

# **Supplemental Deed**

**Australian Ethical Investments Limited**  
ACN 003 188 930

**Climate Advocacy Fund**

## **Blake Dawson**

Level 36, Grosvenor Place  
225 George Street  
Sydney NSW 2000  
Australia  
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F 61 2 9258 6999

**Reference**  
LJS

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# Supplemental Deed

## PARTIES

**Australian Ethical Investments Limited**  
ACN 003 188 930 (**Responsible Entity**)

## RECITALS

- A. Responsible Entity signed a deed of trust to be the constitution of the Climate Advocacy Fund (**Scheme**) by deed poll dated 26 August 2009 (**Constitution**).
- B. Clause 1.4 of the Constitution provides that, subject to the Corporations Act 2001 (Cth), the Responsible Entity may amend the Constitution by supplemental deed.
- C. There are currently no members of the Scheme and the Scheme is not presently registered.
- D. Responsible Entity wishes to amend the Constitution in accordance with this deed.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

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A term defined in the Constitution has the same meaning in this deed unless it is defined differently in this deed.

### 2. AMENDMENT TO CONSTITUTION

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The Constitution is amended in the manner set out in Annexure A.

### 3. BINDING PROVISIONS

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The provisions of this deed are binding on Responsible Entity, each Member and all persons claiming through them as if each were a party to this deed.

### 4. EFFECTIVE DATE

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The changes contemplated by this deed take effect upon a copy of this deed being lodged with ASIC.


### 5. GOVERNING LAW AND JURISDICTION

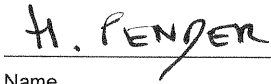
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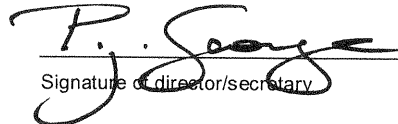
This deed is governed by the law of the Australian Capital Territory.

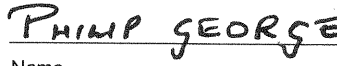
EXECUTED as a deed.

EXECUTED by Australian Ethical  
Investments Limited by:

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature of director/secretary

  
\_\_\_\_\_  
Name

DATE 26 October 2009

**Annexure A**

*In Clause 2.4(i)* - replace last sentence with the following: "The Responsible Entity will use reasonable endeavours to pay the proceeds of liquidation to Unitholders in instalments, as amounts are converted into Cash pursuant to this clause."

*In Clause 2.4 (l)*, change the reference from (l) " to "(k)".

*In Clause 2.4 (n)*, add "and (i)" after the reference "(e)".

*In Clause 3.1 (a)* – change the reference from "3.1(f)" to "3.1 (e)".

*In Clause 3.2* – change the reference from "8.5" to "9.5".

*In Clause 3.3 (g)* – add the following sentence at the end of clause 3.3 (g): "The Responsible Entity will determine a Redemption Price Calculation Date as soon as practicable after the circumstances which resulted in the Redemption Price Calculation Date being postponed under clause 3.3 (f) cease to apply."

*In Clause 3.3(h)* – replace with the following:

(h) **(notify Unitholder)** The Responsible Entity will notify the Unitholder of:

- (i) the Redemption Price Calculation Date for the Units redeemed;
- (ii) the number of Units redeemed; and
- (iii) at what price per Unit.

*In Clause 9.5* – change the reference from "2.3(e)" to "2.4".

*In Paragraph 9.5(b)* - change the words "each Trust" to "the Trust".

*In Clause 9.5* - in the first paragraph under paragraph (d), delete the sentence beginning "Where assets of the Trust" and ending "assets of only one Trust."

*In the Schedule* – Change the reference from "8.5 (b)" to "9.5 (b)".

**CONSTITUTION OF THE  
CLIMATE ADVOCACY FUND**

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive name.

**DEED POLL**

**THIS DEED POLL IS MADE ON 26 AUGUST 2009**

**By Australian Ethical Investment Limited (ACN 003 188 930)**

**Registered Office: Trevor Pearcey House, 34 Thynne Street, Block E, Treager Court,  
Bruce ACT 2617 ('the responsible entity')**

**Recitals**

A. By way of this Deed Poll, the Climate Advocacy Fund is established.



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**SCHEDULES.....**

*ES*

## 1 INTERPRETATION

### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**“Accrual Period”**, in respect of the Trust, means a period ascertained as follows:

- (a) the dates set out in the Schedule;
- (b) where the determination of the Trust occurs during an Accrual Period, the last Accrual Period in respect of the Trust shall end on the date of determination; and
- (c) the Responsible Entity may determine that an Accrual Period in respect of the Trust should end on a date other than that then in force but before doing so the Responsible Entity must notify all Unitholders in the Trust in writing of the new date.

**“Act”** means the Corporations Act 2001 (Cth).

**“Affiliate”** of a body corporate means:

- (a) any related body corporate of that body;
- (b) each director of that body; and
- (c) any person who has a substantial holding in that body.

**“Application”** means a request for the issue of Units to a person, in a form acceptable to the Responsible Entity.

**“Application Money”** means the Cash or any other assets that may be contributed to the Trust, tendered in accordance with sub-clause 3.1 in respect of an Application or regular contribution.

**“Business Day”** means any Monday, Tuesday, Wednesday, Thursday or Friday on which banks are open for business in Canberra and Sydney.

**“Cash”** means the legal tender of Australia for the time being, money on deposit in a financial institution denominated in Australian currency and situated in Australia, a cheque drawn on a bank (or other approved financial institution) situated in Australia and denominated in Australian currency or an electronic transfer of Australian currency (as appropriate).

**“Commission”** means the Australian Securities and Investments Commission or any delegate and includes every successor body to the Australian Securities and Investments Commission.

**“Constitution”** means this deed, including any schedules.

**“Expense”** means any cost, charge or expense incurred in relation to the Trust including without limitation any cost, charge or expense incurred in relation to:

- (a) the acquisition, valuation, registration, custody, disposal of or other dealing (including any proposed dealing or other proposed transaction of whatsoever nature) with investments, including commission, bank charges and stamp duty, but excluding any incidental expense which is not an out-of-pocket expense or disbursement incurred by the Responsible Entity;
- (b) the Trust or Compliance Plan Auditor or any registered company Auditor appointed in accordance with the Constitution or the Compliance Plan;
- (c) all income tax, stamp duties, financial institutions duties and bank account debit taxes or any other duty, tax or impost or any amount in bona fide reimbursement of any such duty, tax or impost properly charged to or payable by the Responsible Entity (whether by any taxing authority or any other person) in connection with the Trust on any account whatsoever;
- (d) postage, electronic funds transfer, stamp duty on all cheques (other than distribution cheques) accounts, statements, certificates, notices and other documents sent to Unitholders in accordance with the provisions of this Constitution, the Compliance Plan, the Corporations Act or otherwise;
- (e) preparation, printing and postage of accounts, any distribution statements, cheques and certificates;
- (f) the keeping of the registers and of accounting records;
- (g) preparation, execution, stamping, lodgement and registration (as applicable) of this deed, any further supplemental deed, the Compliance Plan and any revision and any subsequent issue of Units in the Trust (including legal, accounting, tax and financial advice and services);
- (h) postage and stamp duty on distribution cheques;
- (i) convening and holding meetings of Unitholders;

- (j) any action, suit or proceeding taken on behalf of or brought against the Trust (including costs of obtaining advisory opinions) and all costs and disbursements incurred by the Responsible Entity in obtaining any legal advice or opinions concerning or relating to the interpretation and construction of this Constitution or the Compliance Plan or any provision hereof;
- (k) the amount of any reimbursement to the Responsible Entity for payments made by it under indemnities lawfully granted by it or on account of compliance committee members or other service providers; and
- (l) trust reimbursement or similar insurance taken out by the Responsible Entity (to the extent permitted by law).

PROVIDED THAT the combined total amount in respect of those items specified in paragraphs (d), (e), (f) and (g) referable to any Financial Year shall not exceed one point five percent (1.5%) of the average of the Value of the Trust (but before making any deduction as required in the definition of that expression) on the last day of each month during the Financial Year PROVIDED FURTHER THAT in respect of the first Financial Year of the Trust, the Value of the Trust (but before making any deduction as aforesaid) shall not be averaged but shall be taken as being such Value on the last day of the last month in that Financial Year.

**“Financial Year”** means each period beginning on the date the Trust was established or the day after the end of the preceding Financial Year, and ending on 30 June or some other date determined by the Responsible Entity, or the date of last distribution of assets on a winding up (as the case may be).

**“Liabilities”** means all present liabilities of the Trust, including any provision that the Responsible Entity decides should be taken into account in determining the liabilities of the Trust, but does not include any amount representing Unitholders' capital, undistributed profits, capital reserves or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as debt or equity in the accounts of the Trust.

**“Redemption Price Calculation Date”** means the date upon which the redemption price of a Unit is required to be calculated and, subject to Clause 3.3(f), is the date upon which the request to redeem is received by the Responsible Entity in accordance with Clause 3.3(d) provided that where a request to redeem is received later than 3.00p.m. Canberra time on a business day (or later than such other time as determined by the Responsible Entity and notified to Unitholders), or on a day which is not

a business day, the "Redemption Price Calculation Date" shall be the next following business day.

"**Register**" means the principal and any branch register kept under sub-clause 7.2.

"**Responsible Entity**" means:

- (a) while the Trust is not a registered scheme, the body corporate named at the beginning of this document or if another body corporate holds office as trustee of the Trust, that body corporate; or
- (b) while the Trust is a registered scheme, the body corporate registered with ASIC as the responsible entity of the Trust under the Corporations Act.

"**Termination Date**" means the date the Trust terminates under clause 2.3.

"**Trust**" means the trust established under this Constitution.

"**Unit**" means an equal undivided beneficial interest in the Trust.

"**Unitholder**" means a person by or on behalf of whom an Application is made and accepted or who is otherwise entitled to a Unit in the Trust.

"**Value of the Trust**" means the amount determined by the Responsible Entity in accordance with sub-clause 5.2 as the total of the value of all assets of the Trust, less the value of the distribution account and the Liabilities.

## 1.2 Interpretation

In this Constitution:

- (a) unless the context otherwise requires:
  - (i) **(gender)** a reference to any gender includes a reference to the other gender;
  - (ii) **(singular and plural)** words expressed in the singular include the plural and vice versa;
  - (iii) **(amendment and reenactment)** a reference to a deed (including this Constitution), agreement, regulation or statute is to be construed as a reference to the same as amended substituted or reenacted;

- (iv) **(Corporations Act definitions)** words defined in the Act the initial letter of which is a capital will, unless also defined in this Constitution, have the meaning given in the Act;
  - (v) **(successors)** a reference to a person in this Constitution (including a party to this Constitution) includes any successor of that person;
  - (vi) **(persons)** a reference to a person means any manner of legal person;
  - (vii) **(legislation)** a reference to a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) **(headings)** headings and numberings are not to affect the construction of this Constitution;
  - (c) **(covenants in this Constitution)** each covenant made by the Responsible Entity is made severally to each Unitholder, so that each covenant in this Constitution may be enforced by any Unitholder;
  - (d) **(benefits and obligations)** this Constitution will be construed, except as otherwise provided, to bind the Responsible Entity, each Unitholder and any person claiming through either; and
  - (e) **(proper law)** this Constitution is governed by the laws of the Australian Capital Territory.

### 1.3 Appointment of Responsible Entity

The Responsible Entity has agreed to act as responsible entity and trustee of the Trust.

### 1.4 Amendment

Subject to the Corporations Act, the Responsible Entity may by supplemental deed amend this Constitution.



## 1.5 ASIC Instruments

If the Trust is a registered scheme and relief from the provisions of the Corporations Act is given by an ASIC instrument on condition that this document includes specified provisions, then for so long as the condition applies, those provisions are taken to be included in this document and prevail over the other provisions of this document to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Trust), the ASIC instrument (and the provisions it requires) will be taken to be included in this document only if the Responsible Entity states in writing at any time that is the case.

