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Mr Andre Moore
Assistant Secretary
Advice, Insurance and Capital Markets
The Treasury
Langton Crescent
Parkes ACT 2600

Via email: MISRegulation@treasury.gov.au

Dear Mr Moore

RE: Enhancing Oversight and Governance of Managed Investment Schemes

The Financial Services Council (**FSC**) welcomes the opportunity to provide a submission to the Government's consultation paper on *Enhancing Oversight and Governance of Managed Investment Schemes*.

The FSC supports the Government's objective of strengthening investor protection, improving regulatory visibility and reinforcing confidence in Australia's managed investment scheme (**MIS**) framework. Recent scheme failures have highlighted the importance of effective governance, robust conflicts management and early regulator identification of structural and conduct risks. It is appropriate that Treasury examine whether targeted reforms are required to ensure the regulatory framework continues to operate effectively in a market characterised by increasing size and complexity, and global participation.

In considering reform, it is important to distinguish between structural prescription and governance effectiveness. The MIS framework already operates within a dense regulatory architecture, including obligations and statutory duties under *Chapter 5C* of the *Corporations Act 2001* (**the Corporations Act**), fiduciary duties of responsible entities as trustees at law, Australian Financial Services Licence (**AFSL**) obligations, breach reporting, restrictions on related party transactions, compliance plan audits, financial resource requirements and disclosure regimes. Where failures have occurred, they have often reflected breaches of existing laws including in oversight, escalation and conduct, rather than gaps in statutory structure.

The FSC therefore supports a reform pathway that is proportionate, risk-based and evidence-led. Regulatory settings should target identifiable risk drivers and enhance supervisory capability, rather than impose uniform structural mandates across a diverse sector. A calibrated approach that strengthens accountability, improves transparency and supports tiered, risk-based supervision will better protect investors while preserving competition, innovation and investment choice.

The FSC also supports equipping ASIC with the data and intelligence it needs to effectively implement risk-calibrated registration of MISs as well as detect high-risk super switching activity. On the latter, the FSC considers that existing channels of data reporting (such as through APRA) can be leveraged to achieve this objective.

This submission outlines the FSC's views on each of the consultation proposals and sets out a broader risk-calibrated reform pathway that aligns enhanced data collection, registration scrutiny and supervisory engagement with objective indicators of scheme-level risk.

About the Financial Services Council

The FSC is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in one of Australia's largest industry sectors, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds and financial advice licensees.

Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses. The financial services industry is responsible for investing more than $4 trillion on behalf of over 15.6 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is one of the largest pools of managed funds in the world.

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Summary of Recommendations

1. The compliance plan framework should be refined in a targeted and proportionate manner to strengthen articulation of material risks, control ownership and escalation pathways, supported by ASIC guidance and a transition timeframe, while avoiding duplication of existing disclosure obligations applicable to MISs and unnecessary prescriptive content requirements;
2. Any refinement of compliance plan content should be supported by ASIC guidance identifying priority risk areas and expected control coverage, recognising that compliance plans are governance documents focused on material risks and not exhaustive statements of all statutory obligations;
3. Liability for contraventions of a compliance plan should attach only to material contraventions, supported by clear guidance on the assessment of materiality, alignment with existing breach reporting concepts, and appropriate consequential amendments to sections 601FC and 601FD;
4. Compliance plan audit requirements should promote consistency and quality of assurance, incorporate a clear materiality threshold aligned to the purpose of the audit, remain proportionate to scheme size and complexity, and avoid unnecessary duplication and cost;
5. Responsible entities should notify ASIC of changes to compliance committee membership to enhance supervisory visibility, within a reasonable period after the removal or appointment and without introducing approval mechanisms;
6. The regulatory framework should not be amended to mandate a majority of external directors on responsible entity boards or to remove the compliance committee model, as such structural prescription is unlikely to improve governance outcomes and would impose disproportionate costs relative to demonstrable benefit;
7. Any governance reform should take into account the limited availability of suitably qualified external directors and avoid creating sector-wide structural requirements that may lead to director scarcity, increased investor costs and unintended governance strain;
8. Independent oversight should be strengthened through principles-based guidance on governance capability, conflict management and effective challenge, supported by enhanced supervisory visibility, rather than through prescriptive board composition

mandates;

9. Governance reforms should be proportionate and carefully assess impacts on investor costs, director availability, market competition and industry structure before introducing sector-wide structural mandates;
10. The related party transaction framework should preserve legitimate and investor-beneficial arrangements, rather than adopting a blanket prohibition with limited exceptions that would be inherently difficult to calibrate without inadvertently and unnecessarily capturing legitimate commercial practices;
11. Introduce a clearly defined prohibition targeting high-risk and self-dealing related party arrangements that undermine the responsible entity's duty to act in members' best interests.
12. Require clear and comprehensive disclosure of all related party transactions in product disclosure and ongoing reporting;
13. Supervisory visibility and governance expectations regarding related party arrangements should be strengthened to support risk-based oversight, rather than replacing the existing RPT framework with a blanket structural prohibition regime;
14. The high-level objectives of MIS financial requirements may be clarified in primary legislation, but detailed capital thresholds and calibration mechanisms should remain within ASIC's regulatory legislative instrument framework to preserve flexibility and adaptability;
15. Financial requirements should be calibrated to clearly articulated regulatory objectives, including operational resilience and orderly wind-down, rather than applying across-the-sector capital uplifts without demonstrated consumer benefit;
16. Any reform to financial requirements should be subject to detailed consultation and accompanied by clear and certain calibration settings. In the absence of further detail, it is difficult to assess the impact of potential changes. Any adjustments should be proportionate to scheme risk and complexity, while providing sufficient certainty to enable responsible entities to undertake effective capital planning and business management;
17. Financial requirement reforms should consider the interaction with group capital structures and funding models, ensuring that capital held at the responsible entity level is proportionate to demonstrable risk exposure and consumer protection objectives;
18. Where financial resilience gaps are identified, targeted measures addressing wind-down capability and liquidity management should be preferred over broad capital uplifts that may not address the specific risk being mitigated;
19. Any changes to financial requirements should be supported by a clear assessment of investor cost impacts, competition effects and barriers to entry, ensuring that reforms are proportionate to demonstrated regulatory need;
20. A legislative framework for recurrent data collection may be appropriate where clearly linked to risk-based supervision, provided that:

- Detailed reporting fields and formats remain adaptable through regulatory instruments and/or ASIC industry guidance;
- Consequences for non-compliance are proportionate and distinguish material failures from inadvertent errors; and
- Any data verification requirements are targeted and risk-based.

