

Master Trust Deed

Salt Listed Funds

Salt Investment Funds Limited

**The New Zealand Guardian Trust Company
Limited**

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Deed dated 12 October 2018

Parties

- 1 **Salt Investment Funds Limited** at Auckland (**'Manager'**)
- 2 **The New Zealand Guardian Trust Company Limited** at Auckland (**'Supervisor'**)

Background

- A The Manager and the Supervisor wish to establish a scheme to be known as the Salt Listed Funds or such other name as the Manager may determine from time to time (**'Scheme'**) under which persons may acquire interests in a variety of different and independent funds.
- B The Manager intends to register the Scheme as a managed investment scheme under the Financial Markets Conduct Act 2013 (**'FMCA'**), to make a regulated offer (as defined in the FMCA) of Units. The Manager may also determine to list the Units in one or more Funds on an Exchange.
- C The Supervisor is to be appointed the trustee and supervisor, and the Manager is to be appointed the manager, of the Scheme and of each Fund established within the Scheme, in each case on the terms and conditions set out in this Deed.
- D The terms and conditions set out in this Deed will govern all Funds established under this Deed. Each individual Fund is to be established by, and any terms or conditions specific to that individual Fund are to be set out in, a separate Establishment Deed.
- E Accordingly, the Supervisor and the Manager have agreed to enter into this Deed.

Covenants

1 Interpretation

1.1 Defined Terms

In this Deed unless the context otherwise requires:

'Amount' means the amount of all or part of the Income or capital of a Fund calculated in accordance with clause 24;

'Associated Person' has the meaning given to it by the FMCA;¹

'Auditor' means in respect of each Fund the auditor of the Trust Fund appointed pursuant to clause 27.1;

'Authorised Investments' means any investment, security, financial product, derivative, interest, or estate, whether in New Zealand or any other country and whether legal or equitable, corporeal or incorporeal, freehold, leasehold, or some other tenure as agreed between the Manager and the Supervisor from time to time, which, in respect of each Fund, are set out in or otherwise determined in accordance with the SIPO for the Scheme which covers the relevant Fund;

¹ Section 12(1) of the FMCA.

'Borrow' means to borrow money, or to raise money by way of the drawing, acceptance, discount, or sale of bills of exchange or promissory notes or other financial instruments, or in any other manner, whether in New Zealand currency or any other currency and **'Borrowing'** and **'Borrowed'** have a corresponding meaning;

'Business Day' means a day on which registered banks are open for business in Auckland and Wellington, other than a Saturday or Sunday;

'Cash' includes cheques, bank cheques, bank deposits, bank transfers, and bank drafts;

'Commencement Date' means in relation to each Fund:

- a the date on which the Manager by notice in writing to the Supervisor specifies as the date on which that Fund is to commence; or
- b if no such notice is given by the Manager to the Supervisor, the date on which consideration for Units in that Fund is first accepted by or on behalf of the Manager;

'Custodian' means a person appointed in accordance with clause 19.2a and includes, to the extent the context permits, any Sub-Custodian;

'Deed' means this trust deed, as amended from time to time, and where the context permits or requires in respect of a particular Fund includes the Establishment Deed for that Fund;

'Disclosure Document' in relation to a Fund or Funds means the document or documents, however described, issued by the Manager under which Units are offered for issue (and, in respect of a Fund for which a regulated offer (as defined in the FMCA) is made, includes the PDS);

'Distribution Date' means in respect of a Fund such date (if any) as the Manager may fix from time to time for the purpose of distributing an Amount to Unit Holders of that Fund;

'Distribution Period' in relation to a Fund means the period:

- a from the Commencement Date of that Fund to its first Distribution Date; and
- b thereafter, the period from a Distribution Date to the next Distribution Date,

including the first date, but excluding the final date, in each period;

'Electronic Communication' means a transmission of an instruction, request, notice, or information by telephone, facsimile, computer, videophone, or other electronic medium approved by the Manager subject to such conditions as the Manager considers appropriate as to identification of the person making the communication or verification of the content of the communication;

'Entitlement' in relation to a Unit means the proportionate Amount to be distributed to a Unit Holder in respect of that Unit in accordance with clause 24;

'Establishment Deed' means a separate deed providing for the establishment of a Fund, containing in respect of that Fund any of the particulars set out in Schedule 1 that the Supervisor and Manager consider necessary or appropriate for that Fund, subject to clause 3.5 and as amended from time to time;

'Exchange' means any:

- a official or formally constituted share, security, unit, or other equity ownership interest, futures, or options exchange on which a relevant Investment or Unit (as applicable) is quoted in any country, and includes a licensed market (as defined in the FMCA); or
- b other platform or exchange, whether or not official or formally constituted, on which an Investment is quoted and which the Manager, following consultation with the Supervisor, determines to be an Exchange for the purposes of the relevant Fund);

'Expenses' means all costs and expenses incurred by the Manager and the Supervisor in connection with the relevant Fund, including fees, costs, and expenses for which the Manager and the Supervisor are entitled to reimbursement under this Deed;

'Financial Statements' means financial statements as that term is defined in the Financial Reporting Act 2013;

'FMA' means the Financial Markets Authority, or any successor entity;

'FMCA' means the Financial Markets Conduct Act 2013 and includes, where appropriate, the FMC Regulations and any other regulations made under the FMCA;

'FMC Regulations' means the Financial Markets Conduct Regulations 2014;

'Fund' means every separate fund constituted under clause 3.3, and where the context requires includes the Trust Fund of that Fund;

'Fund Particulars' means in respect of each Fund the particular terms and conditions applicable to that Fund specified in accordance with the Establishment Deed;

'Gross Asset Value' means in relation to any Fund and any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Fund on that Valuation Day being the aggregate of:

- a the amount of Cash forming part of the assets of the Trust Fund;
- b the Market Value of all of the other Investments of the Fund (including for the avoidance of doubt accrued and unpaid Gross Income of the Trust Fund on that Valuation Day); and
- c the benefit of adjustments made to Unit Holders' interests on account of PIE Tax,

less the aggregate of the Liabilities of that Fund, excluding any accruals for fees and expenses and for the avoidance of any doubt in calculating the Gross Asset Value of any Fund no allowance shall be made for the Subscription Bank Account Balance, other than any portion of the Subscription Bank Account Balance that is attributable to Units that have been issued but in respect of which the consideration has not yet been transferred to the Supervisor in accordance with clause 6.8;

'Gross Income' means the income earned by the relevant Fund from its Investments, as determined by the Manager in accordance with NZ GAAP;

'GST' means goods and services tax payable under the Goods and Services Tax Act 1985;

'Income' means in relation to any Fund the Gross Income earned by that Fund less its Liabilities. For the avoidance of doubt:

- a the Income of each Fund may be a negative amount, and may include current or retained earnings of the relevant Fund; and
- b no deduction from Income shall be made by the Manager or the Supervisor unless specifically provided for in this Deed or the relevant Establishment Deed;²

'Investment' means in relation to any Fund any investment or other asset including any Cash made or held at any relevant time by or for that Fund;

'Issue Price' means the price for the issue of Units determined in accordance with clause 7.1, subject to clause 5.9;

'Liabilities' in relation to any Fund means each liability which should be classified as such by NZ GAAP but does not include:

- a a contingent liability (other than any fee or other charge properly accrued by the Manager and except to the extent the Manager decides that an allowance shall be made for contingent liabilities);
- b a Unit; or
- c PIE Tax, except for PIE Tax recovered from a Unit Holder and held pending payment to Inland Revenue;

'Management Agreement' means a separate written management agreement recording the reporting and other information the Manager shall provide to the Supervisor in accordance with clause 22.13.

'Management Fee' means in relation to any Fund the fee for managing that Fund determined in accordance with clause 16.1;

'Manager' means Salt Investment Funds Limited or such other person for the time being appointed to act as manager of the Scheme and Funds pursuant to this Deed;

'Market Value' in relation to any Investment as at any Valuation Day means:

- a in respect of Investments which are listed on an Exchange the value determined by the Manager, by reference to the price quoted for the last sale of that Investment on the relevant Exchange on or before that Valuation Day, or if there has been no such sale, or if, in the Manager's reasonable opinion, the last sale is not an accurate measure of the value of that Investment, the value determined by the Manager, acting reasonably, having regard to such information as the Manager considers appropriate, including without limitation the advice of a Valuer, subject to giving prior notice to the Supervisor;
- b in respect of Investments which are valued by the issuer of those Investments, the most recent valuation made of those Investments which the Manager is aware prior to the Valuation Day, provided that if, in the Manager's reasonable opinion, that valuation is not an accurate measure of the value of that Investment, the value determined using some

² NZX Main Board/Debt Market Listing Rule 5.1.9, Appendix 10.

other form of appropriate determination as to value in respect of any specific Investment from time to time as the Manager determines and the Supervisor agrees to;

- c in respect of real property Investments, the most recent value of that property fixed by a Valuer as at a date not more than twelve months preceding that Valuation Day, provided that if, in the Manager's reasonable opinion, that valuation is not an accurate measure of the value of that Investment, some other form of appropriate determination as to value in respect of any specific Investment from time to time as the Manager determines and the Supervisor agrees to; and
- d in respect of any other Investment, the value fixed by the Manager according to proper prudent principles of valuation agreed to by the Supervisor or, failing such agreement, according to principles of valuation determined by a Valuer,

and where in respect of an Investment to which sub-paragraph a or b applies the relevant information as to value is not received within 24 hours of the time fixed on a Valuation Day for determination of the Gross Asset Value and Net Asset Value, means the value of that Investment which applied on the preceding Valuation Day **provided that** the Supervisor shall be entitled at any time to appoint an independent valuer to value, at the expense of the relevant Fund, the Market Value of the Investments of a Fund;³

'Minimum Value of Units' means in relation to any Fund such aggregate Unit Value of Units of that Fund, expressed as either a number of Units or a monetary amount, as may be determined by the Manager from time to time as the minimum aggregate Unit Value which shall be held by a Unit Holder or which may be the subject of a Transaction;

'Net Asset Value' means in relation to any Fund and any Valuation Day such sum as is ascertained and fixed by the Manager in respect of that Fund on that Valuation Day by deducting from the Gross Asset Value of that Fund for that Valuation Day the aggregate of any accruals for fees and expenses and any other amounts the Manager reasonably considers should be included for the purposes of making an equitable and reasonable determination of the Net Asset Value;

'Non-SP Investments and Liabilities' has the meaning given to that term in clause 8.13;

'NZ GAAP' means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 2013;

'NZX' means NZX Limited and includes its predecessors, successors, and assigns and as the context permits includes any duly authorised delegate of NZX Limited;

'Office' means the registered office from time to time of the Manager;

'Performance Fee' means in relation to any Fund any performance fee payable in respect of that Fund, as referred to in clause 16.4;

'PDS' means the product disclosure statement or PDS, as defined by the FMCA;

'Person' means and includes a natural person, a company, a corporation, a corporation sole, a managed investment scheme or fund within a managed investment scheme (as defined in the FMCA), a government, or a body of persons (whether corporate or unincorporated);

³ NZX Main Board/Debt Market Listing Rule 5.1.9, Appendix 10.

'PIE' means Portfolio Investment Entity as defined in section YA 1 of the Tax Act;

'PIE Rebate' means a rebate of tax received by a Fund in respect of Unit Holders;

'PIE Tax' means, in relation to any Fund, tax payable by that Fund, the Supervisor, or the Manager (whether provisional, deferred, or current) which is determined by reference to Prescribed Investor Rates of Unit Holders (with the exception of a listed PIE which is determined by the corporate income tax rate, currently 28%) or is otherwise determined by the Supervisor or the Manager to be payable on Income attributed to Unit Holders;

'Prescribed Investor Rate' has the meaning given to the term by section YA 1 of the Tax Act;

'Register' means a register maintained pursuant to the Relevant Requirements⁴ and referred to in clause 11;

'Related Party' has the meaning given to that term by the FMCA;⁵

'Related Party Benefit' has the meaning given to it by the FMCA;⁶

'Relevant Requirements' means, as the context requires:

- a all laws applicable to the Manager (including its issuer obligations and market services licensee obligations (as those terms are defined in the FMCA)), the Supervisor, the Scheme, or a Fund at the relevant time, and where applicable including the financial markets legislation (as that term is defined in the FMCA) and any methodologies or frameworks issued by the FMA under the FMCA; and
- b for any period during which Units in a Fund are quoted on any Exchange, in respect of that Fund the Rules applicable to that Exchange (as amended from time to time), including, for the avoidance of doubt, the NZX Main Board/Debt Market Listing Rules.⁷

'Rules' means the rules applicable to issuers of financial products that are quoted on an Exchange (including for the avoidance of doubt, any ruling, waiver, or revocation of a waiver given pursuant to those Rules);

'Scheme' means the managed investment scheme governed by this Deed;

'SIPO' has the meaning given to it by the FMC Regulations;⁸

'SP Investments and Liabilities' has the meaning given to that term in clause 8.13;

'SP Date' has the meaning given to that term in clause 8.13;

'SP Units' has the meaning given to that term in clause 8.13;

'Special Arrangements' has the meaning given to that term in clause 8.14;

'Special Resolution', in relation to the Scheme or a Fund, has the meaning given to that term in relation to that type of scheme or fund by the Relevant Requirements;⁹

⁴ Section 215 of the FMCA.

⁵ Section 172(2) of the FMCA.

⁶ Section 172(1) of the FMCA.

⁷ NZX Main Board/Debt Market Listing Rule 3.1.1(c).

⁸ Regulation 5 of the FMC Regulations.

⁹ Section 6 of the FMCA.

'Standing Application' means an application for the issue of Units on a regular and periodic basis;

'Sub-Custodian' means a person appointed in accordance with clause 19.2b;

'Subscription Bank Account' means, in relation to the Scheme, the bank account maintained in the name of the Supervisor, Custodian, or Sub-Custodian in accordance with clause 3.9;

'Subscription Bank Account Balance' means, in relation to the Subscription Bank Account, the balance of the Subscription Bank Account at that time;

'Supervisor' means The New Zealand Guardian Trust Company Limited or such other person who is for the time being appointed as Supervisor under the provisions of this Deed and, where the context requires or allows such interpretation, this expression includes any Custodian;

'Switching Notice' means a notice given in accordance with clause 9.1;

'Switch Fund' has the meaning specified in clause 9.1;

'Tax Act' means the Income Tax Act 2007 or any legislation passed in substitution thereof;

'Tax File Number' has the meaning given to that term by section YA 1 of the Tax Act;

'Taxing Acts' means:

- a the Tax Act;
- b the Tax Administration Act 1994;
- c the Goods and Services Tax Act 1985;
- d any applicable double tax treaties entered into by the New Zealand Government from time to time; and
- e any other taxation legislation enacted in New Zealand from time to time;

'Transaction' means the:

- a issue of Units;
 - b withdrawal of Units; or
 - c switching of Units between Funds,
- or any one or more of those events, as is applicable in the context;

'Transaction Costs' means whichever of:

- a the Manager's estimate of the total cost of acquiring Investments; and
- b the Manager's estimate of the total cost of selling Investments,

is relevant in the context, provided that the Manager may in any case, and subject to all Unit Holders being treated equivalently, treat Transaction Costs as a lesser amount or as zero, and may set a fixed percentage or amount as the notional Transaction Cost that will be

deemed to apply in respect of any particular Transaction or type of Transaction for the purposes of this Deed;

'Trust Fund' means in relation to each Fund the aggregate of all Investments and other assets, Liabilities, and obligations for the time being held or owing by the Supervisor under this Deed;

'Unit' means an undivided part or share in the Trust Fund as described in clause 3.4 and includes parts of a Unit (if applicable pursuant to clause 4.5);

'Unit Holder' means in relation to a Fund a person for the time being entered on the relevant Register as the holder of any Unit of that Fund;

'Unit Value' means in relation to any Fund and any Valuation Day such amount as is ascertained by dividing the Net Asset Value of the Fund by the number of Units on issue on that Valuation Day rounded down if necessary to such number of decimal places as the Manager determines from time to time;

'Valuation Day' means in respect of each Fund a day whether periodical or otherwise specified by the Manager in the Establishment Deed for that Fund, or as specified in writing by the Manager to the Supervisor from time to time, as a day on which the Gross Asset Value and Net Asset Value of that Fund is determined;¹⁰

'Valuer' means an appropriately qualified person nominated by the Manager and agreed to by the Supervisor;

'Withdrawal Amount' means an amount to be withdrawn from the Fund in accordance with clause 8.1;

'Withdrawal Notice' means a notice given in accordance with clause 8.1;

'Withdrawal Suspension Notice' means a notice given in accordance with clause 8.8;

'Withdrawal Fund' has the meaning specified in clause 9.1; and

'Withdrawal Value' means the price payable for the redemption of Units determined in accordance with clause 8.3.

