the Supervisor

Subject to Relevant Law, nothing in this Governing Document is deemed to prohibit the Supervisor or any Associated Person of the Supervisor 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, trustee, 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 by this Governing Document established or otherwise imposed or implied by Relevant Law.

22.9 Supervisor's limited liability to Unitholders

Notwithstanding anything contained in this Governing Document, save and except in the case of wilful default or wilful breach of trust or unless the Supervisor has 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 and Relevant Law, in no event is the Supervisor bound to make any payment to Unitholders except out of the appropriate Fund or be liable to the Unitholders to any greater extent than the Investments, vested in or received by the Supervisor in accordance with this Governing Document.

22.10 Advisers

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

23 LIMITATION OF LIABILITY OF UNITHOLDERS

23.1 No liability

- (a) Except as expressly provided by this Governing Document, 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 the Fund relating to the Fund in which that Unitholder holds Units as compared with the Liabilities to be met from that Fund.
- (b) In respect of each Fund, the rights (if any) of the Supervisor or Manager or of any creditor to seek indemnity are limited to having recourse to the Fund of that Fund and do not extend to a Unitholder in that Fund personally in that person's capacity as a Unitholder.

23.2 Supervisor not to recover from Unitholders

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 such person's capacity as Unitholder by reason of there being any deficiency of assets in any of the Funds.

24 MEETINGS OF UNITHOLDERS AND DIRECTIONS TO SUPERVISOR

24.1 Meetings

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.

24.2 Unitholders' directions to the Supervisor

By means of a Special Resolution passed at a meeting of Unitholders, the Unitholders have the power to give such directions to the Supervisor as they think proper concerning the relevant Fund, being directions that are consistent with the provisions of this Governing Document and the FMCA.

24.3 Compliance with directions of Unitholders

Where any direction is given to the Supervisor pursuant to clause 24.2 in respect of any matter, the Supervisor may comply with the direction and is not liable for anything done or omitted by it by reason of its 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.

25 NOTICES

25.1 Notices to Unitholders

- (a) In any other case other than a notice of meeting, a notice may be given under this Governing Document to any Unitholder by:
- (i) personally leaving it at the Unitholder's address recorded in the Register; or
 - (ii) 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
 - (iii) sending it to the information system specified by (or on behalf of) the Unitholder for the purpose of receiving notices by electronic means; or
 - (iv) sending it by electronic mail in accordance with Relevant Law.
- (b) 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.
- (c) 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 1 hour of sending.
- (d) A Unitholder must notify the Manager of any change of the Unitholder's registered address and the relevant Register shall be altered accordingly.
- (e) Any notice given to Unitholders by the Manager must be copied to the Supervisor by the Manager provided that, where notices are given to Unitholders in substantially the same form but with personalised details in respect of each Unitholder, it shall be sufficient to provide the Supervisor with a sample of such a notice.

- (f) The signature to any notice to be given by the Manager or the Supervisor may be written or printed.
- (g) Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Units is bound by every notice which, before such person's name and address being entered in a Register in respect of the Units, has been given to the person from whom such person derives the title to the Units.
- (h) Any notice or document delivered or sent to 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 such deceased Unitholder's death) be deemed to have been duly given in respect of such Unitholder's Units, whether held by such Unitholder solely or jointly with another person or persons, until some other person is registered in the place of the Unitholder as the new Unitholder or joint Unitholder.

25.2 Notice to Manager and Supervisor

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

25.3 Calculation of notice periods

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 is to be reckoned in the number of days or other period.

25.4 Telephone and Electronic Instructions

A Unitholder may give instructions by telephone or other electronic communication in accordance with such procedures for verification of identity or authority, disclosure and payments as the Manager thinks fit and in accordance with other relevant provisions of this Governing Document. Such instructions may relate to or be:

- (a) Applications for Units;
- (b) Relevant Instructions;
- (c) Exit Requests and payment of the proceeds of repurchase or redemption of Units;
- (d) Switches and Switch Requests;
- (e) Transfers of Units; or
- (f) Changes in amounts or the destination of amounts authorised for payment or distribution to or from the Unitholder.

25.5 Each Way Communication

The Manager and the Supervisor may give notices to any Unitholder by telephone or other electronic communication where such means of communication has been authorised by (or on behalf of) the Unitholder.

25.6 Unitholder Risk

A Unitholder who uses a telephone or other electronic transaction service:

- (a) may be recorded for the protection of the Unitholder, the Manager and the Fund; and
- (b) is deemed to accept that the Manager's records of the communication are final and conclusive.

25.7 Conditions

The Manager shall not be bound to accept electronically conveyed instructions unless it has verified the identity of the Unitholder through matching of the Unitholder's name, Unitholder number and password (or other unique identifier). The Manager may take that verification as conclusive evidence of the identity of a Unitholder, but is not liable for refusing to accept any instruction, nor for good faith acceptance of any instruction believed on reasonable grounds to have been appropriately authorised (whether or not it was so authorised).

25.8 Release By Unitholder

By using the electronic communication service for instructions the Unitholder:

- (a) releases, discharges and agrees to indemnify the Manager and the Supervisor from and against all actions, claims and liabilities arising from or in relation to the instructions;
- (b) agrees that neither the Unitholder, nor any person claiming for or through the Unitholder, shall make any claim against any Fund, the Manager or the Supervisor in relation to any payment made or purporting to be made pursuant to electronic instructions notwithstanding that the payment relates to a request or instruction made without the Unitholder's knowledge or authority; and

- (c) undertakes that if the Unitholder forgets his or her password or it becomes known to other persons, the Unitholder will notify the Manager immediately and confirm it in writing.

26 AMENDMENT TO GOVERNING DOCUMENT

26.1 Power to change this Governing Document

Subject to Relevant Law, the Supervisor and the Manager may at any time make any variation or addition to the provisions of this Governing Document or any Establishment Deed (by means of a deed executed by the Supervisor and the Manager) if:

- (a) in the Supervisor's opinion:
 - (i) the change is made to correct a manifest error or is of a formal or technical nature; or
 - (ii) the change is necessary or desirable or expedient for the more convenient, economical or advantageous working, management or administration of any of the Funds or for safeguarding or enhancing the interests of any of the Funds or Unitholders and is not or not likely to become materially prejudicial to the general interests of all Unitholders of the relevant Funds; or
 - (iii) the change is not, or is not likely to become, prejudicial to the general interests of Unitholders; or
- (b) in the case of a change that, in the opinion of the Supervisor, is likely to affect Unitholders in a particular Fund, the change is authorised by Special Resolution of those Unitholders; or
- (c) in the case of a change affecting all Unitholders, the change is authorised by Special Resolution of all Unitholders as if they were beneficiaries of a single Fund; or
- (d) in the event of a change or proposed change in any Relevant Law affecting unit trusts or PIEs, a change to this Governing Document is necessary to make any provision of this Governing Document consistent with such Relevant Law and in the opinion of the Supervisor does not affect materially and adversely the interests of the Unitholders in the relevant Fund(s); or
- (e) Unitholders affected by the proposed variation or addition to the provisions of this Governing Document (which relate to Investments, or fees and expenses) are given 90 days' prior written notice of the implementation of the proposed variation or addition and are given an opportunity to withdraw from the relevant Fund.

26.2 Notice of change

Subject to clause 26.1(e), 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.

27 WINDING UP

27.1 Winding-up

The provisions of the FMCA relating to the winding up of a scheme shall apply to the winding up of a Scheme or its Funds.

27.2 Period of Funds

Each Fund commences on the date of its creation and continues until whichever of the following dates occurs first (*Termination Date*):

- (a) the termination date (if any) specified by the Manager to the Supervisor and to each Unitholder of the relevant Fund, being a date not earlier than three months after the date of such notice (it being acknowledged that the Manager may give any such notice as it sees fit);
- (b) the date on which the Fund is otherwise terminated under this Governing Document or by operation of law; or
- (c) date of termination of the relevant Scheme; or
- (d) the date on which the Unitholders determine to terminate the Fund by Special Resolution.

27.3 Perpetuity period

Each Fund has a perpetuity period of 125 years less two days from the date they are established (*the Perpetuity Period*). A Fund shall not terminate automatically on the expiry of the Perpetuity Period. In the event that a Fund would be invalid after the expiry of the Perpetuity Period under any rule of law relating to perpetuities due to the ability of Unitholders to redeem their Units or the ability of the Manager to issue further Units in any Fund, Units in the Fund may not be redeemed or issued to the extent necessary to ensure the Units are not void under the rule of law relating to perpetuities. The Supervisor may take any action it thinks fit so as to prevent the application of any rule of law relating to perpetuities which might otherwise invalidate any of the Funds.

27.4 Notice of Termination Date

Where the Termination Date in respect of a Fund arises as a result of clause 27.2(b), the Supervisor shall notify all Unitholders of that Fund of the relevant Termination Date.

27.5 Realisation of Investments

From and after the Termination Date, the Supervisor must sell and realise the relevant Fund as soon as reasonably practicable (but in any event within 180 days of the Termination Date).

27.6 Retentions by Supervisor

The Supervisor is entitled to retain out of the relevant Fund such amount that the Supervisor considers necessary or appropriate to meet all claims and Liabilities (including for this purpose Contingent Liabilities) in connection with the relevant Fund or arising out of the liquidation of that Fund including the Supervisor's fees due under clause 18.1, and the costs, charges and liabilities and the fees of any agents, solicitor's, bankers, accountants, auditors or other persons (including the Manager) whom the Supervisor may employ in connection with the winding up of that Fund. The Supervisor is entitled to be indemnified in respect of the foregoing from the monies or assets retained by the Supervisor.

27.7 Application of realisation

Subject to the retention of any monies as provided in clause 27.6, the net proceeds of realisation of Investments shall be applied by the Supervisor as follows:

- (a) first, in payment or retention of all costs, charges, expenses and Liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the relevant Fund and of all remuneration payable to the Supervisor and the Manager as provided in this Governing Document; and
- (b) secondly, in the case of the relevant Fund, in payment to the Unitholders (including holders of Fractional Units) pro rata to their respective holdings of Units held by them in the relevant Fund.

27.8 Interim distributions

If, in the Supervisor's opinion, it is expedient to do so, the Supervisor may make interim payments or distributions on account of the monies to be distributed in accordance with clause 27.7.

27.9 Receipts

Each distribution can be made only against delivery to the Supervisor of such form of receipt and discharge as may be required by the Supervisor.

27.10 Termination and Replacement by Alternative Fund

The Manager, with the approval of the Supervisor, may exercise all or any of the following powers and discretions:

- (a) to require a Unitholder to accept repayment in respect of all or any of the Unitholder's Units;
- (b) to apply the proceeds of repayment towards the Unit Price for Units in another fund being a new Fund managed by the Manager (an *Alternative Fund*), with a SIPO and other terms similar in all material respects to those of the Fund for which repayment is required (the *Existing Fund*), as if the Unitholder had given a Switch Request to that effect;
- (c) to sell or otherwise transfer all or any assets of an Existing Fund to the Alternative Fund;

- (d) subject to the terms and conditions set out in the deed establishing the Alternative Fund, to assume liabilities of the Existing Fund on behalf of the Alternative Fund;
- (e) to accelerate termination of the Existing Fund by bringing the Termination Date to a date earlier than the date fixed pursuant to clause 27.2(a).

27.11 Unclaimed benefits

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.

28 TAX

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

28.2 Withholding Taxes

If the Manager or the Supervisor is obliged by law to make any deduction or withholding on account of a Taxation Amount 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 excess to the Relevant Person.

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.

28.3 Rights of PIP Investors

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.

28.4 Role of PIP Investor Proxy

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 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.

28.5 Non-residents Taxation

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.

28.6 Powers if a Fund is a PIE

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.

28.7 Tax payments in good faith

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 a 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.

28.8 Provision of Information where a Fund is a PIE

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.

28.9 Indemnity for Tax

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).

28.10 Fair Dividend Rate Powers

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.

29 GENERAL

29.1 Waivers and remedies

Time shall be of the essence in this Governing Document but no delay in acting, or failing to act, by (or on behalf of) a Unitholder is a waiver if any of that Unitholder's rights. The rights provided in this Governing Document do not exclude any rights provided by Relevant Law.

29.2 Partial invalidity

An invalid provision in this Governing Document shall not affect the enforceability of the remaining provisions of this Governing Document.

29.3 Survival

The indemnities given in this Governing Document will survive the termination of this Governing Document, as the case may be.

29.4 Counterparts

This Governing Document may be signed in several counterparts (including email or other similar means of communication), each signed or assented to by one or more signatories, all of which when taken together shall constitute one and the same instrument and a binding and enforceable deed between the parties.

29.5 Governing law

This Governing Document shall be governed by and construed in accordance with the laws of New Zealand. Each of the parties and the Unitholders submit to the non-exclusive jurisdiction of the courts of New Zealand.

29.6 Delivery

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

Shahazad Contractor
Head of Client Supervision

Authorised Signatory

Witness signature:

Witness name:

Aditya Bhatli
Operations Manager
Auckland

Occupation:

Address:

SCHEDULE 1 FUNDS

- 1 The Managed Funds Scheme consists of the following Funds:
 - 1.1 Fisher Funds Australian Growth Fund established on 7 November 1994;
 - 1.2 Fisher Funds New Zealand Growth Fund established on 28 July 1998;
 - 1.3 Fisher Funds International Growth Fund established on 16 October 2007;
 - 1.4 Fisher Funds Property & Infrastructure Fund established on 21 November 2008; and
 - 1.5 Fisher Funds Income Fund established on 14 March 2011.
 - 1.6 Fisher Funds Conservative Fund established 8 May 2018.
 - 1.7 Fisher Funds Growth Fund established 8 May 2018.
- 2 The Premium Service Scheme consists of the following Funds:
 - 2.1 Fisher Funds Premium New Zealand Fund established on 14 March 2007;
 - 2.2 Fisher Funds Premium Australian Fund established on 14 March 2007;
 - 2.3 Fisher Funds Premium International Fund established on 16 October 2007;
 - 2.4 Fisher Funds Premium Property & Infrastructure Fund established on 21 November 2008; and
 - 2.5 Fisher Funds Premium Income Fund established on 14 August 2014.

SCHEDULE 2 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.
- 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 TRUST

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.

2.2 Name of Fund

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



2.3 Relevant Scheme

The Fund shall be part of the [Premium Service/ Managed Funds] Scheme.

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)	Director
in the presence of:)	
)	_____
		Director

Witness signature:

Witness name:

Occupation:

Address:

Signed by)	_____
Trustees Executors Limited)	Director/Authorised Officer
in the presence of:)	
)	_____
		Director/Authorised Officer

Witness signature:

Witness name:

Occupation:

Address: