

Governing Document for the Pie Funds Management Scheme

Pie Funds Management Limited(Manager)

Trustees Executors Limited(Supervisor)

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GOVERNING DOCUMENT FOR THE PIE FUNDS MANAGEMENT SCHEME

Date: 20 July 2016

PARTIES

Pie Funds Management Limited at Auckland (*Manager*)

Trustees Executors Limited at Wellington (*Supervisor*)

BACKGROUND

- A The Manager and the Supervisor entered into a trust deed relating to the Pie Funds Management Unit Trusts dated 23 November 2007, as amended by deeds of amendment dated 1 November 2011, 1 September 2014, 16 July 2015, 6 August 2015, 27 August 2015 and 15 April 2015 (the *Existing Trust Deed*).
- B The Manager and Supervisor wish to amend the Existing Trust Deed by amending and replacing the provisions of the Existing Trust Deed (other than those set out in the Conditions of Establishment in relation to particular Funds) with all the provisions of this Governing Document in order to:
- (a) comply with the requirements of the Financial Markets Conduct Act 2013 (the *FMCA*), the Financial Markets Conduct Regulations 2014 (the *FMC Regulations*) and all other relevant enactments as amended by the Financial Markets (Repeals and Amendments) Act 2014;
 - (b) establish the "Pie Funds Management Scheme" for the purposes of the FMCA, whereby each Fund governed by this Governing Document is a separate fund within that scheme for the purposes of the FMCA; and
 - (c) make other minor amendments as are required by or in consequence of the FMCA or the FMC Regulations or which are permissible under the amendment provisions of the Existing Trust Deed.

BY THIS DEED:

Effective on and from the Effective Date: 20 July 2016

- (a) the Funds will continue to be held on the same trusts as before;
- (b) the Funds will otherwise be governed and administered as provided in this Governing Document and the Conditions of Establishment; and
- (c) the Existing Trust Deed is amended by deleting all of its provisions and replacing them with the provisions of this Governing Document as set out below (other than those provisions set out in the Conditions of Establishment in relation to particular Funds, which shall continue with any applicable re-numbering of clause references).

OPERATIVE PROVISIONS

1 CREATION OF THE SCHEME AND THE FUNDS

Creation of the Scheme and the Funds

- 1.1 The Scheme is established under this Deed, and shall be known as the "Pie Funds Management Scheme". Each Fund governed by this Deed is a separate fund within the Scheme under the FMCA.
- 1.2 The Supervisor is appointed as, as agrees to act as, the trustee and supervisor of the Scheme and agrees to hold (or arrange for the Custodian to hold) the Investments of each Fund in trust solely for the Investors and to act in the interests of the Investors, on and subject to the terms and conditions expressed or implied in this Governing Document, the relevant Conditions of Establishment, and Relevant Law¹. The Supervisor shall be the supervisor of the Scheme for the purposes of the FMCA.
- 1.3 Each separate Fund shall come into existence upon the later of:
 - (a) the commencement date stated in the Conditions of Establishment of each Fund; and
 - (b) the lodging by the Manager with the Supervisor of the sum of \$100 to be held for the relevant Fund.
- 1.4 The Manager is appointed as the manager of the Scheme and agrees to act as the manager of the Scheme on and subject to the terms and conditions expressed or implied in this Governing Document, the relevant Conditions of Establishment, the FMCA and any other Relevant Law².
- 1.5 Nothing in this Governing Document or the Conditions of Establishment shall confer on the Investors of a Fund any right, title or claim to the Investments of any Fund other than that of which they are Investors.
- 1.6 The Conditions of Establishment for the initial Fund created under this Governing Document, being the Pie Australasian Growth Fund, are contained in the Schedule.

Constitution of the Funds

- 1.7 The Investments of each Fund shall consist of all of the investments, cash, property, assets and rights for the time being held by the Supervisor (or the Custodian) on trust for the Investors of the relevant Fund including:
 - (a) the proceeds of sale of any Investments;

¹ Section 135(1)(g) of the FMCA.

² Section 135(1)(h) of the FMCA.

- (b) all additions or accretions (if any) to the Fund which arise by way of dividend, interest, premium or distribution, or which are otherwise received and are for the time being retained; and
- (c) all income therefrom held pending distribution or reinvestment.

Separate Funds

- 1.8 The Supervisor will hold the Investments of each Fund as a separate and distinct pool of separate assets and Liabilities governed by the terms and conditions of this Governing Document and the relevant Conditions of Establishment. All investments made with the assets of a Fund shall be held by the Supervisor (or the Custodian) as the exclusive property of the relevant Fund and such investments shall be held exclusively for the benefit of the Investors of that Fund. All Liabilities incurred in relation to a Fund shall be the exclusive liability of that Fund.

No claim

- 1.9 No Investor in one Fund shall by virtue of being an Investor in such Fund have any claim on any other Fund.
- 1.10 The establishment of a new Fund shall not in any way vary or affect a Fund previously constituted nor give rise to any re-settlement of any such Fund.
- 1.11 Notwithstanding any name given to the Scheme or a Fund pursuant to this Governing Document or any Conditions of Establishment, the Manager may, subject to compliance with all legal and regulatory requirements, change the name of the Scheme or a Fund in its discretion at any time. The Manager shall notify the Supervisor and the Investors in a Fund of any change of name of that Fund when next convenient for the Manager.³

2 UNITS

Nature of Units

- 2.1 The beneficial interests in a Fund shall be divided into Units.
- 2.2 Every Unit other than a Fractional Unit shall confer an equal interest in the relevant Fund and be of equal value, subject to any rights, terms of issue, obligations and restrictions attaching to any particular Units or class of Units. A Fractional Unit shall confer a proportional interest in the relevant Fund but shall not confer any voting rights on the holder. A Unit shall not confer any interest in any particular part of the Fund to which it relates or of any Investment and no Investor shall be entitled to require the transfer to him of any of the Investments comprised in a Fund. Subject to the rights of Investors created by this Governing Document and by Relevant Law, no Investor shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any rights, powers, authorities or discretions conferred upon them or either of them by this Governing Document or in respect of a Fund or the Scheme.

³ Section 127 of the FMCA.

- 2.3 The benefits and obligations contained in this Governing Document apply for the benefit of and bind each Investor to the extent provided in this Governing Document.

Consolidation or division of Units

- 2.4 The Manager may determine that all Holdings of Units as at the close of business on a Business Day shall be consolidated or divided proportionately so as to alter the numbers of Units on issue with effect from the close of business on that Business Day. Where such consolidation or division involves a fraction of a Unit in relation to any Investor, the number of Units to which that Investor is entitled is to be rounded down to the nearest whole number with any fraction amount being redeemed in cash, subject to any deduction or adjustment in accordance with this Governing Document as the Manager, at its discretion, considers appropriate.

Listing of Units

- 2.5 The Manager may at its discretion at any time apply to any Exchange for the listing of the Units in a particular Fund on the Exchange.

Creation of initial and additional Units

- 2.6 The beneficial interest in each Fund as originally constituted shall be divided into 100 Units or such other number as may be specified in the relevant Conditions of Establishment. Those Units shall be held by the Manager.
- 2.7 The Manager may from time to time subject to Relevant Law:
- (a) itself pay, or invite Applicants for Units to pay Cash, into a Fund by way of Application for Units; and
 - (b) arrange for persons (including the Manager or any Associated Person of the Manager) to transfer Authorised Investments to a Fund in return for Units calculated on the basis of an Application for Units to the value of the purchase price payable for the Authorised Investment. The Manager may deduct from the value of the purchase price payable for the Authorised Investment any costs incurred in valuing and transferring the Authorised Investment if such amounts have not been included in the value. Before finalising any such transfer the Manager shall first notify the Supervisor in writing of the terms of acquisition and shall certify in writing to the Supervisor that the purchase price payable for the Authorised Investment represents the fair market value of the Authorised Investment calculated on an arm's length basis. Any such transfer or arrangement shall be subject to the provisions of clause 9.3.
- 2.8 As and when addition is made to a Fund by payment for Units, additional Units shall automatically be issued as specified in clauses 2.9 to 2.29 (inclusive).

Application for and issue of Units⁴

- 2.9 Every person wishing to apply for or acquire Units in a Fund:
- (a) shall, in the first instance, if required by the Manager, complete and lodge with the Manager an Application signed by or on behalf of the Applicant in the form and by such method from time to time prescribed by the Manager;
 - (b) shall pay with the Application the Application moneys or transfer to the Fund the Authorised Investment agreed to be acquired by the Manager; and
 - (c) may, if the Manager agrees, in respect of subsequent Applications, make such Application by telephone or in writing or by electronic transmission.
- 2.10 The Manager may in its absolute discretion accept or refuse to accept in whole or in part any Application (including one made by virtue of an Instalment Application) or postpone the processing of the Application pending receipt of cleared funds or for any other reason, and the Manager shall not be required to give any reason or ground for such refusal or postponement.
- 2.11 An Application accepted by the Manager may at the option of the Manager be treated as:
- (a) a subscription for Units to be issued from the relevant Fund; or
 - (b) a request for the purchase from the Manager of Units owned or to be acquired by the Manager in the relevant Fund.
- Regardless of the alternative adopted by the Manager, the purchase or subscription price payable in respect of each Unit by Applicants shall always be the Selling Price or Switching Price, whichever is applicable, and the Manager shall always sell or issue Units at the Selling Price or Switching Price.
- 2.12 If the Manager accepts an Application and the relevant payment or other consideration has been made to the Manager, the Units shall be deemed to be sold or issued at the Relevant Time.
- 2.13 In any of the foregoing cases where there is an issue of Units direct from the relevant Fund, the Application moneys or the Authorised Investment acquired shall (after deducting any Entry Fee or Switching Fee, whichever is applicable) be deemed to constitute an Investment of the Fund on the same Business Day that the Units are deemed to be issued.
- 2.14 The number of Units sold or issued pursuant to an Application or acquisition of an Authorised Investment shall be that number of Units that have an aggregate Selling Price or Switching Price, whichever is applicable, equal to the Application moneys received and accepted or in the case of the acquisition of an Authorised Investment,

⁴ Section 135(1)(a) of the FMCA.

the purchase price or consideration for the Authorised Investment agreed by the Manager (after deducting any Entry Fee or Switching Fee, whichever is applicable).

- 2.15 All Application moneys shall immediately be credited or paid into the Bank account established by the Supervisor under clause 9.13 (or, if relevant, an account established by the Manager under clause 9.12) for the relevant Fund without deduction within seven days of receipt in accordance with any Relevant Law and the Supervisor shall pay without deduction therefrom (except as required by Relevant Law) to the Manager all amounts the Manager is expressly entitled by this Governing Document and the relevant Conditions of Establishment to receive and retain for its own benefit. All monies required to be paid to the Supervisor or a Custodian shall, upon receipt by the Manager, or any agent of the Manager, become subject to the terms of the relevant Fund and shall be held by the Manager in trust in accordance with Relevant Law.⁵
- 2.16 The Manager is entitled to receive and retain for the Manager's own benefit:⁶
- (a) the Selling Price or Switching Price of Units sold by the Manager; and
 - (b) any Entry Fee and Switching Fee in respect of all Units issued from a Fund or sold by the Manager.
- 2.17 The Manager shall make a prompt decision on all Applications and must as soon as is practicable refund or arrange for the Supervisor to refund Application moneys received in respect of rejected Applications. Application moneys received or held in respect of rejected Applications shall not constitute an Investment in any of the Funds.
- 2.18 The Manager shall promptly notify the Registrar of the acceptance or rejection of each Application in such manner as is agreed between the Registrar and the Manager. The Registrar shall cause an accepted Applicant to be entered upon the Register of the relevant Fund (or, where the Applicant is already on the Register, cause the Register to be altered accordingly). Where required by Relevant Law, the Manager shall provide confirmation information recording the issue of Units in a Fund, in such form and within such timeframes as the Manager shall decide, subject to any Relevant Law⁷. The Manager may issue confirmations recording the issue of Units, in such form and within such timeframe as the Manager shall decide, even if it is not required to do so by Relevant Law. Subject to clause 2.20, an Application may be in respect of any amount of money. If it shall be necessary to issue Fractional Units then the Manager may require all Fractional Units to be consolidated into whole Units so far as possible.
- 2.19 The Manager may otherwise impose such conditions or restrictions as the Manager may from time to time determine on the offer for sale or issue of Units.

⁵ Section 87 of the FMCA and Regulation 49 of the FMC Regulations.

⁶ Section 135(1)(f) FMCA.

⁷ Section 100 of the FMCA and Regulations 65 to 68 of the FMC Regulations.

- 2.20 A Fund may have a Minimum Application Amount and/or a Minimum Instalment Amount and/or a Minimum Contribution Amount
- 2.21 An Application may be designated by the Applicant as an Instalment Application. The Manager may decline any Instalment Application or may from time to time refuse to accept Instalment Applications in general for any period or periods. With any instalment Application the Manager may from time to time determine:
- (a) an administration fee payable by the Investor in respect of each instalment payment agreed to be paid by the Investor to the Manager;
 - (b) a sum to be charged by the Manager as a penalty in any case where an Investor fails to make payment of the agreed Instalment after the date of payment by the Investor of the first agreed Instalment.
- 2.22 The Manager shall disclose the amount of any such administration fee and penalty to the Investor concerned so as to comply with Relevant Law.
- 2.23 No Unit in a Fund may be issued or sold by the Manager after receipt by the Supervisor of a notice of termination for that Fund given by the Manager pursuant to clause 21.2 except with the prior consent in writing of the Supervisor.
- 2.24 The Manager shall be at liberty, at its own cost, to pay such commission, procreation fee or brokerage determined by the Manager to any person for subscribing for or underwriting the purchase or subscription for or obtaining purchases or subscriptions for any Units in a particular Fund.
- 2.25 Any proposed issue of Units may in the Manager's discretion be underwritten and any underwriter or its nominee may take up Units not otherwise subscribed for and charge reasonable underwriting commission and all reasonable costs and disbursements of the issue as may be agreed with by the Manager.
- 2.26 The Manager must not make a Regulated Offer of Units unless:
- (a) the Scheme is registered under the FMCA;
 - (b) a PDS has been prepared and lodged on the Offer Register in respect of the relevant Fund; and
 - (c) Register Entries containing all information required by Relevant Law have been uploaded in respect of the Scheme and the relevant Fund.
- 2.27 The Manager must use reasonable endeavours to ensure that each Disclosure Document at all times complies with Relevant Law and, subject to clause 2.28, is otherwise in a form provided to the Supervisor in advance of lodgement or supply, as the case may be.
- 2.28 The Manager shall provide to the Supervisor, with reasonable notice, drafts of all proposed Disclosure Documents (excluding Fund Updates) 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 and set out in the Supervisory Agreement, within that timeframe).

- 2.29 The Manager must ensure that the Scheme and the Manager meet (and continue to meet) the initial and ongoing registration requirements applying to the Scheme and each of the Funds and the Manager (as manager of the Scheme) under Relevant Law⁸.

Selling Price⁹

- 2.30 The Manager shall be entitled to charge and retain for its own benefit an Entry Fee on the Application moneys or value of the Authorised Investments agreed to be acquired by the Manager regardless of whether the Units are purchased from the Manager or issued from a Fund. When Units are issued from the relevant Fund as a result of a Switch the Manager shall only be entitled to charge and retain for its own benefit a Switching Fee. The Manager shall be entitled to waive from time to time the whole or any part of any Entry Fee or Switching Fee or to increase or reduce such fees.¹⁰ Any Entry Fee shall be paid to the Manager by the Applicant at the time Units are sold or issued for cash. Where the Application consideration received is paid by the transfer of Authorised Investments, the Fund shall pay the Manager any Entry Fee in cash, having deducted an amount equal to such Entry Fee from the Application consideration before calculating the number of Units to be sold or issued at the relevant Selling Price. Where the Application consideration is received in cash and the transfer of Authorised Investments, the Manager may elect either of the above methods of payment of any Entry Fee or a combination of them which would result in the same amount being deducted from the Application consideration and the same Entry Fee being received by the Manager as would have occurred if the Manager elected either alternative solely.
- 2.31 The Manager will not charge any Entry Fee or Switching Fee where the Units issued in a Fund arise solely in respect of a consolidation of Fractional Units or are Units issued pursuant to clauses 11.4 or 11.9.

Valuation¹¹

- 2.32 Net Asset Determination Times shall be determined by the Manager, but must take place at intervals not exceeding 31 days unless the Conditions of Establishment or any Disclosure Document for a Fund provides otherwise or the Manager determines in consultation with the Supervisor.

⁸ Including sections 127 and 133 FMCA

⁹ Section 135(1)(f) of the FMCA.