1.2 Implied terms and inconsistencies

- a Terms implied in this Deed under the Relevant Requirements apply for so long as they are implied in this Deed under the Relevant Requirements despite anything to the contrary in this Deed, and any provision in this Deed that is contrary to any such implied term (while it is so implied) is void to the extent that it is inconsistent with such implied terms.¹¹
- b If a provision of this Deed is inconsistent with the FMCA or the Rules, as applicable to the Manager or a Fund from time to time:¹²
 - i the FMCA shall prevail over the Rules; and
 - ii the Rules shall prevail over this Deed,

¹⁰ Section 135(1)(d) of the FMCA.

¹¹ Regulation 84 and clauses 1 to 3 of Schedule 13 of the FMC Regulations.

¹² NZX Main Board/Debt Market Listing Rule 3.1.1(e).

to the extent of the relevant inconsistency.

1.3 Frameworks or methodologies

Where any frameworks or methodologies are specified in notices issued by the FMA under subpart 4 of part 9 of the FMCA, apply to the Scheme or a Fund and relate to any matter which is required by the FMCA to be provided for adequately in this Deed, the provisions of this Deed dealing 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 the Scheme and / or Fund (as applicable).

1.4 Requirements reflected in Deed

Where:

- a a provision of this Deed replicates a specific compulsory requirement of the Relevant Requirements (whether or not in its entirety); but
- b such requirement of the Relevant Requirements is subsequently repealed, replaced, or amended, or an exemption, waiver, or other relief from that requirement subsequently applies to the Scheme or a Fund, or that requirement ceases to apply to the Scheme or a Fund for any other reason,

the provisions of this Deed dealing with that requirement shall be deemed to be modified to the extent necessary to make this Deed consistent with such modified requirement other than to the extent that doing so would be void under the Relevant Requirements (including section 139 of the FMCA).

1.5 Failure to comply with Rules

Subject to the Relevant Requirements, any:¹³

- a failure to comply with the Rules; or
- b failure to comply with a provision of this Deed corresponding with a provision of the Rules,

shall not affect the validity or enforceability of any transaction, contract, action, or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Manager or a Fund, except that a party to a transaction or contract who knew of the failure to comply with the Rules or those provisions of this Deed shall not be entitled to enforce that transaction or contract. For the avoidance of doubt, this clause does not affect the rights of any holder of Units against the Manager, a Fund, or the Directors (as that term is defined in the NZX Main Board/Debt Market Listing Rules) of the Manager arising from failure to comply with the Rules or those provisions of this Deed.

1.6 General construction

In this Deed, unless the context otherwise requires:

- a Unless otherwise defined in this Deed, a word which is given a special meaning by the Relevant Requirements shall have the same meaning in this Deed.

¹³ NZX Main Board/Debt Market Listing Rule 3.1.2.

- b Words importing the singular number include the plural and vice versa and the masculine gender includes the feminine or neuter genders and vice versa.
- c References to statutes or regulations includes all amendments, re-enactments, and replacements thereof.
- d References to any legislation includes a regulation, order-in-council and other instrument from time to time issued or made under, that legislation, and, in the case of the FMCA, to any framework or methodology issued by the FMA under the FMCA.
- e Headings to clauses are used in this Deed for reference only and are not to be used as an aid in the interpretation of this Deed.
- f Where anything is to be done under or pursuant to this Deed on or by a certain date, and that date is not a Business Day, it shall be done on the following Business Day.
- g Footnotes used in this Deed do not form part of this Deed, are a guide only and where they refer to legislative provisions or other Relevant Requirements, they are not intended to incorporate those provisions or Relevant Requirements in this Deed or affect the interpretation of this Deed. However, often they will refer to the provisions which have prompted the inclusion of the reference in this Deed to comply with a particular Act, other Relevant Requirement, or legislation generally.
- h If it shall be necessary for any of the purposes of this Deed to determine the equivalent at any date in New Zealand Dollars of any amount denominated in any other currency, that equivalent shall be determined by the Manager on the basis of such rate of exchange prevailing as at that date as the Manager may reasonably select.

2 Purpose of Scheme

2.1 Purpose of Scheme

This Deed governs a managed investment scheme under which persons may acquire interests in a variety of different and independent Funds.

2.2 Name of Scheme

The managed investment scheme governed by this Deed shall be known as the Salt Listed Funds or such other name as the Manager may determine from time to time by notice in writing to the Supervisor.

3 The Scheme and Funds

3.1 Appointment of Supervisor

The Supervisor agrees to act as trustee and supervisor of the Scheme and each Fund for the Unit Holders for the purposes of the FMCA.¹⁴ In that capacity, the Supervisor will hold each Trust Fund in trust for those Unit Holders, upon and subject to the terms and conditions contained or implied in this Deed and the Relevant Requirements.¹⁵

¹⁴ Section 127(1)(d) of the FMCA.

¹⁵ Sections 152(1)(c), and 156 to 159 of the FMCA and Regulations 85 to 88 of the FMC Regulations.

3.2 Appointment of Manager

The Manager agrees to act as the manager of the Scheme and each Fund for the purposes of the FMCA¹⁶ upon and subject to the terms and conditions contained or implied in this Deed, the Relevant Requirements, and any other applicable legislation, and will observe and perform the manager obligations under this Deed, the Relevant Requirements, and any other applicable legislation.

3.3 Establishment of Funds

The Manager may at any time give notice to the Supervisor of its desire to establish a Fund under this Deed. If the Supervisor agrees to act as trustee and supervisor of that Fund, then the Supervisor and the Manager shall enter into an Establishment Deed. Subject to the Fund Particulars set out in the Establishment Deed, the provisions of this Deed shall govern that Fund.

3.4 Trust Funds

The Trust Fund of each Fund shall consist of all Investments for the time being held by the Supervisor in respect of that Fund upon the trusts of this Deed and the relevant Fund Particulars including:

- a the proceeds of sale or realisation of any Investments of that Fund pending distribution or reinvestment;
- b all additions or accretions; and
- c all Gross Income therefrom held pending distribution or reinvestment.

For the avoidance of doubt all references to the 'Trust Fund' contained in this Deed excludes the Subscription Bank Account Balance.

3.5 Separate Funds

Although the Scheme is a single managed investment scheme for the purposes of the FMCA, each Fund shall constitute a separate and independent Trust Fund with separate property and liabilities, and the Supervisor and the Manager shall in all respects act so as to give effect to this intention. Without prejudice to the generality of the foregoing:

- a the assets of a Trust Fund shall not be available to meet the Liabilities of any other Trust Fund;
- b all Investments made with the moneys of a Fund shall be held by the Supervisor or its Custodian as the exclusive property of that Fund and for the exclusive benefit of the Unit Holders of that Fund pursuant to this Deed;
- c the Supervisor and the Manager shall keep separate records and accounts in respect of each Fund, and shall not permit the Investments, property, assets, or Liabilities of any Trust Fund to become intermingled with those of any other Trust Fund **provided that**, subject to clause 15, nothing in this subclause shall prevent the assets of any Fund being lent to, deposited with or invested in another Fund; and

¹⁶ Section 127(1)(c) of the FMCA.

- d the creation of a Fund shall not in any way vary or affect any other Fund nor give rise to any resettlement of any other Fund.

3.6 Restrictions on Fund Particulars

No Fund Particulars for a Fund shall contain any provision which affects the rights or interests of Unit Holders of any other Fund in existence at the time of establishment of that Fund unless the Manager complies with the Relevant Requirements and:¹⁷

- a it is authorised by a Special Resolution of the Unit Holders of every Fund so affected;
- b the same is considered by the Supervisor not to be or likely to become prejudicial to the interests of Unit Holders of any Fund so affected; or
- c the same is effected no earlier than two months (or such lesser period as the Supervisor agrees) after notice has been sent to every Unit Holder affected thereby, provided that no notice may be given when there is a Withdrawal Suspension Notice in place in relation to the affected Fund or Funds.

3.7 Amalgamation of Funds

The Manager may at any time, after giving the Supervisor and all affected Unit Holders not less than one month's notice in writing and subject to compliance with the Relevant Requirements:¹⁸

- a amalgamate the Trust Funds of any two or more Funds to form a single Trust Fund under one Fund; or
- b divide any Trust Fund into two or more separate Trust Funds to create two or more separate Funds,

in which case the Supervisor and the Manager will execute a deed amendment in accordance with clause 31.1 and do all things and execute such documents as may be necessary to give effect to the amalgamation or division.

3.8 Bank accounts

A bank account or accounts in the name of the Supervisor or its Custodian or Sub-Custodian must be opened and maintained for each Fund. All moneys belonging to the relevant Fund and coming into the hands of the Manager or the Supervisor must be paid to the credit of such bank account (or, if applicable, to the credit of one of those bank accounts). The Supervisor is to determine the Persons authorised to operate those bank account(s) and those Persons may, for the avoidance of doubt, include the Manager.

3.9 Subscription Bank Account

- a A bank account must be maintained outside the Scheme, in the name of the Supervisor (or a Custodian or Sub-Custodian) or the Manager, in accordance with the Relevant Requirements.¹⁹
- b All cash consideration for Units that is paid, prior to the issue of those Units in accordance with this Deed, must be paid to the credit of the Subscription Bank Account

¹⁷ NZX Main Board/Debt Market Listing Rule 8.3.

¹⁸ NZX Main Board/Debt Market Listing Rule 8.3.

¹⁹ Regulation 49 of the FMC Regulations.

in accordance with the Relevant Requirements²⁰ until Units for those amounts are issued, at which point such cash consideration shall be credited to a bank account of the relevant Fund or the Scheme.

- c Amounts payable when the relevant Units are cancelled must be paid to the credit of the Subscription Bank Account.
- d The Supervisor shall determine the persons authorised to operate such bank accounts.

4 Units

4.1 Beneficial interest in Fund

The beneficial interest in the Trust Fund of each Fund shall be divided into Units.

4.2 Equal but not specific interests

Each Unit shall confer an equal interest in that Trust Fund, but shall not confer any interest in any particular part of the Trust Fund, and no Unit Holder shall be entitled to require the transfer to the Unit Holder of any of the Investments or other part of that Trust Fund or otherwise give directions in relation to any of the Investments or other part of that Trust Fund.

4.3 No interest in other Trust Funds

A Unit of one Fund shall not confer any right or interest in the Trust Fund of any other Fund.

4.4 No interference in management etc

Subject to the rights of the Unit Holders created by this Deed, the Relevant Requirements,²¹ or any other applicable legislation, no Unit Holder shall be entitled to interfere with or question the exercise or non-exercise by the Manager or the Supervisor of any of the rights, powers, authorities, or discretions conferred upon them or either of them by this Deed or in respect of any Fund or Trust Fund or any part or parts thereof, or to exercise any right, power or privilege in respect of any Investment.

4.5 Part Units

If the Manager permits, parts of a Unit may be created and can exist under this Deed and be denoted by figures up to four decimal places or such other denotation as the Manager determines from time to time.

4.6 Values binding

Unit Values, Issue Prices and Withdrawal Values determined pursuant to this Deed are, in the absence of manifest error (and subject to clause 14.4), final and binding on all Unit Holders and any other Persons claiming a beneficial interest in the relevant Trust Fund.

²⁰ Section 87 of the FMCA and Regulation 49 of the FMC Regulations.

²¹ NZX Main Board/Debt Market Listing Rule 2.1.

5 Issue of Units

5.1 Manager may invite offers²²

The Manager may at any time and from time to time invite offers, subscriptions, or applications for Units in any Fund created pursuant to this Deed upon and subject to the terms and conditions contained in or pursuant to this Deed, any Establishment Deed, and the relevant Fund Particulars and otherwise in such manner and upon such terms and conditions as the Manager shall from time to time determine. There is no limit as to the number or amount of Units that can be issued under this Deed.

5.2 Manager may apply for quotation

The Manager may, at its discretion and at any time, apply to the operator of any Exchange for the quotation of the Units in a particular Fund on that Exchange.

5.3 Compliance with legislation

The Manager shall in:

- a inviting and processing offers, subscriptions, or applications in terms of clause 5.1 and processing withdrawals; and
- b operating any bank account opened for a Fund pursuant to clause 3.8,

comply with the Relevant Requirements.²³ The Manager shall provide reasonable assistance to the Supervisor to enable the Supervisor to comply with its obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 that arise as a result of acting as the supervisor of the Funds.

5.4 Issue may be underwritten

Any proposed issue of Units may in the Manager's discretion be underwritten by an underwriter and such underwriter and its nominees or any of them may take up the Units not otherwise subscribed for, and charge reasonable underwriting commission and all costs and disbursements of the issue as may be agreed with the Manager.

5.5 Manager may pay commissions

The Manager may, at its own cost, pay such commission, fee, or brokerage determined by the Manager to any person for obtaining purchases or subscriptions for any Units in a particular Fund.

5.6 Manager may consolidate or subdivide

The Manager may at any time, by notice in writing to the Unit Holders of a Fund and the Supervisor, cause the Units of that Fund in existence at the date specified in that notice to be consolidated or subdivided. Each such notice shall:

- a specify the date on which such consolidation or subdivision is to take place ('**Operative Date**'); and

²² Section 135(1)(b) of the FMCA.

²³ Including Part 3 of the FMCA and, to the extent applicable, NZX Main Board/Debt Market Listing Rules 6.1.2(e), 7.1, and 7.15.

- b specify the ratio ('Ratio') which the number of Units in existence after the consolidation or subdivision will bear to the number of Units in existence before the consolidation or subdivision.

5.7 Effect of consolidation or subdivision

As from the Operative Date, each Unit Holder of the relevant Fund shall be deemed to hold a number of Units equivalent to the number held before the Operative Date multiplied or divided (as the case may be) by the Ratio. For this purpose parts of a Unit beyond such number of decimal places as may be specified by the Manager for this purpose shall be rounded down and disregarded.

5.8 Cessation of issues

The Manager may at any time or times by notice in writing given to the Supervisor determine that from a date specified in the notice given to the Supervisor, no further Units shall be issued pursuant to this Deed or in respect of a specified Fund or Funds either for any specified period or until the relevant Fund(s) are terminated. In such event the Manager agrees with the Supervisor that the Manager will not after the date specified in the notice issue any further Units under this Deed or in respect of such Fund or Funds (as applicable) for the specified period or until the relevant Funds are terminated, whichever situation applies.

5.9 Contribution fee

The Manager may deduct and retain a contribution fee for issue of Units in any Fund of up to 5% of the Cash or other consideration forwarded to meet the Issue Price of Units in that Fund.

6 Application for Units²⁴

6.1 Application procedure

Every person wishing to apply for Units shall:

- a complete and lodge with the Manager an application for Units in a specified Fund or Funds in writing, if the Manager permits by verbal communication (including by telephone), or by Electronic Communication in such form or to comply with such specifications as may from time to time be prescribed by the Manager. An application shall be signed, authorised, or authenticated by or on behalf of the applicant in such manner as the Manager may from time to time prescribe; and
- b forward or credit to the Supervisor or Subscription Bank Account, or to the Manager or an administration manager appointed by the Manager for payment to the Supervisor or Subscription Bank Account, the Cash consideration in respect of the Units applied for. The Manager may, in its discretion, permit consideration for applications to be provided in a form other than Cash, on such basis as the Manager and the Supervisor may from time to time agree, and the provisions of this clause 6 and clause 7 shall be construed accordingly. Any non-Cash consideration accepted shall be Authorised Investments and valued at Market Value on a day determined by the Manager.

²⁴ Section 135(1)(a), (b), and (c) of the FMCA.

6.2 Standing Application

An application may be designated as a Standing Application for an amount per month (or such other period as the Manager shall determine) at least equal to any applicable Minimum Value of Units for Standing Applications, and may include an authorisation to the Manager to initiate direct debits to a bank account nominated by the applicant for relevant application amounts to be credited to the Supervisor. The Manager may at any time at its discretion waive any applicable Minimum Value of Units, either generally or in a particular case or cases.

6.3 Issue of Units

Applications for Units will be treated by the Manager as a subscription for Units to be issued from the relevant Fund or Funds at the Issue Price for the relevant Valuation Day for which the application is effective (as determined in accordance with the relevant Establishment Deed).

6.4 Acceptance of applications

The Manager may:

- a in its discretion refuse to accept in whole or in part any application and shall not be required to give any reason or ground for such refusal;
- b postpone the processing of an application pending receipt of cleared funds (or for any other reason) and shall not be required to give any reason or ground for such postponement;
- c if, in accordance with clause 5.1, it determines to invite offers, subscriptions, or applications for units by way of an initial offer period, postpone the processing of applications until after the expiry of that initial offer period (and any valid applications received during any initial offer period may be treated by the Manager as only being effective (including for the purposes of the relevant Establishment Deed) after the expiry of the initial offer period); and
- d in its absolute discretion redeem Units or treat as void ab initio the issue of Units which would or could result in the Fund losing its status as a PIE if remedial action was not taken.

To the extent necessary, each affected Unit Holder will be deemed to have given a Withdrawal Notice in respect of any Units the Manager determines to redeem pursuant to clause 6.4d and the provisions of clause 8 will otherwise apply to the redemption of such Units.

6.5 Uncleared funds

The Manager may treat Units issued against application money provided other than in cleared funds or as non Cash consideration that does not subsequently clear as either:

- a void ab initio; or
- b a withdrawal from the relevant Fund or Funds,

with the option adopted to be determined by the Manager in its sole discretion.

6.6 Units issued in error

Units that the Manager determines have been issued in error will be treated at the time of any such determination as either:

- a subject to a Withdrawal Notice, in which case the Manager shall effect a withdrawal from the relevant Fund or Funds accordingly; or
- b void ab initio,

with the option adopted to be determined by the Manager in its sole discretion, provided that relevant Units may not be treated as void ab initio if an affected person has in good faith altered their position to their detriment in reliance on the validity of those Units in circumstances where relevant law does not require the Units to be treated as void.

6.7 Refunds and void Units

The Manager shall promptly notify the Supervisor of the acceptance or rejection of each application or voidance of Units in such manner as is from time to time agreed between the Supervisor and the Manager, and shall refund or arrange for the Supervisor to refund any application moneys received in respect of a rejected application or voided Units as soon as practicable. Where Units are redeemed or voided under clause 6.4d the Manager must request the Supervisor to pay the Withdrawal Value for such Units and, subject to the maintenance of equity as between Unit Holders, such other compensation (if any) as the Manager considers appropriate. Subject to compliance with Relevant Requirements and maintenance of equity as between Unit Holders, the Manager shall have all powers necessary to restore the Trust Fund of any Fund or the Subscription Bank Account to the position it would have been in if the rejected application moneys had never been received or if Units determined to be void, withdrawn, or redeemed had never been issued.

6.8 Registration and issue of Units

The Manager shall:

- a make a decision in respect of an application, issue the relevant Units, and pay all application moneys to the Supervisor or Custodian within five (5) Business Days of the Valuation Day for which the relevant application is effective in accordance with the relevant Establishment Deed;
- b on acceptance of an application and issue of Units, enter the name of the Unit Holder on the appropriate Register (or, where the Unit Holder is already on such Register, cause such Register to be altered accordingly); and
- c provide the Unit Holder with any confirmations required under clause 12.1.²⁵

6.9 Minimum Value of Units

The Manager may from time to time determine a Minimum Value of Units in respect of applications for Units in any Fund. The Manager may at any time at its discretion waive any applicable Minimum Value of Units, either generally or in a particular case or cases.

²⁵ Regulations 65 to 68 of the FMC Regulations.

6.10 Joint Holders of Units

The Manager may, but shall not be bound to, register multiple persons as holders of any Unit. Where multiple persons are registered as the holders of any Unit they shall be deemed to hold the same as joint tenants with benefit of survivorship subject to the following provisions:

- a 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;
- b on the death of a joint holder, the survivor or survivors shall be the only person or persons recognised by the Manager as having any title to such Unit, but the Manager may require such evidence of death as it thinks fit;
- c any one of such joint holders may give notices and communications, including Withdrawal Notices or Switching Notices, execute a transfer of Units, or give effectual receipts for any Withdrawal Amount or distribution payable to such joint holders on behalf of all joint holders, but the Manager may require from time to time in respect of any Fund that all joint holders complete such documentation;
- d the Manager or the Supervisor may give or send to any one Joint Holder any confirmation information, statement, notice, payment or other communication and the giving or sending of any of the foregoing shall be deemed to have been given to all the joint holders;
- e to the extent permitted at law, at any meeting of Unit Holders, any one of the joint holders or their duly authorised nominee may vote either personally or by duly authorised representative or by attorney or proxy in respect of such Unit, provided that if more than one joint holder is so present then:
 - i on a poll, only the Person whose name stands first in the Register shall be entitled to vote in respect of such Unit; and
 - ii on a show of hands, only the Person who is only entitled to vote as a holder of the Unit and whose name stands first in the Register shall be entitled to vote in respect of the Unit,to the exclusion of the votes of the other joint holders; and
- f for the purposes of calculating a Fund's PIE tax liability and attributing such liability to joint Unit Holders and the allocation of PIE Income or losses and PIE Rebates, the Manager may in its absolute discretion either treat the Unit Holders as separate Unit Holders (in shares reflecting their legal interests), or treat the joint Unit Holders as a single Unit Holder with a Prescribed Investor Rate equal to the highest Prescribed Investor Rate of the joint Unit Holders. For listed PIE funds a PIE tax rate of 28% is applied regardless of the Prescribed Investor Rate of Unit Holders.

7 Issue Price and issue of Units²⁶

7.1 Issue price

Each Unit of any Fund shall be issued in accordance with clause 6.8 at the Issue Price on the Valuation Day for which the relevant application is effective in accordance with the relevant

²⁶ Section 135(1)(a) and (b) of the FMCA.

Establishment Deed. The 'Issue Price' of a Unit shall be the Unit Value effective for that Valuation Day plus Transaction Costs (if any) at the relevant time.

7.2 Number of Units²⁷

The number of Units sold or issued pursuant to an application shall be that number of Units (rounded down if necessary to such number of decimal places as the Manager determines from time to time) that have an aggregate Issue Price effective for the relevant Valuation Day equal to the application moneys (less applicable fees).

7.3 Application moneys subject to trusts

All application moneys received by or on behalf of the Manager in payment of the Issue Price for Units pursuant to clause 7.1 shall become subject to the trusts created by this Deed upon payment to the bank account of the relevant Fund but, for the avoidance of any doubt, those application moneys shall only become an Investment of the Fund upon the issue of the relevant Units.

8 Withdrawals²⁸

8.1 Withdrawal Notice

- a If any Unit Holder wishes to effect a withdrawal from a Fund, the Unit Holder shall give notice in writing, if the Manager permits by verbal communication (including by telephone) or by Electronic Communication ('Withdrawal Notice') to the Manager to that effect.
- b Such Withdrawal Notice shall specify either a monetary amount or the number of such Units in respect of which the Unit Holder desires to effect withdrawal (the 'Withdrawal Amount'), as well as the Fund or Funds from which the withdrawal is to be effected, and shall be in such form or comply with such specifications (if any) as may be prescribed by the Manager from time to time, and shall not be able to be revoked by the Unit Holder by whom it has been given once received by the Manager.

8.2 Minimum Value of Units

- a No Withdrawal Notice shall be given in respect of less than the Minimum Value of Units in the relevant Fund, and except where all Units held by a Unit Holder are to be redeemed, no Withdrawal Notice shall be given if the effect of the withdrawal would be that the Unit Holder who gave the same would hold less than the Minimum Value of Units in the relevant Fund. The Manager may at any time at its discretion waive the requirements of this clause 8.2a, either generally or in a particular case or cases.
- b Subject to the Relevant Requirements,²⁹ the Manager may from time to time determine a Minimum Value of Units applicable to a Fund or any Unit Holder within a Fund and where the number or value of Units held by a Unit Holder drops below that minimum, the Unit Holder is deemed to have made a Withdrawal Notice for those Units in accordance with clause 8.1.

²⁷ Section 135(1)(c) of the FMCA.

²⁸ Section 135(1)(a), (b), and (e) of the FMCA.

²⁹ NZX Main Board/Debt Market Listing Rule 8.5.

c Where:³⁰

- i a Unit Holder holds less than a Minimum Holding (as defined in the NZX Main Board/Debt Market Listing Rules);
- ii the Manager gives not less than three months' prior notice to that Unit Holder of the Manager's intention, at the expiry of that period, to sell or redeem the Unit Holder's Units; and
- iii at the expiration of that period, the Unit Holder holds less than the Minimum Holding,

the Manager shall have the right to sell (through NZX or in some other manner approved by NZX) or redeem such Units. If the Manager elects to redeem the Unit Holder's Units, the Unit Holder will be deemed to have made a Withdrawal Notice for those Units in accordance with clause 8.1, with such Withdrawal Notice to take effect on the expiration of the period specified under clause 8.2cii. If the Manager elects to sell the Unit Holder's Units, the Manager will account to the affected Unit Holder for the proceeds of sale after deduction of reasonable sale expenses.

8.3 Withdrawal Value

- a The 'Withdrawal Value' of a Unit shall be the Unit Value for the relevant Valuation Day for which the Withdrawal Notice is effective (as determined in accordance with the relevant Establishment Deed) less the applicable Transaction Costs.
- b Subject to the provisions of this Deed, the Withdrawal Amount must be paid within the period specified in the relevant Establishment Deed.

8.4 Redemption of Units

- a Subject to clauses 8.8 to 8.18 and clause 11.7 the Manager shall upon a Withdrawal Notice becoming effective (as specified in the relevant Establishment Deed) request the Supervisor to redeem the number of Units, or Units of aggregate Withdrawal Values at least equal to the Withdrawal Amount, as specified in the Withdrawal Notice. Any amount realised in excess of the required amount shall be paid to the Unit Holder with the Withdrawal Amount.
- b In connection with the redemption of Units referred to in clause 8.4a above, the Manager may in its discretion request the Supervisor to:
 - i pay the Unit Holder the Withdrawal Amount in Cash;
 - ii transfer to the Unit Holder Investments of the relevant Fund of a value equal to the Withdrawal Amount, with the Unit Holder and the Supervisor's prior agreement; or
 - iii if the Withdrawal Amount is 5% or more of the Net Asset Value of the Fund for the relevant Valuation Day, transfer to the Unit Holder Investments of the relevant Fund of a value equal to the Withdrawal Amount, without the Unit Holder and the Supervisor's agreement.

Where the Manager exercises its discretion in accordance with clause 8.4bii or 8.4biii, the Manager shall determine, in its sole discretion, which Investments held by the Fund

³⁰ NZX Main Board/Debt Market Listing Rule 8.5.

shall be transferred to the Unit Holder. In exercising its discretion to determine which Investments shall be transferred to the Unit Holder, the Manager shall treat all Unit Holders in an equitable manner by considering the interests of the Unit Holder requesting the withdrawal and all other remaining Unit Holders of the Fund. The Manager shall determine the value of any such Investments in accordance with the Market Value of the Investments less any Transaction Costs attributable to that transfer.

- c Subject to clause 8.19:
 - i the price payable to the Unit Holder for each redeemed Unit shall be the Withdrawal Value; and
 - ii the Market Value of any Investments transferred to the Unit Holder shall be equal to the Withdrawal Amount less any Transaction Costs attributable to that transfer as determined by the Manager in accordance with clause 8.4b.

8.5 Manager's obligation

Without limiting the generality of clauses 8.4 and 22.1 it is declared that the obligation of the Manager pursuant to clause 8.4 is not a personal obligation of the Manager, but is an obligation of the nature referred to in clause 22.1. The Manager is not obliged to offer to repurchase Units at any time.

8.6 Manager to direct Supervisor

In connection with redemption of Units under clause 8.4bi the Manager shall have the right:

- a to request the Supervisor to realise sufficient Investments of the relevant Fund pursuant to clause 23.4; and/or
- b subject to clause 19.4, to direct the Supervisor to Borrow on behalf of the relevant Fund pursuant to clause 19.1 a sufficient amount,

to provide the Withdrawal Amount in respect of the Units to be redeemed. Upon receipt of such a direction, subject to clause 23.5, the Supervisor shall forthwith realise Investments and/or Borrow moneys in accordance with that direction and shall hold the proceeds of such realisation and/or Borrowing for the purposes of the relevant Trust Fund.

8.7 Cancellation of Units redeemed

Units redeemed pursuant to this clause 8 shall cease to exist from the date of redemption and shall be deemed to be cancelled. The Manager shall make an appropriate entry on the relevant Register in respect of such cancellation.

8.8 Withdrawal Suspension Notice

If by reason of:

- a a decision to wind up one or more of the Funds;
- b the suspension of trading on any Exchange (whether generally or in respect of any specific Investment);
- c financial, political or economic conditions applying in respect of any financial market;
- d the nature of any investment; or

- e the occurrence or existence of any other circumstance or event relating to the relevant Fund or generally,

the Manager shall in good faith form the opinion that it is not practicable, or would be materially prejudicial to the interests of Unit Holders generally, for the Manager to give effect to Withdrawal Notices or Switching Notices, then the Manager may give notice ('**Withdrawal Suspension Notice**') to that effect to the Supervisor and to any Unit Holder of the relevant Fund who gives or has given a Withdrawal Notice or a Switching Notice to which effect has not been given.

8.9 **Effect of Withdrawal Suspension Notice**

A Withdrawal Suspension Notice in respect of any Fund shall have the effect of suspending the operation of all Withdrawal Notices and Switching Notices given in respect of that Fund until such time as the Manager gives to the Unit Holders who gave those Withdrawal Notices or Switching Notices notice that the Withdrawal Suspension Notice is cancelled, provided that the Manager must give that notice if the circumstances in clause 8.8 relating to that Withdrawal Suspension Notice cease to apply.

8.10 **Cancellation of Withdrawal Suspension Notice**

The Manager shall, unless the Supervisor otherwise agrees, give notice of cancellation of a Withdrawal Suspension Notice not later than three (3) months after the date upon which that Withdrawal Suspension Notice is given. The Supervisor will not unreasonably withhold its agreement to an extension of the operation of a Withdrawal Suspension Notice beyond that period of three (3) months. Unless extended in accordance with this clause, a Withdrawal Suspension Notice will be deemed to be automatically cancelled upon the expiration of that three (3) month period.

8.11 **Large withdrawals**

a If:

- i a Withdrawal Notice or Switching Notice; or
- ii a series of Withdrawal Notices and/or Switching Notices,

have been received within a period of three (3) months that in aggregate relate to more than 5% (or such other percentage as the Manager specifies from time to time by not less than 30 days' prior notice to Unit Holders and the Supervisor) of the number of Units on issue in the relevant Fund at the time of the Withdrawal Notice or Switching Notice, or last Withdrawal Notice or Switching Notice in such series then, notwithstanding clause 8.4, the Manager may determine that the redemption of such Units will be deferred.

- b Where the Manager determines to defer the redemption of Units pursuant to clause 8.11a, the Manager will give written notice to that effect to the affected Unit Holder or Unit Holders and the Supervisor, and may redeem affected Units:

- i progressively by instalments with effect from one or more Valuation Days falling in a period determined by the Manager (such period not to exceed 90 days without the approval of the Supervisor, such approval not be unreasonably withheld); and/or

- ii in total at the expiry of a period determined by the Manager (such period not to exceed 90 days without the approval of the Supervisor, such approval not to be unreasonably withheld),

as set out in that notice, and in any such case the Withdrawal Value is to be calculated as at the Valuation Day or Days on which Units are redeemed.

8.12 Calculation of Units to be redeemed

If a Withdrawal Suspension Notice is given and is later cancelled, then any Unit Holder who had given the Manager a Withdrawal Notice or Switching Notice affected by the Withdrawal Suspension Notice must either provide the Manager a new Withdrawal Notice in accordance with clause 8.1 or Switching Notice in accordance with clause 9.1 (or such other form as the Manager may determine from time to time) and the Withdrawal Value shall be calculated in accordance with clause 8.3.

8.13 Supervisor and Manager may side-pocket

Subject to Relevant Law, where the Manager considers that it is in the interests of the Unit Holders in a Fund or Funds generally to do so (for example, but without limitation, to address liquidity or pricing issues in relation to a particular Investment that might lead to the Manager giving a Withdrawal Suspension Notice in respect of that Fund or those Funds), the Manager may with the approval of the Supervisor, with effect from a particular date ('**SP Date**') without the agreement of, or consultation with, Unit Holders:

- a determine that particular Investments and Liabilities of a Fund or Funds should be quarantined in accordance with these clauses 8.13 to 8.18 ('**SP Investments and Liabilities**'); and
- b reclassify, divide or otherwise reconstruct the Units of Unit Holders in that Fund as at the SP Date so that those Units consist of:
 - i Units that relate to the Investments and Liabilities of the Fund that are not SP Investments and Liabilities ('**Non-SP Investments and Liabilities**'); and
 - ii Units that relate to the SP Investments and Liabilities ('**SP Units**'),all on a pro rata basis.

