

**ARTICLES OF ASSOCIATION  
of**

**FIX PROTOCOL LTD**

**(adopted on 16 JUNE 2011)**

**PRIVATE COMPANY LIMITED BY GUARANTEE**

**AND NOT HAVING A SHARE CAPITAL**

**Company Registration No: 3760285**

1. In these regulations:

“the **Act**” means the Companies Act 2006 including any statutory modification or re-enactment thereof for the time being in force.

“the **articles**” means the articles of the Company.

“**business day**” means any day on which banks are generally open for business in both the United Kingdom and the State of New York.

“**clear days**” in relation to the period of a notice means that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

“**Co Chair of the GSC**” means one of the two members of the GSC elected as Co-Chairs of the GSC pursuant to paragraph 3.1 of the GSC Terms of Reference.

“**communication**” means the same as in the Electronic Communications Act 2000.

“**electronic communication**” means the same as in the Electronic Communications Act 2000.

“**Enforcer**” means the person appointed as enforcer pursuant to the Deed of Trust entered into on 5 October 2005 between the Company (1) Investec Trust (Guernsey) Limited (now Investec Trust (Jersey) Limited) (2) and Christopher Morstatt (3).

“**executed**” includes any mode of execution.

“**FIX Protocol**” means the protocol maintained by the Company, from time to time.

“**GSC**” means the standing committee of the board of directors established pursuant to Regulation 47, as amended from time to time.

“**GSC Terms of Reference**” means the GSC Terms of Reference in force on the date that these Articles of Association are adopted by the Company, as amended from time to time in accordance with the provisions of these Articles.

“**office**” means the registered office of the Company.

“the **seal**” means the common seal of the Company.

“**secretary**” means the secretary of the Company or any other person appointed to perform the duties of the secretary of the Company, including a joint, assistant or deputy secretary.

“**special majority**” means a resolution of the GSC passed by a two-thirds majority of all the members of the GSC.

“**specified committee**” shall bear the same meaning as in paragraph 2.2 of the GSC Terms of Reference.

“**subscribers**” means the persons who are on the list maintained by the Company of persons who are paying membership dues in relation to FIX Protocol.

“**Subscriber Category**” shall bear the meaning given in Regulations 48 to 50 inclusive.

“the **United Kingdom**” means Great Britain and Northern Ireland.

Unless the context otherwise requires, words or expressions contained in these regulations bear the same meaning as in the Act but excluding any statutory modification thereof not in force when these regulations become binding on the Company.

#### **LIABILITY**

2. The liability of the members is limited.
3. Every member of the Company undertakes to contribute such amount as may be required (not exceeding £100) to the Company's assets if it should be wound up while he is a member or within one year after he ceases to be a member, for payment of the Company's debts and liabilities contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of contributories among themselves.

#### **OBJECTS**

4. The Company's objects are to promote cooperation between bodies and corporations engaged in the conduct of global securities trading and transaction settlement processing and doing all such things as are or may be incidental or conducive to the attainment of that object (the “Object”).

#### **MEMBERS**

5. The subscribers to the memorandum of association of the Company and such other persons as are admitted to membership in accordance with these regulations shall be members of the Company. Every person who wishes to become a member shall deliver to the Company an application for membership in such form as the directors require executed by him.
6. A member may at any time withdraw from the Company by giving at least one hundred and eighty (180) clear days' notice to the Company. Membership shall not be transferable and shall cease on death or winding-up.

## **GENERAL MEETINGS**

7. The directors may call general meetings and, on the requisition of members pursuant to the provisions of the Act, shall forthwith proceed to convene a general meeting in accordance with the provisions of the Act. If there are not within the United Kingdom sufficient directors to call a general meeting, any director or any member of the Company may call a general meeting.

## **NOTICE OF GENERAL MEETINGS**

8. General meetings shall be called by at least fourteen clear days' notice but a general meeting may be called by shorter notice if it is so agreed by a majority in number of the members having a right to attend and vote being a majority together holding not less than ninety per cent in nominal value of the shares giving that right.

The notice shall specify the time and place of the meeting and the general nature of the business to be transacted.

Subject to the provisions of the articles the notice shall be given to all the members and to the directors and auditors.

9. The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

## **PROCEEDINGS AT GENERAL MEETINGS**

10. No business shall be transacted at any meeting unless a quorum is present. One person entitled to vote upon the business to be transacted, such person being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.
11. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such a quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the directors may determine.
12. The chairman of the board of directors or in his absence some other director nominated by the directors shall preside as chairman of the meeting, but if neither the chairman nor such other director (if any) be present within fifteen minutes after the time appointed for holding the meeting and willing to act, the directors present shall elect one of their number to be chairman and, if there is only one director present and willing to act, he/she shall be chairman.