¹⁰ Section 135(1)(f) of the FMCA.

¹¹ Section 135(1)(c) of the FMCA

2.33 Promptly after each Net Asset Determination Time and subject to compliance with clause 2.34, the Manager will determine the amount expressed in New Zealand currency that fairly represents the Net Asset Value of each Fund determined at Net Asset Determination Time by taking the aggregate of:

- (a) Investments listed on an Exchange valued by reference to quotations and sale prices on such Exchange, having regard to the dates of the last quotations and last known significant sales;
- (b) Investments made in units in a managed investment scheme or other form of pooled investment fund, at the current unit price of the units, or at such other current value that the Manager determines having regard to normal commercial considerations;
- (c) Investments not listed on an Exchange valued at the current fair market value by reference to the most recent material sales valuations or other information that the Manager considers appropriate having regard to normal commercial considerations;
- (d) income accruing from Investments or a proper proportion thereof relative to the Business Day in which income is being determined to the extent such income is not included in the previous parts of this definition; and
- (e) any other amount which in the opinion of the Manager should be included in such aggregate for the purposes of making an equitable and reasonable determination of the Net Asset Value of the Fund having regard to generally accepted accounting standards and principles current at the time;

and by deducting from such aggregate the total of:

- (f) all Liabilities of the Fund;
- (g) the aggregate of any Income Entitlements determined under clause 10.2 to the extent that they have not been paid or a provision made for their payment;
- (h) all costs, charges and other amounts incurred or accrued or which will be incurred in holding or administering the Investments of the Fund or a proper proportion of any of the foregoing having regard to the Business Day on which the cost, charge or other amount is being determined in relation to the period to which it relates;
- (i) the amount of any moneys held by the Manager or the Supervisor in respect of Applications that have not been accepted by the Manager or that have been rejected by the Manager to the extent that such moneys have been included in the Investments of the Fund;
- (j) any provision for any expenses that the Manager anticipates are or will be payable or reimbursable from the relevant Fund, which in the opinion of the Manager should be included in such aggregate for the purpose of making an

equitable and reasonable determination of the Net Asset Value of the Fund;
and

- (k) any other amount which in the opinion of the Manager should be included in such aggregate for the purpose of making an equitable and reasonable determination of the Net Asset Value of the Fund having regard to the accounting policies of the Fund.

- 2.34 In addition to the determination of the Net Asset Value of each Fund in terms of clause 2.33 the Manager may also at any time subject to compliance with clause 2.37 make a special determination of the Net Asset Value of any Fund if the Manager considers that special circumstances have arisen that warrant such a determination. The Manager shall, in that case, advise the Supervisor that special circumstances exist, details of the circumstances and the time of the special determination of the Net Asset Value of the relevant Fund.
- 2.35 Every determination of the Net Asset Value of a Fund shall be deemed to take effect at the Net Asset Determination Time in respect of which it is made.
- 2.36 Determinations of the Net Asset Value of each Fund remain in force from the time they take effect until the next succeeding determination of the Net Asset Value of the Fund is made by the Manager. The Manager may from time to time (but shall not be under any duty to do so) engage any valuers or other suitably qualified persons for the purposes of assisting the fixing of the current fair market value of any Investment and the Manager shall be entitled to rely upon the advice of any such valuer or other person and any such valuer or other person shall be deemed to be acting as an expert.
- 2.37 Subject to clause 2.39, there being no manifest error, and the Manager complying with the Accounting Policies for the Scheme, the Net Asset Value of a Fund ascertained by the Manager is final and binding on all persons including without limitation the Manager, the Supervisor, any Applicant, and all Investors.
- 2.38 The Manager will determine the Net Asset Value of each Fund on a consistently applied basis. The Manager shall however be entitled at any time to alter the basis of determination of the Net Asset Value of a Fund and the application of such basis, provided the Manager first consults with the Supervisor and the Auditor in relation to the proposed alterations.
- 2.39 The Manager shall determine whether any liability, cost, expense or charge properly incurred under this Governing Document should be apportioned between any two or more Funds and shall apportion such liability, cost, expense or charge as so determined and every such determination or apportionment shall be final and binding on all Investors.
- 2.40 If any payment of Application moneys fails for any reason, any Units issued in relation to those Application moneys will be void.

Pricing errors

- 2.41 The Manager:

- (a) shall report to the Supervisor any material error in the calculation of a Price or material non-compliance with the methodology for pricing managed investment products as set out in this Governing Document or notices issued by the FMA to the extent required by Relevant Law¹²;
- (b) may, where there has been an error in the calculation of a Price¹³, alter an Investor's Holding to address partly or entirely the impact of the error in the calculation of a Price¹⁴, provided such alteration does not adversely affect the relevant Investor's Holding or the position of other Investors, as compared with the position such Investor or Investors would have been in had the error in the calculation of the relevant Price not occurred; and
- (c) shall correct any material errors in the calculation of a Price or material non-compliances with the methodology for pricing managed investment products as set out in this Governing Document or notices issued by the FMA, to the extent provided by Relevant Law, and otherwise in accordance with the Supervisory Agreement, provided that where (after all relevant Unit adjustments and set offs have been made under clause 2.41(b) or otherwise) the amount of any reimbursement or compensation required is less than \$20 or any other minimum level of reimbursement or compensation which the Manager and Supervisor agree from time to time, then no reimbursement or compensation shall be required to be provided.¹⁵

3 REDEMPTION OR REPURCHASE OF UNITS¹⁶

Covenant to repurchase or redeem Units

3.1 Subject to clauses 3.2, 3.3, 3.12 to 3.14, the Manager covenants with the Supervisor (for the benefit of the Investors as well as the Supervisor) that the Manager will at its option at its sole discretion upon receiving a Repurchase Request from an Investor and upon compliance with the terms of this Governing Document either:

- (a) repurchase each Unit to which such request relates; or
- (b) redeem each Unit to which such request relates.

Regardless of the alternative adopted by the Manager, the price payable to the Investor for each Unit shall always be the Repurchase Price.

3.2 The Manager may from time to time fix a minimum number of Units that may be held, repurchased or redeemed or a minimum value for Units held, repurchased or redeemed.

¹² Section 168 of the FMCA and Regulations 97 to 99 of the FMC Regulations.

¹³ Section 168(2) of the FMCA.

¹⁴ Section 168(2) of the FMCA.

¹⁵ Section 168 of the FMCA and Regulation 99 of the FMC Regulations.

¹⁶ Section 135(1)(a) of the FMCA.

- 3.3 Where the Manager receives a Repurchase Request, the Manager may in its sole discretion:
- (a) Unless the Repurchase Request relates to all the Units in a Fund held by an Investor, refuse to repurchase or redeem the Units to which the Repurchase Request relates in any case where the Repurchase Request is for less than the minimum determined pursuant to clause 3.2; and
 - (b) If the requesting Investor's Holding (after excluding the number of Units to which the Repurchase Request relates) is less than the Minimum Holding Amount for the relevant Fund, repurchase or redeem the balance of Units in that Fund held by that Investor as if the request relates to all the Units in that Fund held by that Investor.
- 3.4 A Repurchase Request shall be made in a form and manner (and including by facsimile, electronic means or orally) that is acceptable to the Manager.
- 3.5 The amount payable on repurchase or redemption by the Manager in respect of each Unit shall be calculated as at the Relevant Time and paid to the Investor in accordance with the provisions of this Governing Document. Where Units have been paid for by cheque the Manager shall be under no obligation to repurchase or redeem those Units until the proceeds of that cheque have been cleared.
- 3.6 A Repurchase Request shall be effective only on a Business Day and shall be irrevocable once given (regardless of whether or not there is any suspension or deferral of the Relevant Time at which repurchase or redemption takes effect pursuant to clauses 3.16 and 3.17).
- 3.7 Subject to clauses 3.16 and 3.17, the repurchase or redemption of Units shall take effect and the Manager shall repurchase or redeem the Unit at the Relevant Time and the Repurchase Price shall be paid within a reasonable time not exceeding five Business Days of the Relevant Time.
- 3.8 Where Units relating to a Repurchase Request by an Investor are repurchased, the Manager shall pay to the Investor the Repurchase Price out of the Manager's own funds.
- 3.9 Where the Units referred to in a Repurchase Request by an Investor are to be redeemed, the Manager shall request the Supervisor to release the Repurchase Price from the relevant Fund. The Manager may pay the Investor the Repurchase Price out of the Manager's own funds and shall be entitled to retain for its own benefit the moneys released by the Supervisor from the Fund.
- 3.10 Units are repurchased by the Manager for its own benefit and the Manager shall be entitled then at any time thereafter to sell any or all of those Units or to redeem them in accordance with this Governing Document. Notwithstanding any other provision of this Governing Document, if the Manager elects at or before the time of repurchasing any Units to have the Units immediately redeemed, the Repurchase Price for such redemption shall be the same as the Repurchase Price at which the Manager repurchases the Units.

- 3.11 Where an Investor requests the repurchase or redemption of sufficient Units held by him to realise a specified amount, the Repurchase 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 Investor in a new Unit or Units or Fractional Units as if applied for immediately before the Relevant Time or may be refunded to the Investor.
- 3.12 Unless the Manager decides otherwise, the first Units issued to an Investor are the first redeemed or repurchased pursuant to a Repurchase Request.
- 3.13 Where the consideration for Units has not been received or cleared or transfer has not been completed or the consideration has been retrieved or reversed, the Manager need not repurchase or redeem the Units so applied for until such payment is received by, transferred to, or such retrieved or reversed amount is repaid to the Manager.
- 3.14 The Manager may request the Supervisor to transfer assets of a Fund to an Investor in that Fund, or with the Supervisor's consent to hold such assets on trust solely for such an Investor on such terms as the Supervisor requires, rather than pay cash on the redemption of Units. These assets must be of equal value to the Repurchase Price less any deductions permitted by this Governing Document.
- 3.15 For any proceeds of redemption or repurchase paid in cash, payment in accordance with the Investor's instructions or, in the absence of any instructions, by cheque posted to the address of the Investor specified in the relevant Register shall constitute valid payment and shall discharge the Manager and the Supervisor from any further payment obligation.

Suspension

- 3.16 If the Manager in good faith determines that the Manager's obligation to repurchase any Units in a particular Fund or Funds or to request the Supervisor to redeem any Units in a particular Fund or Funds:
- (a) is not practicable; or
 - (b) would or may be prejudicial to the general interests of the Investors in the relevant Fund; or
 - (c) would threaten the relevant Fund's eligibility for PIE status; or
 - (d) is not desirable for the protection of the relevant Fund,
- then the Manager may give a repayment suspension notice to any Investor or Investors and the Supervisor. A repayment suspension notice shall have the effect of suspending the operation of all Repurchase Requests relating to the relevant Fund or Funds until:
- (e) the Manager gives to the relevant Investors and the Supervisor notice to the effect that the repayment suspension notice is cancelled; or

- (f) 90 days after the date of the repayment suspension notice or such other date that is determined by the Manager in consultation with the Supervisor,

whichever is the earlier. Where Repurchase Requests are suspended, the Repurchase Price payable to the Investors affected shall be calculated on the day the Units are repurchased or redeemed. The Manager shall notify the Supervisor of its intention to issue a repayment suspension notice or to cancel such notice before giving effect to the suspension or cancellation. This clause 3.16 shall take priority over all other provisions in this Governing Document relating to the repurchase or redemption of Units.

3.17 Notwithstanding anything contained in this Governing Document if:

- (a) a Repurchase Request is received or a series of Repurchase Requests are received in respect of a Fund within a period of three Months that relate to more in total than 5% of the Number of Units on Issue at the time of the request or last request; and
- (b) the Manager in good faith determines that it is in the general interests of all Investors in that Fund to defer immediate redemption or repurchase of the total Units requested,

then such Units may be repurchased or redeemed by instalments over a period determined by the Manager and/or at the expiration of a period determined by the Manager. In any such case the Repurchase Price shall be calculated at the Business Day or respective Business Days on which such Units are repurchased or redeemed.

Where such a Repurchase Request is received or a series of Repurchase Requests are received within a period of three Months that relate to more than 10% of the Number of Units on issue in respect of a Fund at the time of the request or last request, the Manager may suspend the right of Investors in that Fund to make Repurchase Requests provided that the Manager notifies the Supervisor of its intention to suspend the right of Investors in the relevant Fund to make Repurchase Requests.

Compulsory repurchase

3.18 Notwithstanding anything contained elsewhere in this Governing Document, where:

- (a) the total Holding of an Investor in any Fund, valued with the reference to the Selling Price or Switching Price, is valued at less than the Minimum Holding Amount;
- (b) the Manager gives to that Investor not less than 30 days' notice in writing that the Manager intends at the expiration of that period to require the repurchase or redemption of all the Units to which that Investor is entitled; and
- (c) at the expiration of that period that Investor holds less than the Minimum Holding Amount,

then the Manager shall have the right to repurchase or redeem that Investor's Holding with effect as at the date of expiry of the Manager's notice as if a Repurchase Request has then been received from the Investor.

Redemption of Units by Manager

- 3.19 The Manager shall be entitled, at any time, to redeem relevant Units held by the Manager and the Supervisor shall, in accordance with a request to do so by the Manager, release from the relevant Fund the aggregate Repurchase Price of the Units to be redeemed and such Units shall be redeemed at the Relevant Time.
- 3.20 All redeemed Units shall be cancelled and shall not thereafter be reissued but this shall not restrict the creation and issue of additional or new Units.
- 3.21 The Manager shall be entitled to the benefit of any surplus and be liable for any deficiency of the Repurchase Price of a Unit owned by the Manager and redeemed under this clause over or below the price at which that Unit was issued to or otherwise acquired by the Manager and to the maximum extent permitted by Relevant Law,¹⁷ the Manager shall not be obliged to account to the Supervisor, the Fund or any Investor nor shall the Supervisor, the Fund or any Investor be obliged to recompense the Manager for any such surplus or deficiency over or below the Repurchase Price.

Effect of PIE status

- 3.22 If a Fund is a PIE, then all the provisions of this clause 3 will take effect subject to clause 22.7 and must be read accordingly. In addition, this clause 3 will not apply to any adjustment of Units under clause 22.7.

4 SWITCHING UNITS BETWEEN FUNDS¹⁸

Covenant to Switch

- 4.1 The Manager covenants with the Supervisor (for the benefit of the Investors as well as the Supervisor) that the Manager will upon accepting a Request to Switch from an Investor treat such a request as though it were both a Repurchase Request and an Application for Units in the Fund or Funds specified in the Request to Switch and will apply the Repurchase Price in payment of the Application moneys due. Each Unit sold or issued by the Manager in accordance with a Request to Switch shall be sold or issued at the Switching Price.
- 4.2 Every Switch will at all times be effected in accordance with the relevant provisions of this Governing Document, the relevant Conditions of Establishment to which the Switch relates and the requirements of Relevant Law.¹⁹
- 4.3 The Manager may reject any Request to Switch. The Manager will notify the Investor of any rejection within seven days of receipt of the Request to Switch.

¹⁷ Sections 136(1), 143(1), 144, 153(1) and 154 of the FMCA.

¹⁸ Section 135(1)(a) of the FMCA.

¹⁹ Section 135(1)(a) of the FMCA.

Nomination of Investors and issue of Units

- 4.4 The Manager shall have the sole right to nominate the person whose name is entered in the Register or in the case of joint holders entered first in the Register as the Investor.²⁰ The Manager shall cause to be entered upon the Register the name of every nominated Applicant whose Application is accepted and who has paid or arranged for the payment of the total Selling Price or Switching Price, whichever is applicable, of the Unit.

