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Investment Funds Unit

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Submission on *Enhancing oversight and governance of managed investment schemes* consultation paper

Thank you for the opportunity to provide feedback on the *Enhancing oversight and governance of managed investment schemes* consultation paper released by Treasury on 10 February 2026.

CNM Legal is a commercial law firm specialising in funds management, financial services licensing, corporate capital raising and corporate advisory work.

We act for responsible entities of registered managed investment schemes and so many of our clients have a keen interest in the matters raised in this consultation paper.

Our responses to the questions in your proposal are as follow:

P1Q1 What are your views on proposals 1.1 to 1.4 to enhance the compliance framework for MISs?

We support targeted enhancements to the compliance framework, particularly where reforms are directed at improving the quality and enforceability of compliance plans and audits.

In principle:

- Proposal 1.1 (stricter compliance plan requirements) is appropriate, provided any additional prescription remains proportionate and scalable.
- Proposal 1.2 (materiality threshold for liability) is strongly supported. The current framework incentivises generic drafting and risk-minimisation rather than meaningful articulation of controls.
- Proposal 1.3 (mandatory audit and assurance standards) is appropriate and would align compliance plan audits more closely with financial statement audits.
- Proposal 1.4 (notification of compliance committee changes) is reasonable and relatively low impact.

However, the reforms should avoid creating a prescriptive 'checklist' regime that displaces board judgement and risk-based governance.

P1Q2 Should the framework for compliance plans be amended to include more specific content requirements?

Yes, but only to the extent necessary to address systemic deficiencies identified by ASIC.

The compliance plan is not the appropriate document to include a scheme's investment strategy. The product disclosure statement is the appropriate place to include the scheme's investment strategy, which may change over time.

Compliance plans should remain principles-based and capable of being tailored across corporate groups and diverse asset classes. Overly granular prescription is not supported.

P1Q3 Who should set and enforce standards for compliance plan audits?

We consider there is merit in strengthening the legal status of standards applicable to compliance plan audits. In our view, the framework would be strengthened if the body responsible for setting statutory auditing standards were expressly authorised to determine the mandatory standards applicable to compliance plan audits. Those standards should have clear legislative backing under the Corporations Act so that compliance is not merely aspirational but enforceable.

ASIC should continue to oversee compliance and take enforcement action where appropriate. Embedding the standards in legislation would elevate the consistency and credibility of compliance plan audits, bring them into closer alignment with the treatment of financial audits, and preserve the appropriate distinction between technical standard-setting and regulatory supervision.

P1Q4 Are any other changes required to strengthen the compliance framework?

No. The focus should be on improving alignment within the existing framework.

In particular:

- clarifying how compliance plans integrate with broader risk management systems under section 912A; and
- providing clearer guidance on interaction between compliance plans and design and distribution obligations.

Improving coherence across existing regimes would likely be more effective than adding further standalone requirements.

P1Q5 What would the impacts of the proposals be, including compliance costs?

Compliance costs will increase, particularly for smaller responsible entities. Impacts would include redrafting compliance plans, increased audit scope and fees, and additional board oversight time.

A phased implementation period would be appropriate.

P2Q6 Should responsible entities be required to have a majority of external board members?

No. While the governance rationale is acknowledged, removal of the compliance committee option reduces structural flexibility.

For founder-led or tightly held groups, this would require substantive board restructuring, additional external director appointments and a rethink of committee architecture, rather than marginal adjustment.

P2Q7 Are there enough external directors available in Australia to meet this proposal?

No. There is a relatively limited pool of suitably experienced external directors with funds management and Chapter 5C expertise. The role requires not only general governance capability, but also a detailed understanding of scheme structures, liquidity management, valuation, conflicts and regulatory obligations. That combination of skills is not widely available.

Mandating a majority of external directors across all responsible entities is likely to:

- increase director concentration risk, with a small cohort sitting across multiple RE boards;
- materially increase remuneration costs due to heightened demand; and
- encourage multi-board appointments, which may give rise to perceived or actual conflicts, particularly where directors sit on boards of competing managers or platform REs.

