

CORPORATIONS ACT

A Public Company Limited by Guarantee

CONSTITUTION

of

AUSTRALIAN FINANCIAL MARKETS ASSOCIATION LIMITED

(as amended on 20/11/2019)

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1. DEFINITIONS

In this Constitution:

AFSL means an Australian Financial Services Licence granted pursuant to the Corporations Act.

Affiliate Member means a member of the Company under clause 5.3.

Appointment Year means, with respect to a Director, each period that Director holds office commencing on the date of an Annual General Meeting and ending on the date of the next Annual General Meeting.

Annual General Meeting means an annual general meeting of the Company.

Board means the board of Directors of the Company.

Chair means the chairperson of the Board from time to time.

Committee means any committee of the Company established pursuant to clauses 14.9, 15 or 16.

Committee Member means the member of any Committee of the Company.

Company means the Australian Financial Markets Association Limited.

Corporations Act means the Corporations Act 2001 (Commonwealth).

Director means a person appointed for the time being to perform the duties of a director of the Company, whilst ever the person is holding the office of director.

Eligible Persons means those persons who are eligible to be appointed directors pursuant to clause 11.2.

Financial Markets Entity means any entity or body (whether incorporated or not but not including an individual) participating in, or carrying on business in the financial markets in Australia or overseas and such other entities or bodies at any time and from time to time that the Board determines to be Financial Markets Entities.

Financial Markets Member means a member of the Company under clause 5.2.

Incorporation Date means the date on which the Company was incorporated pursuant to the Corporations Act.

Joining Fee means any fee payable by a Member pursuant to clause 5.5.1.

Market Governance Committee or **MGC** means the Committee established and operating in accordance with clause 15.

Member means an entity or body whose name is entered for the time being in the Register as a member of the Company.

Office means the registered office for the time being of the Company.

Partner Member means a member of the Company under clause 5.4.

Register means the register of Members kept by the Company under the Corporations Act.

Seal means the common seal of the Company.

Secretary means a person appointed for the time being to perform the duties of a secretary of the Company.

Termination Event means the appointment of an administrator, liquidator or receiver to the Member concerned, or any other event described as a Termination Event in this Constitution.

2. NATURE OF COMPANY AND LIABILITY

2.1 Nature of Company

The Company is a public Company limited by guarantee.

2.2 Liability of each Member is limited to a maximum of ten dollars

2.2.1 The liability of each Member is limited. Each Member guarantees to contribute up to a maximum of ten dollars to the assets of the Company if it is wound up while that Member is a Member, or within one year of the time that Member ceased to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before that Member ceased to be a Member;
- (b) payment of the costs, charges and expenses of winding up the Company; and
- (c) adjustment of the rights of the contributories among themselves.

2.2.2 The liability of each Member is limited to making such contribution and no more.

3. OBJECTIVES OF THE COMPANY

The objectives of the Company are to represent the common interests of Members as participants in the financial markets industry in:

- Promoting and assisting the development and maintenance of competitive financial markets that operate in a fair, strong and efficient manner and effectively support the Australian economy;
- Promoting and assisting professionalism in the conduct of business in the financial markets industry, including through common standards and guidance that support efficient and ethical practices by the firms and individuals involved;
- Promoting the financial markets as essential elements of the Australian economy and the development of policies for their effective regulation and operation;
- Representing Members on matters concerning the good reputation and efficient operation of the financial markets industry and its regulation by government;
- Engaging in any other activity which the Directors consider to be supportive of, or incidental to, any other objective in this clause.

4. LEGAL CAPACITY AND POWERS OF THE COMPANY

The Company has all of the powers of a natural person and of a body corporate, including these set out in the Corporations Act.

5. MEMBERSHIP

5.1 Membership

The membership of the Company will consist of Financial Markets Members, Partner Members and Affiliate Members. The Board may create additional classes of Members which carry such rights or restrictions as determined by the Board.

5.2 Financial Markets Members

5.2.1 The Financial Markets Members of the Company are the Full Members of the Company on the Incorporation Date, and each Member who:

- (a) is a Financial Markets Entity;
- (b) is the holder of an AFSL, unless, with respect to any applicant for membership, the Board waives that requirement;
- (c) whose membership application has been endorsed in writing by two Financial Markets member of AFMA; and
- (d) has been admitted by the Board to membership of the Company as a Financial Markets Member after making an application for membership pursuant to clause 6.

5.2.2 Each Financial Markets Member has:

- (a) the right to receive notices of, attend and be heard at any general meeting of the Company;
- (b) the right to one vote at any general meeting of the Company;
- (c) subject to clause 11, the right to nominate a Director of the Company; and
- (d) subject to clause 15, the right to nominate a person for election to the Market Governance Committee and any other Committee with respect to which such Member has the right to nominate a person for election.

5.3 **Affiliate Members**

5.3.1 The Affiliate Members of the Company are the Affiliate Members of the Company on the Incorporation Date, and each Member who:

- (a) is a statutory authority, central bank, official regulator or similar regulatory body governing, regulating or administering financial markets in Australia or elsewhere; and
- (b) has been admitted by the Board to membership of the Company as an Affiliate Member.

