
Supplemental Deed to the Unit Trust Deed dated 28 July 1998

Fisher Funds Management Limited (the Manager)

Trustees Executors Limited (the Trustee)

Date: 2007

PARTIES

Fisher Funds Management Limited a company having its registered office at Auckland (*the Manager*)

Trustees Executors Limited a company having its registered office at Wellington (*the Trustee*)

BACKGROUND

- A This deed is supplemental to and amends a trust deed dated 28 July 1998 (as amended) made between the Manager and the Trustee (*the Trust Deed*).
- B Clause 13.1 of the Trust Deed provides that:
- "Circumstances in which changes can be made*
Subject to any requirements of law, the Trustee and the Manager may, by supplemental deed or written agreement, amend, add to or revoke in whole or in part any provision of this Deed (as it may have been amended) and/or the Issue Terms relating to any Fund if the change:
- (a) is in the opinion of the Trustee and the Manager necessary or expedient to comply with the provisions of any statute, ordinance, regulation or by-law or any law made under the authority of any statute regulation by-law or ordinance or is the requirement of any competent authority;
 - (c) is in the opinion of the Trustee... of a formal, technical or administrative nature only;
 - (d) is in the opinion of the Trustee not materially and adversely prejudicial to the Unit Holders in the relevant Fund; or
 - (e) will in the opinion of the Trustee enable the relevant Fund or the provisions of this Deed to be more conveniently or advantageously administered;..."
- C The Trustee and the Manager have agreed to amend certain provisions of the Trust Deed in the manner set out in this deed having regard to the provisions of clause 13.1 as set out above.

BY THIS DEED the parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed (including the Background), unless the context otherwise requires, words which are defined in the Trust Deed have the same meaning in this deed.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) words importing one gender shall include the other gender;
- (b) words importing the singular shall include the plural and vice versa;
- (c) headings shall be ignored and shall not affect the construction of this deed; and
- (d) references to clauses are references to clauses of the Trust Deed.

2 AMENDMENTS TO THE TRUST DEED

The Trust Deed is hereby amended as at the date of this deed by:

- 2.1 Amending the definition of "Current Value of the Fund" by adding at the end of the existing definition:

"provided no income shall be recognised or deductions shall be made to or from the amount of income for changes in the value of Units which results from treating Units as Liabilities."

- 2.2 Inserting the following definition of "Entitlement":

"*Entitlement* means in relation to a Unit, the amount of Income to be distributed to a Unit Holder in respect of that Unit"

- 2.3 Inserting the following definition of "Income":

"*Income* means, in respect of each Fund and any period, all the net income of the Fund for such period determined by the Manager in accordance with clause 9.2, provided no income shall be recognised or deductions shall be made to or from the amount of income for changes in the value of Units which results from treating Units as Liabilities"

- 2.4 Replacing the word "income" with "Income" in paragraph (b) of the definition of "Asset".
- 2.5 Inserting in paragraph (e) of the definition of "Liabilities" at the end of that paragraph the following:

"but excluding in the case of a Fund which is a PIE, where the Manager in its complete discretion considers it appropriate to do so, any Portfolio Entity Tax Liability;"

- 2.6 Inserting at the end of paragraph (h) of the definition of "Liabilities" the following:

"but excluding any amount which results from treating Units as Liabilities."

- 2.7 Deleting the word "Net" in the definition of "Net Income Account".
- 2.8 Deleting the word "Net" in the definition of "Net Income of the Fund for a Financial Period".
- 2.9 Inserting the following definitions below the definition of "Prospectus":

"Portfolio Allocation Period has the same meaning as in section OB 1 of the Tax Act.

Portfolio Calculation Period has the same meaning as in section OB 1 of the Tax Act.

Portfolio Class Net Income has the same meaning as in section HL 18 of the Tax Act.

Portfolio Class Net Loss has the same meaning as in section HL 18 of the Tax Act.

Portfolio Class Taxable Income has the same meaning as in section OB 1 of the Tax Act.

Portfolio Class Taxable Loss has the same meaning as in section OB 1 of the Tax Act.

Portfolio Entity Tax Liability means in respect of a Fund the tax liability for the Fund as defined in section HL 20 of the Tax Act.

Portfolio Investment Entity or *PIE* means a portfolio investment entity as defined in section OB 1 of the Tax Act.

Portfolio Investor Allocated Income has the same meaning as in section HL 24 of the Tax Act.

Portfolio Investor Allocated Loss has the same meaning as in section HL 24 of the Tax Act.

Portfolio Investor Class has the same meaning as in section OB 1 of the Tax Act.

Portfolio Investor Interest Fraction has the same meaning as in section OB 1 of the Tax Act.

Portfolio Investor Rate means a Unitholder's portfolio investor rate as defined in section OB 1 of the Tax Act."

- 2.10 Deleting the existing definition of "Related Person" and replacing it with the following definition:

"*Related Person* means a party that is related to an entity. A party is related to an entity if:

- (a) directly, or indirectly through one or more intermediaries, the party:
 - (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries);
 - (ii) has an interest in the entity that gives it significant influence over the entity; or
 - (iii) has joint control over the entity;
- (b) the party is an associate (as defined in NZ IFRS28 "Investments in Associates") of the entity;
- (c) the party is a joint venture in which the entity is a venturer (see NZ IFRS31 "Interests in Joint Ventures");
- (d) the party is a member of the key management personnel of the entity or its parent;

- (e) the party is a close member of the family of any individual referred to in (a) or (d);
- (f) the party is an entity that is controlled, jointly controlled or significantly influenced by, or for which significant voting power in such entity resides with, directly or indirectly, any individual referred to in (d) or (e); or
- (g) the party is a post-employment benefit plan for the benefit of employees of the entity, or of any entity that is a Related Party of the entity.

Close members of the family of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity. They may include:

- (a) the individual's domestic partner and children;
- (b) children of the individual's domestic partner, and
- (c) dependants of the individual or the individual's domestic partner."

2.11 Deleting the word "Net" from the definition of "Retained Net Income Account".

2.12 Inserting the words "Portfolio Entity Tax Liability," after the words "income tax," in the definition of "Tax".

2.13 Inserting the following definitions below the definition of "Tax":

" *Tax Act* means the Income Tax Act 2004, including (other than when used in the context of section, part or subpart references), the Tax Administration Act 1994.

Tax Credit means a credit against a person's tax liability provided for under subpart HL of the Tax Act, or any other similar credit.

Tax File Number has the same meaning as in section OB 1 of the Tax Act."

2.14 Deleting the existing definition of "Unit" and replacing it as follows:

"*Unit* means in respect of a Fund, an undivided part of or share in the beneficial interest in that Fund as provided for in this Deed."

2.15 Inserting a new Clause 1.4 as follows:

"1.4 Manager's Discretion to follow Accounting Principles

Notwithstanding any provision of this Deed, where a matter is to be or may be interpreted pursuant to any provision of this Deed by reference to generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards either expressly or implicitly (other than in relation to the preparation and audit of financial statements, but including when valuing any assets, liabilities or net assets for any other purpose), the Manager may elect not to follow such generally accepted accounting principles or the New Zealand equivalents to international financial reporting standards."

2.16 Inserting after the words "Asset of that Fund" in line 3 of Clause 2.4.2 the following words:

"(provided that if the Manager considers it necessary or desirable in the Manager's complete discretion that the Fund should meet the unit valuer's requirements in section EX 44B of the Tax Act, the Fund shall be treated as having assigned to each Unit Holder an interest in a proportion of the net returns from investments of the Fund corresponding to the Unit Holder's Unit holding)"

2.17 Deleting the following paragraph from Clause 3.1.5:

"Where a number of Units so calculated results in a fraction the number of Units to be issued may rounded to any number not further from the number calculated than the next whole number"

and replacing it with the following:

"Where the number of Units so calculated results in a fraction the number of Units to be issued shall be rounded to the nearest 1000th of a Unit (or such other decimal place as the Manager determines)."

2.18 Deleting Clause 3.1.7 (*Aggregating Fractions*).

2.19 Deleting Clause 3.3.3 (*Treatment of Balances*).

2.20 Adding a new clause 4.1.3(d) as follows (and renumbering existing paragraphs (d) and (e) accordingly):

"(d) if the Fund is a PIE, the IRD number and current Portfolio Investor Rate for each Unit Holder;"

2.21 Adding the words "or Portfolio Investor Rate" after the word "address" in the first line of clause 4.2.3.

2.22 Deleting the "and" at the end of Clause 4.5.4, replacing the "." at the end of Clause 4.5.5 with ";" and inserting the following Clause 4.5.6 after Clause 4.5.5:

"4.5.6 for the purposes of calculating the relevant Fund's Portfolio Entity Tax Liability and attributing such liability to Unit Holders and for all other purposes relating to the application of the Tax Act to the Fund as a PIE, the Manager may in its complete discretion either treat the Unit Holders as separate Unit Holders (in equal shares), or treat the joint Unit Holders as a single Unit Holder with a Portfolio Investor Rate equal to the highest Portfolio Investor Rate of the joint Unit Holders or such other rate as the Manager thinks fit in its complete discretion."

2.23 Inserting at the end of Clause 5.11.1(f) the following words:

"including, without limitation, if the Fund is a PIE and allowing the redemption of Units in the Fund would cause the Fund to breach the requirements of the PIE definition in the Tax Act,"

2.24 Inserting a new clause 5.12.4(e) (and renumbering the existing clause 5.12.4(e) accordingly) as follows:

"(e) where allowing the transfer would threaten the Fund's eligibility as a PIE; or"

2.25 Inserting at the end of Clause 6.1 the following:

"provided that if the Fund is a PIE, the Assets of the Fund shall be invested as far as is practically possible so the Fund continues to be eligible as a PIE"

- 2.26 Deleting paragraph 7.5.1(d) in its entirety (Presumptions in respect of Acceptance Time).
- 2.27 Deleting paragraph 7.5.2 in its entirety (*Presumptions*).
- 2.28 Deleting the word "Net" in the following Clauses: 9.2, 9.2.1, 9.2.3, 9.3, 9.4, 9.4.1, 9.4.2, 9.4.3, 9.5.1, 9.5.2, 9.6.1, 9.7.1, 9.8, 9.11, 9.11.1, 9.11.2.
- 2.29 Inserting the following at the end of clause 9.2.1(e)(v) (before the ";"):

"and, if the Fund is a PIE, excluding, where the Manager in its complete discretion considers it desirable to do so, any Portfolio Entity Tax Liability".
- 2.30 Inserting, the following at the end of clause 9.2.1(h) (before the ";"):

"excluding, if the Fund is a PIE and the Manager in its complete discretion considers it desirable to do so, any Portfolio Entity Tax Liability".
- 2.31 Replacing the word "income" with "Income" in Clause 9.2.2 and 9.5.1.
- 2.32 Replacing the words "notional earnings" with "Entitlement" in Clause 9.3.
- 2.33 Replacing the words "section LE (8) of the Income Tax Act 1994" in the paragraph below Clause 9.4.3 with "section OB 1 of the Tax Act".
- 2.34 Deleting the words ", with the approval of the Trustee," from clauses 9.9.2, 9.9.5(c) and 9.10.
- 2.35 Deleting the words ", with the approval of the Trustee" from clause 9.9.3.
- 2.36 Deleting the words "and with the approval of the Trustee" from clause 9.9.4.
- 2.37 Deleting the words "with the approval of the Trustee" from clause 9.9.5(a).
- 2.38 Inserting as a new Clause 10.1.1 A immediately after Clause 10.1.1:

"10.1.1 A *Powers if a PIE*: The Manager may elect that a Fund be a PIE, or cease to be a PIE, in its complete discretion. The Manager shall have the following additional powers and discretions in respect of any Fund which is a PIE and all

the other provisions of this Deed shall take effect subject to them:

- (a) to determine, on such basis as the Manager thinks appropriate in its complete discretion, classes of Unit Holders applying the definition of Portfolio Investor Class in section OB 1 of the Tax Act;
- (b) to determine the Portfolio Allocation Period and the Portfolio Calculation Period for the Fund in accordance with section HL 15(2) of the Tax Act;
- (c) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the assessable income (for tax purposes) of the Fund for a Portfolio Allocation Period and to allocate (in such manner and on such basis as the Manager considers appropriate in its complete discretion) such income to each Portfolio Investor Class for that Portfolio Allocation Period, for the purposes of section HL 18(3) of the Tax Act;
- (d) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the deductions incurred in deriving the assessable income allocated to a Portfolio Investor Class of Unit Holders for a Portfolio Allocation Period, for the purposes of section HL 18(4) of the Tax Act;
- (e) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Portfolio Class Net Income or the Portfolio Class Net Loss, as the case may be, for each Portfolio Investor Class for a Portfolio Allocation Period for the purposes of section HL 18 of the Tax Act;
- (f) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Portfolio Class Taxable Income or the Portfolio Class Taxable Loss, as the case may be, for each Portfolio Investor Class:
 - (i) for a Portfolio Allocation Period, for the purposes of section HL 19 of the Tax Act; and

- (ii) for a tax year, for the purposes of section HL 29 of the Tax Act;
- (g) to determine each Unit Holder's Portfolio Investor Interest Fraction for any period, based on what that Unit Holder's proportionate interest in any distribution by the Fund to Unit Holders would be in that period, if such a distribution were to be made;
- (h) to determine, on such basis as the Manager thinks appropriate in its complete discretion, the Fund's Portfolio Entity Tax Liability or rebate, as the case may be, for the applicable calculation period, for the purposes of section HL 20 of the Tax Act;
- (i) to elect (taking into account such factors as the Manager considers relevant in its complete discretion) whether the Fund determines its Portfolio Entity Tax Liability pursuant to section HL 21 or section HL 22 or section HL 23 of the Tax Act, and to make any elections required to give effect to such determination;
- (j) to retain any amount to which a Unit Holder otherwise would be entitled if that amount is required to be paid to the Commissioner of Inland Revenue pursuant to section HL 21(5) of the Tax Act;
- (k) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amounts of any rebates of tax under section KI 1 of the Tax Act available to the Fund by virtue of section HL 20(2) or section HL 26 or section HL 27 (11)(b) of the Tax Act;
- (l) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any rebate of tax referred to in paragraph (k) that is attributable to a Unit Holder and to make available to the Unit Holder the benefit of that rebate of tax in such manner as the Manager considers appropriate in its complete discretion;

- (m) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any credits against income tax payable by a Fund that are available to the Fund by virtue of section HL 27 of the Tax Act;
- (n) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of any tax credit referred to in section HL 27(1) of the Tax Act that is available to be allocated to a Portfolio Allocation Period and allocating (in such manner and on such basis as the Manager considers appropriate in its complete discretion), such tax credit to that Portfolio Allocation Period for the purposes of section HL 27(3) of the Tax Act;
- (o) to determine, on such basis as the Manager considers appropriate in its complete discretion, the amount of Tax paid or payable by the Fund that is attributable to a Unit Holder and to reduce the amount of any distribution otherwise payable to the Unit Holder by the amount of such Tax;
- (p) to make any other elections or exercise any options as to the method of calculation, allocation, attribution or payment of tax as it thinks fit having regard to the interests of Unit Holders generally and the requirements of the Tax Act;
- (q) to carry out any other tax calculations, allocations or attributions required by the Tax Act;
- (r) to adjust Unit Holder's Unit holdings by cancelling or issuing Units as the Manager considers necessary or desirable in its complete discretion, whether in accordance with section HL 7 of the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the repurchase, redemption or Switch of the Unit Holder's Units), having regard to the effect of:
 - (i) the Unit Holder's Portfolio Investor Rate; and

- (ii) the Unit Holder's Portfolio Investor Allocated Income, Portfolio Investor Allocated Loss and allocated Tax Credits as adjusted for any expenses and any other amount required by the Tax Act from time to time which the Manager determines it is appropriate to charge on a Unit Holder specific basis,

on the Fund's Portfolio Entity Tax Liability and the amount of any rebate under section HL 26 or HL 27 of the Tax Act;

- (s) to deduct or credit any amount on account of Portfolio Entity Tax Liability from or to any Entitlement or Exit Price or purchase money under clause 4.7.9 in respect of a Unit Holder on such basis as the Manager considers necessary or desirable in its complete discretion, whether in accordance with section HL 7 of the Tax Act or otherwise to the extent permitted by law, at any time (including immediately prior to the repurchase, redemption or Switch of the Unit Holder's Units) having regard to the effect of:

- (i) the Unit Holder's Portfolio Investor Rate; and
- (ii) the Unit Holder's Portfolio Investor Allocated Income, Portfolio Investor Allocated Loss and allocated Tax Credits as adjusted for any expenses and any other amount required by the Tax Act from time to time which the Manager determines it is appropriate to charge on a Unit Holder specific basis,

on the Fund's Portfolio Entity Tax Liability and the amount of any rebate under sections HL 26 or HL 27 of the Tax Act.

