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Constitution of Macquarie CPS Trust

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Constitution of Macquarie CPS Trust

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Constitution of Macquarie CPS Trust

Details

Issuer	Name	Macquarie Capital Loans Management Limited
	ABN	18 077 595 012
	Address	No. 1 Martin Place, Sydney NSW 2000
Trust	Macquarie CPS Trust (ARSN 129 962 358)	
Governing law	Victoria	
Date of deed	See Signing page	

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Constitution of Macquarie CPS Trust

General terms

1 Interpretation

1.1 Definitions

In this Constitution these words and phrases have the following meaning unless the contrary intention appears. A term that is capitalised but not defined has the meaning given to it in clause 19.2 of the CPS Terms.

ASIC means the Australian Securities and Investments Commission or any regulatory body which replaces it or performs its functions.

ASIC Relief means an exemption or declaration granted by ASIC which gives relief from certain requirements of the Corporations Act.

Assets means all the property, rights and income of the Trust, including the rights and benefits of the Issuer under Transaction Documents, but not application money in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid, or any amount to which a Unit Holder is entitled under clause 10.

Class means a class of Units on issue from time to time.

Closing Date means a closing date for applications for CPS under or in connection with the Product Disclosure Statement.

Compliance Committee Member means a member of a compliance committee established by the Issuer in connection with the Trust.

Constitution means this deed.

CPS means the CPS, as defined in the CPS Terms.

CPS Terms means the terms of issue of the CPS set out in Schedule 1 to this Constitution (with the Initial Margin completed as set out in the Product Disclosure Statement), as those terms may from time to time be varied in accordance with those terms of issue or this Constitution.

Credit Rating Agency means any credit rating agency determined by the Issuer and notified to Unit Holders from time to time.

Custody Deed means the custody deed between Trust Company Limited (ABN 59 004 027 749) in its capacity as custodian of the Assets and the Issuer.

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Distribution Payment Date means either:

- (a) while there are CPS on issue, a Distribution Payment Date as defined in the CPS Terms; or
- (b) while there are no CPS on issue, the last day of each Financial Year and such other days as the Issuer designates.

Distribution Period means either:

- (a) while there are CPS on issue, a Distribution Period as defined in the CPS Terms; or
- (b) while there are no CPS on issue, the period from (but not including) the preceding Distribution Payment Date until (and including) the next Distribution Payment Date.

Financial Year means:

- (a) for the first financial year, the period from the establishment of the Trust to the next Financial Year End Date;
- (b) for the last financial year, the period from the Financial Year End Date before the date the Trust terminates to the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the 12 month period ending on the Financial Year End Date in each year.

Financial Year End Date means 30 June or another Distribution Payment Date nominated by the Issuer as the financial year end date for tax purposes.

GST has the meaning given to that expression in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*.

Gross Asset Value means the value of the Assets not including assets of the Trust that relate to derivative instruments used for hedging.

Holder means the person Registered as holder of a CPS (including persons jointly Registered).

Initial Period means the period on and from the Issue Date up to but not including the Initial Period End Date.

Initial Period End Date means the 75th anniversary of the Issue Date.

Issue Price means the issue price for a Unit described in the Ordinary Unit Terms or the CPS Terms, (as applicable).¹

Issuer means Macquarie Capital Loans Management Limited (ABN 18 077 595 012), as trustee of the Trust for the time being or any other company

¹ See clause 5 "Issue Price for Units"

which is registered with ASIC as the responsible entity or temporary responsible entity for the Trust under the Corporations Act.

Joint Holders means Holders who are jointly registered as the owner of a CPS.

Liabilities means all present liabilities of the Trust including obligations under the Transaction Documents and any provision taken into account in accordance with applicable accounting standards in determining the liabilities of the Trust, but not liabilities:

- (a) to applicants for Units, in respect of application money in respect of which Units have not yet been issued; or
- (b) to Unit Holders, arising by virtue of any right of Unit Holders in connection with redemption of their Units or to participate in the distribution of the Assets on winding up of the Trust.

Listed means:

- (a) in the case of the Trust, the trust being listed on the ASX; and
- (b) in the case of CPS, the CPS being Officially Quoted,

and **Listing** has a corresponding meaning.

LPS Holder has the meaning given to that expression in the LPS Terms.

LPS Subscription Agreement means the agreement of that name between the Issuer and MCPSSLIC, dated on or about the Issue Date.

MFHL means Macquarie Financial Holdings Limited (ABN 63 124 071 398).

MGHNZL means Macquarie Group Holdings New Zealand Limited, a company incorporated under the laws of New Zealand (Company number 1952566).

MGL means Macquarie Group Limited, a company incorporated under the laws of Australia (ABN 94 122 169 279).

Minimum Holding means the amount from time to time determined by the Issuer pursuant to clause 7.4.

Officially Quoted means quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days.

OMA means the Offer Management Agreement between the Issuer, MGL and Macquarie Capital Advisers Limited (ABN 79 123 199 548) and the other joint lead managers, dated on or about the date of the Product Disclosure Statement.

Ordinary Unit means a Unit with an undivided share in the beneficial interest in the Trust having the rights, obligations and restrictions set out in the Ordinary Unit Terms.

Ordinary Unit Holder means such person Registered as the holder of Ordinary Units being, initially, MFHL and MGHNZL.

Ordinary Unit Terms means the terms of issue of Ordinary Units as set out in the body of this Constitution and in Schedule 2 to this Constitution.

Quarter Year means each three month period ending on 31 March, 30 September, 30 June and 31 December in each year.

Register means the register, including any branch register, of Unit Holders, established by or on behalf of the Issuer under the Corporations Act.

Registered means recorded in the Register.

Registration means recording in the Register.

Required Majority means except where the body of this Constitution, the CPS Terms, the law or the Listing Rules provide otherwise, a simple majority.

Resolution means:

- (a) a resolution passed at a meeting of Unit Holders (or at a meeting of a Class of Unit Holders):
 - (i) on a show of hands, by the Required Majority of Unit Holders (or Unit Holders of the Class) present in person or by proxy and voting on the show of hands; or
 - (ii) on a poll, by the Required Majority of votes cast by Unit Holders (or Unit Holders of the Class) present in person or by proxy and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by Unit Holders holding the Required Majority of the Units (or Unit Holders of the Class).²

Restriction Agreement means an agreement which is required to be concluded under Chapter 9 of the Listing Rules or is voluntarily concluded between the Issuer and one or more Unit Holders.