8.14 Special Arrangements

The provisions of this Deed will apply, with such modifications as are necessary, to the SP Investments and Liabilities and the SP Units as if the relevant Fund consisted solely of the SP Investments and Liabilities and the SP Units, provided that the Manager may, with the approval of the Supervisor, determine and apply special arrangements relating to the SP Investments and Liabilities and the SP Units ('**Special Arrangements**'). Without limiting the generality of the proviso to the previous sentence, the Special Arrangements may, subject to the Relevant Requirements, include:

- a arrangements preventing Unit Holders from giving Withdrawal Notices in relation to the SP Units;
- b arrangements for the treatment of Withdrawal Notices that remain outstanding as at a SP Date (including, without limitation, the cancellation of any such Withdrawal Notices);

- c arrangements preventing further Unit Holders from obtaining (including by way of issue) any Units in a Fund relating to the SP Investments and Liabilities;
- d arrangements for the realisation or discharge (as applicable) of the SP Investments and Liabilities;
- e arrangements relating to the distribution or application of the net proceeds of realisation of the SP Investments and Liabilities;
- f arrangements relating to the dissolution of the side-pocketing arrangement (including the cancellation of the SP Units);
- g arrangements relating to the fees and expenses associated with, and any further Liabilities that may be incurred in respect of, the SP Investments and Liabilities and the SP Units;
- h arrangements relating to the recovery of tax (including PIE Tax) from Unit Holders holding SP Units (including where applicable the recovery of tax relating to SP Investments and Liabilities from those Unit Holders by way of arrangements relating to Units (if any) held by such Unit Holders that relate to the Non-SP Investments and Liabilities) and the payment of the Fund's tax liabilities;
- i approval for treating SP Units held by Unit Holders as a different class of Units in the Fund;
- j arrangements that the Manager, after consultation with the Supervisor, considers appropriate in relation to the relevant Fund's status as a PIE; and
- k such other arrangements as the Manager, after consultation with the Supervisor, considers to be appropriate and in the interests of Unit Holders in the relevant Fund generally in relation to the side-pocketing arrangements contemplated by these clauses 8.13 to 8.18.

8.15 Special Arrangements to prevail

Where any conflict arises between the Special Arrangements and any other provision of this Deed, the Special Arrangements will prevail (other than those provisions setting out the Manager's duties to act in the interests of the Unit Holders generally and corresponding liability provisions).

8.16 Notice to Unit Holders

The Manager must give written notice to the Unit Holders holding Units in a Fund in relation to which side-pocketing has occurred under these clauses 8.13 to 8.18 as soon as reasonably practicable after the SP Date (which may be by publication of an announcement on NZX in accordance with clause 30.1aiv, if applicable). The notice must state that side-pocketing has occurred in relation to the Fund and include such other information as the Manager, in consultation with the Supervisor, considers necessary.

8.17 No new Fund created

For the avoidance of doubt, while the side-pocketing arrangements contemplated by these clauses 8.13 to 8.18 may involve the creation of a different class of Unit in a Fund, those arrangements operate within the affected Fund and do not create a new and separate Fund.

Unless required by the Relevant Requirements, the Manager need not prepare separate Financial Statements relating to the Non-SP Investments and Liabilities and the SP Investments and Liabilities provided that the Manager must prepare accounts in such form as necessary to provide adequate disclosure to Unit Holders.

8.18 **Fund's PIE status**

Where the relevant Fund is a PIE, these clauses 8.13 to 8.18 will take effect subject to clause 14.7 and must be read accordingly. In addition, these clauses 8.13 to 8.18 will not apply to any adjustment of Unit Holder interests under clause 14.7.

8.19 **Withdrawal fee**

The Manager may deduct and retain a withdrawal fee of up to 5% of any Withdrawal Amount.

9 Switching between Funds

9.1 **Switching Notice**

Any Unit Holder may at any time give a notice in writing, if the Manager permits by verbal communication (including by telephone), or by Electronic Communication ('**Switching Notice**') to the Manager to the effect that the Unit Holder wishes to withdraw Units from one Fund ('**Withdrawal Fund**') and invest the proceeds of such withdrawal in another Fund or Funds ('**Switch Fund**' or '**Switch Funds**').

9.2 **Form and contents of Switching Notice**

A Switching Notice shall:

- a specify either a monetary amount or the number of Units in the Withdrawal Fund in respect of which the Unit Holder desires to effect withdrawal;
- b specify the Switch Fund or Switch Funds, and, if more than one Switch Fund is specified, specify the proportions in which it is desired to invest in those Switch Funds;
- c not be able to be revoked by the Unit Holder by whom it has been given once received by the Manager (unless the Manager agrees);
- d be for not less than the Minimum Value of Units in the Withdrawal Fund or for a number of Units that would reduce the holding of the Unit Holder in the Withdrawal Fund to less than the Minimum Value of Units;
- e provide for investment in a Switch Fund of not less than the Minimum Value of Units applicable to that Fund from time to time; and
- f be in such form or comply with such specifications as may be prescribed by the Manager from time to time,

and the provisions of clause 8 shall apply to a Switching Notice as if it were a Withdrawal Notice in respect of Units in the Withdrawal Fund. The Manager may at any time at its discretion waive any applicable Minimum Value of Units, either generally or in a particular case or cases.

9.3 Switching

The Manager shall, subject to clauses 8.8 to 8.18 and 28.2 on the next Valuation Day after receipt of the Switching Notice procure that the number of Units, or Units in the Withdrawal Fund of aggregate Unit Values equal to the Withdrawal Amount, as specified in that Switching Notice, are dealt with in accordance with clause 8 and that the proceeds are applied in the acquisition of Units in the Switch Fund or Switch Funds at a price determined in accordance with clause 7 (as if the Switching Notice were an application in respect of those Units) and (if more than one Switch Fund is involved) in the proportions specified in the Switching Notice.

9.4 Right to decline switch

The Manager may decline to implement a switch in its sole discretion without providing any reason, including to the extent that the switch could or would result in a Fund losing its status as a PIE.

10 Transfer and transmission of Units³¹

10.1 Transfer generally

All or any of the Units held by any Unit Holder may be transferred by instrument in writing in accordance with clause 10.2 provided that, unless the Manager determines otherwise in its sole discretion:

- a Subject to clauses 10.1b and 28, any transfer of Units in a Fund pursuant to this clause 10 will be processed as a withdrawal of the number of Units to be transferred in accordance with clause 8 and a subsequent application for an equal number of Units in the relevant Fund in accordance with clause 6 provided that:
 - i the Manager's discretion to reject that subsequent application under clause 6.4 is subject to the provisions of the Relevant Requirements;³² and
 - ii if the Manager rejects the application under clause 6.4 the transfer request will be deemed to be cancelled (such that neither the Manager nor the Supervisor is under any obligation to give effect to the relevant withdrawal or subsequent application).
- b In processing any such transfer the Issue Price for each Unit issued pursuant to that transfer will be the Withdrawal Value per Unit of those Units redeemed to facilitate the transfer.

10.2 Instrument of transfer

A transfer of Units shall be in:

- a any common form which complies with the Relevant Requirements; or
- b subject to the Relevant Requirements, such other form as the Manager may approve from time to time.

10.3 Incomplete instruments

An instrument of transfer in writing that has not been properly completed shall be promptly returned to the person submitting it, for completion, and (subject to the Relevant

³¹ Section 135(1)(a) of the FMCA.

³² Section 379 of the FMCA.

Requirements and this clause 10) shall be registered when the errors or omissions have been rectified.

10.4 **Manager may decline transfers**

Subject to the Relevant Requirements, the Manager may decline to register any transfer:

- a which does not comply with the Relevant Requirements;
- b which is given in respect of less than the Minimum Value of Units in the relevant Fund;
- c if the effect of the transfer would be that the transferor or the transferee Unit Holder would hold less than the Minimum Value of Units in the relevant Fund;
- d during any period when the relevant Register is closed;
- e if such registration, together with the registration of any further transfer or transfers then held by the Manager and awaiting registration, would result in the proposed transferee or the transferor holding Units of less than the Minimum Holding (as that term is defined in the NZX Main Board / Debt Market Listing Rules);
- f which would or could result in a Fund losing its status as a PIE;
- g if the transferee is subject to any statutory, regulatory or other restrictions, ruling requirements or conditions that could detrimentally affect the Fund or its affairs, including restrictions under foreign securities laws.

The Manager may at any time at its discretion waive any applicable Minimum Value of Units, either generally or in a particular case or cases.

10.5 **Registration of transfers**

The instrument of transfer shall be left at the Office for registration, if required by the Manager. On being satisfied that the provisions of this clause 10 and all applicable statutory provisions have been complied with, and subject to clause 11.7, the Manager will register the transfer in the Register and provide any confirmations required by clause 12. No transfer shall be effective until entered in the relevant Register.

10.6 **Manager to retain instrument of transfer**

Every instrument of transfer of a Unit which is registered shall be retained by the Manager for such period as the Manager may determine (subject to the Relevant Requirements) but any instrument of transfer which the Manager may decline to register shall within ten (10) Business Days after the date on which the transfer is lodged with the Manager be returned to the person lodging that transfer.

10.7 **Suspension of registration**

Subject to the Relevant Requirements,³³ registration of transfers may be suspended at such times and for such periods as the Manager may from time to time determine provided that the Manager may not suspend registration of transfers for a period exceeding thirty (30) Business Days in any calendar year without the approval of the Supervisor (such approval not to be unreasonably withheld).

³³ NZX Main Board/Debt Market Listing Rule 11.1.

10.8 Transmission of Units of deceased Unit Holder

The executors or administrators of a deceased Unit Holder (not being one of several joint Unit Holders) shall be the only persons recognised by the Manager as having any title or interest in the Units held by such Unit Holder or Unit Holders. However, if that Unit Holder has sold or otherwise disposed of some or all of those Units and has delivered to the transferee a transfer of such Units and the transfer of Units is not registered before the death of the deceased Unit Holder, the Manager may register that transfer notwithstanding that the Manager at the time of such registration has notice of that Unit Holder's death.

10.9 Transfer by operation of law

The property manager of a Unit Holder who is subject to a Court order under the Protection of Personal and Property Rights Act 1998 and any person becoming entitled to any Units in consequence of the bankruptcy or liquidation of any Unit Holder may upon producing such evidence of capacity or of title as the Manager shall think sufficient be registered as the holder of such Units and subject to the provisions as to transfer contained in this clause 10 may transfer such Units. This provision shall apply in the case of a person who becomes entitled as a survivor of persons registered as joint holders.

10.10 Payment of sums owed a condition to transfer

No transfer of any Units can be registered unless the Unit Holder has paid all duties, taxes (including goods and services tax), and other commissions, fees, and charges (in cleared funds) in respect of the transfer of the relevant Units (and for the purposes of the NZX Main Board/Debt Market Listing Rules, the Manager shall be deemed to have a lien over those Units in respect of any such unpaid amounts).

11 Registers

11.1 Registers to be maintained

- a The Manager shall keep and maintain or cause to be kept and maintained an up-to-date separate Register of Unit Holders in respect of each Fund, which shall together form the Register of Unit Holders for the Scheme.
- b Each Register shall take the form and be compiled in the manner required by the Relevant Requirements.³⁴
- c The Manager will at the request of the Supervisor provide the Supervisor with a copy of the Register.

11.2 Content of Registers

Each Register shall contain:

- a the content required by the Relevant Requirements;³⁵
- b the Tax File Number and Prescribed Investor Rate of each Unit Holder; and
- c any other particulars that the Manager may consider to be desirable, or that are required by law to be kept.

³⁴ Sections 215 to 226 of the FMCA; NZX Main Board/Debt Market Listing Rule 7.11.5.

³⁵ Section 217 of the FMCA.

11.3 Audit of the Register

The Manager shall cause the Register of Unit Holders for each Fund to be audited by the Auditor in accordance with the FMCA, provided that if the audit is carried out in accordance with regulation 110 of the FMC Regulations, the Supervisor may from time to time require the Manager to obtain an audit of the Register of Unit Holders for each Fund in accordance with regulation 109 of the FMC Regulations.³⁶

11.4 Changes of name or address

Any change of name or address of any Unit Holder shall be notified by such Unit Holder in writing to the Manager who shall alter the Register accordingly.

11.5 Inspection

Unit Holders of any Fund shall be entitled to rights of inspection and copies of the Register as may be conferred on them by the Relevant Requirements³⁷ or otherwise by relevant law from time to time.

11.6 Reliance upon Register

Each of the Manager and the Supervisor shall be entitled:

- a to rely absolutely on each Register as being correct;
- b subject to relevant law, for all purposes to treat a person whom it believes to be the person entered on a Register as the holder of any Units as the legal and beneficial owner of those Units without further enquiry; and
- c to effect transfers, redemptions, or other dealings of any nature with Units on the basis of the information recorded in the Register without requiring production of any form of confirmations or other evidence of ownership that may have been issued from time to time in respect of those Units.

11.7 Evidence of entitlement

Notwithstanding clause 11.6, the Manager shall be entitled, at its absolute discretion, before giving effect to any transfer, redemption, or other dealing with any Units to require the production to the Manager of evidence satisfactory to it in its discretion that the person seeking to effect such dealing is the person named in the relevant Register as the holder of the Units in question or the personal representative of the holder of the Units in question. If confirmations have been provided in respect of the Units in question, such evidence may (but need not) be the production by that person of a confirmation relating to those Units.

11.8 No notice of trust etc

Except as required by the Relevant Requirements and any other applicable legislation neither the Manager nor the Supervisor shall be bound to see to the performance of any trust (express, implied, or constructive) or of any 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 Unit Holder, and

³⁶ Sections 218 and 219 of the FMCA and Regulations 108 to 110 of the FMC Regulations.

³⁷ Sections 221 to 226 of the FMCA and Regulations 111 and 112 of the FMC Regulations.

accordingly no notice of any trust (expressed, implied, or constructive), charge, pledge, or equity shall be entered upon any Register.

12 Confirmations

12.1 Manager to provide required confirmations and may provide other confirmations

- a Where required by the Relevant Requirements, the Manager shall issue confirmations recording the issue, transfer, or redemption of Units in a Fund, in such form and manner, and within such time frames as the Manager shall decide, subject to the Relevant Requirements and any applicable legislation.³⁸
- b In addition to the provision of confirmations under clause 12.1a, the Manager may provide confirmations recording the issue, transfer, or redemption of Units, in such form and manner, and within such time frames as determined by the Manager, even if it is not required to do so by the Relevant Requirements.

12.2 Confirmation not evidence of title

A confirmation shall not constitute evidence of the title of the person named therein to the Units referred to therein. The Manager and the Supervisor shall in accordance with clause 11.6c be free to effect any dealing with Units on the basis of information contained in the relevant Register without requiring production of a confirmation provided in respect of those Units, and shall be entitled to provide a fresh confirmation for Units without requiring the production or surrender of any previous confirmation in respect of the same Units.

13 Qualifications of Manager³⁹

13.1 Qualifications of Manager

The Scheme and each Fund must have a manager, who must be entitled:

- a in accordance with the FMCA; and⁴⁰
- b otherwise by law,

to act as the manager of the Scheme and each Fund.

At least two directors of the manager must be ordinarily resident in New Zealand.⁴¹

14 Manager's duties, responsibilities, and powers

14.1 Manager's responsibilities

- a The Manager is designated as the manager of the Scheme and each Fund for the purposes of the FMCA and is responsible for performing the functions for which responsibility is attributed to it as manager under the Relevant Requirements.⁴²
- b Each Trust Fund and each Fund shall be managed by the Manager and the Manager hereby agrees to carry out, comply with, and perform the duties and obligations on its

³⁸ Section 100 of the FMCA and Regulations 65 to 68 of the FMC Regulations; NZX Main Board/Debt Market Listing Rule 11.2.

³⁹ Section 135(1)(h) of the FMCA.

⁴⁰ Sections 127(1)(c) and (e) and 135(1)(h) of the FMCA.

