



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 45

Mortgage schemes— improving disclosure for retail investors

September 2008

About this guide

This is a guide for responsible entities, compliance committees, compliance plan auditors, valuers, publishers and others involved with the issue or advertising of interests in mortgage schemes.

It sets out ASIC's benchmarks for improved disclosure to retail investors to help them understand and assess these schemes, while maintaining the flexibility of the public fundraising process.

It also sets out the standards we expect responsible entities and publishers to meet when advertising mortgage schemes that are offered to retail investors.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This version was issued on 2 September 2008 and is based on legislation and regulations as at 2 September 2008.

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Contents

A	Overview	4
	Benchmarks for unlisted mortgage schemes	4
	Disclosure against the benchmarks—‘If not, why not’	5
	Advertising standards for all mortgage schemes.....	6
	Who does this guide apply to?	7
	What is the timing?	8
	Underlying principles	9
B	The unlisted mortgage scheme sector	11
	Business models of mortgage schemes.....	11
	Risks to investors.....	12
C	Benchmarks for unlisted mortgage schemes	14
	Benchmark 1: Liquidity	14
	Benchmark 2: Scheme borrowing	16
	Benchmark 3: Portfolio diversification	17
	Benchmark 4: Related party transactions.....	19
	Benchmark 5: Valuation policy	20
	Benchmark 6: Lending principles—loan-to-valuation ratios	21
	Benchmark 7: Distribution practices	22
	Benchmark 8: Withdrawal arrangements	23
D	Disclosure against the benchmarks—‘If not, why not’	26
	‘If not, why not’ approach.....	26
	How to apply the benchmarks	26
	Updating existing investors.....	27
	Disclosure in a PDS.....	28
	Ongoing disclosure	31
E	Advertising standards for all mortgage schemes	34
	Standards for advertisements.....	34
	Warning statements generally	37
	How ASIC deals with contraventions.....	38
	The role of publishers and the media	38
F	Compliance plans	40
	The compliance plan.....	40
	Compliance committees	41
	Compliance plan auditors	42
	Key terms	43
	Related information	45

A Overview

Key points

ASIC has developed 8 benchmarks for unlisted mortgage schemes that can help retail investors understand the risks, assess the rewards being offered and decide whether these investments are suitable for them: see RG 45.1–RG 45.5.

Responsible entities of unlisted mortgage schemes in which retail investors invest should address the benchmarks in their disclosures on an ‘if not, why not’ basis: see RG 45.6–RG 45.7.

ASIC has also set standards for advertising of all mortgage schemes (whether listed or unlisted) to retail investors: see RG 45.8–RG 45.10.

Those involved with mortgage schemes (e.g. compliance committees, compliance plan auditors and valuers) should use the benchmarks and the ‘if not, why not’ explanations in carrying out their responsibilities: see RG 45.14–RG 45.15.

Benchmarks for unlisted mortgage schemes

- RG 45.1 Since mid-2007, Australia has experienced debt market turbulence flowing from the US sub-prime crisis, together with successive interest rate increases and a cyclical softening in property markets. Some mortgage schemes have experienced financial stress under these economic conditions, evidenced by a decrease in fund inflows and extensions of withdrawal periods or suspensions of withdrawals.
- RG 45.2 In this context, ASIC considers that the requirement to provide retail investors in mortgage schemes with the information they need to make an investment decision requires, at a minimum, disclosure against key benchmarks.
- RG 45.3 ASIC has developed 8 benchmarks that apply to all unlisted mortgage schemes in which retail investors invest: see Table 1 and Section C of this guide. We expect the benchmarks to be followed (as applicable) and if not followed, explained on an ‘if not, why not’ basis: see Section D. We also expect any advertising to support the use of these benchmarks: see Section E.
- RG 45.4 Failing to meet one or more of these benchmarks does not mean that a particular mortgage scheme is necessarily a poor investment. However, additional disclosure to investors will be needed to address that benchmark on an ‘if not, why not’ basis so that investors can assess its impact on their investment decision.

- RG 45.5 The benchmark approach to disclosure for unlisted mortgage schemes is an extension of the approach we took for debentures in Regulatory Guide 69 *Debentures—improving disclosure for retail investors* (RG 69). We consider that this model is also suitable for unlisted mortgage schemes because:
- (a) some features and risks of mortgage schemes are similar to features and risks of mortgage debentures (e.g. liquidity management and loan portfolio diversification are important considerations for both products);
 - (b) the underlying assets of mortgage schemes are usually relatively illiquid, which can affect an investor’s ability to withdraw from the scheme; and
 - (c) being unlisted means that there is no liquid secondary market on which an investor can sell an investment.

Table 1: Benchmarks for unlisted mortgage schemes in which retail investors invest

1. Liquidity (pooled mortgage schemes only)	Benchmark 1 addresses the scheme’s ability to satisfy withdrawal requests and other operational commitments.
2. Scheme borrowing	Benchmark 2 addresses the scheme’s policy on borrowing.
3. Portfolio diversification (pooled mortgage schemes only)	Benchmark 3 addresses the scheme’s lending practices and portfolio risk.
4. Related party transactions	Benchmark 4 addresses the risks associated with related party lending, investments and transactions.
5. Valuation policy	Benchmarks 5 and 6 address the scheme’s property-related lending and valuation practices.
6. Lending principles— loan-to-valuation ratios	
7. Distribution practices	Benchmark 7 addresses the transparency of the scheme’s distribution practices.
8. Withdrawal arrangements	Benchmark 8 addresses the transparency of the responsible entity’s approach to withdrawals of investments.

Disclosure against the benchmarks—‘if not, why not’

- RG 45.6 Responsible entities of unlisted mortgage schemes in which retail investors invest should address the benchmarks in their disclosures on an ‘if not, why not’ basis: see Section D of this guide. This means stating that the scheme either:
- (a) meets the benchmark; or
 - (b) does not meet the benchmark *and* explaining how and why the responsible entity deals with the business factors or issues underlying the benchmark in another way.

- RG 45.7 Disclosure against the benchmarks should be:
- (a) addressed upfront in the Product Disclosure Statement (PDS);
 - (b) updated in ongoing disclosures as material changes occur (e.g. in a supplementary PDS or continuous disclosure notice); and
 - (c) supported in, and not undermined by, advertising material.

Responsible entities may also choose to update disclosures against the benchmarks in other materials (e.g. monthly or quarterly fund updates).

Advertising standards for all mortgage schemes

- RG 45.8 Experience indicates that retail investors who are thinking about investing place particular emphasis on the information and impressions given in advertisements. Some of the advertisements we have observed for mortgage schemes have not given a realistic impression of the scheme, its features and risks.

Note: References to ‘advertisements’ in this guide should be read broadly. They include comment on and promotion of mortgage schemes in media programs or publications (generally known as ‘advertorials’) and statements about mortgage schemes published by responsible entities on their websites that are intended to promote the scheme to retail investors. They do not, however, include statements in a PDS.

- RG 45.9 To promote investor understanding of mortgage schemes and minimise the risk of mis-selling, ASIC has set standards for responsible entities when advertising their mortgage schemes: see Table 2 and Section E of this guide. These standards apply to all mortgage schemes (whether listed or unlisted) that are offered to retail investors.
- RG 45.10 While the primary responsibility for advertising material rests with the organisation placing the advertisement, under general law the publisher or other media conduit may also have some responsibility for its content. Therefore, we expect publishers and the media to support these standards when accepting advertisements for mortgage schemes.

Table 2: Advertising standards for mortgage schemes (whether listed or unlisted)

Area	Summary of standard
Repayment of principal investment	To avoid common misconceptions about the risk profile of mortgage schemes, all advertisements for mortgage schemes that are offered to retail investors should include a prominent statement to the effect that investors risk losing some or all of their principal investment.
Returns on investment and investment ratings	<p>Advertisements for mortgage schemes should only quote returns if the return is accompanied by prominent disclosure that there is a risk that the investment may achieve lower than expected returns.</p> <p>Advertisements for mortgage schemes should only quote investment ratings if the rating is properly explained and does not create a misleading impression about the scheme. The advertisement should state that investment ratings are only one factor that investors should consider when deciding whether to invest.</p>

Area	Summary of standard
Comparisons with bank deposits and 'risk free' suggestions	<p>Advertisements for mortgage schemes should state that a mortgage scheme is not a bank deposit. They should <i>not</i> suggest that:</p> <ul style="list-style-type: none"> • a mortgage scheme is, or compares favourably to, a bank deposit; or • there is no or little risk of the investor losing their principal or not being repaid.
Withdrawal periods, withdrawal rights and investment periods	<p>Advertisements for mortgage schemes that refer to withdrawal periods, withdrawal rights or investment periods should include details of any restrictions on withdrawal that might apply.</p>
Fees	<p>Advertisements for mortgage schemes that state the amount of a fee (or that a type of fee is not payable) should include details of any circumstances in which a higher fee applies (or in which the fee is payable).</p>
Suitability statements	<p>Advertisements for mortgage schemes should not state or imply that the scheme is suitable for a particular class of investor.</p>
Consistency with PDS disclosure	<p>Statements in advertisements for mortgage schemes should be consistent with the corresponding disclosures on that subject matter in the PDS.</p>
Telephone inquiries	<p>Statements made in response to inquiries are subject to the same regulation about misleading and deceptive conduct as the advertisements.</p>

Who does this guide apply to?

- RG 45.11 For the purposes of this guide, a 'mortgage scheme' is a managed investment scheme that has or that is likely to have at least 50% of its non-cash assets invested in mortgage loans and/or unlisted mortgage schemes. Mortgage loans are loans secured by a mortgage over real property (including residential, commercial, industrial or retail property or vacant land).
- RG 45.12 We expect responsible entities of unlisted registered mortgage schemes in which retail investors invest directly or indirectly (e.g. through an investor directed portfolio service) to follow the disclosure benchmarks as discussed in Sections C and D of this guide.
- RG 45.13 We expect responsible entities of both listed and unlisted registered mortgage schemes to follow the advertising standards in Section E.
- RG 45.14 We expect other parties involved with issues of interests in unlisted registered mortgage schemes or advertisements for registered mortgage schemes generally to support the principles in this guide. This includes compliance committees, compliance plan auditors, valuers, publishers and media.
- RG 45.15 For example, we expect compliance plans for mortgage schemes to set out adequate measures to ensure compliance with the disclosure and advertising standards in this guide: see Section F.

What is the timing?

RG 45.16 Responsible entities of unlisted mortgage schemes should disclose against the benchmarks in any PDS dated on or after 30 November 2008. We also expect responsible entities to refer to the benchmarks in their ongoing disclosures from that time.

Note 1: We encourage responsible entities to disclose against the benchmarks in new PDSs before 30 November 2008 if possible.

Note 2: Responsible entities of contributory mortgage schemes that provide an investor with a supplementary PDS for the investor's mortgage loan may deal with the benchmarks in the supplementary PDS.

RG 45.17 By no later than 30 November 2008, responsible entities of existing unlisted mortgage schemes should have addressed the benchmarks on an 'if not, why not' basis in updated disclosure that is brought to the attention of their existing investors see RG 45.93–RG 45.95.

RG 45.18 By no later than 30 November 2008, if an existing PDS is still in use, responsible entities should:

- (a) include the benchmark disclosure information on a website referred to in the PDS (if the omission of benchmark disclosure information from the PDS is not materially adverse); or
- (b) update the PDS by a new or a supplementary PDS so that it includes the benchmark disclosure information.

Note: If the omission of benchmark disclosure information from a PDS dated before 30 November 2008 is not materially adverse, responsible entities may be able to rely on Class Order (CO 03/237) *Updated information in product disclosure statements* to update the PDS by providing this information on a website referred to in the PDS: see RG 45.106–RG 45.107.

RG 45.19 From 30 November 2008 to 31 January 2009, we will review updated investor disclosures for each responsible entity in this industry sector to check that this benchmarking information is adequately disclosed to investors on an 'if not, why not' basis.

RG 45.20 During this period, we will also:

- (a) work with responsible entities to ensure that the benchmarks and our disclosure expectations are understood;
- (b) discuss any concerns we have with a responsible entity's disclosure with them and, where necessary, require additional disclosure (e.g. about the practical impact of not following a particular benchmark and the associated risks for investors);
- (c) discuss any concerns we have about the financial position and performance of a mortgage scheme with the responsible entity; and
- (d) conduct surveillance visits as needed to reinforce our disclosure expectations.

RG 45.21 For all listed and unlisted mortgage schemes, responsible entities should comply with the advertising standards from the publication date of this guide.

Table 3: Timetable for implementing improved disclosure

Date	Action(s)
From publication date of this guide	Responsible entities for all listed and unlisted mortgage schemes should comply with the advertising standards in this guide.
By 30 November 2008	Responsible entities for existing unlisted mortgage schemes should report against benchmarks to existing investors (e.g. in a regular investor update or by including the information on a website that is used to communicate with investors).
By 30 November 2008—PDS that are dated before 30 November 2008 but remain in use	If an existing PDS is still in use for an unlisted mortgage scheme, responsible entities should either: <ul style="list-style-type: none"> include the benchmark disclosure information on a website referred to in the PDS (if the omission of benchmark disclosure information from the PDS is not materially adverse); or update the PDS by a new or a supplementary PDS so that it includes the benchmark disclosure information.
From 30 November 2008	PDSs dated on or after 30 November 2008 for unlisted mortgage schemes should clearly and prominently address the benchmarks on an 'if not, why not' basis.
30 November 2008—31 January 2009	ASIC reviews PDSs and other disclosure for unlisted mortgage schemes against the 'if not, why not' approach.
February–April 2009	ASIC issues public report on the results of the new approach.

Underlying principles

RG 45.22 The disclosure framework in the *Corporations Act 2001* (Corporations Act) requires responsible entities of mortgage schemes to:

- (a) disclose upfront to investors all the information they reasonably need to know in order to make a decision as a retail client to acquire an interest in the scheme; and
- (b) provide ongoing disclosure about material matters to help retail investors monitor whether their expectations are being met.

RG 45.23 Disclosure is not designed to stop retail investors from taking investment risks, but to help them understand the risks involved in any particular investment or type of investment. This enables them to make an informed decision about whether the potential reward (the return on their investment) matches the level of risk involved, and whether they are prepared to take on that risk.

- RG 45.24 We believe that our approach balances:
- (a) the need to improve disclosure to allow investors to make better informed decisions; and
 - (b) the desirability of not unduly interfering with this market as a market for raising capital.
- Note: The need to strike an appropriate balance between protecting investors' interests and allowing markets to operate freely is part of ASIC's mandate under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).
- RG 45.25 This approach should also lead to more comparable disclosure for mortgage schemes, helping investors to compare investments in this sector.
- RG 45.26 Our approach cannot prevent investments failing, nor ensure that they perform to investors' expectations. However, better disclosure can help investors make better risk–reward decisions.
- RG 45.27 Our approach should not result in longer disclosures. Recent experience shows that investors need better quality and relevant disclosure, presented in a way best suited to investor understanding.
- RG 45.28 The standards we have set for responsible entities when advertising mortgage schemes seek to reduce the risk that advertisements will give retail investors messages about mortgage schemes that are inconsistent with disclosure in a complying PDS.

B The unlisted mortgage scheme sector

Key points

Some features of unlisted mortgage schemes can create risks for investors. Clear benchmarks can help investors to make better-informed decisions about these products.

Business models of mortgage schemes

- RG 45.29 A mortgage scheme operates on the basis that:
- (a) the scheme raises funds by issuing interests to investors. These funds are either pooled and lent by the scheme to various borrowers (pooled schemes) or lent in relation to a specific property (contributory schemes). In both pooled and contributory schemes, loans are secured by mortgages over real property and security may be a first or subsequent mortgage;
 - (b) for pooled schemes, investors do not have an interest in a particular mortgage loan, but have an interest in scheme property as a whole;
 - (c) the return to investors is generally generated by interest payments made by the borrowers to the scheme;
 - (d) investments are either for a fixed term or can be withdrawn following a withdrawal request; and
 - (e) the value of an investor's investment may be subject to change depending on the asset position of the scheme.
- RG 45.30 Some mortgage schemes may lend funds for construction or property development. For these schemes, the skills and experience of the responsible entity in assessing these activities and selecting appropriate loans are particularly important to the performance of the scheme.
- RG 45.31 Some schemes promote that they can provide investors with a level of capital security by committing to pay investors back their initial investment at the end of their investment term. Other schemes promote fixed rates of return.
- RG 45.32 Some schemes may lend funds to borrowers and 'capitalise' the expected interest payments. This means that the scheme may not be receiving actual cash payments from the borrower over the course of the loan and instead receive the capital and accumulated interest payments at the end of the loan term.
- RG 45.33 Many schemes promote that withdrawal requests will generally be satisfied within a relatively short period.

Risks to investors

- RG 45.34 Past experience and our recent analysis of the mortgage scheme market suggests that features of the operations of some mortgage schemes can hold particular risks for investors. These key features and risks are identified in Table 4.
- RG 45.35 These features are not present in every unlisted mortgage scheme that is offered to retail investors. The investment risks described will vary from scheme to scheme and from business model to business model. However, disclosure about these features and risks, including to what extent they are present in a given offering, is relevant for a broad range of schemes.
- RG 45.36 The disclosure benchmarks in Section C address these features and risks, so that investors can make better-informed decisions about whether a mortgage scheme is a suitable investment for them.
- RG 45.37 We have excluded listed mortgage schemes for the purposes of the disclosure benchmarks in Section C because:
- (a) being listed means that there is a secondary market on which an investor can sell their investment;
 - (b) the market supervisor will assess and, if appropriate, admit the interests in the scheme to trading; and
 - (c) the market supervisor will supervise the scheme's ongoing compliance with any listing rules, in particular, a continuous disclosure regime.

Note: The advertising standards in Section E apply to all mortgage schemes, whether listed or unlisted.

Table 4: Key risk features of mortgage schemes

Risk feature	Description	What this means
Liquidity	The liquidity of the scheme is key to its ability to meet its representations about whether investors can withdraw from the scheme and its other ongoing commitments.	<p>Liquidity may be at risk because of a mismatch between when the responsible entity represents that they can meet withdrawal requests and cash flows from the underlying businesses or assets to which funds have been lent.</p> <p>Liquidity is frequently heavily dependent on continuing inflows from new investors, borrowings or 'rollovers' by existing investors, as the underlying assets of the scheme may not be easily realised within a short period of time.</p>
Scheme borrowing	Some schemes borrow against the assets of the scheme to fund distributions, redemption requests or scheme operations generally.	<p>If a scheme borrows against the assets of the scheme, investors' interests in the scheme's assets will generally rank behind the lender.</p> <p>Investors in schemes with high borrowings face the risk that distributions will not be made or withdrawals will be suspended so that loan payments can be met.</p> <p>Investors also face the risk that they may lose part or all of their investment if the scheme defaults on these loans.</p>

Risk feature	Description	What this means
Portfolio diversification	<p>The criteria that responsible entities use to decide what loans to make are variable and prone to risk, especially where:</p> <ul style="list-style-type: none"> • loan-to-valuation ratios are often much higher than for traditional lending; and • the loans made may be highly concentrated to particular types of commercial activities, locations or borrowers. 	<p>Lack of diversification in the mortgage scheme's loan book may mean that an adverse event affecting one borrower or one type of loan will simultaneously affect the majority of borrowers, and therefore put the overall portfolio at greater risk.</p>
Related party transactions	<p>Some schemes lend, invest scheme funds and transact with associated companies or businesses.</p>	<p>There is an increased risk that these transactions are less likely to be made on arm's length commercial terms and that the responsible entity will not monitor them as robustly as those involving unrelated parties.</p>
Inconsistency in valuations	<p>The valuations that schemes rely on are carried out on a variety of bases, with differing assumptions and instructions.</p> <p>These valuations are fundamental to determining how much the scheme may lend.</p>	<p>If valuations are not prepared properly or by appropriately qualified and experienced valuers, it is difficult to assess the risk exposure associated with a loan. It is also difficult to monitor loan-to-valuation ratios on a continuing basis.</p>
Distribution practices	<p>Some schemes fund distributions out of sources other than income.</p>	<p>Where distributions are not sourced solely from scheme income, there is a risk that these distribution practices may not be sustainable over the long term. This risk may be heightened where a scheme promotes a fixed return on investments.</p>
Withdrawal arrangements	<p>Some mortgage schemes promote a short withdrawal period to attract investors, although the maximum period allowed in the scheme's constitution is much longer.</p>	<p>This practice creates the risk that investors do not fully appreciate that their right of withdrawal may be refused until a longer period of time has elapsed than the one represented.</p>
Misleading advertising	<p>Advertising used to promote some mortgage schemes helps create unrealistic expectations about the investors' ability to withdraw their investment and the scheme's relative safety.</p>	<p>Even if the PDS highlights risk in an appropriate way, advertising that conveys messages not in line with the regulated disclosure document can undermine the effect of that disclosure.</p>

C Benchmarks for unlisted mortgage schemes

Key points

All responsible entities of unlisted mortgage schemes should address general benchmarks on:

- liquidity—pooled mortgage schemes only (see RG 45.38–RG 45.46);
- scheme borrowing (see RG 45.47–RG 45.52);
- portfolio diversification—pooled mortgage schemes only (see RG 45.53–RG 45.60);
- related party transactions (see RG 45.61–RG 45.63);
- valuation policy (see RG 45.64–RG 45.69);
- lending principles—loan-to-valuation ratios (see RG 45.70–RG 45.74);
- distribution practices (see RG 45.75–RG 45.80); and
- withdrawal arrangements (see RG 45.81–RG 45.87).

This information should be disclosed clearly and prominently in the responsible entity's PDS and ongoing disclosures: see Section D.

Benchmark 1: Liquidity

RG 45.38 The responsible entity of an unlisted mortgage scheme (other than a contributory mortgage scheme) should:

- (a) have cash flow estimates for the scheme for the next 3 months; and
- (b) ensure that at all times the scheme has cash or cash equivalents (but not including undrawn amounts under bank overdraft or lending facilities) sufficient to meet its projected cash needs over the next 3 months.

Note 1: In estimating cash flows, a responsible entity can take into account a reasonable estimate of investor inflows and outflows based on previous experience. Withdrawals should be determined with reference to the period within which investors would reasonably expect withdrawal requests to be processed, rather than the maximum period within which the responsible entity is able to process withdrawal requests.

Note 2: 'Cash' and 'cash equivalents' have the same meaning as in Australian Accounting Standard AASB 107 *Cash Flow Statements*. Paragraph 9 of AASB 107 defines 'cash' as 'cash on hand and demand deposits' and 'cash equivalents' as short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value. However, for the purposes of the benchmark, a responsible entity cannot take into account undrawn amounts under bank overdraft or lending facilities.

RG 45.39 Responsible entities of unlisted pooled mortgage schemes should also disclose the policy of the scheme on balancing the maturity of their assets and the maturity of their liabilities. For example, if a scheme has a policy of ensuring that sufficient assets are held in readily realisable investments to meet future withdrawal requests, the responsible entity should state this in their PDS and report against this in their ongoing disclosures.

Explanation

RG 45.40 For the purposes of this benchmark, ‘liquidity’ is the proportion of cash or cash equivalents in a scheme’s assets. It is a powerful indicator of the ability of the scheme to meet its short-term commitments. For mortgage schemes, we are particularly concerned with relative liquidity (i.e. short-term assets relative to short-term liabilities).

Note: ‘Liquidity’ for the purposes of this benchmark is not the same as ‘liquidity’ for the purposes of Part 5C.6 (which relates to satisfying a statutory test). It is important that any disclosure to investors does not confuse these two concepts.

RG 45.41 Recent experience and the expert advice ASIC received in developing the benchmarks show that adequate liquidity is a key feature in the ability of the responsible entities of some mortgage schemes to meet investors’ expectations about their ability to withdraw from those schemes.

RG 45.42 Mortgage schemes face significant challenges in managing their liquidity. For example, many mortgage schemes are marketed on the basis that withdrawal requests are generally satisfied within a few days even though:

- (a) scheme constitutions may allow up to 1 year to satisfy withdrawal requests;
- (b) it may take a relatively long period to realise mortgage loans held by mortgage schemes; and
- (c) the strength of the market for mortgage loans is likely to vary according to surrounding economic circumstances such as the strength of the property market and the level of mortgage defaults.

RG 45.43 Liquidity management is also important so that schemes can meet:

- (a) investor expectations about the payment of distributions;
- (b) loan commitments drawn in stages by borrowers;
- (c) changes in the scheme’s operational needs;
- (d) unexpected expenses of the scheme; and
- (e) interest on scheme borrowing.

RG 45.44 We envisage that responsible entities would need to review their forecast cash flows on an ongoing basis to determine whether they continue to satisfy this benchmark. We expect responsible entities to take into account their historical

experience on investor inflows and outflows in estimating their cash flows and to disclose material assumptions underlying their cash flows (e.g. historical inflow and outflow rate) when reporting against this benchmark.

- RG 45.45 We also expect responsible entities to periodically ‘stress test’ their liquidity assumptions. For example, we expect responsible entities to consider:
- (a) their current PDS and the possibility of an ASIC stop order disrupting their cash flows;
 - (b) the possibility of a significant increase in the rate of investor withdrawal requests; and
 - (c) the possibility of a significant reduction in the rate of investor rollovers or new investments.
- RG 45.46 We expect responsible entities to take into account the results of this stress testing in their liquidity planning. In some cases, this may mean they need to increase their cash position: see RG 45.38.

Benchmark 2: Scheme borrowing

- RG 45.47 If an unlisted mortgage scheme has borrowed funds (whether on or off balance sheet), the responsible entity should disclose:
- (a) for each borrowing that will mature in 5 years or less—the amount owing and the maturity profile in increments of not more than 12 months;

Note: For borrowings that will mature within 12 months, the responsible entity should exercise judgment to determine whether it would be appropriate to disclose aggregate amounts for time bands within 12 months.
 - (b) for borrowings that mature in more than 5 years—the aggregate amount owing;
 - (c) for each credit facility—the aggregate undrawn amount and the maturity profile in increments of no more than 12 months;
 - (d) the fact that amounts owing to lenders and other creditors of the scheme rank before an investor’s interests in the scheme; and
 - (e) the purpose for which the funds have been borrowed, including whether they will be used to fund distributions or withdrawal amounts.
- RG 45.48 If borrowings and credit facilities are due to mature within 12 months, the responsible entity should make appropriate disclosure about the prospects of refinancing or possible alternative actions (e.g. sale of assets or equity fundraising). If the responsible entity has no reasonable grounds for commenting on the prospect of refinancing or possible alternative actions, then they should state this and explain why to investors: see Regulatory Guide 170 *Prospective financial information* (RG 170) at RG 170.91.

Note: Any forward-looking statements should comply with s769C and RG 170.

RG 45.49 Responsible entities should explain any risks associated with their borrowing and credit facility maturity profile, including whether borrowings have been hedged and if so, to what extent.

RG 45.50 Responsible entities should also disclose any information about breaches of loan covenants that is reasonably required by investors and update investors about the status of any breaches through ongoing disclosure.

Note: Responsible entities should be aware that, in certain cases, investors would reasonably require information on likely breaches of loan covenants (e.g. if the responsible entity has approached the lender about a likely breach and been informed that the loan is likely to be terminated if the breach occurs).

Explanation

RG 45.51 Some schemes borrow to finance distributions or the operation of the scheme. It is important that investors are made aware if this is the case and are provided with details of the borrowings and credit facilities entered into by the scheme. Borrowings that are due to mature within a relatively short timeframe can be a significant risk factor, especially in periods where credit is more difficult and expensive to obtain. It is important that investors understand that they will rank behind creditors of a scheme.

RG 45.52 Responsible entities should also disclose whether borrowed funds will be used to fund distributions or withdrawal requests since this may indicate that the responsible entity's policy on distributions and withdrawals is not sustainable over the long term. Information about breaches of loan covenants reasonably required by investors is key risk information in upfront and ongoing disclosures.

Benchmark 3: Portfolio diversification

- RG 45.53 A responsible entity of an unlisted mortgage scheme (other than a contributory mortgage scheme) should disclose the current nature of the mortgage scheme's investment portfolio, including:
- (a) by number and value, loans by class of activity (e.g. development projects, industrial, commercial, retail, residential, specialised property, reverse mortgages);
 - (b) by number and value, loans by geographic region;
 - (c) by number and value, what proportion of loans are in default or arrears;

Note: A responsible entity should disclose, by number and value, what proportion of loans are in both default and arrears if these terms have different meanings in the scheme's lending policy.

- (d) by number and value of loans, what is the nature of the security for loans made by the scheme (e.g. first or second ranking);

- (e) what proportion of the total loan monies have been lent to the largest borrower and the 10 largest borrowers;

Note: We acknowledge that, for reasons of privacy or commercial confidence, it may not be appropriate to actually *name* the largest borrowers. The total loan monies lent to the 10 largest borrowers can be disclosed as an aggregated amount.

- (f) by number and value, loans that have been approved but have funds that have yet to be advanced and the funding arrangements in place for any of these undrawn loan commitments;
- (g) by number and value, the maturity profile of all loans in increments of not more than 12 months;
- (h) by number and value of loans, loan-to-valuation ratios for loans, in percentage ranges;
- (i) by number and value of loans, interest rates on loans, in percentage ranges;
- (j) by number and value, loans where interest has been capitalised;
- (k) the use of derivatives (if any); and
- (l) a clear description of the non-loan assets of the scheme including the value of such assets.

RG 45.54 The responsible entity should also disclose their policy on the above matters and on how the scheme will lend funds generally. For example, disclosure should cover:

- (a) the maximum loan amount for any one borrower;
- (b) the method of assessing borrowers' capacity to service loans;
- (c) the responsible entity's policy on revaluing security properties when a loan is rolled over; and
- (d) the responsible entity's approach to taking security on lending by the scheme (e.g. what types of security they take and in what circumstances, and whether the security must be income producing).

RG 45.55 If an unlisted pooled mortgage scheme invests in, or may invest in, other unlisted mortgage schemes (whether registered or unregistered), the responsible entity should also disclose their policy on investing in those schemes, including the extent to which the responsible entity requires those schemes to satisfy the benchmarks in this guide.

Explanation

RG 45.56 The primary assets of a mortgage scheme are the loans it makes to others. The quality of these loans and its other investments is a key element in the financial position and performance of the scheme. The more diversified a loan portfolio is, generally the lower the risk that an adverse event affecting one borrower or one type of loan will simultaneously affect the majority of borrowers, and therefore put the overall portfolio at risk.

- RG 45.57 It is important that responsible entities disclose in their PDSs their approach to loan portfolio diversification. Most responsible entities will have a firm policy on how and when the scheme will lend funds. This should be disclosed as clearly and prominently as possible to help investors monitor the financial position and performance of the scheme over time.
- RG 45.58 Responsible entities should also disclose the nature of the security for loans made by the scheme (e.g. its ranking, the value of the assets supporting the security and the financial position of any guarantor).
- Note: If any security rights (e.g. mortgages) held by the scheme have been assigned or transferred to third parties, this needs to be disclosed as well.
- RG 45.59 Investors should know what proportion of loans are in default and the scheme's approach to such loans. The responsible entity is relying heavily on payment of interest and repayment of capital on the loans it has made to pay distributions and withdrawal proceeds to investors and to maintain the financial position of the scheme. Therefore, investors have a strong interest in the proportion of loans in arrears and what the responsible entity is doing to address this.
- RG 45.60 Investors can also benefit from having useful additional information about the diversity and strength of the scheme's loan book. It will help investors to know details of ranges for:
- (a) the maturity profiles of loans;
 - (b) loan-to-valuation ratios; and
 - (c) interest rates on loans.

Benchmark 4: Related party transactions

- RG 45.61 A responsible entity of an unlisted mortgage scheme who transacts with related parties of the scheme, including lending or investing scheme funds with related parties should disclose their approach to these transactions, including:
- (a) details of any loans, investments and transactions they have made to or with any related party;
 - (b) their policy on related party transactions, including the assessment and approval process for related party lending and arrangements to manage conflicts of interest; and
 - (c) how the processes and arrangements are monitored to ensure their policy is followed.

Note: The term 'related party' should be interpreted broadly, taking into consideration the definitions of 'related party' in s228 (as applied to the scheme by Part 5C.7) and accounting standard AASB 124 *Related Party Transactions* and includes the responsible entity.

Explanation

- RG 45.62 Related party transactions (including loans to, and investments in, related parties) are less likely to be monitored as robustly as those involving unrelated parties. This can affect valuations, loan-to-valuation ratios, due diligence and credit assessment processes.
- RG 45.63 It is important that responsible entities disclose in the PDS their approach to related party lending, investments and other transactions. As discussed under benchmark 3, we expect that most responsible entities will have a firm policy on how and when they will lend and invest funds and this should be disclosed to investors.

Note: Responsible entities are financial services licensees and have duties to adequately manage conflicts of interest: s912A(1)(aa). If appropriate, responsible entities may also need to obtain investor approval for related party transactions under Part 5C.7.

Benchmark 5: Valuation policy

- RG 45.64 A responsible entity of an unlisted mortgage scheme should take the following approach to valuations of properties over which it has taken security:
- (a) Properties (i.e. real estate) should be valued on an ‘as is’ and (for development property) also on an ‘as if complete’ basis.
 - (b) The responsible entity should have a clear policy on how often they obtain valuations, including how recent a valuation has to be when they make a new loan.
 - (c) The responsible entity should establish a panel of valuers and ensure that no one valuer conducts more than 1/3 of the responsible entity’s valuation work for the scheme, calculated by value of properties (other than for contributory mortgage schemes).
- RG 45.65 The responsible entity should also include information about the valuation of a particular property for an unlisted mortgage scheme where a loan secured against the property accounts for 5% of more of the total value of scheme’s loan book. The responsible entity of a contributory mortgage scheme only needs to provide an investor with information about the valuation of a property securing a loan if the investor has, or is being offered, an interest in the loan.

Note: We would also expect responsible entities to include the ‘cost’ of such a property for comparison purposes.

- RG 45.66 We expect responsible entities to only use valuers who:
- (a) where possible, are registered under one of the state/territory valuer registration regimes or a relevant overseas registration regime; and
 - (b) include a statement in their valuation reports on whether the valuation complies with all relevant industry standards and codes.
- Note: We realise that not all states and territories have a registration or licensing regime for valuers at this time.

Explanation

- RG 45.67 Robust and objective valuations are needed to ensure that the scheme's financial position is correctly stated in the PDS and ongoing disclosures. It is important for investor confidence that independent experts perform the valuations, and that the process is transparent.
- RG 45.68 It is also in the interests of responsible entities that the valuations they obtain and use are robust and accurate. Responsible entities are responsible for the accuracy of the financial statements and other documents that rely on these valuations.
- RG 45.69 We expect that, where possible, responsible entities will only use professional valuers who are registered or licensed in the relevant state or territory or overseas jurisdiction, and who subscribe to a relevant industry code of conduct. We also expect that responsible entities will be careful to ensure that their instructions to valuers are comprehensive and contain reasonable assumptions.

Benchmark 6: Lending principles—loan-to-valuation ratios

- RG 45.70 A responsible entity of an unlisted mortgage scheme should maintain the following loan-to-valuation ratios for loans made by the scheme:
- (a) where the loan relates to property development—70% on the basis of the latest 'as if complete' valuation; and
 - (b) in all other cases—80% on the basis of the latest market valuation.
- Note 1: The loan-to-valuation ratio should be based on the unencumbered value of the property.
- Note 2: The responsible entity of a contributory mortgage scheme will meet this benchmark for a particular investor if the loan in which the investor has an interest satisfies the above ratios.
- RG 45.71 Where the loan relates to property development, the responsible entity should ensure that the scheme only provides funds to the developer in stages, based on external evidence of the progress of the development.

Explanation

- RG 45.72 A scheme's approach to loan-to-valuation ratios is one indicator of how conservative or aggressive its lending practices are. Some schemes are willing to lend funds equal to a higher proportion of a property's value (sometimes up to or exceeding 100% of its value). Such ratios make a scheme more vulnerable to risk in that a change in market conditions (e.g. a downturn in the property market) may mean it is unable to fully recover the money it has lent to borrowers. It also increases the risk that the security obtained from borrowers will be insufficient to cover the loan.
- RG 45.73 We have separated loans relating to property development from other property-related loans (e.g. residential mortgages). By property development, we mean loans whose main or primary purpose is for real estate developments (e.g. home units, retail, commercial, subdivisions and industrial development). The benchmark loan-to-valuation ratio for property development loans is lower than for other loans because it is calculated on an 'as if complete' basis.
- RG 45.74 If funds are lent for property development activities, a loan-to-valuation ratio may be agreed upfront, but it is generally not appropriate to advance all of the funds to the developer upfront. Rather, we expect responsible entities to put systems and controls in place to ensure funds are only provided to the developer where there is satisfactory progress of the development (based on reliable external evidence of that progress). We also expect that the policy on how and when funds are provided to developers will be stated in the PDS.

Benchmark 7: Distribution practices

- RG 45.75 If an unlisted mortgage scheme is making or forecasts making distributions to members, the responsible entity should disclose:
- (a) the source of the current distribution (e.g. from income earned in the relevant distribution period, financing facility, application monies);
 - (b) the source of any forecast distribution;
 - (c) if the current or forecast distribution is not solely sourced from income received in the relevant distribution period, the reasons for making those distributions; and
 - (d) if the current distribution or forecast distribution is sourced other than from income, whether this is sustainable over the next 12 months.

Note 1: Any forward-looking statements should comply with s769C and RG 170. If a responsible entity does not have reasonable grounds for disclosing whether current or forecast distributions sourced other than from realised income are sustainable, it should explain this to investors: see RG 170.91.

- RG 45.76 If the scheme promotes a particular return on investments, the responsible entity should clearly disclose details of the circumstances in which a lower return may be payable, together with details of how that lower return will be determined.
- RG 45.77 The responsible entity of a contributory mortgage scheme will meet this benchmark for a particular investor if they disclose the above information to the investor for distributions or returns made or forecast to be made to the investor.

Explanation

- RG 45.78 Investors need to know how distributions are funded because this is an important indicator of the performance of the scheme. In some situations, distributions that are funded wholly or in part from sources other than scheme income for the relevant distribution period may indicate that the distribution practices are unsustainable over the long term or may be insufficient to meet advertised returns. Accordingly, it is important that responsible entities disclose where distributions are sourced from and, where these are not sourced from scheme income, explain why.
- RG 45.79 We understand that where scheme income is insufficient to meet advertised returns, schemes may fund distributions in a number of different ways (e.g. by reducing their fees, from scheme borrowings or from scheme capital) rather than paying a reduced return. Such practices have developed because competition in the mortgage scheme sector means that many schemes may prefer to meet advertised returns even if that means funding out of capital.
- RG 45.80 Some mortgage schemes seek to give investors an assurance about income stability by disclosing that a fixed return is generally payable. We consider that such disclosures will be misleading unless the responsible entity also makes prominent disclosure of:
- (a) the mechanism by which it will seek to achieve a fixed return, together with any limitations of relying on that mechanism; and
 - (b) the circumstances in which investors may be paid a lower return and how that lower return will be determined.

Benchmark 8: Withdrawal arrangements

- RG 45.81 A responsible entity of an unlisted mortgage scheme should provide details of whether investors will be able to withdraw from a scheme. If investors are given the right to withdraw from a scheme, the responsible entity should clearly disclose:
- (a) the maximum withdrawal period allowed under the constitution for the scheme (this disclosure should be at least as prominent as any shorter withdrawal period promoted to investors);

- (b) any significant risk factors or limitations that may affect the ability of investors to withdraw from the scheme (including risk factors that may affect the ability of the responsible entity to meet a promoted withdrawal period);
- (c) the approach to rollovers, including whether the ‘default’ is that investments in the scheme are automatically rolled over; and
- (d) if withdrawals from the scheme are to be funded from an external liquidity facility, the material terms of this facility, including any rights the provider has to suspend or cancel the facility.

RG 45.82 If the scheme promotes a fixed redemption unit price for investments (e.g. \$1 per unit), the responsible entity should clearly disclose details of the circumstances in which a lower amount may be payable, together with details of how that amount will be determined.

Note: The responsible entity of a contributory mortgage scheme will meet this benchmark for a particular investor if the responsible entity discloses the above information to the investor as it relates to the investor’s ability to withdraw.

Explanation

RG 45.83 It is important for responsible entities to make investors aware of withdrawal arrangements so that investors form realistic expectations about their ability to withdraw from the scheme. If a scheme constitution provides for a long withdrawal period but the scheme is promoted on the basis that withdrawal requests are satisfied within a much shorter period, it is important for responsible entities to clearly disclose that:

- (a) the responsible entity does not have an obligation to satisfy withdrawal requests within the shorter period;
- (b) the constitution provides a longer withdrawal period for satisfying withdrawal requests (including details of the longer withdrawal period); and
- (c) if the scheme does not satisfy the statutory liquidity requirements, members will only have a limited ability to withdraw (if any).

Note 1: Members will only have a limited ability to withdraw if a scheme is not ‘liquid’ for the purposes of Part 5C.6.

Note 2: If a responsible entity makes representations about likely future withdrawal periods, they must have reasonable grounds for those representations: s769C.

RG 45.84 Some mortgage schemes rely on investors keeping their funds invested beyond the end of the initial investment period. In some cases, the terms of issue allow this to occur automatically unless the investor makes a positive decision to withdraw their funds. In other cases, it is the investor who makes a positive decision to have their funds re-invested.

- RG 45.85 It is important that investors fully understand the responsible entity's approach to rollovers through clear disclosure in the PDS, including details of:
- (a) the default position on maturity;
 - (b) what investors need to do to withdraw or reinvest their funds (including details of the relevant timeframes); and
 - (c) any restrictions on the ability of members to withdraw at the end of the initial period.
- RG 45.86 We consider that it is potentially misleading not to provide investors with updated information about their investment when they are considering whether to rollover their investment. Depending on the circumstances, the responsible entity may also need to provide investors with an updated PDS.
- RG 45.87 Some mortgage schemes seek to give investors an assurance about capital stability by disclosing that investments are generally redeemable at a fixed unit price. We consider that such disclosure will be misleading unless the responsible entity also makes prominent disclosure of:
- (a) the mechanism by which it will seek to achieve a fixed withdrawal price (e.g. by relying on a third party guarantee), together with any limitations of relying on that mechanism;
 - (b) any restrictions on the ability of investors to withdraw from the scheme;
 - (c) what will occur if the portion of the net assets of the scheme attributable to an interest in the scheme has a value that is less than the fixed withdrawal price; and
 - (d) the circumstances in which investors may be paid a lower withdrawal price and how that lower price will be determined.

D Disclosure against the benchmarks—‘If not, why not’

Key points

Responsible entities of unlisted mortgage schemes should use the benchmarks in Section C on an ‘if not, why not’ basis in meeting their disclosure obligations to investors: see RG 45.88–RG 45.90.

We expect responsible entities of both new and existing unlisted mortgage schemes to comply with these disclosure requirements from 30 November 2008. We also expect responsible entities for existing schemes to provide existing investors with updated disclosure against the benchmarks by 30 November 2008: see RG 45.93–RG 45.95.

For an overview of how to apply the disclosure requirements: see Table 5.

‘If not, why not’ approach

RG 45.88 Responsible entities of unlisted mortgage schemes should disclose whether they meet the benchmarks in Section C, and if not, why not. ‘Why not’ means explaining how a responsible entity deals with the business factor or issue underlying the benchmark (including the alternative systems and controls the responsible entity has in place to deal with the issue underlying the benchmark).

Note: If a benchmark contains multiple requirements and a responsible entity cannot meet all requirements, they should state that they do not meet the benchmark and clearly explain why they failed to meet particular requirements.

RG 45.89 Our view is that the inherent risks for investors in mortgage schemes mean that information about these risks is required both upfront in the PDS and in ongoing disclosures.

RG 45.90 Disclosure against the benchmarks is not intended to lead to longer and more complex PDSs. Rather, we expect that this disclosure will help responsible entities produce PDSs that are more focused on the issues that matter to investors and are more clear, concise and effective.

How to apply the benchmarks

RG 45.91 Our approach to additional and improved disclosure applies to both existing and new offers of interests in unlisted mortgage schemes. Table 5 explains how we expect responsible entities for existing and new unlisted mortgage

schemes to disclose against the benchmarks on an ‘if not, why not’ basis and our views on good practice for updating investors.

RG 45.92 From 30 November 2008 to 31 January 2009, we will review updated investor disclosures for unlisted mortgage schemes to check that this benchmarking information is adequately disclosed to investors on an ‘if not, why not’ basis: see RG 45.19.

Table 5: Implementing the ‘if not, why not’ approach against the benchmarks

Existing schemes—update existing investors by 30 November 2008	<p>By 30 November 2008, the responsible entity of an existing unlisted mortgage scheme should address the benchmarks on an ‘if not, why not’ basis in updated disclosure that is brought to the attention of existing investors: see RG 45.93–RG 45.95.</p> <p>This could be by using the responsible entity’s normal investor communication channels (e.g. in a regular investor update or by including the information on a website that is used to communicate with investors).</p>
By 30 November 2008—PDSs that are dated before 30 November 2008 but remain in use	<p>By 30 November 2008, if an existing PDS is still in use, responsible entities should either:</p> <ul style="list-style-type: none"> • include the benchmark disclosure information on a website referred to in the PDS (if the omission of benchmark disclosure information from the PDS is not materially adverse); or • update the PDS by a new or a supplementary PDS so that it includes the benchmark disclosure information. <p>Note: PDSs commonly allow information to be updated through a website if the updated information is not materially adverse: see CO 03/237. We consider that if the omission of the benchmark disclosure information from an existing PDS is not materially adverse, the responsible entity will generally be able to rely on CO 03/237 to update the PDS for this information without the need for a supplementary or new PDS: see RG 45.106–RG 45.109.</p>
New PDSs from 30 November 2008	<p>PDSs dated on or after 30 November 2008 should clearly and prominently address the benchmarks on an ‘if not, why not’ basis.</p> <p>The PDS should also explain how the responsible entity intends to update investors for ongoing disclosures.</p>
Material changes to information	<p>Where there are any material changes to the scheme’s performance against the benchmarks, the responsible entity should deal with this in ongoing disclosures. It is good practice to update investors on material changes to key information concerning a mortgage scheme as soon as practicable (e.g. by updating a website used for this purpose).</p>
Updating on status of information	<p>It is good practice for responsible entities to update investors at least half-yearly on the status of their performance against the benchmarks, including whether the information has been updated for any material changes since the last investor report: see RG 45.114–RG 45.117.</p>

Updating existing investors

RG 45.93 For existing investors in unlisted mortgage schemes, the first information that responsible entities will provide in response to the scheme’s performance against the benchmarks will be after they have invested. By 30 November 2008, we expect responsible entities to provide existing investors

with updated disclosure addressing each of the benchmarks in Section C on an ‘if not, why not’ basis.

- RG 45.94 The initial update for existing investors could be in a regular report (e.g. in the quarterly report) or in a periodic statement under s1017D. An alternative would be to put the initial update on the scheme’s website (if this is already used to communicate with investors).
- RG 45.95 The initial disclosure should also advise investors how the responsible entity intends to update them on the status of the scheme’s performance against the benchmark and material changes. This is particularly important where the responsible entity intends to use a website to communicate material changes to key information.

Disclosure in a PDS

Content of a PDS

- RG 45.96 The Corporations Act requires disclosure in the form of a PDS for an offer of interests in a mortgage scheme. The PDS must:
- (a) make specific disclosures, including significant risks associated with holding the product (s1013D); and
 - (b) include all other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to invest in the scheme (s1013E).
- RG 45.97 We expect the PDS for a mortgage scheme to explain in a clear, concise and effective way:
- (a) the business model of the mortgage scheme and what it will actually do with the money;
 - (b) the track record and experience of senior management; and
 - (c) what the nature of the investor’s interest in the mortgage scheme is (e.g. what withdrawal rights apply, if any).
- RG 45.98 Our benchmarks relate to matters that in any event must be disclosed under s1013D–1013E. Issues relating to liquidity, scheme borrowing, portfolio diversification, related party transactions, valuation policies, lending principles, distribution practices and withdrawal arrangements are all matters that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to invest in the scheme.

Note: The benchmarks do not attempt to specify all of the information that is required to be included in a PDS by the Corporations Act.

- RG 45.99 We expect a responsible entity of an unlisted mortgage scheme to meet the benchmarks or explain why they do not. We consider that s1013D–1013E require:
- (a) disclosure of the benchmarks and how they have been met;
 - (b) a statement that the responsible entity will meet the benchmarks going forward or if not, why not; and
 - (c) in circumstances where the benchmarks are not met, disclosure of the extent of failure to meet the benchmarks and the reason for this and an explanation of how and why the responsible entity deals with the business factor or issue underlying the benchmark in another way. In some circumstances, failing to meet the benchmarks is a risk that should be disclosed prominently.

The PDS should also explain how the responsible entity intends to update investors on material changes to key information about the scheme.

- RG 45.100 We will consider exercising our stop order powers under s1020E if we think there is material non-disclosure or misleading disclosure against the benchmarks. We believe that disclosure against the benchmarks in a PDS promotes compliance with the requirement that PDSs should be worded in clear, concise and effective manner by encouraging comparability and uniformity of financial measures and highlighting issues which ASIC and industry experts consider crucial to making an investment decision.

Clear, concise and effective disclosure

- RG 45.101 PDSs must be worded and presented in a clear, concise and effective manner: s1013C(3). A PDS should therefore contain clear and prominent disclosure of the key features and risks of the investment. For unlisted mortgage schemes, this *includes* the benchmark disclosure information.
- RG 45.102 One way of prominently disclosing key information is to set it out in the first few pages of the PDS. Where the key information is too lengthy to be included in full, the first few pages of the PDS should provide a summary of the information with a clear reference to more detailed disclosure. This could include a well-referenced table in the first few pages that gives investors a brief introduction to the key information and a reference to where the information is further explained.
- RG 45.103 Experience suggests that clear, concise and effective PDS disclosure requires simple and clear disclosure of the business model of the mortgage scheme and the key risks associated with investing in it. We encourage responsible entities to use consumer-friendly tools as much as possible in disclosing key features and risks, including tables, diagrams and other comparative features.

Supplementary PDSs

- RG 45.104 The benchmarks relate to information required in a PDS under the Corporations Act. A PDS must be given to prospective investors in various circumstances: s1012A–1012C. If there are material changes to a responsible entity’s performance against the benchmarks, a responsible entity with a current offer open will need to provide a new or supplementary PDS if the new information would be materially adverse to the reasonable investor.
- RG 45.105 We consider that it is good practice to also make the information in a new or supplementary PDS available to existing investors (e.g. in a regular investor update or on the website).

Updating PDSs

- RG 45.106 Responsible entities may be able to rely on CO 03/237 to provide updated disclosure against the benchmarks on a website, subject to various conditions including:

- (a) the updated information is not materially adverse;
- (b) the PDS must have included a statement that non-materially adverse information may be updated by a website and that a paper copy of any updated information will be given to a person without charge on request;
- (c) the updated information is easily accessible to investors; and
- (d) the PDS was up-to-date at the time it was prepared.

Note: See CO 03/237 for all of the applicable conditions that must be fulfilled.

- RG 45.107 Subject to fulfilling the conditions in the class order (including that the updated information is not materially adverse), we consider that CO 03/237 should allow responsible entities to update:

- (a) PDSs dated before 30 November 2008 for the benchmark disclosure information; and
- (b) PDSs that do include the benchmark disclosure information for changes to that information.

- RG 45.108 By 30 November 2008, if an existing PDS that does not contain the benchmark disclosure information remains in use, we expect responsible entities to:

- (a) disclose the benchmark disclosure information using a website or other means of communication referred to in the PDS (if the omission of benchmark disclosure information from the PDS is not materially adverse); or
- (b) update the PDS by a new or a supplementary PDS so that it includes the benchmark disclosure information.

- RG 45.109 The information in a PDS must be up-to-date at the time it is given. We consider that PDSs that do not contain the benchmark disclosure information by 30 November 2008 are unlikely to be up-to-date given the key nature of the benchmark disclosure information, particularly in light of recent economic conditions affecting the mortgage scheme sector and the fact that new PDSs will disclose this information.

Ongoing disclosure

Effective ongoing disclosure

- RG 45.110 If there have been any material changes to a responsible entity's performance against the benchmarks, including against the responsible entity's alternative approach to meeting the benchmarks, the responsible entity should explain these in ongoing disclosures.
- RG 45.111 In a PDS, a responsible entity makes a number of statements about how the funds being raised by the PDS will be used, and how the responsible entity will operate the mortgage scheme. These 'promises' are part of the basis on which the investor invests their money, and the investor should be given the opportunity to monitor the responsible entity's performance against these promises.
- RG 45.112 Good ongoing disclosure plays an important role in helping investors monitor their investment, evaluate its performance and decide if and when to exit the investment (provided exit mechanisms exist) or increase their investment in the scheme.
- RG 45.113 Responsible entities have a number of obligations to make ongoing disclosures to investors under the Corporations Act: see RG 45.118–RG 45.124. Apart from these legal requirements, we encourage responsible entities to use the most efficient and effective methods to regularly communicate key information to investors: see RG 45.117.

Good practice for ongoing disclosure

- RG 45.114 It is good practice for a responsible entity to maintain a document addressing the benchmarks on an 'if not, why not' basis that is updated for material changes that the responsible entity becomes aware of in the ordinary course of managing the mortgage scheme. This updating allows the responsible entity to provide consolidated updated disclosure to investors on request. It is also good practice for this consolidated benchmark disclosure document to be clearly accessible on the scheme's website (if used for updating investors). The consolidated benchmark disclosure document should indicate the date it was prepared and last updated.
- RG 45.115 Many responsible entities have a practice of updating investors on key information about the scheme with a quarterly or half-yearly report. We

consider that it is good practice for responsible entities to update investors in writing on the status of key information at least every 6 months.

RG 45.116 Although it is not necessary to repeat information about performance against the benchmarks if it has not changed in these updates, we consider it is good practice to provide investors with:

- (a) an overview of any material changes to the responsible entity's performance against the benchmarks since the last update (so far as the responsible entity is aware);
- (b) if there have been no material changes, confirmation that this is the case;
- (c) details of how to access the scheme's consolidated benchmark disclosure document on the website (if available there); and
- (d) confirmation that they are entitled to a hard copy of the benchmark disclosure information on request.

Note: An alternative would be for responsible entities to provide investors with details of material changes to the benchmark disclosure information using a procedure similar to that applying for the provision of the financial report under s314.

RG 45.117 In addition to the regular updates discussed in RG 45.115, material changes to key information, including the benchmark disclosure information, should be given directly to investors, or made easily accessible by them, as soon as practicable using the most efficient and effective method of communication. For example, this could be through a website used for updating investors. The regular investor update should then advise investors directly that the benchmark disclosure information had been updated for a material change: see RG 45.116.

The legal framework for ongoing disclosure

RG 45.118 Responsible entities of mortgage schemes have obligations to provide ongoing disclosure to investors under the Corporations Act, including:

- (a) disclosure of material changes and significant events (s675 or 1017B); and
- (b) periodic statements to members under s1017D.

Continuous disclosure

RG 45.119 If the responsible entity of a scheme that is subject to continuous disclosure becomes aware of information that is not generally available and that a reasonable person would expect, if it were available, to have a material effect on the price or value of the interests in the scheme, the responsible entity must lodge a document with ASIC containing the information: s675.

Note: It is good practice for responsible entities to provide investors with access to continuous disclosure documents lodged with ASIC, either by sending investors a hard copy or posting the information on a website used for updating investors.

RG 45.120 The benchmarks reflect information that would reasonably be expected to have a material effect on the price or value of interests in the scheme. Material changes to the responsible entity's performance against the benchmarks may therefore trigger s675, unless the information is already generally available.

Notifications of material changes and significant events

RG 45.121 If a mortgage scheme is not subject to continuous disclosure obligations under Ch 6CA, the responsible entity must give investors notice of any material change to a matter, or a significant event that affects a matter, that would have been required to be specified in a PDS: s1017B.

RG 45.122 In our view, diversions from the benchmarks are material issues that should be covered in notifications to investors under s1017B. Where such changes or events are adverse to investors, notifications generally need to be provided as soon as practicable and in any event within 3 months.

Periodic statements

RG 45.123 The responsible entity of a mortgage scheme must give members a periodic statement at least annually: s1017D. Periodic statements must include details of:

- (a) the information that the responsible entity reasonably believes the investor needs to understand their investment in the mortgage scheme; and
- (b) details of any change in circumstances affecting the investment that has not been notified since the previous periodic statement.

RG 45.124 Periodic statements are designed to give investors regular updates about their investment. If a responsible entity does not otherwise report to investors in regular updates, they should update investors on the status of the benchmark disclosure information in the periodic statement.

E Advertising standards for all mortgage schemes

Key points

Responsible entities of all mortgage schemes (whether listed or unlisted) can promote investor understanding and minimise the risk of mis-selling by ensuring that advertising for their products meets certain standards: see RG 45.125–RG 45.147.

Responsible entities who fail to comply with these standards risk making false or misleading statements or engaging in misleading or deceptive conduct: see RG 45.148–RG 45.149.

Under general law, a publisher or other media conduit may have some responsibility for an advertisement's content: see RG 45.150–RG 45.155.

Standards for advertisements

Repayment of principal investment

- RG 45.125 Retail investors may confuse products where returns, interest rates or fixed term investment periods are advertised with bank or other deposits. Many mortgage schemes advertise one or more of these features. Retail investors may fail to realise that a mortgage scheme investment is an equity investment in a managed investment scheme, and there is a higher risk of losing some or all of their money than is the case with a bank deposit.
- RG 45.126 For this reason, any advertisements for mortgage scheme investments that are offered to retail investors should contain prominent disclosure that investors risk losing some or all of their principal investment.

Returns on investments and investment ratings

- RG 45.127 Advertisements for mortgage schemes that are offered to retail investors should *only* quote returns on the investment if this is accompanied by prominent disclosure that there is a risk that the investment may achieve lower than expected returns.

Note: This includes advertisements with generic references to the return (e.g. to a 'very high', 'highly competitive', 'regular' or 'consistent' return) as well as to a specific return.

- RG 45.128 References to returns in advertising can be very influential to retail investors. These references can be misleading if at the same time the investor is not given information about the likelihood of being paid that return.

- RG 45.129 If an investment rating is used in a mortgage scheme advertisement, it should be properly explained. This explanation should include the meaning of the rating and where an investor can obtain further information about the rating. The advertisement should also state that investment ratings are only one factor to be taken into account when deciding whether to invest.
- RG 45.130 Responsible entities should ensure that:
- (a) the impression the investment rating creates about the mortgage scheme being advertised is not misleading; and
 - (b) investment ratings used in advertisements for mortgage schemes are only quoted from research houses that hold an Australian financial services licence.

Comparisons with bank deposits and ‘risk free’ suggestions

- RG 45.131 Advertisements for mortgage schemes should state that the mortgage scheme is *not* a bank deposit. Advertisements should also *not* suggest that:
- (a) the mortgage scheme is, or compares favourably to, a bank deposit or other deposit product; or
 - (b) there is no or little risk of the investor losing their principal or not being paid a return.
- RG 45.132 This means that the following terms should be avoided in advertisements for mortgage schemes: ‘secure’, ‘secured’, ‘guaranteed’, ‘warranted’, ‘safe’, ‘deposit’, ‘first ranking’ and ‘fixed income’.
- RG 45.133 We consider that the use of these (or similar) terms creates a misleading impression about the mortgage scheme and the risks involved with investing in it. They contribute to the misconception that investors can achieve higher returns than a bank deposit without the risk of losing their principal investment.
- RG 45.134 Terms such as ‘secure’, ‘secured’, ‘guaranteed’ and ‘warranted’ convey an impression of a safe investment and, in our experience, they have a disproportionate effect on retail investors. We consider that investors will be left with a misleading impression about the risk profile of the mortgage scheme without a detailed explanation of:
- (a) the nature of the security, guarantee or warranty;
 - (b) the fact that investors in the scheme are unsecured equity investors; and
 - (c) the fact that lenders to the scheme have priority over the assets of the scheme.
- RG 45.135 We consider the use of terms such as ‘fixed income’ may also create a misleading impression that the returns an investor receives are not subject to change and that the returns are in the form of interest rather than a return from the revenue generated by the scheme.

Withdrawal periods, withdrawal rights and investment periods

- RG 45.136 Many mortgage schemes operate on the basis that withdrawal requests will be satisfied within a relatively short period even though the constitution of the scheme allows for a much longer maximum period to satisfy withdrawal requests.
- RG 45.137 We consider that an advertisement which promotes a withdrawal period or withdrawal rights will be misleading unless there is prominent disclosure:
- (a) of any longer period within which the responsible entity may satisfy withdrawal requests;
 - (b) that there are circumstances in which the responsible entity may suspend withdrawals (if this is the case); and
 - (c) that members will only have limited rights to withdraw if the scheme does not satisfy the statutory liquidity test in the Corporations Act.
- RG 45.138 Some mortgage schemes advertise fixed term investments (e.g. 6 months, 12 months). If the investor can only withdraw at the end of the fixed term by making a withdrawal request, the reference to the fixed term investment is likely to be misleading unless it is accompanied by prominent disclosure of the risk that the investor will not be paid their withdrawal proceeds within a reasonable period after the end of the fixed term.

Fees

- RG 45.139 Some mortgage schemes advertise that a particular type of fee is not payable or is payable at a low rate. If this arrangement is dependent on conditions being satisfied (e.g. it is a requirement that the member not withdraw from the scheme for a specified period of time), we consider the advertisement will be misleading unless there is prominent disclosure of:
- (a) if it is advertised that no fee is payable, the circumstances in which a fee is payable, together with the amount of the fee; and
 - (b) if it is advertised that a fee is payable at a particular rate, the circumstances in which a higher fee is payable, together with the amount of the higher fee.

Suitability statements

- RG 45.140 Advertisements for mortgage schemes should not state or imply that the investment is suitable for a particular class of investor (e.g. ‘this product is suitable for a conservative investor’ or ‘this product is suitable for a self-managed super fund’). Such a statement may be misleading as it may convey the impression that the responsible entity has actually assessed the suitability of the mortgage scheme for particular investors targeted by the advertisement.

Consistency with PDS disclosure

- RG 45.141 Statements in advertisements for mortgage schemes should be consistent with all corresponding disclosures on that subject matter in the PDS. In particular, responsible entities should take into account the disclosures in the PDS about the benchmarks in Section C.
- RG 45.142 In ensuring consistency with disclosure in the PDS, responsible entities should be aware that an advertisement may be misleading if it quotes a statement from the PDS out of context. For example, while it may not be misleading to describe a return on a mortgage scheme product as ‘guaranteed’ in the PDS where sufficient information is given about the guarantee and its likely efficacy, using the term ‘guaranteed’ in an advertisement is likely to be misleading.

Telephone inquiries

- RG 45.143 Statements made over the telephone or in any correspondence in response to inquiries about mortgage schemes are subject to the same regulation for misleading and deceptive conduct as the advertisements. Therefore, the same restrictions apply (e.g. about using words such as ‘secure’, ‘secured’ and ‘guaranteed’).
- RG 45.144 Responsible entities of mortgage schemes should ensure that all statements made by call centre staff (or other staff or contractors engaged by them) to prospective investors who respond to advertisements for mortgage schemes are consistent with disclosures on that subject in the PDS. In the case of returns, withdrawal periods, withdrawal rights, investment periods and fees, no statements should be made that would have been prohibited in the advertisement to which the inquiry related.
- RG 45.145 To ensure compliance with this standard, responsible entities could develop a script and list of questions and answers that call centre staff and any other staff fielding these inquiries should adhere to.

Warning statements generally

- RG 45.146 The warning statements referred to in RG 45.126–RG 45.131 and RG 45.137–RG 45.139 should be prominent. For example, investors who notice a statement about returns (if any) should also be reasonably likely to notice the corresponding warning statement and be able to easily understand it. This will help ensure investors have a balanced impression of the mortgage scheme offering.
- RG 45.147 We are not prescribing ‘boilerplate’ or standardised warning statements. It is the responsibility of the responsible entity to ensure that their advertisement is not misleading or deceptive and that the warning statements referred to in RG 45.126–RG 45.131 and RG 45.137–RG 45.139 are effective.

How ASIC deals with contraventions

- RG 45.148 Responsible entities of mortgage schemes who fail to comply with the advertising standards risk making false or misleading statements or engaging in misleading or deceptive conduct in contravention of the Corporations Act or ASIC Act.
- RG 45.149 The law provides ASIC with various options for dealing with misleading or deceptive advertisements for mortgage schemes or mortgage scheme advertising that constitutes misleading or deceptive conduct. These include:
- (a) issuing a stop order on any misleading or deceptive statements in an advertisement for a mortgage scheme;
 - (b) seeking an injunction against a responsible entity for mortgage scheme advertising that constitutes misleading or deceptive conduct;
 - (c) investigating potential criminal action for contraventions of s1041E of the Corporations Act or s12DF of the ASIC Act; and
 - (d) taking other regulatory action against a responsible entity where mortgage scheme advertising contravenes their obligations as a financial services licensee.

Note: See Regulatory Guide 156 *Debenture advertising* (RG 156) at RG 156.31–RG 156.32 for further guidance about when advertising may be misleading or deceptive.

The role of publishers and the media

- RG 45.150 While the primary responsibility for advertising material rests with the organisation placing the advertisement, under general law the publisher may also have some responsibility for its content. This depends on whether the publisher received the ‘advertisement for publication in the ordinary course of that business and did not know, and had no reason to believe, that its publication would amount to an offence against that provision’: s1044A, Corporations Act; s12GI(4), ASIC Act.
- RG 45.151 We believe that the advertising standards in this guide give publishers knowledge of the type of conduct that would contravene the law. This means that publishers should ensure that they are in a position to decline advertisements for mortgage schemes that:
- (a) fail to contain the statements referred to in RG 45.126–RG 45.131 and RG 45.137–RG 45.139;
 - (b) have any references to returns that fail to comply with the standards in RG 45.127–RG 45.128;
 - (c) have any references to withdrawal periods, withdrawal rights or investment periods that fail to comply with the standards in RG 45.136–RG 45.138;

- (d) use the terms ‘secure’, ‘security’, ‘guaranteed’ or ‘warranted’ (or similar terms) (see RG 45.134); or
- (e) contain suitability statements (see RG 45.140).

- RG 45.152 Generally, responsible entities will use the terms ‘mortgage’, ‘mortgage scheme’, ‘mortgage trust’ or ‘mortgage fund’ to describe products subject to this regulatory guide. But we encourage publishers to specifically ask their advertising clients if the product they are advertising is regulated by this guide.
- RG 45.153 To help publishers identify potentially problematic advertisements, we will make available details of responsible entities of mortgage schemes that have previously had a stop order made against either their PDS or any of their advertisements. We expect publishers to scrutinise advertisements by these responsible entities with particular care.
- RG 45.154 We also expect publishers to cease publishing an advertisement if we inform them that it is currently subject to a stop order. We will assist publishers by making this information available.
- RG 45.155 If a publisher contributes to the content of the advertisement (e.g. in writing advertorials) or otherwise has an active involvement in the promotion of the financial product (e.g. through co-branding or where a media personality uses their influence to promote a product), we regard the publisher to be in the same position as the responsible entity in terms of their responsibility to comply with the advertising standards in this guide. We consider that this level of active involvement may mean that the general defence that publishers might claim against liability for content of an advertisement under s1044A is unlikely to apply.

F Compliance plans

Key points

Compliance plans must set out measures for the responsible entity to comply with the Corporations Act and scheme constitution.

We expect compliance plans for mortgage schemes to set out adequate measures to ensure compliance with the disclosure and advertising obligations discussed in this guide.

We expect compliance committees and compliance plan auditors to be aware of these disclosure and advertising obligations and to have regard to them in carrying out their duties.

Responsible entities, compliance committees and compliance plan auditors should consider these disclosure and advertising obligations when assessing whether a compliance plan is adequate.

The compliance plan

- RG 45.156 Compliance plans play a key role in protecting investors and promoting their interests. The law requires managed investment schemes to have a compliance plan: s601EA. The compliance plan must set out adequate measures for the responsible entity to ensure compliance with the Corporations Act and the scheme's constitution: s601HA. The responsible entity has a duty to comply with the compliance plan: s601FC(1)(h).
- RG 45.157 Compliance plans should contain adequate procedures to ensure that responsible entities comply with their upfront and ongoing disclosure obligations, including their obligations for disclosure against the benchmarks in this guide. Compliance plans should also contain adequate procedures to ensure that responsible entities comply with their advertising obligations.
- RG 45.158 We do not expect that responsible entities will necessarily need to change their compliance plans to deal expressly with the disclosure and advertising obligations discussed in this guide. Good compliance plans should already contain procedures to ensure that responsible entities comply with all of their disclosure and advertising obligations under the law.
- RG 45.159 However, we do expect responsible entities to critically examine existing compliance plans and consider whether they are adequate to ensure compliance with the obligations discussed in this guide. Regardless of whether a scheme has a compliance committee, responsible entities have a duty to ensure that compliance plans establish adequate measures to ensure compliance (including with disclosure and advertising obligations): s601FC(1)(g).

Compliance committees

- RG 45.160 Many mortgage schemes have a compliance committee. A scheme is required to have a compliance committee unless at least half of the responsible entity's directors are external directors: s601JA. If the scheme does not have a compliance committee, the responsible entity's directors should be particularly vigilant about ensuring the responsible entity complies with the compliance plan and the compliance plan is adequate.
- RG 45.161 The functions of a compliance committee are to:
- (a) monitor the extent to which a responsible entity complies with the compliance plan and report its findings to the responsible entity;
 - (b) report any breach of the law or the scheme's constitution to the responsible entity;
 - (c) report to ASIC if the compliance committee considers that the responsible entity is not taking adequate action to deal with a matter reported under paragraph (b); and
 - (d) assess at regular intervals whether the compliance plan is adequate, to report to the responsible entity on the assessment and to make recommendations to the responsible entity about any changes that it considers should be made to the plan: s601JC(1).
- RG 45.162 We expect compliance committees for mortgage schemes to be aware of the disclosure and advertising obligations discussed in this guide. Compliance committees need to regularly assess whether the compliance plan contains adequate measures to ensure compliance by responsible entities with their:
- (a) upfront and ongoing disclosure obligations, including disclosure against the benchmarks as discussed in Section D; and
 - (b) advertising obligations as discussed in Section E.
- RG 45.163 If a compliance committee forms the view that a compliance plan is not adequate, it needs to report this to the responsible entity, together with recommendations about changes that should be made to the plan.
- RG 45.164 A compliance committee should also monitor compliance by the responsible entity with the compliance plan. Where a compliance committee identifies non-compliance or a possible breach of the law (including a breach relating to the responsible entity's disclosure and advertising obligations), the compliance committee will need to make a report to the responsible entity and, if necessary, report the matter to us.

Compliance plan auditors

RG 45.165 Compliance plans are subject to an annual audit. The auditor of a compliance plan must give the responsible entity a report that states the auditor's opinion on whether:

- (a) the responsible entity has complied with the compliance plan; and
- (b) the plan continues to meet the requirements of the Corporations Act.

RG 45.166 We expect compliance plan auditors to be aware of the disclosure and advertising obligations in this guide. In determining whether a plan continues to meet the requirements of the Corporations Act, compliance plan auditors should consider whether the compliance plan is adequate to ensure compliance with these disclosure and advertising obligations.

Key terms

Term	Meaning in this document
advertisements	Includes comment on and promotion of mortgage schemes in media programs or publications (generally known as ‘advertorials’) and statements about mortgage schemes published by responsible entities on their websites that are intended to promote the scheme to retail investors (but does not include statements in a PDS)
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i> (Cth) including regulations made for the purposes of that Act
‘as if complete’ valuation	An estimate of the market value of a property, assuming certain specified improvements are made
‘as is’ valuation	An estimate of the market value of a property in its current state (i.e. without any further improvements)
Australian Accounting Standards	Standards made for the purposes of s296(1) of the Corporations Act
benchmark disclosure information	A statement in relation to each benchmark that the scheme either: <ul style="list-style-type: none"> • meets the benchmark; or • does not meet the benchmark <i>and</i> an explanation of how and why the responsible entity deals with the business factors or issues underlying the benchmark in another way
cash or cash equivalents	Has the same meaning as in Australian Accounting Standard AASB 107 <i>Cash Flow Statements</i> : see Note 2 to RG 45.38
contributory mortgage scheme	A mortgage scheme under which an investor invests in a single mortgage loan through: <ul style="list-style-type: none"> • a general authority, where the investor receives a summary after the application is approved followed by a cooling off period; or • a specific authority where the investor receives a supplementary PDS before investing
Corporations Act	<i>Corporations Act 2001</i> (Cth) including regulations made for the purposes of that Act
CP 99	An ASIC consultation paper (in this example, numbered 99)
liquidity	For the purposes of benchmark 1, the proportion of cash or cash equivalents in a scheme’s assets <p>Note: ‘Liquidity’ for the purposes of this benchmark is not the same as ‘liquidity’ for the purposes of Part 5C.6 (which relates to satisfying a statutory test).</p>

Term	Meaning in this document
market value	An estimate of the amount for which the property or asset could exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction
mortgage loan	A loan secured by a mortgage over real property (including residential, commercial, industrial or retail property or vacant land)
mortgage scheme	<p>A managed investment scheme that has or that is likely to have at least 50% of its non-cash assets invested in mortgage loans and/or unlisted mortgage schemes</p> <p>Note: This definition includes contributory mortgage schemes.</p>
PDS	Product Disclosure Statement
related party	The term 'related party' should be interpreted broadly, taking into consideration the definitions of 'related party' in s228 (as applied to the scheme by Part 5C.7) and accounting standard AASB 124 <i>Related Party Transactions</i> and includes the responsible entity
RG 69	An ASIC regulatory guide (in this example, numbered 69)
rollovers	Where an existing investor keeps their money in the existing mortgage scheme for an additional term (whether on the same or slightly different terms)
s1017B (for example)	A section of the Corporations Act (in this example, numbered 1017B)

Related information

Headnotes

Mortgage schemes, pooled mortgage schemes, contributory mortgage schemes, listed, unlisted, benchmarks, advertising, misleading, deceptive, responsible entities, valuers, compliance plans, compliance committees, compliance plan auditors

Regulatory guides

RG 69 *Debentures—improving disclosure for retail investors*

RG 118 *Commentary on compliance plans: Contributory mortgage schemes*

RG 119 *Commentary on compliance plans: Pooled mortgage schemes*

RG 132 *Managed investments: Compliance plans*

RG 144 *Mortgage investment schemes*

RG 156 *Debenture advertising*

RG 170 *Prospective financial information*

Legislation

Ch 2M, 6CA, Pt 7.9, 7.10 Corporations Act, ASIC Act

Consultation papers and reports

CP 99 *Mortgage schemes—improving disclosure for retail clients*