

## **PRODUCT RULING - BR Prd 04/07**

This is a product ruling made under section 91F of the Tax Administration Act 1994.

### **Name of the Person who applied for the Ruling**

This ruling has been applied for by Tortis-International Fund.

### **Taxation Laws**

All legislative references are to the Income Tax Act 1994 unless otherwise stated.

This Ruling applies in respect of sections CF 3(1)(b) and CF 3(1)(c).

### **The Arrangement to which this Ruling applies**

The Arrangement is the establishment and continued operation of a unit trust known as Tortis-International Fund (“Tortis-INTL” or the “Fund” or the “Trust”) pursuant to a Deed of Trust dated 16 December 1996 and amended on 18 February 1997, 31 July 2000, 16 August 2001 and 12 July 2002 (the “Trust Deed”), and the Prospectus for the Fund dated 11 September 2003 (the “Prospectus”).

Further details of the Arrangement are set out in the paragraphs below.

- 1 The Fund invests in the securities of those companies that make up the TOWER Global Index (the “Global Index” or the “Index”). The Global Index is a customised version of the Morgan Stanley Capital International World Index (the “MSCI World Index”). The Fund has been designed to provide investors with comprehensive coverage of global equities.
- 2 Tortis-INTL is a unit trust in terms of the Unit Trusts Act 1960 and meets the definition of a “unit trust” contained in section OB 1.
- 3 Tortis-INTL is a New Zealand tax resident. The trustee of Tortis-INTL is the Public Trustee (the “Trustee”). The manager of Tortis-INTL is TOWER Managed Funds Investments Limited (previously known under the name “TOWER Trust Services Limited”) (the “Manager”). The investment manager of the Fund is State Street Global Advisors, Australia, Limited (the “Investment Manager” or “State Street”).
- 4 The investment policy of the Fund is set out in clause 82.1 of the Trust Deed. It states:
  82. The investment policy of the Trust shall be:

- 82.1 to only invest the Fund (other than the Cash Pool and Unmarketable Accumulations) in Index Shares in a manner that replicates the Adjusted MSCI and to only enter into transactions that are necessary to give effect to that policy;
- 82.2 to invest the Cash Pool in deposits with banks registered under the Reserve Bank Act 1989 or other debt obligations or in the TOWER FirstRate Account upon terms that will allow the Manager to pay the anticipated Liabilities of the Fund and to manage the redemption of Units and the liquidity of the Trust;
- 82.3 to invest Unmarketable Accumulations in Derivatives until the total value of investment in Derivatives reaches a Marketable Amount whereupon the Derivatives will be realised and the proceeds invested in accordance with clause 82.1 or 82.2; and
- 82.4 to not take any action to hedge or manage foreign exchange risks or exposures that arise from the Investments being held in non New Zealand currencies.

5 The investment objectives of the Fund are as follows:

- To track the adjusted MSCI Index, called the TOWER Global Index, to provide broad international coverage of approximately 1,000 companies;
- The Global Index includes only “grey listed” countries to New Zealand, so that double taxation issues do not occur. These include companies resident in the United States, United Kingdom, Germany, Canada, Japan, and Australia. These companies provide coverage of 80% of all international companies contained within the total MSCI Index;
- The Investment Manager cannot diversify investments of the Fund, or take prudent steps in respect of the mix of the Fund’s investments.

6 The Trust Deed states that:

It is not the Fund or the Trustee’s intention to profit from holding, acquiring or selling constituent company securities.

7 Tortis-INTL is an open fund and new investors are able to subscribe for units from time to time. The beneficial interest in Tortis-INTL is divided into units. Each unit confers an equal interest in Tortis-INTL (other than a fractional unit which will confer a proportionate interest) but does not confer any interest in any particular part of the fund or any particular investment of the fund.

8 Tortis-INTL has confirmed that all aspects of the previous rulings (BR Prv 96/135, BR Prv 96/136, and BR Prv 01/15), relating to the Fund, have been complied with. There has been no change to the Trust Deed of the Fund (except for the changes noted above), nor any change to the management or operation of the Fund since its establishment.