Joint holders of Units

- 4.5 Where two or more persons are registered as the holders of any Unit (called **Joint Holders**), they shall for the purposes of the administration of the Funds and not otherwise be deemed to hold the same as joint tenants or as joint tenants in trust for themselves or as tenants in common with the benefit of survivorship, subject to the following provisions:
- (a) the Registrar shall not be bound to register more than two persons as the holders of any Unit;
 - (b) the Joint Holders of any Unit shall be 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 Holder, the survivor or survivors of them shall be the only person or persons recognised by the Registrar as having any title of the Unit, but the Registrar may require such evidence of death as it may deem fit;
 - (d) any one Joint Holder may lawfully act in all respects on behalf of all Joint Holders. In particular, by way of example:
 - (i) any one Joint Holder may give effective notices, requests, discharges, including Repurchase Requests, receipts and other communications to the Supervisor and the Manager on behalf of all Joint Holders and such notices, requests, receipts and other communications shall be effective whether given in the sole name of the Joint Holder or given on behalf of all or any Joint Holders;
 - (ii) the Manager or the Supervisor may give or send to any one Joint Holder any confirmation, notice, cheque, payment or other communication and the giving or sending of any of the forgoing shall be deemed to have been given to all Joint Holders; and
 - (iii) at any meeting of the Joint Holders, any one of them may vote either personally or by representative, attorney or proxy in respect of the Unit as if it were solely entitled thereto, but if more than one Joint Holder is present personally or by representative, attorney or proxy, then any vote or other action taken by the Joint Holder whose name stands first

²⁰ Section 215 of the FMCA.

in the Register in respect of Units shall alone be entitled to vote and act on behalf of the relevant Joint Holders.²¹

- 4.6 For the purposes of calculating a Fund's PIE Tax and attributing such liability to joint holders and for all other purposes relating to the application of the Tax Act to the Fund as a PIE, the Manager may in its absolute discretion either treat the holders as separate holders (in equal shares), or treat the Joint Holders as a single Investor with a tax rate equal to the highest Prescribed Investor Rate of the Joint Holders or such other rate as is permitted by law.

Registered holder absolute owner²²

- 4.7 Save as otherwise provided in this Governing Document and subject to the provisions of Relevant Law, the Manager, the Registrar, and the Supervisor shall be entitled to treat the registered holder of a Unit as the absolute owner thereof and accordingly shall not, except as ordered by a court of competent jurisdiction or as required by statute, be bound to recognise (even when having notice thereof) any equitable or other claim to or interest in the Unit on the part of any other person. Subject to Relevant Law, no notice of any trust, expressed, implied or constructive, may be entered on the Register.

5 TRANSFER OF UNITS²³

Form of instrument of transfer

- 5.1 Subject to the provisions of this Governing Document, a Unit may be transmitted or transferred.²⁴
- 5.2 The instrument of transfer of any Unit shall be in writing or with the Manager's approval may be made electronically or in any usual or common form which the Manager approves.

Execution of Instrument of transfer.²⁵

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

Dealing with Instrument of transfer

- 5.4 Every instrument of transfer of Units shall be left at or transmitted to the Office for registration accompanied by such evidence as to title and identity as the Manager may determine from time to time.
- 5.5 No transaction or dealing in any Units on behalf of or for the benefit of or at the request of any Investor shall be registered unless the Investor has paid all duties, tax (including GST) and other commissions, fees and charges in respect of the

²¹ Clause 15 of Schedule 11 of the FMC Regulations.

²² Section 217(3) of the FMCA.

²³ Section 135(1)(a) FMCA.

²⁴ Section 135(1)(a) of the FMCA.

²⁵ Section 135(1)(a) of the FMCA.

transaction dealing or instrument or in respect of any prior transaction dealing or instrument.

5.6 The Registrar may decline to register any transfer:

- (a) for non-compliance with Relevant Law or during 14 days immediately preceding any of the days fixed for distribution of Income Entitlements or Units;
- (b) if registration of the transfer would result in less than the Minimum Holding Amount in a Fund remaining in the name of the transferor or standing in the name of the transferee;
- (c) if registration of the transfer would threaten the relevant Fund's eligibility for PIE status.

Retention of instruction of transfer²⁶

5.7 Subject to Relevant Law, 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 the provisions of any Relevant Law or this Governing Document to the contrary) the Manager may destroy it.

6 TRANSMISSION OF UNITS

Transmission upon death

6.1 The executor or administrator of a deceased Investor (not being one of several Joint Holders) and in the case of the death of one or more joint Investors the survivor or survivors shall be the only person recognised by the Manager as having any title to the Units registered in the name of that Investor. However, if that Investor has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of the Units so sold or otherwise disposed of and the transfer of the Units is not registered before the death of that Investor, the Registrar may register that transfer notwithstanding that the Registrar at the time of such registration has notice of that Investor's death.

Transmission by operation of law

6.2 The committee, statutory representative or manager of an Investor of unsound mind or of an Investor whose person or estate is liable to be dealt with in any way under the laws relating to mental health and any person becoming entitled to Units in consequence of the death, insolvency, bankruptcy, liquidation, arrangement or composition with creditors or assignment for the benefit of the creditors or scheme of arrangement of any Investor or otherwise than by transfer, may, upon producing the evidence required by clause 6.3 be registered as the Investor in respect of the Units or may (subject to the provisions as to transfers) validly transfer Units.

²⁶ Section 227 of the FMCA.

- 6.3 Any committee, statutory representative, manager or person seeking registration as an Investor in respect of Units or the transfer of Units shall produce such evidence of capacity, identity or of title as is considered by the Registrar to be sufficient.

Refusal of registration of transmissions

- 6.4 Registration of a transmission of Units to any person may be refused by the Registrar in the same circumstances that would apply to a transfer.

7 REGISTER

Contents of Register

- 7.1 The Manager shall keep and maintain or cause to be kept and maintained in New Zealand in respect of each Fund an up-to-date Register. Each Register shall:

- (a) be kept in the manner;
- (b) contain the content;
- (c) be audited; and
- (d) be available for inspection,

as required by the FMCA.²⁷

Appointment of Registrar

- 7.2 The Registrar shall be the Manager, or any delegate selected by the Manager, and may include the Supervisor or its Associated Persons. The Register may be electronic or computerised²⁸ or take the form of a computer printout or any other computer based information storage and retrieval system compiled in a manner approved by the Manager²⁹.

- 7.3 The following information shall also be kept by the Registrar in respect of any period where the relevant Fund is a PIE:

- (a) the Tax File Number and notified Prescribed Investor Rate of the Investors of that Fund; and
- (b) such details as the Manager considers are necessary or desirable for that Fund to comply with, and to enable the Manager to administer that Fund in accordance with, all relevant PIE rules under the Tax Act.

Register deemed to be accurate

- 7.4 The Supervisor and the Manager are entitled to rely upon entries in a Register as being correct, shall not be required to enquire as to the authenticity of a Register and shall not incur any liability or responsibility on account of any mistake in a Register.³⁰

²⁷ Sections 215 to 223 of the FMCA and Regulations 109 and 110 of the FMC Regulations.

²⁸ Section 216(2)(a) of the FMCA.

²⁹ Section 216(2)(b) of the FMCA.

³⁰ Section 217(3) of the FMCA.

Investors to notify changes

- 7.5 Any change of name or address, Tax File Number or Prescribed Investor Rate of any Investor shall be notified by the Investor 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.

No security interests to be entered upon a Register

- 7.6 Neither the Manager nor the Supervisor shall be bound to see to the performance of any security interest, charge, pledge, or equity to which any of the Units or any interest therein are or may be subject, or to recognise any person as having any interest in any Unit except for the person recorded in a Register as the Investor, and accordingly no notice of any security interest, charge or pledge shall be entered upon a Register.³¹

Copy of extract

- 7.7 The Manager must send a copy or an extract of the Register to a person upon written request in accordance with the FMCA and subject to the payment by that person of any prescribed fee³².

Retention of records

- 7.8 The entries on the Register and any document required by or for the purposes of Relevant Law in respect of the Units, an offer of the Units, or any Fund, shall be retained by the Manager (or the Registrar on behalf of the Manager) in such manner and for such period as required by Relevant Law³³ and after such period the Manager (or the Registrar) may (subject to any Relevant Law or to the provisions of this Deed to the contrary) destroy such entries.

8 MANAGEMENT OF THE FUNDS

Powers of the Manager and the Supervisor

- 8.1 The Manager shall:
- (a) act honestly in acting as a manager;
 - (b) in exercising any powers or performing any duties:
 - (i) act in the best interests of the Investors; and
 - (ii) treat the Investors equitably; and
 - (c) not make use of information it acquires through being the manager in order to:
 - (i) gain an improper advantage for itself or any other person; or

³¹ Section 217(2) of the FMCA.

³² Section 223 FMCA

³³ Including under section 227 FMCA

(ii) cause detriment to the Investors.

8.2 The Manager, as a professional manager of a registered scheme under the FMCA, shall, in exercising any powers, or performing any duties, exercise the care, diligence, and skill that a prudent person engaged in that profession would exercise in the same circumstances.

8.3 Subject to Relevant Law, the powers reserved to the Supervisor by this Governing Document, and the relevant Conditions of Establishment, each Fund shall be managed and administered by the Manager in accordance with the terms of this Governing Document, the relevant Conditions of Establishment and the Relevant Law, and without limiting the generality of the foregoing (or the Manager's full and complete power of management), the Manager is empowered to perform each of the following duties in relation to the Funds:

- (a) manage Investments and determine the terms of sales, purchases and other dealings with Investments;
- (b) make all decisions relating to Investments including acquisition and sale decisions, the acceptance or rejection of takeover offers and Cash and other issues, the investment of dividends and the exercise of voting rights in respect of investments;
- (c) make all decisions relating to lending or borrowing by a Fund (including stock lending) and the terms of such lending, borrowing and any securities relating to such borrowing;
- (d) determine the terms of all contracts, rights and other matters relating to each Fund's Investments or Liabilities;
- (e) place on deposit with any Bank or with any person (investment with which is an Authorised Investment) Cash in a Fund;
- (f) appoint and engage solicitors and other consultants and advisors on such terms as the Manager determines;
- (g) enter into any contract for the purpose of hedging against or providing for or spreading or reducing the risk of any loss in respect of any Investment or class of Investment or Liability which might result from any circumstance whatsoever including fluctuations in any currency or currencies or interest rates or other financial risks;
- (h) without limiting clause 8.6(g), grant or take up options to purchase or sell any Authorised investment; and
- (i) enter into any underwriting, agreement to underwrite, sub underwriting or agreement to sub underwrite any issue of securities which when issued would constitute an Authorised Investment;

- (j) liaise with Investors and provide them (directly, through electronic means or via any other method the Manager may determine at its absolute discretion) with all information, notices and disclosures required to be given to Investors under Relevant Law³⁴³⁵;
- (k) correct, and if applicable, arrange compensation for, errors in the calculation of a Price or material non-compliances in accordance with clause 2.41(b) and (c)³⁶;
- (l) ensure compliance by the Scheme and the Funds with the requirements of the Relevant Law and the SIPO and provide to the Supervisor as soon as practicable prior to registration or distribution a copy of any Disclosure Document in accordance with clause 2.28;
- (m) appoint and engage any auditor (other than the Auditor, who shall be appointed pursuant to clause 15.8), administration manager or investment manager on terms and conditions and with such powers, duties, discretions and remuneration agreed by the Manager and the relevant appointee, with prior written notice of such appointment to be given to the Supervisor; and
- (n) exercise all such other powers, authorities, functions and discretions as are granted or imposed by Relevant Law or incidental to the above.

Delegates of the Manager

8.4 The Manager may authorise any person or persons to act as its delegate (in the case of a joint appointment, jointly and severally) to perform any act or exercise any discretion within the Manager's power (including, for the avoidance of doubt and without limitation, all or any investment management, registry or other administrative powers, authorities, functions or discretions, with the same power to sub-delegate), provided that the Manager shall:

- (a) take all reasonable steps to ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the Manager were performing them directly;³⁷ and
- (b) monitor the performance of those functions;³⁸
- (c) at all times remain liable and responsible for the acts and omissions of any person appointed pursuant to this clause.³⁹

The authorisation must be written subject to this clause. The Manager may include provisions to protect and assist those dealing with the delegate in the authorisation

³⁴ Including sections 96, 97 and 100 of the FMCA.

³⁵ Including Regulations 56, 62 and 65 of the FMC Regulations.

³⁶ Section 168 of the FMCA and Regulation 99 of the FMC Regulations.

³⁷ Section 146(2)(a)(i) of the FMCA.

³⁸ Section 146(2)(a)(ii) of the FMCA.

³⁹ Section 146(2)(b) of the FMCA.

as the Manager thinks fit. The delegate may be an Associated Person of the Manager or the Supervisor, except where prohibited by any Relevant Law. The Manager may appoint brokers or dealers appropriate for the purpose of carrying out transactions in relation to the Investments of a Fund.

- 8.5 The Manager may agree with any such delegate the fees that may be charged and the extent to which expenses will be reimbursed as the Manager may consider suitable, having regard to normal commercial terms. The Supervisor may institute, prosecute, defend and compromise legal proceedings in order to secure compliance with the provisions of this Governing Document, any Conditions of Establishment and the terms of any PDS and may recover any loss suffered by any Investors on their behalf in respect of their Units.
- 8.6 The Supervisor may share any information that the Manager (or any administration manager or investment manager) provides to the Supervisor, with the Supervisor's own advisers, with any experts appointed under the FMCA⁴⁰ or this Governing Document and/or with the FMA to the extent that, it reasonably considers that it is required to do so by Relevant Law or the Supervisor reasonably considers it necessary or desirable to do so in order to perform its functions under this Governing Document and/or its supervisor functions under the FMCA.

Supervisor's functions

- 8.7 The Supervisor has the following functions in respect of the Scheme and each Fund:
- (a) acting on behalf of Investors in relation to:
 - (i) the Manager;
 - (ii) any matter connected to this Governing Document or the terms of any Regulated Offer of Units;
 - (iii) any contravention or alleged contravention of the Manager's Issuer Obligations;
 - (iv) any contravention or alleged contravention of the FMCA by any other person in connection with the Scheme or a Fund;
 - (b) supervising:
 - (i) the performance by the Manager of its functions and its Issuer Obligations;
 - (ii) the financial position of the Manager, the Scheme and each Fund, to ascertain that they are adequate;
 - (c) holding the Scheme Property, or ensuring that the Scheme Property is held, in accordance with Relevant Law; and

⁴⁰ Section 115 of the FMCA.

(d) performing or exercising any other functions, powers and duties conferred or imposed on the Supervisor by the FMCA, the Financial Markets Supervisors Act 2011 or this Governing Document.

8.8 The Supervisor must not delegate its functions under clause 8.7 except as expressly permitted under clauses 8.20 to 8.22 or as permitted by, and then subject to, any conditions imposed under Relevant Law.

8.9 Without affecting the generality of the foregoing, the Supervisor in performing its functions under this Governing Document may, to the extent permitted by the FMCA⁴¹, engage any expert from whom the Supervisor reasonably considers the Supervisor requires assistance in respect of its functions under the Governing Document. All reasonable fees and expenses of the expert shall be paid by the Manager from the relevant Fund, subject to the Manager's right of reimbursement under clause 13.23 from that Fund.

8.10 The Supervisor has the same duties and liabilities in the performance of its functions as supervisor as it would if it performed those functions as a trustee (except to the extent those duties are altered or inconsistent with the FMCA)⁴².

Supervisor's general powers

8.11 The Supervisor shall have the power, on instructions from the Manager, to settle and complete all transactions in respect of each Fund.

8.12 The Supervisor must do all things it has the power to do to cause any contravention referred to in clause 8.7(a) to be remedied (unless it is satisfied that the contravention will not have a material adverse effect on Investors).

Supervisor's duties

8.13 The Supervisor must:

- (a) act honestly in acting as Supervisor of the Scheme and each Fund;
- (b) in exercising its powers and performing its duties as Supervisor:
 - (i) act in the best interests of the Investors; and
 - (ii) exercise the care, diligence and skill that a prudent person engaged in the business of acting as a Licensed Supervisor would exercise in the same circumstances; and
- (c) exercise reasonable due diligence in carrying out its functions as Supervisor.

⁴¹ Section 155 of the FMCA.

⁴² Section 153(4) of the FMCA.

Borrowing powers

- 8.14 Subject to clauses 8.14 and 8.15, and 9.7, and the provisions of Relevant Law, the Supervisor shall, if so directed by the Manager, have power to:
- (a) borrow or raise money from any person (including an Investor); or
 - (b) enter into any form of credit facility or other accommodation or sell discount and deal with bills of exchange, promissory notes and other securities; or
 - (c) charge the investments of a Fund or any of them as Security for any moneys borrowed or raised for the purpose of acquiring further capital investments for that Fund.
- 8.15 The aggregate of the principal moneys borrowed or raised and outstanding (or proposed to be borrowed and raised) in respect of a Fund or secured against a Fund shall not exceed an amount specified in the relevant Conditions of Establishment as the limit on borrowings for such Fund, or such other amount agreed by the Supervisor from time to time.
- 8.16 The Manager shall (subject to the limitation mentioned in clause 8.15) determine and give notice to the Supervisor of the amounts and name of the lender and other terms and conditions of all borrowings and financings to be undertaken by the Supervisor and all securities to be entered into. The Supervisor shall subject to clause 8.11 and 9.7 enter into and execute all loan documents and securities and will take all other steps necessary to give effect to any such borrowing or the giving of such securities.
- 8.17 The Manager will ensure that the entry into of any borrowing or financing arrangement does not breach the limitations in clause 8.15 or any limitations in the relevant Conditions of Establishment at the time of the borrowing or financing.
- 8.18 There shall be no obligation upon the Supervisor to comply with any direction given pursuant to clauses 8.14 or 8.16 or to complete any loan or Security documents unless the Supervisor is satisfied that:
- (a) the Supervisor's liability is restricted to the investments from time to time comprising the relevant Fund;
 - (b) any loan Security or other obligation binding on the Fund does not impose any unreasonable obligation upon the Supervisor in any capacity other than in his capacity as Supervisor; and
 - (c) the repayment of all borrowings and the payment of all interest can be met on the relevant due dates.
- 8.19 No person lending or advancing moneys to the Supervisor in respect of a Fund or completing loan documents or securities in respect thereof shall be concerned to enquire as to whether or not any limitation or requirement in this Governing Document or the relevant Conditions of Establishment has been observed or complied with.

Appointment of Custodians

- 8.20 The Supervisor may, subject to providing prior written notice to the Manager, nominate, 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. The Custodian must meet the requirements for such person under the FMCA⁴³. The Supervisor shall be jointly and severally liable with the Custodian for the due and faithful performance and observance by the Custodian of all the duties and obligations imposed on it pursuant to this clause 8.20 and otherwise by Relevant Law.
- 8.21 If authorised in writing by the Supervisor (subject to providing prior written notice to the Manager), a Custodian appointed under clause 8.20 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 8.21 must meet the requirements for such a person under the FMCA⁴⁴. The Supervisor and the Custodian shall be jointly and severally liable with the appointed sub-custodian for the due and faithful performance and observance by the sub-custodian of all the duties and obligations imposed on it pursuant to this clause 8.21 and otherwise by Relevant Law.
- 8.22 The Supervisor may agree:
- (a) to limit the liability (in connection with its services in respect of the Scheme); and/or
 - (b) to indemnify and reimburse out of the relevant Fund's Investments,

⁴³ Sections 127(1)(f) and 156 of the FMCA.

⁴⁴ Section 156 of the FMCA.

a Custodian appointed under clause 8.21, to the fullest extent permitted by Relevant Law, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian in respect of the Scheme or any action taken or omitted to be taken in connection with the relevant Fund (including, without limitation, legal fees and disbursements).

9 INVESTMENT OF THE FUNDS

SIPO to be established

- 9.1 The Manager shall, in consultation with the Supervisor, establish, and may at any time, on prior written notice to the Supervisor, amend or replace, a SIPO for the Scheme in accordance with the requirements of Relevant Law⁴⁵.
- 9.2 If the Manager proposes to alter the SIPO in relation to a Fund in a manner which materially affects existing Investors, the Manager shall, prior to effecting any such alteration, give at least 30 days' written notice to the Investors of the relevant Fund.

Investments to follow SIPO

- 9.3 Subject to the provisions of this Governing Document, the applicable Conditions of Establishment and the powers, rights and discretions given to the Manager, the Scheme Property shall be invested by the Manager in accordance with the SIPO and the Scheme Property shall be invested only in the Authorised Investments. A SIPO and this clause 9.3 constitute a "contrary intention" for the purposes of sections 2(5), 2(5A) and 13D(1) of the Trustee Act 1956.
- 9.4 Notwithstanding sections 13B and 13C of the Trustee Act 1956, and subject always to Relevant Law⁴⁶, the Supervisor shall not in carrying out its duties be required to exercise any care, diligence or skill in respect of the investment of any Fund, other than to monitor the Manager's obligations in respect of the SIPO of the relevant Fund.
- 9.5 Subject to Relevant Law, neither the Supervisor nor the Manager shall be responsible to the Fund or any Investor for the investment performance of a Fund arising as a result of the SIPO.
- 9.6 The Manager and the Supervisor may from time to time in relation to a Fund agree upon guidelines and procedures for the Manager to follow in connection with the Investments of that Fund. The Manager will comply with any such agreed guidelines and in the event of the Manager wishing to depart therefrom the Manager will first notify the Supervisor of the Manager's intention.
- 9.7 The Supervisor must refuse to act (and must direct any Custodian to refuse to act) on a direction of the Manager in the circumstances where such a refusal is required by the FMCA⁴⁷, and the Supervisor (and any Custodian) shall not be liable to Investors or the Manager for so refusing to act on any direction (or for directing any Custodian to so refuse to act on any direction).

⁴⁵ Sections 164 to 166 of the FMCA.

⁴⁶ Section 160 of the FMCA.

⁴⁷ Section 160 of the FMCA.

- 9.8 If the Supervisor refuses pursuant to clause 9.7 to act (or directs any Custodian to refuse to act) on a direction from the Manager, the Supervisor must notify the Manager and the FMA in writing of that fact and the Supervisor's reasons for the refusal or the direction to refuse.⁴⁸
- 9.9 Subject to clauses 9.3 to 9.8 (inclusive) and the SIPO, the Manager may direct the Supervisor in respect of:
- (a) the investment and management of Investments;
 - (b) the purchase, acquisition, sale, transfer, replacement and disposition of Investments;
 - (c) the amendment or modification of any Investments; and
 - (d) the entering into any commitments or Liabilities.

The Manager alone shall be authorised from time to time to cause to be effected any contracts or transactions in relation to investments by the Scheme which the Manager considers in the interests of the Investors and will ensure that all acquisitions resulting from such contracts or transactions are acquired in the name of the Supervisor or the Custodian. Subject to clauses 8.11 and 9.7, the Supervisor will from time to time enter into such contracts and, to the extent of the Funds in its hands or control, effect and pay for such contracts or transactions, investments or other commitments, or Liabilities as shall be directed in writing by the Manager and will sign all documents and do all things necessary on its part to give effect to such directions.

Related party transactions

- 9.10 Notwithstanding any other provision of this Governing Document, and subject to clause 9.7 and compliance with the Relevant Law in relation to related party transactions⁴⁹, the Manager may:
- (a) cause any moneys of a Fund to be invested or lodged with any Related Party; or
 - (b) sell, purchase or otherwise dispose of or acquire any Investment to or from any Related Party; or
 - (c) enter into any contract, agreement or other arrangement with any Related Party to provide management or consultancy services or any other services that the Manager considers desirable.

Neither the Manager, nor any Related Party shall be liable to account to the Supervisor or any Investor for any profit arising from any such transaction. A failure to comply with this clause 9.10 does not affect the validity of a transaction (subject to any court order to the contrary)⁵⁰.

⁴⁸ Section 160(3) of the FMCA.

- 9.11 The Manager shall cause Investments for which provision for registration exists to be registered in the name of the Supervisor or the Custodian as soon as reasonably practicable after receipt of the necessary documents and shall deliver all certificates or other documents of title for safe custody as directed by the Supervisor.

Bank Accounts

- 9.12 The Manager at the request of the Supervisor shall provide evidence satisfactory to the Supervisor that a separate Bank account into which all relevant Application moneys are paid is opened and maintained as a separate account for the subscription moneys and for no other purpose. The Manager shall at a time or times approved by the Supervisor account to the relevant Fund for interest and earnings payable to that Fund.
- 9.13 The Supervisor shall open and maintain a separate Bank account with a branch of a Bank in the name of each Fund. All moneys belonging to a Fund and coming into the hands of the Supervisor (or the Custodian) howsoever shall be paid to the credit of the Bank account for that Fund. The Supervisor shall authorise the Manager to operate such Bank account.

Investment procedure

- 9.14 The Manager shall give notice to the Supervisor of any transaction or type of transaction required to be entered into by the Supervisor in relation to borrowing, the giving of security or the sale, purchase, leasing or dealing in any manner whatsoever with Authorised Investments in a form which is reasonably acceptable to the Supervisor. The Supervisor may request any additional information which it may reasonably require regarding such transaction.
- 9.15 Subject to any applicable legislation (and in the case of a Fund which is a PIE, the rules prescribed by the Tax Act), the Manager shall have the full and absolute power to make all investment decisions in relation to the Scheme and the Funds and, subject to compliance with the SIPO and the terms of this Governing Document, may determine the terms of all sales, purchase or other dealings with assets, and all contracts, rights and other matters relating to such assets or Liabilities, and acquire and sell assets on behalf of the Scheme and the Funds for cash or upon terms, as determined by the Manager.
- 9.16 Any shares or other assets or rights received by the Supervisor in lieu of or in satisfaction (in whole or in part) of a dividend in respect of any Investment or from amalgamation or reconstruction of any corporation in which part of any Fund is invested may either be retained as part of such Fund, or sold or retained as to part and sold as to the balance as determined by the Manager.
- 9.17 The Supervisor may before entering into any transaction, Security or liability require that its liability is to its satisfaction restricted or limited to the assets of investments for the time being in the Supervisor's hands as Supervisor of the relevant Fund.

⁴⁹ Sections 172 to 177 of the FMCA and Regulations 100 to 106 of the FMC Regulations.

⁵⁰ Section 173(6) of the FMCA.

9.18 Subject to the provisions of this Governing Document, all voting rights conferred by the assets shall be exercised in such manner as the Manager may from time to time decide. At the request of the Manager, the Supervisor shall execute, deliver and appoint or cause to be executed, delivered and appointed such proxies, attorneys and representatives as may be necessary to enable the Manager or its nominees to exercise or act in relation to such voting rights.

9.19 Subject to the provisions of this Governing Document, neither the Manager, the Supervisor, nor any holder of any proxy or power of attorney referred to in clause 9.18 shall be liable or responsible for any vote cast or not cast.

Amendment of Authorised Investments

9.20 Where the Manager determines, in consultation with the Supervisor, that it is in the interests of the Investors to vary the definition of 'Authorised Investments' so as to exclude from that definition any material investment class or to add any material investment class, then:

- (a) if the Manager notifies all Investors on the Register for that Fund of the proposed variations in accordance with Relevant Law; and
- (b) Investors holding not less than 5% of the number of Units in existence at the date of the notification do not give notice of their intention to call a meeting of Investors within 30 days of the date of the notification,

the Supervisor and the Manager may enter into and execute a deed amending the definition of Authorised Investments in respect of that particular Fund, and the Manager shall amend the SIPO to give effect to the alterations in accordance with clauses 9.1 and 9.2.

9.21 Where any amendment has been made to the Governing Document and the SIPO pursuant to clause 9.20, the Manager will notify the Investors of that Fund in writing in summary form of all material amendments made to the Governing Document and the SIPO, such notification to be forwarded to those Investors no later than three Months after the date the amendments are made.

Investment record

9.22 The Supervisor or Custodian must keep and reconcile, or ensure that there are kept and reconciled, complete, accurate and separate records of all Investments constituting each of the Funds in accordance with the applicable requirements of Relevant Law.

9.23 The Supervisor or Custodian must keep and reconcile the records required by clause 9.22, or ensure that they are kept and reconciled, in a manner that enables those records to be conveniently inspected by the Manager and the Supervisor and conveniently and properly audited or reviewed at any time on any Business Day and otherwise in accordance with the applicable requirements of Relevant Law, and give reports in relation to the Scheme Property in accordance with Relevant Law⁵¹.

⁵¹ Sections 156 to 159 of the FMCA and Regulations 86 to 88 of the FMC Regulations.

9.24 The Manager shall be entitled to assume that the Supervisor's or Custodian's records of Investments are complete and accurate and to rely upon them accordingly.

10 **INCOME AND INCOME ENTITLEMENTS**⁵²

10.1 The Manager may at any time generally or before the determination of Income Entitlements at the end of a Distribution Period, capitalise and retain as an asset of the Fund the whole or any part of the income of the Fund. All income of the Fund capitalised and retained as an asset of the Fund shall be capitalised and retained in the Fund at least annually as at a date set by the Manager.

10.2 Subject to clauses 10.1, 11.1 and 22.7, as soon as practicable after the end of every Distribution Period the amount of the income available for distribution for that Distribution Period shall be determined by the Manager and divided by the Number of Units on Issue at the end of the last day of that Distribution Period provided that, for the avoidance of doubt, the Manager may determine that the income available for distribution in relation to any Fund and any or all periods for that Fund shall be nil. The resultant quotient (calculated to the actual fourth decimal place of a dollar) is the Income Entitlement attributable to a Unit other than a Fractional Unit for the Distribution Period in respect of which such calculation is made. The total of Income Entitlements of an Investor for a Distribution Period is calculated by multiplying a number which represents the number of Units (including any fraction) held by the Investor at the end of the last day of the Distribution Period by the quotient for that Distribution Period arising as a consequence of any calculation of the Income Entitlement attributable to a Unit.

10.3 If any question shall arise as to whether any money or property constitutes income or capital or whether any expense is properly chargeable against income or capital such question shall be determined by the Manager (in consultation where necessary with the Auditors and any other relevant advisor) who shall do so by construing this Governing Document and the relevant Conditions of Establishment and having regard to general commercial practice and the Accounting Policies of the Scheme. However, nothing in this Governing Document or in the Accounting Policies of the Scheme shall require realised or unrealised gains in the value of Investments to be classified as income unless the relevant Conditions of Establishment so require or the Manager in its sole discretion so determines.

11 **ALLOCATION AND DISTRIBUTION OF INCOME ENTITLEMENTS**⁵³

11.1 During the continuance of a Fund and subject to terms of this Governing Document and any Conditions of Establishment the Manager will allocate to each Investor the total of its Income Entitlements provided that where any distribution to an Investor is subject to any withholding or like tax the same shall be deducted from the relevant entitlement before distribution is effected. Subject to clause 11.8 the Manager may from time to time determine the date or dates of allocation and

⁵² Section 135(1)(e) of the FMCA.

⁵³ Section 135(1)(e) of the FMCA.

distribution of entitlements and the Distribution Period or periods to which entitlements relate.

- 11.2 A Unit including a Fractional Unit deemed to be on issue at the end of the last day of a Distribution Period shall entitle its holder to participate in the distribution for the period in full irrespective of the number of days it has been on issue.
- 11.3 Each allocation and distribution shall be made within 60 days after the last day of the Distribution Period to which it relates or if the audit relating to the Distribution Period has not been completed, as soon as possible after completion thereon. The Manager shall be entitled to require that distributions to Investors be made by direct Bank credit into the Investor's Bank account or in such other manner as the Manager may reasonably require. The Manager shall also be entitled to deduct from the Investors' entitlement postage, Bank transaction charges and any other costs or expenses in respect of the payment or distribution of the Investor's Income Entitlement to the Investor.
- 11.4 Subject to clause 11.8, Investors may elect to reinvest their entitlements distributed to them by the Manager in additional Units in the relevant Fund by making a written request to the Manager on the Application or in such other form as may from time to time be required by the Manager. Any request in such other form must be submitted to the Manager prior to the expiration of the relevant Distribution Period. Such a request may be varied or terminated by notice in writing to the Manager at any time. The Manager will treat such a request as though it were both a Cash distribution and an Application in respect of the specified Fund. The provisions of this Governing Document and the relevant Conditions of Establishment with such changes as are necessary, apply to Units issued in accordance with this clause. The Selling Price of these Units shall be the Selling Price at the Relevant Time except that the Manager may decide not to charge an Entry Fee.
- 11.5 Notwithstanding clause 11.1, the Manager shall not be obliged to effect any reinvestment of an Income Entitlement.
- 11.6 The Manager is entitled in its discretion, to specify in respect of each distribution the extent to which (allowing for reasonable approximation) the Income Entitlements of an Investor participating in that distribution consist or are deemed to consist of various types of income comprised therein.
- 11.7 The Manager and the Supervisor are authorised to make such disclosure as may be required by the Commissioner of Inland Revenue of the details of Investors, any distributions to Investors or any other details or information arising out of the relevant Fund.
- 11.8 If the Manager decides that any Distribution Period should end on a date other than that presently prevailing it may change that date on notice to the Supervisor, and in accordance with Relevant Law.
- 11.9 The Manager may in its discretion at any time capitalise the whole or any part of the income or capital and apply it in or towards paying in full new Units to be issued and

distributed as fully paid bonus Units to and amongst the Investors who would have been entitled thereto if the same were distributed as income.

11.10 Notwithstanding any other provision of this Governing Document, the Manager may direct the Supervisor to pay such supplementary distributions to Investors resident outside New Zealand as may be provided for by the Tax Act and as the Manager determines to be fair and equitable.