21. The use of expanded ASIC data collection should be to support risk-calibrated registration and supervisory engagement, enabling ASIC to identify higher-risk schemes, allocate regulatory resources proportionately and intervene earlier where risk indicators deteriorate;
22. Recurrent data collection should be limited to clearly defined and objective risk indicators, including liquidity profile, valuation governance, leverage, structural complexity and related party financing exposure, to ensure that reporting is targeted to areas of demonstrable supervisory relevance;
23. If event-based notification requirements are introduced, they should be limited to clearly defined, material structural changes in risk profile and calibrated to avoid capturing lawful, disclosed or routine operational decisions taken in accordance with responsible entity duties;
24. Any expanded data collection regime should be proportionate, clearly specified and coordinated across regulatory agencies in accordance with the Government's "tell us once" principle, to minimise duplication, reduce compliance burden and maximise supervisory effectiveness;
25. The FSC recommends that, if the policy objective is to improve ASIC's visibility of potential high-risk super switching, Treasury consider pursuing an enhanced periodic data reporting model via APRA rather than a mandatory alerts regime. Requiring RSE licensees to report the source of newly created accounts, broken down by AFSL and/or authorised representative where known, through existing APRA reporting channels would enable regulators to detect industry-wide patterns in a structured, objective manner while minimising duplication and reliance on subjective trustee judgement;
26. The FSC recommends ASIC explore formalised intelligence-sharing arrangements with AUSTRAC and the ATO, and assess the utility of existing data holdings, before establishing new reporting obligations that may duplicate existing frameworks;
27. The FSC recommends that Treasury explore providing greater clarity or safe-harbour style protections for good-faith intelligence sharing to provide confidence that firms can test and escalate concerns without disproportionate legal exposure;
28. The registration framework should incorporate objective risk indicators that allow enhanced scrutiny of higher-risk or more complex schemes, while preserving efficient registration pathways for lower-risk and well-governed structures; and
29. Supervisory engagement should be explicitly calibrated according to identifiable and objective risk indicators, informed by existing regulatory data sources, enabling regulatory resources to focus on higher-risk schemes and emerging vulnerabilities.

Proposal 1: Enhance the regulatory framework for compliance

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

4. Are any other changes required to strengthen the compliance framework?

The FSC supports maintaining strong and effective compliance arrangements for responsible entities. The existing compliance plan regime provides a robust framework which, when properly implemented, is capable of identifying, escalating and remediating breaches and emerging risks. Recent scheme failures highlight the importance of effective execution, oversight and supervisory engagement, rather than necessarily indicating structural deficiencies in the framework itself. It is therefore appropriate for Treasury to consider whether targeted refinements may improve consistency of outcomes.

However, reform should focus on enhancing the substantive effectiveness of compliance frameworks rather than increasing prescriptive content requirements. Compliance plans sit within a broader regulatory architecture that already includes AFSL obligations, statutory duties imposed on responsible entities and their officers, risk management system requirements, Design and Distribution Obligations (**DDO**), breach reporting obligations and disclosure requirements. Expanding documentary content within compliance plans without clearly identifying the governance deficiency being addressed risks layering additional documentation without changing behaviour. A targeted approach that strengthens accountability, improves supervisory visibility and aligns liability with genuine investor harm will better achieve the stated policy objectives.

Proposal 1.1: Introduce stricter compliance plan frameworks

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

The FSC supports Treasury's objective of improving the effectiveness and clarity of compliance plans and enhancing ASIC's supervisory capability. Any refinement of content requirements should focus on strengthening governance outcomes rather than expanding prescriptive documentation. While high-level contextual information may assist Australian Securities and Investments Commission's (**ASIC's**) understanding of the nature of and a scheme's risk profile, mandating detailed restatement of a scheme's nature or investment strategy risks duplicating information already contained in MIS Product Disclosure Statements (**PDSs**) and related regulatory documentation. Compliance plans are operational governance documents that describe how compliance obligations are implemented in practice, not disclosure instruments.

Increasing the level of detail in relation to relevant obligations and associated control processes may, in some cases, improve the quality of compliance plan audits and strengthen accountability. Any uplift in content requirements should be clearly linked to supervisory outcomes and supported by ASIC guidance outlining expectations and practical examples, together with appropriate transition timeframes. To the extent that *Proposal 5* expands ASIC's data collection powers, relevant structural or risk information should be obtained through that mechanism rather than being duplicated within compliance plan documentation.

Compliance plans are intended to operate as operational governance documents that describe how compliance obligations are implemented in practice, rather than as disclosure

documents. Reform should therefore prioritise operational effectiveness and supervisory clarity, rather than expanding prescriptive narrative content that risks emphasising form over substance without improving investor outcomes.

In practice (as permitted by the current regulatory framework), many responsible entities utilise master compliance plans for funds that are similar in nature and risk profile. This approach promotes consistency, efficiency and clarity of control articulation. Requiring individual compliance plans for each fund, or significantly expanding descriptive content within master plans, would likely require substantial system uplift and increase audit and assurance costs. These additional costs would ultimately be borne by MIS investors and would be unlikely to deliver commensurate supervisory benefit.

Recent scheme failures have generally reflected weaknesses in implementation of governance oversight, conflicts management processes and control effeteness rather than deficiencies in descriptive content within compliance plans. It is therefore sufficient for the scope and content of compliance plans to continue to prioritise clarity of control frameworks, accountability and escalation mechanisms rather than having to include an expanded narrative.

RECOMMENDATION 1

The compliance plan framework should be refined in a targeted and proportionate manner to strengthen articulation of material risks, control ownership and escalation pathways, supported by ASIC guidance and a transition timeframe, while avoiding duplication of existing disclosure obligations applicable to MISs and unnecessary prescriptive content requirements.

