

**INSTRUMENT OF INCORPORATION**

**of**

**SMITHSON EQUITY FUND**

**(an Investment Company with Variable Capital)**

**Registered in England and Wales**

## CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATION .....	1
2. CONSTITUTION .....	3
3. NAME.....	3
4. DURATION OF THE COMPANY .....	3
5. OBJECT.....	3
6. TYPE OF AUTHORISATION OF COMPANY .....	4
7. DESIGNATED PERSON.....	4
8. ELIGIBLE MARKETS .....	4
9. BASE CURRENCY .....	4
10. SHARE CAPITAL AND CLASSIFICATION OF SHARES .....	4
11. DENOMINATIONS OF SHARES .....	4
12. ISSUE AND CANCELLATION OF SHARES IN THE COMPANY .....	5
13. IN SPECIE ISSUE AND CANCELLATION .....	5
14. SALE AND REDEMPTION.....	5
15. VALUATION AND PRICING .....	5
16. QUALIFICATIONS AND RESTRICTIONS ON HOLDING SHARES .....	5
17. EVIDENCE OF TITLE TO SHARES.....	6
18. TRANSFER AND TRANSMISSION OF SHARES.....	7
19. GENERAL MEETINGS.....	8
20. PROCEEDINGS AT GENERAL MEETINGS .....	8
21. VOTING RIGHTS .....	10
22. PROXIES .....	10
23. CORPORATIONS ACTING BY REPRESENTATIVES .....	11
24. ACD.....	11
25. REMUNERATION AND REIMBURSEMENT OF EXPENSES OF THE ACD .....	12
26. FUNCTIONS OF THE ACD .....	12
27. INTERESTS OF THE ACD .....	12
28. MINUTES OF MEETINGS .....	12
29. REMOVAL OF THE ACD.....	13
30. AMENDMENTS .....	13
31. INCOME EQUALISATION.....	13
32. INCOME AND DISTRIBUTIONS.....	13
33. CHEQUES .....	14
34. INITIAL EXPENSES .....	14
35. DESTRUCTION OF DOCUMENTS.....	14
36. NOTICES.....	14

37. WINDING UP..... 15  
38. INDEMNITY ..... 15  
39. CONFLICT WITH REGULATIONS..... 16  
40. GENUINE DIVERSITY OF OWNERSHIP..... 16

**Schedule**

PART 1 – INVESTMENT OBJECTIVE AND POLICY ..... 17  
PART 2 – DETERMINATION OF NET ASSET VALUE ..... 19

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Instrument the words and expressions set out in the first column below shall have the meanings set opposite them unless the context requires otherwise. Words and expressions contained in this Instrument but not defined herein shall have the same meanings as in the Act or the Regulations (as defined below) (as the case may be) unless the contrary is stated.

<b>Accumulation Shares</b>	the Shares in the Company as may be in issue from time to time in respect of which income allocated thereto is credited periodically to capital pursuant to the FCA Rules.
<b>ACD</b>	the authorised corporate director holding office as such from time to time pursuant to the FCA Rules.
<b>Act</b>	the Financial Services and Markets Act 2000.
<b>base currency</b>	the currency in which the accounts of the Company are to be prepared in accordance with clause 9 of this Instrument.
<b>Company</b>	Smithson Equity Fund.
<b>Depository</b>	the person to whom is entrusted the safekeeping of all the scheme property of the Company (other than certain scheme property designated by the FCA Rules) and who has been appointed for this purpose in accordance with the Regulations.
<b>extraordinary resolution</b>	a resolution of the Company in general meeting passed by a majority of not less than three-quarters of the votes validly cast (whether on a show of hands or on a poll) for and against the resolution at the meeting.
<b>FCA</b>	The Financial Conduct Authority or any successor body which may assume its regulatory responsibilities from time to time.
<b>the FCA Rules</b>	the rules contained in the Collective Investment Schemes sourcebook published by the FCA as part of its Handbook of rules made under the Act which shall, for the avoidance of doubt, not include

guidance or evidential requirements contained in the said sourcebook.

<b>in writing</b>	includes typing, printing, lithography, photography, telex, facsimile, electronic mail and any other form of transmission as enables the recipient to know and to record the time of receipt and to preserve a legible copy of such transmission, and includes items partly in one such form and partly in another.
<b>this Instrument</b>	this instrument of incorporation, including the Schedule, as amended from time to time.
<b>Net Asset Value</b>	the value of the scheme property of the Company less all the liabilities of the Company determined in each case in accordance with this Instrument.
<b>OEIC Regulations</b>	The Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).
<b>ordinary resolution</b>	a resolution of the Company in general meeting passed by a simple majority of the votes validly cast (whether on a show of hands or on a poll) for and against the resolution at such meeting.
<b>Prospectus</b>	the prospectus of the Company from time to time.
<b>the Regulations</b>	the OEIC Regulations and the FCA Rules.
<b>the Shares</b>	the single class of Accumulation Shares of the Company, the "S Shares", in issue from time to time.
<b>signed</b>	includes signed by way of a signature or representation of a signature affixed by a photographic, electronic or mechanical means or any other electronic evidence of assent, except where the context specifically requires otherwise.