## 2 TRUSTS

### 2.1 Name

- (a) The Trust is called the Climate Advocacy Fund or such other name as the Responsible Entity determines. If the Responsible Entity retires or is removed and the name of the Trust implies an association with the Responsible Entity or its business, the new Responsible Entity must, unless otherwise approved by the Responsible Entity, change the Trust's name to a name that does not imply the association.
- (b) If the new Responsible Entity is required to change the Trust's name under clause 2.1(a), it must do so within seven days after the Responsible Entity retires or is removed (or any longer period approved by the Responsible Entity).

### 2.2 Commencement

As soon as practicable after the execution of this Constitution, the Responsible Entity will procure a person who is permitted by the Act to do so without being provided a Product Disclosure Statement (other than the Responsible Entity or any proposed custodian) to subscribe for 100 Units at \$1.00 each. The Trust is then commenced and all assets will then vest in the Responsible Entity to be held on trust by the Responsible Entity for Unitholders in accordance with this Constitution. This clause does not prevent the Responsible Entity from appointing a custodian or nominee to hold the Trust assets (or any of them).

### 2.3 Duration



The Trust referred to in clause 2.1 will commence as set out in that Clause and shall continue until

- (a) the date being one day before the 80th anniversary of the commencement of the Trust;
- (b) the date specified by the Responsible Entity as the date of termination of the Trust in a notice given to Unitholders; and
- (c) the date on which the Trust terminates in accordance with another provision of this document or an order of a court or by law.

## 2.4 Termination

Where the Trust is to be determined:

- (d) **(termination notice)** The Responsible Entity will if practicable give prior notice to each Unitholder of the Termination Date.
- (e) **(liquidate)** The Responsible Entity will take all reasonable steps to convert promptly the assets of the Trust into Cash, but may delay conversion of any asset for such time as the Responsible Entity considers is in the best interest of the Unitholders. The Responsible Entity in doing so may transfer any asset to the trustee of another trust irrespective of any association that it may have with that other trust.
- (f) **(costs)** The Responsible Entity may retain for as long as it thinks fit Trust assets, converted into Cash or otherwise, for the purpose of meeting any actual or contingent liabilities of the Trust. Any retained asset will be distributed to the extent it ceases to be required to meet actual or contingent liabilities.
- (g) **(no Unitholder liability)** If the liabilities of the Trust exceed its assets the Unitholder will not be liable to satisfy the deficiency.
- (h) **(distribution)** Subject to the other provisions of this Clause, the Responsible Entity will endeavour to complete the conversion of the assets of the Trust to Cash within 180 days of the Termination Date but the Responsible Entity may extend that period if it thinks it is in the interests of Unitholders to do so. The Responsible Entity will not be liable for any loss attributable to the extension..
- (i) **(proceeds)** Subject to paragraph (j) of this sub-clause, after the liquidation, the Responsible Entity will divide the proceeds of

liquidation, less all proper expenses (including the expenses of Termination and distribution) and less all Liabilities among the Unitholders of the Trust in proportion to the number of Units in respect of which they are registered as the Unitholder. The Responsible Entity may pay the proceeds of liquidation to Unitholders under this paragraph in instalments

- (j) **(receipt)** The Responsible Entity may require from each Unitholder a receipt or discharge in respect of any amount distributed to that Unitholder.
- (k) **(statement)** Within 8 weeks after the final distribution in relation to the termination, the Responsible Entity will send to each Unitholder a statement setting out the proceeds of liquidation and related costs and the calculation by the Responsible Entity of the amount distributed to the Unitholder.
- (l) **(discharge of Responsible Entity)** Upon dispatch of the statements described in paragraph (l) and subject to the Corporations Act, the Responsible Entity will be discharged and released from further obligations in respect of the Trust. The discharge will not apply to claims by former Unitholders based on fraud, negligence, breach of duty or trust, or failure to exercise the required degree of care or diligence.
- (m) **(retention)** The Responsible Entity may retain in its hands or under its control for as long as it thinks fit, such part of the assets of the Trust as in its opinion may be required to meet any outgoings or liabilities (actual or contingent) in respect of the Trust. But any part of that Trust so retained, to the extent that it is ultimately found not to be so required, shall remain subject to the Trust for conversion and distribution contained in paragraph (e) of this Clause.
- (n) **(distribution in specie)** The Responsible Entity and any Unitholder may agree that a Unitholder's entitlement on distribution shall be satisfied in part or whole by the transfer to the Unitholder of investments of the Trust at their market value. The market value of the assets to be transferred must be based on a valuation carried out within one month before the date of transfer of the assets. The costs associated with the valuation and transfer of the assets are payable by the Unitholder.
- (o) **(Audit)** The Responsible Entity must procure an independent audit by a registered company auditor of the final accounts of the Trust after completion of the winding up.

- (p) **(continuance)** Subject to the Corporations Act, the provisions of this document (including, for the avoidance of doubt, clause 6 ("**Income**")) continue to apply from the date of termination of the Trust until the date of final distribution under this clause 2.4, but during that period the Responsible Entity must not accept any applications for Units and is under no further obligation to process redemption requests whether received before, on or after the date of termination.

### 3 UNITHOLDERS

#### 3.1 Applications and Application Money

- (a) **(Applicant)** Any person wishing to be issued, or to cause to be issued, Units must submit an Application to the Responsible Entity. The Responsible Entity subsequently may issue Units to a Unitholder without further Application in accordance with paragraph 3.1(f).
- (b) **(accept or refuse)** The Responsible Entity has absolute discretion to accept or refuse any Application without giving any reason and may accept an Application but only a part of the relevant Application Money. The Responsible Entity promptly will notify any applicant of any refusal. Any Application not accepted within 30 days of receipt will be deemed to be refused.
- (c) **(Application Money to accompany)** An Application should be accompanied by the relevant Application Money. The subsequent dishonouring of any cheque, or the frustration of attempts by the Responsible Entity to take legal title to any Application Money automatically will revoke acceptance with respect to that (or that part of the) Application.
- (d) **(part of Trust)** All accepted Application Money will form part of the assets of the Trust upon the issue of Units in respect of that Application Money.
- (e) **(regular contributions)** The Responsible Entity may offer applicants and Unitholders a regular contribution facility whereby the Responsible Entity will debit a specified amount from an account nominated by, or otherwise receive a specified amount from or on behalf of, the Unitholder and apply that amount to the purchase of Units in accordance with the instructions of the Unitholder.