It is also important to recognise that a compliance plan cannot reasonably be expected to codify controls addressing every obligation under the Corporations Act. Compliance plans are not exhaustive legal compliance manuals; they are governance instruments designed to address material risks specific to the scheme. If refinement of content expectations is contemplated, clearer ASIC guidance on priority risk areas and the level of control articulation expected would be more effective than broadly expanding content requirements.

For example, where recent failures have involved elevated illiquidity risk, concentrated related party exposures or conflicted remuneration practices, ASIC could articulate expectations that compliance plans include clearly documented controls addressing liquidity management, related party transactions and conflicts management. A targeted, risk-based articulation of required control coverage would better align compliance plan content with supervisory priorities than mandating generic expansion across all schemes.

RECOMMENDATION 2

Any refinement of compliance plan content should be supported by ASIC guidance identifying priority risk areas and expected control coverage, recognising that compliance plans are governance documents focused on material risks and not exhaustive statements of all statutory obligations.

Proposal 1.2: Amend the liability framework for compliance plans

Aligning liability to material contraventions of a compliance plan would better calibrate regulatory consequences to genuine investor risk. The current framework may inadvertently incentivise high-level drafting to minimise exposure to technical breaches. A compliance framework should instead encourage detailed articulation of controls and incentivise early detection and remediation of issues.

Limiting liability to material contraventions would not weaken enforcement. Responsible entities and their officers would remain subject to statutory duties, breach reporting obligations and general law obligations. The amendment would ensure that compliance plan liability is proportionate to the significance of the contravention and its potential impact on investors.

An additional benefit of this approach would be a reduction in the volume of technical or low-level breach reports lodged with ASIC that do not reflect meaningful investor harm or systemic governance weakness. This would improve the quality and utility of breach reporting by focusing regulatory attention on genuinely significant issues. Clear guidance on the assessment of materiality will be important to ensure consistent application across the sector. In developing this framework, Treasury may wish to consider alignment with the concept of "significant" breaches in section 912D(5) of the Corporations Act.

If implemented, consequential amendments would be required to sections 601FC and 601FD to ensure that the materiality threshold applies consistently to both responsible entities and their directors.

RECOMMENDATION 3

Liability for contraventions of a compliance plan should attach only to material contraventions, supported by clear guidance on the assessment of materiality, alignment with existing breach reporting concepts, and appropriate consequential amendments to sections 601FC and 601FD.

Proposal 1.3: Mandatory audit and assurance standards for compliance plan auditors

Mandating audit and assurance standards may improve consistency and comparability across the sector. Where standards are formalised, they should enhance assurance quality without expanding audit scope beyond what is necessary to assess compliance plan effectiveness.

It is important that any formalised standards incorporate a clear concept of materiality aligned to the purpose of compliance plan audits. This would help ensure audit reporting focuses on matters significant to scheme operations, investor protection and the effectiveness of the compliance framework, rather than minor or technical procedural deviations.

A legislative requirement that all compliance plan audits be conducted in accordance with applicable auditing and assurance standards is likely to increase compliance and assurance costs (which in some cases, are taken out of the assets of a fund and therefore are borne by

investors of a MIS). Requirements should therefore remain proportionate to scheme size and complexity, avoid duplicating broader AFSL and financial reporting obligations, and include appropriate transitional timeframes to allow responsible entities and auditors to adjust systems and methodologies in an orderly manner.

3. Who should set and enforce standards for compliance plan audits?

Audit standards should be set through recognised assurance frameworks and supported by clear regulatory guidance, with ASIC responsible for supervision and enforcement.

RECOMMENDATION 4

Compliance plan audit requirements should promote consistency and quality of assurance, incorporate a clear materiality threshold aligned to the purpose of the audit, remain proportionate to scheme size and complexity, and avoid unnecessary duplication and cost.

Proposal 1.4: Notification of changes to compliance committees

Requiring responsible entities to notify ASIC of the appointment, removal or resignation of compliance committee members would enhance regulatory visibility and support more proactive supervision. Effective compliance oversight depends not only on formal independence, but also on the relevant skills, experience and capacity of compliance committee members to exercise informed judgement and fulfil the function set out in section 601JC(1)(d) of the Corporations Act to assess whether a compliance plan is adequate and to make recommendations to a responsible entity about any changes that it considers should be made to the plan. Clarifying regulatory expectations regarding qualifications, capability and competence of both external directors and external members of compliance committees may be more effective than introducing additional structural mandates.

A notification requirement represents a proportionate uplift that strengthens transparency without mandating structural change. It would allow ASIC to monitor governance arrangements and identify patterns or potential risks across the sector. However, notification should not be subject to a de facto approval process that increases documentation requirements without demonstrable improvement in governance outcomes. It should merely operate as a notification requirement.

Any notification framework should also consider privacy and safety implications for compliance committee members. ASIC's recent decision (2 February 2026) to remove residential addresses of company officeholders from publicly available company extracts reflects a sensible approach to balancing regulatory transparency with the protection of personal information. Similar safeguards should apply to information collected regarding compliance committee members, ensuring personal details are not made publicly accessible in a manner that could expose individuals to identity theft, cyber-crime or personal safety risks.

The incremental compliance cost associated with notification is likely to be modest relative to other proposals, particularly if implemented through streamlined reporting channels.

RECOMMENDATION 5
Responsible entities should notify ASIC of changes to compliance committee membership to enhance supervisory visibility, within a reasonable period after the removal or appointment and without introducing approval mechanisms.

Proposal 2: Require a majority of external directors on the boards of responsible entities

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

The consultation paper proposes requiring responsible entities to have a majority of external directors and removing the option of operating with a compliance committee where less than half of the board are external directors.

Strengthening independent oversight is an important policy objective. However, mandating a majority of external directors would represent a structural redesign of the MIS governance framework. Governance effectiveness is driven by capability, accountability, access to information and effective challenge, not by numerical board composition thresholds alone. Reform should therefore focus on improving governance outcomes rather than prescribing a uniform structural model across a diverse sector.

Structural mandate and Governance Effectiveness

Requiring responsible entities to have a majority of external board members would remove the current dual-model framework that allows either:

- A board with at least half of its directors being external directors (including structures where the responsible entity function is outsourced); or
- A board with a less than half of its directors being external directors and a compliance committee with a majority of external members.

Both mechanisms are capable of delivering effective independent oversight.