Special Resolution means a Resolution where the required majority is 75%.

Tax means all kinds of taxes (except GST), duties, imposts, deductions and charges imposed by a government, together with interest and penalties.

² Circumstances where a special resolution is required include a vote on amendments to this Constitution if necessary (see section 601GC(1)(a)). For voting on winding up by members and choosing a new responsible entity see sections 601FL and 601NB.

Transaction Documents means this Constitution, the Custody Deed, the Deed of Undertaking, the Implementation Deed, the Offer Management Agreement, the LPS Subscription Agreement and the LLC Agreement.

Trust means the Macquarie CPS Trust, established under this Constitution.

Trust Income means for a period, the amount determined under clause 10.2 for the period.

Underwriting Liabilities means any amount which the Issuer is or may become liable to pay to an underwriter, lead manager or any other person in respect of or arising out of the OMA of any underwriting agreement for CPS, including amounts payable under indemnity or reimbursement provisions in the OMA or underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Issuer of its obligations, representations or warranties under the OMA or any such underwriting agreement, but excluding underwriting fees, handling fees, and underwriting costs and expenses.

Unit means an undivided share in the beneficial interest in the Trust as provided in this Constitution, being either Ordinary Units or a CPS.

Unit Holder means the person Registered as a holder of a Unit (including persons jointly Registered) from time to time.

User Pays Fees means any cost incurred in relation to:

(a) an entitlement to a payment or a payment to or from the Trust in respect of a Unit Holder; or

(b) any action or failure to act, requested by a Unit Holder,

which the Issuer considers should be borne by that Unit Holder.

1.2 Interpretation

Unless the contrary intention appears, in this Constitution:

(a) terms defined in the Corporations Act are used with their defined meaning;

(b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;

(c) the singular includes the plural and vice versa;

(d) the words “includes” or “including”, “for example” or “such as” when introducing a list of items do not exclude a reference to other items, whether of the same class or genus or not;

(e) amend includes delete or replace;

(f) person includes a firm, a body corporate, an unincorporated association or an authority;

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- (g) the cover page, contents, headings (except in so far as they are used as a means of cross reference), footnotes, marginal notes and finding lists are for convenience only and do not affect interpretation of this Constitution;
- (h) a reference to a year (other than a Financial Year), quarter or month means a calendar year, calendar quarter or calendar month respectively;
- (i) a reference to dollars or \$ is a reference to the currency of Australia;
- (j) a reference to this Constitution (including the CPS Terms and the Ordinary Unit Terms) or any other document is a reference to the document as amended and includes any schedules and recitals to the document.

1.3 Other documents

A document does not become part of this Constitution by reason only of that document referring to this Constitution or vice versa, or any electronic link between them.

1.4 Constitution legally binding³

This Constitution binds the Issuer, and each present and future Unit Holder and any person claiming through any of them in accordance with its terms as if each of them had been a party to this Constitution.

1.5 Constitution and CPS Terms

On and from the Issue Date:

- (a) the CPS Terms apply and the Constitution is to be read subject to the CPS Terms; and
- (b) subject to clause 28, to the extent of any inconsistency, the CPS Terms prevail over all other provisions of this Constitution.

1.6 Severance

If all or part of any provision contained in this Constitution is void or invalid or would otherwise result in all or part of this Constitution being void or invalid for any reason, then such part is to be severed from this Constitution without affecting the validity or operation of any other provision of this Constitution.

1.7 Governing law

This Constitution is governed by the law in force in Victoria.

³ Refer Section 601GB

1.8 Other obligations excluded

Except as required by the Corporations Act all obligations of the Issuer which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any obligation of the Issuer in its capacity as responsible entity of the Trust arising under any statute.

1.9 Corporations Act compliance

A provision of this Constitution which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.

2 Name of Trust

2.1 Name

The Trust is called the Macquarie CPS Trust or by such other name as the Issuer determines from time to time.⁴

2.2 If Issuer retires

If the Issuer retires or is removed, and its successor as the responsible entity is not a member of the Macquarie Group, its successor must, unless otherwise approved by MGL, change the name of the Trust and the name of the CPS to names that do not imply an association with MGL or its business.

3 Assets held on trust

3.1 Assets held on trust

The Issuer holds the Assets on trust for Unit Holders.⁵

3.2 Assets vest in Issuer

The Assets must be clearly identified as property of the Trust and be held separately from property of the Issuer and property of any other managed investment scheme.⁶

3.3 Purpose

The Trust is a single purpose non-operating trust established solely for the purpose of investing in the LPS and related assets described in clause 13.2(a).

⁴ See Corporations Regulation 5C.1.02

⁵ See section 601FC(2) of the Corporations Act

⁶ See section 601FC(1)(i)

4 Macquarie CPS Trust

4.1 Beneficial interest divided into Units

The beneficial interest in the Trust is divided into Units, being the Ordinary Units and CPS.

4.2 Units confer undivided interest

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class as set out in the body of this Constitution and the CPS Terms or the Ordinary Unit Terms:

- (a) each Unit confers an equal undivided interest in the Assets;
- (b) a Unit confers an interest in the Assets as a whole, subject to the Liabilities;
- (c) a Unit does not confer an interest in a particular Asset; and
- (d) Units of a Class rank equally with each other Unit in that Class.

4.3 Classes of Units

- (a) The Issuer may issue two Classes of Units, being Ordinary Units and CPS.
- (b) At the time of issue of any Units, the Issuer must identify the Class to which the Units belong and maintain that information in the Register.

4.4 Rights attaching to Units

A Unit Holder holds a Unit subject to the rights, restrictions and obligations attaching to that Unit, including those set out in the body of this Constitution and the CPS Terms or the Ordinary Unit Terms (as applicable).

4.5 No fractions of Unit

Fractions of a Unit may not be issued by the Issuer.

4.6 Consolidation and division of Units

Subject to the Listing Rules, the Corporations Act and this Constitution, Units may be consolidated or divided as determined by the Issuer provided that all the Units in a Class are dealt with in the same way.

4.7 Initial Units

All Units issued prior to the issue of CPS under the Product Disclosure Statement are Ordinary Units.