12 THE SUPERVISOR AND THE MANAGER

Covenants by the Supervisor⁵⁴

12.1 The Supervisor shall perform, in respect of the Scheme, the functions of a supervisor of a registered managed investment scheme under the FMCA⁵⁵ and shall have the powers conferred on it by Relevant Law. Without limiting the generality of the foregoing, the Supervisor covenants with the Manager (with the intent that the benefit of such covenant shall enure not only to the Manager but to the Investors jointly and to each of them severally) that the Supervisor shall:

- (a) when exercising its powers and performing its functions as Supervisor of the Scheme, comply with its duties under Relevant Law⁵⁶;
- (b) act continuously as Supervisor under the Funds in this Governing Document set forth and will not do or cause to be done or omit to do any act, matter or thing which would or might cause it to be disqualified from acting as Supervisor under this Governing Document or which might prevent it from so acting and will act continuously as Supervisor under each Fund in this Governing Document set forth until such Fund is determined as provided in this Governing Document or until the Supervisor has retired or been removed from office;
- (c) exercise the care, diligence, and skill in carrying out its functions and duties hereunder that a prudent person engaged in the business of acting as a Licensed Supervisor would exercise in the same circumstances⁵⁷;
- (d) subject to the other provisions of this Governing Document, retain documents evidencing title to or registration of Authorised Investments in safe custody and hold them as Supervisor for the Investors upon the terms of this Governing Document or arrange for a Custodian to hold them in accordance with this Governing Document and any Relevant Law (or procure that this is complied with)⁵⁸;

⁵⁴ Sections 153 and 154 of the FMCA.

⁵⁵ Section 152 of the FMCA.

⁵⁶ Including sections 153, 154 and 160 of the FMCA.

⁵⁷ Section 154 of the FMCA.

⁵⁸ Section 156 of the FMCA.

- (e) keep (or arrange for a Custodian to keep) the assets of each Fund separate from all other assets, investments and other property vested in or held by the Supervisor (or the relevant Custodian);
- (f) except as provided in this Governing Document or in the relevant Conditions of Establishment or as authorised by Relevant Law, not sell, mortgage, charge or otherwise part with the ownership or possession of any of the Investments of any Fund;
- (g) without delay forward to the Manager all notices and other information relevant to the Manager and received by the Supervisor or on the Supervisor's behalf in connection with each Fund;
- (h) subject to clause 9.7 and the provisions of the FMCA, whenever the Manager requests the Supervisor to redeem Units the Supervisor will if necessary borrow moneys as directed by the Manager or realise Investments comprised in the relevant Fund as directed by the Manager; and
- (i) be a Licensed Supervisor in relation to the Scheme.

Covenants by the Manager

12.2 The Manager shall perform, in respect of the Scheme, the functions of a manager of a registered managed investment scheme under the FMCA⁵⁹ and shall have the powers conferred on it by Relevant Law. Without limiting the generality of the foregoing, the Manager covenants with the Supervisor (with the intent that the benefit of such covenant shall enure not only to the Supervisor but to the Investors jointly and to each of them severally) that the Manager shall:

- (a) use its best endeavours to ensure that each Fund is carried on in a proper and efficient manner and in accordance with the provisions of this Governing Document and the relevant Conditions of Establishment;
- (b) not repurchase or redeem a Unit or issue a Unit in any Fund otherwise than at a price calculated in accordance with the provisions of this Governing Document;
- (c) without delay forward to the Supervisor all notices and other information relevant to the Supervisor and received by the Manager or on the Manager's behalf in connection with any Fund;
- (d) prepare or cause to be prepared all distribution cheques (where payment is elected by the Investor to be made by cheque) and notices which are to be issued pursuant to this Governing Document and produce them to the Supervisor or a person authorised by the Supervisor for this purpose so as to afford the Supervisor or such authorised person reasonable time to examine and check the same and to sign those cheques for dispatch. The Supervisor may rely on the report of the Auditor or the Manager given in respect of the

⁵⁹ Including sections 143 to 151 of the FMCA.

accuracy of the particulars of such cheques if such reliance is based upon a reasonable belief that the report is genuine;

- (e) make available to the Supervisor or to its 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 Office or elsewhere;
- (f) without limiting sections 147 to 151 of the FMCA, give 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 and set out in the Supervisory Agreement or as required by Relevant Law or requested by the Supervisor under Relevant Law, including, without limitation, in respect of all matters relating to the Scheme and each Fund, the Manager and the Investments and the management and administration of the Scheme and each Fund;
- (g) at the reasonable request of the Supervisor give the Supervisor or the Custodian or the Auditor such oral or written information as may be required with respect to all matters relating to the Manager provided that the Supervisor shall only request such information in the following circumstances:
 - (i) when permitted by the FMCA; or
 - (ii) after consultation with the Manager; and
 - (iii) if the Supervisor believes that the Manager is unable or is likely to become unable to carry out its obligations under this Governing Document and the Supervisor certifies its belief in writing to the Manager;
- (h) alter an Investor's Holding to the extent reasonably practicable in the circumstances to address partly or entirely the impact of any error in the calculation of a Price, provided such alteration does not adversely affect the relevant Investor's Holding or the position of the other Investors as compared with the position such Investor or Investors would have been in had the error in the calculation of the Price not occurred and further provided that the Supervisor has been consulted regarding any such alteration, and otherwise in accordance with clause 2.41(b);
- (i) correct any material error in the calculation of a Price or material non-compliances with a pricing methodology for Units in a Fund, to the extent required by the FMCA, and otherwise in accordance with 2.41(c);
- (j) retain in safe keeping all Applications and instruments of transfer and transmission or copies of reproductions thereof and will make those documents available for inspection by or on behalf of the Supervisor at any time during normal business hours but on the expiration of 7 years from the date of any such document the Manager may in its discretion (subject to any Relevant Law to the contrary and first obtaining the Supervisor's approval) destroy the document;

- (k) be a Licensed Manager in relation to the Scheme;
- (l) provide the Supervisor on request access to such employees and board members of, and service providers to, the Manager as the Supervisor reasonably requires; and
- (m) notify 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 Investors or on the reputation of the Manager or its licence under the FMCA.

13 REMOVAL AND RETIREMENT OF MANAGER⁶⁰

13.1 The Manager shall cease to hold office as Manager if:

- (a) the Manager is removed pursuant to the FMCA⁶¹; or
- (b) the Manager shall have a receiver or voluntary administrator appointed or if an order is made or a resolution passed for the liquidation or winding up of the Manager.

13.2 If the Manager ceases to hold office pursuant to clause 13.1, the Manager and any delegates of the Manager shall immediately desist from all activities related to the Scheme, unless the Supervisor agrees to the contrary⁶².

13.3 The Manager may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Supervisor of its intention to do so. No such retirement shall take effect until a new Manager has been appointed and has executed the deed referred to in clause 13.12.

13.4 The Manager may retire at any time and appoint an Associated Person in its place, subject to such Associated Person entering into a deed under clause 13.12 of this Governing Document, and otherwise complying with any legal requirements for appointment, including under the FMCA.

13.5 The power of appointing a temporary Manager of the Scheme where a vacancy in the office of Manager arises shall be vested in the Supervisor. No person shall be appointed as a new Manager of the Scheme unless that person complies with any legal requirements for appointment, including under the FMCA.

13.6 Where the Scheme does not have a manager and where Relevant Law so requires, the Supervisor shall appoint a new or temporary manager which satisfies any legal requirements for such appointment, including under the FMCA.⁶³

⁶⁰ Section 135(1)(h) of the FMCA.

⁶¹ Sections 185(1)(a), (b) and (d) of the FMCA.

⁶² Section 185(4) of the FMCA.

⁶³ Section 186(3)(a) of the FMCA.

- 13.7 Where the Supervisor appoints a temporary manager, the Supervisor must take all reasonable steps to appoint a permanent manager for the Scheme which satisfies any legal requirements for such an appointment⁶⁴.
- 13.8 If the Supervisor has not appointed a temporary manager or the Supervisor requests the FMA to do so, the FMA may, where Relevant Law so requires, appoint a temporary Manager that satisfies any legal requirements.⁶⁵ The FMA's costs and expenses incurred in connection with any such appointment of a temporary Manager will be reimbursed out of the Scheme⁶⁶.
- 13.9 A temporary manager has all of the powers and duties of the Manager under this Governing Document or Relevant Law⁶⁷.
- 13.10 In accordance with the requirements of Relevant Law, a former manager must provide any new Manager with all of the information and records held and controlled by the former Manager and give reasonable assistance to the new manager⁶⁸.
- 13.11 In accordance with the requirements of Relevant Law, the new manager must lodge a notice of change of Manager with the Registrar of Financial Service Providers⁶⁹.
- 13.12 Any new Manager shall forthwith upon such appointment execute a deed in such form as the Supervisor may reasonably require whereby the new Manager undertakes to the Supervisor and the Investors to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment and from such date the retiring Manager shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Manager shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Manager hereunder in all respects as if such Manager had been originally named as a party hereto.
- 13.13 Nothing in this clause 13 shall prevent the former Manager from receiving payment or a benefit which has accrued to the former Manager pursuant to the terms of this Governing Document prior to the date of or arising on the Manager's retirement or removal from office⁷⁰.

⁶⁴ Sections 186(2) and (3)(a) and section 189 of the FMCA.

⁶⁵ Section 186 of the FMCA.

⁶⁶ Section 188 of the FMCA.

⁶⁷ Sections 186 and 187 of the FMCA.

⁶⁸ Section 190 of the FMCA.

⁶⁹ Section 192 of the FMCA.

⁷⁰ Section 191 of the FMCA.

Removal and retirement of Supervisor⁷¹

13.14 Subject to compliance with the requirements of the FMCA⁷², the Supervisor shall cease to hold office as trustee and supervisor of the Scheme if:

- (a) the Supervisor is removed from office as Supervisor of the Scheme by the Manager with the FMA's consent⁷³; or
- (b) Investors resolve by Special Resolution that the Supervisor be removed from office as Supervisor of the Scheme⁷⁴; or
- (c) the FMA, the Manager (as issuer) or any Court removes the Supervisor from office as Supervisor of the Scheme in accordance with any Relevant Law⁷⁵; or
- (d) a receiver or voluntary administrator is appointed to the Supervisor, or an order is made or a resolution passed for the appointment of a liquidator or voluntary administrator of the Supervisor.

13.15 The Supervisor may retire at any time without assigning any reason upon giving 90 days' notice in writing to the Manager of its intention to do so subject to the due appointment of a new Supervisor and the transfer to such new Supervisor of all of the investments and all other property or assets of any nature of the Scheme.

13.16 The Supervisor shall not be removed or retire pursuant to clause 13.14(a), (b) or (d) or clause 13.15 unless:

- (a) all functions and duties of the Supervisor as Supervisor of the Scheme have been performed; or
- (b) another Supervisor has been validly appointed, and accepted the appointment, in the Supervisor's place; or
- (c) the Court consents⁷⁶.

13.17 The power of appointing a new Supervisor of the Scheme (in place of a Supervisor which has retired or been removed from office) shall be vested in the Manager. No person shall be appointed as a new Supervisor unless that person is a Licensed Supervisor whose licence covers the Scheme.⁷⁷ If the Manager fails or refuses to appoint a new Supervisor, such new Supervisor may be appointed by a Special Resolution of Investors.

⁷¹ Section 135(1)(g) of the FMCA.

⁷² Sections 193 to 194 of the FMCA.

⁷³ Section 193(1)(d) and (2)(b) of the FMCA.

⁷⁴ Section 193(1)(c) of the FMCA.

⁷⁵ Section 193(1)(b) of the FMCA and Part 2 of the Financial Markets Supervisors Act 2011.

⁷⁶ Section 193(2)(a) of the FMCA.

⁷⁷ Section 135(1)(g) of the FMCA.

13.18 Where a new Supervisor is appointed, the Manager must lodge a notice of change of Supervisor with the Registrar of Financial Service Providers in accordance with the FMCA.⁷⁸

13.19 Any new Supervisor shall forthwith upon such appointment execute a deed in such form as the Manager may require, whereby the new Supervisor undertakes to the Manager and the Investors of the relevant Scheme to be bound by all the covenants on the part of the Supervisor hereunder from the date of such appointment and from such date the retiring Supervisor shall be absolved and released from all such covenants hereunder (save in respect of any antecedent breach hereof) and the new Supervisor shall thereafter exercise all the powers and enjoy and exercise all the rights and shall be subject to all the duties and obligations of the Supervisor hereunder in all respects as if such Supervisor had been originally named as a party hereto.

Remuneration⁷⁹

13.20 The Supervisor shall be entitled to be paid out of a Fund or from the fee paid to the Manager in respect of its ongoing services hereunder from the date of establishment of the relevant Fund up to the earlier of the date of removal or retirement of the Supervisor or the date of termination of such Fund, an annual fee as agreed with the Manager (including any time and attendance fees), and on the basis agreed with the Manager. The Supervisor and the Manager may at any time and from time to time agree to alter the amount of the annual fee in respect of a Fund by giving at least three Months' notice to that effect to all Investors of the relevant Fund. The Supervisor shall be entitled to receive, in addition to such fees any goods and services tax or duty or similar tax or duty payable in respect of such fee.

13.21 The Manager shall be paid, in respect of its ongoing services hereunder, out of a Fund the following fees:⁸⁰

- (a) a management fee as set out in the PDS for the Fund;
- (b) a performance fee (if any) as set out in the PDS for the Fund.

The Manager shall be entitled at any time and from time to time, following consultation with the Supervisor, to alter the basis for calculating the amount or the amounts of any fee in respect of a Fund by giving at least three Months' prior notice to that effect to all Investors of the relevant Fund. The Manager shall be entitled to receive, in addition to such fee, any goods and services tax or duty or similar tax or duty payable in respect of any fee.

13.22 The Supervisor or the Manager may accept a lower fee than it is entitled in relation to any Fund, and may defer payment for any period. Where payments are deferred the fee accrues daily until paid.

⁷⁸ Section 194 of the FMCA.

⁷⁹ Section 135(1)(f) of the FMCA.

⁸⁰ Section 135(1)(f) of the FMCA.

Reimbursement of expenses⁸¹

13.23 All expenses incurred by the Supervisor or the Manager in connection with each Fund, or in performing their respective obligations under this Governing Document and the relevant Conditions of Establishment are payable or reimbursable from the relevant Fund. This includes without limitation expenses connected with:

- (a) the formation of the Fund, the acquisition, registration, custody, ownership, disposal of or other dealing with Investments of the Fund, including legal costs, Bank charges and stamp duty, valuation fees, search and enquiry fees, brokerage, commission, registration fees, the expenses of any agents, delegates or the Custodian, the Supervisor or the Manager both within and outside New Zealand, and other outgoings of or in connection with the investigation of or negotiation for the acquisition, sale, transfer, exchange, replacement or other dealing with or disposition of an Investment;
- (b) the fees and expenses of the Auditor;
- (c) all taxes duties and imposts charged to or payable by the Supervisor or Manager (whether by any taxing authority or any other person) in connection with the Fund, Investors or the Investments or any account whatsoever;
- (d) interest and other expenses relating to borrowings and discounts and acceptance and other fees in respect of bill facilities and Security transactions;
- (e) convening and holding any meeting of Investors;
- (f) mailing and postage costs in respect of all cheques, Financial Statements, distribution statements, Disclosure Documents or any notices, quarterly and other reports and other documents posted to all or any Investors in accordance with the provisions of this Governing Document;
- (g) any solicitor, barrister, valuer, accountant or other person from time to time engaged by the Manager or by the Supervisor in the discharge of their respective duties under this Governing Document;
- (h) the preparation, registration (as applicable) and printing of Disclosure Documents, Financial Statements, distribution statements, notices and cheques;
- (i) the keeping of the Register including the costs of establishing and maintaining any computer equipment and services or a fair contribution towards such a Cost where the equipment and services are shared or used for other purposes not related to the Fund; and
- (j) all other costs or expenses properly and reasonably incurred by the Supervisor or the Manager in connection with carrying out their respective duties under this Governing Document.

⁸¹ Section 135(1)(f) of the FMCA.

13.24 Where any costs, charges, fees or expenses referred to in clause 13.23 relate to more than one of the Funds in the Scheme then such costs, charges, fees or expenses shall be apportioned between each of the Funds on such fair and equitable basis as may be determined by the Manager.

13.25 The Manager may, in accordance with the Accounting Policies of the Scheme, provide for and anticipate the expenses of the Scheme for the purpose of determining the Net Asset Value of the Fund, including providing for expenses at a fixed percentage amount during the Financial Year.

14 **LIMITATION OF RESPONSIBILITIES**

14.1 No provision of this Governing Document has the effect of exempting the Supervisor or Manager or any director, officer or employee of the Supervisor or Manager from, or indemnifying the Supervisor or Manager or any such director, officer or employee against, any liability to the extent that doing so would be void under Relevant Law.