There is limited evidence that mandating majority-external boards would necessarily produce stronger governance outcomes or would have prevented the types of failures referenced in the consultation paper. Director duties apply equally to internal and external directors. Governance failures typically arise from deficiencies in culture, reporting, supervision and escalation, rather than solely from board composition.

ASIC's 2022 Responsible Entity Governance Review examined governance practices across a range of large responsible entities and observed varied board compositions and governance structures. The review did not identify systemic governance failings arising from board composition, nor did it recommend prescriptive changes to board structure. ASIC emphasised that governance effectiveness is not a one-size-fits-all concept and must reflect the nature, scale and complexity of the entity. This reinforces the importance of focusing on capability and oversight effectiveness rather than mandating structural board composition requirements.

In some MIS structures, the responsible entity performs both trustee and investment

management functions. In others, the responsible entity is independent of the Investment Manager. Individuals with direct investment expertise and familiarity with the scheme's operational model may be better positioned to exercise informed challenge than an external director who may not have a detailed understanding of the underlying business. Many governance models delegate the day-to-day operation of a Fund to either internal management or an external investment manager and in either case the board does not approve each individual investment. In IDPS-Like Schemes, it is the investors themselves making investment decisions. Governance effectiveness therefore depends on an appropriate governance structure with delegation and supervision supported by individuals with the capability and expertise, rather than formal independence alone.

The compliance committee model is not a lesser form of oversight. It was deliberately designed to provide focused compliance supervision where a responsible entity board does not consist of a majority of external directors. Compliance committees:

- Must have a majority of external members;
- Have the statutory obligation to report concerns directly to ASIC if the compliance committee is of the view that the responsible entity has not taken appropriate action to deal with a breach of the law or the constitution;
- Can obtain independent advice at the reasonable expense of the responsible entity; and
- Provide dedicated oversight of compliance matters.

If concerns exist regarding the effectiveness of compliance committees in practice, those concerns could be addressed through targeted supervisory or guidance-based enhancements rather than removing the model entirely.

RECOMMENDATION 6
The regulatory framework should not be amended to mandate a majority of external directors on responsible entity boards or to remove the compliance committee model, as such structural prescription is unlikely to improve governance outcomes and would impose disproportionate costs relative to demonstrable benefit.

Availability of External Directors

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

A majority-external director mandate would apply across the entire responsible entity sector. As at 30 June 2025, there were approximately 400 responsible entities operating around 3,500 registered MISs in Australia. This illustrates the breadth of entities that would be affected by a sector-wide structural requirement.

The pool of individuals with deep MIS governance experience, particularly those familiar with the Corporations Act, Chapter 5C obligations, complex conflicts management and scheme oversight, is finite. External directors typically command higher remuneration and may face constraints on multiple appointments due to conflict considerations. Mandating majority-external director boards across such a broad population of responsible entities would likely increase competition for qualified directors, elevate remuneration costs and create recruitment

strain.

RECOMMENDATION 7

Any governance reform should take into account the limited availability of suitably qualified external directors and avoid creating sector-wide structural requirements that may lead to director scarcity, increased investor costs and unintended governance strain.

Conflicts of Interest and Independent Oversight

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

As the policy objective is to strengthen conflicts management and independent oversight, more proportionate and targeted alternatives are available within the existing governance framework.

These include:

- Building on the principles-based guidance in *ASIC Regulatory Guide 132 Funds management: Compliance and oversight* regarding the experience, competence and independence of judgement expected of external directors and compliance committee members;
- Reinforcing expectations regarding reporting lines, access to information and escalation pathways;
- Enhancing ASIC visibility of governance structures and committee composition; and/or Targeted supervisory engagement where governance indicators raise concern.

Such measures would strengthen governance capability while preserving flexibility in organisational structure. They would also more directly address the types of supervisory weaknesses identified in recent enforcement matters, which involved failures of oversight and escalation rather than the absence of majority-external director boards.

Under the Corporations Act the liability and duties of directors compared to those of compliance committee members are different, so it should not be assumed that external compliance committee members will be willing to become directors particularly in circumstances where the one licensee operates more financial services activities than simply operating registered managed investment schemes.

We also note that there is no legislated requirement for Australian Prudential Regulation Authority (**APRA**)-regulated superannuation trustees to maintain majority-external director boards, despite those trustees often overseeing significantly larger pools of capital and member numbers. Governance settings across adjacent regimes should remain consistent and proportionate.

RECOMMENDATION 8

Independent oversight should be strengthened through principles-based guidance on governance capability, conflict management and effective challenge, supported by enhanced supervisory visibility, rather than through prescriptive board composition mandates.

Impacts on Investors and Market Structure

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

Mandating majority-external director boards would require many responsible entities to substantially restructure governance arrangements. This would likely result in:

- Increased director remuneration and recruitment costs;
- Transitional restructuring expenses;
- Additional administrative burden;
- Potential loss of focus on compliance related issues given the differing liabilities and duties imposed on directors and compliance committee members under the Corporations Act;and
- Slower decision-making processes due to increased governance layers.

Entities licensed to operate registered schemes frequently conduct a range of other activities — whether funds management, advisory services, custody or broader corporate operations. As directors owe duties in respect of the whole licensed entity, a prescriptive requirement for majority-external director boards would affect governance across the entirety of the licensee's business, not solely its MIS operations. To confine such a requirement to the responsible entity function would generally require structural separation into a distinct licensed entity, which itself carries cost and complexity. Mandating majority-external boards may therefore necessitate broader governance restructuring beyond MIS activities.

To avoid these broader impacts, licensees may feel compelled to establish special purpose responsible entity vehicles or rely on outsourced responsible entity arrangements. Such structural responses would add cost and complexity to the industry without delivering proportionate benefits for investors. They may also concentrate responsible entity services among a smaller number of specialist providers, potentially reducing competition and choice in the market.

Responsible entities often need documents approved or signed by the board at short notice. A requirement for a majority of external directors may increase operational complexity, including longer lead times for the circulation of papers, provision of background materials and execution of agreements or regulatory forms. Additional processes and timeframes required to properly brief and inform external directors may delay decisions on matters affecting investors' interests.

These increased costs would ultimately be borne by investors.