- (t) to allocate the costs associated with being a PIE between Unit Holders and Funds on such basis as the Manager thinks appropriate (to the extent practical) in its complete discretion;
- (u) to take all steps as the Manager considers necessary or desirable to ensure the Fund is eligible

or continues to be eligible as a PIE, or otherwise to comply with the requirements of the Tax Act relating to PIEs, including (in the Manager's complete discretion) rejecting applications for Units, treating Units issued to a Unit Holder as void (ab initio or from such other date as the Manager may decide in its complete discretion) to the extent to which the Unit Holder's Unit holding exceeds the investor interest size requirement prescribed in section HL 9(1) of the Tax Act, redeeming or repurchasing a Unit Holder's Units or switching a Unit Holder's Units from one Fund to another Fund as if the PIE had received a Repayment Request to that effect from the relevant Unit Holder;

- (v) to require that before accepting an application that the applicant provides their Tax File Number, Portfolio Investor Rate and any other information required by the Tax Act, and that at any time a Unit Holder must confirm such details on request from the Manager;
- (w) to disclose any information, including issuing any statements and providing any information to Unit Holders as required by the Tax Act and in respect of their tax position in relation to the Fund (including pursuant to section 31B of the Tax Administration Act 1994), and providing any information (including personal information) to the Inland Revenue Department (including pursuant to section 57B of the Tax Administration Act 1994) or any other person where the Manager considers it reasonably necessary or desirable to do so in order to administer the Fund's taxation obligations;
- (x) to value tax losses of the Fund for the purpose of determining the Current Value of the Fund as the Manager thinks fit in its complete discretion having regard to section HL 28 of the Tax Act and to the Fund's stated policies (if any) from time to time.
- (y) to make a special distribution to Unit Holders prior to the Fund becoming a PIE, of such amount as the Manager thinks desirable in its complete discretion having regard to the interests of Unit Holders

generally, and if the Manager thinks desirable in its complete discretion to reinvest such special distributions on behalf of Unit Holders in Units;

- (z) to take all steps and do all things as the Manager thinks necessary or desirable in its complete discretion to convert a Fund to and from being a PIE or to administer the Fund as a PIE."

2.39 Inserting the following new clause 11.7.2 (and renumbering existing clauses 11.7.2 and 11.7.3 accordingly):

"11.7.2 Any Portfolio Entity Tax Liability incurred by the Trustee in respect of that Fund;".

2.40 Inserting the words "(including any Portfolio Entity Tax Liability)" after the word "demands" in clause 13.8.2(a).

3 CONFIRMATION

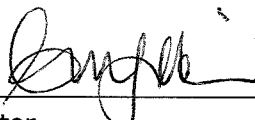
The Trust Deed shall continue in full force and effect, and the Manager and the Trustee hereby confirm their respective obligations, covenants, rights, powers and duties under the Trust Deed, as the same may be amended by this Deed.

4 COUNTERPARTS

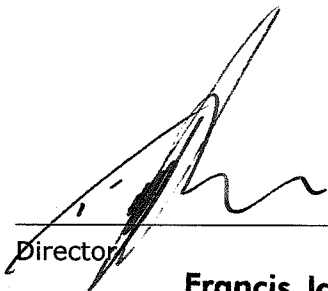
This deed may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. Once the parties have signed the counterparts, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

EXECUTED as a Deed on the date shown on the first page.

SIGNED by Fisher Funds Management Limited by:



 Director
Carmel Fisher
 Director
 Fisher Funds Management Ltd
 Name Auckland



 Director
Francis Jasper
 Director
 Fisher Funds Management Ltd
 Name Auckland

SIGNED by Trustees Executors Limited

by:

Authorised Signatory

Authorised Signatory

in the presence of:

Name:

Occupation:

Address: