

**GOVERNING RULES UPDATE – VERSION 05/20**

**TRUSTEE ACKNOWLEDGEMENT RESOLUTION**

### Instructions

1. This resolution can be used by both corporate and individual trustees.
2. To be effective all trustees/directors must sign the resolution.
3. Once signed the resolution must be kept as part of the Trustee's records of the Superannuation Fund.
4. Variables are in red text.

### Background notes

1. The SUPERCentral Governing Rules are periodically amended by way of complete replacement of the current version of the Governing Rules with an updated version of the Governing Rules.
2. The proposed amendment is effected by Super Governing Rules Pty Ltd exercising the power of amendment conferred on that company by the SUPERCentral Establishment Deed/Amendment Deed which has been signed by the Trustee.
3. Fourteen clear days' notice is given of the proposed amendment and the Trustee, if it so wishes, may decline to accept the proposed amendment by notifying SUPERCentral within that notice period. If the Trustee does not opt out of the proposed amendment, then the new version of the SUPERCentral Governing Rules will apply to the Fund after the end of the update period.
4. The formal notice of the proposed amendment was issued on **21 April 2020** and the 14 day notice period expires on **6 May 2020**. Consequently, the new version of the SUPERCentral Governing Rules will apply on and from **7 May 2020**. With the formal notice, an information sheet was provided which detailed the changes and the implications of the changes.
5. As the updating system operates on an "opt out" basis, the Trustee does not need to notify SUPERCentral of their decision to accept the proposed amendment.
6. Despite Point 5, the Trustee may wish to record the decision to not to opt out of the proposed amendment of the SUPERCentral Governing Rules for internal management purposes.
7. This template is provided for a Trustee which wishes to formally record for internal management purposes the Trustee's acknowledgement of the proposed amendment and its decision not to "opt out".

## **Written Resolutions in respect of the Trustee of the D&J Suttie Superfund("the Fund")**

### **Purpose of resolution**

The purpose of this resolution is to formally confirm and record the decision by the Trustee not to opt out of the SUPERCentral Governing Rules Update – Version 05/20 which was notified to the Trustee (or its information agent) and which will apply (if the update is not rejected by the Trustee within the notice period) on and from **7 May 2020**.

### **Notice of update and information received**

Noted that the Trustee (or its information agent for this purpose) had received:

- (a) a notice issued by Super Governing Rules Pty Ltd of the replacement of the current version of the SUPERCentral Governing Rules Version 04/19 with the updated Version 05/20;
- (b) an electronic link to the SUPERCentral Governing Rules Version 05/20;
- (c) an electronic link to a marked up version of the SUPERCentral Governing Rules Version 05/20; and
- (d) a link to an information sheet on the changes made to the SUPERCentral Governing Rules.

### **Consideration of changes made to the SUPERCentral Governing Rules as set out in Version 05/20**

Noted that the information sheet identified, amongst other changes, the principal changes which have been made to the SUPERCentral Governing Rules which are summarised below:

#### **(a) COVID-19 Superannuation Measures**

The Governing Rules will be amended to give effect to the Federal Government's coronavirus economic response that allows account based and similar pensions to reduce the annual minimum pension limit for the 2019-20 and 2020-21 financial years. This measure is to assist super pensioners to avoid selling assets with loss positions to fund annual pension payments. This change will be effected by an amendment to Rule 28.

#### **"Rule 28 Minimum pension limit relief**

##### **28.1 Purpose of rule**

The purpose of this Rule is to give effect to the transitional measure in Schedule 10 of the Coronavirus Economic Package Omnibus Act 2020 that amends the SIS Regulations to reduce the minimum payment amounts for allocated pensions, account based pensions and market linked pensions for the 2019-20 and 2020-21 financial years.

28.2 For the purpose of Rule 15.6 and Rule 15.7, the minimum pension limit applicable to pensions of the following types in respect of the 2019-20 and 2020-21 financial years will be reduced and determined in accordance with:

- (a) allocated pensions that commenced on or before 31 December 2005 – Clause 3A of the SIS Regulations;

- (b) allocated pensions that commenced on or after 1 January 2006 and before 1 July 2007 – Clause 3A of Schedule 1AAB of the SIS Regulations;
- (c) account based pensions that commenced on or after 1 July 2007 – Clause 4A of Schedule 7 of the SIS Regulations;
- (d) market linked pensions – Clause 10 of Schedule 6 of the SIS Regulations”

The COVID-19 economic measures also make provision for temporary early access to superannuation for eligible individuals up to \$10,000 before 1 July 2020 and a further \$10,000 in 2020-2021. Early release of benefit is covered under Rule 16.7 which allows a Member to access all or part of their Superannuation Balance in circumstances permitted by Superannuation Law (e.g. severe financial hardship, compassionate grounds) and the Trustee must pay the Member as requested in the manner permitted by Superannuation Law. As such, it is not necessary to amend the Governing Rules for this early access provision.