There is also a risk that smaller or boutique responsible entities may struggle to attract appropriately qualified candidates, potentially entrenching larger institutional players and accelerating consolidation in the sector.

While strengthening independent oversight is a legitimate policy objective, any reform should be calibrated to ensure it does not inadvertently reduce diversity, competition or governance quality through over-concentration of directorships.

P2Q8 Are any other changes required to address conflicts of interest and ensure independent oversight of MISs?

No. These are already addressed in the Corporations Act and AFS licensing regime.

P2Q9 What would the impacts of the proposal be, including compliance costs?

Board restructuring costs would be material. Increased director remuneration would ultimately be borne by scheme members. Transitional arrangements would be essential.

P3Q10 Should responsible entities of MISs be prohibited from investing or lending money to companies that are controlled by a member of the responsible entity's board or companies that are related bodies corporate of the responsible entity? What exceptions would be required?

We do not support a blanket prohibition. Related party arrangements are a structural feature of many legitimate and well-governed vertically integrated funds management groups. In practice, retail feeder funds commonly invest into related wholesale funds, group entities provide investment management or operational services, and treasury functions are centralised at group level. These arrangements, of themselves, do not give rise to consumer harm where properly governed.

Accordingly, reform should focus on strengthening governance and oversight of related party transactions rather than prohibiting them outright. In our view, the regulatory emphasis should be on:

- robust arm's length testing and documentation of commercial terms;
- enhanced board-level oversight, particularly by external directors;
- clear and prominent disclosure of related party relationships and fee flows; and
- mandatory independent valuation or fairness assessment for material transactions involving scheme property.

If tighter restrictions were to be introduced, carefully calibrated exemptions would be essential to preserve legitimate commercial structures. At a minimum, exemptions would be required for:

- feeder fund arrangements investing into related wholesale or underlying funds within a group;
- standardised treasury and liquidity management functions undertaken on commercial terms;
- group service entities providing administration, custody, investment management or operational services; and
- internal restructures or portfolio management activities conducted on arm's length conditions.

Without such exemptions, the reform would materially disrupt established business models, increase operational duplication and cost, and ultimately reduce efficiency for members.

P3Q11 Are any other changes required to ensure investment decision making by the responsible entity is in the best interests of scheme members?

No. This is already covered in the Corporations Act.

P3Q12 What would the impacts of the proposal be, including compliance costs?

A prohibition would significantly disrupt established structures and increase compliance and restructuring costs. Product innovation and efficiency may be reduced.

P3Q13 Where a responsible entity has a separate investment manager, should the investment manager be prohibited from being a related party?

No. It is common market practice for a responsible entity to appoint a related body corporate as investment manager within an integrated funds management group. This structure reflects commercial efficiency and operational alignment rather than, of itself, evidencing unmanaged conflicts.

Prohibiting related party investment managers would require widespread restructuring of established group models. This would introduce duplication of infrastructure, increased operating costs and tax inefficiencies, with costs ultimately borne by scheme members.

Importantly, the existence of a related party investment manager does not diminish the responsible entity's statutory obligations, including its duties under section 601FC and its AFS licensee conflict management obligations under section 912A. Accountability remains clearly with the responsible entity.

If reform is considered necessary, more proportionate measures would include enhanced disclosure, strengthened arm's length pricing oversight, periodic independent review of related party arrangements, or targeted reporting to ASIC.

Mandating structural separation would undermine the clarity and efficiency of the single responsible entity model without clear evidence of improved consumer outcomes.

P4Q14 Should more specific financial resource requirements should be imposed on responsible entities (in addition to the general obligation to have adequate resources under section 912A(1)(d) of the Corporations Act)?

Greater clarity around the objectives of the financial resource regime would be beneficial. However, any move toward more prescriptive capital requirements must reflect the functional role of responsible entities. Responsible entities are not prudential institutions and are not intended to absorb investment losses. Financial resources should be calibrated to ensure:

- operational resilience;
- compliance capability; and
- the ability to facilitate an orderly transition or wind-up.

If additional specificity is introduced, a risk-based approach would be more appropriate than a uniform uplift in capital. Relevant factors could include scale (FUM), structural complexity and asset liquidity profile.