⁴¹ NZX Main Board/Debt Market Listing Rule 3.3.1(b)

⁴² Sections 133 and 142 of the FMCA.

part contained in this Deed, the Relevant Requirements (including, for so long as Units in one or more Funds are quoted on any Exchange, the Rules),⁴³ and any other applicable legislation, and to observe and perform the manager obligations under this Deed and the Relevant Requirements.

- c Nothing contained in this Deed shall be construed to prevent the Manager and the Supervisor in conjunction or the Manager or the Supervisor separately from establishing or acting as manager, trustee, or supervisor for trusts whether of a nature similar to or different from the trusts of this Deed.

14.2 Prime services of the Manager

Without limiting the generality of clause 14.1, the prime services of the Manager in respect of the Scheme and each Fund shall be the issuing and redeeming of Units, investment of the Trust Fund of each Fund, and processing related cash flows. All other services of the Manager carried out pursuant to this Deed shall be regarded as necessary incidents of the Manager carrying out those prime services, except where an additional service in respect of the relevant Fund is separately agreed between the Manager and the Supervisor.

14.3 Manager's powers

Without prejudice to prime services of the Manager being as described at clause 14.2, the Manager shall in the performance of its functions under clause 14.1 and the Relevant Requirements,⁴⁴ manage and administer the Scheme and each Fund for the benefit of Unit Holders relating to the relevant Fund with full and complete power of management. In particular, the Manager shall take all steps which in its discretion are necessary or desirable, and for or in connection with the investigation of or negotiation for, the acquisition or the disposal of, and all other dealings in relation to, the assets and Liabilities of each Fund. The Manager shall, without limiting the Manager's discretion and full powers of management and administration but subject to clauses 15, 23.5, and the Relevant Requirements⁴⁵ have full and absolute power to do the following:

- a manage and make all decisions in relation to the acquisition and disposal of Authorised Investments upon such terms as it sees fit;
- b attend and vote at meetings relating to any Investment;
- c lend money, provided that where the lending does not relate to an Authorised Investment, the Manager may only lend with the consent of the Supervisor, such consent not to be unreasonably withheld or delayed;
- d instruct solicitors and other advisers to act in relation to an Authorised Investment or proposed acquisition or disposal of an Authorised Investment;
- e make and carry out any takeover proposal, offer, or invitation;
- f promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Manager considers fit;
- g create, grant, renew, alter, or vary any mortgage, charge, or other encumbrance over all or any assets for any purpose whatsoever, subject to clause 19.4 where Borrowings of

⁴³ Sections 143 to 151 of the FMCA and NZX Main Board/Debt Market Listing Rule 3.1.1(c).

⁴⁴ Section 142 of the FMCA.

⁴⁵ NZX Main Board/Debt Market Listing Rule 8.4, 9.1, and 9.2.

the Supervisor are involved, and upon such terms and conditions as the Manager may in its absolute discretion think fit;

- h initiate or agree to any one or more of the following:
 - i the release, modification, or variation of any rights, privileges, or liabilities of or in relation to any Authorised Investments;
 - ii the rearrangement or reconstruction of any corporation including any increase or reduction in the capital of the corporation;
 - iii the amalgamation or merger of any corporation with any other corporation;
 - iv the sale or other disposition of all or any part of the property or undertaking of any corporation; and
 - v the sale or other disposition of all or any part of the property or undertaking of any corporation;
- i enter into any arrangements with any government, public body, or authority to obtain any rights, authorities, or concession, or clearances and to give any undertakings binding upon the Manager either generally or on conditions as the Manager deems fit and to carry out, exercise, and comply with any of the same;
- j acquire and accept for any Fund any equity of redemption;
- k participate in the rights and obligations including obligations to contribute in any manner to the liabilities of the parties under any partnership agreement or joint venture agreement relating to Authorised Investments or to act as the operator or one of the operators under any such agreement which relates to Authorised Investments;
- l enter into, perform, and enforce agreements;
- m institute, prosecute, compromise, and defend legal proceedings;
- n pay all outgoings connected with any Fund or this Deed or which are not otherwise payable by the Manager; and
- o take all steps necessary to convert a Fund to a PIE or terminate a Fund's PIE status (as the case may be) and conduct all necessary administration to that end and consequent upon it, where the Manager, with the consent of the Supervisor, has determined that a Fund should become or cease to be a PIE.

In exercising the above powers, the Manager shall act in accordance with the terms of this Deed and the Relevant Requirements.

14.4 Manager's powers in respect of Unit pricing errors or non-compliances

The Manager has the powers to:

- a alter a Unit Holder's Unit holding to address partly or entirely the impact of any Unit pricing error⁴⁶ provided such alteration does not adversely affect the relevant Unit Holder's Unit holding or the position of other Unit Holders, as compared with the position

⁴⁶ Section 168(2) of the FMCA.

such Unit Holder or Unit Holders would have been in had the Unit pricing error not occurred; and

- b correct Unit pricing errors or non-compliances with a Unit pricing methodology for Units in a Fund to the extent required by the FMCA, provided that:
 - i where (after all relevant Unit adjustments and set offs have been made under paragraph a or otherwise) the amount of any reimbursement or compensation required is less than the amount determined on a case-by-case basis by the Manager based on industry guidelines which factor in the size of the error, the type of error, the frequency of the error and the administration costs of paying compensation, then no reimbursement or compensation shall be required to be provided; and⁴⁷
 - ii the Manager will notify the Supervisor of the proposed compensation (including the calculation methodology) of a Unit pricing error at least five days prior to compensation being paid to a Unit Holder.

14.5 Delegation by Manager generally

Without in any way affecting the generality of clause 14.1 the Manager may in carrying out and performing the duties and obligations on its part which are contained in this Deed and subject to the Manager remaining liable for the acts and omissions of any delegate whether or not the delegate is acting within the terms of its delegated authority:⁴⁸

- a delegate all or any of its powers, authorities, functions, and discretions exercisable under this Deed whether or not requiring the Manager's judgment and discretion, to its officers and employees or to any other Person nominated by the Manager;
- b by power of attorney appoint any Person in any part of the world to be attorney or agent of the Manager for such purposes and with such powers, authorities, and discretions (not exceeding those vested in the Manager) as it thinks fit with power for the attorney or agent to sub-delegate any such powers, authorities, or discretions; and
- c appoint any Person in any part of the world:
 - i to be an agent, investment manager, sub-manager or co-ordinator, arranger or supervisor of any investment manager or sub-manager in respect of the Investments or any of them of any Fund and confer upon and delegate to such Person all or any of the powers, authorities or discretions of the Manager under this Deed or in respect of any Fund (including power for such Person to sub-delegate);
 - ii as an administration manager to assist with the administration and management of the Scheme or a Fund (including registry functions);
 - iii as an expert for the provision of services relevant to the Scheme or a Fund.

Subject to clause 15 in relation to Related Party Benefits, any such appointment shall be upon such terms (including as to the fees payable and extent to which expenses will be reimbursed) as the Manager may in its discretion determine, and the Manager may enter

⁴⁷ Section 168 of the FMCA and Regulation 99 of the FMC Regulations.

⁴⁸ Section 146 of the FMCA.

into agreements or deeds on such terms as it determines recording the terms of any such appointment.⁴⁹

14.6 Exercise of voting rights by Manager

All rights of voting conferred by the Investments of a Fund shall be exercised in such manner as the Manager may determine and neither the Supervisor nor any Unit Holder shall have any right to interfere therein and the Supervisor shall from time to time execute and deliver or cause to be executed or delivered to the Manager or its nominee such proxies or powers of attorney as the Manager may request. Neither the Supervisor nor the Manager shall be under any liability or responsibility in respect of any vote or action taken or consent given by the Manager in person or by proxy or attorney and none of the Supervisor, the Manager, or the holder of any such proxy or power of attorney shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval given or withheld by the Supervisor, the Manager, or by the holder of such proxy or power of attorney 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.

14.7 Withholding taxes and adjustments for tax

- a If the Manager or the Supervisor is obliged or permitted by law to make any deduction or withholding on account of taxes from any payment to be made to a Unit Holder in respect of any Fund, the Manager or Supervisor (as the case may be) shall make such deduction or withholding and pay such amount to the Commissioner of Inland Revenue or other taxing authority or to the relevant Fund on account of PIE Tax on Income attributed to that Unit Holder, as the case may be. On payment of the net amount to the relevant Unit Holder and the amount deducted or withheld to the tax authorities or to the relevant Fund on account of PIE Tax on Income attributed to that Unit Holder, the full amount payable to the relevant Unit Holder shall be deemed to have been duly paid and satisfied.
- b Unit Holders' interests in any Fund or rights arising from those interests in the Fund may be adjusted by issue or cancellation of Units or by deduction from any payment or distribution to a Unit Holder at times determined appropriate by the Manager with the approval of the Supervisor to pay or provide for PIE Tax and to provide the benefit of PIE Rebates to Unit Holders.

15 Related Party Benefits

15.1 General prohibition on Related Party Benefits

The Manager and any Related Party must not enter into a transaction that provides for a Related Party Benefit to be given, except as permitted by the Relevant Requirements.⁵⁰

15.2 Notice to Supervisor

The Manager must give notice to the Supervisor in respect of any transaction which provides for a Related Party Benefit in accordance with the Management Agreement.

⁴⁹ Sections 135(1)(f), 146 and 172 to 175 of the FMCA.

⁵⁰ Sections 172 to 175 of the FMCA and regulations 100 to 105 of the FMC Regulations, and NZX Main Board/ Debt Market Listing Rule 9.2 and 9.3.

15.3 Effect of permitted benefit

- a Neither the Manager nor any such Related Party shall be liable to account to the Supervisor or any Unit Holder for any profit arising from any transaction permitted by the Relevant Requirements.⁵¹
- b A failure to comply with clause 15.1 does not affect the validity of a transaction (subject to any Court order to the contrary).⁵²

16 Remuneration of the Manager⁵³

16.1 Management Fees

The Manager shall be paid out of the Trust Fund of each Fund a fee not exceeding 2% plus any GST per annum of the Gross Asset Value of the relevant Fund as determined by the Manager from time to time for the prime services of the Manager referred to in clause 14.2.

16.2 Manager's entitlements

Subject to clause 16.1, the Manager shall be entitled:

- a at any time and from time to time to increase the amount of the Management Fee in respect of any Fund by giving at least one (1) month's prior notice to that effect to all Unit Holders of that Fund and the Supervisor;
- b at its sole discretion at any time and from time to time to waive or reduce the Management Fee either generally or in relation to a particular Fund or Funds or Unit Holder or category of Unit Holders or Transaction; and
- c to receive, in addition to the Management Fee, any value added tax or duty or similar tax payable in respect of such fee including GST.

16.3 Fees calculated on a daily basis

The Management Fee shall be calculated and accrued daily on the basis of the Gross Asset Value of each Fund from day to day (or on such other basis as the Manager and the Supervisor may agree from time to time in respect of any Fund) and paid monthly in arrears.

16.4 Performance Fee

In addition to the Management Fee payable under clause 16.1, the Manager may charge a performance fee in respect of any Fund, plus any GST, as specified in the relevant Establishment Deed ('Performance Fee'). If a Performance Fee is charged, the Manager may amend the basis or amount of the Performance Fee at any time and from time to time in respect of any Fund by giving at least one (1) month's prior notice to that effect to all Unit Holders of that Fund and the Supervisor.

16.5 Disclosure of fees

Fees payable pursuant to this clause 16 shall be recorded in any relevant Disclosure Document issued by the Manager in accordance with the Relevant Requirements.

⁵¹ Sections 172 to 175 of the FMCA and regulations 100 to 105 of the FMC Regulations.

⁵² Section 173(6) of the FMCA.

⁵³ Section 135(1)(f) of the FMCA.

17 Removal and retirement of Manager

17.1 Removal

- a The Manager shall cease to hold office as manager of the Scheme and the Funds if:⁵⁴
- i the Manager is substituted by the High Court under section 209 of the FMCA (where applicable) or by such other means as may at any relevant time be prescribed by law;
 - ii the Manager is removed by written direction of the Supervisor after the Supervisor certifies that it is in the best interests of the Unit Holders that the Manager be removed;
 - iii the Manager is removed by the Supervisor in respect of a Fund in circumstances where:⁵⁵
 - A the Manager is in breach of its obligations under this Deed; and
 - B the Manager fails to carry out its duties to the satisfaction of the Supervisor; or
 - C the Supervisor considers that it is in the interest of Unit Holders to do so; or
 - D the Manager is wound up (other than for the purposes of amalgamation or reconstruction while solvent) or a receiver is appointed in respect of the Manager; or
 - iv the Manager is removed by a Special Resolution of the Unit Holders of the Scheme.
- b If the Manager ceases to hold office pursuant to clause 17.1a, the Manager and any delegate of the Manager shall immediately desist from all activities related to the Scheme and the Funds unless the Supervisor agrees to the contrary.⁵⁶

17.2 Retirement

The Manager may retire as manager of the Scheme and the Funds without giving any reason upon giving ninety (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 as referred to in clause 17.5.

17.3 Temporary Manager

The power to appoint a temporary manager under the FMCA⁵⁷ shall apply upon the occurrence of a vacancy in the office of manager of the Scheme.

17.4 Replacement Manager

The Supervisor shall, upon a vacancy in the office of Manager occurring, summon a meeting of Unit Holders and shall take such steps as that meeting or any subsequent meeting of Unit Holders may require to secure the appointment of a new permanent manager of the Scheme

⁵⁴ Sections 185, 209 and 210 of the FMCA.

⁵⁵ NZX Main Board/Debt Market Listing Rule 5.1.9, Appendix 10.

⁵⁶ Section 185(4) of the FMCA.

⁵⁷ Sections 186, 187, 189, and 191 of the FMCA.

and the Funds (which may, for the avoidance of doubt but subject to the FMCA,⁵⁸ be any temporary Manager appointed pursuant to clause 17.3).

17.5 Retiring Manager released

A new Manager appointed pursuant to clause 17.4 shall forthwith upon such appointment execute a deed in such form as the Supervisor may require whereby the new Manager undertakes to the Supervisor and Unit Holders to be bound by all the covenants on the part of the Manager hereunder from the date of such appointment. Subject to the Relevant Requirements,⁵⁹ 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 new Manager had been originally named as a party hereto.

17.6 New manager to lodge notice of change

The new Manager must lodge a notice of change of Manager with the Registrar of Financial Service Providers in accordance with the FMCA.⁶⁰

17.7 Former manager must hand over records and give reasonable assistance

A former manager must hand over records and give reasonable assistance to the new manager in accordance with the requirements of the FMCA.⁶¹

17.8 Former manager's entitlements

Subject to any order of the Court, nothing in this clause 17 shall prevent the former Manager from receiving payment or a benefit which has reasonably and properly accrued to the former Manager pursuant to the terms of this Deed or by applicable legislation prior to the date of or arising on the former Manager's retirement or removal from office.⁶²

17.9 Supervisor consent to change in Manager and terms of appointment

Notwithstanding any other provision of this Deed, but subject to the Relevant Requirements, any change in the Manager, or the terms of the appointment of the Manager, shall be subject to the approval of the Supervisor.⁶³

17.10 Protection of Salt name

No person other than Salt Investment Funds Limited or Salt Funds Management Limited (including the Supervisor, any Custodian, the Auditor, a Unit Holder, a new or temporary Manager, or any other person) shall be deemed to have acquired through an interest in any Fund or otherwise any right to the use of, or any goodwill in, the word "Salt". Notwithstanding any other provision of this Deed, if Salt Investment Funds Limited or any other company nominated by Salt Investment Funds Limited ceases for any reason to be the Manager of a Fund then (except to the extent that Salt Investment Funds Limited otherwise agrees in writing):

⁵⁸ Section 189 of the FMCA.

⁵⁹ Section 191 of the FMCA.

⁶⁰ Section 192 of the FMCA.

⁶¹ Section 190 of the FMCA.

⁶² Section 191 of the FMCA.

⁶³ NZX Main Board/Debt Market Listing Rule 5.1.9, Appendix 10.

- a the name of the relevant Scheme and Fund (and any Custodian which uses the word "Salt" in its name) shall be a name arrived at by removing the word "Salt"; and
- b the Supervisor and the Manager shall each ensure that, as soon as practicable after the date of such cessation, the word "Salt" does not appear in any documents, publications, or advertisements relating to the relevant Fund or the Scheme, and that all Registers and records are amended to record that change.