***The MSCI World Index***

9 The TOWER Global Index is a customised version of the MSCI World Index.

10 The tracking of the Global Index is undertaken by the Investment Manager.

11. The document *MSCI Methodology Book: MSCI Standard Index Series Methodology* dated and effective from 29 April 2003 (“the Methodology Book”) states the objective of MSCI, with respect to its Equity Index Series, as being the construction of global benchmark indices which serve as a gauge for measuring performance of a market and investment strategy, effective research tools for purposes such as strategic asset allocation, and as the basis for investment vehicles designed to replicate the performance of a market or to implement and manage an investment policy. MSCI consistently applies its equity index construction and maintenance methodology across regions and developed and emerging markets, making it possible to aggregate individual country and industry indices to create meaningful regional and composite benchmark indices.
12. The MSCI Standard Index Series adjusts the market capitalisation of index constituents for free float and targets for index inclusion 85% of free float-adjusted market capitalisation in each industry group, in each country. Currently, MSCI calculates the Standard Index Series for 50 countries globally in the developed and the emerging markets.
13. As of December 2003, the MSCI World Index comprises the 23 developed market country indices.
14. The Methodology Book describes MSCI’s index construction objective (see paragraph 11 above), guiding principles, and the methodology for the Standard Index Series.

*Guiding principles*

15. MSCI adheres to the following principles in the design and implementation of its index construction and maintenance methodology:
  - Broad and fair representation of the total underlying market;
  - Investability and replicability;
  - Consistent application of the methodology across all markets;
  - Continuity and relatively low turnover while reflecting the evolution of the markets in a timely fashion;
  - Disciplined approach: principles, rules and guidelines to ensure all decisions MSCI makes are consistent with a benchmark index;
  - Transparency;
  - Independence and objectivity.

*Index construction process*

16. The index construction process involves:
- Defining the equity universe – about 99% of the world’s total equity market capitalisation is included;
  - Adjusting the total market capitalisation of securities in the universe for free float available to foreign investors;
  - Classifying the universe of securities under the Global Industry Classification Standard;
  - Selecting securities for inclusion according to MSCI’s index construction rules and guidelines.

*Index constituent eligibility rules and guidelines*

17. MSCI targets an 85% free float-adjusted market representation level within each industry group, within each country. The security selection process within each industry group is based on the careful analysis of:
- Each company's business activities and the diversification that its securities would bring to the index.
  - The size (based on free float-adjusted market capitalisation) and liquidity of securities. All other things being equal, MSCI targets for inclusion the most sizeable and liquid securities in an industry group. In addition, securities that do not meet the minimum size guidelines and/or securities with inadequate liquidity are not considered for inclusion.
  - The estimated free float for the company and its individual share classes. Only securities of companies with an estimated overall and/or security free float greater than 15% are, in general, considered for inclusion. The only exception is where not including a security of a large company would compromise the index’s ability to fully and fairly represent the characteristics of the underlying market.
18. Differences in the structure of industries, and other considerations, may lead to over- or under-representation in certain industries. In these cases, the indices are constructed with a view to minimising the divergence between the industry group representation achieved in the index and the 85% representation guideline.

*Maintaining the MSCI Standard Index Series*

19. The MSCI Standard Index Series is maintained with the objective of reflecting, on a timely basis, the evolution of the underlying equity markets. Emphasis is also placed on continuity, replicability and on minimising turnover in the indices. Overall, index maintenance can be described by three broad categories of implementation of changes:

- Annual full country index reviews that systematically reassess the various dimensions of the equity universe for all countries and are conducted on a fixed annual timetable.
- Quarterly index reviews, aimed at promptly reflecting other significant market events.
- Ongoing event-related changes, such as mergers and acquisitions, which are generally implemented in the indices rapidly as they occur.

Potential changes in the status of countries (standalone, emerging, developed) follow their own separate timetables. These changes are normally implemented in one or more phases at the regular annual full country index review and quarterly index review dates.

In this Ruling, index maintenance is referred to as Structural Change (quarterly and annual review changes) and Market Driven Change (ongoing event-related changes).

#### ***The Adjusted MSCI World Index: the TOWER Global Index***

20. The Global Index is a customised version of the MSCI World Index. The Global Index replicates the MSCI World Index, with one qualification: it only contains grey list countries, which comprise at least 2% of the MSCI World Index. The Global Index does not alter the MSCI World Index in any other way.
21. If any of the countries included in the Global Index leave the grey list then securities held in companies resident in that country will be immediately divested. If any company in which Tortis-INTL holds securities ceases to be resident in a grey list country, then securities held in that company will be immediately divested.

#### ***Trust Deed and Prospectus***

##### *Two classes of units*

22. The Fund offers two classes of units: Class A and Class B. Class A units are standard retail units. Class B units are issued on exactly the same terms as Class A units, however holders of Class B units, due to the size of their investment, are able to negotiate reduced management and trustee fees.

##### *Date of Adjustments*

23. The Fund is rebalanced in the following circumstances:
  - If any security, any country index, or the entire Index has a deviation of greater than +/- 0.5% of the total Fund; and

- Due to the Structural Changes in the MSCI, currently quarterly; and
  - If there is a Market Driven Change such as a merger, takeover, new listing or reduction or increase in capital affecting any Index company on the Global Index.
24. Such rebalancing will occur as soon as possible after the above events have occurred and in any event within 2 business days.

*Rights Issues*

25. The Global Index may be adjusted from time to time because of rights issues.
26. In the event of any rights issue by an Index Company, the Manager will hold the entitlement if the entitlement is included in the Index. If the entitlement is not included in the Index, but the securities the subject of the entitlement will be immediately included in the Index, the Manager will retain the entitlement and take up the securities. If the Manager does not know whether the securities the subject of the entitlement will be included in the Index the Manager will sell the entitlement at the earliest possible time and reinvest the proceeds in the Index Companies to track the Index.

*Mergers, Takeovers and Share Buy-backs*

27. The Global Index may be adjusted from time to time because of mergers, takeovers or share buy-backs.
28. With the exception of any situation where shares in an Index company are compulsorily acquired pursuant to any companies legislation, listing rules or takeover code requirements, in the event of a merger or takeover of an Index Company, the Manager will adjust the Fund portfolio at a time as close as practicably possible to the time the Index is adjusted. The Fund will not accept an offer unless as a consequence of not accepting the offer the Fund would track the Index less accurately than if it had accepted the offer.
29. The Manager will not elect to participate in a share buy-back scheme of a Index Company.

*Cash investments held by the Fund*

30. Although it is not an objective of the Fund to hold cash, the Manager and the Investment Manager (on behalf of the Fund) may hold cash to facilitate the easier administration of the Fund. The cash held by the Manager and the Investment Manager is on “call”. Wherever possible, the Manager will enter into futures contracts to cover the cash held by the Fund. This is known as “equitised cash”.

31. The Investment Manager (on behalf of the Fund) will hold cash in the following circumstances:
- Following the sale of securities in the course of tracking the Index, pending the reinvestment of that cash;
  - Following a contribution to the Fund, pending the investment of that contribution;
  - Following the sale of securities to meet a request for withdrawal by a Manager on behalf of a unit holder;
  - To accumulate the minimum amount of cash required to allow for minimum trade sizes and to obtain a reasonable representation of the number of securities on the Index, which is presently \$US3 million (“the minimum investment level”).
32. The Investment Manager may hold up to an amount equivalent to the minimum investment level in cash (including both free and equitised cash). This threshold may be exceeded in the following circumstances:
- for up to 10 working days preceding a MSCI structural change;
  - for up to 3 working days after a MSCI structural change; or
  - for up to 10 working days prior to a pending withdrawal in respect of which it has received a withdrawal request.
33. In addition to any funds held by the Investment Manager, the Manager may hold cash. The amount of cash held by the Manager will not be greater than what strictly arises out of the circumstances described below, and in any event will not exceed 2% of the total assets of the Fund. Those circumstances are:
- Following a contribution to the Fund, pending the investment of that contribution;
  - Following the sale of securities to meet a request to redeem units in cash; and
  - To fund the expenses, fees and taxation for the Fund;
34. The 2% threshold of cash held by the Manager may be exceeded in the following circumstances:
- For up to one business day if there is rapid inflow to the Fund, or the Fund has notice of a substantial pending withdrawal ;

