

13 June 2017

360 Capital Total Return Fund proposed AMIT regime

This notice is published by 360 Capital FM Limited ABN 15 090 664 396, AFSL 221474 (“**Responsible Entity**”) as responsible entity of the 360 Capital Total Return Active Fund ARSN 602 303 613 and the 360 Capital Total Return Passive Fund ARSN 602 304 432 (together, the stapled entity known as the 360 Capital Total Return Fund, ASX: TOT) (“**Fund**”) under section 601GCA(3) of the Corporations Act (as introduced by *ASIC Corporations (Attribution Managed Investment Funds) Instrument 2016/489* (“**Class Order**”)) to inform members of the Fund (“**Members**”) that the Responsible Entity proposes to amend the constitution of the 360 Capital Total Return Active Fund and the constitution of the 360 Capital Total Return Passive Fund (each, the “**Constitution**”) to allow the Fund to be operated as an attribution managed investment trust under the new “**AMIT Regime**”. This is explained in more detail below.

The AMIT Regime

A new tax regime applying to managed investment schemes became law on 5 May 2016 under the *Tax Laws Amendment (New Tax System for Managed Investment Funds) Act 2016* (Cth), together with additional supplemental legislation (“the **AMIT Regime**”).

The Responsible Entity is proposing to amend the Constitution so that the Fund can be operated as an attribution managed investment trust under this new tax regime.

The key difference between the current tax regime 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 Responsible Entity. The new AMIT Regime requires the Responsible Entity to undertake this allocation or attribution on a fair and reasonable basis. This is in contrast to the current tax 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 Fund according to trust law principles.

Reasons for the proposed amendments to the Constitution

The Responsible Entity believes that the new AMIT Regime will produce more equitable and fair tax outcomes for Members for the following reasons:

- 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 Fund. 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;
- removal of ambiguity in relation to the tax treatment of tax deferred and tax free distributions;
- the ability to reconcile errors in the taxable income allocated to members (referred to as "unders" and "overs") in the year they are discovered by the Responsible Entity rather than the present requirement to amend the returns of previous years; and
- greater certainty regarding certain aspects of the tax treatment of the Fund, such as the Fund being deemed to be a "fixed trust" for income tax purposes.

Effect of the proposed amendments to the Constitution

The proposed amendments will amend the Fund's Constitution so as to permit the Responsible Entity to:

- elect for the Fund to operate as an AMIT;
- determine the taxable income of the Fund and allocate the taxable income to Members on a fair and reasonable basis;
- make amended allocations of taxable income to Members; and
- do all things necessary to operate the Fund as an AMIT.

The proposed amendments also:

- provide limitations to the Responsible Entity's powers to ensure as far as possible that the Members continue to have "clearly defined rights", a necessary requirement for the Fund to be able to apply the AMIT Regime;
- confirm that the exercise of the Responsible Entity's powers under the AMIT Regime is subject to the same limitation of liabilities as provided for generally under the Constitution of the Fund;
- provide the machinery for the exercise of the rights afforded to Members under the AMIT Regime to object to any attribution. It also requires Members to indemnify the Responsible Entity 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
- provide for each Member to indemnify the Responsible Entity 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 Responsible Entity under the AMIT Regime, which the Responsible Entity reasonably determines relates to the Member or units held by the Member.

How to contact us if you wish to respond to this notice

The Responsible Entity will proceed to amend the Constitution as proposed on or after the date which is **7 days from the date of this notice**, unless it receives requests to call and arrange to hold a meeting of Members of the Fund to consider and vote on a special resolution to modify the Constitution as proposed, from Members with at least 5% of the votes that may be cast on such a resolution.

You are not required to respond to this notice, but if you wish to request a meeting of Members to vote on the amendments, this request must be made in writing, and sent before Tuesday, 20 June 2017 to:

Level 8
56 Pitt Street
Sydney NSW 2000

If you wish to discuss the proposed Constitutional amendments or the AMIT Regime in more detail, or you would like a copy of the Constitution and the proposed amendments, please feel free to call the Responsible Entity on (02) 8405 8860.