### 3.2 Acceptance of Applications

Upon accepting an Application and receiving the associated Application Money, the Responsible Entity will deduct from the Application Money any application fee (as set out in clause 8.5) payable in respect of the Application and an amount (if any) determined by the Responsible Entity being no greater than its estimate of the cost of investing the Application Money. The Responsible Entity will apply the balance of the Application Money to the issue of Units to the applicant. The Responsible Entity will then:

- (a) **(register)** make an appropriate entry in the Register; and
- (b) **(notify Unitholder)** notify the Unitholder of:
  - (i) the effective date of the issue of the units (which will be a date on or after the receipt of the Application, but may be a date that is prior to the processing of the Application by the Responsible Entity);
  - (ii) the number of Units issued; and
  - (iii) at what price per Unit,

but a certificate of Unit Holding as such need not be provided.

- (c) **(Issue Units)** issue units at the issue price on the date of receipt of the Application Money or the date of acceptance of the Application by the Responsible Entity (whichever is the later). The issue price of a Unit will be determined by dividing the Value of the Trust by the number of Units then on issue in respect of the Trust, rounding to at least the fourth decimal place. The issue price may also include an amount (if any) determined by the Responsible Entity being no greater than its estimate of the cost of investing the Application Money. Any excess Application Money which results from rounding will be an asset of the Trust.

### 3.3 Redemption of Units

- (a) **(redemption allowed)** The Unitholders have the right to withdraw from the Trust. While the Trust is liquid (as defined in Section 601KA of the Act) the Responsible Entity will within 21 days of the Redemption Price Calculation Date (unless otherwise provided in a Schedule) satisfy a redemption request from the Trust on and in accordance with the request (in a form acceptable to the Responsible Entity) of a Unitholder. The balance of the terms of this sub-clause define the provisions applicable to such a redemption. While the Trust is not liquid (as defined in Section

601KA of the Act) the right to withdraw must be exercised in accordance with Part 5C.6 of the Act.

- (b) **(minimum redemption)** The Responsible Entity may refuse to satisfy a redemption request if the request is in respect of a redemption with a value of less than a minimum redemption amount set by the Responsible Entity and notified to the Unitholder. The Responsible Entity may treat a redemption request which, if satisfied, would result in the relevant Unitholder holding Units worth less than a minimum redemption amount set by the Responsible Entity and notified to the Unitholder as a request for a complete redemption.
- (c) **(redemption in Cash)** No redemption will be satisfied other than by payment in Cash, except, in the absolute discretion of the Responsible Entity, the Responsible Entity may choose to satisfy a redemption by transferring assets of the Trust to a Unitholder rather than pay Cash. The assets transferred, together with any Cash payment, must be of equal value to the total amount due to the Unitholder under the redemption request or withdrawal offer (based on a valuation of assets done within one month of the proposed transfer)..
- (d) **(value of Unit upon redemption)** The redemption price of a Unit will be determined on the Redemption Price Calculation Date by dividing the Value of the Trust by the number of Units on issue in respect of the Trust, rounding to at least the fourth decimal place. The redemption price may then be reduced by an amount (if any) determined by the Responsible Entity being no greater than its estimate of the sum of the cost of realising assets to meet the requested redemption and the amount of the redemption fee set out in clause 8.5. Any excess money which results from rounding will be an asset of the Trust.
- (e) **(Responsible Entity's discretion)** Unless provided to the contrary at law, the Responsible Entity has an absolute discretion to terminate a person's Unit Holding in the Trust and redeem that person's Units in accordance with this sub-clause 3.3.
- (f) **(Postponement of calculation of redemption price)** The Redemption Price Calculation Date may be postponed or an application for redemption may be refused by the Responsible Entity if
  - (i) the Responsible Entity has taken all reasonable steps to realise enough assets to satisfy a redemption request, but it has been unable to do so because of something outside its



control (for example, restricted or suspended trading in a market for assets);

- (ii) the Responsible Entity does not consider it is in the best interests of Unitholders as a whole to realise sufficient assets to satisfy a redemption request; or
- (iii) due to circumstances beyond the reasonable control of the Responsible Entity, the Responsible Entity is unable to calculate or pay the redemption price or to fairly determine the Value, including but not limited to:
  - (A) the destruction or suspension of the normal operation or trading of any of the markets in which the assets of the Trust are invested;
  - (B) a breakdown in the means of communication by which correct information is available concerning the normal operation or trading of any of the markets in which the assets of the Trust are invested; or
  - (C) an expected revaluation of any asset or assets of the Trust which revaluation would cause a substantial change in the Value of the Trust.
- (g) **(Suspension of rights)** Subject to the Corporations Act, the rights of a Unitholder under this Deed (other than the right, pursuant to this clause, to receive the redemption proceeds) in relation to Units which are the subject of a redemption request shall be suspended as at the Redemption Price Calculation Date. A Unitholder may not withdraw a redemption request unless the Responsible Entity agrees.
- (h) **(notify Unitholder)** The Responsible Entity will notify the Unitholder of:
  - (i) the effective date of the redemption of the units (which will be a date on or after the receipt of the redemption request, but may be a date that is prior to the processing of the redemption request by the Responsible Entity);
  - (ii) the number of Units redeemed; and
  - (iii) at what price per Unit.
- (i) **(own funds)** The Responsible Entity is not obliged to pay any part of the redemption amount payable to a Unitholder out of its own funds.

- (j) **(income and capital)** The Responsible Entity may determine at its discretion that the redemption amount paid to a Unitholder on the redemption of Units comprises income as well as capital. If the Responsible Entity makes such a determination the Responsible Entity must notify the Unitholder or the former Unitholder of the composition of the redemption amount. In the absence of such a determination, the redemption amount will comprise capital only. If the Redemption Price paid to a Unitholder on the redemption of Units comprises any income, the Unitholder shall be presently entitled to such income and shall continue to be presently entitled to such income notwithstanding the redemption of such Unitholder's Units and the payment of the redemption amount to the Unitholder.

### **3.4 Recognition of Unitholder as absolute Owner**

The Responsible Entity shall recognise the Unitholder or the Unitholder's executors or administrators, as the absolute owner of the Units in respect of which the Unitholder is registered. The Responsible Entity need not take notice of any trust or equity affecting a Unit unless ordered to do so by order of a Court of competent jurisdiction or required to do so by statute. The receipt of the Unitholder or of the executors or administrators of the Unitholder, for any money payable in respect of the Units of that Unitholder shall be a good discharge for the Responsible Entity. Where a unitholder dies, the survivor or survivors, where the deceased was a joint holder shall be the only persons recognised by the Responsible Entity as having any title to the Units registered in that name.

### **3.5 Unitholder's interest in Trust assets**

Except as provided to the contrary in this Constitution or by law, a Unitholder may not interfere with the performance by the Responsible Entity of its duties, rights or powers under this Constitution or any law. Unitholders will have no liability to pay to the Responsible Entity any amount of money otherwise than as set out in this Constitution and Unitholders will have no obligation to meet the liabilities, including if there is a deficiency in the assets, of any Trust or those of the Responsible Entity. No Unitholder will have a divisible interest in any asset of any Trust.

### **3.6 Provision of information**

Each Unitholder promptly will provide to the Responsible Entity notice of any change of name or address and any other information, including information with respect to the Unitholder's eligibility to contribute to the



Trust or to remain a Unitholder, as and when reasonably requested, or required under this Constitution.

### **3.7 Unitholders bound by Constitution**

The terms and conditions of this Constitution are binding on the Responsible Entity and each Unitholder and all persons claiming through them respectively as if such Unitholder and other persons had been party to this Constitution.

### **3.8 Transfer of Units**

A Unitholder may transfer a Unit by a document in any form approved by the Responsible Entity and which is signed by or on behalf of both the transferor and the transferee, accompanied by any evidence reasonably required by the Responsible Entity to establish the right of the transferor to transfer the Unit and marked with payment of any stamp duty payable.. The Responsible Entity may refuse to register a transfer of Units without giving any reason for doing so.

### **3.9 Transferor remains holder until transfer registered**

The transferor of a Unit remains the holder of it until the transfer is registered and the transferee's name is entered in the Register as the holder of the Unit.

### **3.10 Death of joint holder**

The Responsible Entity must recognise only the surviving joint holders as being entitled to Units registered jointly in the names of a deceased Unitholder and others. The estate of the deceased joint holder is not released from any liability in respect of the Units.

### **3.11 Death of single holder**

The Responsible Entity must not recognise anyone except the legal personal representative of the deceased Unitholder as having any title to Units registered in the sole name of a deceased Unitholder. If the personal representative gives the Responsible Entity the documents described in section 1071B(9) or 1071B(13) of the Corporations Act or other information that satisfies the Responsible Entity of the representative's entitlement to be registered as holder of the Units:

- (a) the Responsible Entity must register the personal representative as the holder of the Units as soon as practicable



after receipt of a written and signed notice to the Responsible Entity from the representative requiring it to do so; and

- (b) whether or not registered as the holder of the Units, the personal representative:
  - (i) may transfer the Units to another person; and
  - (ii) has the same rights as the deceased Unitholder.

### 3.12 Transmission of Units on insolvency or mental incapacity

Subject to the *Bankruptcy Act 1966* (Cth), if a person entitled to Units because of the insolvency or mental incapacity of a Unitholder gives the Responsible Entity the information it reasonably requires to establish the person's entitlement to be registered as holder of the Units:

- (a) the Responsible Entity must register that person as the holder of the Units as soon as possible after receipt of a written and signed notice to the Responsible Entity from that person requiring it to do so; and
- (b) whether or not registered as the holder of the Units, that person:
  - (i) may transfer the Units to another person; and
  - (ii) has the same rights as the insolvent or incapable Unitholder.

## 4 UNITS

### 4.1 Units

- (a) **(Beneficial interests in the Trust divided into Units)** The entire beneficial interest of the Trust will be divided into Units. The Responsible Entity may elect to issue fractions of Units, and may combine fractional Units issued to the same Unitholder.
- (b) **(Classes of Units)** The Responsible Entity may issue Units in the Trust with such special rights or restrictions on such rights as the Responsible Entity shall determine. All Units of a class will be of equal value. The issue and redemption price, as well as the ongoing value of a Unit, will be determined by reference to the Value of the assets to which the Unit relates.

- (c) **(Unit Split)** The Responsible Entity may declare that the number of Units in the Trust is a multiple (the "Multiple"), which may be less than one, of the number of Units existing prior to the declaration. Each Unit holding following that declaration will be adjusted accordingly. The Responsible Entity will, following its declaration of a Unit split or consolidation, promptly issue notices to Unitholders of their Units held after the Unit split or consolidation.

## 5 INVESTMENT

### 5.1 Investment and the Charter

Without limiting clause 8.1, the Responsible Entity may invest the Trust's asset in anything which it could invest in using its own resources, taking into account the terms of this Charter. The Responsible Entity will actively use the Trust's shareholdings to encourage corporate actions which result in:

- (a) the development of workers' participation in the ownership and control of their work organisations and places;
- (b) the production of high quality and properly presented products and services;
- (c) the development of locally based ventures;
- (d) the development of appropriate technological systems;
- (e) the amelioration of wasteful and polluting practices;
- (f) the development of sustainable land use and food production;
- (g) the preservation of endangered eco-systems;
- (h) activities which contribute to human happiness, dignity and education;
- (i) the dignity and well being of non human animals;
- (j) the efficient use of human waste;
- (k) the alleviation of poverty in all its forms; or
- (l) the development and preservation of appropriate human buildings and landscapes,

and Responsible Entity will actively use shareholdings to discourage corporate actions which:

- (m) pollute land, air or water;
- (n) destroy or waste non recurring resources;
- (o) extract, create, produce, manufacture or market materials products, goods or services which have a harmful effect on humans, non human animals or the environment;
- (p) market, promote or advertise products or services in a misleading or deceitful manner;
- (q) create markets by the promotion or advertising of unwanted products or services;
- (r) acquire land or commodities primarily for the speculative gain;
- (s) create, encourage or perpetuate militarism or engage in the manufacture of armaments;
- (t) entice people into financial over commitment;
- (u) exploit people through the payment of low wages or the provision of poor working conditions;
- (v) discriminate by way of race, religion or sex in employment, marketing or advertising practices; or
- (w) contribute to the inhibition of human rights generally.

The Responsible Entity will have a duty to collaborate with fellow investors in listed entities and to engage with listed investees in pursuit of the aims set out in the Charter above.

## 5.2 Determining Value

At least once in every month during the continuance of the Trust the Responsible Entity will determine the Value of that Trust. In doing so it may seek opinions from valuers as it considers necessary or appropriate, and may rely upon a written valuation of real estate for no more than 18 months. The Responsible Entity may value certain assets more frequently as it considers appropriate. Wherever the Value of the Trust is ascertained on the last day of an Accrual Period, the same shall be determined before appropriation of Unitholders' income entitlement on that day.

### 5.3 Valuation Method

- (a) The Responsible Entity may determine valuation methods and policies for each category of asset and change them from time to time. Unless the Responsible Entity determines otherwise, the value of an asset for the purpose of determining Value will be its market value.
- (b) Where the Responsible Entity values an asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Responsible Entity must be capable of resulting in a calculation of the issue price and redemption price that is independently verifiable and fair to all Unitholders.

### 5.4 Limitation on Investments

The following limitations apply to investments of each Trust:

- (a) the total equity interest in any one trading company comprised in the Trust shall not be such that the trust would be treated as a trading trust for the purposes of section 102 N of the Income Tax Assessment Act;

### 5.5 Temporary Investment of Cash

The Responsible Entity is entitled to place Cash with a bank, or any managed investment scheme or prescribed interest investing in government or bank backed securities (the securities not individually screened by the Responsible Entity) for such time as the Responsible Entity shall consider desirable in the interests of the Unitholders.

## 6 INCOME

### 6.1 Calculation of Income

- (a) Income is notionally allocated to each Unitholder on a daily basis and each Unitholder shall be presently entitled to such income when it is allocated. The income or such lesser amount as constitutes the net income of the trust determined in accordance with section 95(1) of the Income Tax Assessment Act, 1936 (the "tax income") shall be distributed within two calendar months of the end of each Accrual Period but the Responsible Entity need not distribute funds equating to the amount of unrealised

amounts and imputation rebates, foreign tax credits and other tax credits included in the income or tax income of the Trust. For this purpose "income" shall be the amount which constitutes the net accounting income of the Trust for a Financial Year determined in accordance with generally accepted accounting principles PROVIDED THAT:

- (i) the Unitholders presently entitled to the income direct that the Responsible Entity capitalise for their benefit so much of the income as constitutes unrealised amounts;
- (ii) where the tax income of the Trust exceeds the income, the Responsible Entity may in its discretion distribute to Unitholders either:
  - (A) the tax income; or
  - (B) some other amount not less than the income.
- (b) The income of the Trust which has arisen in respect of each Accrual Period shall, at the end of such Accrual Period, be credited to a distribution account and shall be distributed to Unitholders in the Trust in proportion to the number of Units held by them on the last day of the Accrual Period provided that where the Responsible Entity is liable to pay any withholding or other tax or duty in respect of a Unitholder's income entitlement or any part thereof, the same shall be deducted before such distribution is effected.
- (c) Where Units are issued on the last day of an Accrual Period, the holder of such Units on that day shall participate in the distribution of the net income of the Trust for such period, but a holder of Units whose Units have been redeemed on such day, shall not so participate.

## 6.2 Deferral of Income

Notwithstanding sub-clause 6.1, the Responsible Entity may, in its discretion, determine to distribute less than the whole of the income of the Trust for any Accrual Period if money is required to meet any Expenses authorised by this Constitution to be paid out of the Trust.

## 6.3 Fixed Amount Payments

A Unitholder may, in such a form as the Responsible Entity approves, nominate a specific amount to be paid out of the Trust to the Unitholder at

specified regular intervals acceptable to the Responsible Entity. If the Responsible Entity agrees to make such payments, the amounts required will be distributed first out of accrued income of the Unitholder and secondly out of the capital value of the Unitholder's Units. In the latter case the Unitholder will be deemed to have requested redemption of Units of the Unitholder to the extent required to meet the payment. Payments will cease once all income and the capital value of all of the Unitholder's Units have been paid out.

## 7 ACCOUNTS

### 7.1 Keeping of Accounts

The Responsible Entity will keep for the Trust, the Register and proper accounting records that record the transactions and financial position of the Trust, including the assets, liabilities, income and expenditure and any other accounts that may be required by law. The accounts will be kept in a way that will enable the preparation of true and fair accounts of the Trust and the convenient audit of those accounts.

### 7.2 Register

The Responsible Entity will maintain in respect of the Trust a Register, and may maintain in other locations a branch register, which will record:

- (a) **[Name and address]** The name and most recently advised address of each Unitholder;
- (b) **[Units]** The date of issue of Units, their class, most recently determined value and the number of such Units issued to that Unitholder, and date of redemption or other disposal of any Units; and
- (c) **[Other]** Any other detail required by law or which the Responsible Entity may think appropriate.

A Unitholder must promptly notify the Responsible Entity of any change to its name or address and the Responsible Entity must update the Register to reflect the change. Subject to this document, the Responsible Entity may treat the person named in the Register as the holder of a Unit as the absolute owner of it, unless otherwise ordered by a court of competent jurisdiction or required by statute. The Register is admissible in evidence in any proceeding and is prima facie evidence of the Units held by a Unitholder.



### 7.3 Expenses

The Responsible Entity may operate an expense reserve account within the Trust to meet Expenses. The Responsible Entity may meet Expenses from its own resources and then recover them from the Trust, or Expenses may be met directly from the Trust but, in either case, the Expenses may be paid from the Trust only to the extent that they relate to the proper performance by the Responsible Entity of its duties.