**1.2** Any reference in this Instrument to any statute, statutory provision or regulation shall be construed as including a reference to any modification, amendment, extension, replacement or re-enactment thereof for the time being in force.

- 1.3** In this Instrument, words denoting the singular shall include the plural and vice versa. Words denoting one gender only shall include all genders. Words denoting persons shall include companies or associations or unincorporated bodies of persons.
- 1.4** In this Instrument, the word "may" shall be construed as permissive and the word "shall" shall be construed as imperative.
- 1.5** The word "company" shall (unless the contrary intention is expressed) mean a body corporate including a company within the meaning of the FCA Rules.
- 1.6** The headings used in this Instrument are for convenience only, do not form part of, and shall not affect the construction of, this Instrument.
- 1.7** Any reference in this Instrument to clause numbers shall (unless the contrary intention is expressed) be construed as a reference to clauses of this Instrument.

## **2. CONSTITUTION**

- 2.1** The head office of the Company is situated in England and Wales.
- 2.2** The Company is an open-ended investment company with variable share capital.
- 2.3** The shareholders are not liable for the debts of the Company. A shareholder is not liable to make any further payment after he has paid the price of his Shares in the Company and no further liability can be imposed on him in respect of the Shares which he holds.
- 2.4** The scheme property of the Company is entrusted to the Depository for safekeeping (in accordance with and subject to any exceptions permitted by the FCA Rules).
- 2.5** Charges or expenses of the Company may be taken out of the scheme property.

## **3. NAME**

The name of the Company is Smithson Equity Fund.

## **4. DURATION OF THE COMPANY**

The Company is not to be wound up after the expiry of a particular period of time and shall continue in existence until otherwise wound up in accordance with FCA Rules.

## **5. OBJECT**

The object of the Company is to invest the scheme property in transferable securities, cash or near cash and deposits in accordance with the FCA Rules applicable to the Company and according to the type of authorisation of the Company as stated in clause 6 below with the aim of spreading investment risk and giving its shareholders the benefit of the results of the management of that property. The specific investment objective and policies of the Company are set out in Part 1 of the Schedule to this Instrument.

**6. TYPE OF AUTHORISATION OF COMPANY**

The Company is a UCITS scheme for the purposes of the FCA Rules.

**7. DESIGNATED PERSON**

The person designated for the purposes of paragraph 4 of Schedule 4 to the OEIC Regulations shall be the person who is for the time being the ACD of the Company.

**8. ELIGIBLE MARKETS**

**8.1** Subject to any restriction contained in the FCA Rules or this Instrument, the Company has the power to invest in any securities market:

**8.1.1** which is an eligible securities market under the FCA Rules to the extent that power to do so is conferred by the FCA Rules; or

**8.1.2** to the extent that the power to do so is conferred by the FCA Rules irrespective of any issue of eligibility.

**8.2** In accordance with the FCA Rules, the ACD, after consultation with and notification to the Depositary, may choose a market as one which is appropriate for the purpose of investment of, or dealing in, the scheme property. Any such market will be an eligible market for the purposes of the FCA Rules and a list of such markets will be included in the Prospectus.

**9. BASE CURRENCY**

The accounts of the Company shall be prepared in Sterling or such other currency or currencies as shall be the lawful currency of the United Kingdom from time to time.

**10. SHARE CAPITAL AND CLASSIFICATION OF SHARES**

**10.1** The capital of the Company shall be represented by Shares of no par value and shall at all times be equal to the Net Asset Value of the Company in base currency.

**10.2** The minimum capital of the Company shall be £100 and the maximum capital shall be £100,000,000,000.

**10.3** The Company shall have in issue one class of share, the S Share, and the rights attaching to the Shares shall be as set out in this Instrument and in the Regulations. The rights attached to the Shares shall not be varied except with the sanction of an extraordinary resolution of the shareholders of the Company.

**10.4** The rights attaching to the Shares shall be deemed not to be varied by the creation, allotment or issue of further Shares.

**11. DENOMINATIONS OF SHARES**

The rights attaching to the Shares may be expressed in two denominations and the proportion of a larger denomination share represented by a smaller denomination share shall be one thousandth of the larger denomination share.

## **12. ISSUE AND CANCELLATION OF SHARES IN THE COMPANY**

The ACD will issue or cancel Shares in the Company by making a record of the issue or cancellation of such Shares and the number of Shares. Subject to and in accordance with the FCA Rules, the issue or cancellation of Shares may take place through the Company directly.