5.3.2 Each Affiliate Member has:

- (a) the right to receive notices of, and attend any general meeting of the Company; and
- (b) no right to vote at any general meeting of the Company.

5.4 **Partner Members**

5.4.1 The Partner Members of the Company are the Partner Members of the Company on the Incorporation Date, and each Member who:

- (a) is a body or entity (not including an individual) which provides services to Financial Markets Entities; and
- (b) has been admitted by the Board to membership of the Company as a Partner Member after making an application for membership pursuant to clause 6.

5.4.2 Each Partner Member has:

- (a) the right to receive notices of, and attend any general meeting of the Company; and
- (b) no right to vote at any general meeting of the Company.

5.5 **Fees payable by Members**

- 5.5.1 Upon admission to membership, a new Member must pay to the Company such amount as the Board may from time to time determine to be payable as a joining fee.
- 5.5.2 Each Member shall pay to the Company such annual subscription fee or special project fee as may from time to time be determined by the Board with respect to each Member or class of Members. The Board shall notify Members of such annual subscription and project fees in writing.
- 5.5.3 Any joining, annual subscription, or special project fees notified to a Member by the Board are payable by the Member to the Company at the expiry of 30 days from the date the Member is notified in writing of the fees by the Board unless prior to the expiry of such 30 day period the Member has resigned from membership in accordance with clause 7.1.
- 5.5.4 If any Member has not paid any joining, annual subscription, or special project fees within 90 days of the date that they are due (as the case may be), a Termination Event will occur in respect of that Member on the date that is 90 days from the date such fees are due.

5.6 **Membership not transferable**

No membership interest, benefit or right of any Member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to effect same.

6. ADMISSION TO MEMBERSHIP

6.1 Consideration of application by the Board

- 6.1.1 An application for Financial Markets Membership, Partner Membership or Affiliate Membership or any other class of membership must be made to the Board, and must be in writing signed by or on behalf of the applicant, and be supported by such documents or evidence as considered necessary by the Board to demonstrate eligibility for membership in accordance with clause 5.
- 6.1.2 If an application complies with clause 6.1.1 the Board may consider the application for membership as soon as practicable after its receipt and determine, in its discretion, the acceptance or rejection of the application for membership.
- 6.1.3 The Board may in its discretion waive the requirement in clause 6.1.1 for an application for membership and may instead extend to a potential Member an invitation for membership.
- 6.1.4 The Board may in its discretion waive the requirement in clause 5.2.1(c) for a member application to be endorsed by two Financial Markets Members.

6.2 Acceptance or rejection of membership application

- 6.2.1 If an application for membership is accepted:
- (a) the Secretary must notify the applicant of admission; and
 - (b) the name and details of the applicant must be entered in the Register as a Financial Markets Member, Partner Member, Affiliate Member or other member as the case may be.
- 6.2.2 If an application for membership is rejected the Secretary must notify the applicant that the application has been rejected.
- 6.2.3 The Directors do not have to give reasons for rejecting or accepting an application for membership.

6.3 Register of Members

- 6.3.1 A register of the Members of the Company must be kept in accordance with the Corporations Act.
- 6.3.2 The following must be entered in the Register in respect of each Member:
- (a) the full name and corporate identifier of the Member;
 - (b) the address, telephone and facsimile number, and electronic mail address if any, of the authorised or primary contact of the Member;
 - (c) the date of admission to and cessation of membership;

- (d) the class of membership to which such Member has been admitted; and
- (e) such other information as the Board may require.

6.4 **Change of Member details**

Each Member must notify the Secretary in writing of any change in the name, address, telephone, facsimile number, or electronic mail address of the Member, or of the authorized or primary contact of that Member, within one month after the change.

6.5 **Membership rights and obligations**

Each member is entitled to all the privileges of membership and must observe:

- (a) this Constitution;
- (b) the Company's Code of Conduct as published by the Company from time to time; and
- (c) any other rules, standards and conventions adopted by the Board, or by the Company at general meetings from time to time.

7. **REMOVAL AND CESSATION OF MEMBERSHIP**

7.1 **Resignation**

7.1.1 Subject to clause 7.1.3, a Member may resign from membership of the Company by leaving written notice to that effect at the Office addressed to the Secretary.

7.1.2 The resignation of a Member is deemed to take effect from the date such notice is left at the Office.

7.1.3 If there is only one Member and the Member gives proper notice of resignation or on the same day all of the Members give proper notice of resignation, the notice or notices will be ineffective and the Member or Members cannot resign until either another person is appointed as a Member or the Company is wound up.

7.2 **Cessation of membership**

7.2.1 The Board may at any time in its absolute discretion determine that the membership of any Member for whatever reason be cancelled effective either forthwith, at the expiration of the period with respect to which a Member's annual subscription fees are paid, or at such other time as the Board determines in its absolute discretion.

7.2.2 The Board is not required to give reasons why the membership of a Member is cancelled.

7.2.3 Upon the passing of such resolution the Member concerned thereupon ceases to be a member at the time determined by the Board and the Secretary must amend the Register accordingly.

7.3 Other Cessation of membership

A Member ceases to be a member on any Termination Event occurring in respect of the Member (including by non-payment of fees as referred to in clause 5.5) unless the Board has prior thereto or subsequent thereto at the request of the Member otherwise resolved. Upon cessation of membership the Secretary shall if so directed by the Board amend the Register as soon as practical thereafter.

7.4 No refund of fees

7.4.1 Upon a Member ceasing to be a member for any reason whatsoever any fees at that time due and payable but remaining unpaid will remain due and payable notwithstanding that Member ceasing to be a member.

7.4.2 Upon a Member ceasing to be a member for any reason whatsoever no fees paid by the Member to the Company are refundable to the Member.

8. NO PROFITS FOR MEMBERS

8.1 Transfer of income or property

The assets and income of the Company shall be applied solely in furtherance of the objectives of the Company and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly to any Member, except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

8.2 Payments, services and information

Nothing in clause 8.1 prevents the payment in good faith of:

- (a) remuneration to any officers or employees of the Company for services actually rendered to the Company provided such remuneration is reasonable compensation for the services provided;
- (b) an amount to any Member in return for any services actually rendered to the Company (whether by the Member or any corporation or partnership in which the Member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
- (c) reasonable and proper interest on money borrowed from any Member; or
- (d) reasonable and proper rent for premises let by any Member to the Company.

9. GENERAL MEETINGS

9.1 Convening of meetings

9.1.1 Annual General Meetings of the Company shall be held in accordance with the provisions of the Corporations Act.

9.1.2 General meetings may be convened by the Board whenever it thinks fit or by requisition as provided by the Corporations Act.

9.2 **Notice of Meetings**

9.2.1 Subject to the provisions of the Corporations Act relating to special resolutions and consent to short notice, at least twenty-one days' notice (exclusive of the day on which the notice is served or received or deemed to be served or received and exclusive of the day for which notice is given) specifying the place, the day and the time of meeting and, in the case of special business, the general nature of that business, shall be given to Members entitled to receive such notices from the Company.

9.2.2 For the purposes of clause 9.2.1, all business that is transacted at a general meeting or Annual General Meeting, with the exception of the consideration of accounts, financial statements and the reports of the Board and auditors, shall be special business.

9.2.3 Accidental omission to give notice of a general meeting or Annual General Meeting by the Company to, or the non-receipt of notice of a meeting by, any Member shall not invalidate proceedings at a general meeting or Annual General Meeting.

9.3 **Cancellation of general meetings**

9.3.1 The Board may subject to the Corporations Act cancel a general meeting.

9.3.2 A meeting may only be cancelled in accordance with this clause if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least 2 business days prior to the time of the meeting as specified in notice of meeting.

9.4 **Quorum at general meetings**

9.4.1 Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

9.4.2 A quorum is the presence in person or by proxy or attorney of not less than twenty five percent (25%) in number of the Members entitled to vote at the meeting.

9.4.3 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the Chair the meeting is dissolved.

9.5 **Appointment of Chair**

9.5.1 The Chair elected by the Board as Chair of its meetings will preside as Chair at every general meeting of the Company.

9.5.2 The Directors present at a general meeting must elect one of their number to chair the meeting if:

- (a) a Director has not been elected as Chair; or

- (b) the Chair is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act.

9.5.3 The Members present at a general meeting must elect one of their number to chair the meeting if:

- (a) there are no Directors present within fifteen minutes after the time appointed for the holding of the meeting; or
- (b) no Director present is willing to take the chair.

9.6 **Chair's powers**

9.6.1 The ruling of the Chair on all matters relating to the order of business, procedure and conduct of a general meeting shall be final and no motion of dissent from a ruling of the Chair can be accepted.

9.6.2 The Chair, in his or her discretion may expel any Member or Director from a general meeting if the Chair reasonably considers that the Member's or Director's conduct is inappropriate behaviour. The following conduct may be considered inappropriate in a general meeting:

- (a) the use of offensive or abusive language which is directed to any person, object or thing;
- (b) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance; or
- (c) the use or consumption of any drug by a person at the meeting.

9.7 **Adjournment of meetings**

9.7.1 The Chair may, with approval by a resolution of Members entitled to vote at any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.

9.7.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

9.7.3 When a meeting is adjourned for thirty days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

9.7.4 Except when a meeting is adjourned for thirty days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

9.8 **Voting on show of hands**

9.8.1 At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.

9.8.2 If a poll is not duly demanded, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of Members, is conclusive evidence of the fact, without proof, of the number or proportion of the votes recorded in favour of or against the resolution.

9.9 **Demand for a poll**

9.9.1 A poll may be demanded by:

- (a) the Chair; or
- (b) by any Member entitled to vote, whether present in person, proxy or attorney or representative.

9.9.2 The demand for a poll may be withdrawn.

9.9.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.

9.9.4 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a Chair or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the Chair directs. The result of the poll is the resolution of the meeting at which the poll is demanded.

9.9.5 A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

9.10 **Voting rights**

9.10.1 Each Financial Markets Member and any other Member of a class entitled to vote at general meetings has the following rights:

- (a) To be represented at any Meeting of Members by any proxy, attorney or representative appointed in accordance with clause 10.2; and
- (b) On a show of hands or on a poll, every such Member present in person or by proxy, attorney or representative has one vote.