- For up to one calendar month if the Manager receives a formal notice of a forthcoming obligation of subsequent performance (ie, payment due on partly paid shares) affecting the constituent securities in the Index; or
  - For up to one calendar month if the Manager is aware of a forthcoming distribution to unit holders at the scheduled date of distribution.
35. However, in any event, if the 2% threshold of cash held by the Manager is exceeded, the Fund will take immediate action to remedy the situation within the shortest practicable time.
36. At all times, there is a limit on the total cash (including cash held by the Manager and free and equitised cash held by the Investment Manager) which is the greater of 5% of the total value of the Fund and the sum of 2% of the total value of the Fund and the minimum investment level (except if there is a significant withdrawal or investment).
37. The Investment Manager will use best endeavours to equitise all cash, subject to futures contract size constraints.
38. The following futures contracts are currently used:

Country	Contract
Australia	SPI200
Canada	S&P/TSE60
Japan	Nikkei 225, TOPIX
Germany	DAX
United Kingdom	FTSE100
United States	S&P500

39. In the event that alternative futures contracts in one or more markets enable improved tracking of the Global Index, or that one or more of the above contracts ceases to exist, the Investment Manager will use such alternative contract or contracts.

#### *Hedging*

40. The Fund does not take any action to hedge or remove foreign currency risks or exposures that arise from the investments of the Fund in non-New Zealand currencies.

#### *Foreign Currencies*

41. The Investment Manager may enter into spot foreign exchange contracts where these are necessary in order to purchase or divest the foreign currencies necessary to purchase or dispose of Index securities. These contracts are not speculative and are settled within 2 business days.

#### *Borrowing*

42. The Fund may only borrow in the following circumstances:
- To temporarily fund the redemption of units when the cash pool has insufficient funds; this borrowing must be repaid as soon as possible, and in any event any such borrowing will be repaid within three business days;
  - Where a security is sold and another purchased and a settlement mismatch occurs resulting in the Fund becoming inadvertently overdrawn, and in this event for no longer than strictly necessary;
  - To temporarily fund the purchase of securities in order to rebalance following a merger, where pursuant to the merger payment due to the Fund for securities that have been disposed of has been delayed (such delay being beyond the control of the Fund), and in this event for no longer than strictly necessary; or
  - For advances (not to exceed total borrowings of \$5,000) by the Manager to the Fund to meet expenses of the Fund, where the Manager's expense account is insufficient to enable the Manager to meet such expenses.

*Events that trigger acquisitions or realisations*

43. The Fund will only sell or otherwise dispose of securities in the following circumstances:
- If the Fund is voluntarily or involuntarily wound up;
  - If there is a change in the Index composition due to either Structural Changes or Market Driven Changes so that the composition of the Fund no longer tracks the Index, or when the Fund is otherwise required to buy and sell securities to rebalance the Fund in order to maintain tracking;
  - Funding redemptions to the extent that these cannot be met out of cash held by the Fund;
  - Transferring securities to a unit holder if the unit holder redeems units for securities;
  - If there is a claim on the Trustee in respect of the Fund that cannot be met by the cash held by the Fund or cash held in the Manager's expense account.

*Issue and redemption of Units*

44. Investors wishing to subscribe for units may do so for cash or, alternatively, above a certain prescribed level, investors may subscribe for units by transferring to Tortis-INTL an appropriately weighted basket of securities, and will receive units in Tortis-INTL in exchange.

45. When a unit holder wishes to dispose of an investment in the Fund, the unit holder is able to elect that the units be either redeemed by the Trustee, or repurchased by the Manager.

Notwithstanding any provision in the Prospectus or the Deed of Trust, it is the invariable practice of the Fund that where such an election is made by the unit holder, the units will be either redeemed by the Trustee, or repurchased by the Manager, in strict accordance with that election.

In the absence of an election by the unit holder, the units will in all instances be repurchased by the Manager.

Where units are repurchased by the Manager, the price paid to the unit holder by the Manager will be the same amount as would be received by the unit holder if the unit holder had elected the direct redemption method. In all instances where units are repurchased by the Manager, whether pursuant to an election by a unit holder or not, the Manager will redeem those units with the Trustee for the same price as paid to the unit holder.

46. A unit holder may redeem units subject to the conditions in Article C of the Trust Deed. Article C gives the Manager a discretion to refuse to redeem units where the amount to be redeemed is less than the minimum number acceptable by the Manager at that time. Currently the Manager has set a minimum withdrawal at \$500.
47. Unit prices may be published in newspapers. Tortis-INTL has an Internet site which will be used principally to publish prices at which the Manager will repurchase or redeem units, and as a means for transferring units only by purchase from the Manager, and redemption or repurchase by the Manager.

*Same day unit redemption policy*

48. When units are repurchased, the Manager is required to pay the aggregate value of the units to the investor within 21 business days of the relevant time (as described in the Trust Deed). However when possible the Fund operates a same day unit redemption policy. The Fund will endeavour to redeem the units requested by any unit holder and redeem and pay for those units on the same day as the unit holder's request is made.
49. If the Fund has insufficient cash in the cash pool, the Fund will always in the first instance attempt to borrow (on suitable commercial terms) sufficient funds in order to meet the redemption request. In situations where the Fund is not able to borrow such sufficient funds, the Fund may suspend the withdrawal of units in the Fund. The only exception to the Fund always attempting to borrow in the first instance where a redemption request is made and there is insufficient cash in the cash pool, is where a redemption request is made by a unit holder who holds 5% or more of the value of the Fund and to borrow rather than suspend the withdrawal of units in the Fund would

prejudice other unit holders. In such a case the Fund will always suspend the withdrawal of units.

*Suspension of issuing and redeeming units*

50. A suspension from issuing or redeeming units (including any deferral notice with regard to Class B units) may be necessary in exceptional circumstances, being the following situations:
- (1) if the Fund is to be terminated and notice has been given to the Trustee pursuant to clause 198 of the Trust Deed;
  - (2) if extreme financial, political, or economic conditions occur and prevent the acquisition or redemption of Index Shares from the Stock Exchanges on which those Index Shares are listed;
  - (3) where the Fund has received redemption requests that exceed the available cash pool and the Fund is unable to borrow (on suitable commercial terms) sufficient funds to meet such redemption requests; or
  - (4) where there is insufficient cash in the cash pool and a redemption request is made by a unit holder who holds 5% or more of the value of the Fund and to borrow rather than suspend the withdrawal of units in the Fund would prejudice other unit holders; or
  - (5) in the case of any deferral notice in respect of class B units, the Trustee reasonably forms the opinion that to fund redemptions may prejudice the Fund's obligations to Class A unit holders.

Where suspension occurs because of termination of the Fund, the suspension will be for a maximum of 3 months of the giving of the notice to terminate by the Manager.

In other circumstances, if a suspension from issuing or redeeming units occurs, the period of suspension will not exceed 3 business days, except if the situation is beyond the control of the Manager of the Fund, in which case the suspension shall be only for such period as is strictly necessary for the Fund or the Manager to recover from that event. However in the case of a deferral notice, with regard to Class B units, the period of the deferral notice may be extended until the Trustee reasonably forms the opinion that to fund redemptions is no longer prejudicial to the Fund's obligations to Class A unit holders.

The Fund has suspended the issuing and redeeming of units only once, for 3 days after the World Trade Center was destroyed, as the US market was closed and so valuations were not available.