13. If no director is willing to act as chairman, or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be chairman.
14. A director shall, notwithstanding that he/she is not a member, be entitled to attend and speak at any general meeting.
15. The chairman may, with the consent of a meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for fourteen days or more, at least seven clear days' notice shall be given specifying the time and place of the adjourned meeting and the general nature of the business to be transacted. Otherwise it shall not be necessary to give any such notice.
16. A resolution put to the vote of a meeting shall be decided on a show of hands unless before, or on the declaration of the result of, the show of hands a poll is duly demanded. Subject to the provisions of the Act, a poll may be demanded:
  - (a) by the chairman; or
  - (b) by at least two members having the right to vote at the meeting; or
  - (c) by a member or members representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting;and a demand by a person as proxy for a member shall be the same as a demand by the member.
17. Unless a poll is duly demanded a declaration by the chairman that a resolution has been carried or carried unanimously, or by a particular majority, or lost, or not carried by a particular majority and an entry to that effect in the minutes of the meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
18. The demand for a poll may, before the poll is taken, be withdrawn but only with the consent of the chairman and a demand so withdrawn shall not be taken to have invalidated the result of a show of hands declared before the demand was made.
19. A poll shall be taken as the chairman directs and he/she may appoint scrutineers (who need not be members) and fix a time and place for declaring the result of the poll. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
20. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a casting vote in addition to any other vote he may have.

21. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either forthwith or at such time and place as the chairman directs not being more than thirty days after the poll is demanded. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll was demanded. If a poll is demanded before the declaration of the result of a show of hands and the demand is duly withdrawn, the meeting shall continue as if the demand had not been made.
22. No notice need be given of a poll not taken forthwith if the time and place at which it is to be taken are announced at the meeting at which it is demanded. In any other case at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken.

### **VOTES OF MEMBERS**

23. On a show of hands, every Member present in person or by proxy shall have one vote unless the proxy is himself a Member entitled to vote. On a poll, every Member present in person or by proxy shall have one vote.
24. A member in respect of whom an order has been made by any court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder may vote, whether on a show of hands or on a poll, by his receiver, curator bonis or other person authorised in that behalf appointed by that court, and any such receiver, curator bonis or other person may, on a poll, vote by proxy. Evidence to the satisfaction of the directors of the authority of the person claiming to exercise the right to vote shall be deposited at the office, or at such other place as is specified in accordance with the articles for the deposit of instruments of proxy, not less than 48 hours before the time appointed for holding the meeting or adjourned meeting at which the right to vote is to be exercised and in default the right to vote shall not be exercisable.
25. No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is tendered, and every vote not disallowed at the meeting shall be valid. Any objection made in due time shall be referred to the chairman whose decision shall be final and conclusive.
26. The appointment of a proxy shall be executed by or on behalf of the appointer and shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve).

“PLC/Limited

I/Weof

being a member/members of the above-named company, hereby appoint

of \_\_\_\_\_ or failing him, \_\_\_\_\_ .  
of \_\_\_\_\_ , as my/our proxy to vote in my/our names[s]  
and on my/our behalf at the general meeting of the company to be held on \_\_\_\_\_ 20  
at any adjournment thereof.

Signed on \_\_\_\_\_ 20 \_\_\_\_\_ “

27. Where it is desired to afford members an opportunity of instructing the proxy how he shall act the appointment of a proxy shall be in the following form (or in a form as near thereto as circumstances allow or in any other form which is usual or which the directors may approve)

“ \_\_\_\_\_ PLC/Limited

I/We \_\_\_\_\_ of \_\_\_\_\_

being a member/members of the above-named company, hereby appoint

of \_\_\_\_\_ or failing him, \_\_\_\_\_ .

of \_\_\_\_\_ , as my/our proxy to vote in my/our names[s]

and on my/our behalf at the general meeting of the company to

be held on \_\_\_\_\_ 20 \_\_\_\_\_ at any adjournment thereof.

This form is to be used in respect of the resolutions mentioned below as follows:

Resolution No 1 \*for \*against

Resolution No 2 \*for \*against.

\* Strike out whichever is not desired.

Unless otherwise instructed, the proxy may vote as he thinks fit or abstain from voting.

Signed this \_\_\_\_\_ day \_\_\_\_\_ of 20 \_\_\_\_\_ “

28. The appointment of a proxy and any authority under which it is executed or a copy of such authority certified notarially or in some other way approved by the directors may:

- (a) be deposited at the office or at such other place within the United Kingdom as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or

- (b) in the case of an appointment contained in an electronic communication, where an address has been specified for the purpose of receiving electronic communications:
  - (i) in the notice convening the meeting, or
  - (ii) in any instrument of proxy sent out by the company in relation to the meeting, or
  - (iii) in any invitation contained in an electronic communication to appoint a proxy issued by the Company in relation to the meeting,

be received at such address not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the appointment proposes to vote;

- (c) in the case of a poll taken more than 48 hours after it is demanded, be deposited or received as aforesaid after the poll has been demanded and not less than 24 hours before the time appointed for the taking of the poll; or
- (d) where the poll is not taken forthwith but is taken not more than 48 hours after it was demanded, be delivered at the meeting at which the poll was demanded to the chairman or to the secretary or to any director;

and an appointment of proxy which is not deposited, delivered or received in a manner so permitted shall be invalid.

When calculating the periods of time referred to in this regulation 28 no account shall be taken of any part of a day that is not a working day.

In this regulation 28 and in regulation 29, “address”, in relation to electronic communications, includes any number or address used for the purposes of such communications.

- 29. A vote given or poll demanded by proxy or by the duly authorised representative of a corporation shall be valid notwithstanding the previous determination of the authority of the person voting or demanding a poll unless notice of the determination was received by the Company at the office or at such other place at which the instrument of proxy was duly deposited where the appointment of the proxy was contained in an electronic communication, at the address at which such appointment was duly received before the commencement of the meeting or adjourned meeting at which the vote is given or the poll demanded or (in the case of a poll taken otherwise than on the same day as the meeting or adjourned meeting) the time appointed for taking the poll.



## **ALTERNATE DIRECTORS**

30. Subject to Regulation 31 below, any director (other than an alternate director) may appoint any other director, or any other person approved by resolution of the directors and willing to act, to be an alternate director and may remove from office an alternate director so appointed by him.
31. An "A" Director may appoint another "A" Director who is not a member of the GSC as his alternate or any other person who is not a member of the GSC. If the "A" director appointing an alternate is a member of the GSC, his alternate may also be a member of the GSC.
32. An alternate director shall be entitled to receive notice of all meetings of directors and of all meetings of committees of directors of which his appointor is a member, to attend and vote at any such meeting at which the director appointing him is not personally present, and generally to perform all the functions of his appointor as a director in his absence but shall not be entitled to receive any remuneration from the Company for his services as an alternate director. But it shall not be necessary to give notice of such a meeting to an alternate director who is absent from the United Kingdom.
33. An alternate director shall cease to be an alternate director if his appointor ceases to be a director; but, if a director retires by rotation or otherwise but is reappointed or deemed to have been reappointed at the meeting at which he retires, any appointment of an alternate director made by him which was in force immediately prior to his retirement shall continue after his reappointment.
34. Any appointment or removal of an alternate director shall be by notice to the Company signed by the director making or revoking the appointment or in any other manner approved by the directors.
35. Save as otherwise provided in the articles, an alternate director shall be deemed for all purposes to be a director and shall alone be responsible for his own acts and defaults and he shall not be deemed to be the agent of the director appointing him.

## **POWERS OF DIRECTORS**

36. Subject to the provisions of the Act, the memorandum and the articles and to any directions given by special resolution, the business of the Company shall be managed by the directors who may exercise all the powers of the Company. No alteration of the memorandum or articles of association and no such direction shall invalidate any prior act of the directors which would have been valid if that alteration had not been made or that direction had not been given. The powers given by this regulation shall not be limited by any special power given to the directors by the articles and a meeting of directors at which a quorum is present may exercise all powers exercisable by the directors.

37. The directors may, by power of attorney or otherwise, appoint any person to be the agent of the Company for such purposes and on such conditions as they determine, including authority for the agent to delegate all or any of his powers.

### **DELEGATION OF DIRECTORS' POWERS**

38. The directors may delegate any of their powers to any committee consisting of one or more directors or other persons. They may also delegate to any managing director or any director holding any other executive office such of their powers as they consider desirable to be exercised by him/her. Any such delegation may be made subject to any conditions or procedures the directors may impose, and either collaterally with or to the exclusion of their own powers and may be revoked or altered. Subject to any such conditions or procedures and subject to Regulation 47, the proceedings of a committee with two or more members shall be governed by the articles regulating the proceedings of directors so far as they are capable of applying.

### **APPOINTMENT AND RETIREMENT OF DIRECTORS**

39. There shall be five (5) "A" directors ("A" Directors") and two (2) "B" directors ("B" Directors").
40. *Election of "A" Directors*
- 40.1 The "A" Directors shall be nominated and elected by the subscribers in accordance with this Regulation 40. An individual may not be eligible to stand as an "A" Director if the appointment would mean that more than 1 "A" Director is a member of the GSC.
- 40.2 If an "A" Director becomes a member of the GSC (but not a Co-Chair of the GSC) and the effect on the board of directors is that more than one of the "A" Directors are members of the GSC then the last of such directors to be appointed to the GSC shall be deemed to have been immediately removed from his office as an "A" Director. The remaining "A" Directors shall appoint a person to serve in his/her place for the remainder of the term.
- 40.3 If an "A" Director becomes a Co-Chair of the GSC ("New GSC Co-Chair") upon such appointment he shall be deemed to have been immediately removed from his office as an "A" Director. The remaining "A" Directors shall appoint a person to serve in his/her place for the remainder of the term. The New GSC Co-Chair shall be appointed as a "B" Director in accordance with regulation 41.
- 40.4 Each "A" Director shall, except in the circumstances outlined in regulation 40.2 and 40.3, serve an expected term of three (3) years and the "A" Directors shall retire annually by rotation.

- 40.5 Any person may be nominated as a candidate to be appointed as an “A” Director upon expiry of the term of office of an incumbent “A” Director by the giving of written notice to the Secretary by any subscriber nominating such person (such nomination also to include the written consent of the person nominated to act as an “A” Director).;
- 40.6 If the Secretary has received nominations for a person or persons pursuant to regulation 40.5 to serve as an “A” Director or “A” Directors equal to the number of vacancies for the office of “A” Director, then such person or persons shall be appointed as the relevant “A” Director or “A” Directors;
- 40.7 if the Secretary has received valid nominations pursuant to regulation 40.5 for more persons to serve as an “A” Director than the number of vacancies occurring, then he/she shall send to each subscriber a written notice specifying the name of each person nominated. The vacancy or vacancies shall be filled by a separate election held for each vacancy amongst the subscribers. The candidate nominated who has obtained the most votes in each such election shall be appointed to fill the vacancy PROVIDED THAT:
- (a) each Premier Global subscriber shall have three (3) votes in such election, each Regular subscriber shall have two (2) votes in such election, each Small Firm subscriber shall have one (1) vote in such election.
  - (b) in the event that two or more candidates receive an equal number of votes, the Co-Chairs of the GSC shall exercise a casting vote;
  - (c) no subscriber may exercise its vote if its subscription fee has fallen overdue and is unpaid; and
  - (d) any subscriber may vote by post, by facsimile communication or by electronic mail received by the Secretary prior to 5.00pm Greenwich Mean Time on the deadline set for the polling.
- 40.8 In the event that an “A” Director retires or the office otherwise becomes vacant prior to the expiry of the term of his office, then the remaining “A” Directors shall appoint a person to serve in his place for the remainder of his term of office PROVIDED THAT, if such vacancy occurs more than one (1) year prior to the expiry of the term of office of the previous incumbent, then the person appointed to fill the vacancy shall serve until the next Polling Date on which an “A” Director is due to be elected under these Articles and, on that day, there shall be held a separate election for a person to serve the remainder of the previous incumbent’s term of office.

*Election of “B” Directors*

41. The “B” Directors shall be appointed by the board of directors provided that the board of directors shall appoint as a “B” Director any person who has been validly appointed as a Co-Chair of the GSC under the GSC Terms of Reference from time

to time and shall remove such person as a “B” Director immediately upon him ceasing to serve as a Co-Chair of the GSC.

## **RESERVED MATTERS**

42. The following shall be Reserved Matters:
- 42.1 any amendment to GSC Terms of Reference except with the prior consent of a special majority of the GSC;
  - 42.2 the removal of the Enforcer except with the prior consent of a special majority of the GSC;
  - 42.3 any action of the board of directors in relation to a matter specified in Regulation 47 except with the prior consent of a special majority of the GSC;
  - 42.4 the removal of any GSC Member or of a person as a Co-Chair of GSC or as a Co-Chair of a specified committee except by reason of the expiry of his term of office or with the prior consent of the GSC;
  - 42.5 the acquisition or disposal by the Company of any undertaking or business or of a material asset or assets or of any shares in any company (and, without limitation, for this purpose an asset is deemed to be material if the market value of the asset exceeds £100,000 and any disposal of the whole or any part of, or of any interest in, the FIX Protocol shall be deemed material);
  - 42.6 any transfer or sale of any interest in the intellectual property of any nature owned by the Company;
  - 42.7 the entry by the Company into any merger or similar arrangement with any other person;
  - 42.8 any amendment to the memorandum or articles of association of the Company or any change to the rights attaching to membership of the Company;
  - 42.9 any admission or resignation of a member or any approval or registration of any transfer of any membership, where “transfer” shall be given the widest possible meaning and shall include, without limitation, sale, assignment, or other disposal, the creation of any trust or the creation or permitting to subsist of any security interest whatsoever;
  - 42.10 any resolution or action by the board of directors to wind up the Company or the filing of a petition for winding up the Company or the making of any arrangement with creditors generally or any application for an administration order or for the appointment of a receiver or administrator;

- 42.11 making any investment, or the liquidation or any investment made by the Company, in any other person or business or save in the ordinary course of business the acquisition or disposal of, or the grant of any option or right of preemption in respect of, any asset of the Company;
- 42.12 save in the ordinary course of business, the creation or redemption of any mortgage, charge, debenture, pledge, lien or other encumbrance or security interest over any of the assets, property or undertaking of the Company;
- 42.13 the effecting of any of the above matters by any affiliate of the Company.
43. Neither the members nor (save as may be required by their fiduciary duties) the directors may undertake, authorise or approve any Reserved Matter, or vote in favour of any resolution in respect of any Reserved Matter except with prior approval or authorisation by a Subscriber Resolution and following prior notification to the Enforcer as required by Regulation 46.
44. A Subscriber Resolution must be approved by more than half the subscribers at a Special Meeting of the subscribers. A Special Meeting of the Subscribers may be called by the directors by the giving to each Subscriber of not less than 30 days' written notice specifying the time and place at which such meeting is to be held and containing the Subscriber Resolution to be considered at the meeting. At such a Special Meeting, each subscriber shall be entitled to attend and speak and each subscriber shall be entitled to exercise one vote, provided that the counting of such votes shall be on the same basis as is specified in Regulation 51 so that members of a Subscriber Category shall exercise a fractional vote (being less than one full vote) if they would be entitled to exercise a fractional vote only under Regulation 51.
45. Save as expressly provided to the contrary, the regulations regarding the convening of a Special Meeting and the conduct of such meeting (including, without limitation as to appointment of proxies) shall be identical to those set out in the Regulations 5 to 28 in relation to an Extraordinary General Meeting of the Company with all references to an Extraordinary General Meeting being construed instead as references to a Special Meeting, and all references to a member or members being instead construed as references to a subscriber or subscribers.
46. A copy of any Subscriber Resolution to be considered at a Special Meeting (together with a written notice setting out in reasonable detail the action proposed to be taken) of the Subscribers must be provided by the Company to the Enforcer at the same time that notice of that Special Meeting is given to the Subscribers.

#### **DUTIES OF THE GSC**

47. Subject to their fiduciary duties and to law and regulation from time to time, the directors shall establish a committee, to be known as the Global Steering Committee, which shall:

- 47.1 be constituted as a standing committee of the board of directors;
- 47.2 be responsible for overseeing the operation, maintenance and development of the FIX Protocol;
- 47.3 be responsible for regulating access to, and the use of, the FIX Protocol;
- 47.4 be responsible for making recommendations as to policy and strategy to the board of directors;
- 47.5 within the GSC Terms of Reference, regulate its own proceedings as it sees fit; and
- 47.6 carry out such other responsibilities and functions as the board of directors may from time to time elect

In the event that the directors ever exercise their powers to dissolve such committee, they shall, subject as aforesaid, establish a successor committee for the same purposes as soon as reasonably practicable.

Without limitation to Regulation 71, if the GSC so recommends (acting by a special majority), the directors of the Company shall, subject to their fiduciary duties, remove a person as Enforcer provided that, if the GSC does not recommend another person to serve as Enforcer pursuant to the terms of reference of the GSC from time to time, the person who would otherwise be removed will continue to serve as Enforcer until the GSC has recommended a person to fill the vacancy.

### **SUBSCRIBER RESOLUTIONS**

- 48. Each subscriber shall, on paying his first subscription, declare in writing to the Secretary of the GSC as to which category of subscriber he belongs (a "Subscriber Category") provided that:
  - 48.1 no subscriber may declare himself to belong to more than one Subscriber Category without the written consent of the board of directors;
  - 48.2 if a subscriber has not declared himself to belong to a Subscriber Category within thirty (30) days after his first subscription payment has fallen due pursuant to this article 48, the board of directors may declare in writing that he is deemed to be a member of a particular Subscriber Category; and
  - 48.3 having declared his Subscriber Category, no subscriber may change his Subscriber Category except with the written consent of the board of directors.
- 49. The Subscriber Categories shall be:
  - (i) "Buy Side" Institutions;
  - (ii) "Sell Side" Broker/Dealers;

- (iii) "Vendors";
- (iv) "ECNs/Exchanges";
- (v) "Regulators";
- (vi) "Associations"; and
- (vii) Other Subscribers.

PROVIDED THAT the directors may abolish a Subscriber Category and create such new Subscriber Category/ies as it considers appropriate and if the board of directors abolishes a Subscriber Category or creates a new Subscriber Category, it shall specify in writing the qualifications necessary for membership of that Subscriber Category and shall afford any member of an existing Subscriber Category a reasonable opportunity to leave its existing Subscriber Category and to join a different Subscriber Category (but subject always to Regulation 50).

- 50. The decision of the directors in determining whether a person is eligible to be a member of a Subscriber Category or to which Subscriber Category a person belongs shall be in its absolute discretion and shall be final and binding.
- 51. At any Special Meeting called for the purpose of considering a Subscriber Resolution, each Subscriber shall have One (1) vote PROVIDED THAT no Subscriber Category may exercise more than thirty per cent (30%) of the votes in relation to the approval or rejection of any Subscribers' Resolution and if any poll in relation to a Subscribers' Resolution, more than thirty per cent (30%) of the votes are cast by any single Subscriber Category, then each vote cast by the members of that Subscriber Category shall be reduced by such percentage as is required to ensure that the members of that Subscriber Category have exercised thirty per cent (30%) of the votes in that poll so that each vote cast by the members of the relevant Subscriber Category shall count as a valid fraction of a vote.

#### **NOTIFICATION EVENTS**

- 52. The directors shall promptly, upon it coming to their attention, give notice in writing to each of the Co-Chairs of the GSC upon the occurrence of any of the notification events set out in Regulation 54 (the "Notification Events") or if they have reasonable grounds for believing that a Notification Event may have occurred or may reasonably occur. Such notice is to include reasonable details of the Notification Event which has occurred, may have occurred or may reasonably occur, together with sufficient information to enable the GSC to determine what steps (if any) may be taken in consequence thereof.
- 53. Upon receiving a notice from the directors pursuant to Regulation 52, the Co-Chairs of the GSC shall call a meeting of the GSC as soon as is reasonably practicable thereafter (and, in any event, within ten (10) days of receipt of such notice). The

directors of the Company shall attend this meeting and shall provide such information pertaining to the financial affairs of the Company as the GSC may reasonably require.