Supervisor's and Manager's responsibilities and indemnities⁸²

14.2 Subject to Relevant Law, the Supervisor and the Manager (including their respective directors, officers and employees) shall be indemnified out of the assets of the relevant Fund, to the maximum extent permitted by law, from and against any losses, expense or liability that may be incurred in performing any of their respective duties or exercising any of their respective powers in relation to the Fund or otherwise relating to the Fund.⁸³

14.3 Subject to Relevant Law, the Supervisor is not and shall not be responsible for any loss incurred as a result of any act, omission, deceit, neglect, mistake or default of the Manager or any agent of the Manager or for checking any information, document, form or list supplied to it by the Manager or by any agent of the Manager that is reasonably believed by the Supervisor to be genuine (notwithstanding that an error in the information, document, form or list is reproduced by the Supervisor in any step taken by it).⁸⁴

14.4 Neither the Supervisor nor the Manager shall incur any liability to anyone in respect of doing or performing or failing to do or perform any act or thing which, by reason of any provision of any present or future law of New Zealand or regulation or bylaw made pursuant thereto, or of any decree, order or judgment of any court of competent jurisdiction, either the Supervisor or the Manager is required to do or perform or is hindered, prevented or forbidden from doing or performing.

14.5 Subject to Relevant Law, neither the Supervisor nor the Manager shall be liable to account to the other or to any Investor for any payments made by the Supervisor or the Manager in good faith to any proper authority for taxes, imposts or other charges made upon or in respect of the Funds or with respect to any transactions

⁸² Section 135(1)(f) of the FMCA.

⁸³ Sections 135(f), 136(1), 143(1), 144, 153(1) or 154 of the FMCA.

⁸⁴ Sections 153(1) and 154 of the FMCA.

under this Governing Document, notwithstanding that any such payment ought or need not have been made.⁸⁵

- 14.6 The Supervisor and/or the Manager may accept and act upon the opinion or advice of or information obtained from any expert instructed by the Supervisor or the Manager (as the case may be) and believed by the Supervisor or the Manager (as the case may be) in good faith to be expert or suitably qualified in relation to the matters upon which they are engaged. Subject to Relevant Law, the Supervisor and/or the Manager (as the case may be) is not liable for anything done or suffered by it in good faith in reliance upon any such opinion, advice, statement or information.
- 14.7 Whenever pursuant to any provision of this Governing Document any notice, instruction, direction or other communication is to be given by the Manager to the Supervisor, the Supervisor may accept as sufficient evidence thereof a document signed on behalf of the Manager by any one of its directors or by its secretary or by any other person or persons duly authorised by the Manager.
- 14.8 Except insofar as is otherwise expressly provided in this Governing Document the Manager shall as regards all the powers, authorities and discretions vested in it by this Governing Document have absolute and uncontrolled discretion as to the exercise thereof, whether in relation to the manner or as to the mode of and time for the exercise thereof subject to the giving of any notice to the Supervisor and the approval of or supervision by the Supervisor wherever required.
- 14.9 Except insofar as is otherwise expressly provided in this Governing Document the Supervisor shall as regards all the trusts, powers, authorities and discretions vested in it by this Governing Document have absolute and uncontrolled discretion as to the exercise thereof whether in relation to the manner or as to the mode of and time for the exercise thereof.
- 14.10 Subject to Relevant Law and to clause 9.10, nothing in this Governing Document shall prevent the Manager or any Associated Person of the Manager or in their own right any officers of the Manager from subscribing for, purchasing, holding, dealing in or disposing of Units, or from otherwise at any time contracting or acting in any capacity as representative or agent or entering into any contract or transaction whatsoever with the Supervisor or with any Investor or from being interested in any such contract or transaction or otherwise, acting as manager of any other managed investment scheme or holding any Investment jointly with a Fund and none of them shall be in any way liable to account either to the Supervisor or to the Investors or any of them for any profits or benefits howsoever made or derived, but those persons shall act, in connection with such transactions with the Supervisor in its capacity as such, and with the Investors in their capacities as Investors, in a fiduciary relationship of utmost good faith to all Investors and with regard to their general duties and obligations under any Relevant Law.
- 14.11 Subject to Relevant Law and to clause 9.10, nothing in this Governing Document shall be deemed to prohibit the Supervisor or any Associated Person or any

⁸⁵ Sections 143(1), 144, 153(1) and 154 of the FMCA.

shareholder or officer of either (in this clause included in the expression 'the Supervisor') from being an Investor or from acting in any representative capacity for an Investor and in particular and without prejudice to the generality of the foregoing from acting on its own account or as executor, administrator, supervisor, receiver, attorney or agent or in any other fiduciary, vicarious or other professional capacity. Nor shall the acting in any such capacity as aforesaid be deemed a breach of any of the obligations arising out of the fiduciary relationship between the Supervisor and the Manager on the one hand or the Supervisor and the Investors on the other hand by this Governing Document established or otherwise imposed or implied by law, but those persons shall act, in connection with such transactions, in a fiduciary relationship of utmost good faith to all Investors and with regard to their general duties and obligations under any Relevant Law.

14.12 Notwithstanding anything contained in this Governing Document, save and except in the case of fraud or of dishonesty or unless the Supervisor or Manager (as applicable) has failed to show the degree of care and diligence required of a Supervisor or a Manager (as applicable) having regard to the powers, authorities and discretions conferred on the Supervisor or Manager (as applicable) by this Governing Document, in no event shall the Supervisor or Manager (as applicable) be bound to make any payment to the Investors except out of the relevant Fund or be liable to the Investors to any greater extent than the Investments vested in or received by the Supervisor or Manager (as applicable) in accordance with this Governing Document for the relevant Fund.

14.13 The Manager is not liable for any act or omission of the Supervisor.

14.14 Subject to Relevant Law, the Supervisor is entitled to rely on the Manager as to the validity of any signature on any document if such reliance is based on a reasonable belief that the signature is genuine and any order by a court of competent jurisdiction against the Supervisor for damages in favour of any person who suffers loss as a result of a signature being forged or otherwise ineffective will, subject to any right of reimbursement from any other person, be borne by the relevant Fund.

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

14.16 Subject to any Relevant Law, the Supervisor is not liable for anything done, or omitted to be done, in good faith in giving effect to a direction given to it by Investors⁸⁶.

14.17 Except as otherwise expressly provided in this Governing Document, all rights of voting conferred by the Investments or any of them shall be exercised in such manner as the Manager may determine and any interest of the Supervisor is by reason only of acting on behalf of the Investors in the ordinary course of business of

⁸⁶ Section 153(3) of the FMCA.

the Supervisor as Supervisor of the Scheme. Neither the Manager nor the Supervisor shall be under any liability or responsibility in respect of the management of the corporations or bodies in which the Funds or any part thereof are for the time being invested nor in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney. Subject to Relevant Law, neither the Supervisor nor the Manager nor the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error or law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Supervisor or Manager or by the holder of such proxy or power of attorney under this Governing Document and neither the Supervisor nor the Manager shall be under any obligation to anyone with respect to any action taken or caused to be taken or omitted by the Manager or by any such holder of a proxy or power of attorney.

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

14.19 Should the Supervisor purchase or otherwise acquire any Investment in regard to which there is a Liability, the Supervisor will have a right of indemnity out of the relevant Fund in respect of the Liability, to the fullest extent permitted by Relevant Law⁸⁷.

14.20 Subject to Relevant Law, neither the Manager nor the Supervisor is liable for any action taken or thing suffered by the Manager or the Supervisor in reliance upon any document or writing of any type reasonably believed by the Manager or the Supervisor to be genuine.⁸⁸

14.21 In relation to any option or right to take up or sell any Investment, the Supervisor need not obtain any certificates or other documents, but may rely on confirmation notes issued or purporting to be issued by and on the records of any Exchange, clearing corporation, broker or other agent through whom any such options or rights were written or repurchased. The Manager and the Supervisor shall be entitled to rely on any such confirmation note and shall not be under any liability or responsibility as a result thereof.

Supervisor's statutory duty

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

⁸⁷ Section 136(1) of the FMCA.

⁸⁸ Section 136(1) of the FMCA.

Manager's statutory duty

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

Power to indemnify investment managers and administration managers

14.24 The Manager may agree:

(a) to limit the liability (in connection with its services in respect of a Fund) of; and/or

(b) to indemnify and reimburse out of a Fund's property,

any investment manager or administration manager appointed in respect of a Fund, to the fullest extent permitted by law, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Fund or any action taken or omitted to be taken in connection with the Fund (including, without limitation, legal fees and disbursements).⁸⁹

15 FINANCIAL STATEMENTS, AUDIT AND ANNUAL REPORT

Accounts, reports and updates

15.1 The Manager must keep or cause to be kept, in accordance with the Accounting Policies for the Scheme, proper records and Accounts of or relating to the Scheme and each Fund and must keep or cause to be kept true Accounts of all sums of money received and expended by or on behalf of the Scheme and each Fund and the matters in respect of which each receipt and expenditure takes place and of all sales, purchases and other transactions relating to the Investments and the Liabilities of each Fund and issue or transfer of Units. The Manager must furnish to the Supervisor from time to time any information necessary for this purpose.

15.2 In keeping or causing to be kept the Manager's proper records or Accounts under clause 15.1:

(a) the Manager must have appropriate systems of control and oversight;

(b) the Manager must keep such records or Accounts at a suitable secured location accessible by the Supervisor and the Auditor; and

(c) the provisions of Subpart 2 of Part 7 of the FMCA must be complied with.

Inspection by the Auditor

15.3 The accounting and other records of the Manager and of the Supervisor in respect of each Fund are open to the inspection of each other, the FMA, the Auditor and any other person required under Relevant Law. The Auditor is entitled to require from

⁸⁹ Sections 135(1)(f) and 136 of the FMCA.

the Manager and the Supervisor such information, accounts and explanations as may be necessary for the performance of the duties of the Auditor.

Annual financial statements

- 15.4 The Manager must cause annual Financial Statements to be prepared in respect of each Fund for each Financial Year and arrange for such financial statements to be audited by the Auditor, in each case, in accordance with Relevant Law.⁹⁰

Annual information to be sent to Investors

- 15.5 The Manager must, in accordance with Relevant Law,
- (a) prepare an annual report on the affairs of the Scheme (including each Fund) during the Financial Year that complies with Relevant Law⁹¹; and
 - (b) cause to be sent annually to every Investor of each Fund, a copy of the annual report for the Scheme (including each Fund) or a notice containing the statements required by the FMC Regulations.⁹²

Fund Updates

- 15.6 The Manager shall:
- (a) prepare quarterly Fund Updates as required by Relevant Law; and
 - (b) arrange for the Fund Updates to be lodged on the Offer Register and sent to Investors and the Supervisor in the time and manner required by Relevant Law.

Required statutory filings

- 15.7 The Manager must in every year, by the date specified in the FMCA, file or cause to be filed with any person in relation to the Scheme or the relevant Fund any information required by Relevant Law.

Auditor

- 15.8 A Person or firm of chartered accountants selected by the Manager and acceptable to the Supervisor must be appointed Auditor of each Fund provided that such Person or firm of Chartered Accountants is licensed under the Audit Regulation Act 2011 and meets the requirements of Relevant Law.⁹³ The terms of the audit, including the services to be performed by the Auditor and their scope and the remuneration of the Auditor is to be determined by the Manager following consultation with the Supervisor and in the manner required by Relevant Law, including Schedule 13 of the Regulations.

⁹⁰ Sections 461A and 461D of the FMCA.

⁹¹ Regulation 63 of the FMC Regulations.

⁹² Including Regulation 62 of the FMC Regulations.

⁹³ Section 461E of the FMCA.

Removal/retirement

- 15.9 The Auditor may at any time and from time to time be removed by the Manager with approval of the Supervisor or if the Supervisor believes it to be in the best interests of the Funds and/or Investors it may instruct the Manager to remove the Auditor. The Auditor may retire upon giving the Manager one Month's notice in writing.

New appointment

- 15.10 Any vacancy in the office of Auditor must be filled by the Manager, in consultation with the Supervisor, appointing a Person or firm of Chartered Accountants to be Auditor provided that such Person or firm of chartered accountants meets any requirements of Relevant Law and the process prescribed in Schedule 13 of the FMC Regulations is followed.

16 MEETINGS

Meetings of Investors

- 16.1 When required by the FMCA, the Manager must call a meeting of Investors in the manner and on the basis set out in the FMCA and the FMC Regulations.⁹⁴ A meeting of Investors shall be conducted in accordance with the requirements of Relevant Law.⁹⁵
- 16.2 The Manager may, at any time and of its own volition, convene a meeting of Investors of a Fund to be held at such place and at such time as it may determine and to be conducted in accordance with the requirements of Relevant Law.

17 NOTICES

Notices to Investors

- 17.1 A notice of a meeting to be held pursuant to clause 16.1 and a notice required to be given of an amendment to the Governing Document pursuant to clause 19.1 shall be given to every Investor of the relevant Fund by sending it addressed to the Investor at its registered address by ordinary, prepaid post or, if that address is outside New Zealand, by airmail, prepaid post or by other means permitted by Relevant Law.
- 17.2 In any other case a notice may be given under this Governing Document to any Investor personally by leaving it at his registered address or by sending it addressed to the Investor at his registered address by ordinary prepaid post or, if that address is outside New Zealand, by airmail, prepaid post, or by advertisement with the prior written approval of the Supervisor or by other means permitted by Relevant Law. An Investor is bound to notify the Manager of any change of the Investor's registered address and the Registrar shall alter the relevant Register accordingly.
- 17.3 Any notice sent by post will be deemed to have been given at the expiration of 48 hours after posting, and in proving service it will be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted. Any

⁹⁴ Sections 161 to 163 of the FMCA and Regulations 83 and 91 of the FMC Regulations.

⁹⁵ Sections 162 and 163 of the FMCA and Regulations 83 and 91 of, and Schedule 11 to, the FMC Regulations.

notice by advertisement will be deemed to have been given on the day of publication of the newspaper or other publication containing the advertisement.

- 17.4 The signature to any notice to be given by the Manager or the Supervisor may be written or printed.
- 17.5 Subject to any Relevant Law, where a given number of days' notice or notice extending over any other period is required to be given, neither the day of giving the notice nor the day upon which the notice will expire shall be reckoned in the number of days or other period.
- 17.6 Every person who by operation of law, transfer or other means whatsoever becomes entitled to any Units shall be bound by every notice which, prior to his name and address being entered in the Register in respect of the Units, has been given to the person from whom he derives his title to the Units.
- 17.7 Any notice or document delivered or sent by post or left at the registered address for service of any Investor in pursuance of the provisions of this Governing Document will (notwithstanding that the Investor is then deceased and whether or not the Manager has notice of his death) be deemed to have been duly given in respect of his Units, whether held by him solely or jointly with another person or persons, until some other person shall be registered in his stead as the holder or joint holder thereof.

Notice to Manager and Supervisor

- 17.8 Any notice, communication or information required by this Governing Document to be given by the Manager to the Supervisor or by the Supervisor to the Manager shall be given in writing or by facsimile communication and addressed to the secretary, director or principal officer of the party to whom it is intended to be given at its registered office or other usual place of business (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) and shall be signed by a duly authorised officer on behalf of the party giving it or in the case of the Manager in the manner provided in clause 17.4.

18 INSTRUCTIONS

Communication of Relevant Instructions

- 18.1 Any Investor may give Relevant Instructions by telephone or by any other approved means unless the provisions of this Governing Document or the relevant Conditions of Establishment or the relevant PDS requires otherwise.
- 18.2 Where Relevant Instructions are permitted to be made by telephone or by any other approved means the Manager may put in place additional procedures designed to procure verification of identity.
- 18.3 The Manager may permit Relevant Instructions to be given on-line and shall prescribe applicable conditions for this to occur from time to time.

19 ALTERATIONS TO THE GOVERNING DOCUMENT AND/OR CONDITIONS OF ESTABLISHMENT

Amendment to Governing Document and/or Conditions of Establishment

19.1 Subject to Relevant Law⁹⁶, the Supervisor and the Manager in respect of all Funds or any one or more Funds may at any time make any alteration, modification, variation or addition to the provisions of this Governing Document (by means of a deed executed by the Supervisor and the Manager) and/or the Conditions of Establishment in any of the following cases:

- (a) if in the opinion of the Supervisor the same is made to correct a manifest error or is of a formal, administrative or technical nature; or
- (b) if in the opinion of the Supervisor the same is necessary or desirable for the more convenient economical or advantageous working management or administration of a Fund or for safeguarding or enhancing the interests of a Fund or Investors and is not or not likely to become materially prejudicial to the interests of the Investors generally; or
- (c) if the same is authorised by an Special Resolution; or
- (d) if the same is authorised pursuant to clause 8.19; or
- (e) if the same is required by or in consequence of any amendment to or repeal of and/or replacement of any Relevant Law or where, in the reasonable opinion of the Manager, such amendment is necessary or desirable to maintain the status of a Fund as a PIE under PIE Tax legislation or other relevant legislation or to permit and to operate more efficiently under such legislation; or
- (f) if the same is required to enable the Units of a Fund to be listed on an Exchange; or
- (g) if 30 days' prior notice in writing is given to Investors of the Trust,

provided that no amendment to any clause (including this proviso) conferring rights, powers or privileges of the Manager, shall be made without the agreement of the Manager.