Compliance constitutes a distinct area of expertise, as comprehensive knowledge of effective

compliance controls, including their design, implementation, monitoring, and continuous improvement, demands specialised experience and competencies that differ from those typically associated with the role of an independent director. Moving away from compliance experts to more generic independent directors, may risk weakening compliance supervision and not strengthen it.

There is also a broader risk that structural mandates of this nature could accelerate consolidation within the responsible entity market or increase reliance on third-party responsible entity service providers, potentially reducing competition and innovation over time.

RECOMMENDATION 9

Governance reforms should be proportionate and carefully assess impacts on investor costs, director availability, market competition and industry structure before introducing sector-wide structural mandates.

Proposal 3: Prohibit responsible entities of registered MISs from conducting related party transactions with limited exceptions

10. 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?

The FSC does not support a blanket prohibition on related party transactions (**RPTs**) by responsible entities. While robust management of conflicts of interest is fundamental to the integrity of the MIS framework, a general prohibition with limited carve-outs would represent a significant departure from the current RPT regime embedded in the Corporations Act.

The existing framework already imposes strict statutory duties on responsible entities, including obligations to act in members' best interests, manage conflicts of interest appropriately, and comply with the RPT provisions of the Corporations Act (such as obtaining member approval unless an exception such as the "arm's length terms" applies). Where recent scheme failures have occurred, they appear to have involved breaches of existing duties/obligations or governance breakdowns, rather than a structural deficiency permitting otherwise lawful but harmful conduct.

Importantly, the FSC agrees that scheme assets should not be used to fund the personal investments, property developments or private ventures of directors or officers of the responsible entity, directors or officers of related bodies corporate, or their associates. Transactions of that nature raise acute conflicts and should be expressly prohibited. A clear distinction should be drawn between such self-dealing arrangements and intra-group commercial structures, including investments between commonly managed funds, where governance oversight is maintained and transactions occur on arm's length terms in members' best interests.

Reform should therefore focus on clearly harmful conflicted arrangements and timely supervisory enhancements, rather than replacing a principles-based fiduciary regime with a broad structural prohibition.

The Role of Related Party Transactions in Modern Funds Management

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

RPTs are not inherently problematic. They are a common and often necessary feature of contemporary funds management structures, particularly in globally integrated and vertically integrated business models and diversified financial services businesses. Under the existing law a responsible entity is already liable for investor losses caused by their agents and so investors should not be penalised by this arrangement as per s.601FB(2) and s.601GA(2) of the Corporations Act.

For example:

- **Master-feeder structures** allow Australian investors to access offshore master funds managed by related parties of the responsible entity, providing broader diversification, established track records and cost efficiencies derived from scale;
- **Delegation to overseas related party investment managers** enables global "around-the-clock" portfolio management models, allowing trading and portfolio management to continue outside Australian business hours and enhancing market responsiveness;
- **Inter-affiliate service arrangements** allow global managers to centralise research, portfolio management, administration or risk management functions within related entities, often lowering costs and promoting operational consistency;
- **Integrated responsible entity and investment management models** are common where the responsible entity and investment manager operate within the same corporate group, supported by appropriate conflicts management and oversight mechanisms;
- **Use of related party service providers operating within separate business units of the same corporate group**, such as related party brokers, futures clearing brokers or custodial providers, may provide competitive pricing, specialist capability or differentiated service offerings that are in investors' interests;
- **Fund-of-funds and affiliated portfolio allocations** may involve investment in related funds where consistent with the mandate and competitively priced, supported by documented member benefit analysis. This can allow pooling of capital across multiple MISs investing in the same strategy (for example, fixed income or high yield bonds), delivering scale and diversification benefits;
- **Multi-asset fund structures** commonly involve investment into related party underlying trusts to obtain efficient asset class exposure. This pooled approach delivers scale, diversification and netting efficiencies, reduces duplication of trading and oversight, and lowers transaction costs and capital gains realisation;
- **Investor-directed investments on platforms (IDPS and IDPS-like structures)** may involve allocation to related party funds at the direction of the investor;
- **Investments in deposit or other banking products offered by a related party bank**, where consistent with the mandate and competitively priced, may support liquidity

management; and

- **Cross trades between a MIS and a related party fund or mandate**, where conducted at independently verified prices or using third-party pricing data, can reduce transaction costs for both sets of investors when appropriately governed.

Where a responsible entity appoints a separate investment manager within the same corporate group structure, the existence of that corporate affiliation does not, of itself, demonstrate that investor interests are compromised. Many MISs operate within large corporate groups where investment management expertise and operational capability are centralised and separated from the responsible entity function. These arrangements can enhance efficiency, reduce cost and improve investment outcomes. Structural separation does not necessarily guarantee effective oversight, nor does affiliation inherently compromise independence of judgement. The relevant question is whether the responsible entity retains effective oversight, exercises independent judgement and manages conflicts appropriately.

Mandating complete structural separation between the responsible entity and investment manager would not necessarily improve consumer outcomes and risks diluting the clear statutory accountability of the responsible entity. Many sophisticated operators already maintain layered governance frameworks, including board-level oversight, internal risk committees and external-majority compliance committees, to ensure effective supervision and independent judgement, even within integrated group structures.

Prohibiting the appointment of related party investment managers, investment into related underlying funds, or dealings with related service providers would represent a significant structural intervention. Such a measure would disrupt widely used and investor-beneficial pooled structures, reduce scale efficiencies, increase transaction costs and potentially crystallise capital gains, without clearly addressing the conduct issues observed in recent failures.

These examples demonstrate that RPTs encompass a wide range of arrangements, many of which are operationally necessary and beneficial to investors. A blanket prohibition risks capturing legitimate structures and transactions and reducing investment choice without a commensurate governance benefit.

RECOMMENDATION 10

The related party transaction framework should preserve legitimate and investor-beneficial arrangements, rather than adopting a blanket prohibition with limited exceptions that would be inherently difficult to calibrate without inadvertently and unnecessarily capturing legitimate commercial practices.

Limitations of a Blanket Prohibition Model

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

A prohibition-with-exceptions model presents significant practical challenges.

Firstly, carve-outs would need to be sufficiently broad to preserve legitimate structures and transactions. The broader the exemptions, the more complex and uncertain the regime

becomes. This risks creating regulatory ambiguity and increased compliance burden without materially improving investor protection.