5 Transfer of CPS

5.1 Transfer of CPS if Officially Quoted

While CPS are Officially Quoted, CPS may be transferred in accordance with the CPS Terms.

5.2 Transfers of Units if not Officially Quoted

- (a) While CPS are not Officially Quoted, CPS may be transferred in any form approved by the Issuer, accompanied by any evidence reasonably required by the Issuer to show the right of the transferor to make the transfer and (if the Issuer requires) be presented for Registration duly stamped.
- (b) Ordinary Units:
 - (i) may not be transferred other than to another entity in the Macquarie Group; and
 - (ii) may only be transferred in the manner set out in clause 5.2(a).

5.3 Registration

A transfer of a Unit is not effective until Registered.

5.4 Issuer must retain instruments of transfer

The Issuer:

- (a) must retain every instrument of transfer of an Ordinary Unit which is Registered for such period as the Issuer determines; and
- (b) must deal with the instrument of transfer of a CPS, in accordance with clause 13.12 of the CPS Terms.

5.5 Return of refused transfers

If the Issuer refuses to register a transfer of:

- (a) an Ordinary Unit, the Issuer must return the transfer documents submitted to it unless there has been an allegation of fraud concerning the transfer or the transaction to which it relates⁷; and
- (b) a CPS, the Issuer must act in accordance with clause 13.13 of the CPS Terms.

5.6 Joint tenancy

Persons Registered jointly as the Unit Holder of:

⁷ Section 1071E requires that the responsible entity advise of a refusal to register a transfer of a unit within 2 months after the date on which the transfer was lodged. An aggrieved proposed transferee may apply to court for an order that the transfer be registered, but the court will only grant such an order if satisfied on the application that the refusal was without just cause.

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- (a) an Ordinary Unit, hold as joint tenants and not as tenants in common unless the Issuer otherwise agrees; and
- (b) a CPS, hold in accordance with clause 13.5 of the CPS Terms.

6 Issue Price for Units⁸

6.1 Issue Price

- (a) The Issue Price for Ordinary Units is the amount set out in the Ordinary Unit Terms.
- (b) The Issue Price for a CPS is the amount set out in the CPS Terms.

6.2 If issue of CPS does not proceed

If the Issuer decides not to proceed with the issue of CPS, the full amount paid by each applicant (less any applicable Tax) will be reimbursed and must be repaid to the applicant without interest.

6.3 Restriction on issues

- (a) The Issuer may only issue further CPS after the Issue Date provided:
 - (i) the issue occurs prior to the twentieth anniversary of the Issue Date;
 - (ii) the CPS issued are on the same terms as set out in the CPS Terms; and
 - (iii) the proceeds of the issue are invested in LPS.
- (b) Subject to clause 22.3, the Issuer may issue Ordinary Units after the Issue Date, provided those further Ordinary Units are issued to an entity in the Macquarie Group.

7 Application procedure

7.1 Application form

An applicant for Units must complete a form approved by the Issuer if the Issuer so requires. The form may be transmitted electronically if approved by the Issuer.

7.2 Payment

Payment in a form acceptable to the Issuer must:

- (a) accompany the application; or

⁸ Required to be included by Section 601GA(1)(a).

- (b) be received by or made available to the Issuer or the Issuer's custodian within such period before or after the Issuer receives the application form as the Issuer determines from time to time.

7.3 Issuer may reject an application

The Issuer may reject an application in whole or in part without giving any reason for the rejection.⁹

7.4 Minimum amounts

The Issuer may set a minimum application amount and a Minimum Holding for the Trust or a Class and alter or waive those amounts at any time.

7.5 Issue date

Units are taken to be issued to a person when that person's name is recorded in the Register.

7.6 Uncleared funds

Units issued against application money paid other than in cleared funds are void if the funds are not subsequently cleared within five Business Days of the relevant Closing Date.

8 Redemption Price¹⁰

8.1 Redemption Price of CPS

The Redemption Price for a CPS is the amount determined in accordance with the CPS Terms.

8.2 Redemption Price of Ordinary Units

An Ordinary Unit must only be redeemed at a redemption price of \$100.

8.3 Rounding

The Redemption Price will be rounded to four decimal places. For the purpose of calculating the Redemption Price in respect of a Holder's aggregate holding of CPS, any fraction of a cent will be disregarded and remain an Asset.

9 Redemption

9.1 No general right of redemption of CPS

Holder's have no right to require the Redemption of their CPS.

⁹ Refer Listing Rule 10.11 if the Trust is Listed - restriction on issue of Units to related parties.

¹⁰ Required to be included by Section 601GA(4).

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9.2 Redemption by Issuer

The Issuer must Redeem, Convert or Exchange some or all CPS in accordance with the CPS Terms and this Constitution.

9.3 Issuer not obliged to pay Redemption Price out of own funds

The Issuer is not obliged to pay any part of the Redemption Price of any CPS out of its own funds.

9.4 No general right of redemption of Ordinary Units

Subject to clause 9.5, Ordinary Unit Holders are not entitled to have their Ordinary Units redeemed.

9.5 Redemption of Ordinary Units

While the Trust is not Liquid, an Ordinary Unit Holder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Issuer under the Corporations Act. If there is no withdrawal offer currently open for acceptance by Ordinary Unit Holders, an Ordinary Unit Holder has no right to withdraw from the Trust.

While the Trust is Liquid, the Issuer may decide to satisfy a Redemption request in respect of Ordinary Units in relation to all or some of the Ordinary Units which are the subject of the request, in which case, the Redemption Price must be paid within 60 days of the Issuer's decision.

9.6 Sums owed to RE

Subject to the CPS Terms, the Issuer may deduct from the proceeds of any redemption any money due to it by a Unit Holder.

10 Income and distributions

10.1 Collection of income

The Issuer must receive and collect all income of the Trust.

10.2 Determination of Trust Income

- (a) The Issuer must determine the Trust Income in respect of each Distribution Period.
- (b) The Trust Income in respect of each Distribution Period is the income of the Trust according to ordinary concepts, being the net amount of cash available for distribution by the Issuer.
- (c) In ascertaining the Trust Income, the Issuer must determine:
 - (i) the classification of any item as being on income or capital account; and
 - (ii) the extent to which reserves or provisions need to be made.

- (d) The preparation of the accounts of the Trust in accordance with applicable accounting standards is independent of and does not affect the determination of Trust Income under this clause 10.2.

