

“We do not want so many portfolio holdings as to dilute our efforts and knowledge, but we want enough to reduce the risk if something goes wrong. A portfolio candidate will only make it into our portfolio if it is at least as good as our existing portfolio holdings” . *Fisher Funds*

## The Management Agreement



## The Management Agreement

A copy of the Management Agreement is available for inspection during normal business hours at the registered office of the Company at 2 King Edward Parade, Devonport, Auckland and free of charge on the Companies Office website at [www.companies.govt.nz](http://www.companies.govt.nz).

The Company has appointed the Manager to manage the Portfolio and implement investment decisions within the Investment Mandate. The Investment Mandate is contained in the Management Agreement and is described in summary on this page.

The key terms of the Management Agreement are as follows:

### Agreement Conditional

The Management Agreement only comes into effect once the Company has received and accepted applications for a minimum of 30 million Shares.

### Term

The Management Agreement is for an initial period of five years commencing on the date the Company lists on the NZSX (unless terminated earlier in accordance with its terms). Thereafter the Company will (provided that the Manager is prepared to renew arrangements) renew the Management Contract for further five year terms unless following discussion with the Manager and commissioning an independent review it elects not to and obtains an ordinary resolution from shareholders of the Company approving such non-renewal.

### Duties of the Manager

The Manager's duties are to manage the Portfolio and to ensure that Portfolio administrative and general services are provided to the Kingfish Group in accordance with the Management Agreement (and general administrative services where the Board and the Manager have elected to have Fisher Funds perform these duties). To perform its duties under the Management Agreement, the Manager has certain powers to act on behalf of the Kingfish Group.

### Manager's Powers

The Manager has absolute and unfettered discretion to manage the Portfolio and to do all things considered necessary or desirable in relation to the Portfolio, except that the Board of Kingfish control the voting rights in respect of the Portfolio companies. In exercising such powers the Manager must have regard to its duties under the Management Agreement and the Investment Mandate.

### Benchmark

Using its stock selection skills, the Manager will aim to produce higher returns than the Benchmark, which is changes in the CSFB 90 Day Bank Bill Index plus 7%. That is, the Manager aims to achieve annual returns that are 7% higher than an investor could earn from a portfolio of fixed interest securities approximating the CSFB 90 Day Bank Bill Index.

### Manager's Investment Mandate

The Manager is appointed to invest the Portfolio primarily in equity securities of New Zealand companies. Without precluding other New Zealand equities investments, it is envisaged that the initial investment focus will be on New Zealand companies that have, at the time of acquisition or investment, a market capitalisation of less than \$450 million, with some discretion to diversify the Portfolio into cash.

All investments and sales made by the Manager on behalf of Kingfish Holdings Limited shall be consistent with the investment philosophy described in the Offer Document on page 12.

### Authorised Investments

- Equity Securities (as defined in the Management Agreement) listed on the NZSX or NZAX.
- Equity Securities in New Zealand companies listed on other stock exchanges.
- Unlisted New Zealand equities.
- Underwriting or sub-underwriting commitments relating to New Zealand equities otherwise authorised in the Management Agreement.
- Bank deposits or money market securities, in New Zealand dollars, the maturity of which is no greater than 30 days from the time of investment.
- Any other type of security approved of by the Company and notified to the Manager in accordance with the Management Agreement.

### Prudential Limits

- The maximum permitted exposure to the Equity Securities of any individual company is 15% (at the time of purchase) of the market value of the Portfolio.
- The maximum permitted exposure to unlisted Equity Securities collectively is 30% (at the time of purchase) of the Portfolio.
- No more than 20% of the issued capital of any company shall be held by the Portfolio without the prior written consent of the Company.
- The Manager must not invest in any Unit Trusts which are managed by the Manager, or to which the Manager is an advisor, without the prior written consent of the Company.
- Bank deposits and money market securities must be with banks registered in New Zealand and carrying a minimum short-term Credit Rating of A1 (from Moody's Investor Services).

If a pre-existing shareholding in a company within the Portfolio breaches any of the rules contained in bullet points 1, 2 and 4 immediately above, by virtue of post acquisition performance or market activity, then the Manager may continue to hold that security in the Portfolio.

## The Management Agreement – Continued

### Borrowing

The Company will procure a debt facility from a registered bank to a maximum value of 20% of the Gross Asset Value of the Company, at the time of draw down.

The Manager shall have the authority to draw on this facility with the prior written approval of the Board.

The Manager may use such borrowings where it believes they will enhance the management and / or the return of the Portfolio.

### Derivatives

The Manager must not use financial derivatives other than in respect of managing the interest rate exposures implicit in any debt borrowing undertaken by the Manager on behalf of the Company.