54. The Notification Events are:
- 54.1 the Company has more than one (1) successive quarter of negative cash flow (and, for these purposes, the relevant quarters shall commence on 1 January, 1 April, 1 July and 1 October of each calendar year) or, in any single quarter, cash paid out by the Company exceeds cash received by the Company by a sum in excess of one hundred thousand pounds (£100,000) or the equivalent sum in any other currency;
  - 54.2 the Company's gross liabilities exceed its gross assets;
  - 54.3 the Company's current assets exceed its current liabilities;
  - 54.4 any writ, claim, summons or other court proceeding is issued against the Company, whether in the United Kingdom or elsewhere including (without limitation) any petition for a winding-up or liquidation of the Company; or
  - 54.5 the Company is, or there is a material risk of the Company becoming, insolvent for the purposes of the Insolvency Act 1986 (as amended from time to time) or any successor provision or substantially equivalent provision in any jurisdiction.
55. In determining whether a notification event has occurred or may have occurred or may reasonably occur for the purposes of Regulations 51 to 54 (inclusive), the directors shall apply United Kingdom generally accepted accounting practice.

#### **LIST OF SUBSCRIBERS**

56. The Company shall maintain a list of persons who are subscribers and shall make such list available upon request to any member of the GSC.

#### **DISQUALIFICATION AND REMOVAL OF DIRECTORS**

57. The office of a director shall be vacated if:
- (a) he/she ceases to be a director by virtue of any provision of the Act or he becomes prohibited by law from being a director; or
  - (b) he/she becomes bankrupt or makes any arrangement or composition with his creditors generally; or
  - (c) he/she is, or may be, suffering from mental disorder and either:
    - (i) he is admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or, in



Scotland, an application for admission under the Mental Health (Scotland) Act 1960, or

- (ii) an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a receiver, curator bonis or other person to exercise powers with respect to his property or affairs; or
- (d) he/she resigns his office by notice to the company; or
- (e) he/she shall for more than six consecutive months have been absent without permission of the directors from meetings of directors held during that period and the directors resolve that his office be vacated.
- (f) his/her firm of employment ceases to be an FPL subscriber (member).
- (g) he/she ceases to be an employee of a subscribing (member) firm for more than three consecutive months.
- (h) he/she has failed to participate in at least 75% of meetings of the Directors throughout the previous twelve months.

#### **REMUNERATION OF DIRECTORS**

58. The directors shall be entitled to such remuneration as the Company may by ordinary resolution determine and, unless the resolution provides otherwise, the remuneration shall be deemed to accrue from day to day.

#### **DIRECTORS' EXPENSES**

59. The directors may be paid all travelling, hotel, and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or separate meetings of the holders of debentures of the company or otherwise in connection with the discharge of their duties.

#### **DIRECTORS' APPOINTMENTS AND INTERESTS**

60. Subject to the provisions of the Act, the directors may appoint one or more of their number to the office of managing director or to any other executive office under the Company and may enter into an agreement or arrangement with any director for his employment by the Company or for the provision by him of any services outside the scope of the ordinary duties of a director. Any such appointment, agreement or arrangement may be made upon such terms as the directors determine and they may remunerate any such director for his services as they think fit. Any appointment

of a director to an executive office shall terminate if he ceases to be a director but without prejudice to any claim to damages for breach of the contract of service between the director and the Company. A managing director and a director holding any other executive office shall not be subject to retirement by rotation.

61. Subject to the provisions of the Act, and provided that he has disclosed to the directors the nature and extent of any material interest of his, a director notwithstanding his office:

- (a) may be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested;
- (b) may be a director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is otherwise interested; and
- (c) shall not, by reason of his office, be accountable to the Company for any benefit which he derives from any such office or employment or from any such transaction or arrangement or from any interest in any such body corporate and no such transaction or arrangement shall be liable to be avoided on the ground of any such interest or benefit.

62. For the purposes of regulation 61:

- (a) a general notice given to the directors that a director is to be regarded as having an interest of the nature and extent specified in the notice in any transaction or arrangement in which a specified person or class of persons is interested shall be deemed to be a disclosure that the director has an interest in any such transaction of the nature and extent so specified; and
- (b) an interest of which a director has no knowledge and of which it is unreasonable to expect him to have knowledge shall not be treated as an interest of his.

#### **DIRECTORS POWER TO AUTHORISE CONFLICTS OF INTEREST**

63. The directors may, in accordance with the requirements set out in this article 63, authorise any matter proposed to them by any director which would, if not authorised, involve a director breaching his duty under section 175 of the Act to avoid conflicts of interest ('Conflict').

64. Any authorisation under article 63 will be effective only if:

- (a) the matter in question shall have been proposed by any director for consideration at a meeting of directors in the same way that any other

matter may be proposed to the directors under the provisions of these articles or in such other manner as the directors may determine;

- (b) any requirement as to the quorum at the meeting of the directors at which the matter is considered is met without counting the director in question; and
- (c) the matter was agreed to without his voting or would have been agreed to if his vote had not been counted.