9.11 **Voting majority**

9.11.1 Any motion, resolution or any other matter to be put to a general meeting is passed only if at least 75% in number of those Members entitled to vote at the general meeting and present in person, or by proxy, attorney or representative, vote in favour of such matter put to the meeting, other than a ballot of Members to elect Directors pursuant to clause 11.4.3 who are elected pursuant to the procedures set out in that clause.

9.12 Objections to voter qualification

- 9.12.1 No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 9.12.2 An objection to the qualification of a voter must be referred to the Chair, whose decision will be final.
- 9.12.3 A vote which is not disallowed by the Chair pursuant to this Constitution is valid for all purposes.

9.13 Mode of calling and holding general meetings

A general meeting may be:

- (a) called using any mode of communication which gives a Member written notice of the meeting, including facsimile and electronic mail; and
- (b) held using any technology that gives the Members as a whole a reasonable opportunity to participate.

10. PROXIES AND REPRESENTATIVES

10.1 Proxies and representatives of Members

- 10.1.1 At meetings of Members, each Financial Markets Member or other Member entitled to vote may vote in person or by its proxy, attorney or representative where the proxy, attorney or representative is appointed in accordance with clause 10.2.1.
- 10.1.2 Subject to the terms of the appointment, a person attending as a proxy, attorney or representative of a voting Member, has all the powers of the voting Member.

10.2 Appointment of proxies, attorneys or representatives

- 10.2.1 A Financial Markets Member or other Member entitled to vote, may appoint another person as that Member's proxy, attorney or representative to attend and vote instead of that Member. A proxy, attorney or representative must be the Chair of Directors of the Company, or any officer or employee of the Member making the appointment, or an officer or employee of any other Member entitled to vote.
- 10.2.2 A document appointing a proxy, attorney or representative must be in writing, in any form permitted by the Corporations Act and signed by the Member making the appointment.

10.3 Authority of proxies, attorneys or representatives

- 10.3.1 A document appointing a proxy, attorney or representative may specify the manner in which the proxy, attorney or representative is to vote in respect of a particular resolution and, where the document so provides, the person concerned is not entitled to vote on the resolution except as specified in the document.

10.3.2 Subject to the Corporations Act and except as expressly provided by the document appointing a proxy, attorney or representative an appointment of a proxy, attorney or representatives confers the same rights as the Member to speak at the general meeting, to vote (but only to the extent allowed by the appointment) and to join in a demand for a poll.

10.4 **Verification of proxies, attorneys or representatives**

10.4.1 Before the time for holding the meeting or adjourned meeting at which a proxy, attorney or representative proposes to vote, there must be deposited with the Company:

- (a) the document appointing the proxy, attorney or representative; and
- (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.

10.4.2 Those documents must be received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting, prior to the time the meeting commences.

10.4.3 If a general meeting has been adjourned, an appointment and any authority received by the Company before the resumption of the meeting are effective for the resumed part of the meeting.

10.5 **Validity of proxies, attorney or representatives**

A document appointing a proxy, attorney or representative is invalid if it is not deposited or produced prior to the time the meeting commences in accordance with clause 10.4.2.

10.6 **Revocation of appointment of proxy, attorney or representative**

Subject to the Corporations Act, a vote given in accordance with the terms of a proxy document or power of attorney or appointment of representative is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Company at the Office before the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting, at which the document is used:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed; and
- (c) any other event prescribed as such under the Corporations Act.

11. APPOINTMENT AND RETIREMENT OF DIRECTORS

11.1 Number of Directors

The number of Directors of the Company (not counting alternate directors of the Company) will be not less than five, and shall be not more than fifteen, or such other maximum number determined by the Directors in accordance with clause 11.1.1, but the number so determined at a particular time must not be less than the number of Directors when the determination takes effect.

11.1.1 The maximum number of Directors may only be reduced in accordance with the Corporations Act.

11.2 Persons eligible to be appointed Directors

11.2.1 A Financial Markets Member may nominate a person to be a Director of the Company.

11.2.2 A person cannot be nominated by a Financial Markets Member, or appointed a Director of the Company unless that person is:

- (a) the Chief Executive Officer of the Member, nominating him or her;
- (b) the head of institutional banking or head of wholesale markets of the Member, nominating him or her; or
- (c) any other person who is a senior executive of the Member nominating him or her that the Directors determine to be an Eligible Person.

11.2.3 No Financial Markets Member may nominate more than one person for appointment to the Board, nor may a Financial Markets Member nominate a person for such appointment, if another nominee of that Member is a Director of the Company.

11.3 Appointment and removal of Directors

Subject to the other sub-paragraphs of this clause, Directors of the Company may be appointed by Members or removed by the Company in general meeting.

11.4 Nomination of Eligible Person for Appointment as Directors

11.4.1 Financial Markets Members may each nominate not more than one Eligible Person for election as a Director of the Company from the date of an Annual General Meeting by:

- (a) a notice in writing, signed by a Financial Markets Member and accompanied by the written consent of the Eligible Person nominated (which may be endorsed on the nomination form); and

- (b) delivered to the Secretary not less than 35 days or some other time determined by the Directors from time to time before the date fixed for the holding of that Annual General Meeting.