19.2 Following any material variation to this Governing Document or any Conditions of Establishment the Manager will notify the relevant Investors in writing in summary form of all material amendments made by forwarding notification to the Investors no later than three Months after the date the changes were made, and otherwise in accordance with Relevant Law.

⁹⁶ Including section 139 of the FMCA.

20 OBLIGATIONS AND RIGHTS OF INVESTORS

Investors bound by this Governing Document

- 20.1 The terms and conditions of this Governing Document and the relevant Conditions of Establishment are binding on, and are legally enforceable between⁹⁷, the Supervisor, the Manager and each Investor and all persons claiming through them respectively and as if each Investor had been party to and had executed this Governing Document and the Conditions of Establishment.⁹⁸

Limitation of liability of Investors

- 20.2 Except as expressly provided by this Governing Document no Investor is, by reason alone of being an Investor or by reason alone of the relationship hereby created with the Supervisor or with the Manager, under any personal obligation to indemnify the Supervisor or the Manager or any creditor of them or of either of them in the event of there being any deficiency of assets of a Fund as compared with the Liabilities to be met therefrom. The rights (if any) of the Supervisor or Manager or of the creditor to seek indemnity are limited to having recourse to a Fund and do not extend to an Investor personally in his capacity as an Investor.
- 20.3 The Supervisor covenants with the Manager and the Investors that (subject to any rights the Supervisor may have to recover moneys paid in error) the Supervisor will not make any claim and will not take any action or legal proceedings against any Investor (in an Investor's capacity as such) by reason of there being any deficiency of assets in a Fund.

Inspection of Governing Document

- 20.4 A copy of this Governing Document and the Conditions of Establishment together with copies of all supplemental deeds shall at all times during usual business hours be made available by the Manager at the Office for inspection by Investors who shall be entitled to receive from the Manager a copy of this Governing Document, the relevant Conditions of Establishment and every supplemental deed on payment to the Manager of such sum as the Manager may from time to time prescribe.

21 PERIOD OF FUNDS AND WINDING UP

Period of Funds

- 21.1 Each Fund created under this Governing Document is to be deemed to have commenced on the date the Fund comes into existence in accordance with clause 1.3 and will continue during the period commencing on that date and determining at the date the Manager is removed if the Manager does not approve the Fund continuing, or at such other date that the Manager determines, or a period ending 80 years less two days from the date of this Governing Document (the *Perpetuity Period*), whichever is the earlier. Each Fund shall not terminate automatically on the expiry of the Perpetuity Period. In the event that the Fund would be invalid after the expiry of the Perpetuity Period under any rule of law relating to perpetuities, due to the ability of Investors to redeem their Units or the ability of the Supervisor to issue further Units, Units shall not be redeemed or issued

⁹⁷ Section 137 of the FMCA.

⁹⁸ Section 137 of the FMCA.

to the extent necessary to ensure the Units are not void under the rule of law relating to perpetuities. The Manager or 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 the Fund.

Termination⁹⁹

21.2 At any time after the commencement of a Fund the Manager may, in consultation with the Supervisor, notify each Investor in that Fund in writing that such Fund is to be terminated and three Months after the giving of such notice the Fund will terminate unless the Manager and the Supervisor reach an agreement to do otherwise. The provisions of the FMCA¹⁰⁰ relating to the winding up of the Fund(s) shall apply with effect from the date of that notice.

21.3 The Manager shall wind up the Scheme if it is required to be wound up under the FMCA¹⁰¹.

Procedure on winding up

21.4 Upon the termination of any Fund the rights of Investors to have their Units purchased or redeemed shall cease and the Supervisor shall sell and realise the investments and assets of the relevant Fund which are not to be distributed in specie as part of the termination, as directed by the Manager, as soon as reasonably practicable.

21.5 Upon the termination of any Fund the Supervisor shall at the direction of the Manager and subject to the right of retention contained in clause 21.6, distribute the whole or part or parts of the Fund to the Investors in that Fund in specie and may for that purpose set such value as the Manager considers fair upon such property to be distributed.

21.6 The Supervisor shall retain out of any money in its hands relating to the Fund to be terminated such amount as the Manager considers necessary or appropriate to meet all costs, charges, expenses, claims and Liabilities (including contingent Liabilities) and tax, including at the Supervisor's discretion provision for PIE Tax in connection with the relevant Fund or any Investor in that Fund, in connection with the Fund, or arising out of the liquidation of the Fund, including the Supervisor's fees¹⁰², the Manager's fees and the fees of any agents, solicitors, bankers, accountants, auditors or other persons (including the Manager) whom the Manager or the Supervisor may employ in connection with the winding up of the Fund. The Manager and the Supervisor shall be entitled to be indemnified in respect of the foregoing from the moneys or assets retained by the Supervisor to the maximum extent permitted by Relevant Law.¹⁰³

⁹⁹ Section 135(1)(i) of the FMCA.

¹⁰⁰ Including, without limitation, sections 212 and 213 FMCA

¹⁰¹ Including section 211 of the FMCA.

¹⁰² Section 135(1)(f) of the FMCA.

¹⁰³ Section 136 of the FMCA.

21.7 All moneys and assets of the Fund to be wound up shall be held and applied by the Supervisor as follows:

- (a) first, in payment or retention of all costs, charges, expenses, claims and Liabilities incurred and payments made by or on behalf of the Supervisor or the Manager and payable from the Fund and of all remuneration payable to the Supervisor and the Manager as provided in this Governing Document;
- (b) secondly, in payment or distribution to the Investors (including holders of Fractional Units) of the Fund in proportion to their respective Holdings of Units at the time of distribution.

If in the opinion of the Supervisor it shall be expedient to do so the Supervisor may make interim payments or distributions on account of the moneys to be distributed in accordance with this clause.

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

21.9 The Supervisor must, on a winding up of a Fund, comply with the requirements of Relevant Law, including:

- (a) giving a copy of any order or resolution for the winding up to the FMA within the required timeframes;
- (b) ensuring that the final financial statements of the Fund are prepared and audited within the required timeframes;
- (c) ensuring that copies of the final audited financial statements are sent to the FMA and Investors within the required timeframes; and
- (d) informing the FMA of the date on which the final distribution of the assets is completed.

22 GENERAL

Taxation liability of Supervisor and Manager

22.1 In this clause:

Relevant Person means an Investor and their personal representatives or successors.

Tax includes all taxes, duties, levies and other charges including penalties and interest, but excluding, at the discretion of the Supervisor, any PIE Tax.

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 persons Units;

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

Taxing Authority means the Commissioner of Inland Revenue or other relevant taxing authority.

22.2 If the Manager or the Supervisor is obliged by law to make payment of any Taxation Amount:

- (a) from any payment to be made to an Investor (including, without limitation, amounts which would be so paid if they were not being applied for a Switch or reinvested under this Governing Document); or
- (b) in respect of any Investor's holding of Units,

the Manager or Supervisor (as the case may be) shall make payment of such Taxation Amount to the Taxing Authority.

22.3 Amounts paid or deducted under clause 22.2 shall be applied in:

- (a) payment of the Taxation Amount to the Taxing Authority; or
- (b) reimbursement of the Supervisor or the Manager for any corresponding amount paid from their own funds; and
- (c) any balance shall be refunded to the Relevant Person.

22.4 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 an Investor's Units is insufficient to meet any liability for a Taxation Amount payable in respect of that Investor by a Fund or the Supervisor (whether current or deferred).

22.5 The Manager or Supervisor is authorised to adjust the interests of Investors, or withdraw or withhold any amount payable to an Investor to the extent necessary to account for payments or rebates in respect of any Tax, Taxation Amount or other amounts payable or received from time to time, as the Manager or Supervisor considers appropriate. The provisions of clause 22.4 will apply with regard to any redemption or cancellation of Units pursuant to this clause. Investors shall be deemed to have made a Repurchase Request in respect of the Units concerned.

22.6 On payment or application of the net amount in respect of the Relevant Person and of the Taxation Amount to the Taxing Authority, the full amount payable or available to the relevant Investor 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 Investor in the case of a Switch or a reinvestment of Entitlements.

PIE Tax

22.7 The Manager may elect that a Fund be a PIE, or that a Fund cease to be a PIE at its discretion, and may allocate the costs of being a PIE as it considers appropriate. The Manager shall ensure that any Tax that is to be attributed to Investors is attributed on an equitable basis, taking into account such matters as the Manager considers appropriate.

- (a) Subject to the requirements of the Tax Act, the Manager has the power and discretion for as long as a Fund is a PIE to:
 - (i) make any elections as to the method of calculation for allocation or attribution of income or PIE Tax as it thinks fit;
 - (ii) take all steps necessary to ensure that the relevant Fund is eligible or continues to be eligible as a PIE or otherwise to comply with the requirements of the Tax Act relevant to PIEs, including, but not limited to, redeeming all or some of an Investor's Units;
 - (iii) elect to offset Tax liabilities and credits or losses in respect of a Fund or Funds and/or Investor and make such adjustments as the Manager considers appropriate;
 - (iv) allocate any Tax rebate received for Tax credits or Tax losses in respect of Investors or former Investors among the Investors or former Investors in such manner as the Manager in its complete discretion considers appropriate;
 - (v) adjust an Investor's Holding (by redeeming, cancelling or issuing Units (as applicable)), or withdraw or withhold any amount payable to an Investor to the extent necessary to account for payments or rebates in respect of any Tax or other amounts payable or receivable from time to time, as the Manager reasonably considers appropriate;
 - (vi) exercise or decline to exercise any power or discretion relevant to PIEs granted under any enactment as the Manager considers appropriate.

Non residents' taxation

22.8 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 Investors to mitigate the Tax liability of any Investors arising out of their ownership of any Units, in accordance with the procedure for the payment of supplementary dividends to non resident Investors set out in the Tax Act, provided such actions, in the opinion of the Manager, are not prejudicial to any other Investor and are equitable having regard to the interests of all Investors.

Power of Manager to require disclosure of beneficial interests in Units

22.9 The Manager may, by notice in writing given to an Investor, require the Investor to, within 14 days after receiving the notice, furnish to the Manager a statement in writing setting out:

- (a) full particulars of that Investor's Relevant Interest in the Units and of the circumstances by reason of which they have that interest; and
- (b) so far as it lies within the Investor's knowledge:
 - (i) full particulars of the name and address of every other person (if any) who has a Relevant Interest in those Units;
 - (ii) full particulars of each such interest and of the circumstances by reason of which the other person has that interest;
 - (iii) full particulars of the name and address of each person (if any) who has given to the holder of the Unit 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.

22.10 Where the Manager is aware that any person other than an Investor has a Relevant Interest then the Manager may by notice in writing given to that person require that person within 14 days after receiving the notice to furnish to the Manager a statement in writing setting out in relation to any other person the same information set out in clause 22.9.

22.11 Where the Manager is satisfied that an Investor or person has failed to comply with any request made by the Manager pursuant to clauses 22.9 or 22.10, the Manager may by notice in writing to the Investor registered as Holding the Units in respect of which the failure relates ('the specified Units') require the disposal of the specified Units or any part thereof within such time as is specified in the notice. Any Investor disposing of specified Units shall not be entitled to make any claim upon the Manager or the Supervisor in respect of the acquisition or disposal of the specified Units or in respect of any other matter.

22.12 If the specified Units are not disposed of in accordance with the notice given by the Manager pursuant to clause 22.9 the Manager may itself purchase or sell or redeem or cause the specified Units to be sold or redeemed at the Repurchase Price on a date or dates nominated by the Manager and approved by the Supervisor.

22.13 For the purposes of giving effect to clause 22.12, the Manager may:

- (a) appoint a person to execute as transferor a transfer or other instrument in respect of any Units sold or redeemed in accordance with the provisions of clause 22.12 and to receive and give good discharge of the purchase or redemption money therefor; and
- (b) register the transfer or effect the redemption.

22.14 The purchase or redemption money less the expenses of any sale or redemption made in accordance with the provisions of clause 22.12 shall be paid to that Investor whose Units were sold or redeemed.

Payments to Investors

22.15 Any moneys payable by the Supervisor or by the Manager to an Investor under the provisions of this Governing Document may be paid by cheque that is crossed 'not transferable' and made payable to the Investor or his agent or other authorised person and may be given or sent through the post to the Investor or his agent or other authorised person or may be credited to any Bank account nominated by the Investor. Payment of every cheque, if duly presented and paid and, 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 moneys payable and will be good discharge to the Supervisor and to the Manager.

Arbitration

22.16 Any dispute arising between the Manager or Supervisor in relation to any matters contained in this Governing Document or any Conditions of Establishment shall be referred to the arbitration of a single arbitrator (if the Supervisor and Manager can agree upon one arbitrator) otherwise to the arbitration of two arbitrators and their umpire, any such arbitration to be conducted in accordance with the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof. Nothing in this clause shall prevent the Supervisor applying to the court for directions in respect of any matter arising in respect of a Fund.

Law applicable

22.17 This Governing Document shall be governed by the laws of New Zealand.¹⁰⁴ The courts and tribunals of New Zealand shall have exclusive jurisdiction to hear and determine any claim or matter arising out of or in connection with this Governing Document.

Unclaimed moneys

22.18 If any payment made to any Investor at his or her address recorded in the Register or in accordance with his or her payment instructions is returned or otherwise unclaimed, the amount thereof shall be retained by the Supervisor on behalf of the relevant Fund and held for such Investor without liability to invest the same or pay interest thereon. Such retained amount shall not for any purposes of this Governing Document be part of the relevant Fund. Any amount unclaimed for five years or longer shall be forfeited to and for the benefit of the Manager. After forfeiture of any amount pursuant to this clause the person who would have been entitled to payment of such amount had it not been forfeited, shall be entitled to payment from the Manager of any amount equal to such forfeited amount upon adducing sufficient evidence to satisfy the Manager that he or she would have been entitled to such amount had it not been forfeited.

¹⁰⁴ Section 128(1)(a) of the FMCA.

Severance

22.19 If a provision of this Governing Document is void or voidable or unenforceable or illegal it shall not apply but the balance of this Governing Document shall have full force and effect.

22.20 Notwithstanding clause 22.18, if a provision of this Governing Document is still void or voidable or unenforceable or illegal:

- (a) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and
- (b) in any other case, the whole provision is hereby severed, and the remainder of this Governing Document has full force and effect.

Counterparts

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

23 DELIVERY

23.1 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 facsimile, 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.

24 DEFINITIONS AND INTERPRETATION

Definitions

24.1 In this Governing Document, the following definitions apply:

Accounting Policies for the Scheme means accounting policies developed by the Manager which comply with Relevant Law and generally accepted accounting principles, as advised to the Supervisor.

Accounts, in relation to each Fund, means an account of the income and expenditure of that Fund for a Financial Year and a statement of Investments and Liabilities of that Fund at the end of a Financial Year.

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

Applicant's Investment Costs means the amount determined by the Manager in its absolute discretion (and which may be nil if the Manager so decides) in relation to an Application on account of costs (including brokerage, commission, stamp duty and legal fees) which would be incurred if the Application moneys for such Unit were applied in securing investments for that Fund. Where the Unit is to be issued in return for Authorised Investments, the Applicant's Investment Costs shall be determined by the Manager in its absolute discretion on account of any costs of converting the Authorised Investments into the Authorised Investments in which the Manager wishes to invest.

Application in relation to each Fund means an application for Units in the relevant Fund made in the form from time to time prescribed by the Manager which upon completion and delivery to the Manager shall, for the purposes of a Switch, be deemed to be an application in writing under clause 2.9 for Units in any of the Funds within the Scheme that may be selected by an Investor pursuant to a Request to Switch.

Associated Person has the meaning given to it by the FMCA.¹⁰⁵

Auditor in relation to a Fund means the person or persons for the time being appointed pursuant to clause 15.8 holding the office of Auditor of the Scheme.