10.3 CPS entitlement to Trust Income during the Initial Period

- (a) During the Initial Period, each person who is or was a Holder on the Record Date referable to a Distribution Period, is entitled to be paid a Distribution on the relevant Distribution Payment Date, if the Issuer determines to make a Distribution in respect of the Distribution Period.
- (b) If, during the Initial Period, the Issuer determines to make a Distribution in respect of the Distribution Period in accordance with clause 10.3(a), the Issuer must pay the Distribution on the Distribution Payment Date.

10.4 Ordinary Unit Holder entitlement to Trust Income during the Initial Period

- (a) During the Initial Period, if:
- (i) having paid a Distribution to Holders in respect of a Distribution Period, Trust Income is available for distribution; or
 - (ii) a Distribution is not paid to Holders in accordance with the CPS Terms and Trust Income is available for distribution,
- the Issuer may, in its sole discretion determine to make a distribution to the Ordinary Unit Holders out of the Trust Income available for distribution in respect of a Distribution Period on the Distribution Payment Date.
- (b) If, during the Initial Period, the Issuer determines to make a distribution in respect of Ordinary Units in accordance with clause 10.4(a), the Issuer must pay the distribution on the Distribution Payment Date.

10.5 Entitlements post Initial Period

- (a) On and from the Initial Period End Date, the Issuer must, in respect of each Distribution Period, determine what share of the Trust Income is to be allocated to each Class of Units as a distribution in respect of the relevant Distribution Period.
- (b) Subject to clause 10.5(a), each person who is or was a Unit Holder on the Record Date referable to the relevant Distribution Period, is entitled to be paid a distribution on the Distribution Payment Date, if the Issuer has determined to make a distribution in respect of that Unit Holder's Class of Units.
- (c) Subject to clause 10.5(a), if the Issuer has determined to make a distribution in respect of a Unit Holder's Class of Units in accordance

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with clause 10.5(a), the Issuer must pay the distribution on the Distribution Payment Date.

- (d) A Unit Holder cannot be defeated of any share of the Trust Income to which the Unit Holder is entitled under clause 10.5(a).

10.6 No other payment

The Issuer must not distribute to any Holder under clause 10.3 any additional amount out of the Trust Income other than an amount which the Holder is entitled to be paid in accordance with clause 10.3, clause 23.3 or the CPS Terms.

10.7 Separate accounts

- (a) The Issuer may keep separate accounts of different categories or sources of income or both, or deductions or credits for tax purposes, and may allocate income, deductions or credits from a particular category or source or both to particular Unit Holders.
- (b) Where the Issuer allocates income, deductions or credits from a particular category or source to a Unit Holder, the Issuer must notify the Unit Holder.

10.8 Position on transfer of Units

- (a) Subject to the Issuer determining to make a Distribution on the CPS, a person who is or was a Holder on the Record Date referable to a Distribution Period remains entitled to their share of the Trust Income in respect of that Distribution Period under clause 10.3 notwithstanding a transfer, transmission or redemption of CPS after the Record Date.
- (b) Subject to the Issuer determining to make a Distribution on the Ordinary Units, a person who is or was an Ordinary Unit Holder on the Distribution Payment Date remains entitled to their share of the surplus Trust Income (if any) in respect of that Distribution Period under clause 10.4 notwithstanding a permitted transfer or transmission of their Ordinary Units after the Distribution Payment Date.

11 Valuation of Assets

11.1 Issuer may value

The Issuer may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.¹¹

11.2 Valuation methods and policies

The Issuer may determine valuation methods and policies for each category of Asset and change them from time to time.

¹¹ See section 601FC(j) for Scheme Operator's obligations concerning valuation

12 Payments

Money payable by the Issuer to:

- (a) a Holder must be paid in accordance with the CPS Terms; and
- (b) Ordinary Unit Holders may be paid in any manner the Issuer decides.

13 Powers of the Issuer

13.1 General powers

Subject to this Constitution, the Issuer has all the powers in respect of the Trust that it is possible under the law to confer on a trustee as though it were the absolute owner of the Assets and acting in its personal capacity.

13.2 Specific restrictions

Despite clause 13.1, but subject to any express provision to the contrary elsewhere in this Constitution, the Issuer in its capacity as responsible entity of the Trust must not:

- (a) acquire any interest in any asset other than:
 - (i) LPS;
 - (ii) interests in bank accounts in which income or capital of the Trust is invested;
 - (iii) cash, rights and benefits under the Transaction Documents; and
 - (iv) income or other rights arising in connection with those assets;
- (b) sell, assign or otherwise dispose of the LPS, other than in accordance with the Transaction Documents;
- (c) grant any mortgage, charge, pledge, lien, or other form of security over the Assets;
- (d) borrow or raise money;
- (e) lend money to any person, other than by way of investing in a bank account or as permitted by another paragraph of this clause 13.2; or
- (f) agree to an amendment to any of the Transaction Documents unless the Issuer reasonably considers the amendment will not have a material adverse effect on the interests of Unit Holders, or the amendment is approved by a Resolution of Unit Holders.

13.3 Obligation to enter and perform Transaction Documents

The Issuer in its capacity as responsible entity of the Trust must enter into and perform its obligations under the Transaction Documents.

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13.4 Power of delegation¹²

The Issuer may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Issuer's power, including the power to appoint in turn its own agent or delegate.¹³ Without limitation, the Issuer's power to appoint its own agent or delegate includes a power to appoint a person as its agent or delegate by granting a power of attorney.

13.5 Protection and assistance for those dealing with agents and delegates

The Issuer may include in the authorisation referred to in clause 13.4, provisions to protect and assist those dealing with the agent or delegate as the Issuer thinks fit.

13.6 Agents and delegates may be associates

The agent or delegate may be an associate of the Issuer or a member of the Macquarie Group.¹⁴

13.7 Exercise of discretion

Subject to this Constitution, the Issuer may in its absolute discretion decide how and when to exercise its powers.

13.8 Listing of the Trust

The Issuer may apply for the Trust to be Listed and the CPS to be Officially Quoted and for this purpose the Issuer is authorised on its own behalf and on behalf of each Unit Holder to do all things necessary to effect a Listing.

