



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 136

# Managed investments: Discretionary powers and closely related schemes

Related instruments [CO 98/55], [CO 98/58], [CO 98/59], [CO 98/60], [CO 98/61], [CO 98/62], [CO 98/63], [CO 98/64], [CO 98/65], [CO 98/66], [CO 98/67], [CO 98/68], [CO 98/69], [CO 98/70], [CO 98/71], [CO 98/72], [CO 98/74], [CO 98/75], [CO 98/76], [CO 98/77], [CO 98/78], [CO 98/79], [CO 98/80], [CO 98/81], [CO 98/82], [CO 98/83], [CO 98/84], [CO 98/85], [CO 98/100], [CO 98/101], [CO 99/557], [CO 00/1067], [CO 00/1087], [CO 00/1714], [PF 71], [PF 96], [PF 97], [PF 143], [PF 176], [PF 177], [PF 178], [PF 179], [PF 180], [PF 181], [PF 182]

**Part 5C.11 — Exemptions and modifications**  
**s601HH(3) and 331AC — Consenting to resignation of auditors**

**Part 5C.5 — The compliance committee**  
**s601ED(3) — Closely related schemes**

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*From 5 July 2007, this document may be referred to as Regulatory Guide 136 (RG 136) or Policy Statement 136 (PS 136). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 136.1) or their policy statement number (e.g. PS 136.1).*

## What this guide is about

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In order to gain a full understanding of our policy in this area you should read all the parts of this guide, including the Underlying Principles and the Explanations.

RG 136.1 This guide gives you guidance on:

- A** when we have given and when we will give you relief from the Law on managed investment schemes;  
*see RG 136.2–RG 136.29*
- B** which of our regulatory guides, class orders and pro formas still apply to managed investment schemes;  
*see RG 136.30–RG 136.66*
- C** when we will give you an extension of time to establish or reconstitute a compliance committee; and  
*see RG 136.67–RG 136.81*
- D** when we will regard schemes as so closely related that they should be aggregated in determining if some exemptions for small schemes apply.  
*see RG 136.82–RG 136.89*

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## **A Exemptions and modifications**

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### **Our policy**

RG 136.2 We will consider giving relief to address atypical or unforeseen circumstances and unintended consequences of the Law relating to managed investment schemes.

### ***Foreign schemes***

RG 136.3 We have given relief to enable a scheme that is not registered to operate if no offers or issues of interests have been made in Australia, other than excluded offers or issues. See [CO 98/58].

### ***Transitional relief for one party schemes***

RG 136.4 We have modified s1455–1461 when there is no separate trustee because of an exemption given before the Managed Investments Act commenced. See [CO 98/59]. This means that the provisions on retirement notices and the consequences of receiving them do not apply.

### ***Voting by interested members***

RG 136.5 If any resolution is required under Chapter 5C (including resolutions required by Part 5C.7 in applying Part 3.2A), we will consider case by case relief so resolutions can be passed when all the members are disqualified by s253E. See [PF 176].

### ***Investing in unregistered schemes***

RG 136.6 We have given relief so interests can be acquired in pooled custody arrangements that are unregistered schemes when:

- (a) the responsible entity is liable for the acts and omissions of the custodian as if they were acts or omissions of the responsible entity; and
- (b) the custodian, subject to the general law other than any contract with the custodian, deals in the scheme property only on the directions of the responsible entity or those of its agents.

See [CO 98/55].

RG 136.7 We have given relief so a responsible entity can invest in an unregistered scheme that:

- (a) is operated by the Crown, or

(b) is under an approved deed because the transitional provisions still apply to the unregistered scheme.

See [CO 98/55].

RG 136.8 We have given relief so that a responsible entity can keep an interest in an unregistered scheme where disposing of the interest would reduce the value of the scheme property (other than due to ordinary transaction costs). The interest may only be kept when you can reasonably foresee an opportunity to dispose of the interests with less loss. See [CO 98/55].

### ***Protecting class rights***

RG 136.9 We have given relief so that a modification of a constitution or a new constitution that may adversely affect the rights of a class of members, can only be made by a special resolution if any requirements of the constitution to protect class rights are met. See [CO 98/60]. This means that a modification can only be lodged with us after any steps specified in the constitution are taken to protect the interests of that class.

### ***Excluded issue schemes***

RG 136.10 We have given relief so that a scheme does not have to be registered when all interests on issue were issued as excluded issues. See [CO 98/61]. Our relief only applies if all the members have agreed that the scheme does not have to be registered.

### ***Business matching services***

RG 136.11 We have extended the relief available under Regulatory Guide 129 *Business matching services* (RG 129) (see [CO 97/2329]) in relation to managed investment schemes (see [CO 98/62]). Our relief means that you will not need a prospectus if you make 20 offers of interests in registered schemes in 12 months in addition to offers made through the business matching service.

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#### **How to apply for relief**

- Lodge your application with the prescribed fee at any ASIC Regional Office
- Make sure your application complies with Regulatory Guide 51 *Applications for relief* (RG 51)
- Applications are not needed if a class order applies

You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

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### ***Individual representatives as external members***

RG 136.11A We have given relief so that an individual who is a management company, trustee or representative is not taken to have been substantially involved in business dealings, or in a professional capacity, with a responsible entity because before the scheme was registered they acted as the management company, trustee or representative of a prescribed interest undertaking of which the responsible entity was the other body: see [CO 98/1805].

### ***External directors and compliance committee members***

RG 136.11B We have given relief so that a person is not taken to have been substantially involved in business dealings, or in a professional capacity, with a responsible entity because they are an external director of a related body corporate or a member of a compliance committee of a registered scheme operated by a related body corporate: see [CO 98/1806].

### ***Registration of schemes in each jurisdiction***

RG 136.11C We have modified the Law so that it is clear that a company incorporated in any Australian state or territory may be the responsible entity of a scheme registered under the Corporations Law of each Australian state and territory. See [CO 99/557]. This is for the avoidance of any doubts that arise about a responsible entity incorporated in one jurisdiction meeting the requirements for registration under the Law of each other jurisdiction.

### ***Differential fee arrangements***

[*Historical note:* RG 136.11D–RG 136.11E inserted 11/9/2000.]

RG 136.11D We have given relief from s601FC(1)(d) under Class Order [CO 00/1714] so that a responsible entity can:

- (a) charge, rebate or waive management fees (including entry, exit and ongoing fees) as individually negotiated with sophisticated and professional investors (that is, members who acquired their interests in response to offers to which s708(8) and s708(11) would apply if the scheme were registered at the time of the offers); and
- (b) enter into banding and tiering fee arrangements with all members.