## 8 RESPONSIBLE ENTITY

### 8.1 Powers of Responsible Entity

Subject to the provisions of this Constitution, the Responsible Entity has all the powers and rights over the assets of the Trust as if it were the beneficial owner, and without limiting this generality:

- (a) **(buy and sell)** the power to buy and sell assets in accordance with the provisions of this Constitution;
- (b) **(agreements)** the power to enter into and enforce agreements relating to the operation or assets or liabilities of the Trust;
- (c) **(accounts and payments)** the power to transfer assets and liabilities and to operate accounts at financial institutions;
- (d) **(advice)** the power to seek professional advice whether as to law, actuarial considerations, valuation of assets or other topics relevant to the operation of the Trust;
- (e) **(voting)** except as provided by law, the power to exercise the voting rights attaching to any shares or other assets held by the Responsible Entity under this Constitution having regard to the best interests of Unitholders;
- (f) **(agent)** the power to, if it sees fit, appoint in writing any agent or attorney with any authority and indemnity the Responsible Entity thinks appropriate, to act for or on behalf of the Responsible Entity in any respect and the Responsible Entity will be liable for the acts and omissions of any agent or attorney to the extent that the general law or the Corporations Act makes the Responsible Entity so liable;
- (g) **(exclude personal liability)** the power to refuse to enter into transactions as Responsible Entity unless the terms of the transaction are satisfactory to the Responsible Entity and unless, in the absence of its own fraud, negligence, breach of duty or

breach of trust, it is satisfied that its personal liability thereunder is excluded or limited in such manner as it reasonably may require;

- (h) **(custody and agent)** the power to appoint a custodian or nominee to hold Trust assets on behalf of the Responsible Entity domestically and overseas, and the power to appoint a clearing and settlement agent in respect of the Trust;
- (i) **(guarantee and indemnity)** the power to guarantee any liability or other obligation of a third party and to grant indemnities on account of any third party, provided the Responsible Entity considers that the guarantee or indemnity is for the benefit of the Trust, and, if such guarantee or indemnity is given in relation to a borrowing by a third party, it will be subject to the limitation in sub-clause 8.2.

## 8.2 Borrowing

The Responsible Entity has the power, where it is considered by the Responsible Entity to be in the best interests of Unitholders, to borrow, raise money or procure other financial accommodation (including, without limitation, the issuing of convertible notes on such terms as the Responsible Entity determines) either unsecured or secured on the investments of the Trust provided that the total liabilities of the Trust do not, at the time of borrowing, exceed 40% of the Value of the Trust.

## 9 RESPONSIBLE ENTITY'S RIGHTS

### 9.1 Responsible Entity may hold Units

- (a) The Responsible Entity and its Affiliates may hold and deal with Units in any capacity.
- (b) Unless otherwise expressly provided by this document or the Corporations Act, the Responsible Entity and its Affiliates, as Unitholders, have all the rights of a Unitholder in relation to the Units they hold.

### 9.2 Responsible Entity may deal etc with itself in other capacities

Subject to the Corporations Act, the Responsible Entity (or any of its Affiliates) may:

- (a) deal with itself (in any capacity), an Affiliate or a Unitholder, including:

- (i) buying assets; or
- (ii) selling property into the Trust;
- (b) be interested in any contract or transaction with itself (in any capacity), an Affiliate or a Unitholder; or
- (c) act in the same or similar capacity in relation to another managed investment scheme or trust.

**9.3 Responsible Entity not accountable**

The Responsible Entity and its Affiliates do not have to account for, and may retain for their own benefit, any profit or benefit arising from anything referred to in clause 9.2.

**9.4 Retirement and Replacement of Responsible Entity**

The Responsible Entity may retire from the Trust in accordance with the procedures specified in section 601FL of the Act. The Responsible Entity will on the date of retirement vest the Trust in the new responsible entity or in a temporary responsible entity, and deliver to that entity all books and records however constituted relating to the Trust. Costs incurred by any party pursuant to the operation of this sub-clause will be met from the assets of the Trust. The Responsible Entity will retire when required to do so in accordance with the Act.

**9.5 Remuneration of Responsible Entity**

The Responsible Entity for its services will be due from each Trust in each Financial Year until its retirement or the final distribution of assets under paragraph 2.3(e) a fee:

- (a) **(applications)** equal to 6% of the amount of Application Money as and when accepted during that year, and subject (at the discretion of the Responsible Entity) to a minimum of not more than \$30.
- (b) **(annual percentage)** equal to:

Value of the Trust plus the value of the distribution account	* the annual percentage fee (as set out in the Schedule for each Trust)	* Number of days since the last unit price for the Trust was determined
Number of days in the year		



The annual percentage amount will be paid monthly in arrears. If the "annual percentage fee" is not specified in a Schedule it shall be 1.9167%;

- (c) **(redemption fee)** equal to 3% of the amount payable in respect of any redemption of Units;
- (d) **(special)** which the Responsible Entity may set, to offer additional services to Unitholders, but not to exceed 0.5% of the value of a Unitholder's holding at the time any such fee is charged. The fee is payable by the Unitholder and will be paid through redemption of a Unitholder's Units on the last Business Day of each month. The unit price applicable to the redemption will be the unit price for the last Business Day of the month.

All such remuneration, unless otherwise specified in this Constitution, will be received by the Responsible Entity out of the assets of the Trust. The Responsible Entity may reduce, defer or spread over time collection of its fee, and may offer investors the choice of payment of the fee listed in paragraph (a) in periodic instalments. Where assets of the Trust are invested in another trust for which the Responsible Entity is the responsible entity, fees in respect of those assets shall not exceed the fees which could be charged were they assets of only one Trust. The fees payable to the Responsible Entity under this Constitution do not include any amount referable to GST. If the Responsible Entity is or becomes liable to pay GST in respect of any supply under, or in connection with, this Constitution, then in addition to any fee or other consideration payable to the Responsible Entity in respect of the supply, the Responsible Entity is entitled to be paid an additional amount on account of GST. The additional amount is to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Responsible Entity shall be entitled to be reimbursed or indemnified for such amount of GST out of the Trust.

All remuneration payable under this clause 8.5 will only be payable in relation to the proper performance by the Responsible Entity of its duties.

## 9.6 Responsible Entity's Indemnity and Limitation of Liability

- (a) Without limiting the Responsible Entity's powers, duties or rights under this Constitution or any law, the Responsible Entity will not incur any liability and will be able to be indemnified out of the assets of the Trust in respect of any loss, cost, expense or other liability which may arise or be incurred by it in the proper performance of its duties or the exercise of its powers in respect of that Trust.