13.9 Underwriting

- (a) Without limiting the effect of clause 13.1, the Issuer may enter into an arrangement with a person or persons (including an associate) to underwrite the subscription for or purchase of CPS on such terms as the Issuer determines. Subject to clause 21.3 any Underwriting Liabilities of the Issuer are an expense of the Trust, provided the Issuer has, in relation to those Underwriting Liabilities, properly performed its duties.
- (b) Unless the agreement between the Issuer and the underwriter or underwriters expressly states the contrary intention, the underwriter or underwriters will not be an agent or delegate of the Issuer.

¹² See also Section 601FB

¹³ A responsible entity may wish to lay off the tasks of operating a scheme to a third party. This does not reduce the legal responsibility of the responsible entity for the operation of the scheme (by virtue of section 601FB(2) of the Corporations Act).

¹⁴ Subject to Part 5C.7 which regulates related party transactions in the context of a registered managed investment scheme. Part 5C.7 has the effect of making chapter 2E applicable to a registered scheme with certain modifications.

14 Retirement of Issuer

14.1 Retirement – Trust not a registered scheme

Whilst the Trust is not a registered scheme, the Issuer may retire on not less than one month's notice to the Ordinary Unit Holders. On retirement, the Issuer may appoint another person in writing to be the trustee.

14.2 Voluntary retirement

While the Trust is a registered scheme, the Issuer may retire as the responsible entity of the Trust as permitted by law.¹⁵ If permitted by law or by any relief from the Corporations Act granted by ASIC, the Issuer may appoint its successor by deed.¹⁶

14.3 Compulsory retirement

While the Trust is a registered scheme, the Issuer must retire as the responsible entity of the Trust when required by law.¹⁷

14.4 Release

When it retires or is removed, but subject to the Corporations Act, the Issuer is released from all obligations in relation to the Trust arising after the time it retires or is removed.¹⁸

15 Notices to Unit Holders

A notice or other communication required under this Constitution to be given to:

- (a) a Holder, will be provided in accordance with clause 14 of the CPS Terms; and
- (b) an Ordinary Unitholder, will be provided in accordance with clause 14 of the CPS Terms, where all references to a Holder are to be read as references to an Ordinary Unit Holder.

16 Notices to the Issuer

A notice or other communication required under this Constitution to be given by:

¹⁵ See Section 601FL. The change does not take effect until the ASIC alters its records: Section 601FJ.

¹⁶ Section 601FL(3) allows the responsible entity to appoint a temporary responsible entity in certain circumstances but does not allow it to appoint a permanent replacement, this being a matter, generally speaking, for members under section 601FL(1) and 601FL(2).

¹⁷ See Section 601FM and 601FA.

¹⁸ See section 601FR for the Scheme Operator's obligation to transfer records, etc. Section 601FS and 601FT deal, respectively, with the transfer of rights, obligations and liabilities of a former responsible entity to a new responsible entity (on the one hand) and the automatic change of references in documents to which the former responsible entity was a party so that they are construed as references to the new responsible entity (on the other hand).

- (a) a Holder to the Issuer, will be provided in accordance with clause 14 of the CPS Terms; and
- (b) an Ordinary Unitholder to the Issuer, will be provided in accordance with clause 14 of the CPS Terms, where all references to a Holder are to be read as references to an Ordinary Unit Holder.

17 Meetings of Unit Holders

17.1 Convening of meetings

The Issuer may at any time convene a meeting of Unit Holders or of a Class of Unit Holders and must do so if the Corporations Act requires.¹⁹

17.2 Issuer may determine

Subject to the specific provisions of this Constitution relating to meetings of Unit Holders or of a Class of Unit Holders and to the Corporations Act,²⁰ the Issuer may determine the time and place at which a meeting of Unit Holders or of a Class of Unit Holders will be convened and the manner in which the meeting will be conducted.

17.3 Notice of meeting

Notice of a meeting of Unit Holders must be given in accordance with the Corporations Act.

17.4 Quorum

The quorum for a meeting of:

- (a) Unit Holders is at least two Unit Holders present in person or by representative or proxy together holding or representing at least 10% of all Ordinary Units:
- (b) a Class of Unit Holders is at least two Unit Holders of Units in that Class present in person or by representative or proxy together holding or representing at least 10% of all Units in that Class,

unless, in the case of a meeting of a Class of Unit Holders, the Class has only one Unit Holder who may vote on a Resolution, in which case that one Unit Holder constitutes a quorum.

17.5 No quorum

If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:

- (a) if convened on the requisition of Unit Holders - dissolved; or

¹⁹ Refer Part 2G.4

²⁰ Refer Part 2G.4

- (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Issuer decides by notice to the Unit Holders and others entitled to notice of the meeting.

At any adjourned meeting, those Unit Holders present in person or by proxy constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

17.6 Chair

Subject to the Corporations Act²¹ the Issuer may appoint a person to chair a meeting of Unit Holders or a Class of Unit Holders.

17.7 Role of chair

The chair of a meeting of Unit Holders or a Class of Unit Holders:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chair under this clause 17.7 is final.

17.8 Postponement or cancellation

The chair has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chair thinks fit.

17.9 Notice of cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Unit Holders or of a Class of Unit Holders must state the reason for cancellation or postponement and be given:

- (a) to each Unit Holder (or Unit Holder in the Class) individually; and
- (b) to each other person entitled to be given notice of a meeting of Unit Holders under the Corporations Act.

17.10 Contents of notice of postponement of meeting

A notice of postponement of a meeting of Unit Holders must specify:

²¹ Refer Part 2G.4 and Section 601FC(1)

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- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

17.11 Number of days for postponement of meeting

The number of days from the giving of a notice postponing the holding of a meeting of Unit Holders or of a Class of Unit Holders to the date specified in that notice for the holding of the postponed meeting must not be less than the number of days notice of the meeting required to be given by this Constitution.

17.12 Business at postponed meeting

The only business that may be transacted at a meeting of Unit Holders or of a Class of Unit Holders the holding of which is postponed is the business specified in the notice convening the meeting.

17.13 Proxy, attorney or representative at postponed meeting

Where:

- (a) by the terms of an instrument appointing a proxy or an attorney or a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Unit Holders or of a Class of Unit Holders to be held on a specified date or at a meeting of Unit Holders or of a Class of Unit Holders to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then, by force of this clause 17.13, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Unit Holder appointing the proxy, attorney or representative gives to the Issuer notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

17.14 Proxies and voting

The provisions of the Corporations Act governing proxies and voting for meetings of members of registered schemes apply to the Trust, save where the contrary is expressly stated in this Constitution.²²

²² The Corporations Act deals with proxies and voting in Divisions 5 and 6 of Part 2G.4.