See RG 136.29K–RG 136.29M for conditions of this relief.

RG 136.11E Where an entry fee is to be individually negotiated, relief from s601GA(1)(a) is needed and may be available under [CO 98/52]: see Regulatory Guide 134 *Managed investments: Constitutions* at RG 134.20.

## Underlying principles

### ***Avoiding unintended consequences***

RG 136.12 When considering relief we will assess whether or not:

- (a) strict compliance with the Law would be impossible or disproportionately burdensome;
- (b) people acquiring or holding interests in a scheme would still have the protection that they were intended by Parliament to have; and
- (c) there would be commercial benefit to the parties to the scheme.

## Explanations

RG 136.13 We expect to receive applications from responsible entities and others asking us to exercise our discretion under s601QA. When giving relief we will be careful to avoid changing the intended policy underlying the Law.

RG 136.14 If you want to apply for relief, refer to Regulatory Guide 51 *Applications for relief* (RG 51). This gives you general guidance on how to apply for relief and what information we need to consider your application.

RG 136.15 We assess if relief is appropriate in light of any conditions that would apply if we give the relief.

RG 136.16 If possible and appropriate, we will give relief by class orders so that you do not have to apply for it.

RG 136.17 We may modify the Law by imposing additional obligations or restrictions. For example, s601QA says that we may require a custodian. We can give exemptions and modifications even though we have not had any application for them. We can determine that additional requirement to those set out in s784(2)(a) to (d) and s784(2A) apply under s784(2)(e). The requirements must be met by an applicant for authorisation to operate managed investment schemes. See Superseded Policy Statement 131 *Managed investments: Financial requirements* at [SPS 131.8].

RG 136.18 We have decided to continue applying some of our policies on prescribed interest schemes. Therefore, we have given exemptions and modifications to continue those policies. See Part B of this guide at RG 136.30.

### ***Foreign schemes***

RG 136.19 Section 601ED(5) generally prohibits unregistered schemes from operating inside and outside Australia: s110D. Schemes may be regarded as being operated in Australia even if they are primarily operating outside Australia. Some unregistered schemes operating in Australia only have foreign investors and investors that have received excluded issues. The operation of these schemes without registration is not likely to adversely affect confidence in Australian financial services and will not reduce the investor protection for Australians that the Law intends. Therefore we have given relief in [CO 98/58] so these schemes can operate.

### ***Transitional relief for one party schemes***

RG 136.20 We consider that the transitional provisions apply to a scheme even if it was exempted from all of Div 5 of Pt 7.12: see Regulatory Guide 135 *Managed investments: Transitional issues* at RG 135.54. Even when there was an exemption in relation to a scheme from all of Div 5, it can be said that Div 5 applied to prescribed interests in the scheme before the Managed Investments Act commenced (although specified people would have been exempted).

RG 136.21 We consider it is appropriate for the transitional provisions to apply in a modified way when there is no separate trustee and management company because of relief we gave before the Managed Investments Act commenced on 1 July 1998. Therefore, we have given relief so that a meeting does not have to be convened. A meeting may be unnecessary because you may intend to rely on any exemption under s601QA. However, you may convene a meeting to consider:

- (a) registering the scheme;
- (b) winding-up the scheme; or
- (c) allowing another person to be chosen as the responsible entity.

The relief has been limited from 25 May 2000 to exclude trustee common funds which now have the benefit of alternative relief under [CO 00/1067]: see RG 135.25B.

[*Historical note:* RG 136.21 was amended 11/9/2000 by inserting the last paragraph.]

### ***Voting by interested members***

RG 136.22 You cannot vote if you have an interest other than as a member: s253E. Your associates cannot vote either if they have interests other than as a member: s253E. This prevents conflicts of interest. However, if all members are disqualified and cannot pass a resolution they may all be adversely affected. Therefore, we will consider case-by-case relief allowing resolutions to be passed.

### ***Investing in unregistered schemes***

RG 136.23 It is arguable that some custody arrangements, particularly omnibus accounts when there is pooling, may be “schemes”. However, we believe that pooled custody systems used for holding scheme property are better regulated as part of the scheme’s property arrangements rather than as an investment by the scheme regulated by s601FC(4). This is consistent with the position that the custodian takes the role of an agent of the responsible entity for liability purposes. The use of pooled custody arrangements is subject to the Law. In particular, a responsible entity must:

- (a) hold scheme property separately from its assets and those of other schemes unless we have given relief from that requirement; and
- (b) have a compliance plan in place.

These requirements are discussed in Regulatory Guide 133 *Managed investments: Scheme property arrangements* (RG 133).

RG 136.24 The transitional provisions allow a registered scheme in relation to which there was an approved deed on 30 June 1998 to invest in schemes that have an approved deed under the transitional provisions: s1454(4). We have given relief to allow all registered schemes to make these investments.

RG 136.25 The provisions regulating prescribed interests were part of Chapter 7 before the Managed Investments Act commenced. Chapter 7 does not bind the Crown (s15(2) Corporations [Name of State] Act). We consider that the Crown is not subject to Chapter 5C although it has no express immunity from Chapter 5C. We consider that Chapter 5C is not likely to apply to the Crown because of the:

- (a) legislative history; and
- (b) immunity that continues to apply from disclosure regulation and from licensing requirements under Chapter 7.

Therefore, unregistered schemes may be operated by the Crown. The Crown can raise funds by way of non-excluded offers of interests in



those schemes. It is not appropriate to prohibit investments by registered schemes in unregistered schemes operated by the Crown. They should not be prohibited when the investors in the registered scheme could have invested directly in the Crown's scheme.

RG 136.26 You cannot “keep” an interest in an unregistered scheme: s601FC(4). However, sometimes interests that are sold off quickly do not reach a good price. Therefore, we do not consider that this prohibition should trigger an obligation to immediately dispose of interests. For example, a responsible entity should not have to immediately dispose of interests if the scheme loses its registration. We believe that there should be a reasonable period for sale to prevent avoidable losses.

### ***Protecting class rights***

RG 136.27 A responsible entity must act fairly towards members of each class of interest. However, members may requisition a meeting and pass a special resolution that adversely affects class rights. Our relief means that a constitution can protect the rights of members of a class. For example, a constitution may require that a specified majority of the members of a class approve a resolution before a copy of a modification by special resolution is lodged. A modification is not effective until a copy of it is lodged with us.

### ***Excluded issue schemes***

RG 136.28 If all members were issued their interest by excluded issue, a scheme should not be required to be registered. This applies even though former members may have taken a non-excluded issue. Registration should be required unless all members agree. This is because existing members will have invested on the basis the scheme would be regulated.