11.4.2 If nominations are received in number equal to or less than the vacancies arising, then those nominated are taken to be elected.

11.4.3 If more nominations are received than there are vacancies to fill, a ballot is to be held at the Annual General Meeting to be conducted in such manner as the Chair thinks fit. Each Member present in person, or by proxy, attorney or representative and entitled to vote, shall be entitled to vote for any number of such candidates not exceeding the number of vacancies. Those candidates equal in number to the number of vacancies who attract the most votes will be declared elected.

11.4.4 Appointment of Directors takes effect from the time immediately following the Annual General Meeting for which they are nominated for election.

11.5 **Period of Office**

11.5.1 One third of the Directors (which includes persons retiring pursuant to clause 11.8), or if their number is not a multiple of three, then the number nearest to one third shall retire from office. Those Directors to retire in each year shall be those longest in office, but as between Directors appointed on the same day, those to retire shall be those who agree to retire, or as determined by lot.

11.5.2 No person shall be eligible to hold office as a Director of the Company for a period exceeding six (6) consecutive Appointment Years without the prior approval of the Board.

11.5.3 A person shall continue to hold office as Director until the time he or she retires or resigns as a Director, is removed as a Director, vacates his office, or ceases to be an Eligible Person.

11.5.4 A Director who retires from that office under either clause 11.5 or clause 11.6 shall be eligible for nomination and re-election under this clause 11.

11.5.5 A Director who retires and is re-elected as a Director pursuant to this clause 11 shall be taken for the purposes of clause 11.5.1 to have held office as Director since the date of most recent appointment irrespective of the length of any prior period of service in office as Director.

11.6 **Retirement of Directors**

A Director may retire from office by leaving at the Office a notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of:

- (a) the time of leaving the notice at the Office; or
- (b) the expiration of the period, if any, specified in the notice.

11.7 **Vacation of office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this Constitution, the office of Director becomes vacant if the Director:

- (a) becomes a bankrupt or makes any arrangement or composition with his or her creditors;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) is absent without the consent of the Board from the meetings of the Board held during a continuous period of more than 6 months and the Board resolves that the office of that Director be vacated; or
- (d) becomes prohibited from being a Director by reason of an order made under the Corporations Act.

11.8 **Casual vacancies**

The Board may appoint any Eligible Person of any Financial Markets Member to fill any casual vacancy arising from any Director ceasing to hold office for any reason, or as an addition to the existing Directors. Any such person so appointed, or any person appointed by an increase in Board numbers under clause 11.1, must retire at the next Annual General Meeting of the Company following his or her appointment and is eligible for nomination and re-election.

11.9 **Alternate or substitute Directors**

A Director may appoint any person or another Director to be an alternate or substitute Director in his or her place only with the approval of the Chair of Directors.

12. **DIRECTORS' REMUNERATION**

12.1 **Directors fees**

12.1.1 Subject to clause 12.1.2, the Directors are not entitled to any fees for their services as Directors.

12.1.2 Each Director is entitled to reimbursement of his or her reasonable expenses incurred in performing the duties as a Director only if such expenses are approved by the Board.

12.2 **Prior Approval by Directors**

12.2.1 Notwithstanding anything else in this Constitution no payment of any kind which is permitted to be paid to a Director by this Constitution can be made to a Director until that payment is approved by the Board.

13. POWERS OF DIRECTORS

The business, affairs and property of the Company shall be managed by the Board, and the Board may exercise all those powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

14. PROCEEDINGS OF THE BOARD

14.1 Convening of Board meetings

A Director may at any time, and the Secretary must upon the request of a Director, convene a meeting of the Directors.

14.2 Proceedings of the Board

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.

14.3 Meetings by Technology

14.3.1 For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:

- (a) telephone;
- (b) video;
- (c) any other technology which permits each Director to communicate with every other participating Director; or
- (d) any combination of these technologies.

A Director may withdraw the consent given pursuant to this clause 14.3.1 in accordance with the Corporations Act.

14.3.2 The fact that a Director is taking part in the conference shall be made known to all the other Directors taking part, and no Director may disconnect or cease to have access to his or her means of communication or otherwise cease to take part in the conference unless he or she makes known to all other Directors taking part that he or she is ceasing to take part in the conference. Until a Director makes it known that he or she is ceasing to take part in the conference he or she shall be deemed to continue to be present and to continue to form part of the quorum.

14.4 Quorum at Board meetings

At a meeting of the Board, the number of Directors whose presence is necessary to constitute a quorum is five or such other number determined by the Members from time to time.

14.5 **Voting at Board meetings**

Any motion arising at a meeting of the Board is passed only if at least 75% in number of those Directors present at the meeting and entitled to vote, vote in favour of the motion put to the meeting. A decision of such majority is for all purposes a decision of the Board. Each Director shall have one vote.

14.6 **Appointment of Chair and Deputy Chair**

14.6.1 The Board may elect the following office bearers who must be Directors of the Company:

- (a) Chair to chair Board meetings; and
- (b) Deputy Chair.

14.6.2 Each office bearer will hold office for one (1) Appointment Year or until they otherwise cease office, and are eligible for re-election to the office to which they are appointed for subsequent Appointment Years.