17.15 Proxies containing some of the required information

The Issuer may determine that the appointment of a proxy is valid even if it contains only some of the information required by the Corporations Act.

17.16 Adjournment of meeting

- (a) The chair of a meeting of Unit Holders or of a Class of Unit Holders may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) In exercising this discretion, the chair may, but need not, seek the approval of the Unit Holders or of a Class of Unit Holders present. Unless required by the chair, no vote may be taken or demanded by the Unit Holders or of a Class of Unit Holders present in respect of any adjournment.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

17.17 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

17.18 Validity of vote in certain circumstances

A vote cast by a person as a proxy, attorney or representative is valid even in the event of:

- (a) the previous revocation of that person's authority by the death of the Unit Holder of the Units in respect of which the vote is cast or otherwise; or
- (b) the execution of a transfer of those Units by that Unit Holder,

unless a notice in writing of the revocation or transfer has been received by the Issuer or by the chairman of the meeting before the vote is cast.

17.19 Resolutions binding

- (a) A Resolution by:
 - (i) Unit Holders binds all Unit Holders;
 - (ii) Unit Holders of a Class, binds all Unit Holders of that Class, whether or not they voted or were present at the meeting.

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- (b) No objection may be made to any vote unless the objection is made at the meeting.

17.20 Minutes

The minutes of a meeting of Unit Holders or of a Class of Unit Holders signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proven.

17.21 Equality of votes - no casting vote for chairman

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Unit Holder or proxy or attorney or representative.

17.22 Entitlement to vote

- (a) Subject to any rights or restrictions for the time being attached to any Class or Classes of Units and to this constitution:
- (i) on a show of hands, each Unit Holder present in person and each other person present as a proxy, attorney or representative of a Unit Holder has one vote; and
 - (ii) on a poll, each Unit Holder present in person has one vote for each one dollar of the value of the Units held by the Unit Holder and each person present as proxy, attorney or representative of a Unit Holder has one vote for each one dollar of the value of the Units held by the Unit Holder that the person represents.
- (b) A Unit Holder is not entitled to vote at a meeting in respect of Units which are the subject of a current Restriction Agreement for so long as any breach of that agreement subsists.

17.23 Joint Unit Holders' vote

If a Unit is held jointly and more than one Unit Holder votes in respect of that Unit, only the vote of the Unit Holder whose name appears first in the Register counts.

17.24 Vote of unitholder of unsound mind

If a Unit Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Unit Holder's committee or trustee or any other person who properly has the management of the Unit Holder's estate may exercise any rights of the Unit Holder in relation to a meeting of Unit Holders as if the committee, trustee or other person were the Unit Holder.

17.25 Objection to voting qualification

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

17.26 Meetings by technology

A meeting of Unit Holders or any Class of Unit Holders may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

17.27 Meetings of Class

If any meeting of the Unit Holders of a Class is required to be held the foregoing provisions of this clause 17 will apply with any necessary amendments.

18 Rights and liabilities of Issuer

18.1 Holding Units

The Issuer and its associates may hold Units in the Trust in any capacity.²³

18.2 Other capacities

Subject to the Corporations Act,²⁴ nothing in this Constitution restricts the Issuer (or its associates) from:

- (a) dealing with itself, (as responsible entity of the Trust or in another capacity), an associate, any member of the Macquarie Group or with any Unit Holder;
- (b) being interested in any contract or transaction with itself (as responsible entity of the Trust or in another capacity), an associate, any member of the Macquarie Group or with any Unit Holder or retaining for its own benefit any profits or benefits derived from any such contract or transaction; or
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme.

18.3 Issuer may rely

The Issuer may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Issuer, in relation to the interpretation of this

²³ See Section 601FG, Section 253E, Part 5C.7 and LR 10.11

²⁴ Refer Part 5C.7

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Constitution or any other document (whether statutory or otherwise) or generally in connection with the Trust;

- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Issuer who are in each case believed by the Issuer in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Issuer believes in good faith to be the original or a copy of an appointment by a Unit Holder of a person to act as their agent for any purpose connected with the Trust;
- (d) notices that the Issuer believes in good faith to be genuine, provided to the Issuer by any party to a Transaction Document; and
- (e) any other document provided to the Issuer in connection with the Trust upon which it is reasonable for the Issuer to rely,

and the Issuer will not be liable for anything done, suffered or omitted by it acting reasonably and in good faith in reliance upon such opinion, advice, statement, information or document.

18.4 Exercise of powers

In exercising its powers under this Constitution, the Issuer will have regard to the matters set out in schedule 1.

19 Limitation of liability and indemnity in favour of Issuer

19.1 Issuer not liable except to the extent Corporations Act imposes liability

The Issuer and any director and officer of the Issuer is not liable in contract, tort or otherwise to Unit Holders for any loss suffered in any way relating to the Trust except to the extent that the Corporations Act imposes such liability.

19.2 Limitation on Issuer's liability

Subject to the Corporations Act, the liability of the Issuer to any person other than a Unit Holder in respect of the Trust (including in respect of any contracts entered into as trustee of the Trust or in relation to any Assets) is limited to the Issuer's ability to be indemnified from the Assets.

19.3 Indemnity in favour of Issuer

The Issuer is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing or exercising any of its powers or duties in relation to the Trust²⁵.

²⁵ See Section 601GA(2).

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19.4 Indemnity includes acts and omissions of an agent or delegate

To the extent permitted by the Corporations Act,²⁶ the indemnity under clause 19.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Issuer.

19.5 Indemnity in addition to indemnity allowed by law

The indemnity under clause 19.3 is in addition to any indemnity allowed by law. It continues to apply after the Issuer retires or is removed from the office it holds in relation to the Trust.

19.6 Indemnity unaffected by unrelated breach of trust

The Issuer may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy a liability to any creditor of the Issuer (as trustee of the Trust) notwithstanding that the Trust may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Issuer or by any delegate or agent appointed by the Issuer.

20 Liability of Unit Holders

20.1 Liability limited

Subject to clauses 20.2 and 20.3, the liability of a Unit Holder is limited to the amount if any which remains unpaid in relation to the Unit Holder's application for their Units.