Materially higher or inflexible capital settings would have significant downstream consequences, including higher barriers to entry, pressure on boutique and platform RE models, and increased capital allocations from parent groups to RE subsidiaries. This may accelerate consolidation without necessarily improving member outcomes.

Accordingly, any reform should remain proportionate and aligned to operational risk rather than adopting a prudential-style capital framework.

P4Q15 Should the MIS financial requirements (including the net tangible asset requirement for responsible entities) continue to be set by ASIC using its exemption and modification powers in the Corporations Act or should the requirements be set out in primary legislation or regulations?

Yes, the MIS financial requirements should continue to be set by ASIC. ASIC's modification power provides flexibility and responsiveness to evolving risk settings. Hard-coding requirements in primary legislation may reduce agility.

P4Q16 Should the objectives of the MIS financial requirements be specified in primary legislation or regulations to provide more clarity about the purpose of the requirements?

The requirements are already addressed in legislation and ASIC Regulatory Guide 166 *AFS licensing: Financial requirements*.

P4Q17 Are any other changes to the framework for determining MIS financial requirements required?

No further changes are required.

P4Q18 What would the impacts of the proposal be, including compliance costs?

Higher capital requirements may create higher barriers to entry for new REs, accelerate industry consolidation and increase costs to members.

P5Q19 Should a new legislative framework be introduced for the recurrent collection of data by ASIC on MISs?

Yes, in principle. ASIC would benefit from scheme-level recurrent data collection, provided duplication with APRA and other regulators is minimised.

P5Q20 What types of recurrent data could help to detect risks, including conduct or fund level risks in the retail MIS sector?

Data such as funds under management (**FUM**) and net flows, liquidity metrics, asset allocation, related party exposure, redemption restrictions and complaints trends would be useful.

P5Q21 What data should be collected about MISs?

Data collection should be risk-focused and scalable, with proportional burden on smaller schemes.

P5Q22 What event notifications should be provided to ASIC? For example, should there be a notification when redemptions are frozen or suspended?

Notification may be appropriate for suspension of redemptions, material valuation adjustments, material related party transactions and significant compliance breaches affecting members.

P5Q23 What would the impacts of the proposal be, including compliance costs?

Recurrent reporting will increase systems and compliance costs.

P6Q24 Would a mandatory alerts regime for superannuation trustees be the most effective means of improving ASIC's visibility of problematic super switching behaviour?

P6Q25 What types of suspected conduct or patterns of behaviour should be reportable to ASIC?

P6Q26 What, if any, existing barriers prevent transferring funds from:

- **Reporting issues to ASIC where they identify potential concerns?**
- **Identifying suspicious behaviour or potential misconduct by a third party, such as financial adviser or the receiving fund?**

P6Q27 What barriers may impact the ability of trustees to meet this new reporting obligation?

P6Q28 Under a data reporting approach:

- **What data should be reported?**
- **Are there existing data or reporting lines which could be leveraged?**

In response to questions P6Q24 to P6Q28, much of the information a mandatory alerts regime seeks to capture is already available through existing regulatory channels.

ASIC and APRA already receive substantial data relating to rollovers, advice fee deductions, and member complaints through IDR, the Reportable Situations Regime and APRA reporting frameworks. AFCA and ASIC datasets, while retrospective, provide visibility of switching-related harm once it crystallises. In addition, trustees already monitor rollover volumes, adviser-linked activity and fee deductions as part of their operational and risk management processes.

The issue is therefore less one of data absence and more one of data aggregation, analytics and regulatory coordination. If an alerts regime were introduced, it should be tightly scoped and focus on systemic patterns (e.g. concentrated adviser-driven rollovers or abnormal advice fee trends) rather than isolated transactions. Clear thresholds and safe-harbour protections would be essential to avoid defensive over-reporting.

Trustees would face system uplift costs, data harmonisation challenges and increased compliance burden if required to build new monitoring capabilities. Leveraging existing APRA collections and RSR/IDR reporting lines would be preferable to creating parallel reporting streams.

Sincerely



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