### ***Business matching services***

RG 136.29 Chapter 5C applies only when interests are issued by non-excluded issue. Therefore, relief from Chapter 5C is not necessary to facilitate business matching services. Making offers of interests does not make registration necessary. We have given relief in [CO 97/2329] from the prospectus requirements so that 20 offers of securities other than prescribed interests can be made in 12 months in addition to offers through the business matching service. Extending this relief to interests in registered schemes is consistent with the amendments to s66(2)(d) and 66(3)(d).

***Individual representatives as external members***

RG 136.29A At RG 135.61A we set out our view that s1464 applies equally to officers and employees of a representative of a prescribed interest undertaking as it does to officers and employees of a trustee or management company. However, a representative may be an individual and so may themselves be appointed to a compliance committee or board. We consider that s1464 was intended to prevent a person being ineligible as an external member merely for their involvement with, or so far as relevant, as, the body other than that which becomes the responsible entity. Accordingly, we have modified s1464 so that an individual who is one of the bodies referred to in s1452(1) (typically an individual “representative” of a scheme) is not excluded from being an external member or external director merely because of things they did in the role before the scheme’s registration: see [CO 98/1805].

***External directors and compliance committee members***

RG 136.29B A person can be an external member of a compliance committee even though they are an external director or member of another compliance committee of a registered scheme operated by the responsible entity: s601JB(4). As holding a directorship of, or membership of the compliance committee of a registered scheme operated by, a related body corporate is not likely to lead to any greater risk of loss of manifest independence, these circumstances should not cause loss of external director or member status. This is consistent with s601JB(2)(a) which provides that only external directors are eligible as external members of a compliance committee.

***Registration of schemes in each jurisdiction***

RG 136.29C A managed investment scheme that is required to be registered may not be operated in a jurisdiction unless it is registered in that jurisdiction: s601ED(5), s8(5)(ixa). Under s9, unless the contrary intention appears, references in the Law of a jurisdiction to a company or a public company mean a company incorporated in that jurisdiction. We have given relief to provide certainty that, for the purposes of Ch 5C, references to a company or public company are to a company incorporated in any jurisdiction: see [CO 99/557]. To remove any doubt the relief also provides that any schemes registered by ASIC before Class Order [CO 99/557] was issued are taken to be registered in all jurisdictions. We take any application for registration under s601EB as an application for registration under the Law of each jurisdiction.

## ***Differential fee arrangements***

[Historical note: RG 136.29D–RG 136.29P inserted 11/9/2000.]

RG 136.29D Under s601FC(1)(d), a responsible entity must treat investors in the same class equally. In our view, this prohibits a responsible entity from charging fees to a member of one class that differ from those charged to another member of the same class based on:

- (a) characteristics of the member (eg the amount they have invested in the scheme); or
- (b) individual negotiation between the member and the responsible entity.

RG 136.29E We consider that this applies equally whether the difference in fees arises by way of different charges, or as a result of waivers or rebates. Paragraph 601FC(1)(d) does not apply to an intermediary waiving its own commission.

RG 136.29F We recognise that these fee arrangements are a means by which responsible entities attract large investors to a scheme. Such arrangements may deliver cost savings to all investors through the adoption of more efficient scheme structures. Therefore, we have given relief from s601FC(1)(d) under Class Order [CO 01/50].

RG 136.29G Under this relief, fee arrangements that involve individual negotiation may only be entered into with persons who are sophisticated, or professional investors. Sophisticated or professional investors are more likely to be able to negotiate a reduced fee. If they are not able to do so, they may avoid the relevant scheme. Allowing individual negotiation for these investors may advantage other investors through economies of scale.

RG 136.29H By restricting individual negotiation to limited classes of sophisticated or professional investors, we have minimised the risk to other investors who will not adequately protect their interests by individually negotiating reductions. Allowing individual negotiation of fees with all investors would reduce the incentive to keep standard fee rates competitive so as to attract additional investment, resulting in higher standard rates for these investors.

RG 136.29I However, under [CO 01/50] certain differential fee arrangements may be offered to all members, that is fees:

- (a) at a rate specified by reference to the total amount invested by the investor (or an investor and their relatives or associates). For example, an investor with a large amount to invest would be

charged fees at a lower percentage rate than an investor with a smaller amount (“tiered fees”); and

- (b) on the basis of “bands” that offer equal access by all investors to differential fee rates based on the amount of interests held inside particular bands. For example, the fee for the first \$100,000 invested would be 2%, whereas the fee for any amount over that would be 1%.

RG 136.29J Fees that apply to members on a transparent basis (ie banding or tiered fee arrangements rather than individual negotiation) are likely to be set at a level that is not unreasonably high to attract investment. In this case, investors can consider if the fee they will pay is reasonable given the fees others will pay.

RG 136.29K Under the conditions of [CO 01/50] relief only applies to fee arrangements:

- (a) disclosed to:
  - (i) existing members of the scheme; and
  - (ii) persons being offered interests in the scheme under a disclosure document; and
- (b) that do not adversely affect the fees that any other member will incur.

RG 136.29L Adequate disclosure of fee arrangements includes stating:

- (a) the basis upon which fees are payable to the responsible entity and the basis upon which rebates or waivers of fees are available. This will involve stating any formula for tiering or banding, and where fees may be individually negotiated, that fees may be negotiated with certain large, sophisticated or professional investors; and
- (b) the types of fees that are eligible for reduced fee scales, individual negotiation, rebate or waiver.

RG 136.29M The responsible entity must notify existing members of the scheme about its fee arrangements (as set out in RG 136.29L) no later than the next general communication it makes to members other than any communication within two months of the date of [CO 01/50].

RG 136.29N We consider that these conditions are important and reasonable safeguards for protecting investors and informing them of fee arrangements which might otherwise be perceived as unnecessary and unfair, and thus undermine the credibility of managed

investments. We have allowed the responsible entity to include the notification in a communication that it would undertake anyway (and allowed 2 months for printing and planning lead times). The responsible entity will not have to incur the costs of a mailout that was not otherwise planned.

RG 136.29O In some circumstances discounted fee arrangements for related parties may be used to provide incentives for effective performance by officers and employees. We have given relief in relation to one scheme to allow a differential fee arrangement to apply to employees of a related body corporate of the responsible entity of a scheme and their relatives where:

- (a) the number of employees as a proportion of all members in the scheme was insignificant (and therefore unlikely to materially affect other members in voting or takeover); and
- (b) the differential fee arrangement involving the waiver of entry and exit fees did not impact on the scheme to the disadvantage of other members of the scheme.