14.7 **Director's contracts**

14.7.1 If a Director is interested in a contract or proposed contract with the Company and the financial benefit to the Director under the contract is not prohibited by the Corporations Act:

- (a) the Director is not disqualified by holding office as Director from contracting or entering into any arrangement with the Company, whether as vendor, purchaser or otherwise;
- (b) a contract or arrangement entered into by or on behalf of the Company in which the Director is in any way, whether directly or indirectly, interested, is not liable to be avoided; and
- (c) the Director is not liable to account to the Company for a profit realised from that contract or arrangement by reason of the Director holding that office.

14.7.2 A Director and a firm in which the Director is interested may act in a professional capacity for the Company. The Director and that firm are entitled to remuneration for professional services as if the Director was not a Director of the Company.

14.7.3 Nothing in this clause authorises a Director or a firm in which the Director is interested to act as auditor of the Company.

14.8 **Declarations of interest**

14.8.1 A Director may not be counted in any quorum considering any contract or proposed contract with the Company in which he or she is interested nor vote in respect of any such contract or proposed contract unless the Director discloses the existence and

nature of that interest to the Board prior to voting and if he or she does so vote without making disclosure, his or her vote shall not be counted. Such Director may (whether or not the disclosure is made) attest the affixation of the seal to such a contract.

14.8.2 In addition to the requirements of clause 14.8.1, if a Director has a material personal interest in a matter being considered by the Board, the requirements of the Corporations Act must be satisfied.

14.9 **Delegation of powers to committee**

14.9.1 The Board may delegate any of their powers to committees consisting of Directors or other persons as it thinks fit to act in Australia or elsewhere.

14.9.2 The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Board.

14.9.3 In the exercise of any powers delegated to it, a committee formed by the Board must conform to the directions of the Board.

14.9.4 The Board will form an Audit and Risk Committee, comprising not less than 3 Directors.

The primary purpose of the Committee is to assist the Board to fulfil its responsibilities with regard to:

- Financial reporting
- Risk management systems
- External audit

14.10 **Proceedings of committees**

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Board are governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee were meetings and proceedings of the Board.

14.11 **Validity of acts of the Board**

All acts done by a meeting of the Board or of a committee of Directors or other persons are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

14.12 **Minutes**

14.12.1 The Board must cause minutes of all proceedings of general meetings and of meetings of the Board to be entered within one month after the relevant meeting is held, in books kept for the purpose.

14.12.2 The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting, within a reasonable time after the meeting.

14.13 **Circulating Resolution of Directors**

A resolution in writing signed by not less than 75% in number of the Directors entitled to vote on the resolution, excluding Directors who have been given leave of absence by the Board, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.

14.14 **Form of resolution in writing**

14.14.1 A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.

14.14.2 In relation to a resolution in writing:

- (a) a document generated by electronic means which purports to be a facsimile of a resolution of the Board is to be treated as a resolution in writing; and
- (b) a document bearing a facsimile of a signature is to be treated as signed.

15. **MARKET GOVERNANCE COMMITTEE**

15.1 **Establishment and role of Market Governance Committee**

The Company will establish a Market Governance Committee (“MGC”) whose aims and objectives are:

- the development and maintenance of market protocols and operational standards that facilitate and promote the efficient and smooth running of the financial markets in Australia;
- advising the Board on issues that affect the reputation of financial markets and investor confidence;
- the promotion of high ethical standards in the financial markets within Australia; and
- to engage in any other activity which the MGC considers to be supportive of, or incidental to, any other objective in this clause.

15.2 **Number of members of MGC**

The members of the MGC shall not exceed in number 12 members, or such other number of members as determined from time to time by the MGC.

15.3 **Persons eligible to be member of MGC**

15.3.1 A Financial Markets Member may nominate a person to be a member of MGC if that person is eligible to be appointed pursuant to clause 15.3.2.

15.3.2 A person cannot be nominated to be appointed a member of MGC unless that person is:

- (a) the head of institutional banking or the head of wholesale markets of the Member nominating him or her; or
- (b) any other person who is a senior executive of the Member nominating him or her that the MGC determines to be a person eligible for appointment as a member of MGC.

15.3.3 No Member may nominate more than one person for appointment to the MGC, nor may a Member nominate a person for such appointment if another nominee of that Member is a member of MGC.

15.4 **Appointment and removal of members of MGC**

Subject to this clause 15, members of MGC may be appointed or removed by the Company in general meeting.

15.5 **Nomination of eligible members of MGC**

Members may nominate persons eligible to be appointed members of MGC in the same manner and the election is to take place adopting the same procedure and protocol as set out in this Constitution for the nomination and election of Directors of the Company.

15.6 **Period of office**

15.6.1 At the Annual General Meetings of the Company, one third of the members of MGC (which includes persons retiring pursuant to clause 15.13) must retire as MGC members in the same way and subject to the same conditions and procedures as Directors who must also retire by rotation at Annual General Meetings of the Company. Clause 11.5 will apply to members of MGC as if they were Directors.

15.6.2 A person shall continue to be a member of MGC until he or she retires, resigns, is removed as a member of MGC, vacates his or her office, or ceases to be a person eligible for appointment as a member of MGC.

