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To Whom It May Concern

Enhanced Data Collection for Managed Investment Schemes

The Property Council of Australia (**Property Council**) and Property Funds Association (**PFA**) welcome the opportunity to respond to Treasury's consultation paper on Enhanced data collection for Managed Investment Schemes (**MIS**).

The Property Council is the peak body for owners and investors in Australia's property sector. Our members invest in, design, build, finance and manage homes, workplaces, industrial assets and retail centres that support the daily life of Australian communities.

The PFA is the peak body representing responsible entities and fund managers operating unlisted property and real asset MISs across retail and wholesale markets in Australia. PFA members collectively manage more than $32 billion in assets on behalf of approximately 50,000 investors. Schemes operated by PFA members provide Australians with access to diversified property investment across residential, commercial, industrial and agricultural asset classes. These schemes support housing delivery, commercial development, and long-term retirement savings. They play an important role in channelling private capital into productive real-economy assets that underpin broader economic growth.

The property industry is the country's second largest employer, providing over 1.4 million jobs to Australians, representing a direct gross domestic product contribution of $232 billion, or 10.6 per cent of total GDP, as well as 18.2 per cent of total tax revenues totalling $129.6 billion.

Enhanced data collection will only be effective if it is linked to a clear supervisory framework

MIS are subject to a number of different disclosure regimes, depending on the nature of the scheme. This includes ASX continuous disclosure obligations for listed MIS, the existing MIS continuous disclosure regime for unlisted registered MIS, and various ASIC reporting obligations.

We are open to a limited and risk-based expansion of data collection by ASIC. Greater visibility of scheme-level data may assist ASIC to identify emerging risks earlier and reduce the need for repeated ad hoc information requests.

More specificity of the use case is needed

The consultation paper provides limited information about how Treasury intends for ASIC to use the additional data proposed to be collected to address the policy concerns identified in the review. This issue is recognised in the paper itself. One of the guiding principles states that "data should only be collected where there is a clear policy or regulatory use case, with priority given to datasets that deliver the highest analytical or supervisory value".

While the consultation paper identifies a range of information that may improve ASIC's understanding of MIS operations and performance, it does not clearly connect the proposed data points with indicators of misconduct, systemic risk or other circumstances warranting enhanced regulatory attention. In the absence of that connection, it is difficult to assess whether the proposed reporting obligations are proportionate to the risks they are intended to address.

Given that the proposed reforms would impose additional compliance obligations on a large number of schemes for which no concerns have been identified, the onus should be on ASIC to demonstrate why broad-based reporting is necessary to identify a relatively small subset of higher-risk entities. ASIC should not seek expansive reporting powers in advance of establishing a clear supervisory framework and then rely on industry to determine how the resulting information should be interpreted. If the objective of additional reporting is to enable ASIC to identify schemes that warrant closer scrutiny, Treasury should first establish the supervisory metrics against which that information will be assessed. Those metrics should not be developed after data collection commences. Rather, they should inform what data is collected and why.

These metrics need not be overly prescriptive. For example, a significant change in leverage may serve as an indicator warranting further review. Guidance could provide examples of what may constitute a "significant" change, recognising that no single metric will be determinative. A specified numerical threshold may be one relevant factor, such as a 20 per cent increase in leverage for an established fund. However, qualitative and contextual factors may also be relevant, including where leverage materially exceeds the fund's historical range or previous peak levels.

Once meaningful supervisory indicators have been established, there is a strong argument that reporting obligations should be targeted towards schemes that trigger those indicators, rather than applying equally to all MISs. For example, responsible entities could be required to notify ASIC when specified risk thresholds are exceeded, with additional reporting obligations arising only where a scheme presents elevated risk.

This approach could be implemented through a graduated framework. A substantial deterioration in a single indicator, or more moderate deterioration across several indicators, could trigger additional reporting or regulatory engagement. Such a model would better align regulatory burden with regulatory risk.

However, proper consideration should also be given to ensure that information is reported with sufficient context to prevent inappropriate weighting of regulatory focus. For example, in relation to benchmarks, moves outside of benchmarks may be caused by market movements or revaluations outside of the control of the fund and may otherwise be necessary to protect investor interests - particularly in relation to credit. Further, funds with a higher portion of illiquid assets, such as property funds, may take significantly longer to rebalance when market movements result in those funds being outside of benchmarks.

Expectations of Active Supervision

The proposed framework risks creating expectations of active supervision without ensuring that ASIC has the resources, processes or mandate to undertake that supervision.

A regime that requires responsible entities to provide extensive information to ASIC, without any corresponding merits review of that information, risks creating a perception of regulatory oversight that exceeds ASIC's actual role.

Investors and other market participants may reasonably assume that information lodged with ASIC is being monitored and assessed for warning signs. If market participants believe ASIC is performing an ongoing supervisory function, they may place less emphasis on conducting their own due diligence, weakening an important source of market discipline.

Similarly, compliance with a reporting regime may inadvertently confer a degree of legitimacy on regulated entities. Where information is collected but not routinely assessed, market participants may interpret the absence of regulatory intervention as evidence that no concerns exist. This may delay the identification of problems and create a gap between investor expectations and the regulator's actual level of oversight.

In effect, the proposed framework risks creating expectations of active supervision without ensuring that ASIC has the resources, processes or mandate to undertake that supervision.

Another concern is that a framework that requires businesses within this sector to collect, process and verify a substantial volume of granular data (ie Proposals 2 and 3) will likely result in negative competition outcomes across the private market sector. In this regard, the frameworks proposed under Proposals 2 and 3 will impose a substantial degree of additional compliance burden and cost, resulting in negative competition outcomes for both smaller businesses that are less able to absorb additional compliance costs than larger market participants, and the investors that will ultimately bear the increased costs in the form of higher fees passed through by those businesses. It will be particularly crucial that Treasury has proper regard to these competition concerns in designing any fine and penalties and the parameters for which ASIC may apply the reported information to justify additional surveillance activities - which naturally will result in diversion of governance and compliance resources away from what investors care most about - the management of their investment portfolios to identify opportunities, manage risk and optimise returns.

Objectives could be achieved through other mechanisms

Before introducing new reporting obligations, the consultation should assess whether its objectives can be achieved through better use of data already available to ASIC. This should include information provided through existing breach and internal dispute resolution reporting, which may already identify patterns of misconduct, investor harm and emerging risk. Mapping objectives of the data collection to existing sources would help identify genuine information gaps and avoid imposing duplicative collection requirements where relevant data is already available.

Finally, to the extent that additional data is sought for statistical or macroeconomic purposes, including by the Australian Bureau of Statistics, those objectives could be achieved through a substantially less intrusive and less burdensome reporting framework than that proposed in the consultation paper.

Expansion of the regime to unregistered MISs casts far too broad a net and is unjustified

We do not support Proposal 3 in its current form.

While we recognise Treasury's objective of improving visibility over segments of the managed investment scheme (MIS) sector that may present heightened regulatory risks, the proposal lacks a sufficiently clear definition of the problem being addressed, the entities intended to be captured, and the regulatory outcomes that the proposed reporting regime is expected to achieve.

Lack of a clearly defined regulatory target

The proposal appears to proceed on the assumption that all unregistered MISs present a comparable regulatory concern. However, the category of "unregistered managed investment scheme" encompasses an enormously broad and diverse range of legal structures and commercial arrangements.

Many of these have no direct or indirect connection to retail investors, some do not even have a meaningful connection to Australia, and simply do not pose the consumer protection risks that appear to have motivated the proposal.

The consultation paper does not clearly distinguish between:

- unregistered MIS that have a close or direct connection to retail investors;
- unregistered MIS whose connection to retail investors is reasonably remote; and
- private institutional or commercial arrangements that fall within the legal definition of an MIS but represent little or no risk from a governance or regulatory perspective as a result of their nature, size and risk profile.

Indeed, many unregistered schemes have a small number of wholesale investors (often highly sophisticated institutional investors), contain a single, illiquid asset, are closed to new investment after establishment or have very limited rights of withdrawal. There is no benefit in these schemes regularly reporting data to ASIC, whether quarterly or otherwise and noting the consultation paper does not establish clear parameters for the proposed reporting framework.

The expanded reporting requirements appear to disregard the fact that these MISs being unregistered by definition means they are considered (under the statutory framework) to be of minimal systemic risk, for example, because they involve fewer than 20 investors and are not being actively marketed to retail investors by a fund manager.

Any regime that proceeds should exclude institutional-only and private commercial arrangements. Relevant criteria could include the number and type of investors, minimum investment thresholds, whether there are any external investors and whether a PDS is required. Joint venture arrangements and other structures with no external investors should not be captured merely because they fall within the broad legal definition of an MIS. If these arrangements are nevertheless captured, requirements should be limited to basic identifying details sufficient to notify ASIC of their existence and cessation, with no recurrent financial or operational reporting.

Absent a more targeted definition of the schemes Treasury intends for ASIC to monitor, and a clear regulatory need for the data being collected, the proposal risks capturing a substantial

number of entities that are unrelated to the regulatory concerns identified in the consultation paper.

Disproportionate regulatory burden

The reporting framework proposed by Treasury would impose significant, costly and time-consuming compliance obligations across a very large population of schemes, many of which are unlikely to be relevant to Treasury's stated objectives.

Many individual Property Council and PFA members have advised that, under the proposed rules, they would be reporting on dozens and dozens of funds every quarter. This data would not only have to be collected for every fund, but would also need to go through an assurance process, and possibly regular auditing, to ensure that accurate data was reported. This is a substantial impost of time and cost.

Indeed, the proposed compliance obligations on unregistered MISs would appear to be greater than that imposed on Australian companies in some places.

The consultation paper does not adequately demonstrate why such a broad reporting obligation is necessary, nor why the expected regulatory benefits outweigh the compliance costs that would be imposed on industry.

In particular, the proposal would capture a wide range of wholesale-only investment structures and commercial arrangements, including schemes established for a limited number of (pre-identified) sophisticated institutional investors. These entities generally do not present the same investor protection considerations as retail-facing products and should not be subject to a reporting regime designed to address failures occurring elsewhere in the market.

These costs will ultimately be passed on to investors in the former of a higher cost of capital. Increasing cost of capital for developers will come at a time where the impacts of government changes to taxation, rising construction costs, rising interest rates and declining residential property markets are all impacting project feasibility and productivity more generally.

It is likely that this will have a material impact on residential construction – impacting housing at a time of constrained supply and falling sector confidence.

Regulatory tools and intelligence already available to ASIC

We note that ASIC already has substantial regulatory powers to conduct targeted surveillance and gather industry intelligence in a way that doesn't weigh down an entire industry with onerous quarterly reporting.

The consultation paper doesn't address why ASIC's existing powers are not sufficient to address these regulatory concerns. Specifically, Treasury should explain how these new obligations would have assisted ASIC in anticipating and intervening in respect of recent MIS failures.

While parts of the industry are facing challenging market conditions, these circumstances do not constitute evidence of a systemic failure within the MIS sector that would warrant the imposition of a sweeping new reporting framework.

Need for a risk-based and targeted approach

If Treasury is seeking to address specific risks within particular segments of the unregistered scheme market, it should identify those risks directly and tailor its regulatory response accordingly. The appropriate focus of regulation is the conduct, behaviours and warning signs that indicate potential harm, not broad categories of entities or structures that may be used by both compliant and non-compliant participants.

As the Property Council and PFA have consistently argued in previous MIS consultations, isolated instances of misconduct do not justify imposing additional obligations across an entire sector. Regulation should be risk-based, targeted and proportionate.

Absent a far clearer regulatory objective, and a much stronger connection between the data Treasury proposes for ASIC to collect and the specific supervisory outcomes it seeks to achieve, the proposal should be abandoned in its current form.

To the extent that Treasury proceeds with a more detailed reporting framework, the framework design should have regard to the characteristics of common MIS legal structures, and the relevance of collecting any particular data point for the focused regulatory outcomes the framework is intended to achieve.

For example, many schemes have multiple unit classes with different fee structures, benchmarks, asset allocations and gearing arrangements. If extensive data reporting is required, reporting at the scheme level may not always produce meaningful or accurate information. Reporting at the unit class level may be more informative but would likely result in an inappropriate level of reporting burden that would be disproportionately impact new market entrants, smaller REs, smaller fund managers that rely on professional trustees/REs, smaller professional trustees that may otherwise service a substantial number of schemes, and SMA operators (noting a single scheme may support numerous investment strategies). Similarly, where multiple schemes are stapled together with common investors, consolidated data for the stapled structure may provide more meaningful information than separate reports for each underlying stapled scheme.

ABS requirements and broad outlines of the MIS sector

We accept that there is an interest in collecting overall data on the size and scope of the MIS sector, from both a statistical and economic reporting perspective. However, the collection and use of this data by the ABS is a markedly different proposition from the collection and use of this data by ASIC.

For example, an annual requirement for any business that is, or controls, the responsibility entity or entities of more than 5 MISs (registered or unregistered) to provide aggregate data on the total number of MISs they manage, together with an unaudited estimate of total funds under management and / or the total value of their funds, would give sufficient information on the sector for statistical purposes.

Without the need for the production of individual, detailed financial and performance data or audit and assurance processes to avoid potential ASIC penalties if that data was incorrect, the regulatory burden on fund managers would be substantially lower. However, it should be considered whether such information adds anything substantive to existing ABS datasets.

Privacy and data collection

As ASIC is no doubt aware, data breaches have become commonplace in modern society.

Although ASIC currently handles a lot of data, much of it is not commercially sensitive; indeed a lot of the information collected by ASIC is made public.

This is not the case for some of the data ASIC is proposing to collect under this new regime. ASIC should provide greater clarity on how confidential and commercially sensitive information will be protected, particularly where public disclosure is contemplated.

Scheme-level data may reveal information about investment strategies, financing arrangements or commercial positions that would not otherwise be publicly available. The scope of public disclosure, aggregation of data and confidentiality protections should therefore be settled before industry can properly assess and support an expanded reporting regime.

The government should investigate ways to consolidate reporting of information

One key opportunity that has been made clear during this consultation is that there is considerable scope for governments to reduce regulatory burden by consolidating information collection across agencies and adopting a "report once, use many times" approach.

Businesses are often required to provide similar or overlapping information to multiple regulators, at both the state and federal level, even where that information is already held elsewhere within government.

This duplication increases compliance costs, diverts resources away from productive activity and can create inconsistencies when the same information is reported through different channels. A more coordinated approach would enable agencies to access and share relevant information already collected by government, reducing unnecessary reporting obligations while maintaining regulatory oversight.

The principle should be that, where data is required to be reported to multiple regulatory agencies, reporting to one agency should meet the obligation for all.

The introduction of any new reporting should also be accompanied by the removal of existing forms or returns that duplicate the same information. ASIC should specifically review whether existing MIS returns remain necessary and enable information already provided at registration or through other government reporting to be carried forward rather than re-entered. If notification is nevertheless introduced, the introduction of a unique identifier for unregistered schemes could assist with sharing and linking schemes across regulators and differentiate schemes with the same or similar names.

Listed MIS should not be subject to additional disclosure requirements

Before introducing additional data reporting requirements ASIC should consider where that data may already exist or where existing disclosure obligations already cover any relevant concerns.

In particular, it is unnecessary to impose additional reporting requirements on listed MIS, as they are already subject to substantial continuous disclosure obligations and periodic disclosure obligations under the Corporations Act.

Any information that investors require – or ASIC would need – to make an informed decision on their investments should be covered by the existing requirements. Rather than expecting listed MIS to curate and lodge a secondary data set with ASIC, ASIC should create a methodology for capturing data from existing disclosures.

Although this disclosure may not be in the form that ASIC would prefer, this should not justify additional disclosure obligations. Instead, it should be on ASIC to adapt its processes to use the data in the form that it is already provided.

Consultation Questions

In addition to the general points above, we wish to make the following observations regarding the specific consultation questions

Proposal 1

In principle, we support collecting additional information on registration of a MIS, provided that the data collected is sufficiently clear and concise and connected to the structure of the fund rather than speculative data about its expected operations or governance. It is also reasonable to expect REs to provide information regarding the structure of the MIS on registration, similarly to the information required to register a company, provided that the information is of a sufficiently general nature to be manageable in practice. For example, it would not be appropriate to require REs of contributory schemes to submit additional information each time a new unit class or syndicated sub-trust is established.

2. What additional data should be collected at registration?

Any additional information collected by ASIC at the point of registration should be limited to objective and verifiable information relating to the legal structure, governance and operation of the scheme as it exists at that time.

As Treasury notes, a MIS will typically not yet be operational at the time of registration. Information relating to matters such as expected leverage, anticipated liquidity profiles, prospective counterparties or future unit classes or sub-trusts is therefore inherently indicative, unverifiable, and subject to change. This makes it of extremely limited use given it is a projection only. Such information is unlikely to provide a sufficiently reliable basis for regulatory supervision or risk assessment at that stage of a scheme's lifecycle.

Similarly, forward-looking information regarding intended investment strategies, valuation approaches or potential investment activities reflects expectations rather than established facts. While these matters may evolve as a scheme develops, requiring responsible entities to disclose speculative or provisional information at registration is unlikely to provide ASIC with meaningful supervisory insights.

Conversely, it is also foreseeable that requiring such disclosure upfront could incentivise a fund manager to "stay the course" on positions disclosed to ASIC, rather than adapting its business strategy over time in the interests of all scheme members.

The rationale for collecting certain categories of information is also unclear. For example, the consultation paper proposes collecting information regarding investment strategies and ESG commitments. Treasury has not explained how this information would be used by ASIC, what regulatory purpose it would serve, or how it relates to the stated objectives of the review.

ASIC is not a prudential regulator, and it is not its role to assess the commercial merits, appropriateness or risk appetite of a scheme's investment strategy. Nor has Treasury established any supervisory justification for ASIC collecting information regarding environmental, social and governance commitments at the point of registration.

By contrast, requiring disclosure of objective information regarding the legal structure of a scheme would impose a relatively limited compliance burden while providing ASIC with information that is reliable, verifiable and capable of supporting legitimate regulatory functions. Expanding registration requirements to encompass extensive forward-looking or speculative information would create significantly greater compliance costs while offering limited supervisory value, particularly given the inherent uncertainty surrounding future operational decisions.

4. How should MISs keep this information up to date?
The expectation of MISs keeping this information current simply reinforces that the information to be collected should be limited to the legal and financial structure of the MIS. Updating ASIC on changes in investment strategy would be a significant burden, especially as it seems remote that ASIC will do anything meaningful with this data.

From a practical perspective, this would be a very difficult test to comply with, or to enforce, because there is often no bright line event which a fund manager can identify as constituting a change in investment strategy; rather, these events are gradual and cumulative in effect as the manager responds to continuous change in their business and market conditions. It must also be recognised that – given the commercially sensitive nature of information on investment strategy – it is highly unlikely that ASIC will collect meaningful or insightful responses.

By contrast, restructuring a MIS (or for example seeking an ASX listing) is typically a relatively rare event that could trigger an obligation to provide updated information to ASIC. Therefore, the obligation to update this data should be limited to structural changes to the nature of the MIS.

Proposal 2
There are significant concerns with a recurrent data collection regime. The burden of regular reporting is substantially higher than a once-off obligation on registration. Moreover, the data being sought is more substantial than on registration. We believe that a reporting regime that requires registered MIS to report to ASIC when they breach certain, pre-identified thresholds, and contains heightened disclosure only on those MIS is a more sustainable model, should Treasury wish to persist with this expanded data collection approach.

Registered schemes that have no retail investors should also be treated consistently with comparable unregistered wholesale schemes. Registration may occur for reasons unrelated to retail distribution (e.g. for reasons relating to stamp duty) and should not, of itself, result in a more onerous recurrent reporting obligation.

If recurrent reporting is nevertheless introduced, it should be annual, supplemented by prompt notification of defined significant changes, rather than quarterly reporting across all data fields. Relevant events could include a scheme becoming illiquid. This would provide more timely information about material risk while avoiding repeated reporting where nothing has changed.

5. Recurrent data collection; 7. What fields are most valuable for identifying risk
It is concerning that Treasury has started with a broad sweep of data across a range of categories, without specifying how these categories connect to regulatory oversight priorities, and sought feedback from industry on how to connect these categories with risks.

Instead, Treasury should start with a focused, limited data set with data points that clearly connect to identified risk factors for ASIC's regulatory oversight, and ideally have a clear list of factors that indicate where and when a MIS should be subject to heightened regulatory oversight.

Registered MIS are already subject to continuous disclosure obligations pursuant to s675(1)(b) of the Corporations Act, if the registered MIS is an 'unlisted disclosing entity', and s1017B of the Corporations Act if the registered MIS has less than 100 members.

Under ASIC Regulatory Guide 198 (Unlisted disclosing entities: Continuous disclosure obligations), the responsible entity of a registered MIS that is an unlisted disclosing entity, is not required to lodge any continuous disclosure notices with ASIC, if the responsible entity of the relevant MIS publishes the relevant notice on its website.

As a first step, Treasury should consider whether simply requiring continuous disclosure notices to always be lodged with ASIC would give ASIC sufficient information that further disclosure is not needed.

As noted above, simply collecting a wide variety of data from MISs will do little to improve oversight of the MIS sector, regardless of whether that data is collected quarterly or annually. Treasury should resist the temptation to mistake the quantity of data collected for the quality of its use in regulatory oversight. Indeed, there is a risk that the more data that is collected, the less useful it is.

Nor is there likely to be any meaningful benefit, at least in terms of oversight, in collecting qualitative data. The inability to directly compare qualitative data across MISs or even across periods renders its collection largely meritless.

Data intended for comparison or analysis should, wherever possible, be collected through numerical fields or defined selections rather than free text. If qualitative information is nevertheless required, fields such as strategy, objectives or ESG considerations should only be required where ASIC has identified a specific use for that information.

Another problem that is not contemplated by the consultation paper is that MIS exist across a range of different industries and the characteristics of the MIS will be heavily influenced by the types of assets they hold and the sector they invest in.

For example, MISs in the property sector likely have significantly less liquidity within the MIS than a similar MIS that invests in domestic equities, as real estate is a far less liquid asset than equities and, in general real estate transactions are far larger in size and happen less frequently.

This may mean that the data collected will lack the important context that may be necessary to understand changes. For example, if we take reporting against benchmarks, moving outside of benchmarks may be caused by market movements or revaluations outside of the control of the fund. In such circumstances many funds may trigger warnings at the same time.

Also, as noted above, funds with a higher portion of illiquid assets such as property funds, may take significantly longer to rebalance when market movements result in those funds being outside of benchmarks.

The proposed fields must also accommodate schemes with multiple unit classes. Unit classes may have different fees, benchmarks, asset allocations, hedging or gearing arrangements, meaning scheme-level reporting may be misleading. Reporting should accommodate schemes with multiple unit classes without requiring separate class level returns unless ASIC demonstrates that the additional information is necessary and proportionate.

Similar issues arise for stapled structures. Separate reporting for each underlying scheme may not present the most meaningful picture where the schemes have the same investor base and operate as a single stapled investment. The framework should permit consolidated reporting where that better reflects the economic structure.

Quarterly reporting may also be inappropriate for data that is not determined quarterly. Where property valuations are undertaken less frequently than quarterly, quarterly reporting may repeat stale information without improving ASIC's understanding of risk. Reporting frequency should reflect the frequency at which the underlying data is produced and can be meaningfully updated.

Moreover, if reporting on certain data fields on a quarterly basis results in increased risk of time consuming and expensive regulatory surveillance, industry may also design and manage its products to minimize risk. For example, again considering benchmark reporting, over time this may result in benchmarks being widened or removed, reducing the effectiveness of these internal portfolio management measures, or a shift in investment towards lower risk, lower return assets that are less likely to raise an institution's regulatory risk.

One starting point for identifying the correct data points would be for Treasury to undertake an analysis of MIS failures over the last 10 years and identify what commonalities exists between them. Treasury is far better placed to do this with input from ASIC than industry.

It would also significantly minimise the potential burden of these reforms if reporting was not required sector wide but only on an exception basis.

8 Is it possible for the RE of a MIS to report on the source of funds?
The MIS sector has the capacity to report on this information as anti-money laundering / know your client obligations would ensure that fund managers have this information, but it is unclear why this is beneficial from a regulatory perspective. For example, would a MIS that has a greater percentage of investment via a wealth manager have a higher or lower risk profile than one that takes funds from a SMSF?

This is also an example of ASIC's proposals overlapping with the compliance obligations imposed by other Australian regulators.

9. What are the barriers to this proposal
The proposal presents significant practical and implementation challenges, requiring substantial time and cost to establish and maintain systems to collect, validate and assure quarterly fund-level data.

One point, that we note does not appear to be contemplated by the discussion paper, is that any information lodged with ASIC will need to go through a thorough vetting and assurance process.

This process will be substantial and costly for many MIS, especially senior managers who may be required to sign-off on detailed disclosure information on a quarterly basis for a number of different funds.

ASIC does not disclose what penalties will apply for submitting incorrect information, or what process will be available for correcting inadvertent errors in data submitted.

Given that this is a completely new data collection regime, asking for data that has never been disclosed to ASIC before, by MIS that are currently not subject to significant disclosure requirements, there are likely to be substantial teething issues.

The consequences of non-compliance should therefore be carefully considered, with mechanisms to correct genuine errors and enforcement focused on material, repeated or deliberate non-compliance. An overly punitive regime risks encouraging defensive compliance and adding unnecessary cost.

Of particular concern is the prospect, in the event of a subsequently collapse or insolvency of a MIS, senior managers, directors or others may face substantial penalties for inadvertently false disclosures that were not found until after the insolvency of the MIS occurs.

While this disclosure regime is posited as a way to improve prospective actions by the regulator, allowing them to take action before a failure occurs, this may be wishful thinking in practice.

As the amount of data provided may exceed the reasonable capacity of ASIC to analyse it within a meaningful time, it is perhaps more likely that regulators or others will retrospectively analyse data provided by MIS that have already collapsed seeking to assign blame or retrospectively apply liability. This would be particularly concerning when it comes to subjective analysis of qualitative data.

However, whether industry has the capacity (from a capability or cost perspective) to adapt to new reporting requirements is, in many respects, a secondary consideration.

Implementation should allow sufficient time for information to be compiled, checked and approved. Reporting dates should align with when the relevant calculations and valuations are available and should not be concentrated with other major regulatory reporting deadlines. If manual entry into a portal is required, it should display the prior year's information and allow the responsible entity to confirm or update only the fields that have changed. The reporting system should also support bulk uploads using a standard template, particularly for larger organisations reporting across multiple schemes.

The more fundamental questions are why Treasury is seeking to capture data that goes materially beyond the existing reporting framework, and how the proposed data collection will improve regulatory and supervisory outcomes at a level commensurate with the negative impact on productivity from the production of the date by industry.

The consultation paper does not adequately answer either question.

As noted above, it is far from clear that ASIC has the capacity or expertise (or indeed the regulatory mandate) to review the data it is requesting in a timely manner.

The burden should rest with Treasury to establish a clear regulatory need for the information sought and demonstrate how its collection will address an identified regulatory risk or policy objective. It is not for industry to prove the absence of a need for additional reporting obligations.

Conclusion

We support a limited, targeted and clearly defined data collection regime, provided such a regime does not impose a substantial burden on industry and the data collected is used for a specific and identified purpose.

We would welcome the opportunity to engage further with Treasury on the design of a more targeted data collection regime. Please contact Simon Cowan, National Policy Manager – Capital Markets, at scowan@propertycouncil.com.au or Harry New - Secretary, PFA at harry.new@hallandwilcox.com.au to arrange a meeting.

Yours sincerely





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