**Conditions stipulated by the Commissioner**

This Ruling is subject to the following conditions:

- (a) The predetermined rules used by the Investment Manager to ascertain the Global Index constituents, and the predetermined rules used by MSCI to calculate the MSCI World Index, will not be made with or influenced by any intention of seeking higher rates of return or capital growth.
- (b) No material changes will be made to the way in which the Global Index tracks the MSCI World Index.
- (c) No material changes will be made to the way in which MSCI constructs and maintains the MSCI World Index.
- (d) The proportion of Tortis-INTL's assets to be held as cash (including all "free" cash and "equitised" cash) will not exceed what is strictly necessary in order to fulfil the purposes stated in paragraph 30 of this ruling, and will not in any event exceed the greater of 5% of the value of the Fund and the sum of 2% of the value of the Fund and the minimum investment level.

This condition will not be regarded as being breached if, pending investment of contributions or disbursement of withdrawal proceeds, the Fund is forced to hold cash in excess of the greater of 5% of the value of the Fund and the sum of 2% of the value of the Fund and the minimum investment level. The Fund will immediately invest or disburse such cash, except where immediate investment to track the Index is not possible due to the unavailability of appropriate equities, in which case the excess cash may be held for only so long as is strictly necessary and in any event no longer than two business days.

- (e) When the cash held by the Investment Manager reaches the minimum investment level (presently \$US 3 million), it will be immediately applied to track the Index.
- (f) The Investment Manager will rebalance the Fund in the following circumstances:
  - i. If any security, any country index, or the entire Index has a deviation of greater than +/- 0.5% of the total Fund; and
  - ii. Due to Structural Changes in the MSCI, currently quarterly; and
  - iii. If there is a Market Driven Change such as a merger, takeover, new listing or reduction or increase in capital affecting any Index company on the Global Index.

Such rebalancing will occur as soon as possible after the above events have occurred and in any event within 2 business days.

- (g) When rebalancing the Fund the Investment Manager will use its best endeavours to track the Index as exactly as possible. Any rebalancing of the Fund that does not achieve an exact match of the Index will only occur where it is not possible to

obtain or sell the securities necessary to exactly replicate the Index. In any case the tracking deviation will not exceed 1% of the value of the Fund.

- (h) In the event of any rights issue by an Index Company, the Manager will hold the entitlement if the entitlement is included in the Index. If the entitlement is not included in the Index, but the securities the subject of the entitlement will be immediately included in the Index, the Manager will retain the entitlement and take up the securities. If the Manager does not know whether the securities the subject of the entitlement will be included in the Index the Manager will sell the entitlement at the earliest possible time and reinvest the proceeds in the Index Companies to track the Index.
- (i) With the exception of any situation where shares in an Index company are compulsorily acquired pursuant to any companies legislation, listing rules or takeover code requirements, in the event of a merger or takeover of an Index Company, the Manager will adjust the Fund portfolio at a time as close as practicably possible to the time the Index is adjusted (but in any event within 2 business days). The Fund will not accept an offer unless as a consequence of not accepting the offer the Fund would track the Index less accurately than if it had accepted the offer.
- (j) The Fund Manager will not elect to participate in a share buy-back scheme of any Index Company.
- (k) When the Fund is given the option of re-investing its dividends into any Index Company, the Fund invariably accepts the cash dividend.
- (l) The Fund can only borrow in the following circumstances:
  - i. To temporarily fund the redemption of units when the cash pool has insufficient funds; this borrowing must be repaid as soon as possible, and in any event any such borrowing will be repaid within three business days;
  - ii. Where a security is sold and another purchased and a settlement mismatch occurs resulting in the Fund becoming inadvertently overdrawn, and in this event for no longer than strictly necessary;
  - iii. To temporarily fund the purchase of securities in order to rebalance following a merger, where pursuant to the merger payment due to the Fund for securities that have been disposed of has been delayed (such delay being beyond the control of the Fund), and in this event for no longer than strictly necessary; or
  - iv. For advances (not to exceed total borrowings of \$5,000) by the Manager to the Fund to meet expenses of the Fund, where the Manager's expense account is insufficient to enable the Manager to meet such expenses.