65. Any authorisation of a Conflict under article 63 may (whether at the time of giving the authorisation or subsequently):

- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
- (b) be subject to such terms and for such duration, or impose such limits or conditions as the directors may determine;
- (c) be terminated or varied by the directors at any time.

This will not affect anything done by the director prior to such termination or variation in accordance with the terms of the authorisation.

66. In authorising a Conflict the directors may decide (whether at the time of giving the authorisation or subsequently) that if a director has obtained any information through his involvement in the Conflict otherwise than as a director of the company and in respect of which he owes a duty of confidentiality to another person the director is under no obligation to:

- (a) disclose such information to the directors or to any director or other officer or employee of the Company;
- (b) use or apply any such information in performing his duties as a director;

where to do so would amount to a breach of that confidence.

67. Where the directors authorise a Conflict they may provide, without limitation (whether at the time of giving the authorisation or subsequently) that the director:

- (a) is excluded from discussions (whether at meetings of directors or otherwise) related to the Conflict;
- (b) is not given any documents or other information relating to the Conflict;
- (c) may or may not vote (or may or may not be counted in the quorum) at any future meeting of directors in relation to any resolution relating to the Conflict.

68. Where the directors authorise a Conflict:
- (a) the director will be obliged to conduct himself in accordance with any terms imposed by the directors in relation to the Conflict;
  - (b) the director will not infringe any duty he owes to the company by virtue of sections 171 to 177 of the Act provided he acts in accordance with such terms, limits and conditions (if any) as the directors impose in respect of its authorisation.
69. A director is not required, by reason of being a director (or because of the fiduciary relationship established by reason of being a director), to account to the company for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the directors or by the Company in general meeting (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

#### **DIRECTORS' GRATUITIES AND PENSIONS**

70. The directors may provide benefits, whether by the payment of gratuities or pensions or by insurance or otherwise, for any director who has held but no longer holds any executive office or employment with the company or with any body corporate which is or has been a subsidiary of the Company or a predecessor in business of the Company or of any such subsidiary, and for any member of his family (including a spouse and a former spouse) or any person who is or was dependent on him, and may (as well before as after he ceases to hold such office or employment) contribute to any fund and pay premiums for the purchase or provision of any such benefit.

#### **PROCEEDINGS OF DIRECTORS**

71. Subject to the provisions of the articles, the directors may regulate their proceedings as they think fit. A director may, and the secretary at the request of a director shall, call a meeting of the directors. Questions arising at a meeting shall be decided by a majority of votes. In the case of an equality of votes, the chairman shall have a second or casting vote. A director who is also an alternate director shall be entitled in the absence of his appointor to a separate vote on behalf of his appointor in addition to his own vote.
72. The quorum for the transaction of the business of the directors may be fixed by the directors and unless so fixed at any other number shall be a majority of the directors entitled to be present and to vote at that meeting. A person who holds office only as an alternate director shall, if his appointor is not present, be counted in the quorum.

73. The continuing directors or a sole continuing director may act notwithstanding any vacancies in their number, but, if the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting.
74. The directors may appoint one of their number to be the chairman of the board of directors and may at any time remove him from that office. Unless he is unwilling to do so, the director so appointed shall preside at every meeting of directors at which he is present. But if there is no director holding that office, or if the director holding it is unwilling to preside or is not present within five minutes after the time appointed for the meeting, the directors present may appoint one of their number to be chairman of the meeting.
75. All acts done by a meeting of directors, or of a committee of directors, or by a person acting as a director shall, notwithstanding that it be afterwards discovered that there was a defect in the appointment of any director or that any of them were disqualified from holding office, or had vacated office, or were not entitled to vote, be as valid as if every such person had been duly appointed and was qualified and had continued to be a director and had been entitled to vote.
76. A resolution in writing signed by all the directors entitled to receive notice of a meeting of directors or of a committee of directors shall be as valid and effectual as if it had been passed at a meeting of directors or (as the case may be) a committee of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors; but a resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.
77. Save as otherwise provided by the articles, a director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Company unless his interest or duty arises only because the case falls within one or more the following paragraphs:
- (a) the resolution relates to the giving to him of a guarantee, security, or indemnity in respect of money lent to, or an obligation incurred by him for the benefit of, the Company or any of its subsidiaries;
  - (b) the resolution relates to the giving to a third party of a guarantee, security, or indemnity in respect of an obligation of the Company or any of its subsidiaries for which the director has assumed responsibility in whole or part and whether alone or jointly with others under a guarantee or indemnity or by the giving of security;
  - (c) his interest arises by virtue of his subscribing or agreeing to subscribe for any debentures of the Company or any of its subsidiaries, or by virtue of his

being, or intending to become, a participant in the underwriting or sub-underwriting of an offer of any such debentures by the Company or any of its subsidiaries for subscription, purchase or exchange;

- (d) the resolution relates in any way to a retirement benefits scheme which has been approved, or is conditional upon approval, by the Board of Inland Revenue for taxation purposes.