By contrast, a narrowly framed negative list approach would directly target clearly harmful or conflicted arrangements while allowing established, arm's length related party structures to continue operating without disruption. For sophisticated operators with mature governance frameworks, such an approach would not require material changes to existing business models.

Secondly, such an approach may create inconsistency with adjacent regulatory frameworks. Other AFSL holders and APRA-regulated trustees are not subject to a blanket ban on related party dealings. Introducing a structural prohibition solely for registered MISs would represent a material divergence without clear evidence of necessity, particularly where the existing law already prohibits the conduct that led to the collapses of the MISs which the consultation seeks to address.

Thirdly, introducing a blanket prohibition does not directly address the core governance failures identified in recent cases. Where misconduct arises from failures to comply with existing duties, stronger supervisory engagement and enforcement may be more proportionate and effective responses. Alternatively, if Treasury considers the arm's length exception from the existing related party transaction prohibition without member approval did not work sufficiently well in the specific circumstances of the recent cases, a narrow prohibition could be introduced. This would find a targeted way to prohibit responsible entity directors and their controlled entities and associates from entering into transactions with or receiving financial benefits from a scheme operated by that responsible entity, without inadvertently prohibiting or creating uncertainty about the legitimate activities listed above. There would need to be an exception for such persons holding units in, or options over units, in the relevant schemes.

A Targeted Negative List and Safeguard Approach

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

If Treasury considers reform necessary, a more proportionate and effective model would be to introduce a clearly defined and targeted prohibition addressing high-risk, conflicted related party arrangements, rather than adopting a broad prohibition on related party transactions.

In particular, the law could expressly prohibit arrangements that involve self-dealing, conflicted control of scheme assets, or structures that undermine the responsible entity's ability to act in members' best interests. This would directly address the types of misconduct observed in recent failures, without disrupting legitimate and investor-beneficial commercial structures.

By way of illustration, a targeted prohibition could capture arrangements such as:

- Related party lending or financing structures lacking independent valuation or arm's length pricing, where feasible;
- Circular transaction structures designed to obscure asset values or inflate performance;
- Revenue-sharing or conflicted distribution arrangements that compromise

independent decision-making; and/or

- Structures that effectively transfer control of scheme assets to conflicted distribution or advisory entities.

These examples demonstrate the types of conflicted conduct that should be prohibited, rather than constituting an exhaustive or open-ended regulatory list.

As a foundational safeguard, the law should require responsible entities to clearly disclose all related party transactions in product disclosure documentation and ongoing disclosure materials. Enhanced and unambiguous legal disclosure requirements would strengthen transparency and support informed decision-making by scheme members.

This approach ensures that harmful and conflicted conduct is expressly addressed, while preserving legitimate and efficiency-enhancing related party arrangements subject to appropriate governance and arm's length safeguards.

RECOMMENDATION 11

Introduce a clearly defined prohibition targeting high-risk and self-dealing related party arrangements that undermine the responsible entity's duty to act in members' best interests.

RECOMMENDATION 12

Require clear and comprehensive disclosure of all related party transactions in product disclosure and ongoing reporting.

Supervisory and Governance Enhancements

Enhanced supervisory visibility and stronger governance capability expectations, as outlined in the *Proposal 2* section of this submission, may more effectively mitigate related party transactions risk than a structural prohibition. Improved transparency of related party arrangements, combined with more timely risk-based supervisory engagement where governance indicators raise concerns, would allow ASIC to focus regulatory attention on higher-risk structures and transactions without imposing uniform structural constraints across the sector.

RECOMMENDATION 13

Supervisory visibility and governance expectations regarding related party arrangements should be strengthened to support risk-based oversight, rather than replacing the existing RPT framework with a blanket structural prohibition regime.

Proposal 4: Amend the framework for setting financial requirements for responsible entities

14. 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)?

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

The FSC supports a review of the framework for setting financial requirements for responsible entities. Financial resilience is an important component of investor protection and market integrity. Capital settings are one component of the regulatory framework and should not be viewed as a substitute for effective governance, supervision or enforcement. Any reform should be risk-based, proportionate and calibrated to the nature, scale and complexity of the responsible entity's activities.

The objective of reform should be to ensure responsible entities have sufficient financial resources to meet operational obligations, manage periods of stress and facilitate orderly wind-down where necessary, without imposing blunt capital burdens that may not deliver commensurate consumer benefit. Capital requirements also directly influence market structure. Significant uplifts in financial thresholds may increase barriers to entry, accelerate consolidation, increase reliance on third-party responsible entity providers and ultimately raise costs borne by investors. Reform should therefore carefully assess these structural impacts against the demonstrable consumer benefit of increased capital holdings.

Legislative Architecture and Purpose of Financial Requirements

15. 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?

The current framework allows ASIC to set detailed financial requirements through legislative instruments via modification powers set out in the Corporations Act. This flexibility enables calibration of settings to reflect market developments, evolving risk profiles and supervisory experience. Moving detailed financial thresholds into primary legislation may reduce adaptability and create rigidity in a sector characterised by diverse operating models.

High-level objectives of the MIS financial requirements could be articulated in primary legislation to provide clarity of purpose. However, detailed calibration and quantitative thresholds are more appropriately determined through regulatory legislative instruments to preserve flexibility and allow timely adjustment where risk conditions change.

RECOMMENDATION 14
The high-level objectives of MIS financial requirements may be clarified in primary legislation, but detailed capital thresholds and calibration mechanisms should remain within ASIC's regulatory legislative instrument framework to preserve flexibility and adaptability.

16. 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?

Financial requirements for responsible entities serve several distinct purposes:

- Ensuring the entity can meet its ongoing operational obligations;
- Supporting adequate risk management and compliance capability;
- Providing capacity to respond to operational remediation events; and
- Facilitating an orderly wind-up of schemes if required.

Clarifying these objectives at a legislative level may assist in aligning capital settings with regulatory purpose, provided that detailed calibration remains flexible. Capital settings designed to support operational resilience may differ from those required to support wind-down scenarios. A single mechanical uplift to minimum net tangible assets (**NTA**) may not appropriately address each of these risk dimensions.

Current information about public enforcement suggests that recent scheme failures were primarily attributable to governance and conduct deficiencies rather than an absence of baseline capital requirements. Strengthening financial settings should therefore be clearly linked to identified risk gaps and demonstrable consumer protection outcomes. Any uplift in capital requirements should be supported by evidence that the incremental capital held materially improves investor protection outcomes.