RG 136.29P We will consider applications for relief to allow differential fees for employees or officers on a case by case basis having regard to these matters. Applications should include proposals for disclosing such fee arrangements.

*[Historical note: RG 136.29D–RG 136.29P inserted 11/9/2000.]*

## **B Applying pre Managed Investments Act policies**

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### **Our policy**

#### ***Continuing policies***

RG 136.30 We will apply the policies we had before the Managed Investments Act commenced where the Law before 1 July 1998 still applies to a scheme.

RG 136.31 We will also apply the policies we had before the Managed Investments Act, to schemes which the Law from 1 July 1998 applies to, if:

- (a) the changes made to the Law by the Managed Investments Act do not affect our original reasons for our relief; and
- (b) we consider our policy does not need reviewing before relief is given from Chapter 5C.

RG 136.32 When policies provide for relief, it will be available on the same terms as before 1 July 1998, as far as practicable. However, necessary or incidental changes will be needed to reflect the changed Law.

RG 136.33 The policies released before 1 July 1998 which still apply are listed in Table 1 under “Explanations” at RG 136.46.

#### ***Interim relief***

RG 136.34 For some schemes, we have issued new instruments which continue giving equivalent relief to that we gave before 1 July 1998. However the new instruments initially will only give relief until 1 July 2002. Interim relief has been given to:

- (a) managed discretionary accounts operated by members of Sydney Futures Exchange (see [CO 92/1015], now see [CO 00/196]);
- (b) foreign collective investment schemes (see Superseded Policy Statement 65, *Foreign collective investment schemes* [SPS 65], and [PF 71]);
- (c) participating property syndicates (see Regulatory Guide 77 *Property trusts and property syndicates* (RG 77) and [CO 95/820], now see [CO 98/64]); and

- (d) asset-backed securities under at [SPS 55.123] onwards and for the schemes referred to at [SPS 55.128A] onwards. See [CO 98/55]. The interim relief will allow new investments to be made and old investments to be kept in such schemes even though they are not registered.

### ***Superseded policies***

RG 136.35 Some policies we released before the Managed Investments Act commenced are not relevant to schemes regulated as managed investment schemes, eg because of the repeal of the statutory covenants under s1069(1). These policies are listed in Table 2 under “Explanations” at RG 136.56.

#### **Cattle breeding**

RG 136.36 Our policy on cattle breeding schemes in Superseded Policy Statement 85 [SPS 85] no longer applies.

#### **Commercial horse breeding**

RG 136.37 Our policy on commercial horse breeding schemes in Regulatory Guide 91 *Horse racing and breeding schemes* (RG 91) (as reflected in [CO 97/1135] or [CO 97/1137]) will not apply under the Law from 1 July 1998.

RG 136.38 We will not give relief under s601QA in the form of [CO 91/475] (relating to certain horse breeding syndicates).

#### **Options**

RG 136.39 We will not allow option holders to be excluded from voting. This changes our policy that applied before the Managed Investments Act commenced when we allowed them to be excluded in limited cases: see Superseded Policy Statement 55 *Covenants in deeds* at [SPS 55.145] onwards.

#### **Consent to auditor’s resignation**

RG 136.40 We will apply Regulatory Guide 26 *Resignation of auditors* (RG 26) when consenting to resignations of auditors of managed investment schemes or compliance plans other than in relation to the time resignations are expected to take effect.

RG 136.41 We expect that auditors’ resignations will take effect one month after their audit report is lodged with us unless exceptional circumstances are shown. This differs from our policy in RG 26 which

states that resignations must take effect from the next annual general meeting unless there are exceptional circumstances. We will use:

- (a) [PF 177] when consenting to an auditor of the compliance plan resigning; and
- (b) [PF 178] when consenting to an auditor of the scheme resigning.

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### **How to apply to resign as auditor**

- Lodge your application with the prescribed fee at any ASIC Regional Office
- Ensure your application includes the reasons for applying and the other relevant information required by Regulatory Guide 26 *Resignation of auditors* (RG 26)
- For quicker processing, use the form available at any ASIC Regional Office

You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

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## **Underlying principles**

### ***Minimising disruptions***

RG 136.42 We want to minimise any unnecessary disruptions to schemes just because the Law changed when the Managed Investments Act commenced. Therefore, we have considered which policies we can retain so that your scheme can operate under the same conditions as applied before the Law changed.

### ***Exemptions and modifications***

RG 136.43 We consider that our policies about relief issued before 1 July 1998 remain relevant when:

- (a) there is an appropriate co-regulatory arrangement; or
- (b) there is an appropriate alternative regulatory regime; or
- (c) the schemes do not involve investments (eg interests not issued for money referred to in Regulatory Guide 80 *Managed investment schemes—interests not for money* (RG 80)); or
- (d) the schemes are small scale private arrangements; or
- (e) members of the schemes are in a position where they do not require regulatory protection.



## ***Preserving an auditor's independence***

RG 136.44 When considering an auditor's resignation our overriding concern is to preserve the independence and integrity of the audit function.

## **Explanations**

### ***Continuing policies***

RG 136.45 Exemptions which we gave before 1 July 1998 still apply. However, exemptions from Division 5 of Part 7.12, including under s1069(3), do not operate after a scheme is registered.

RG 136.46 We consider that the policies in the following table should continue with only necessary or incidental modifications. They should continue to apply because the grounds for these policies continue to be valid.

**Table 1: Continuing policies**

<b><i>Type of scheme of relief</i></b>	<b><i>Policy before Managed Investments Act</i></b>	<b><i>New relief</i></b>
Horse racing syndicates	[SPS 20], [CO 92/327]	[CO 98/65]
Charities and school enrolment deposits	RG 87, [CO 94/1702], [CO 94/1703], [PF 96], [PF 97], [CO 95/464]	[CO 98/66], [CO 98/67], [PF 96], [PF 97], [CO 98/68] (schools)
Friendly societies covered by Code	[CO 97/1615]	[CO 98/69]
Private horse breeding schemes	RG 91, [CO 97/1136], [CO 97/1138]	[CO 98/70], [CO 98/71]
Private ostrich schemes	RG 112, [CO 97/6]	[CO 98/72]
Lloyds	RG 56, [CO 98/1127]	Class order to be issued
Film and show royalties	RG 80, [CO 95/1799]	[CO 98/74]
Film investment schemes	RG 19, [CO 92/260]	[CO 98/75]
Prescribed interests not for money	RG 80, [CO 95/1798]	[CO 98/76]
Service trusts	RG 56.88 onwards	
Employee share and option contribution plans	RG 49.57	
Limited partnerships	RG 41	
Trustee common funds relief from holding meetings and application forms	RG 32.18, RG 32.21–RG 32.23, [PF 3]	[CO 98/77]

<i>Type of scheme of relief</i>	<i>Policy before Managed Investments Act</i>	<i>New relief</i>
Rounding in accounts	[CO 97/1006]	[CO 98/100]
Uncontactable members	[SPS 55.93]	[CO 98/101]
Investments in unregistered schemes for small, exempt or foreign investments	[SPS 55.117] onwards, [PF 40]	[CO 98/55]
Member discretionary master funds — disclosure	[SPS 94]	
Disclosure for property trusts prospectuses	[SPN 64] (although references on that practice note to statutory covenants will no longer be relevant)	
Small property syndicates	RG 77, [CO 95/821]	[CO 98/78]
Policies about disclosure relief generally		
Additional investments in managed investments schemes	RG 127, RG 56	[CO 98/79], [CO 98/80], [CO 98/81], [CO 98/82], [PF 143]
Regular savings plans and prescribed interest schemes	RG 27	[CO 98/83]
Applications relating to multiple schemes	[SPS 55.135] onwards, [PF 43]	[CO 98/84]
Pathfinder prospectuses	[SPS 8]	[PF 182]
Applications made in New Zealand	[SPS 55.131] onwards	[CO 98/85]

### **Common funds**

*[Historical note: RG 136.46A–RG 136.46G inserted 11/9/2000.]*

RG 136.46A We consider that wholly internal common funds are not managed investment schemes. In these common funds none of the clients make decisions about the investment being made in the common fund, and the trustee places the investment in the common fund within its discretion. Internal common funds involve money held by a trustee under estates and other private trust arrangements.

RG 136.46B However, where any part of a common fund is invested at the direction of a client rather than at the discretion of the trustee, such a common fund is likely to be a managed investment scheme. This conclusion applies whether the investment is made as part of an existing trust arrangement or as a result of investments specifically made on the basis that they will be held in the common fund.

RG 136.46C We consider that the exemptions relating to prescribed interest provisions for intrastate common funds under the laws of Western Australia, South Australia and the Northern Territory do not apply in relation to Chapter 5C of the Law. Such schemes are therefore required to comply with the managed investments provisions of the Law.

RG 136.46D We have modified s601GC of the Law as it applies to common funds so that it is consistent with modifications made under the old Law in Regulatory Guide 32 *Trustee companies common funds* (RG 32): see [CO 00/1087].

RG 136.46E The trustee of a common fund can modify or repeal and replace a constitution where the responsible entity reasonably considers that the changes are in the best interests of members and not inconsistent with its duties to any individual member of the scheme. The responsible entity must provide ASIC with a certificate to this effect when lodging a copy of the modification or the new constitution.

RG 136.46F Common funds may give financial benefits to related parties when the responsible entity reasonably believes that the giving of the financial benefit is in the best interests of members and not inconsistent with its duties to any individual member of the scheme.

RG 136.46G We allow the responsible entity these discretions because common funds involve pooling of assets held under individual trusts. It is therefore inappropriate for the majority of members to make decisions that bind the minority, for example, a decision at a meeting of members to approve amendments to the constitution or related party financial benefits. The responsible entity is empowered to act in the best interests of members to ensure that decisions can be made when the best interests of members demand it. In making decisions, the responsible entity must consider not only its duties to members generally, but its duties to each individual member. Such duties to an individual member may arise under the terms of issue of the interests.

[*Historical note:* RG 136.46A–RG 136.46G inserted 11/9/2000.]

RG 136.47 If we exempt a person from Chapter 5C when operating a scheme, we do not consider that all offers and issues of interests in the scheme will be excluded offers and issues under s66(2)(da) and s66(3)(da). This is because the exemption does not affect whether s601ED requires a scheme to be registered. It merely exempts a person from liability for non-compliance with s601ED(5) if they operate an unregistered scheme that must be registered.

### ***Interim relief***

RG 136.48 In the cases set out in RG 136.51–RG 136.55, we are only giving interim relief until 1 July 2002 as we wish to have additional time to review our policy. Although we are reviewing these policies, we believe that the policies in relation to those cases that we released before 1 July 1998 give investors adequate protection in the interim period. We expect that we will still give relief after our review, although it may be on different terms.

RG 136.49 [Deleted]

RG 136.50 We will give reasonable notice of what transitional arrangements will apply when the interim relief expires. When reviewing policy changes, we will consider the position of existing schemes and schemes established during the interim period.

### **Managed discretionary accounts operated by SFE members**

RG 136.51 We consider that our relief should continue to facilitate managed discretionary accounts operated by members of Sydney Futures Exchange Limited (SFE) (see [CO 92/1015], now [CO 00/196]). However, the terms of this relief will be reassessed in consultation with SFE and interested parties. The purpose of the review is to assess whether any changes to the present regulatory mechanisms would be desirable. The review may also cover the operation of managed discretionary accounts by other licensees.

### **Foreign collective investment schemes**

RG 136.52 Superseded Policy Statement 65 *Foreign collective investment schemes* [SPS 65] relies on a comparison of regulatory mechanisms and standards in other jurisdictions. This analysis needs to be reviewed in light of the Law from 1 July 1998. We do not have the power to exempt a responsible entity of a foreign collective investment scheme that is a registered scheme from keeping a register of all members of the scheme, including foreign members. Therefore, we cannot give the relief provided for in SPS 65 which allows the register to be limited to only Australian members. We will, however, take no enforcement action if a responsible entity fails to include foreign members on the register kept in Australia.

### **Participating property syndicates**

RG 136.53 We will review the relief for participating property syndicates (see Regulatory Guide 77 *Property trusts and property syndicates* (RG 77)). We will assess whether the relief needs to be as

detailed or whether it could be modified to more closely reflect the regulatory approaches in the Law from 1 July 1998.

### Debt-like interests relief

RG 136.54 We have given similar relief on an interim basis to that we gave before 1 July 1998 to allow new investments to be made and existing investments to be kept in unregistered schemes for:

- (a) asset-backed securities at [SPS 55.123] onwards; and
- (b) debt-like schemes referred to at [SPS 55.128A] onwards.

RG 136.55 We have given this interim relief set out at RG 136.54 because we consider that there should be a policy review before we offer indefinite relief. The reason for the relief given before 1 July 1998 was partly because of the difficulties in adapting such investments to the structure required by Div 5. These difficulties may not be relevant under the Law from 1 July 1998. However, we consider that it is likely there will still be some question about the cost-effectiveness of requiring compliance with the Law, especially because the schemes only involve specialised debt-like structures. It would be unreasonable to exclude such investments on an interim basis and they are unlikely to be inconsistent with the policy underlying s601FC(4).