(b) **NALI and NALE**

Under the new rules, income amounts attributable to non-arm's length expenditures, outgoings or losses of a SMSF (NALE) are generally treated as non-arm's length income (NALI), in addition to inflated income derived from non-arm's length schemes.

As a result of the changes, it is important for SMSF trustees to distinguish the capacity in which they provide services or perform duties for their SMSFs. If the services are provided by the trustee in the capacity as an outsourced party, any undercharge or no charge will result in NALI. On the other hand, if the duties or services are performed by the trustee as a trustee of the fund, they would not be entitled to receive any remuneration.

The Governing Rules amendment will strengthen the “capacity” distinction and enable the trustee acting in the outsourced third-party capacity to be remunerated on terms which meet both the existing Section 17B SIS Act requirement and the new NALE requirements.

This change has been effected by an amendment to Rule 4.17(c) (iii) which will provide that:

“the remuneration is no more favourable to the person than that which it is reasonable to expect would apply and must not be less than the amount that would reasonably be expected to apply if the person were dealing with the relevant other party at arm's length in the same circumstances”.

Other incidental minor amendments have also been made to Rule 4.17(c).

(c) **Mutual Capital Instruments**

The Governing Rules have been amended to expressly permit investment in Mutual Capital Instruments (“MCI”). Recent changes to the Corporations Act 2001 allow a so-called qualifying ‘mutual entity’ to raise capital through an MCI.

The change has been effected by the inclusion of MCIs to Rule 3.4 (p). Rule 1.2 Dictionary has also been updated to include the MCI definition.

(d) **Trustee exercise of power**

It is recognised that in the exercise of a trustee power, the trustee's other duties may affect the exercise of such power, in addition to their other interest or the interest of their associates.

Rule 5.5(d) has been amended to include interest "and duties" that may be affected by the exercise of the power. Rule 1.2 Dictionary has also been updated to include the meaning of "Associates".

(e) **Investment strategy review**

Rule 5.7(f) of the Governing Rules has been amended by the insertion of "review regularly" to "formulate and give effect to an investment strategy". At the same time, the reference to "must review regularly that investment strategy" at the end of the subsection has been deleted.

This amendment is to align Rule 5.7(f) totally with sub-regulation 4.09(2) of the SIS Regulations. Sub-regulation 4.09(2) provides that "the trustee of a superannuation entity must formulate, review regularly and give effect to an investment strategy." The "review regularly" requirement was formally introduced into SIS sub-regulation 4.09(2) as part of the Government's Stronger Super reform package.

The amendment will also give weight to the current ATO "best practice" approach to investment strategy compliance.

**Other changes**

These changes are to improve expression, correct typographical errors, update legislative and cross references or are consequential to the principal changes identified above.

**Noted** that Version 05/20 automatically applies to the Superannuation Fund.

**Resolved** that the proposed amendment of the SUPERCentral Governing Rules by the replacement of the current Version 04/19 with Version 05/20 is in the best interests of the members of the Fund and, consequently, no objection should be made to the proposed amendment as it applies to the Superannuation Fund.

**Resolved** that a copy of the information sheet issued in respect of the proposed amendment be provided to each member of the Fund.

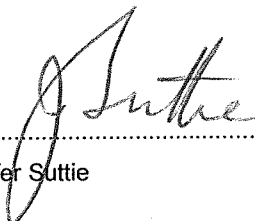
**Signing & Dating – Trustees/Directors**

*For the purposes of this Part "Trustee" means the company which acts as trustee or the group of individuals which constitute the trustee (as the case may be).*

Signed as a Written Resolution D J Suttie Pty Ltd 127 483 596 as Trustee of the Superannuation Fund **D&J Suttie Superfund**



David Suttie



Jennifer Suttie

Dated: ...../...../ 20.....