RECOMMENDATION 15

Financial requirements should be calibrated to clearly articulated regulatory objectives, including operational resilience and orderly wind-down, rather than applying across-the-sector capital uplifts without demonstrated consumer benefit.

Proportional and Risk-Based Calibration

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

The responsible entity sector is diverse. It includes:

- Large vertically integrated responsible entities operating multiple schemes;
- Australian subsidiaries of global asset management organisations within broader corporate group structures;
- Specialist and niche responsible entities with limited scheme complexity; and
- Third-party responsible entity service providers.

A uniform uplift in capital requirements would affect these models differently.

Responsible entities are already subject to NTA requirements under ASIC's financial requirements framework. Where all scheme property is held by an eligible custodian, NTA requirements scale with the value of scheme property up to a capped threshold. In other cases, the NTA requirement is the greater of $10 million or 10 per cent of revenue, without a cap. These

settings already impose material capital discipline on responsible entities. Introducing additional fixed or mechanically scaled capital thresholds may therefore create disproportionate burdens, particularly for smaller or specialised managers, without necessarily improving governance outcomes.

A more proportionate approach would consider:

- The complexity and risk profile of the schemes operated;
- Whether the responsible entity performs investment management in-house or outsources;
- The degree of leverage or illiquidity in the underlying assets of the registered MIS;
- Reliance on outsourcing arrangements; and
- The scale of retail clients holding units in the registered MIS.

This would allow capital settings to reflect actual risk exposure rather than organisational size alone.

RECOMMENDATION 16

Any reform to financial requirements should be subject to detailed consultation and accompanied by clear and certain calibration settings. In the absence of further detail, it is difficult to assess the impact of potential changes. Any adjustments should be proportionate to scheme risk and complexity, while providing sufficient certainty to enable responsible entities to undertake effective capital planning and business management.

Interaction with Group Capital and Funding Structures

Many responsible entities operate within broader corporate groups, including global asset managers. Capital settings must operate coherently within these group structures.

Significant uplifts to NTA requirements may affect:

- Capital planning processes;
- Liquidity management;
- Internal funding arrangements; and
- Group treasury structures.

It is important to assess whether increased capital held at the responsible entity level delivers incremental consumer protection benefit relative to capital and liquidity resources already available at group level. This is particularly relevant where responsible entities operate within broader corporate groups that are subject to robust capital, liquidity or prudential frameworks in Australia or other jurisdictions.

Blunt uplifts may also create inefficiencies in capital allocation without materially improving supervisory outcomes.

RECOMMENDATION 17

Financial requirement reforms should consider the interaction with group capital structures and funding models, ensuring that capital held at the responsible entity level is proportionate to demonstrable risk exposure and consumer protection objectives.

Wind-Down and Remediation Capacity

If concerns exist regarding the ability of responsible entities to manage scheme wind-down or remediation events, reform may be more effectively directed toward ensuring adequate wind-down planning and access to liquidity in stress scenarios, rather than increasing baseline capital across the sector.

This could include:

- Clear expectations regarding wind-down planning;
- Consideration of liquidity buffers where operational risk warrants;
- Alignment with professional indemnity insurance settings; and
- Enhanced ASIC supervisory review of financial resilience for higher-risk entities.

Such targeted measures may better address identified risks than a sector-wide uplift in NTA requirements.

RECOMMENDATION 18

Where financial resilience gaps are identified, targeted measures addressing wind-down capability and liquidity management should be preferred over broad capital uplifts that may not address the specific risk being mitigated.

Impacts on Competition and Investor Costs

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

Capital requirements directly affect market structure. Significant uplifts in financial thresholds may:

- Increase barriers to entry;
- Accelerate consolidation;
- Increase reliance on third-party responsible entity providers; and
- Ultimately increase costs borne by investors.

Reform should carefully assess these impacts against the demonstrable consumer benefit of increased capital holdings.

RECOMMENDATION 19

Any changes to financial requirements should be supported by a clear assessment of investor cost impacts, competition effects and barriers to entry, ensuring that reforms are proportionate to demonstrated regulatory need.

Proposal 5: Increase ASIC's data collection powers on the retail MIS sector

The FSC supports a structured initial and recurrent data collection framework where it is designed to support risk-based registration and supervisory calibration. Data collection should enable ASIC to identify emerging conduct and fund-level risks and allocate supervisory resources proportionately across the sector.

However, expanded data collection powers should be clearly linked to defined regulatory objectives. Data collection should not operate as a blanket reporting expansion, but as a mechanism to support tiered supervision, early risk identification and targeted engagement.

ASIC must be properly resourced to handle to collection and analysis of the data provided. ASIC's current information gathering portals do not demonstrate the kind of reliability that would support imposing increased information sharing burdens on industry.

Legislative Framework for Recurrent Data Collection

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

A legislative framework enabling recurrent data collection may provide clarity and durability for supervisory settings, particularly where data is used to support risk-tiering of schemes.

However, the framework should:

- Clearly define the purpose of collection;
- Provide transparency around intended supervisory use;
- Preserve flexibility in how data fields are specified and updated;
- Avoid duplicating existing reporting regimes; and
- Set out proportionate consequences for non-compliance.

Where consequences are prescribed, there should be a clear distinction between deliberate or systemic failure to provide required data and inadvertent technical or system errors. Enforcement settings should be calibrated to ensure regulatory action is directed at material non-compliance rather than minor reporting inaccuracies.

Consideration may also be given to whether certain data elements require validation or verification mechanisms to support supervisory reliability. Any such measures should remain proportionate and risk-based, and should not impose broad audit requirements unless clearly justified by supervisory need.

Detailed reporting formats and technical specifications are more appropriately determined through regulatory instruments and consultation, rather than fixed in primary legislation. The legislative framework is only as effective as the systems that support the collection and analysis of the requested data.

RECOMMENDATION 20
A legislative framework for recurrent data collection may be appropriate where clearly linked to risk-based supervision, provided that:

- Detailed reporting fields and formats remain adaptable through regulatory instruments and/or ASIC industry guidance;
- Consequences for non-compliance are proportionate and distinguish material failures from inadvertent errors; and
- Any data verification requirements are targeted and risk-based.

