

- (b) not proprietary rights and no income in which a member has any interest is to be paid or worked out by dividing up a pool; or
- (c) used in common or pooled between joint tenants or tenants in common where:
 - (i) none of the tenants is the responsible entity or an associate of the responsible entity; and
 - (ii) each tenant is known to each other tenant before the offer to issue an interest is made.

Procedures for exercising a discretion

Valuation

- RG 134.108 Under [\[CO 13/657\]](#), responsible entities must meet certain requirements if they exercise a discretion that affects the determination or calculation of the:
- (a) consideration to acquire an interest; and
 - (b) withdrawal amount or removal in whole or part of liability of a member.
- Note: An example of a situation where removal of liability of a member occurs is where an interest is partly paid and withdrawal has the effect of terminating liability of the member for any future calls.
- RG 134.109 If a responsible entity exercises a discretion in relation to determining the value of scheme property, the method for calculating the value must:
- (a) be consistent with the range of ordinary commercial practice for valuing that type of asset; and
 - (b) produce a value that is reasonably current at the time of issue or withdrawal.
- RG 134.110 If the responsible entity exercises a discretion in relation to determining the market price of interests that are traded on a financial market, the method for calculating the price must:
- (a) be consistent with the ordinary commercial practice for determining the market price of interests of the same kind; and
 - (b) produce a market price that is reasonably current at the time of issue or withdrawal.
- RG 134.111 What is a 'reasonably current' valuation or market price will depend on the nature of the asset. However, we consider 'reasonably current' would generally be:
- (a) for a class of interests (of a listed registered scheme) that is traded, the price or an average price close to the time it is issued or the time an impending issue is announced. In our view, a market price from several

months before issue or announcement of the issue would not usually be 'reasonably current'; and

- (b) for other classes of interests in a registered scheme:
 - (i) on a daily basis, if the financial products held are traded on a market with regular daily transactions;
 - (ii) as determined within the last year or a longer period while the responsible entity determines that a current valuation would not be materially different where the assets held are non-liquid or thinly traded; and
 - (iii) when a reliable market price is available for an asset, based on the market price for the asset.

Note: The responsible entity must at a minimum conduct valuations at reasonable intervals appropriate to the relevant assets, unless an exemption applies (see s601FC(1)(j)).

Record keeping

- RG 134.112 Under [\[CO 13/657\]](#), a responsible entity must prepare and keep records relating to the exercise of discretions affecting the amount of consideration to acquire interests in a registered scheme, and payments for withdrawal. In particular, the responsible entity must prepare a document that includes:
- (a) a description of the formula or method that is applied to work out the consideration to acquire an interest;
 - (b) the circumstances in which the responsible entity may exercise the discretion;
 - (c) the policy the responsible entity will apply in exercising the discretion, and the date when the policy was formulated;
 - (d) what records the responsible entity will keep in relation to the exercise of the discretion; and
 - (e) if the exercise of the discretion is inconsistent with the ordinary practice of assets being valued or the market price of interests being determined, an explanation of why the responsible entity has been unable to follow ordinary practice.
- RG 134.113 Under [\[CO 13/657\]](#), the responsible entity must keep any policy that documents the exercise of a discretion for seven years after it ceases to be current. The responsible entity must ensure that the records it keeps under s988A are kept in a way that enables the exercise of the discretion to be identified.
- RG 134.114 A member or a person who is entitled to receive a PDS is also entitled to be given, free of charge, a copy of any policy that documents the exercise of a discretion by the responsible entity or nominee. The responsible entity must advise members of this right and include a statement to that effect in the