20.2 Recourse limited to the Assets

In the absence of separate agreement with a Unit Holder, the recourse of the Issuer and any creditor against Unit Holders is limited to the Assets.

20.3 Tax and User Pays Fees

The Issuer is entitled to be indemnified by a Unit Holder or former Unit Holder to the extent that the Issuer incurs any liability for Tax or User Pays Fees as a result of the Unit Holder's action or inaction, or as a result of an action or failure to act requested by the Unit Holder or former Unit Holder.

20.4 Joint Unit Holders

Joint Unit Holders and former Joint Unit Holders are jointly and severally liable in respect of all payments including payments to which clause 20.3 applies.

20.5 Deficiency in the Assets

A Unit Holder need not indemnify the Issuer if there is a deficiency in the Assets or meet the claim of any creditor of the Issuer in respect of the Trust.

²⁶ See Sections 601FB(2) and 601GA(2)

20.6 Restrictions on Unit Holders

Except as otherwise set out in this Constitution, a Unit Holder:

- (a) must not interfere with any rights or powers of the Issuer under this Constitution;
- (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
- (c) may not require an Asset to be transferred to the Unit Holder.

21 Remuneration and expenses of the Issuer

21.1 Issuer Fees

- (a) Subject to clauses 21.1(b) and 21.2, the Issuer is entitled to receive out of the Assets a fee in respect of each Quarter Year equal to the greater of:
 - (i) the amount calculated at the rate of 0.125% per Quarter Year of the Gross Asset Value of the Trust payable quarterly in arrears; and
 - (ii) the Issuer's reasonable estimate of its costs for that Quarter Year, including all overheads and whether incurred directly by the Issuer or reimbursed by the Issuer to any of its related bodies corporate, in properly performing or exercising any of its powers or duties and providing its services as responsible entity for which it is not otherwise reimbursed pursuant to clause 19.3.
- (b) The Issuer's fee, which is payable in arrears, accrues daily, is calculated as at the end of each Quarter Year and must be paid within 21 days of the end of each Quarter Year.

21.2 Waiver of remuneration

The Issuer may waive the whole or any part of the remuneration to which it would otherwise be entitled.

21.3 Expenses

The Issuer's fees and all reasonable expenses including out of pocket expenses and all legal costs and disbursements incurred by the Issuer in relation to the proper performance of its duties in respect of the Trust, are payable or reimbursable out of the Assets to the extent that such reimbursement is not prohibited by the Corporations Act.

21.4 GST

- (a) In this clause 21.4:

- (i) words and expressions which are not defined in this constitution but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
 - (ii) GST Law has the same meaning given to that expression in the GST Act.
- (b) Unless expressly stated, all fees or other sums payable or consideration to be provided under this constitution are exclusive of GST.
 - (c) If GST is payable on any supply made under this constitution, the recipient will pay to the supplier an amount equal to the GST payable on the supply.
 - (d) The recipient will pay the amount referred to in clause 21.4(c) in addition to and at the same time that the consideration for the supply is to be provided under this constitution.
 - (e) The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 21.4(c). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.
 - (f) If an adjustment event arises in respect of a taxable supply made by a supplier under this constitution, the amount payable by the recipient under clause 21.4(c) will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.
 - (g) Where a party is required under this constitution to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:
 - (i) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
 - (ii) if the payment or reimbursement is subject to GST, an amount equal to that GST.
 - (h) The Issuer shall be entitled to be reimbursed or indemnified for the amount referred to in clause 21.4(c) out of the Assets or assets of any controlled sub-trust.

22 Duration of the Trust

22.1 Initial settlement

- (a) The Trust commences when:

- (i) MFHL (or its nominee) subscribes \$100; and
 - (ii) MGHNZL (or its nominee) subscribes \$100,
- for the Ordinary Units in the Trust. MFHL (or its nominee) and MGHNZL must be issued with:
- (iii) in the case of MFHL (or its nominee), one Ordinary Unit; and
 - (iv) in the case of MGHNZL (or its nominee), one Ordinary Unit,
- in return for that payment.
- (b) The Issuer must invest the \$200 application amount for those Ordinary Units in the Trust's operating account.

22.2 Termination

The Trust terminates on the earliest of:

- (a) the date specified by the Ordinary Unitholders as the date of termination of the Trust in a notice given to the Issuer at least 7 days prior to the date specified in the notice; and
- (b) the date on which the Trust terminates in accordance with another provision of this Constitution or by law.²⁷

22.3 Perpetuity period and restriction on issue and redemption of Units

Despite any other provisions in this constitution, no Units may be issued or redeemed after the 80th anniversary of the day preceding the day the Trust commenced, unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

The perpetuity period for the purposes of section 5 of the *Perpetuities and Accumulations Act 1968 (Vic)* is the period of 80 years from the day before the commencement of the Trust. The specification of a perpetuity period in this clause 22.3 does not require that the Trust terminate on the expiration of that period.

23 Procedure on termination

23.1 Realisation of Assets

- (a) Subject to clause 23.1(b), following termination, the Issuer must realise the Assets. This must be completed in 180 days if practical, and in any event as soon as possible after that.
- (b) The Issuer may, however, postpone realisation of the Assets or any Asset if it reasonably considers it is in the interests of Unit Holders to do so, and will not be responsible for any resulting Unit Holder's loss.

²⁷ See Part 5C.9 on winding up

23.2 Audit of winding up

If and to the extent that the law or ASIC policy so requires, the Issuer must arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

23.3 Distribution following termination

- (a) The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated) including income entitlements of Unit Holders and meeting the expenses (including anticipated expenses) of the termination, must be distributed to Unit Holders as follows:
- (i) first, to Holders, for each CPS held as at termination an amount equal to the Liquidation Amount; and
 - (ii) second, the balance (if any) to the Ordinary Unit Holders pro rata in accordance with the number of Ordinary Units held by Ordinary Unit Holders.
- (b) The Issuer may distribute the proceeds of realisation of the Assets in instalments.

23.4 Constitution applies until date of final distribution

Subject to the Corporations Act, the provisions of this Constitution continue to apply from the date of termination until the date of final distribution under clause 23.3.