18 Qualifications of Supervisor

18.1 Qualifications of Supervisor

The Scheme must have a single supervisor who must be a person entitled by law to act as the supervisor of the Scheme.⁶⁴

19 Supervisor's powers and duties

19.1 Supervisor's general powers and duties

The Supervisor shall have the powers conferred on it by the FMCA (including the power to engage advisers or experts⁶⁵), and when exercising its powers and performing its functions and duties as supervisor of the Scheme, it must comply with its duties under the FMCA.⁶⁶

19.2 Supervisor's power to appoint Custodians and Sub-Custodians

- a The Supervisor may, subject to obtaining the prior written approval of the Manager (which shall not be unreasonably withheld), appoint in writing any one or more persons in which any of the Investments or property of the Trust Fund of any Fund are to be vested (each a 'Custodian'), where the Custodian:⁶⁷
 - i is a body corporate that the Supervisor believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Investments and other property; and
 - ii is not the Manager or an Associated Person of the Manager.
- b If authorised in writing by the Supervisor (subject to obtaining the prior written approval of the Manager, which shall not be unreasonably withheld), a Custodian may itself appoint one or more persons (each a 'Sub-Custodian') in which any of the Investments or property of the Trust Fund of any Fund which would otherwise be held by the Custodian are to be vested where the Sub-Custodian:
 - i is a body corporate that the Custodian believes, on reasonable grounds, to be appropriate to hold, and safeguard, the Investments and other property; and
 - ii is not the Manager or an Associated Person of the Manager.
- c If a person contracts the holding of Investments and other property to another person (in this clause, the 'nominee') under this clause 19.2 the person contracting out that function:

⁶⁴ Section 127(1)(d) and (e) of the FMCA.

⁶⁵ Section 155 of the FMCA.

⁶⁶ Sections 152 to 155 and 160 of the FMCA.

⁶⁷ Sections 127(1)(f) and 156 of the FMCA.

- i shall take all reasonable steps to:
 - A ensure that the function is performed by the nominee in the same manner and subject to the same duties and restrictions as if the person were performing it directly;⁶⁸
 - B monitor the performance of that function; and
 - C ensure that the nominee complies with sections 157 to 160 of the FMCA; and
- ii is jointly and severally liable with the nominee (and any other person who has contracted out the function) for the due and faithful performance of that function in accordance with paragraph i.
- d If the Manager agrees the fees and expenses of a Custodian or Sub-Custodian may be payable out of the Investments and other property of the relevant Fund and shall be as agreed between the Supervisor, Manager, and the Custodian or Sub-Custodian from time to time provided that those fees are determined on an arm's-length basis.⁶⁹

19.3 Supervisor's power to Borrow

Subject to clauses 15, 19.4, 19.5, and 23.5 and unless prohibited by the relevant Establishment Deed the Supervisor has the power to and must, if so directed by the Manager:

- a Borrow and raise money for any of the purposes of any Fund, on such terms and conditions as the Manager and the Supervisor think fit; and
- b mortgage, charge, pledge, or otherwise create a security interest over all or any of the assets of any Fund,

and no lender shall be concerned to enquire as to whether the necessity for any such Borrowing has arisen or as to the purpose for which it is required or as to the application of the money Borrowed.

19.4 Limitations on Borrowings

The following restrictions on the power to Borrow conferred by clause 19.1 apply:

- a the aggregate of the principal moneys Borrowed and outstanding from time to time in respect of any Fund may not exceed the limitation on Borrowings set out in the relevant Establishment Deed; and
- b Borrowings shall only be entered into or made where the Manager in good faith determines that the Borrowing is necessary or desirable for the sole purpose of conducting the operation of the Trust Fund of any Fund pursuant to this Deed, including to provide liquidity for the redemption of any Units from time to time.

The Supervisor and any lender may rely upon a certificate given by the Manager as to any determination made under this clause 19.4 without further enquiry.

⁶⁸ Sections 157 to 159 of the FMCA.

⁶⁹ Section 135(1)(f) of the FMCA.

19.5 Conditions of Borrowing

There is no obligation upon the Supervisor to comply with any direction given pursuant to clause 19.1 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 the Investments of any Fund shall not be or become liable in respect of Borrowing made by or on behalf of another Fund;
- c any loan security or other obligations binding on the Supervisor does not impose any unreasonable obligation upon the Supervisor; and
- d there is or will be compliance with clause 19.4.

19.6 Third parties need not enquire

No Person lending or advancing moneys to the Supervisor in respect of a Fund or completing documents or securities in respect of any such Borrowing need to enquire as to whether or not the limitations set out at clause 19.4 or 19.5 have been observed or complied with.

20 Remuneration of the Supervisor

20.1 Remuneration basis⁷⁰

The Supervisor shall be paid out of the Trust Fund of each Fund a fee not exceeding 0.075% plus any GST per annum of the Gross Asset Value of that Fund as agreed upon with the Manager from time to time for its services as supervisor of the relevant Fund.

20.2 Supervisor's entitlements

The Supervisor shall be entitled:

- a to receive, in addition to the Supervisor fee and any special fees payable under clause 20.4, any value added tax or duty or similar tax payable in respect of such fees including GST;
- b to:
 - i a minimum fee, spread in an equitable manner across all of the Funds that are offered to retail investors for the purposes of the FMCA of \$20,000 plus any GST per annum; and
 - ii a minimum fee, spread in an equitable manner across all of the Funds that are not offered to retail investors for the purposes of the FMCA of \$15,000 plus any GST per annum,

notwithstanding the fee set out in clause 20.1; and/or

⁷⁰ Section 135(1)(f) of the FMCA.

- c subject to the maximum fee set out in clause 20.1, to review its fee on an annual basis, and to increase its fee with the agreement of the Manager by giving at least one (1) month's prior notice to that effect to all Unit Holders of that Fund.

20.3 Fee calculated on a daily basis

The fee referred to in clause 20.1 shall be calculated and accrued daily on the basis of the Gross Asset Value of each Fund from day to day (or on such other basis as the Manager and the Supervisor may agree from time to time in respect of any Fund) and paid quarterly in arrears and on the date of termination of the period of the relevant Fund.

20.4 Special fees

In addition to any fees payable to the Supervisor under clause 20.1, the Supervisor is entitled to charge, in respect of each Fund, such special fees for services of an unusual or onerous nature outside the Supervisor's regular services (including by way of example, convening meetings of Unit Holders, breaches of trust and exercising discretions), as the Manager and the Supervisor may agree upon from time to time.

20.5 Supervisor's expenses⁷¹

Notwithstanding clauses 20.1 and 20.2, in consideration of the Supervisor agreeing to act as supervisor of the Scheme, but except to the extent such expenses are reimbursed to the Supervisor directly by the Manager, the Supervisor shall be entitled to deduct from the relevant Trust Fund the Supervisor's reasonable legal expenses in respect of the preparation and on-going advice in respect of this Deed, including, without limitation, convening meetings, attendances at meetings, modification of this Deed, waiver of breaches, and winding up any Fund.

21 Removal and retirement of Supervisor⁷²

21.1 Removal generally

Subject to clause 21.3, the Supervisor may be removed from office as supervisor in accordance with the FMCA.⁷³

21.2 Retirement

Subject to clause 21.3 and any restrictions prescribed by law, the Supervisor may retire at any time without assigning any reason upon giving ninety (90) days' notice in writing to the Manager of its intention to do so. The Supervisor shall not be entitled to retire as supervisor of only some of the Funds, and if it elects to retire, shall do so in respect of all of the Funds.

21.3 Restrictions on removal or retirement

Subject to the FMCA, no removal or retirement under clauses 21.1 or 21.2 will take effect unless:

- a one of the following applies:⁷⁴

⁷¹ Section 135(1)(f) of the FMCA.

⁷² Section 135(1)(g) of the FMCA.

⁷³ Section 193(1) of the FMCA.

⁷⁴ Section 193(2) of the FMCA.

- i all functions and duties of the position have been performed;
 - ii another licensed supervisor has been appointed, and accepted the appointment, in its place; or
 - iii the High Court consents;
- b any new supervisor has executed the deed referred to in clause 21.5; and
 - c all of the Investments and all other property or assets of any nature of the Funds have been transferred to the new supervisor, or a custodian(s) which holds all such Investments, property, or assets has acknowledged in its capacity as custodian for the Funds that it is acting for the new supervisor.

21.4 Appointment of new Supervisor

The power of appointing a new Supervisor of the Funds (in place of a Supervisor which has retired pursuant to clause 21.2 or been removed from office pursuant to clause 21.1) shall be vested in the Manager. If the Manager fails or refuses to appoint a new Supervisor within 30 days of the retirement or removal (as applicable) of the former Supervisor taking effect, such new Supervisor may be appointed by a Special Resolution at a meeting of Unit Holders of all Funds. The Funds shall be wound up if a new Supervisor is not appointed within two months of the vacancy occurring.⁷⁵

21.5 Retiring Supervisor released

A new Supervisor appointed pursuant to clause 21.4 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 Unit Holders to be bound by all the covenants on the part of the Supervisor hereunder from the date of such appointment. From that 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 new Supervisor had been originally named as a party hereto.

22 Supervisor's and Manager's indemnities

22.1 Supervisor and Manager in representative capacity

The Supervisor and the Manager, in incurring any debts, liabilities, or obligations or in taking or omitting any other action pursuant to this Deed for or in connection with the affairs of any Fund, are each, and shall each be deemed to be, acting for and on behalf of the Unit Holders in that Fund and not in their own respective capacities.

22.2 No personal liability

Neither the Manager nor the Supervisor shall be under any personal liability, nor shall resort be had to their own property, for the satisfaction of any obligation or claim arising out of or in connection with any contract or other obligation of any Fund, and that Fund only shall be liable or subject to execution.

⁷⁵ NZX Main Board/Debt Market Listing Rule 5.1.9, Appendix 10.

22.3 Indemnity

If contrary to the provisions of clauses 22.1, 22.2, and 22.6, but subject to clause 22.4 and the indemnity limitations under the FMCA,⁷⁶ either the Manager or the Supervisor shall be held personally liable to any other person in respect of any debt, action taken or omitted in connection with a Fund, or liability or obligation incurred by or on behalf of any Fund, including in respect of the establishment of any Fund, then the Manager or the Supervisor (as the case may be) shall be entitled to be indemnified out of that Fund, to the full extent of such liability and the costs of any litigation or other proceedings in which such liability shall have been determined. If the relevant liability relates to more than one Fund then the associated costs shall be payable from those Funds in accordance with clause 22.7.

22.4 Liability for default

Subject to clause 22.10 and subject to the indemnity limitations under the FMCA, neither the Manager nor the Supervisor shall be liable to any Fund or to any Unit Holder as a result of acting as Manager or Supervisor (as the case may be) under this Deed or for any act or omission or be subject to any liability whatsoever at law or in equity in connection with the affairs of any Fund.

22.5 Reimbursement

Without limiting the generality of the indemnity provided at clause 22.3 but subject to the indemnity limitations under the FMCA,⁷⁷ the Manager and the Supervisor shall each be entitled to be reimbursed out of each Fund for all direct and indirect expenses, losses, costs or liabilities incurred by them respectively in or about acting as Manager or Supervisor (as the case may be) under this Deed. Without prejudice to the generality of the foregoing the Manager and the Supervisor shall be entitled to be indemnified against:⁷⁸

- a any expense or liability which may be incurred by the Manager or the Supervisor (as the case may be) in bringing or defending any action or suit in respect of any Fund or the provisions of this Deed;
- b all costs, charges, disbursements, and expenses incurred in connection with the acquisition, registration, custody, disposal of, or other dealing with an Authorised Investment, including commission, bank charges, and stamp duty;
- c all income tax other than PIE tax recovered from Unit Holders, capital gains tax, stamp duties, financial institutions duties, and bank account debits, or any other duty or impost properly charged to or payable by the Manager or the Supervisor (whether by any taxing authority or any other person) in connection with the Trust Fund of any Fund;
- d costs of postage in respect of all cheques, accounts, distribution statements, notices, reports, and other documents posted to all or any Unit Holders;
- e costs of convening and holding any meeting of Unit Holders;
- f costs of preparing and printing accounts, distribution statements, cheques, and all other documents required to be prepared in connection with any Trust Fund, pursuant to this Deed or any relevant law;

⁷⁶ Sections 135(1)(f) and 136(1)(b) of the FMCA.

⁷⁷ Sections 135(1)(f) and 136(1)(b) of the FMCA.

⁷⁸ Section 135(1)(f) of the FMCA.

- g the costs of the preparation and execution of this Deed including the fees of solicitors and other advisers;
- h fees and expenses of the Auditor or any auditor, any solicitor, barrister, computer expert, or other Person from time to time employed by the Manager or by the Supervisor in the discharge of their respective duties and exercise of powers under this Deed including (without limitation) any person to whom the Manager delegates all or any of its powers, authorities, functions and discretions pursuant to clause 14.5 but, for the avoidance of doubt, this indemnity shall not extend to the Manager's own internal costs for acting as manager of any Fund;
- i expenses in connection with the establishment and maintenance of accounting systems and the keeping of accounting records and the Registers;
- j all costs, charges and expenses incurred in the advertising and promotion of the Funds; and
- k any underwriting commission, brokerage, expenses, costs, and disbursements in respect of the underwriting of an issue of Units.

22.6 Limitation on liability

Without prejudice to the generality of clauses 22.1 to 22.4 but subject to the provisions of the Relevant Requirements:

- a the Supervisor shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Manager or any agent of the Manager nor shall the Supervisor be responsible to check any information, document, form, or list supplied to it by the Manager or any agent of the Manager;
- b the Manager shall not be responsible for any loss incurred as a result of any act, deceit, neglect, mistake, or default of the Supervisor or any agent of the Supervisor nor shall the Manager be responsible to check any information, document, form, or list supplied to it by the Supervisor or any agent of the Supervisor;
- c the Manager and the Supervisor may each act upon the opinion or advice of, or upon statements of or information obtained from, any solicitor, banker, accountant, broker, or other person believed by the Supervisor or the Manager to be expert in relation to the matters on which that person is consulted (irrespective of whether the opinion, advice, statement, or information in question is obtained by the Manager or the Supervisor or both of them) and neither the Supervisor nor the Manager shall be liable for anything done or not done or suffered by it in good faith in reliance upon such opinion, advice, statements or information;
- d whenever pursuant to any provision in this Deed any certificate, notice, 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 director, secretary, officer, or responsible employee of the Manager or by any other person or persons appearing to be authorised by the Manager, and the Supervisor is not liable for anything done or suffered by it in good faith in reliance upon any such certificate, notice, direction, or other communication;

- e unless expressly provided in this Deed the Manager and the Supervisor shall as regard all the trusts, powers, authorities, and discretions vested in each of them by this Deed have absolute and uncontrolled discretion as to the exercise of those functions whether in relation to the manner or as to the mode of or time for the exercise subject, in the case of the Manager, to the giving of any required notice to the Supervisor and the approval of or supervision by the Supervisor wherever required by the provisions of this Deed;
- f nothing in this Deed shall be deemed to prohibit the Supervisor or any Associated Person of the Supervisor or any shareholder or officer of the Supervisor or the Manager or any Associated Person of the Manager or any shareholder or officer of the Manager ('**Relevant Persons**') from being a Unit Holder or from acting in any representative capacity for a Unit Holder. In particular and without prejudice to the generality of the foregoing, any Relevant Person may so act on its own account or as executor, administrator, trustee, receiver, or attorney, or agent or in any other fiduciary, vicarious, or other professional capacity for a Unit Holder and the acting in any such capacity shall not be deemed a breach of any of the obligations arising out of any fiduciary relationship created by this Deed or imposed or implied by law;
- g the Supervisor shall be at liberty to deposit all documents evidencing any Investments, or evidencing title to any Investments with any person considered by the Supervisor to be of good repute; and
- h the Unit Holders of any relevant Fund may by Special Resolution further release the Supervisor or the Manager or both from any liability incurred in relation to that Fund and sanction the Supervisor or Manager or both being indemnified out of that Fund from and against any such liability either with respect to specific acts or omissions, whether past or proposed, or on the Supervisor or Manager ceasing to act in relation to that Fund.

22.7 Apportionment

If any expense, cost or liability shall in the opinion of the Supervisor or the Manager be incurred on account of several Funds, then that expense, cost or liability shall be apportioned amongst those Funds in such manner as the Manager may conclusively determine.