- (m) The Fund will not take any action to hedge or remove foreign currency risks or exposures that arise from the investments of the Fund in non-New Zealand currencies.
- (n) The Fund will only sell or otherwise dispose of securities in the following circumstances:
- i. If the Fund is voluntarily or involuntarily wound up;
  - ii. If there is a change in the Index composition due to either Structural Changes or Market Driven Changes so that the composition of the Fund no longer tracks the Index, or when the Fund is otherwise required to buy and sell securities to rebalance the Fund in order to maintain tracking;
  - iii. Funding redemptions to the extent that these cannot be met out of cash held by the Fund;
  - iv. Transferring securities to a unit holder if the unit holder redeems units for securities;
  - v. If there is a claim on the Trustee in respect of the Fund that cannot be met by the cash held by the Fund or cash held in the Manager's expense account.
- (o) The Fund will not be wound up with a view to enhancing the performance of the Fund or to minimise losses of the Fund in any way. This condition will not be breached if:
- i the Manager decides to wind up the Fund for reasons unrelated to the performance of the investments of the Fund; or
  - ii if the unit holders independently resolve to wind up the Fund.
- (p) This Ruling shall cease to apply if at any time:
- i. there is a unit holder, or two or more unit holders that are associated with each other, or are acting in concert in relation to their investments in the Fund, who hold/s more than 75% of the issued units of the Fund; and
  - ii. if that unit holder, or one or more of such unit holders, ordinarily hold securities on revenue account or the disposal of securities by that unit holder, or one or more of such unit holders, would ordinarily give rise to gross income for income tax purposes.
- For the purposes of this condition unit holders are associated with each other if they are "associated persons" within the meaning of section OD 7 or OD 8(3).
- (q) This Ruling only applies while this Fund remains a widely-held trust (as that term is defined in section CF 3(14)), and the Fund units are offered to the public.

- (r) Apart from the Trust Deed and the Prospectus of the Fund that have been supplied to Inland Revenue as part of the application for this Ruling, there is no agreement, arrangement or understanding between the Fund or the Trustee or the Manager (or any party acting on behalf of the Fund) and any unit holder (or any person associated with or acting on behalf of any unit holder) regarding the control of the Fund, the nature and timing of its investments, or the timing of the investing or withdrawal of funds.

This condition shall not be regarded as breached by virtue only of:

- i. the fact that a unit holder has the ability to invest, or withdraw at any time; and/or
  - ii. the entry into of any agreement, arrangement or understanding contemplated by the Trust Deed for the purpose of enabling investment or withdrawal; and/or
  - iii. the appointment by the Trustee of the Manager; and/or
  - iv. any agreement, arrangement or understanding entered into by the Trustee in a capacity other than as trustee of the Fund, or the Manager in a capacity other than as manager of the Fund, in the ordinary course of the Trustee or the Manager conducting an independent investment advisory or investment portfolio management business.
- (s) The Fund will not exercise any voting rights associated with the holding of Index Company securities.
- (t) If the Fund is resettled this Ruling shall not apply from the date of resettlement.

The Fund will not be resettled in order to enhance the performance of the Fund or to minimise losses of the Fund in any way.

- (u) The Fund will not be involved in any securities lending.
- (v) The Fund will not utilise the power to suspend the issuing or redeeming of units (including any deferral notice with regard to Class B units) except in exceptional circumstances, being the following situations:
- i. if the Fund is to be terminated and notice has been given to the Trustee pursuant to clause 198 of the Trust Deed;
  - ii. if extreme financial, political, or economic conditions occur and prevent the acquisition or redemption of Index Shares from the Stock Exchanges on which those Index Shares are listed;

- iii. where the Fund has received redemption requests that exceed the available cash pool and the Fund is unable to borrow (on suitable commercial terms) sufficient funds to meet such redemption requests;
- iv. where there is insufficient cash in the cash pool and a redemption request is made by a unit holder who holds 5% or more of the value of the Fund and to borrow rather than suspend the withdrawal of units in the Fund would prejudice other unit holders; or
- v. in the case of any deferral notice in respect of class B units, the Trustee reasonably forms the opinion that to fund redemptions may prejudice the Fund's obligations to Class A unit holders.

Where suspension occurs because of termination of the Fund, the suspension will be for a maximum of 3 months of the giving of the notice to terminate by the Manager.

