Treasury's review of the managed investment scheme framework

PFA Master Class

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Australian Government
The Treasury

Review of the regulatory framework for managed investment schemes

Consultation paper

August 2023

Background

- Announcement by the Assistant Treasurer and Minister for Financial Services in March 2023
- Minister said we've seen significant failures in the industry over the past 20 years, including Sterling Income Trust, Trio Capital and Timbercorp
- Minister said it's time to see if the MIS regime:
  - Is fit-for-purpose
  - Has regulatory gaps
  - Could be changed to reduce undue financial risk for investors
- Treasury released a consultation paper in August 2023
- Consultation Paper acknowledges numerous previous reviews of the MIS regime

Key areas of inquiry

Topic	Some key questions
Wholesale client thresholds	• Should the current regime with 4 objective eligibility tests (based on product value, individual wealth, small business, or investor type (ie professional investor)) and 1 subject eligibility test (sophisticated client) be changed? • Do product value tests and individual wealth test assume investors understand the risks or could obtain financial product advice? • Should product value tests and individual wealth test be retained but thresholds increased? • Should the individual wealth test exclude certain assets (eg primary residence, super/pensions)? • Quality of Advice Review recommended everyone who meets the individual wealth test should give written consent to being treated as a wholesale client (ie the subjective test) – is this the correct approach and should it extend to all wholesale client tests?
Suitability of scheme investments	• Do consumers think scheme registration means ASIC has approved the commercial viability of the scheme or that ASIC monitors the scheme's viability? • Should some schemes not be available to be offered to retail clients because of particular complexity? • Should there be criteria which a scheme must satisfy in order to be registered with ASIC? For example, investible assets restrictions (eg limits on investments in hedge funds, use of leverage, or ownership of investments in one company), mandated percentage of minimum liquid investments, or mandated forms of vehicles use for retail offerings. • Is DDO and ASIC's product intervention power sufficient to monitor investment suitability, along with good PDSs?

Key areas of inquiry – *cont'd*

Topic	Some key questions
Scheme governance and the role of the responsible entity	• Post registration, should ASIC have the power to direct an RE to change a registered scheme's constitution so that it meets the minimum content requirements of the Act? Is winding up a scheme for non-compliance a blunt tool? • Should compliance plan auditors be required to meet any minimum qualitative standards under the Corporations Act when conducting the audit of the plan (as opposed to non-enforceable assurance standards)? • Should Res be required to have a majority of external board members, similar to the retail CCIV regime?
Right to replace the responsible entity	• Are the three types of resolutions available to listed and unlisted schemes in relation to voting on resolutions to remove the RE and appoint a new one too complex or set too high a bar? • Should break fees or other poison pills be banned? • Should an outgoing RE be required to actively assist a prospective RE to undertake due diligence on the role of, and risks associated with being, responsible entity before deciding to take it on?
Rights to withdraw from a scheme	• Is there a mismatch between consumers' expectations about liquidity (ie easy conversion to cash) and what the Corporations Act defines as scheme liquidity (eg taking 365 days to satisfy a redemption request)? • Should the Act be changed to specify an upper limit on the period for realising assets to satisfy a withdrawal request? • More generally, should the definitions associated with liquid assets and scheme liquidity be more prescriptive? For example, should liquid assets be defined as those assets able to realised are current market value within 7 days? Alternatively, should liquidity be defined by reference to whether investors can be fully redeemed frequently (eg monthly)? • If the rules are to change, should there be separate regimes for, say, securities funds and property funds, or open-ended funds and close-ended funds?

Key areas of inquiry – *cont'd*

Topic	Some key questions
Winding up 'insolvent' schemes	• Should there be a tailored insolvency regime for schemes, modelled in the existing company and CCIV insolvency regimes? • Should scheme members have statutory limited liability (except for those schemes where the RE is the member's agent)? • Should the regulatory gap between registered schemes and CCIVs be removed in this area? • Should there be differences between trust-based schemes and contract-based schemes?
Commonwealth and state regulation of real property investments	• Is there a regulatory problem for real estate investments of a scheme, where ASIC regulates the scheme as a financial product, but state/territory bodies regulate real property including tenancies?
Regulatory cost savings	• What opportunities are there to modernise and streamline the regulatory framework for managed investment schemes to reduce regulatory burdens without detracting from outcomes for investors? • Are there opportunities to improve MIS regulation through closer alignment with the CCIV regime?

Next steps? Timeline?

Consultation closes 29 September

PFA will be making a submission – PFA will send out to members an issues list on key questions

Other industry groups are likely to make a submission

Need to keep in mind other regulatory developments/review, including the Quality of Advice Review and the ALRC proposal to re-write the Corporations Act

ASIC's enforcement experience with DDO might be key

Questions?

Thank you

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