### Remuneration

In return for the performance of its duties as Manager of the Company's Portfolio, the Manager is entitled to be paid:

- (a) A Management Fee equal to 1.25% per annum of the Gross Asset Value, calculated weekly and payable monthly in arrears. The Management Fee will be reduced by 0.10% for each 1.0% per annum by which the Gross Return is below the change in the CSFB 90 Day Bank Bill Index. A minimum Management Fee of 0.75% per annum applies.
- (b) The Company will pay the Manager a Performance Fee for providing excess returns over and above the Benchmark Rate. The Manager will be paid 15% of the increase in the Net Asset Value above the High-water Mark (refer below) where this increase, expressed as a percentage of Net Asset Value at the beginning of the period, exceeds the Benchmark Rate (subject to certain rules set out in the Management Agreement, including making adjustments for changes in the number of shares on issue and dividends paid etc, and the timing of those changes). The Performance Fee will only become payable once the Net Asset Value per share exceeds \$1.33. The final Performance Fee will be calculated at the end of each financial year although the Company may elect to provide for any Performance Fee more regularly in calculating the Net Asset Value. Any Performance Fee will only be paid to the Manager at the end of the year.

The High-water Mark is the highest Net Asset Value at the end of any previous financial year.

Half of any Performance Fee will be paid to the Manager in shares issued at Net Asset Value, with the remaining half to be paid in cash.

In addition, the Manager agrees to provide certain general administration services for the benefit of the Company for an initial period (and in any event, until no later than 30 September 2004) at no cost to the Company. The Company intends to appoint an administration manager to assume responsibility for these functions following completion of this Offer.

All fees are exclusive of GST, which will be added where applicable.

### Expenses

The Company shall pay and discharge and shall reimburse the Manager in respect of all direct and out of pocket costs, charges, expenses and liabilities associated with or incurred by the Manager on behalf of the Company in connection with the duties of the Manager under the Management Agreement provided in relation to items (or related series of items) of expenditure in excess of \$5,000 per month that the Company has previously approved. All such costs, expenses, charges or liabilities which are partly contributed to other Funds administered by the Manager shall be allocated on an equitable basis between the Company and such other Funds.

The Manager shall pay and discharge all direct costs, charges, expenses and liabilities incurred by the Manager in connection with the establishment and maintenance of its general office infrastructure and overheads, including all salaries, wages and other payments in respect of the Managers' employees, rental, communications, office consumables, library and database, office equipment and general overhead costs.

Notwithstanding the above, the Manager is solely responsible for payment of fees to any other party engaged by the Manager to assist it in undertaking its investment duties under the Management Agreement.

### Termination

The Management Agreement will terminate on the commencement of winding up or dissolution of the Company.

Either the Manager or the Company may terminate the Management Agreement on the occurrence of certain events by giving notice. These include events such as liquidation, receivership or insolvency, composition with

creditors, material breach of the Management Agreement, and gross negligence in the performance of any of their duties under the Management Agreement. Furthermore, the Company may terminate the Management Agreement if, without its consent, neither Warren Couillault nor Carmel Fisher continue to have overall responsibility for, and involvement in, the conduct of investment and control of the Portfolio. In addition, the Company may elect not to renew the agreement upon expiry of its term (or any renewed term) provided it has complied with non-renewal procedures in that regard (see "Term" above).

If the Company elects not to renew the Agreement at the expiry of a term or terminates the Agreement other than for reasons permitted in the Agreement, a termination fee equal to the previous one year aggregate fees paid (or payable) under the Agreement as at the date of termination (as described above) is payable.

**Attendance at Board meetings**

A representative of the Manager shall during the term of the Management Agreement be entitled and required to attend meetings of the Board of Directors of the Company.

**Allocation of Opportunities Between Funds Administered by the Manager**

As referred to earlier, the Manager manages a number of investment funds which may, from time to time, purchase or sell, or wish to purchase or sell, the same securities. In such circumstances, the Manager is required to afford the Kingfish Group an opportunity to participate in such purchase or sale in proportion to other funds managed by the Manager equating to the gross dollar amount of the assets of the Kingfish Group and such other funds at the relevant proposed transaction date, subject to applicable prescribed investment constraints of the Kingfish Group and such other funds.

**Other Terms and Conditions**

The Manager gives no warranty as to the performance or profitability of any of the investments the Company makes. Furthermore, the Manager's liability for any loss or damage sustained by the Company or an investor as a result of the performance of the Manager of its duties under the Management Agreement is restricted to loss or damage due to the gross negligence, fraud, dishonesty or wilful default or unauthorised act of the Manager or that of its officers, employees, advisers or agents.

The Company indemnifies the Manager from all liabilities incurred by the Manager by reason of the Manager performing its role under the Management Agreement except for liability arising from its unauthorised acts, any gross negligence, wilful damage, dishonesty, fraud or other criminal acts or material breach of the Management Agreement, on the part of it, or its officers, employees, advisers or agents.

**Confidentiality**

The Manager is under obligations to keep Company information confidential.

*The above is a summary of the Management Agreement. Investors wishing further and more complete details of the Management Agreement should obtain a copy of the Management Agreement itself.*