### ***Superseded policies***

RG 136.56 The following table sets out which policies do not apply to schemes regulated as managed investment schemes. They will not be relevant because of changes made to the Law by the Managed Investments Act.

**Table 2: Superseded policies**

<i>Type of scheme or relief</i>	<i>Policy before 1 July 1998</i>
Incorporated Associations	[CO 93/1063]
Friendly societies not covered by the Code	[CO 93/640]
Trustee common fund relief generally (other than in relation to meetings and voluntary investors)	[SPS 32]
Trustee relief from Chapter 6 (relief for nominees not affected)	[SPS 88]
Property trusts and syndicates generally	[SPS 77]
Primary production schemes	[SPS 82]
Film and theatrical schemes	[SPS 84]

<i>Type of scheme or relief</i>	<i>Policy before 1 July 1998</i>
Relief for covenants in deeds except as stated otherwise in this policy or in relation to issue price see [SPS 134.20]	[SPS 55]
Secondary sales	[SPS 105.67]–[SPS 105.69]
Implied covenants	[SPN 11]
Fees relating to umbrella deeds at [SPN 58.29] onwards	[SPN 58]
Approval of trustees	[SPS 89], [SPS 90]
Access to prescribed interest registers	[SPS 63]
Reciprocal trade exchanges	[SPS 111]

### Controlled sub-trusts

RG 136.57 We do not consider that controlled sub-trusts under [SPS 55.118] onwards are schemes because the members, ie the responsible entity as trustee, have day-to-day control over the sub-trust. Relief like that given under [SPS 55.118] onwards is not necessary. We consider that any property held through a controlled sub-trust is scheme property of the registered scheme that controls the sub-trust. Therefore, we will regard the sub-trustee of a controlled sub-trust as a custodian which must comply with our standards and requirements for custodians set out in RG 133.

[*Historical note:* RG 136.57 amended 1/11/2000 by inserting the last sentence.]

### Cattle breeding

RG 136.58 The Australian Registered Cattle Breeders' Association Incorporated ceased to be lead regulator on 30 June 1998. Therefore, our policy on cattle breeding schemes in Superseded Policy Statement 85 *Cattle breeding schemes* [SPS 85] no longer applies.

### Commercial horse breeding

RG 136.59 We will not apply our policy on commercial horse breeding schemes in RG 91 under the Law after 1 July 1998. This policy was based on commercial difficulties in applying the structure required by Div 5. These difficulties have not been demonstrated to apply under the Law from 1 July 1998.

RG 136.60 We will not give relief to the horse breeding syndicates to which [CO 91/475] applies. We indicated in RG 91 that this relief was under review. The conditions of the relief required a guardian to play a role like a trustee or representative and do not reflect the regulatory approaches of the Law from 1 July 1998.

## Options

RG 136.61 Section 253F provides an appropriate mechanism for assessing the weighting of votes of option holders to reflect their actual economic interest. Option holders should be entitled to vote to the extent that they have an economic interest at stake. Our policy under [SPS 55] provided for the trustee or representative to determine if specified criteria for excluding option holders from voting apply. Because the criteria involve matters of judgment, giving this discretion to the responsible entity may create a conflict of interest. Therefore we will not give relief allowing option holders to be excluded from voting as set out at [SPS 55.145] onwards. However, if a responsible entity considers that our policy should not apply in particular circumstances they may seek relief.

## Auditors — consent to resignation

RG 136.62 This policy is about how we will consider consenting to an auditor resigning. It is not about how we will consider applications from a responsible entity to remove an auditor. We will consider such applications on case by case until we publish our policy.

RG 136.63 RG 26 relates to auditors of companies rather than schemes or compliance plans. However, similar considerations arise and our consent to resign is required by the Law for the same reason. Therefore, we will use RG 26 as far as possible.

RG 136.64 There are distinctions between companies and schemes. A company's auditor is appointed by the members and the auditor for a scheme or compliance plan by the responsible entity. However, this does not imply that independence of audit of schemes is less important.

RG 136.65 Schemes have no annual general meeting. However, it is important that auditors:

- (a) complete their audit for each financial year; and
- (b) hold office when they lodge their report and send it to members. They also need to hold office after reporting so they can answer any questions.

RG 136.66 For this reason, we consider that auditors' resignations should take effect one month after lodging audit reports unless there are exceptional circumstances. This will also minimise the risk of pressure being placed on auditors to resign if they are likely to produce an adverse report.

## C Compliance committees — extensions of time

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### Our policy

RG 136.67 We will give you more time to establish a compliance committee or to fill vacancies on a compliance committee if you can demonstrate that:

- (a) there are exceptional circumstances that justify relief; or
- (b) it is impractical to comply with the Law (other than due to your default).

RG 136.68 We will give an extension of time in:

- (a) [PF 179] when the compliance committee is to be established; and
- (b) [PF 180] when new members are to be appointed.

Extensions will be given only for a specified period and for as long as appears necessary.

RG 136.69 We will not give relief just because of the cost of finding appropriate members. We will give extensions in limited cases of necessity when any reduction in investor protection is minimised.

RG 136.70 You should apply promptly after it appears that an extension is likely to be necessary. We may, however, extend the time after the end of the 14 day period.

RG 136.71 You should tell us what substitute compliance monitoring will be carried out during any significant extensions of time.

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### How to apply for an extension of time

- As early as practicable lodge your application with the prescribed fee at any ASIC Regional Office
- Set out in your application why there are exceptional circumstances or why it is impracticable to comply with the Law. Also set out why we should give you an extension
- Set out how long an extension you want
- Describe any substitute compliance monitoring proposed

You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

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## Underlying principles

RG 136.72 It is important that vacancies in the external members of a compliance committee are filled quickly so that investor protection is not reduced. Similarly if at least half of the directors are not external, a compliance committee should be established quickly. This is because a compliance committee with a majority of external (and therefore independent) members gives investors protection by regularly monitoring compliance.

## Explanations

RG 136.73 A compliance committee must be established within 14 days of scheme registration: s601JA(3). Similarly, if the number of external directors in the compliance committee drops below half, new appointments must be made within 14 days: s601JB(5).

RG 136.74 We will not ordinarily extend this 14 day period. There will be costs associated with finding appropriate external compliance committee members. However, this is an intended cost associated with establishing appropriate investor protection and you should factor it into budgets at an early stage.