## **13. IN SPECIE ISSUE AND CANCELLATION**

The Depositary may take into or pay out of the scheme property assets other than cash as payment for the issue or cancellation of Shares but only if the Depositary has taken reasonable care to ensure that receipt of or payment out from the property concerned would not be likely to result in any material prejudice to the interests of shareholders of the Company.

## **14. SALE AND REDEMPTION**

In accordance with the Regulations, the arrangements for and any restrictions that apply to the sale and redemption of Shares in the Company are as set out in the Prospectus. The deferral of any redemptions at a valuation point to the next valuation point is permitted and will be undertaken in accordance with the procedures for deferred redemption as detailed in the Prospectus.

## **15. VALUATION AND PRICING**

The Company will be single priced. The Net Asset Value of the Company shall be determined by the ACD in accordance with the FCA Rules, and, subject thereto, in accordance with Part 2 of the Schedule to this Instrument and the Prospectus. Subject to the FCA Rules and in the absence of bad faith, negligence or manifest error, such determination by the ACD shall be definitive. The basis for the pricing of any Shares issued by the Company shall be forward pricing only in accordance with the FCA Rules.

## **16. QUALIFICATIONS AND RESTRICTIONS ON HOLDING SHARES**

**16.1** The ACD may from time to time take such action and impose such restrictions as they think is necessary for the purpose of ensuring that no Shares in the Company are acquired or held by any person in circumstances ("**relevant circumstances**"):

**16.1.1** which constitute a breach of the law or governmental regulation (or any interpretation of a law or regulation by a competent authority) of any country or territory (including being used for the facilitation of money laundering, proliferation financing or terrorist financing); or

**16.1.2** which would (or would if other Shares were acquired or held in like circumstances) result in the Company incurring any liability to taxation or

suffering any other adverse consequence (including a requirement to register under any securities or investment or similar laws or governmental regulation of any country or territory); or

- 16.1.3** which constitutes a breach of the investor eligibility requirements for such Shares as set out in the Prospectus,

and, in this connection, the ACD may, inter alia, reject at its discretion any subscription for, sale or transfer of, Shares.

- 16.2** If it comes to the notice of the ACD that any Shares ("**affected shares**") have been acquired or are being held in each case whether beneficially or otherwise in any of the relevant circumstances referred to in clause 16.1 or if the ACD reasonably believes this to be the case the ACD may give notice to the holder of the affected shares requiring the holder to transfer such affected shares to a person who is qualified or entitled to own the same or to give a request in writing for the redemption or cancellation of such affected shares in accordance with the FCA Rules. If any person upon whom such a notice is served pursuant to this clause does not within thirty days after the date of such notice transfer his affected shares to a person qualified to hold the same, or establish to the satisfaction of the ACD (whose judgement shall be final and binding) that he and any person on whose behalf he holds the affected shares are qualified and entitled to hold the affected shares, he shall be deemed upon the expiration of that thirty day period to have given a request in writing for the redemption or cancellation (at the discretion of the ACD) of the affected shares pursuant to the FCA Rules.

- 16.3** A person who becomes aware that he has acquired or holds Shares whether beneficially or otherwise ("**affected shares**") in any of the relevant circumstances referred to in clause 16.1 shall forthwith, unless he has already received a notice pursuant to clause 16.2 either transfer or procure the transfer of all the affected shares to a person qualified to own the same or give a request in writing or procure that a request is so given for the redemption or cancellation of all the affected shares pursuant to the FCA Rules.

- 16.4** An amount equal to any tax charge incurred by the Company or for which the Company may be held liable as a result of the relevant circumstances shall be recoverable from the shareholder concerned.

## **17. EVIDENCE OF TITLE TO SHARES**

- 17.1** Title to Shares shall be evidenced by an entry in the register of shareholders, and the Company shall not issue certificates to shareholders.

- 17.2** A statement of shareholding ("**statement**") in respect of Shares shall be sent to a holder at least once a year in such form as the ACD may decide. A statement shall not constitute a document of title to the Shares to which it refers. The ACD is authorised to charge for issuing any document recording, or for amending, an entry on the register (other than on the issue or sale of Shares).

**17.3** The Company shall not be obliged to register a Share in the names of more than four joint shareholders.

**18. TRANSFER AND TRANSMISSION OF SHARES**

**18.1** All transfers of Shares shall be effected by transfer in writing in any usual or common form or in any other form as may be approved by the ACD. The signature on the instrument of transfer may be affixed manually or electronically and may be an actual signature or a facsimile signature or any form of signature approved by the ACD. The ACD shall not be bound to enquire as to the genuineness of any signature. The transferor shall remain the holder of the Shares concerned until such time as the name of the transferee is entered in the register in respect thereof.

**18.2** In the case of a transfer to joint holders, the number of joint holders to whom a Share is to be transferred may not exceed four.

**18.3** Unless the ACD in its discretion determines otherwise, no transfer may result in either the transferor or the transferee holding fewer Shares or such Shares having a lesser aggregate value than any number or value as is stated in the Prospectus as the minimum number or value of such Shares which may be held.

**18.4** The Company may refuse to register a transfer of Shares unless there has been paid for the account of the Company, an amount determined by the ACD not exceeding the amount that would be derived by applying the rate of stamp duty reserve tax to the market value of the Shares being transferred. This clause shall not apply to transfers excluded by law from a charge to stamp duty reserve tax.

**18.5** Any person becoming entitled to a Share or Shares in consequence of the death or bankruptcy of a shareholder or otherwise by operation of law may, subject as provided below and upon such evidence being produced as may from time to time be lawfully required by the ACD as to his entitlement, either be registered himself as the holder of the Share or Shares, or elect to have some person nominated by him registered as the transferee thereof. If the person so becoming entitled elects to be registered himself, he shall deliver or send to the Company a notice in writing signed by him stating that he so elects. If he shall elect to have his nominee registered, he shall signify his election by signing and delivering or sending to the Company an instrument of transfer of such Share or Shares in favour of his nominee.

**18.6** All the limitations, restrictions and provisions of this Instrument relating to the right to transfer and the registration of transfers of Shares shall be applicable to any notice or instrument of transfer given or made pursuant to clause 18.5 as if the death or bankruptcy of the shareholder or other event giving rise to the transmission had not occurred and the notice or instrument of transfer were an instrument of transfer signed by that shareholder.

**18.7** A person becoming entitled to a Share in consequence of the death or bankruptcy of a shareholder or otherwise by operation of law shall (upon such evidence being produced as may from time to time be lawfully required by the ACD as to his entitlement) be entitled

to receive and may give a discharge for any income distributions or other monies payable in respect of the Share, but he shall not be entitled in respect of the Share to receive notices of or to attend or vote at general meetings of the Company or, save as stated above, to exercise in respect of the Share any of the rights or privileges of a shareholder until he shall have become registered as the holder thereof. The ACD may at any time give notice requiring any such person to elect either to be registered himself or to transfer the Share in question and if the notice is not complied with within sixty days the ACD may then withhold payment of any income distributions and other monies payable in respect of the Share until the requirements of the notice have been complied with.

## **19. GENERAL MEETINGS**

All general meetings shall be convened in accordance with the Regulations and shall be Extraordinary General Meetings. Annual General Meetings shall not be held. Each shareholder shall be given at least fourteen days notice of a general meeting in accordance with FCA Rules. The notice convening a meeting shall specify the date, time and place of the meeting, the general nature of the business to be transacted and the terms of the resolutions proposed.

## **20. PROCEEDINGS AT GENERAL MEETINGS**

**20.1** Prior to each general meeting the Depositary shall nominate an individual to act as chairman, and if that individual is not present within fifteen minutes (which shall be deemed to be a reasonable time) after the time fixed for the start of the meeting or is not willing and able to act, the shareholders present must choose one of their number to be chairman of the meeting.

**20.2** No business may be transacted at a general meeting unless a quorum is present. The absence of a quorum does not prevent the appointment of a chairman in accordance with this Instrument, which shall not be treated as part of the business of the meeting. The quorum required to conduct business at a general meeting is two shareholders, present in person or by proxy.

**20.3** If a quorum is not present within fifteen minutes (which shall be deemed to be a reasonable time) after the time fixed for the start of the meeting or if there is no longer a quorum present at any time during the meeting, the meeting, if convened on the requisition of shareholders, is dissolved. In any other case it stands adjourned to such other day and time (being not less than seven nor more than twenty-eight days after the day and time for the meeting) and place as the chairman decides. If at an adjourned meeting under this clause 20.3 a quorum is not present within fifteen minutes (which shall be deemed to be a reasonable time) after the time fixed for the start of the meeting, one person entitled to be counted in the quorum shall constitute a quorum and if there is no such person the meeting shall be dissolved.

**20.4** The chairman of any general meeting at which a quorum is present may with the consent of the meeting (and shall if so directed by the meeting) adjourn the meeting from time to time (or for an indefinite period) and from place to place, but no business shall be

transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. Where a meeting is adjourned without agreement as to the date, time and place for the adjourned meeting, the date, time and place for the adjourned meeting shall be fixed by the ACD. Such notice of the adjourned meeting shall be given to shareholders as the ACD shall in its absolute discretion determine is reasonable in the circumstances, provided that when a meeting is adjourned for thirty days or more or for an indefinite period, not less than seven days' notice of the adjourned meeting shall be given.

**20.5** A general meeting of shareholders duly convened and held shall have the power by the passing of the appropriate resolution to decide any matter (including, without limitation, the suspension or curtailment of the powers of the ACD), subject to the Regulations.

