

## December 2009 E-Bulletin

### Draft managed investment scheme PDS regulations released

#### Draft regulations

Through Andrew Shearer-Smith's participation in the federal government's Industry and Consumer Advisory Panel, we have been keeping you up to date with the efforts of the Financial Services Working Group (which was established by the federal government to create shorter disclosure documents). The much anticipated draft regulations establishing the new disclosure regime for managed investment schemes (Regulations) have now been released for consultation. The consultation period ends on 26 February 2010.

Set out below are the key issues for property fund managers. The main point is that the Regulations, as they are currently drafted, will **not** apply to property funds. The commentary to the Regulations indicates that the consultation process will clarify which types of managed investment schemes will be included or excluded from the operation of the Regulations (in particular stapled securities), though the intention is only to cover basic or "vanilla" schemes.

This means there will now be two disclosure regimes for PDSs. One for vanilla schemes, which are caught by the Regulations and can only be six A4 pages in length, and the existing disclosure regime for all other managed investment schemes (including property funds). During meetings with the Financial Services Working Group, Andrew has been highlighting the difficulties that would be faced by property fund managers in complying with the proposed regime but the outright exclusion of property funds from the new regime was not expected.

This exclusion may cause issues from a marketing perspective for property fund managers. One can envisage difficulties selling a product which is explained in an 80 page PDS when competing with a product which has a PDS six pages in length.

#### Key issues:

- The Regulations will not cover property funds or agribusiness schemes.
- The Regulations will only apply to registered managed investment schemes which have at least 80 percent of their assets invested in "financial assets". Whilst "financial assets" is not defined, it is likely that property securities funds and diversified property funds with more than 80 percent of their assets invested in property securities will be caught.
- PDSs caught by the Regulations can only be six A4 pages in length.
- The Regulations mark a return to prescriptive content requirements for offer documents.
- Introduction of a new incorporation by reference regime for managed investment schemes caught by the Regulations.
- Documents incorporated by reference into a PDS will be deemed to have been given to potential investors at the time of providing the PDS. This puts the onus on the investor to access the information incorporated by reference and allays the concerns we have had that issuers could face increased liability under the new regime.

- PDSs caught by the Regulations can refer to “other information” (which can be posted on a website) which is not incorporated by reference.
- Differing liability regimes will apply for statements incorporated by reference and “other information” referred to in the PDS, but not incorporated by reference.
- Some of the form and content of the PDS is prescribed in the Regulations. A summary of those requirements is as follows:
  - Table of contents.
  - Telephone number of the responsible entity for the registered managed investment scheme (which can be used to request a hardcopy of the PDS, including incorporated information).
  - Statement advising that the PDS is a summary of key information and it contains a number of references to other important information, and that consumers should consider that information before making a final decision to invest in the product.
  - A warning that information provided in the PDS is general information only and does not take account of a person’s financial information or needs.
  - An express recommendation that a person should obtain financial advice pertaining to the person’s personal circumstances.
  - Section one — “about the responsible entity”.
  - Section two — the “how to invest” section.
  - Section three — the “benefits of investing” section.
  - Section four — the “risks” section.
  - Section five — “how we invest your money”.
  - Section six — the “fees and costs” section.
  - Section seven — “how managed investment schemes are taxed”.
  - Section eight — the “how to apply” section.

## Next steps

We will be making a submission to the Financial Services Working Group on behalf of the Australian Direct Property Investment Association however, if you have any comments or questions in relation to the proposed Regulations, then please feel free to contact us.

Copies of the Regulations can be found [here](#). If you have any other comments or questions, then please email [andrew.shearer-smith@mcmahonclarke.com](mailto:andrew.shearer-smith@mcmahonclarke.com) or call 07 3239 2915.

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