15.7 **Retirement or vacation from office of members of MGC**

A member may retire as a member of MGC in the same way as a person may retire as a Director pursuant to this Constitution. A member's office as a member of MGC is vacated in the same circumstances as a Director's office is vacated pursuant to this Constitution.

15.8 **Chair**

The Members of the MGC may appoint a member of the MGC as Chair to chair MGC meetings.

15.9 **Proceedings of MGC**

MGC may meet and conduct itself in such manner as its members from time to time determine, and subject to a quorum, and to such rules, whether procedural or otherwise, as the MGC members from time to time determine.

15.10 **Voting and required majority**

At meetings of MGC, each member shall have one vote in person or by proxy, and a motion put to a meeting is passed only if passed by not less than the same majority required to pass a motion put to a meeting of the Board. Proxies may be in the form, and delivered to the Company in accordance with the procedures adopted or determined by MGC.

15.11 **Members of MGC not Directors**

No member of MGC who is not a Director of the Company will, by reason of being a member of MGC, be a Director of the Company nor be held out as, or be, deemed to be held out as a Director of the Company and shall not be personally liable as a Director of the Company or otherwise.

15.12 **No remuneration**

15.12.1 Subject to clause 15.12.2 no remuneration of any kind is payable to any member of MGC by reason of his or her role as a member of MGC.

15.12.2 Each member of MGC is entitled to be reimbursed his or her reasonable expenses incurred in performing duties as an MGC member only if such expenses are approved by the Board.

15.13 **Casual MGC vacancies**

The MGC may appoint any person who is eligible to be a member of the MGC under clause 15.3 to fill any casual vacancy arising from any member of the MGC ceasing to hold that position for any reason, or as an addition to the existing members. Any such person so appointed, or any person appointed by an increase in MGC numbers under clause 15.2 must retire at the next Annual General Meeting of the Company following his or her appointment and is eligible for nomination and re-election.

15.14 **MGC Committees**

The MGC may establish one or more Committees on such terms and having such roles and objectives as determined by the MGC comprising such persons as determined by the MGC who are resident in Australia or overseas and who, in the

opinion of the MGC, have the capacity and experience to make a material contribution in assisting the MGC and the Company to achieve one or more of its objectives.

16. OTHER COMMITTEES

16.1 Establishment of other Committees

16.1.1 The Board may establish one or more other Committees on such terms and having such role as determined by the Board, comprising persons who are resident in Australia or overseas and who, in the opinion of the Board, have the capacity and experience to make a material contribution in assisting the Company to achieve one or more of its objectives.

16.1.2 The provisions of clause 16 shall not apply to the Market Governance Committee established pursuant to clause 15.

16.2 Appointment and removal of Committee Members

16.2.1 The members of a Committee shall be appointed by the Board upon terms determined by the Board and for a fixed period (which may expire only if the person's appointment lapses as provided in clause 16.2.3).

16.2.2 A person shall cease to be a member of a Committee immediately upon the expiration of the period of his or her appointment or earlier upon the lapsing of his or her appointment.

16.2.3 The Board may at any time by notice in writing to any Committee Member notify him or her that from a nominated date his or her membership of the Committee shall lapse. The Board is not required to give to the Committee Member reasons for the decision.

16.3 Role of Committees

The role of any Committee established by the Board under clause 16.1 shall be determined by the Board.

16.4 Committee Members not Directors

A Committee Member who has not been appointed as a Director shall not by reason of being a Committee Member be a director of the Company nor be held out as, or be deemed to be held out as a director of the Company and shall not be personally liable as a director of the Company or otherwise.

16.5 Remuneration of Committee Members

The Board may remunerate each Committee Member in accordance with the agreement reached with him or her (including the reimbursement of all agreed expenses).

17. SECRETARY

The Board shall appoint one or more Secretaries and may at any time terminate the appointment or appointments. No person appointed a Secretary shall be a Director of the Company unless the Directors resolve otherwise. The Board may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this Constitution, the Corporations Act or by any other statute to be carried out by the Secretary of the Company.

18. INDEMNITY AND INSURANCE

18.1 Indemnity

Every person who is or has been a director of the Company or a Secretary of the Company or a Committee Member, is entitled to be indemnified out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent the Company is forbidden by statute to indemnify the person against the liability or legal costs or an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

18.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a director or secretary of the Company or Committee Member against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

19. SEALS AND EXECUTION OF DOCUMENTS

19.1 Custody of Seal

The Board may provide for a common seal of the Company and for its safe custody.

19.2 Execution of documents

19.2.1 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:

- (a) Two Directors;
- (b) A Director and the Secretary; or
- (c) A Director and some other person appointed by the Board for the purpose.

19.2.2 The Company may execute a document without the use of a seal if the document is signed by:

- (a) Two Directors;
- (b) A Director and the Secretary; or
- (c) A Director and some other person appointed by the Board for the purpose.

19.3 Official seals

The Company may have for use in place of the Seal outside the jurisdiction where the Seal is kept one or more official seals, to be used in accordance with procedures approved by the Board.

