

6 November 2017

## Notice in relation to Constitutional amendment for AMIT Regime

This notice is provided by One Managed Investment Funds Limited ABN 47 177 400 987 AFSL 297042 (“**RE**”) as responsible entity of the Folkestone Maxim A-REIT Securities Fund ARSN 116 193 563 (“**Trust**”) under section 601GCB(2) of the Corporations Act as modified by ASIC Corporations (Attribution Managed Investment Trusts) Instrument 2016/489 (“**Class Order**”) to inform members of the Trust (“**Members**”) that the RE has amended the constitution for the Trust (“**Constitution**”) to allow the Trust to be operated as an attribution managed investment trust under the new “**AMIT Regime**” (explained below).

### The AMIT Regime

The Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016, together with additional supplemental legislation (“the **AMIT Regime**”), became law on 5 May 2016. The RE amended the Constitution on 2 November 2017 so that the Trust can be effectively operated as an attribution managed investment trust under this new tax regime.

The key difference between the current tax regime which applies to the Trust (Division 6 of the Income Tax Assessment Act 1936) and the new AMIT Regime is that under the AMIT Regime, Members are taxed on the taxable income that is allocated or “attributed” to Members by the RE. The new AMIT Regime requires the RE to undertake this allocation or attribution on a fair and reasonable basis. This is in contrast to the current taxing regime under Division 6, which provides that a Member will be subject to tax to the extent that each Member is “presently entitled” to the income of the Trust according to trust law principles.

The RE amended the Constitution to allow the RE to elect to apply the new AMIT Regime to the Trust and to allow the RE to operate the Trust as an attribution managed investment trust in a manner permitted by the AMIT Regime. The modifications which were made to the Constitution are summarised in the table at Annexure 1.

### Reasons for amending the Constitution

The RE believes that, by allowing a different tax regime to be adopted for the Trust, the amendments to the Constitution have the following potential benefits for Members:

- a removal of the potential for double taxation that may arise for Members where there are mismatches between the amount distributed and the taxable income of the Trust. This is achieved through the provision of appropriate cost base adjustments where distributions are greater or less than the amount on which the Member is assessed for tax purposes;
- greater certainty regarding the quantum and character of any amounts distributed or otherwise passed through to Members and the tax consequences of those amounts; and
- greater certainty regarding certain aspects of the tax treatment of the Trust, such as the Trust being deemed to be a “fixed trust” for income tax purposes.

The RE notes that the AMIT regime has only been recently enacted. As such, it is possible there may be some uncertainty regarding its operation in the initial years.

### How to contact us if you have any questions

If you wish to discuss the Constitutional amendments or the AMIT Regime in more detail please feel free to call the RE on 02 8277 0000 or by email [folkestone@oneinvestment.com.au](mailto:folkestone@oneinvestment.com.au).

## Annexure 1

The amendments to the Constitution are summarised in the following table:

Clause	Description of the amendment
19.1A	<p><b>RE Elections</b></p> <p>Clause 19.1A provides for distributions from the Trust to be subject to, and be qualified by, the operation of Schedule 1, in instances where the RE has elected to apply the AMIT regime.</p>
19.9 and 19.10	<p><b>Significant Redemption and Redemption Gains Entitlement</b></p> <p>Clause 19.9 permits the RE to determine when a redemption of units is a Significant Redemption.</p> <p>Where the RE has determined that a redemption is a Significant Redemption, the RE can allocate capital gains to the Member in accordance with the formula contained in clause 19.10. Capital gains can be allocated to a Significant Redemption in instances where the Trust has realised capital gains in order to fund a Significant Redemption as determined reasonably by the RE.</p>
19.11	<p><b>RE Elections</b></p> <p>This clause permits the RE to elect into the provisions of the amended Constitution which facilitate the application of the AMIT Regime to the Trust.</p>
19.12	<p><b>Impact of Schedule 1 if the Trust is not an AMIT</b></p> <p>This clause clarifies that the exercise of powers by the RE will not be invalidated if the RE mistakenly believes the Trust is an AMIT for a particular year.</p>
36A	<p><b>Amendment – Attribution Managed Investment Trust</b></p> <p>This clause clarifies that RE may amend the Constitution to facilitate compliance with the AMIT Regime.</p>
Schedule 1	<p><b>AMIT provisions</b></p> <p>Schedule 1 contains the operative provisions in relation to the AMIT Regime. These provisions will apply where the RE has elected for the Trust to operate as an AMIT under the regime.</p> <p>In particular, Schedule 1 permits the RE to:</p> <ul style="list-style-type: none"> <li>determine the taxable income of the Trust and allocate the taxable income to Members on a fair and reasonable basis;</li> <li>make amended allocations of taxable income to Members;</li> <li>issue AMIT Member Annual (“<b>AMMA</b>”) Statements to Members or amended AMMA Statements; and</li> <li>if permitted by the Corporations Act and the Constitution, issue another class of units and cause that class of units to be treated as a separate trust for income tax purposes.</li> </ul> <p>Schedule 1 also:</p> <ul style="list-style-type: none"> <li>provides limitations to the RE's powers to ensure as far as possible that the Members continue to have "clearly defined rights" - this is a necessary requirement for the Trust to be able to apply the AMIT regime;</li> <li>confirms that the exercise of the RE's powers under the AMIT Regime is subject to the same limitation of liabilities as provided for generally under the Constitution of the Trust;</li> <li>provides the machinery for the exercise of the rights afforded to Members under the AMIT Regime to object to the attribution. It also requires Members to indemnify the RE against costs and liabilities incurred in that process and to acknowledge that their rights may be impacted by the exercise of other Members' objection rights; and</li> <li>provides for each Member to indemnify the RE in relation to any tax and any other costs, expenses or liabilities incurred as a result of being liable to such tax, that may become payable by the RE under the AMIT Regime, which the RE reasonably determines relates to the Member or units held by the Member.</li> </ul>
Incidental Changes	<p>Various associated definitions and ancillary amendments to the Constitution were made to facilitate the application of the AMIT Regime to the Trust.</p>