22.8 Supervisor's limited liability to Unit Holders

Subject to clauses 22.4 and 22.10 but notwithstanding any other provision contained in this Deed, in no event is the Supervisor bound to make any payment to Unit Holders except out of the appropriate Trust Fund or be liable to the Unit Holders of a Fund to any greater extent than the Investments of that Fund vested in or received by the Supervisor in accordance with this Deed.

22.9 No waiver

The Supervisor or the Manager may at any time elect not to seek reimbursement from the assets of any Fund for any expense, cost, or liability, without prejudicing the right of the Supervisor or the Manager to be reimbursed for any other expense, cost, or liability (whether or not of a similar nature).

22.10 Indemnity limitations

No provision of clauses 22.1 to 22.8 shall have the effect of exempting the Supervisor or Manager or any director or officer of the Supervisor or Manager from, and no provision of this

Deed has the effect of indemnifying the Supervisor or Manager or any such director or officer against, any liability to the extent that doing so would be void under the Relevant Requirements or any other applicable legislation (including where the expense or liability is caused by the failure of the Manager or the Supervisor (as the case requires) to show the degree of care and diligence required by the FMCA).⁷⁹

22.11 Power to indemnify investment managers and administration managers

The Manager may agree:

- a to limit the liability (in connection with its services in respect of a Fund or the Scheme) of; and/or
- b to indemnify and reimburse out of each relevant Fund's Investments in accordance with clauses 22.5 and 22.7,

any investment manager or administration manager appointed in respect of the Scheme or Fund, to the fullest extent permitted by the Relevant Requirements, in respect of any debt, liability or obligation incurred by or on behalf of the investment manager or administration manager in respect of the Scheme or Fund or any action taken or omitted to be taken in connection with the Scheme or Fund (including, without limitation, legal fees and disbursements).⁸⁰

22.12 Power to indemnify Custodians

The Supervisor may agree, with the Manager's consent:

- a to limit the liability (in connection with its services in respect of a Fund or the Scheme) of; and/or
- b to indemnify and reimburse out of each relevant Fund's Investments in accordance with clauses 22.5 and 20.5,

any Custodian or Sub-Custodian appointed in respect of the Scheme or Fund, to the fullest extent permitted by the Relevant Requirements, in respect of any debt, liability or obligation incurred by or on behalf of the Custodian or Sub-Custodian in respect of the Scheme or Fund or any action taken or omitted to be taken in connection with the Scheme or Fund (including without limitation, legal fees and disbursements).⁸¹

22.13 Manager to provide information

The Manager shall report and provide information to the Supervisor (including, for the avoidance of doubt, in relation to SIPO limit breaks, Unit pricing errors and non-compliances with the applicable Unit pricing methodology for Units in a Fund) to the extent required by the Relevant Requirements and comply in all respects with the Manager's obligations under the Management Agreement, including as to the frequency and content of such reports.⁸²

⁷⁹ Sections 136, 143, 144, 153, and 154 of the FMCA (as applicable).

⁸⁰ Section 135(1)(f) and 136(2) of the FMCA.

⁸¹ Sections 135(1)(f) of the FMCA.

⁸² Sections 135(1)(g), 147 to 151, 167 and 168 of the FMCA and Regulations 83, 94 to 98 and 100 of the FMC Regulations.

23 Investments

23.1 Authorised Investments

Each Trust Fund shall be invested only in Authorised Investments and in accordance with the SIPO for the Scheme which covers that Fund.

23.2 Contrary intent

The Supervisor shall not have any duty or obligation to exercise the care, diligence, or skill of a prudent person in the business of managing investments, other than to the extent required by this Deed. It is hereby expressed, as a contrary intention for the purposes of section 13D(1) of the Trustee Act 1956 only, that the duties imposed on the Supervisor by sections 13B and 13C of that Act shall not apply in relation to the Authorised Investments.

23.3 SIPO

- a The Manager will ensure that there is a SIPO for the Scheme which complies with the FMCA⁸³ and which covers each Fund.
- b The SIPO may be altered by the Manager from time to time subject to the requirements of the FMCA.⁸⁴ The Manager shall provide a copy of the proposed SIPO (or any alteration to that SIPO) to the Supervisor in accordance with the timeframes specified in the Management Agreement.
- c The Manager must lodge the SIPO or alteration (as applicable) with the Registrar of Financial Service Providers to the extent required by the FMCA.⁸⁵

23.4 Manager directs Supervisor

The Manager will manage each Fund and as and when required may, from time to time, but subject to clause 23.5, direct the Supervisor, Custodian, or Sub-Custodian on behalf of the Supervisor in respect of:

- a the investment and management of any Investments of any Fund;
- b the purchase, acquisition, sale, transfer, replacement, and disposition of Investments of any Fund;
- c the amendment or modification of any Investments of any Fund; and
- d the entering into of any commitments or liabilities that are related to Authorised Investments of any Fund,

and the Supervisor will (and, when a Custodian and/or Sub-Custodian has been appointed, will procure that the Custodian and/or Sub-Custodian will) from time to time, to the extent of the Trust Fund of each Fund in its possession or control, act as directed in writing by the Manager.

⁸³ Section 164 of the FMCA.

⁸⁴ Section 164 of the FMCA.

⁸⁵ Sections 165 and 166 of the FMCA.

23.5 **Supervisor's limited duty to refuse to act⁸⁶**

Notwithstanding clause 23.2, the Supervisor must refuse, and must direct any Custodian or Sub-Custodian to refuse, to act on a direction of the Manager that relates to the acquisition or disposal of any Authorised Investment if the Supervisor considers that the proposed acquisition or disposition would be:

- a manifestly not in the interests of the Unit Holders; or
- b in breach of this Deed, any rule of law, or any enactment.

Any Custodian or Sub-Custodian must comply with any direction given to it by the Supervisor under this clause. If the Supervisor refuses, or directs any Custodian or Sub-Custodian to refuse, to act on a direction of 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 direction. The Supervisor and any Custodian or Sub-Custodian is not liable to the Unit Holders or the Manager for refusing, or directing any Custodian or Sub-Custodian to refuse, to act on a direction of the Manager in accordance with this clause.

23.6 **Vesting and custody of Investments**

- a Any Investments of any Fund shall, as soon as reasonably practicable after acquisition by the Supervisor, be:
 - i vested in the Supervisor (or any Custodian or Sub-Custodian); and
 - ii registered in the name of the Supervisor (or, if applicable, such Custodian or Sub-Custodian).
- b The documents (if any) evidencing the Investments shall be held in safe custody by the Supervisor, Custodian, or Sub-Custodian or by some person selected by the Supervisor in accordance with clause 22.6g, and shall remain so vested and held until the same shall be sold or disposed of pursuant to the provisions of this Deed.

23.7 **Limitation of liability**

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

24 **Distributions**

24.1 **Distributions**

Subject to clause 23.4, the Manager may in its sole discretion from time to time determine to distribute Amounts to Unit Holders of a Fund in accordance with this clause 24. Amounts may comprise all or part of the Income or capital of that Fund and in such proportions as the Manager sees fit.

⁸⁶ Section 160 of the FMCA.

24.2 Determination on Distribution Dates

The Manager, after giving prior notice to the Supervisor, will determine the Amount for the Distribution Period ending on each Distribution Date, and in respect of each Unit Holder, the Unit Holder's Entitlement calculated in accordance with this clause 24.

24.3 Determination of distributable Amounts

Except where the Manager determines otherwise from time to time, in determining the Amount of each Fund to be distributed to Unit Holders for any period the Manager may in its sole discretion take into account, amongst other matters:

- a Income attributable to Unit Holders;
- b any PIE Tax or other taxes or duties that are or may become payable;
- c the cash flow requirements of the Fund;
- d the liquidity needs of the Fund;
- e any provisions determined by the Manager; and
- f an amount of capital per issued Unit considered optimal or desirable by the Manager.

24.4 Distribution

All distributable Amounts calculated in accordance with clause 24.3 shall be distributed to the Unit Holders at such time or times and in such manner as may be nominated by the Manager from time to time.

24.5 Entitlements

Unless the Manager determines some other manner of distribution is appropriate from time to time in respect of the relevant Fund and notifies affected Unit Holders accordingly, each Unit Holder's Entitlement will be calculated and distributed in proportion to the number of Units held by them.

24.6 Reinvestment of Entitlements

- a Unit Holders may, if reinvestment of Entitlements is permitted by the Manager from time to time in its absolute discretion, elect to reinvest their Entitlements (less any tax which the Manager is obliged or permitted to deduct, but subject to such relief in relation to Transaction Costs as the Manager sees fit, if at all) by purchasing further Units in the relevant Fund by making a written request in that behalf to the Manager in their initial application or in such other form as may from time to time be agreed by the Manager including Electronic Communication. Any request (whether in an initial application or at a later date) may be varied or terminated by notice to the Manager at any time.
- b The Manager will treat such a request as though it were an application for further Units in the relevant Fund with the relevant Entitlement (less any deductions in accordance with clause 24.6a above) and accordingly the provisions of clause 7, with such changes as are necessary, apply to the Units issued in accordance with this clause.
- c Notwithstanding the foregoing, the Manager may decline to effect any reinvestment of an Entitlement without giving reasons.

24.7 Determination by Manager

If any question shall arise as to whether any money or property constitutes Gross Income or not or whether any expense is chargeable against Gross Income or not such question shall be determined by the Manager having regard to NZ GAAP. However:

- a nothing in this Deed nor in NZ GAAP shall require realised or unrealised gains in the value of Investments to be classified as Gross Income unless the Manager in its sole discretion determines; and
- b no deduction from Gross Income or Income shall be made by the Manager or the Supervisor unless specifically provided for in this Deed or the relevant Establishment Deed.⁸⁷

24.8 Bonus Units

If the Manager recommends at any time and the Supervisor in its discretion accepts that recommendation, the Supervisor will capitalise the whole or any part of the Income or capital of a Fund and apply it in or towards paying in full new Units to be issued and distributed as fully paid bonus Units to and amongst Unit Holders as if those Units were distributed as Amounts.

25 Unit Holders' Limitation of liability

Subject to clause 28.4 but notwithstanding anything else contained in this Deed or any rule of law:

- a no Unit Holder shall in any circumstances other than those described in sub-paragraph d be liable to indemnify the Supervisor or the Manager in respect of any debt or liability incurred in respect of any Fund;
- b nothing in this Deed or in the relationship between the Unit Holders shall be deemed to create a partnership amongst Unit Holders;
- c subject to clause 28, neither the Supervisor nor the Manager shall be or act as agent for the Unit Holders in respect of Units in any Fund, and neither shall have power to incur liabilities on behalf of any Unit Holder or pledge the credit of any Unit Holder beyond the extent of their investment in any Fund; and
- d Unit Holders are personally liable for any PIE Tax on Income attributed to them which has not been satisfied by redeeming Units or by deduction from monies paid to them.

26 Accounts, reporting, and disclosure of information

26.1 Accounting Records

The Manager shall keep or cause to be kept:

- a proper accounting records for the Scheme and each Fund that comply with the FMCA, and allow for inspection of those records to the extent required by the FMCA;⁸⁸ and

⁸⁷ NZX Main Board/Debt Market Listing Rule 5.1.9, Appendix 10.

⁸⁸ Sections 455 to 459 of the FMCA.

- b true accounts of all sums of money received and expended by or on behalf of each Fund and the matters in respect of which such receipt and expenditure takes place and of all the sales, purchases and other transactions relating to the Investments and the Liabilities of each Fund, the issue or transfer of Units and of all other matters for which accounting records should properly be kept.

The Supervisor shall provide to the Manager from time to time any information necessary for this purpose.

26.2 Annual Financial Statements

The Manager shall arrange for the preparation, audit, and lodgement of Financial Statements for the Scheme and each Fund to the extent required by, and in accordance with, the Relevant Requirements.⁸⁹

26.3 Annual Reports

The Manager shall prepare, send, make available, and lodge annual reports in accordance with the requirements of the Relevant Requirements.⁹⁰

26.4 Regulatory compliance

The Manager and Supervisor shall at all relevant times:

- a file or lodge all reports, returns, statements, information, or other material required by the Relevant Requirements to be filed or lodged with any public registry, Exchange, or regulatory authority; and
- b keep copies of documents,
in accordance with the Relevant Requirements.⁹¹

26.5 Reports to Unit Holders

The Manager shall provide Unit Holders with such information, notices, and disclosures as are required to be given to them under the Relevant Requirements (including the FMCA and the Taxing Acts), or ensure that such information, notices, and disclosures are so provided.⁹²

26.6 Manager's power to require disclosure of relevant interest

For so long as Units in a Fund are quoted on an Exchange, the Manager may, in accordance with the Relevant Requirements,⁹³ exercise its powers under the Relevant Requirements to require disclosure of information relating to relevant interests in Units.

27 Auditor

27.1 Appointment

- a The Manager shall, with the prior approval of the Supervisor, appoint an auditor or auditors of the Scheme and each Fund, who shall be a licensed auditor or a registered

⁸⁹ Sections 461D to 461H of the FMCA and NZX Main Board/Debt Market Listing Rule 10.5.

⁹⁰ Regulations 62 and 63 of the FMC Regulations; NZX Main Board/Debt Market Listing Rule 10.4 (where applicable).

⁹¹ Subpart 4 of Part 4 of the FMCA; Section 10 of the NZX Main Board/Debt Market Listing Rules.

⁹² Sections 96, 97 and 100 of the FMCA and Regulations 56, 62 and 65 of the FMC Regulations.

⁹³ Subpart 5 of the FMCA.

audit firm (each as defined in the FMCA) entitled by law to act as auditor of the Scheme.⁹⁴

- b The Manager and the Supervisor must agree upon the services to be performed by the Auditor, and reports to be provided by the Auditor, and their scope having regard to requirements under the FMCA⁹⁵.
- c An Auditor may also be auditor of the Manager or the Supervisor, and the same person may hold office as Auditor of all or any of the Funds.
- d Such appointments shall be made in respect of each Fund as soon as practicable after the execution or establishment of the Fund.

27.2 Remuneration

The remuneration of the Auditor of the Scheme and each Fund shall be fixed by the Manager.

27.3 Removal and retirement

- a The Auditor may at any time be removed from office by the Supervisor (following consultation with the Manager) or by a Special Resolution of Unit Holders of the relevant Fund.
- b The Auditor may retire upon the expiration of not less than ninety (90) days' notice in writing to the Supervisor.

27.4 Vacancy

Any vacancy in the office of the Auditor occurring under clause 27.3 shall be filled by the Manager (with the approval of the Supervisor) appointing an auditor qualified for appointment in terms of clause 27.1.

27.5 Compliance with FMCA auditor requirements

The Manager must comply with the requirements in the FMCA relating to the appointment of the Auditor and the Auditor's opportunity to report to the Supervisor.⁹⁶

28 Taxation Liability

28.1 Definitions

In this clause 28:

'Relevant Person' means a Unit Holder and the Unit Holder's personal representatives or successors;

'Tax' includes all taxes, duties, levies, and other charges made by a governmental agency including penalties, fees, and interest; and

'Taxation Amount' means, in relation to a Relevant Person:

- a any tax payable by or on account of that person or in respect of that person's Units; and

⁹⁴ Section 461E of the FMCA.

⁹⁵ Section 218 of the FMCA and Regulations 108 and 109 of the FMC Regulations.

⁹⁶ Clauses 1 to 3 of Schedule 13 to the FMC Regulations.

- b any withholding tax or similar amounts required to be withheld or deducted by the Manager or the Supervisor in respect of a Unit Holder.

28.2 Deductions

The Supervisor or the Manager may deduct or require to be deducted from any amount otherwise payable to or to be applied in respect of a Relevant Person an amount equal to the Taxation Amount of that Relevant Person where such amount is payable or anticipated to become payable by the Supervisor or the Manager or from a Trust Fund.

28.3 Application of deduction

Subject to clause 28.6, amounts deducted under clause 28.2 shall be applied in:

- a payment of the Taxation Amount to the Person entitled thereto; 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.

28.4 Indemnity

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 that Relevant Person.

28.5 Interest

Any Taxation Amounts paid on behalf of a Relevant Person shall carry interest calculated on a daily basis at such rate as the Manager may determine and such interest shall be paid on demand by the Relevant Person to the Supervisor or the Manager as the case requires.

28.6 Interest on Taxation Amounts

Any interest earned on Taxation Amounts held pending payment in accordance with clause 28.3 will be dealt with as the Manager sees fit in its sole discretion.