The indemnity under this clause is:

- (a) in addition to any indemnity the Responsible Entity may have at law or in equity; and
- (b) a continuing indemnity and, subject to the Corporations Act, it applies to the Responsible Entity after it retires or is removed as responsible entity of the Trust.

### **9.7 Indemnity for Compliance Committee members**

If a member of a Compliance Committee incurs a liability in that capacity in good faith, the Responsible Entity may indemnify the member out of the assets of the Trust in respect of that liability subject to, and so far as permitted by, the Corporations Act.

### **9.8 Liability to Unitholders**

- (c) Without limiting its liability under the Corporations Act (if applicable), if the Responsible Entity acts in good faith and without gross negligence, it is not liable in contract, tort or otherwise to Unitholders for any loss or damage suffered in any way relating to the Trust.
- (d) Subject to the Corporations Act, the liability of the Responsible Entity to any person other than a Unitholder in respect of the Trust is limited to the assets from which the Responsible Entity is entitled to be and is in fact indemnified.

### **9.9 Commission**

The Responsible Entity may pay brokerage and commission in respect of Applications subject to any requirements of the Act. It will pay all brokerage and commission which is not an Expense but is paid in respect of the Trust out of its fees or other of its own resources.

## **10 MEETINGS OF UNITHOLDERS**

### **10.1 Quorum**

No business shall be transacted at any meeting of Unitholders unless a quorum is present when a meeting proceeds to business. Subject to the Act,



the quorum necessary for a meeting at which an Ordinary Resolution only is to be proposed shall be at least 5 persons holding or representing by proxy at least ten percent (10%) of the number of Units in issue in the relevant Trust and for a meeting at which any Special Resolution is to be proposed shall be persons holding or representing by proxy at least twenty five percent (25%) of the number of Units in issue in the relevant Trust. If within fifteen (15) minutes from the time appointed for any meeting a quorum is not present, the meeting shall:

- (a) if called for the purpose of passing an Ordinary Resolution stand adjourned to the same day, in the next week or, if a non-working day to the next working day thereafter and in either event at the same time and the same place; and
- (b) if called for the purpose of passing a Special Resolution stand adjourned for such period as the chairperson shall direct and provided notice of the proposed Special Resolution and of the fact that those present in person or by proxy will constitute a quorum at an adjourned meeting and the place, day and hour of such adjourned meeting shall have been given to the Unitholders by the Responsible Entity,

and at an adjourned meeting the Unitholders present in person or by proxy (whatever their numbers and the number of Units held by them) shall form a quorum and shall have power to pass such Ordinary Resolution or Special Resolution.

## **10.2 Resolutions Binding on the Unitholders**

An Ordinary Resolution or Special Resolution passed at a meeting of the Unitholders of the Trust duly convened and held in accordance with this Constitution shall be binding upon all the Unitholders in the Trust whether present or not present at such meeting and each of the Unitholders shall be bound to give effect thereto accordingly.

## **10.3 Ordinary Resolution**

The expression "Ordinary Resolution" where used in this Constitution means a resolution passed at a meeting of the Unitholders of the Trust duly convened and held in accordance with the provisions herein contained by a majority of the persons voting thereat upon a show of hands and if a poll is demanded then by a majority of the votes given on such poll.

#### 10.4 Special Resolution

The expression "Special Resolution" where used in this Constitution has the same meaning as in the Act.

#### 10.5 Proxies

The Responsible Entity may determine that the appointment of a proxy is valid even if it only contains some of the information required by the Corporations Act. The Responsible Entity may determine that proxy documents may be received up to any period less than 48 hours before a Meeting.

#### 10.6 Chair

Subject to the Corporations Act, the Responsible Entity may appoint a person to chair a meeting. The chairman of a meeting has charge of the general conduct and the procedures to be adopted at the meeting. A decision by the chairman about general conduct and procedures is final.

### 11 COMPLAINTS HANDLING

The Responsible Entity must, having regard to Section 601GA(1)(c) of the Act:

- (a) designate at least one officer of the Responsible Entity as having responsibility for receiving and dealing with any complaint received from a Unitholder ("Complaint");
- (b) acknowledge any Complaint within 5 Business Days of receipt of the Complaint;
- (c) within no more than 21 Business Days after receipt of the Complaint, investigate, properly consider and decide what action (if any) to take or offer, regarding the Complaint and then communicate its decision to the Unitholder, at the same time informing the Unitholder of any available avenue of appeal against the decision to an external industry complaints tribunal or other body; and
- (d) at the same time as communicating its decision under sub-clause 10(c) advise the Unitholder of remedies that may be available to

the Unitholder such as an apology, issue of additional units in the Trust or compensation; and

- (e) include in any Product Disclosure Statement an explanation of its procedures for handling Complaints

## 12 PAYMENTS

- (a) Money payable by the Responsible Entity to a Unitholder may be paid in any manner the Responsible Entity decides.
- (b) Where the Responsible Entity attempts to make a payment to a Unitholder by electronic transfer of funds or any other means and the transfer is unsuccessful, the money may be reinvested in Units at the unit price prevailing at the time the reinvestment is made or paid in another manner that the Responsible Entity determines.
- (c) Cheques issued by the Responsible Entity that are not presented within 6 months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Unitholder, the money may be reinvested in Units at the unit price prevailing at the time the reinvestment is made or dealt with in such other manner as the Responsible Entity considers appropriate.
- (d) A payment to any one of joint Unitholders will discharge the Responsible Entity in respect of any payment required under this Constitution.
- (e) The Responsible Entity may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder, any amount of tax (or an estimate of it) or any other amount owed by the person to the Responsible Entity.



EXECUTED BY AUSTRALIAN ETHICAL INVESTMENT LTD ON 26 AUGUST  
2009

This Deed is executed as a Deed Poll pursuant to section 127 of the Corporations Act 2001.



.....  
NAME: HOWARD PENDER  
DIRECTOR

  
.....  
NAME: PHILIP GEORGE  
COMPANY SECRETARY