In other circumstances, if a suspension from issuing or redeeming units occurs, the period of suspension will not exceed 3 business days, except if the situation is beyond the control of the Manager of the Fund, in which case the suspension shall be only for such period as is strictly necessary for the Fund or the Manager to recover from that event. However in the case of a deferral notice, with regard to Class B units, the period of the deferral notice may be extended until the Trustee reasonably forms the opinion that to fund redemptions is no longer prejudicial to the Fund's obligations to Class A unit holders.

- (w) The Manager will not redeem units as a means of correcting tracking errors.
- (x) The Trustee will not exercise its power under clause 87.7 of the Trust Deed to promote or carry on any scheme or undertaking in any country upon such terms and conditions as the Trustee deems fit.
- (y) The Fund will not invest in derivatives, with the exception of futures contracts entered into for the purposes of tracking the Index and spot foreign exchange contracts (which have a settlement period of no longer than two business days) to acquire or dispose of the necessary foreign currency so as to purchase or dispose of Index securities.
- (z) The Manager has the power to purchase units from unit holders when unit holders wish to redeem their units. The Manager will always use this power when the unit holder specifically requests that the Manager purchase the units and in any instance where the unit holder does not specifically request that the Trustee redeem the units. The Manager will not purchase units from any unit holder, where to do so would be inconsistent with the unit holder's election to redeem their units with the Trustee. The Manager will not use this power to enhance the profit of the Fund.
- (aa) The Global Index will only include countries that are listed in Schedule 3, Part A.

- (bb) The foreign companies included in the Global Index are resident and liable for tax in a country listed in Schedule 3, Part A.
- (cc) For the purposes of section CG 15(2)(b)(iii), in the case of an interest, in relation to a foreign entity, of a kind specified in section CG 15(1)(a), the foreign entity is not a foreign entity, or a member of a class of foreign entities, specified in Part B of Schedule 4.
- (dd) The Fund will not acquire or hold any income interest or any control interest in any company that is a “controlled foreign company” under section CG 4.
- (ee) There is no arrangement between the Trustee and any unit holders to effect the redemption of units in substitution for dividends.
- (ff) Any cancellation of units will not be part of a pro-rata cancellation as that term is defined in section CF 3(14).
- (gg) The Trust units will not be quoted on the official list of any recognised exchange as that term is defined in section OB 1.
- (hh) The Trust units are issued on such terms that their redemption is subject to the reverse ordering rule as stated in section CF 3(1)(b)(iv)(B).
- (ii) All distributions received by the Fund will be paid out to investors net of any expenses incurred by the Fund.
- (jj) In relation to amounts paid as consideration for a cancellation upon liquidation, the recipient will not be a person that is related to Tortis-INTL within the meaning of section CF 3(12).

### **How the Taxation Laws apply to the Arrangement**

Subject in all respects to any conditions stated above, the Taxation Laws apply to the Arrangement as follows.

- Income distributed by the Trustee will be treated as a dividend pursuant to section CF 2(1)(i).
- Any amount received by unit holders on redemption of units in the Fund will be excluded from the definition of dividend in section CF 2, by section CF 3 (1)(b) to the extent that that amount does not exceed the available subscribed capital per share cancelled. The Commissioner is satisfied that, in terms of section CF 3 (1)(b)(iii), the distribution is not in lieu of the payment of dividends. The procedure of publicising buy-back and redemption prices on the Internet does not constitute a “recognised exchange” in terms of the definition of that phrase in section OB 1.

- If the Fund is liquidated, section CF 3 (1)(c) will apply. The amount distributed to unit holders will not be a dividend to the extent that it does not exceed the aggregate of the “available subscribed capital per share cancelled” and the “excess return amount”, as those terms apply to the Fund. The excess return amount will include gains on any securities sold by the Fund.

**The period or income year for which this Ruling applies**

This Ruling will apply for the period from 1 July 2004 until 30 June 2007.

This Ruling is signed by me on the 11<sup>th</sup> day of June 2004.

**Martin Smith**

General Manager (Adjudication & Rulings)