24 Amendments to this Constitution

- (a) Subject to clause 24(c), if the Corporations Act allows,²⁸ this Constitution may be amended:
- (i) by Special Resolution;²⁹ or
 - (ii) by deed executed by the Issuer.
- (b) Subject to clause 24(c) and the Corporations Act, the rights attaching to a Class of Units may only be amended or varied by Special Resolution of members of that Class.
- (c) Subject to the Corporations Act, each Unit Holder agrees not to exercise their right under clauses 24(a)(i) and 24(b) or under the Corporations Act to amend or vary:
- (i) any right attaching to any Class of Units; or
 - (ii) any clause of this Constitution,

²⁸ See Section 601GC for power to amend the Constitution. The amendment cannot take effect until a copy of the modification is lodged with the ASIC

²⁹ The required majority for such a Resolution under section 601GC(1)(a) is 75%.

in a manner which the Ordinary Unit Holders reasonably consider and notifies the Issuer may adversely affect its interests or those of MGL without the consent of the Ordinary Unit Holders.

- (d) Any amendment of this Constitution which amends or has the effect of amending clauses 24(b) or 24(c) or this clause 24(d) constitutes a variation of the rights attached to a Class of Units.
- (e) If the Constitution is amended in accordance with this clause 24, the Issuer may give effect to the amendments by executing a supplemental deed.

25 Compliance committee

If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be indemnified out of the Assets in respect of that liability to the extent permitted by the Corporations Act.³⁰

26 Complaints

26.1 Action on receipt of complaints

If a Unit Holder submits to the Issuer a complaint alleging that the Unit Holder has been adversely affected by the Issuer's conduct in its management or administration of the Trust, the Issuer:

- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as practicable and in any event within 14 days from receipt;
- (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Issuer as appropriate to handle complaints;
- (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
- (d) may in its discretion give any of the following remedies to the complainant:
 - (i) information and an explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and

³⁰ See section 601JF

- (e) must communicate to the complainant in relation to the complaint as soon as practicable and in any event not more than 45 days after receipt by the Issuer of the complaint:
- (i) the determination in relation to the complaint;
 - (ii) the remedies (if any) available to the Unit Holder; and
 - (iii) information regarding any further avenue for complaint.

26.2 Consideration of complaint

In considering a complaint, the Issuer will take into account such of the following factors as are relevant to the complaint:

- (a) the alleged breach of the Corporations Act, this Constitution or breach of trust;
- (b) legal advice (if any) it has received in relation to that alleged breach;
- (c) the supporting material provided by the Unit Holder in relation to the alleged breach;
- (d) any material held by the Issuer in relation to the alleged breach; and
- (e) any other relevant information.

26.3 Referral of complaint

The Issuer must consider a complaint by referring it to the Issuer's compliance committee.

27 Credit Rating

The Issuer may arrange to have the Trust or a Class given a credit rating by a Credit Rating Agency.

28 Statutory provisions

28.1 Corporations Act

- (a) If:
 - (i) the Corporations Act requires that this constitution contain certain provisions, or if any ASIC Relief on which the Issuer has determined it wishes to rely or which is expressly applicable to the Trust and the Issuer requires provisions to a certain effect to be contained in this constitution in order for the ASIC Relief to apply ("**Required Provisions**"); or
 - (ii) any part of this Constitution (a "**Required Part**") is included to comply with the requirements of the Corporations Act,

Listing Rules, ASIC or ASX (“**Regulatory Requirement**”) and that Regulatory Requirement ceases or changes,

then, to the extent the Corporations Act allows,

- (b) the Unit Holders authorise the Issuer to amend the Constitution so that the Required Provisions are included, or the Required Part is deleted or amended to reflect the altered Regulatory Requirement in a deed made for that purpose and, if required, to lodge it with ASIC.

28.2 Listing Rules

While the Trust is admitted to the official list of the ASX, the following applies:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is taken to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is taken not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is taken not to contain that provision to the extent of the inconsistency.

28.3 Corporations Act and the Listing Rules

- (a) Any provision of this Constitution which is expressed to apply subject to the Corporations Act shall only be read as subject to the Corporations Act while the Trust is a registered scheme.
- (b) Any provision of this Constitution which is expressed to apply subject to the Listing Rules shall only be read as subject to the Listing Rules while the Units are Officially Quoted.

28.4 This clause prevails

Subject to the Corporations Act and the Listing Rules, the provisions of this clause 28 prevail over other provisions of this Constitution to the extent of any inconsistency.

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29 Registers and inspection of records

29.1 Inspection by Unit Holders

Subject to the Corporations Act, the Issuer may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Trust or any of them will be open to the inspection of Unit Holders.

29.2 Right of a Unit Holder to inspect

A Unit Holder (other than the Issuer) does not have the right to inspect any document of the Trust except as provided by law or authorised by the Issuer or by the Unit Holders in general meeting.

29.3 Holding Statements

Subject to the Corporations Act, while the Trust is not admitted to an uncertified trading system, a holding statement may be issued to evidence the holding of Units.

EXECUTED as a deed

Schedule 1 - CPS Terms

CPS Terms attached on the following pages.

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Schedule 2 - Ordinary Unit Terms

1 Issue Price

The Issue Price for Ordinary Units is \$100.00 per Ordinary Unit.

2 Rights and restrictions attaching to Ordinary Unit

2.1 Distributions

An Ordinary Unit does not carry a right to be paid distributions other than in accordance with clause 10.4 and 10.5 of the Constitution.

2.2 Distribution on winding up

An Ordinary Unit carries a right to a distribution on a winding up in accordance with clause 23.3(a)(ii) of the Constitution.

2.3 Redemption

- (a) An Ordinary Unit Holder has no interest in any of the Ordinary Shares or the Preference Shares to be issued to MGL Holders on Exchange.
- (b) For the avoidance of doubt, an Ordinary Unit will not be automatically redeemed:
 - (i) on a Redemption of the CPS;
 - (ii) on an Ordinary Share Exchange of the CPS; or
 - (iii) on a Preference Share Exchange of the CPS.

2.4 Ordinary Unit Holders

Ordinary Units must only be held by a member of the Macquarie Group and may not be transferred to anyone other than another member of the Macquarie Group.

2.5 Voting right

An Ordinary Unit confers the right to attend and vote at meetings of Unit Holders.

2.6 No other rights

An Ordinary Unit confers no additional rights on the Unit Holder other than as provided for in the Constitution (including this Schedule 2) and rights conferred by law.