20. SURPLUS ASSETS ON WINDING UP OR DISSOLUTION

Upon winding up or dissolution of the Company, any remaining property or assets after satisfaction of all debts and liabilities, will not be paid to or distributed amongst the Members, but will be given or transferred to some other institution or Company determined by the Members at or before the time of winding up or dissolution of the Company, and in default of any determination by the Supreme Court of New South Wales, Australia which:

- (a) has objectives similar to the objectives of the Company; and
- (b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of clause 8.

21. ACCOUNTS, AUDIT AND RECORDS

21.1 Accounts

The Board must cause proper accounting and other records to be kept in accordance with the Corporations Act. The Board must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act.

21.2 **Audit**

A registered Company auditor of the Company must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

21.3 **Rights of inspection**

Subject to the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members (other than Directors) and a Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or the Company in general meeting.

22. **INADVERTENT OMISSION**

If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate any resolution, act, matter or thing which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission is contrary to the interests of the Company as a whole, oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Member or Members. The decision of the Board is final and binding on all Members.

23. **RULES**

23.1 **Power to formulate rules of the Company**

Without limiting the Board's powers under this Constitution, the Board may from time to time pass resolutions to make regulations and rules relating to;

- (a) the qualifications of Members and applicants for membership;
- (b) the procedure and timing of an application for admission;
- (c) procedure for nomination of Directors;
- (d) the delegation by the Board of its powers to committees;
- (e) the powers, role and function of any executive or Directors (including the terms of appointment of any Executive Director);
- (f) any other matter not being inconsistent with this Constitution which relates to the operations or conduct of the Company.

23.2 **Inconsistency**

In the event of any inconsistency between rules or regulations formulated pursuant to clause 23.1 and the provisions of this Constitution, the latter shall prevail.

24. NOTICES

24.1 Persons authorised to give notices

24.1.1 A notice by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, Director or Company secretary of the Company or Member.

24.1.2 The signature of a person on a notice given by the Company may be written, printed or stamped.

24.2 Method of giving notices

In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given to the addressee by:

- (a) delivering it to a street address of the addressee; or
- (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee; or
- (c) sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee.

24.3 Addresses for giving notices to Members

24.3.1 The street address or postal address of a Member is the street or postal address of the Member shown in the Register.

24.3.2 The facsimile number or e-mail address of a Member is the number which the Member may specify by written notice to the Company as the facsimile number or e-mail address to which notices may be sent to the Member.

24.4 Address for giving notices to the Company

24.4.1 The street and postal address of the Company is the Office.

24.4.2 The facsimile number or e-mail address of the Company is the number which the Company may specify for the time being by written notice to the Members as the facsimile number or email address to which notices may be sent to the Company.

24.5 Time notice of meeting is given

A notice of meeting given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery; or

- (b) if it is sent by post to the street or postal address of the addressee, on the business day after posting; or
- (c) if sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

24.6 Time other notices are given

A notice given in accordance with this Constitution is to be taken as given, served and received:

- (a) if delivered in writing to the street address of the addressee, at the time of delivery; or
- (b) if it is sent by post to the street or postal address of the addressee, on the second (fifth if outside Australia) business day after posting; or
- (c) if sent by facsimile or e-mail to the facsimile number or e-mail address of the addressee, at the time transmission is completed.

24.7 Proof of giving notices

The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of;

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgment of receipt of the e-mail.

24.8 Persons entitled to notice of meeting

Notice of every general meeting must be given by a method authorised by this Constitution to:

- (a) every Member;
- (b) every Director;
- (c) the auditor for the time being of the Company, (if any).

No other person is entitled to receive notices of general meetings.

25. INTERPRETATION

25.1 References to law and the Constitution

A reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; or
- (b) this Constitution means this Constitution as amended from time to time.

25.2 **Presumptions of interpretation**

25.2.1 Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa;
- (b) any gender denotes the other genders; and
- (c) a person denotes an individual and a body corporate.

25.2.2 Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

25.3 **Replaceable rules**

Each of the provisions of the Corporations Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to the Company.

25.4 **Enforcement**

25.4.1 Each Member submits to the non-exclusive jurisdiction of the courts of the State or Territory in Australia in which the Office is situated, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.

25.4.2 If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

25.5 **Exercise of powers**

Except as specifically contemplated to the contrary in this Constitution, the Company may, in any manner permitted by the Corporations Act:

- (a) exercise any power;

- (b) take any action; or
- (c) engage in any conduct or procedure.

which under the Corporations Act a Company limited by guarantee may exercise, take or engage in if authorised by its Constitution.

25.6 **Headings and table of contents**

Headings and any table of contents must be ignored in the interpretation of this Constitution.

25.7 **References to and calculations of time**

25.7.1 Unless the context otherwise requires a reference to a time of day means that time of day in the State or Territory in Australia in which the Office is situated.

25.7.2 For the purposes of determining the length of a period (but not its commencement) a reference to:

- (a) a day means a period of time commencing at midnight and ending twenty-four hours later; and
- (b) a month means a calendar month which is a period commencing at the beginning of a day of one of the twelve months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.

25.7.3 Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.

25.7.4 A provision of this Constitution (except that specifying the time for deposit of proxies with the Company) which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

25.8 **Business day**

A reference to a business day means a day which banks are open for general banking business in the State or Territory in Australia in which the Office is situated.