For the purposes of this regulation, an interest of a person who is, for any purpose of the Act (excluding any statutory modification thereof not in force when this regulation becomes binding on the company), connected with a director shall be treated as an interest of the director and, in relation to an alternate director, an interest of his appointor shall be treated as an interest of the alternate director without prejudice to any interest which the alternate director has otherwise.

- 78. A director shall not be counted in the quorum present at a meeting in relation to a resolution on which he is not entitled to vote.
- 79. The Company may by ordinary resolution suspend or relax to any extent, either generally or in respect of any particular matter, any provision of the articles prohibiting a director from voting at a meeting of directors or of a committee of directors.
- 80. Where proposals are under consideration concerning the appointment of two or more directors to offices or employments with the Company or any body corporate in which the Company is interested the proposals may be divided and considered in relation to each director separately and (provided he is not for another reason precluded from voting) each of the directors concerned shall be entitled to vote and be counted in the quorum in respect of each resolution except that concerning his own appointment.
- 81. If a question arises at a meeting of directors or of a committee of directors as to the right of a director to vote, the question may, before the conclusion of the meeting, be referred to the chairman of the meeting and his ruling in relation to any director other than himself shall be final and conclusive.
- 82. Any director or member of a committee of directors may participate in a meeting of the directors or such committee by means of conference telephone or other communications equipment which allows all persons participating in the meeting to hear each other and participation in a meeting in this manner shall be deemed to constitute presence in person at such meeting and all persons participating in a meeting in this manner shall be entitled to vote or be counted in the quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating is assembled, or if there is no such group, where the chairman of the meeting then is.

## **SECRETARY**

83. Subject to the provisions of the Act, the secretary shall be appointed by the directors for such term, at such remuneration and upon such conditions as they may think fit; and any secretary so appointed may be removed by them.

## **INCOME AND PROPERTY**

84. The income and property of the Company shall be applied solely towards the promotion of its Object and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Company.

## **MINUTES**

85. The directors shall cause minutes to be made in books kept for the purpose:
- (a) of all appointments of officers made by the directors; and
  - (b) of all proceedings at meetings of the Company, of the directors and of committees of directors, including the names of the directors present at each such meeting.

## **THE SEAL**

86. The seal shall only be used by the authority of the directors or of a committee of directors authorised by the directors. The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary or by a second director.

## **NOTICES**

87. Any notice to be given to or by any person pursuant to the articles (other than a notice calling a meeting of the directors) shall be in writing or shall be given using electronic communications to an address for the time being notified for that purpose to the person giving the notice.

In this regulation, "address", in relation to electronic communications, includes any number or address used for the purposes of such communications.

88. The Company may give any notice to a member either personally or by sending it by post in a prepaid envelope addressed to the member at his registered address or by leaving it at that address by giving it using electronic communications to an address

for the time being notified to the Company by the member. A member who gives to the Company an address within the United Kingdom at which notices may be given to him or an address to which notices may be sent using electronic communications, shall be entitled to have notices given to him at that address, but otherwise no such member shall be entitled to receive any notice from the company.

In this regulation and the next, "address", in relation to electronic communications, includes any number or address used for the purposes of such communications.

89. A member present, either in person or by proxy, at any meeting of the Company shall be deemed to have received notice of the meeting and, where requisite, of the purposes for which it was called.
90. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. Proof that a notice contained in an electronic communication was sent in accordance with guidance issued by the Institute of Chartered Secretaries and Administrators shall be conclusive evidence that the notice was given. A notice shall be deemed to be given at the expiration of 48 hours after the envelope containing it was posted and after the envelope containing it was posted and, in the case of a notice contained in an electronic communication, at the expiration of 48 hours after the time it was sent.

#### **WINDING UP**

91. If upon winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to or distributed among members of the Company but shall be given or transferred to some institution or institutions having objects similar to the Company's Object and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of regulation 84 hereof, such institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if and so far as effect cannot be given to such provision, then to some charitable object.

#### **INDEMNITY**

92. For the purposes of this Article a "Liability" is any liability incurred by a person in connection with any negligence, default, breach of duty or breach of trust by him in relation to the Company or otherwise in connection with his duties, powers or office and "Associated Company" shall bear the meaning referred to in section 256 of the Act. Subject to the provisions of the Act and without prejudice to any protection from liability which may otherwise apply:
  - 92.1 the directors shall have power to purchase and maintain for any director of the Company or of an Associated Company insurance against any Liability;



- 92.2 every director and officer of the Company shall be indemnified out of the assets of the company against any loss or liability incurred by him in defending any proceedings in which judgment is given in his favour or in which he is acquitted or in connection with any application in which relief is granted to him by the court from any Liability.
93. Regulation 118 in Table A shall not apply to the Company.

### **ELECTRONIC COMMUNICATIONS**

94. Any notice or other written communication (including, for the avoidance of doubt, a vote cast by a subscriber in relation to the election of an “A” Director or a Subscriber Resolution) may be sent by electronic mail sent:
- (a) in the case of electronic communications to the Company, to the Secretary);
  - (b) in the case of a member or a subscriber, to the electronic mail address supplied by that person to the Company; and
  - (c) in the case of any other person, to the electronic mail address supplied by that person to the Company.