Authorised Investments means, subject to any express limitation in this Deed or the Conditions of Establishment or the SIPO for a Fund, any cash, assets, property (as defined in the Trustee Act 1956), securities, right (contractual or otherwise, including derivatives such as futures, options and swaps, and contractual rights under underwriting agreements) or interest (equitable or otherwise) including, without limitation such class or classes of investments agreed between the Supervisor and the Manager and includes (without limitation) any of the following (whether or not they are investments authorised by law for the investment of trust moneys by trustees) in New Zealand or elsewhere:

- (a) ordinary and preference shares or capital of any person;
- (b) any share or other interest in any partnership joint venture or syndicate formed or carrying on business in New Zealand or elsewhere;
- (c) deposits with or loans to any person whether secured or unsecured;
- (d) debentures, bonds, notes or similar obligations of any person whether secured or unsecured;

¹⁰⁵ Section 12(1) of the FMCA.

- (e) bank bills, bonds, commercial paper, structured investment products, options, foreign exchange contracts, hybrid securities, and equity warrants;
- (f) bills of exchange, promissory notes and other forms of negotiable instruments made, drawn or accepted by any person;
- (g) financial futures contracts and swap contracts provided such contracts are entered into:
 - (i) to make provision for the future realisation of any Authorised Investment where it has been determined to sell such Authorised Investment at a future date provided that the amount covered under any such contract does not exceed the value of the Authorised Investment so determined to be sold; or
 - (ii) where it has been determined and a contract has been entered into to purchase an Authorised Investment and it is deemed desirable to acquire forward cover in respect of the amount payable for such investment provided that the amount covered under any such contract does not exceed the value of the Authorised Investment so determined to be purchased; or
- (h) units, sub-units or other shares or interest in any managed investment scheme established in New Zealand or elsewhere;
- (i) any stock, bonds, obligations or other securities issued or guaranteed by any government or governmental agency or local municipal or statutory authority of any country;
- (j) underwriting or sub-underwriting contracts;
- (k) foreign exchange (including foreign exchange forward and option contracts) contracts;
- (l) any investment fund managed by any Associated Person of the Manager either in New Zealand, Australia or elsewhere;
- (m) any investment approved as an Authorised Investment pursuant to this Governing Document;
- (n) any option or right to take up or sell any Authorised Investment;
- (o) any securities issued by any person incorporated or carrying on-business that are guaranteed by a Bank;
- (p) any instrument or arrangement for hedging or reducing any currency risk or interest rate risk or market movement or commodity price risk or other financial risk whether or not at any particular time the instrument or arrangement constitutes an asset;

- (q) commodities;
- (r) shares, debt and other similar investments in private capital opportunities;
- (s) any other investment or asset not covered by the above and approved by the Supervisor or specified in the Conditions of Establishment or SIPO for a particular Fund.

Bank means a registered bank as defined in the Reserve Bank of New Zealand Act 1989 or a corporation domiciled outside New Zealand, which the Manager certifies to the Supervisor is a corporation carrying on the business of banking.

Business Day means a day other than a Saturday or a Sunday or a public holiday (as defined in section 44 of the Holidays Act 2003) observed in both Wellington and Auckland.

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

Conditions of Establishment means, in relation to each Fund, the written Conditions of Establishment of that Fund agreed between the Manager and the Supervisor and as may from time to time be amended in accordance with this Governing Document.

Cost in relation to an investment means the total cost thereof to the Fund including all stamp duty, fees, agents and legal charges, brokerage and commission incurred directly in its acquisition 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.

Custodian means a person appointed to hold the Scheme Property under clause 8.20, and includes, to the extent the context permits, any sub-custodian appointed by the Custodian to hold such Scheme Property under clause 8.21.¹⁰⁶

Disclosure Documents means, in relation to the Scheme and each Fund, a PDS, Register Entry or Fund Update.

Distribution Period means in relation to each Fund such period or periods (if any) that the Manager from time to time determines for the distribution of Income Entitlements in terms of clause 11.1.

Effective Date means the date on which the Manager elects under clause 19(1)(a) of Schedule 4 to the FMCA for applying the FMCA to the Scheme.

Entry Fee means the fee payable to the Manager on the issuing or selling of Units referred to in clause 2.30.

¹⁰⁶ Section 157 of the FMCA.

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

Existing Trust Deed has the meaning given to it in Background A.

Financial Statements has the meaning given in the FMCA.

Financial Year means in relation to each Fund the financial year prescribed in the relevant Conditions of Establishment or as otherwise determined by the Manager in consultation with the Supervisor.

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

FMCA has the meaning given to it in Background B(a).

FMC Regulations has the meaning given to it in Background B(a).

Fractional Unit means that part of a Unit in respect of which there is contributed by the Applicant for the Unit an amount which is less than the amount of the full Selling Price or Switching Price, whichever is applicable, applicable at the time the Unit is issued.

Fund means each fund of the Scheme established under this Governing Document and the relevant Conditions of Establishment.

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

Governing Document means this trust deed and, where relevant, the Conditions of Establishment of a Fund, in each case as may be amended from time to time.¹⁰⁷

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

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

Income Entitlement in relation to a Unit means the income entitlement attributable to a Unit calculated in accordance with clause 10.2.

¹⁰⁷ Section 6 of the FMCA.

Instalment Application means an application for Units in respect of all moneys from whatever source paid to the Fund from time to time by or on account of an Investor until he ceases to be an Investor or withdraws the Application by notice in writing.

Investment of the Fund or Investment means in relation to each Fund the Authorised Investments or other assets forming part of the relevant Fund.

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

Investor's Realisation Costs means an amount determined by the Manager in its absolute discretion (and which may be nil if the Manager so decides) in relation to a Repurchase Request on account of the estimated costs (including an allowance for brokerage, stamp duty, legal, real estate agents and other fees) which would be incurred if investments of the relevant Fund sufficient to repay the Repurchase Price were realised.

Issuer Obligations has the meaning given in the FMCA.

Liabilities, in relation to each Fund means debts and other obligations of the Supervisor (acting in its capacity as trustee and Supervisor of that Fund) payable from the Fund and the liability of the Supervisor as drawer or acceptor of a bill of exchange including all taxes (other than PIE Tax or any PIE Tax liability) and duties payable from the Fund but excluding contingent liabilities or any amount which results from treating Units in a Fund as a liability except to the extent the Manager decides an allowance should properly be made therefore.

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

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 Pie Funds Management Limited or such other person who is appointed under the provisions of this Governing Document as the Manager for the time being of the Scheme, whether original, additional or substituted.

Minimum Application Amount means in relation to each Fund the minimum Application amount of investment for a Fund determined by the Manager in respect of that Fund pursuant to clause 2.21.

Minimum Contribution Amount means in relation to each Fund the minimum contribution amount for an investment in the Fund determined by the Manager in respect of that Fund pursuant to clause 2.21.

Minimum Holding Amount means in relation to each Fund the minimum Holding amount for an investment in the Fund determined by the Manager in respect of that Fund pursuant to clause 3.2.

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

Month means a calendar month.

Net Asset Determination Time means whichever of the following times applies:

- (a) on a Business Day at a time set by the Manager occurring at intervals not more than 31 days apart as determined by the Manager or at such other times or intervals specified in the relevant Conditions of Establishment or at such other times or intervals approved by the Supervisor; or
- (b) such time on any Business Day on which a special determination of the Asset Value of the Fund is made pursuant to clause 2.31.

Net Asset Value means in relation to each Fund the net asset value of the trust fund as determined from time to time in accordance with clause 2.30 or 2.31 of this Governing Document as the case may be.

Net Asset Value per Unit means the net asset value of the relevant Fund as determined by the Manager in force at the relevant Net Asset Determination Time divided by the Number of Units on Issue at the time.

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

Offer Register means the register of offers of financial products kept under the FMCA.

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

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

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

PIE Tax means the tax liability for a Fund as determined in accordance with the Tax Act once a Fund becomes a PIE.

Portfolio Investment Entity or PIE has the same meaning as defined in the Tax Act.

Prescribed Investor Rate has the same meaning as defined in the Tax Act.¹⁰⁸

¹⁰⁸ Section YA 1 of the Tax Act.

Price means the Selling Price, the Switching Price or the Repurchase Price as the case may be.

Register means the register of Investors maintained for each Fund pursuant to the FMCA.¹⁰⁹

Register Entry has the meaning given in the FMCA.

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

Regulated Offer has the meaning given in the FMCA.

Related Party has the meaning given to it by the FMCA¹¹⁰. *Relevant Instructions* means instructions or directions from an Investor:

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

Relevant Interest means:

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

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

- (a) that person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the wishes of any other person in relation to:
 - (i) the exercise, or the control of the exercise, of any right to vote in respect of the Unit;
 - (ii) the acquisition or disposition of the Unit;
 - (iii) the exercise of the power to control the acquisition or disposition of the Unit by another person; or

¹⁰⁹ Section 172(2) of the FMCA.

¹¹⁰ Section 172(2) of the FMCA.

- (b) another person has the right to exercise, to control the exercise of, to acquire or dispose of or to control the acquisition or disposition of 25% or more of the voting securities of that person,

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

A body corporate has a Relevant Interest in a Unit in which another body corporate that is associated (determined in accordance with the FMCA¹¹¹) to that body corporate has a 'Relevant Interest'.

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

Relevant Time means:

- (a) in respect of an issue or sale of Units for money the time immediately after the next Net Asset Determination Time made by the Manager after the later of the receipt by the Manager of the payment for the Units to be sold or issued and the acceptance by the Manager of the Application;
- (b) in respect of an issue of Units for the acquisition of an Authorised Investment by the Fund the time immediately after the Net Asset Determination Time made by the Manager after the later of the settlement of (or, if the Manager so decides, the entry into a sales contract for) the acquisition of the Authorised Investment and the acceptance by the Manager of the Application;
- (c) in respect of a repurchase of Units means (subject to clauses 3.16 and 3.17) the time immediately after the Net Asset Determination Time after the receipt by the Manager of a Repurchase Request, provided that the Conditions of Establishment for a Fund may specify a minimum number of Business Days' notice which must be given to the Manager of a Repurchase Request;
- (d) in respect of a redemption of Units means (subject to clauses 3.10, 3.16 and 3.17) the time immediately after the next Net Asset Determination Time after the receipt by the Manager of a Repurchase Request, provided that the Conditions of Establishment for a Fund may specify a minimum number of Business Days' notice which must be given to the Manager of a Repurchase Request.

Repurchase Price in relation to each Fund means the total of:

- (a) the Net Asset Value Per Unit; less
- (b) Investors' Realisation Costs,

¹¹¹ Section 172 of the FMCA.

and the resulting price shall be calculated to four decimal places of a dollar.

Repurchase Request means a request by an Investor to the Manager that the Manager repurchase or arrange redemption of any Units in the manner specified in clauses 3.1 to 3.18 (inclusive).

Request to Switch means a request, by an Investor to the Manager, to Switch.

Scheme means the managed investment scheme known as the Pie Funds Management Scheme, governed by this Governing Document.

Scheme Property has the meaning given to it in the FMCA.

Selling Price in relation to each Fund means the total of:

- (a) the Net Asset Value Per Unit; plus
- (b) the Applicant's Investment Costs (if any),

and the resulting price shall be calculated to four decimal places of a dollar.

SIPO means, in relation to the Scheme, the written statement of investment policy and objectives (as may be amended from time to time) as required under the FMCA.¹¹²

Special Resolution means a special resolution (as that term is defined in section 6(1) of the FMCA) passed by Investors.

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

Supervisory Agreement means the Supervisory Agreement dated 20 July 2016 between the Manager and the Supervisor, as amended (or amended and restated) from time to time).

Switch means in relation to an Investor the repurchase or redemption of Units held by such Investor and the immediate Application of the proceeds in or towards the purchase or subscription of Units in another Fund within the Pie Funds Management Scheme.

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

¹¹² Regulation 5 of the FMC Regulations.

Switching Price in relation to each Fund means the total of:

- (a) the Net Asset Value Per Unit; less
- (b) the Switching Fee (if any); less
- (c) the Applicant's Investment Costs (if any); less
- (d) the Investor's Realisation Costs (if any),

and the resulting price shall be calculated to four decimal places of a dollar.

Tax Act means the Income Tax Act 2007, and where the context permits, the Tax Administration Act 1994.

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

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

Interpretation

24.3 In the interpretation of this document, the following provisions apply unless the context otherwise requires:

- (a) words importing any gender include the other genders and the plural includes the singular and vice versa, references to body corporates include persons and vice versa;
- (b) unless otherwise defined in this Governing Document, a word which is given a special meaning by the Companies Act 1993, the FMCA or the FMC Regulations shall have the same meaning in this Governing Document;
- (c) a reference to any document, including this Governing Document, includes a reference to that document as amended, supplemented (by supplemental deed or otherwise) or replaced from time to time;
- (d) all references in this Governing Document to clauses, subclauses, recitals, schedules and paragraphs are to clauses, subclauses, schedules and paragraphs of this Governing Documents and include modifications thereto from time to time in accordance with this Governing Document;
- (e) references to statutes and regulations include all amendments re-enactments and replacements thereof;
- (f) references to currency are to the lawful currency of New Zealand;

- (g) where a word or expression is defined in this Governing Document, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (h) footnotes used in this Governing Document do not form part of this Governing Document and 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;
- (i) 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 principles 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 or net assets for any other purpose), the Manager may elect not to follow such generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards with the consent of the Supervisor;
- (j) terms implied into the Governing Document under the FMCA will apply for so long as they are implied in the Governing Document under the FMCA, despite anything to the contrary in the Governing Document and any provision in the Governing Document that is contrary to any such implied term (while it is so implied) will be void to the extent that it is contrary;
- (k) the rule of construction known as the contra proferentem rule, does not apply to this Governing Document;
- (l) a reference to a party to this Governing Document or any other document includes that party's personal representatives, successors and permitted assigns; and
- (m) where any frameworks or methodologies are specified in notices issued by the FMA under the FMCA, are applicable to a Fund and relate to any matter which is required to be provided for adequately in this Governing Document by the FMCA, the provisions of this Governing Document which deal with such matters shall be deemed to be modified to the extent necessary to adopt such frameworks or methodologies in respect of such matters for that Fund.

24.4 The schedules to this Governing Document form part of it.

24.5 Where for the purposes of any provision of this Governing Document it is necessary to determine the New Zealand currency equivalent of a sum expressed in a non New Zealand currency such sum shall be converted to New Zealand currency on a basis fixed from time to time by the Manager and any liability which is payable in a non New Zealand currency shall for the purposes of this Governing Document be treated as being a liability of an amount equal to the New Zealand currency equivalent determined as aforesaid provided always that in determining the New Zealand currency account may be taken of any contractual arrangement in force for covering

the risk of fluctuations between New Zealand currency and the non New Zealand currency of the liability.

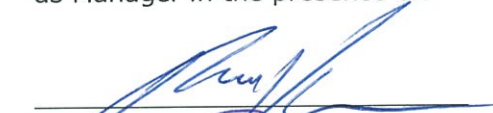
24.6 Where there is provision in this Governing Document or in the Conditions of Establishment for the issue or dealing in or the repurchase of Fractional Units the Manager shall in its sole discretion determine whether and how Fractional Units shall be issued or repurchased or otherwise dealt with, as the case may be, and in the event the Manager determines in any instance to deal only in whole Units then the following shall apply:

- (a) In respect of any issue of bonus Units under clauses 11.4 and 11.9 the Manager shall round downwards the number of bonus Units to which an Investor is entitled to the nearest whole Unit.
- (b) In respect of any repurchase of Units where an Investor requests the repurchase of sufficient Units held by him to realise a specified amount their Repurchase Request will be deemed to relate to so many whole Units of that Investor as will realise at least that specified amount.


24.7 In the event of a conflict between the provisions of this Governing Document and the Conditions of Establishment of any Fund, the terms of the Conditions of Establishment of the Fund shall prevail.

EXECUTION

Pie Funds Management Limited
as Manager in the presence of:




Director




Director

Trustees Executors Limited:



Authorised Signatory **Robert Gatward**



Authorised Signatory **Melanie Lyn Hewitson**



in the presence of:



2016/01 (1 of 2)

Name:

Occupation: **Adesh Kaur**
Business Analyst
Auckland

Address:

Schedule

CONDITIONS OF ESTABLISHMENT - PIE AUSTRALASIAN GROWTH FUND

1 Pie Australasian Growth Fund

1.1 The Fund shall be named the Pie Australasian Growth Fund.

2 Commencement Date

2.1 3 December 2007.

3 Financial year

3.1 The Financial Year for the Fund will be 1 April to 31 March in each year.

4 Borrowing

4.1 The Manager is not permitted to borrow in respect of the Fund.