RG 136.75 We are not likely to give an extension of time to establish a compliance committee when you are registering a scheme. You should not apply for registration unless you are in a position to establish a board or compliance committee immediately your scheme is registered.

RG 136.76 When you need to constitute or reconstitute the compliance committee after your scheme is registered, we recognise that it may be impracticable to find suitable compliance committee members within 14 days. For example, on the sudden death of an external member of the board or compliance committee, compliance with the 14 day deadline may be impracticable. It may be especially difficult for smaller specialised business schemes and schemes based in remote locations. Similarly, when multiple vacancies occur in a compliance committee we recognise that compliance is more likely to be impracticable. We recognise that sometimes efforts to comply within 14 days may lead to unreasonable and unintended costs.

RG 136.76A The Law imposes significant restrictions on who may be an external member of a compliance committee or the board. We currently consider that a member of a compliance committee must be a natural person. Further, an external member must not be, and may not within the previous 2 years have been, substantially involved in business dealings, or in a professional capacity, with the responsible

entity or a related body corporate: s601JB(2)(c). These restrictions, among others in s601JB(2) reflect the importance for investor protection and credibility of regulation for there to be oversight by persons that are manifestly independent.

RG 136.76B The reference to “substantial involvement” means, for example, that a person who is employed by an entity that has had business dealings or a professional relationship with the responsible entity or a related body corporate of the responsible entity would not be excluded as an external member or director merely because they have had a trivial involvement with the dealings or relationship. Further, we consider the term “substantial” qualifies the degree of an individual’s involvement rather than the nature of the business dealings or professional relationship. The provisions should not be interpreted as meaning involvement in substantial business dealings.

RG 136.76C For example, the following persons are likely to be substantially involved in business dealings, or in a professional capacity, with the responsible entity:

- (a) an employee of the auditor of the responsible entity who, has a decision making responsibility in relation to audits of the responsible entity, or, may be exposed to any form of conflict of interest in acting as a compliance committee member because of involvement with the audits;
- (b) an employee or officer of a custodian for the responsible entity who, has had a decision making responsibility in relation to the dealings between the custodian and the responsible entity, or, may be exposed to any form of conflict of interest in acting as a compliance committee member because of their involvement in the business relationship with the responsible entity; or
- (c) a solicitor who is responsible for legal advice provided to the responsible entity.

In addition, a member of a partnership which has a substantial involvement is also not eligible as an external member: s601JB(2)(c).

RG 136.76D As the requirements for being external are intentionally strict and designed to ensure the unambiguous appearance of independence, as well as actual independence, we will not generally grant relief that has the effect of allowing a person who may not be external to be counted as external. We will not generally give relief on the basis of submissions that:

- (a) there is no actual conflict of interest, for example, a partner of a firm of solicitors who has no business dealings with the

responsible entity in the case where the firm has substantial involvement in business dealings with the responsible entity; or

(b) there are difficulties in finding alternative candidates.

However, difficulty in finding alternative candidates may be relevant to an application for an extension of time: see RG 136.67 ff.

RG 136.76E We have provided related relief to allow the following to be counted as external in some circumstances:

- (a) a person who was formerly the representative in relation to a prescribed interest undertaking operated by the responsible entity (see RG 136.11A); and
- (b) a director of, or member of a compliance committee of a registered scheme operated by, a related body corporate of the responsible entity (see RG 136.11B).

We will also consider case by case relief to allow an individual who is a representative or an officer or employee of a trustee or representative to be counted as external in some circumstances even though the trustee or representative remains in office in relation to a scheme of which the responsible entity is the management company: see RG 135.36A.

RG 136.77 We will consider giving conditional relief if you are doing all you reasonably can to appoint a person to the vacancy.

RG 136.78 We will consider if any reduction in investor protection can be minimised. Therefore, when applying for an extension, you should indicate what steps you will take to offset the loss of independent monitoring during that time.

RG 136.79 We want to minimise resource implications for us by discouraging inappropriate applications. However, we want to be flexible and apply the Law reasonably.

RG 136.80 Staffing difficulties and the functions and efficacy of compliance committees in practice will be better understood after experience with the Law from 1 July 1998. Therefore, we may be able to give more guidance in light of that experience.

## **Further examples**

RG 136.81 An example of substitute compliance monitoring is more involvement by external auditors.

## D Closely related schemes

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### Our policy

RG 136.82 We will make a determination that schemes are closely related under s601ED(3) when it appears to us that any of the following circumstances apply.

- (a) The schemes are promoted by different persons but the circumstances and the similar nature of the schemes indicate that the promoters are likely to be associated.
- (b) The businesses or activities of the schemes are similar, the schemes form part of a systematic promotion and there is doubt about whether the schemes fit within s601ED(1)(a) or (b). This doubt may arise because:
  - (i) the interests being offered relate to separate pools or common enterprises and might not all be part of one scheme; or
  - (ii) the schemes might not have been promoted as a business because the necessary regularity may be absent.
- (c) The schemes are:
  - (i) so similar that the one prospectus might reasonably relate to offers of interests in the schemes; and
  - (ii) structured as separate schemes because it means that the offers are “excluded offers” because no more than 20 offers will be made in 12 months for each scheme.

RG 136.83 We will use [PF 181] to make determinations under s601ED(3).

### Underlying principles

RG 136.84 Section 601ED(3) is an anti avoidance mechanism to prevent promoters avoiding the registration requirement by structuring their offerings as separate schemes each having less than 20 members but which in aggregate have more than 20 members. It also provides a way for us to prevent promoters from relying inappropriately on the 20 offers in 12 months exclusion by calculating the 20 offers separately for each separate but related scheme.

## Explanations

RG 136.85 Schemes with more than 20 members must be registered: s601ED(1)(a). We consider that a managed investment scheme can exist when contributions from different groups are pooled or used in a common enterprise as part of a plan. We consider that a scheme can exist even if groups of investors or the promoters derive their financial benefits in different ways or participate in separate pools or common enterprises. We may determine that closely related legal structures are closely related schemes to give certainty even when the structure may be part of the one scheme.

RG 136.86 A scheme must also be registered if it is promoted by a person who is in the business of, or whose associate is in the business of, promoting managed investment schemes: s601ED(1)(b). We can determine that schemes are closely related and can require schemes to be registered when their total membership is over 20: s601ED(1)(c) and 601ED(3).

RG 136.87 In *ASC v Su* 17 ACSR 94, a number of trusts were excluded from regulation as prescribed interest schemes. In *ASC v Su* each trust had less than the relevant number of members to trigger regulation but formed part of the one scheme with more than the relevant number of members. Section 601ED(1)(a) is likely to avoid the outcome in that decision. The test in the Law for registration relates to the number of members of the scheme rather than each trust that may be part of a scheme.

RG 136.88 We make determinations under s601ED(1)(c) to:

- (a) prevent avoidance by having separate promoters offering similar schemes;
- (b) provide certainty when there are questions whether s601ED(1)(a) or (b) apply because it is not clear if:
  - (i) closely related common enterprises or pools may form part of one scheme; or
  - (ii) the promoters are in the business of promoting schemes; or
- (c) prevent use of the 20 offers in 12 months exclusion in s66(2)(d) when it is inappropriate. We think it is inappropriate to rely on that exclusion if the one prospectus could cover the relevant schemes in a cost effective way, but schemes have been established separately for avoidance purposes. We will infer avoidance purposes unless you give us a reasonable alternative explanation.

RG 136.89 We will act with procedural fairness in relation to each promoter before making a determination. However, we consider that we have been given the power to make determinations so that we can make an expeditious decision. We are not bound by the rules of evidence in considering a determination.

## Key terms

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[*Historical note:* RG 136.90 was amended 11/9/2000 by inserting a definition for “common funds”.]

RG 136.90 In this guide, a reference to:

“common funds” means common funds where trustee companies are empowered to pool money, notwithstanding that the money may be held on individual trust, by virtue of one or more of the following state or territory Acts:

- (a) *Trustee Companies Act 1984 (Vic)*
- (b) *Trustee Companies Act 1964 (NSW)*
- (c) *Trustee Companies Act 1988 (SA)*
- (d) *Trustee Companies Act 1968 (Qld)*
- (e) *Trustee Companies Act 1987 (WA)*
- (f) *Trustee Companies Act 1953 (Tas)*
- (g) *Companies (Trustee and Personal Representatives) Act 1981 (NT)*
- (h) *Trustee Companies Act 1947 (ACT)*

“Managed Investments Act” is to the *Managed Investments Act 1998*;

“reg 7.12.15(1)(g)” (for example) is to the Corporations Regulations;

“RG 26” (for example) is to an ASIC regulatory guide (in this example numbered 26);

“s782” (for example) is to a section of the Law;

“scheme” is to a managed investment scheme;

“[SPS 55]” (for example) is to a superseded ASIC policy statement (in this example numbered 55);

“the Law” is to the Corporations Law.

## Related information

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RG 136.91

### Headnotes

Managed investments schemes, exemptions, modifications, s601QA, foreign schemes, one party schemes, unregistered schemes, voting, associates, managed discretionary accounts, participating property syndicates, auditor resignation, extensions of time, 14 days of scheme registration, death of external member of board, reduction in investor protection, closely related schemes, aggregation, 20 members, ordinary business, 20 offers.

### Class orders and pro formas

[CO 98/55], [CO 98/58], [CO 98/59], [CO 98/60], [CO 98/61], [CO 98/62], [CO 98/63], [CO 98/64], [CO 98/65], [CO 98/66], [CO 98/67], [CO 98/68], [CO 98/69], [CO 98/70], [CO 98/71], [CO 98/72], [CO 98/73], [CO 98/74], [CO 98/75], [CO 98/76], [CO 98/77], [CO 98/78], [CO 98/79], [CO 98/80], [CO 98/81], [CO 98/82], [CO 98/83], [CO 98/84], [CO 98/85], [CO 98/100], [CO 98/101], [CO 99/557], [CO 00/1067], [CO 00/1087], [CO 00/1714], [PF 71], [PF 96], [PF 97], [PF 143], [PF 176], [PF 177], [PF 178], [PF 179], [PF 180], [PF 181], [PF 182]

### Policy statements and practice notes

Superseded Policy Statement 20 *Horse racing syndicates* [SPS 20]

Superseded Policy Statement 27 *Regular savings plans and prescribed interest schemes* [SPS 27]

Superseded Policy Statement 55 *Covenants in deeds* [SPS 55]

Superseded Policy Statement 66 *Time-sharing schemes* [SPS 66]

Superseded Policy Statement 82 *Covenants in deeds — non-mining primary production schemes* [SPS 82]

Superseded Policy Statement 84 *Covenants in deeds — film and theatrical schemes* [SPS 84]

Superseded Policy Statement 89 *Trustees and representatives — approvals for prescribed interest schemes* [SPS 89]

Superseded Policy Statement 90 *Related party trustee approvals* [SPS 90]

Superseded Policy Statement 94 *Member discretionary master funds — disclosure* [SPS 94]

Superseded Policy Statement 105 *Secondary trading of unquoted securities* [SPS 105]

Superseded Policy Statement 111 *Reciprocal trade exchanges* [SPS 111]

Superseded Policy Statement 112 *Participation interests involving the sale, agistment, husbandry and breeding of ostriches* [SPS 112]

Superseded Policy Statement 131 *Managed investments: Financial requirements* [SPS 131]

Superseded Practice Note 11 *Trust deeds — implied covenants* [SPN 11]

Superseded Practice Note 64 *Disclosure for property trusts prospectuses* [SPN 64]

### **Regulatory guides**

RG 19 *Film investment schemes*

RG 21 *Discretionary powers application fees*

RG 26 *Resignation of auditors*

RG 32 *Trustee companies common funds*

RG 41 *Limited partnerships fundraising*

RG 49 *Employee share schemes*

RG 56 *Prospectuses*

RG 63 *Access to debenture and prescribed interest registers*

RG 77 *Property trusts and property syndicates*

RG 80 *Prescribed interests not for money*

RG 87 *Charities*

RG 88 *Trustee and nominee companies*

RG 91 *Horse breeding schemes*

RG 127 *Additional investments in managed investments schemes*

RG 129 *Business matching systems*

RG 130 *Managed investments: Licensing*

RG132 *Managed investments: Compliance plans*

RG 133 *Managed investments: Scheme property arrangements*

RG 134 *Managed investments: Constitutions*

RG 135 *Managed investments: Transitional issues*

### **Legislation**

s110D Part 3.2A, Div 5 of Part 7.12 s1069, s1455, 1456, 1457, 1458, 1459, 1460, 1461, 253E, 253F, 601QA, 601FC, 601ED, 66, reg 7.12.04, 601JA, 601JB, 1069A

### **Cases**

*ASC v Su* 17 ACSR 94

### **Consultation papers**

*Licensing a responsible entity*

*Financial requirements of a responsible entity*

*Compliance plans for managed investment schemes*

*Scheme property arrangements*

*Constitutional issues*

*Transitional issues*

*Exemptions and modifications*

### **Information releases**

[IR 98/9], [IR 98/10], [IR 99/18]