29 Meetings of Unit Holders

29.1 Manager must call meetings

- a The Manager must summon a meeting of the Unit Holders of a Fund or the Scheme, upon the request in writing of:
 - i the Supervisor; or
 - ii Unit Holders holding Units that have a combined value of no less than 5% of the value of the Units on issue in that Fund or the Scheme (as applicable),and on the basis set out in the FMCA and FMC Regulations.⁹⁷

⁹⁷ Sections 161 to 163 of the FMCA and Regulations 83 and 91 of the FMC Regulations.

- b If the Manager fails to call a meeting in accordance with the above provisions within 60 days of receipt of the relevant request, the Supervisor shall be entitled to call such a meeting on behalf of the Manager.

29.2 Manager may convene

The Manager may at any time after prior consultation with the Supervisor, convene a meeting of the Unit Holders of any Fund or the Scheme.

29.3 Proceedings

- a For the purposes of clause 5(4) of Schedule 11 to the FMC Regulations, the quorum for a meeting of Unit Holders (other than a meeting at which a Special Resolution is to be submitted) is present if Unit Holders of each relevant Fund holding at least 10% of the number of Units of that Fund on issue at the time are present (with the number of Unit Holders present determined in accordance with the Relevant Requirements). This clause 29.3a applies notwithstanding anything to the contrary in the FMCA.
- b All meetings of Unit Holders shall be convened and held in accordance with clause 29.3a (where applicable) and otherwise in accordance with the requirements of the Relevant Requirements.

29.4 Directions

The Unit Holders of any Fund shall, by means of a Special Resolution, have the power to give such directions to the Supervisor as they think proper concerning that Fund, being directions that are not inconsistent with any enactment, rule of law, or the provisions of this Deed (including, where relevant, any directions given by the FMA under the Financial Markets Supervisors Act 2011).

29.5 Discretion

Where any direction is given to the Supervisor pursuant to clause 29.4 in respect of any matter the Supervisor may (but shall not be obliged to) comply with the direction, and shall not be liable for anything done or omitted by it by reason of its following the direction. The Supervisor may at its discretion apply to the High Court for directions in respect of the matter.

29.6 Powers of Unit Holders exercisable by Special Resolution

A meeting of Unit Holders of a Fund shall have the following powers exercisable by Special Resolution:

- a power to sanction the exchange of Units of the relevant Fund for, or the conversion of such Units into shares, stock, debentures, debenture stock, or other obligations or securities of any company formed or to be formed;
- b power to sanction any alteration, release, modification, waiver, variation, or compromise or any arrangement in respect of the rights of the Unit Holders of the relevant Fund howsoever such rights shall arise;
- c power to give any sanction, assent, release, or waiver of any breach or default by the Manager or the Supervisor under any of the provisions of this Deed;
- d subject to the Relevant Requirements (where applicable), power to discharge, release, or exonerate the Manager or the Supervisor from all liability in respect of any act of

commission or omission for which the Manager or the Supervisor has or may become responsible under this Deed;

- e power to sanction the exchange of Units of the relevant Fund for, or the conversion of Units of the relevant Fund into, units or interests in any other unit trust, managed investment scheme, or similar entity (whether established in New Zealand or elsewhere) on such basis as may be approved by the Special Resolution;
- f the powers given to Unit Holders under clauses 3.6a, 17.1aiv, 21.4, 22.6h, 27.3a, 29.4, 32.1b, 32.2b; and
- g the powers given to Unit Holders by the FMCA that are expressed as being exercisable by Special Resolution,

provided that no such sanction, assent, release, or waiver shall be effective if it materially and adversely affects the interests of one Fund in a manner different from that in which it affects the interest of Unit Holders of other Funds, without the approval of a separate Special Resolution of the Unit Holders of the first mentioned Fund and any other approvals required under the Relevant Requirements.⁹⁸

29.7 Compliance with Relevant Requirements in respect of meetings

- a The Manager and the Supervisor will comply with the Relevant Requirements in respect of convening and holding meetings of Unit Holders.⁹⁹
- b To the extent applicable, the provisions of Rule 9.3.1 to Rule 9.3.3 and Rule 9.3.5 are deemed to be incorporated into this Deed and have the same effect as though they were set out in full without any necessary modification.

30 Notices

30.1 To Unit Holders

- a Without limiting any enabling provision in applicable legislation, any notice and other Scheme-related communication to be given to any Unit Holder may be given:
 - i personally;
 - ii by properly addressing, pre-paying, and posting a letter containing the notice or communication and sending it by post to the address of the Unit Holder shown in the relevant Register;
 - iii by Electronic Communication; or
 - iv subject to the Relevant Requirements, for so long as the Units in the Fund to which the notice relates are quoted on an Exchange, by publication of an announcement on NZX.
- b Notices and other communications will be deemed to have been received as follows:
 - i If given by personal delivery, when delivered.

⁹⁸ NZX Main Board/Debt Market Listing Rule 8.3.

⁹⁹ NZX Main Board/Debt Market Listing Rules 6.1.2(d), 6.2, and 6.3.

- ii If sent by post, on the third day following the day of posting, subject to clause 30.1c.
 - iii If sent by Electronic Communication, without limiting section 214(a) of the Contract and Commercial Law Act 2017 but subject to clause 30.1c, on the Business Day on which it was dispatched or, if dispatched after 5.00 pm (in the place of receipt) or on a non-Business Day, on the next Business Day (in the place of receipt) after the date of dispatch provided in each case the system used to transmit the communication has not generated a record that the communication has failed to be transmitted.
 - iv If published by an announcement on NZX, when the announcement is made on NZX.
- c If a Unit Holder has no registered address within New Zealand and has not supplied to the Manager an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand or an electronic address, then notices for that Unit Holder shall be posted to such physical address or sent electronically to such electronic address, and shall be deemed to have been received by that Unit Holder 24 hours after the time of posting or sending.¹⁰⁰

30.2 Deemed receipt of notices

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 that person's name and address being entered in the Register in respect of the Units, has been given to the person from whom that person derived title to the Units.

30.3 Notice to manager, legal representative etc

A notice may be given by the Manager to the manager of a mentally disordered person, or the Persons entitled to a Unit in consequence of the death or bankruptcy of a Unit Holder, by sending it by post in a prepaid letter addressed to them by name, or by the title of the manager of the mentally disordered person, or the legal representatives of the deceased, or the assignee of the bankrupt, at the address, if any, supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been supplied) by giving the notice in any manner in which it might have been given if the mental disorder, death or bankruptcy had not occurred.

30.4 Notice where no address

If any Unit Holder has no registered address and has not supplied to the Manager an address for the giving of notices, or if any notice posted to a Unit Holder is returned to the Manager, then, notwithstanding anything contained elsewhere in this Deed, until the Unit Holder shall give notice in writing to the Manager of some other address, the address of the Unit Holder for all purposes of this Deed shall be deemed to be the Office.

30.5 Calculation of notice period

Where a specified number of days' notice is required to be given, the day on which it is served or deemed to be served and, in the case of a notice of meeting, the day for which it is given, shall be excluded in calculating such number of days.

¹⁰⁰ NZX Main Board/Debt Market Listing Rule 6.3.2.

30.6 Notices between Supervisor and Manager

Any notice, communication, certificate or information required by this Deed to be given to the Supervisor by the Manager, or to the Manager by the Supervisor, shall be in writing and be signed by a duly authorised officer of the party giving the notice provided that the Manager and the Supervisor may agree from time to time as to certain notices or communications that may be given by Electronic Communication.

30.7 Copy of notice to Unit Holders

A copy of every notice given to Unit Holders under this Deed shall be given, at the same time at which it is given to the Unit Holders, to the Supervisor provided that, where notices are given to Unit Holders in substantially the same form but with personalised details in respect of each Unit Holders, it shall be sufficient to provide the Supervisor with a sample of such a notice.

31 Amendments to Deed

31.1 Power to amend

Subject to the Relevant Requirements,¹⁰¹ the Supervisor and the Manager may at any time make any alteration, modification, variation, or addition to the provisions of this Deed (by means of a deed executed by the Supervisor and the Manager) ('Amendment').

31.2 Notice to Unit Holders

Unless the relevant Amendment is made with the approval of Unit Holders in accordance with the Relevant Requirements, the Manager must notify affected Unit Holders of each Amendment in the next communication to be sent to those Unit Holders (which may be after the Amendment takes effect).

31.3 Lodgement of Amendment

The Manager must lodge a copy of each Amendment with the Registrar of Financial Service Providers in accordance with the FMCA.¹⁰²

32 Winding Up¹⁰³

32.1 Winding up of Scheme

The Scheme (and therefore every Fund) shall determine and be wound up upon the occurrence of the earliest of the following events:

- a the Manager resolves to wind up the Scheme with effect from a date specified in that resolution (such date to be not earlier than 15 days after the date of the resolution unless the Supervisor agrees otherwise) and gives notice in writing of that resolution to the Supervisor;
- b a Special Resolution of all Unit Holders of the Scheme is passed resolving to wind up the Scheme;

¹⁰¹ Sections 139 and 140 of the FMCA; NZX Main Board/Debt Market Listing Rules 6.1, 6.2, and 8.3.

¹⁰² Section 141 of the FMCA.

¹⁰³ Section 135(1)(i) of the FMCA.

- c the Scheme's registration under the FMCA is cancelled; or
- d the Scheme is required to be wound up under the FMCA.¹⁰⁴

32.2 Winding up of Fund

Each Fund shall determine and be wound up upon the occurrence of the earliest of the following events:

- a the Manager resolves to wind up that Fund with effect from a date specified in that resolution (such date to be not earlier than 15 days after the date of the resolution unless the Supervisor agrees otherwise) and gives notice in writing of that resolution to the Supervisor;
- b a Special Resolution of the Unit Holders of that Fund is passed resolving to wind up that Fund;
- c the Scheme determines and is wound up pursuant to clause 32.1;
- d the Fund is required to be wound up pursuant to clause 21.4; and
- e in the case of each Fund, the expiration of a period of eighty (80) years from the Commencement Date for that Fund.

32.3 Power to suspend applications, withdrawals, and switches

Following the occurrence of an event under clauses 32.1 or 32.2 requiring a Fund to wind up ('**Termination Event**'), the Manager may by written notice to affected Unit Holders and the Supervisor in its sole discretion determine that no further Withdrawal Notices, Switching Notices, or applications for Units will be accepted in respect of the relevant Fund or Funds ('**Wind Up Suspension**'). Any Wind Up Suspension will take effect from the date specified in the notice or if no such date is specified, the date of the occurrence of the applicable Termination Event.

32.4 Notice to Unit Holders

The Manager shall within fourteen (14) days after the occurrence of any Termination Event in respect of any Fund give to each Unit Holder of that Fund notice of the occurrence of that event and of the intention of the Supervisor to distribute the relevant Trust Fund. Subject to clauses 32.3 and 32.5, from the date of the giving of such notice no further Withdrawal Notices or Switching Notice or applications for Units shall be accepted in respect of that Fund.

32.5 Switching Notices on Winding up

Except where all the Trust Funds are to be wound up and subject to clause 32.3, a notice given by the Manager pursuant to clause 32.4 may invite affected Unit Holders to give a Switching Notice in accordance with clause 9.1 within such period as the Manager in consultation with the Supervisor may prescribe ('**Switching Period**'). Following the expiration of the Switching Period or in the absence of such an invitation by the Manager, the relevant Trust Fund shall be dealt with in accordance with clause 32.6.

¹⁰⁴ Sections 195 and 211 of the FMCA.

32.6 Procedure

The Supervisor shall as soon as is practicable after the occurrence of a Termination Event (but subject to compliance with clause 32.4):¹⁰⁵

- a sell, call in, and convert into cash the whole of the Trust Fund of the relevant Fund;
- b pay out, discharge, or otherwise make proper provision for all taxes, claims, and Liabilities (including for this purpose contingent liabilities) of that Fund; and
- c distribute the Trust Fund of that Fund (or so much of the Trust Fund as may from time to time be available for distribution), less all costs and expenses incurred by the Supervisor and the Manager in respect of the winding up, amongst Unit Holders of that Fund in proportion to the value of the respective Units held by them as at the later of the date of the relevant Termination Event and the date of expiry of any Switching Period, based on the Unit Values determined in respect of the relevant date.

32.7 Interim distributions

If in the opinion of the Supervisor it is expedient to do so the Supervisor may make interim payments or distributions (which may include an in specie distribution of Investments of the relevant Fund) on account of the moneys to be distributed in accordance with clause 32.6.

32.8 Receipts

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.

32.9 Report to Supervisor

From the Termination Event until the winding up of the relevant Fund is completed, the Manager must provide to the Supervisor a written report on the progress of the winding up in the form reasonably required by the Supervisor and at a frequency required by the Supervisor acting reasonably.

32.10 Compliance with relevant requirements

The Supervisor must provide all the reports and comply with all of the requirements set out in the FMCA and any other applicable legislation when a Fund is wound up.¹⁰⁶

33 Payments to Unit Holders

- a Any moneys payable by the Supervisor or by the Manager to a Unit Holder under the provisions of this Deed may be paid by cheque that is crossed 'non-transferable' and made payable to the Unit Holder or their respective agents or other authorised Persons.
- b The moneys may be given or sent through the post to the Unit Holder or their respective agents or other authorised Persons or may be credited to any bank account nominated by the Unit Holder.
- c 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

¹⁰⁵ NZX Main Board/Debt Market Listing Rule 5.1.9, Appendix 10.

¹⁰⁶ Sections 212 and 213 of the FMCA.

due satisfaction of the moneys payable and will be good discharge to the Supervisor and to the Manager.

- d If any amount has been deducted on behalf of taxes from a payment to a Unit Holder, details of such deduction shall be provided to the Unit Holder when the relevant payment is made.

34 Governing Law

This Deed shall be governed by and construed in accordance with the law of New Zealand.

35 Unit Holders bound by Deed

Except where expressly provided in this Deed to the contrary or where the context does not so permit, all the benefits and provisions (including but not limited to those benefits and provisions which are expressed to be for the benefit of and bind Unit Holders) contained in this Deed, are for the benefit of and bind each Unit Holder and are legally enforceable as between the Manager, the Supervisor, and Unit Holders.¹⁰⁷

36 Counterparts

This Deed may be executed in two or more counterpart copies each of which will be deemed an original and all of which together will constitute one and the same instrument. A party may enter into this Deed by signing a counterpart copy and sending it to the other parties (including by facsimile or email).

37 NZX Rulings¹⁰⁸

If, at any time, NZX has granted a Ruling (as that term is defined in the NZX Main Board / Debt Market Listing Rules) in relation to the Manager or a Fund authorising any act or omission which in the absence of that Ruling would be in contravention of either the Rules or this Deed, that act or omission shall, unless a contrary intention appears in this Deed, be deemed to be authorised by the Rules and by this Deed.

38 Delivery

38.1 Delivery of Deed

For the purposes of section 9 of the Property Law Act 2007 (and without limiting any other mode of delivery) this Deed will be delivered by each party on the earlier of:

- a physical delivery of an original of this Deed, 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 Deed, executed by the relevant party, to the other party or the other party's solicitors.

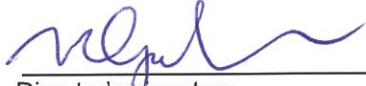
¹⁰⁷ Section 137 of the FMCA.

¹⁰⁸ NZX Main Board/Debt Market Listing Rule 3.1.1(d).

Execution

Executed and delivered as a deed

Signed for Salt Investment Funds Limited
by two of its directors:



Director's signature

Matthew Goodson

Director's name



Director's signature

PAUL HARRISON

Director's name


Signed for and on behalf of
The New Zealand Guardian Trust Company Limited
by its authorised signatories in the presence of:



Authorised signatory

TREVOR PYE

Name



Authorised signatory

MARK PATRICK JEPHSON

Name

Witness to both signatures: _____

Print name:

WITNESS TO BOTH SIGNATURES

Full Name: Debra Gail Morton

Residential Address: Auckland

Occupation:

Occupation: Corporate Trusts Administrator

Address:

Signature: 

ACT 1562

Schedule 1 Fund Particulars (Clauses 3.3 and 3.6)

- 3 The investment strategy of the Fund.
- 4 The frequency of Valuation Days.
- 5 The effective Valuation Day for the issue of Units.
- 6 The period for processing withdrawals.
- 7 Limitations on Borrowing.
- 8 The Distribution Dates and the date or dates for distribution of Entitlements.
- 9 The Performance Fee.
- 10 Any variation of this Deed expressly applicable to the Fund.
- 11 Any other matters which the Manager and the Supervisor deem appropriate or necessary in respect of the Fund.