**20.6** The Depository shall be entitled to appoint a representative to attend and speak on its behalf at each general meeting and shall be entitled to convene such a meeting.

**20.7** A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

**20.7.1** the chairman of the meeting;

**20.7.2** not less than two shareholders; or

**20.7.3** the Depository.

A demand by a proxy is deemed to be a demand by the shareholder appointing the proxy. The chairman must exercise his power to demand a poll if requested to do so by the ACD.

**20.8** A demand for a poll may be withdrawn only with the approval of the chairman of the meeting. Unless a poll is required, a declaration by the chairman of the meeting that a resolution has been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minute book or other record of proceedings, shall be conclusive evidence of that fact without proof of the number or proportion of the votes recorded for or against such resolution. If a poll is required, it shall be taken in such a manner (including the use of ballot papers or electronic or computer voting systems) as the chairman of the meeting may direct and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The chairman of the meeting may (and, if so directed by the meeting, shall) appoint scrutineers and may adjourn the meeting to some place and time fixed by him for the purpose of declaring the result of the poll.

**20.9** A poll demanded on the choice of the chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken either immediately or at such subsequent time (not being more than thirty days from the date of the meeting) and place and in such manner (including by post) as the chairman may direct. No notice need be given of a poll not taken immediately. The demand for a poll shall not prevent the

continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## **21. VOTING RIGHTS**

**21.1** The right to vote at any general meeting of shareholders is in accordance with the FCA Rules. On a show of hands every shareholder who is present in person has one vote. On a poll, votes may be given either personally or by proxy or in any other manner permitted herein. On a poll, the voting rights attaching to each Share shall be such proportion of the voting rights attached to all Shares in issue in the Company, as the price of the Share bears to the aggregate price of all the Shares in issue of the Company.

**21.2** Where a receiver or other person (by whatever name called) has been appointed by any court claiming jurisdiction in that regard to exercise powers with respect to the property or affairs of any shareholder on the ground (however formulated) of mental disorder, the ACD may in its absolute discretion upon or subject to production of such evidence of the appointment as the ACD may require, permit such receiver or other person on behalf of such shareholder to vote on a poll in person or by proxy at any general meeting of shareholders or to exercise any right other than the right to vote on a show of hands conferred by ownership of Shares in relation to such a meeting.

**21.3** No objection shall be raised as to the admissibility of any vote except at the meeting or adjourned meeting at which the vote objected to is or may be given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection shall be referred to the chairman of the meeting whose decision shall be final and conclusive.

## **22. PROXIES**

**22.1** An instrument appointing a proxy shall be in writing in any usual or common form or in any other form which the ACD may approve and:

**22.1.1** in the case of an individual shall be signed by the appointor or his attorney; and

**22.1.2** in the case of a corporation shall be either given under its common seal or signed on its behalf by a person duly authorised for the purpose by the corporation.

**22.2** The signature on such instrument need not be witnessed. Where an instrument appointing a proxy is signed on behalf of the appointor by an attorney, the letter or power of attorney or a duly certified copy thereof must (failing previous registration with the Company) be lodged with the instrument appointing the proxy pursuant to the next following clause, failing which the instrument may be treated as invalid.

**22.3** An instrument appointing a proxy must be left at or delivered to such place or one of such places (if any) as may be specified for the purpose in or by way of note to or in any document accompanying the notice convening the meeting (or, if no place is so specified, to or at the head office of the Company) by the time which is forty-eight hours before (i)

the time appointed for the holding of the meeting or adjourned meeting or (ii) (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which it is to be used and, in default, the appointment of the proxy may be treated as invalid. The instrument appointing a proxy shall, unless the contrary is stated thereon, be valid as well for any adjournment of the meeting as for the meeting to which it relates.

- 22.4** A vote cast by proxy shall not be invalidated by the previous death or bankruptcy of the principal or by other transmission by operation of law of the title to the Shares concerned or by the revocation of the appointment of the proxy or of the authority under which the appointment of the proxy was made provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company at the head office of the Company by the time which is two hours before the commencement of the meeting or adjourned meeting or (in the case of a poll taken otherwise than at or on the same day as the meeting or adjourned meeting) the time appointed for the taking of the poll at which the vote is cast.

### **23. CORPORATIONS ACTING BY REPRESENTATIVES**

Any corporation which is a shareholder of the Company may by resolution of the directors or other governing body of such corporation and in respect of any Share or Shares in the Company of which it is the holder authorise such individual as it thinks fit to act as its representative at any general meeting of the shareholders. The individual so authorised shall be entitled to exercise the same powers on behalf of such corporation as the corporation could exercise in respect of such Share or Shares if it were an individual shareholder of the Company and such corporation shall for the purposes of this Instrument be deemed to be present in person at any such meeting if an individual so authorised is so present.

### **24. ACD**

- 24.1** The ACD shall have authority to exercise all the powers, authorities and discretions expressed in the Regulations and those expressed in this Instrument to be vested in the directors of an investment company with variable capital generally.
- 24.2** The ACD acting by one or more duly authorised representatives is entitled to attend and speak at any general meeting.
- 24.3** No resolution made by the Company in general meeting shall invalidate any prior act of the ACD which would have been valid if such resolution had not been made.
- 24.4** Subject to the Regulations, the ACD may appoint agents and delegate any of the powers, authorities and discretions vested in or exercisable by it, with or without power to sub-delegate. Any such appointment or delegation made by the ACD in accordance with FCA Rules may be made upon such terms and subject to such conditions as the ACD may think fit, and the ACD may remove any such appointee, and may revoke or vary such delegation,

but no person dealing in good faith and without notice of any such revocation or variation shall be affected by it doing so.

- 24.5** Subject to the FCA Rules, the ACD may by power of attorney appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the ACD, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the ACD under this Instrument) and for such period and subject to such conditions as the ACD may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the ACD may think fit, and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions vested in him.

**25. REMUNERATION AND REIMBURSEMENT OF EXPENSES OF THE ACD**

The ACD shall be entitled to remuneration for its services as ACD. Such remuneration shall (unless otherwise determined by the ACD) be deemed to accrue from day to day and the amount of such remuneration shall (subject to the Regulations) be determined by the ACD. The ACD shall be entitled to the reimbursement of expenses of any type disclosed in the Prospectus and for which it may be reimbursed in accordance with the Regulations.

**26. FUNCTIONS OF THE ACD**

- 26.1** Any decision or action which is authorised or required by the Regulations to be taken by the directors of an investment company with variable capital shall, if and for so long as the ACD is the sole director, be valid and effective if made or taken by the ACD.

**27. INTERESTS OF THE ACD**

- 27.1** Subject to the Regulations, the ACD may be party to, or in any way interested in, any contract or arrangement or transaction to which the Company is a party, or in which the Company is in any way interested, and it may hold and be remunerated in respect of any office or place of profit (other than the office of auditor or Depositary of the Company) under the Company or any other company in which the Company is in any way interested and may retain for its own absolute use and benefit all profits and advantages accruing to it thereunder or in consequence thereof.
- 27.2** Any interest of a kind referred to in clause 27.1 must be properly recorded and minuted by the ACD as soon as practicable after it becomes so interested. Nothing in this clause shall absolve the ACD from its fiduciary duty to act in the best interests of the Company as a whole.
- 27.3** The ACD shall, subject to the Regulations, be entitled at its own discretion to determine the terms of its appointment or re-appointment as such with the Company notwithstanding its interest therein which terms shall be set out in writing in an agreement between the ACD and the Company.

**28. MINUTES OF MEETINGS**

**28.1** The ACD shall cause records to be made and kept in permanent form of:

**28.1.1** all proceedings at meetings of shareholders of the Company;

**28.1.2** all proceedings at meetings of the ACD in its capacity as authorised corporate director; and

**28.1.3** all resolutions made by the ACD in respect of the Company otherwise than at a meeting and all other matters required by this Instrument to be formally recorded by the ACD.

## **29. REMOVAL OF THE ACD**

The Company may by ordinary resolution remove the ACD before the expiration of his period of office notwithstanding anything in this Instrument or in any agreement between the Company and the ACD. Such removal shall take effect only upon the satisfaction of either of the conditions appearing in Regulation 21(3) of the OEIC Regulations and shall be without prejudice to any claim the ACD may have for damages for breach of any such agreement.

## **30. AMENDMENTS**

Amendments may be made to this Instrument by resolution of the ACD to the extent permitted by the Regulations.

## **31. INCOME EQUALISATION**

**31.1** Except where the ACD determines otherwise, the following clause shall apply to the Shares of the Company from time to time.

**31.2** An allocation of income (whether annual or interim) to be made in respect of each Share issued by the Company or sold by the ACD during the accounting period in respect of which that income allocation is made shall be of the same amount as the allocation to be made in respect of the other Shares in issue but shall include a capital sum ("**income equalisation**") representing the ACD's best estimate of the amount of income included in the price of that Share and calculated in accordance with the following clause.

**31.3** The amount of income equalisation in respect of any Share shall be either:

**31.3.1** the actual amount of income included in the issue price of that Share; or

**31.3.2** an amount arrived at by taking the aggregate of the amounts of income included in the price in respect of Shares issued or sold in the annual or interim accounting period in question and dividing that aggregate amount by the number of such Shares and applying the resultant average to each of the Shares in question.

## **32. INCOME AND DISTRIBUTIONS**

**32.1** The Company shall have in issue only Accumulation Shares. Accordingly, income shall not be distributed to shareholders and shall instead be credited to the capital of the Company.

**33. CHEQUES**

All cheques, promissory notes, drafts, bills of exchange and other negotiable or transferable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the ACD shall from time to time determine.

**34. INITIAL EXPENSES**

Subject to the FCA Rules, the expenses of the incorporation and authorisation of the Company, of any offer of Shares, the preparation and printing of any Prospectus and the fees for professional services provided to the Company in respect thereof may be borne by the Company.

**35. DESTRUCTION OF DOCUMENTS**

**35.1** Subject to maintaining records in accordance with the Regulations and any other applicable law, rule or regulation, the ACD or Depositary or the Company may at any time destroy any records or other documentation relating to the Company including, without limitation, any payment mandate (including any variation or cancellation of it) which ceases to have effect, any notification of change of name or address which has been recorded, any instrument of transfer of Shares which has been registered and any other document on the basis of which any entry in the register of shareholders has been made or cancelled.

**35.2** It shall conclusively be presumed in favour of the Company that every instrument of transfer so destroyed was a valid and effective instrument duly and properly registered and that every other document destroyed under clause 35.1 was a valid and effective document in accordance with the recorded particulars of it in the books or records of the Company, provided always that the document was destroyed in good faith and without express notice to the Company that the preservation of the document was relevant to a claim.

**35.3** Nothing contained in this clause shall be construed as imposing upon the Company any liability in respect of the destruction of any document in any case where the conditions of this clause are not fulfilled. References in this clause to the destruction of any document include references to its disposal in any manner.

**36. NOTICES**

**36.1** The provisions within the FCA Rules shall be treated as applying to any notice or document to be given to the Company pursuant to this Instrument.

**36.2** A shareholder whose registered address is not within the United Kingdom and who gives to the Company an address within the United Kingdom at which notices may be given to

him shall be entitled to have notices given to him at that address. If he has not given such an address the Company shall give notices to him at his address outside the United Kingdom unless its doing so would contravene any applicable laws or regulations.

**36.3** A person entitled to a Share in consequence of the death or bankruptcy of a shareholder or other operation of law shall, upon such evidence being produced as may from time to time be lawfully required by the ACD as to his entitlement and upon supplying also an address for the service of notices, be entitled to have served upon or delivered to him at such address any notice or document to which the shareholder but for his death, bankruptcy or other event giving rise to the transmission would have been entitled, and service or delivery of such notice or document in such way shall be deemed good service on all persons interested (whether jointly with or claiming through or under him) in the Share. Save as aforesaid any notice or document delivered or sent by post to or left at the address of any shareholder in accordance with the FCA Rules shall, notwithstanding the death or bankruptcy of such shareholder or other operation of law and whether or not the Company has notice of such state of affairs, be deemed to have been duly served or delivered in respect of any Share registered in the name of such shareholder as sole or joint holder.

**36.4** In the case of joint shareholders, service of a notice or document on any one is effective service on the other joint shareholders.

**36.5** If at any time by reason of the suspension or curtailment of postal services within the United Kingdom or any other country or territory, the Company is unable effectively to convene a general meeting by notices sent through the post, such a meeting may be convened by a notice advertised on the same date in at least two leading daily newspapers with appropriate circulation and such notice shall be deemed to have been duly served on all shareholders entitled to receive the same at noon on the day when the advertisement appears. In any such case the Company shall send confirmatory copies of the notice by post if at least seven days prior to the meeting the posting of notices to addresses throughout the United Kingdom or such other country or territory again becomes practicable.

## **37. WINDING UP**

The rights of a shareholder to participate in the property of the Company on a winding up of the Company shall be proportionate to the entitlement in the Company represented by the Shares which he holds.

## **38. INDEMNITY**

**38.1** The ACD, auditor and Depositary of the Company shall each be indemnified by the Company against any liability incurred by them respectively in defending any proceedings (whether civil or criminal) for negligence, default, breach of duty or breach of trust in each case in relation to the Company in which judgement is given in their favour respectively or they are respectively acquitted or in connection with any application under Regulation 63 of the OEIC Regulations in which relief is granted to them respectively by the Court but

this indemnity shall not apply to any liability to the extent that it is recovered from another person.

**38.2** Subject to the Regulations, the ACD may exercise all the powers of the Company to purchase and maintain insurance:

**38.2.1** for the benefit of any person who is or was a director, other officer or auditor of the Company against any liability which may attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Company; and

**38.2.2** for the benefit of any person who is or was the Depositary against any liability for any failure to exercise due care and diligence in the discharge of his functions in respect of the Company.

**39. CONFLICT WITH REGULATIONS**

In the event of any conflict arising between any provision of this Instrument and the Regulations, the Regulations shall prevail and this Instrument shall be construed and shall take effect accordingly.

**40. GENUINE DIVERSITY OF OWNERSHIP**

**40.1** Shares in the Company shall be widely available to retail and institutional investors. Shares shall be marketed and made available sufficiently widely to reach the intended categories of investors.

## THE SCHEDULE

### PART 1 – INVESTMENT OBJECTIVE AND POLICY

#### Investment Objective

The aim of the Company is to achieve long-term (over 5 years) growth in value through exposure to a diversified portfolio of shares issued by listed or traded companies.

#### Investment Policies

The Company will invest in shares issued by small and mid-sized listed or traded companies globally that (at the time of initial investment by the Company) have a market capitalisation within the range of the constituents of the MSCI World SMID Index. The Company is not limited to investing in companies which are constituents of the MSCI World SMID Index.

The Company's approach is to be a long-term investor in its chosen shares. It will not adopt short-term trading strategies.

The Company has stringent investment criteria which the ACD adheres to in selecting securities for the Company's investment portfolio. These criteria aim to ensure that the Company invests in high quality businesses which in the opinion of the ACD are those:

- that can sustain a high return on operating capital employed;
- that generate substantial cashflow;
- that have a clearly identifiable source of secular growth (growth that is driven by long-term forces in the market, rather than short-term, cyclical change) to enable retained cash to be invested at a high rate of return;
- whose advantages are difficult to replicate;
- which do not require significant leverage to generate returns;
- that are resilient to change, particularly technological innovation; and
- whose valuation is considered by the ACD to be attractive.

The application of these investment criteria significantly limits the number of potential investments which the ACD will consider to be appropriate investments for the Company's portfolio. It is envisaged that the investment portfolio of the Company will be concentrated, generally comprising between 25 and 40 stocks.

The Company will not invest in derivatives and will not hedge any currency exposure arising from within the operations of an investee business nor from the holding of an investment denominated in a currency other than sterling. The Company will not engage in interest rate hedging. The Company will not use securities financing transactions, total return swaps, nor credit default swaps.

The Company will not invest in units of other UCITS or other collective investment undertakings.

The Company does not intend to have an interest in immovable or tangible movable property.

Further information on the Company's investment policies, including in relation to liquidity management, is set out in the Prospectus.

## **PART 2 – DETERMINATION OF NET ASSET VALUE**

The value of the scheme property of the Company shall be the value of its assets less the value of its liabilities determined in accordance with the following provisions.

1. All the scheme property (including receivables) is to be included, subject to the following provisions.
2. Property which is not cash (or other assets dealt with in paragraph 3 below) shall be valued as follows and the prices used shall (subject as follows) be the most recent prices which it is practicable to obtain:
  - (a) any transferable security:
    - (i) if a single price for buying and selling the security is quoted, at that price; or
    - (ii) if separate buying and selling prices are quoted, at the average of the two prices; or
    - (iii) if, in the opinion of the ACD, the price obtained is unreliable or no recent traded price is available or if the most recent price available does not reflect the ACD's best estimate of the value, at a value which, in the opinion of the ACD, is fair and reasonable;
  - (b) property other than that described in (a) at a value which, in the opinion of the ACD, represents a fair and reasonable mid-market price.
3. Cash and amounts held in current and deposit account and in other time-related deposits shall be valued at their nominal values.
4. In determining the value of the scheme property, all instructions given to issue or cancel Shares shall be assumed (unless the contrary is shown) to have been carried out and any cash payment made or received and all consequential action required by the Regulations or this Instrument of Incorporation shall be assumed (unless the contrary has been shown) to have been taken.
5. Subject to paragraph 6 below, agreements for the unconditional sale or purchase of property which are in existence but uncompleted shall be assumed to have been completed and all consequential action required to have been taken. Such unconditional agreements need not be taken into account if made shortly before the valuation takes place and, in the opinion of the ACD, their omission shall not materially affect the final net asset amount.
6. All agreements are to be included under paragraph 5 which are, or ought reasonably to have been, known to the person valuing the property.

- 7.** The ACD shall deduct an estimated amount for anticipated tax liabilities including (as applicable and without limitation) capital gains tax, income tax, corporation tax, value added tax, stamp duty and stamp duty reserve tax.
- 8.** The ACD shall deduct an estimated amount for any liabilities payable out of the scheme property and any tax thereon treating periodic items as accruing from day to day.
- 9.** The ACD shall deduct the principal amount of any outstanding borrowings whenever repayable and any accrued but unpaid interest on borrowings.
- 10.** The ACD shall add an estimated amount for accrued claims for tax of whatever nature which may be recoverable and any stamp duty reserve tax provision anticipated to be released.
- 11.** The ACD shall add any other credits or amounts due to be paid into the scheme property.
- 12.** The ACD shall add a sum representing any interest or any income accrued due or deemed to have accrued but not received.
- 13.** Currencies or values in currencies other than the base currency shall be converted at the relevant valuation point at a rate of exchange that is not likely to result in any material prejudice to the interests of shareholders or potential shareholders.