Data to Support Risk-Calibrated Registration and Supervision

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

21. What data should be collected about MISs?

ASIC's collection of data should be designed to support a risk-calibrated registration and supervisory framework. The purpose of collecting additional data should be to enable ASIC to identify MISs that exhibit elevated structural or conduct risk characteristics and calibrate supervisory intensity accordingly.

Data should therefore focus on objective and observable indicators of risk, rather than broad, speculative or open-ended information gathering. Consideration should be given to public data already provided for MISs quoted on an exchange and the appropriateness and proportionality of the data requested from the IDPS Scheme at the trustee level, considering the underlying MIS investment options would also be reporting data.

Examples of data that may assist in identifying higher-risk schemes include:

Liquidity and Redemption Risk (for liquid schemes)

- Asset liquidity profile, including the proportion of assets expected to be capable of being realised within defined timeframes in normal market conditions;
- Redemption frequency, timeframe for payment of redemption proceeds and gating mechanisms;
- Nature, location and currency of proposed assets; and
- Use of liquidity management tools.

Valuation Governance

- Frequency of valuations for unlisted or hard-to-value assets that are material to the scheme (for example, above a defined percentage of total assets) and
- Use of independent valuers or pricing sources.

Leverage and Structural Complexity

- Use of borrowing or leverage at fund level;
- Exposure to related party financing arrangements;
- Asset concentration and counterparty exposure metrics.

Governance and Compliance Indicators

- Material changes to investment strategy;
- Significant changes in related party exposure;
- Recurrent negative compliance plan audit findings or reporting of systemic breaches.

Collecting the types of data outlined would allow ASIC to:

- Identify schemes that warrant enhanced scrutiny at registration;
- Monitor deterioration in risk indicators over time;
- Trigger targeted supervisory engagement; and
- Direct regulatory resources toward emerging vulnerabilities.

Importantly, this approach supports tiered supervision by linking regulatory intensity to identifiable risk characteristics, rather than imposing uniform structural requirements across all responsible entities. If ASIC is given these data collection powers, the data must be collected through reliable, robust systems that support ASIC to analyse this new and its existing data collected.

RECOMMENDATION 21

The use of expanded ASIC data collection should be to support risk-calibrated registration and supervisory engagement, enabling ASIC to identify higher-risk schemes, allocate regulatory resources proportionately and intervene earlier where risk indicators deteriorate.

RECOMMENDATION 22

Recurrent data collection should be limited to clearly defined and objective risk indicators, including liquidity profile, valuation governance, leverage, structural complexity and related party financing exposure, to ensure that reporting is targeted to areas of demonstrable supervisory relevance.

Event-Based Notifications

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

In addition to recurrent reporting, targeted event notifications may support timely regulatory awareness of genuinely material risk developments. Any such framework would need to be tightly defined and limited to clearly identifiable structural or risk-altering events, rather than ordinary operational decisions taken in accordance with scheme disclosure and responsible entity duties.

Examples of events that may warrant notification, if clearly and objectively defined, could include:

- Suspension or freezing of redemptions outside the scheme's disclosed terms, or prolonged suspensions beyond a defined threshold;
- A material fee increase (for example, above a prescribed threshold);
- Changes to the investment objective or fund name that indicate a fundamental change in the nature of the scheme;
- Introduction of material leverage where previously not utilised, or significant increase in in permitted leverage limits under the scheme's disclosed investment guidelines;
- Significant deterioration in liquidity profile relative to stated redemption terms;
- Material changes in related party arrangements;
    - excluding ordinary course transactions conducted on arm's length terms (such as investments in related funds consistent with the disclosed strategy, use of related party brokers, or placements with related party banking entities);
- Structural changes such as restructures or mergers; or
- Replacement of the responsible entity or material changes to core governance or investment management functions.

It is important to recognise that certain events, such as temporary suspension of redemptions in stressed market conditions to ensure fair unit pricing, may represent prudent discharge of responsible entity duties rather than regulatory concern. Notification settings should not disincentivise responsible entities from acting appropriately in investors' interests.

Event notifications should therefore be confined to objectively defined, material changes in risk profile, and drafted with sufficient precision to avoid uncertainty, unnecessary legal interpretation and over-reporting.

RECOMMENDATION 23

If event-based notification requirements are introduced, they should be limited to clearly defined, material structural changes in risk profile and calibrated to avoid capturing lawful, disclosed or routine operational decisions taken in accordance with responsible entity duties.

Impacts and Implementation

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

Expanded data collection will impose significant operational and systems costs on responsible entities. These impacts may include:

- System development and data aggregation costs;
- Integration across custodians, administrators and service providers;

- Ongoing reporting resource allocation and additional compliance controls;
- Alignment of internal data taxonomies to regulatory definitions; and
- Potential duplication with existing reporting regimes.

The retail MIS sector already operates within a multi-agency reporting environment. In particular:

- **APRA** collects extensive data from RSE licensees, including granular asset allocation, liquidity, valuation and exposure data;
- **The ATO** collects superannuation and fund-level reporting data through established reporting frameworks; and
- **The Australian Bureau of Statistics** is progressing enhancements to its funds management data collection framework, which may further expand recurring reporting obligations across the sector.

Any expansion of ASIC's recurrent data collection powers should be carefully designed to align with the Government's stated "tell us once" principle. Where similar or overlapping data is already collected by another regulator, mechanisms should be explored to enable data sharing or harmonisation between agencies rather than requiring duplicative reporting by industry. There are existing extensive information sharing requirements with ASIC and any review of data requirements must not duplicate these existing requirements simply in a different regulatory portal.

In the absence of coordination, there is a risk of fragmented and overlapping reporting frameworks that increase compliance costs without necessarily improving supervisory outcomes.

To mitigate these impacts:

- Data collection should be limited to information reasonably available and necessary to achieve defined supervisory objectives;
- Reporting requirements should, wherever possible, leverage data already produced in the ordinary course of business and avoid necessitating the design and implementation of new systems or processes;
- Reporting frequency should be proportionate to the nature of the risk being monitored and not so frequent as to disrupt business-as-usual operations;
- Definitions and technical reporting formats should be clearly specified upfront;
- Adequate transition timeframes should be provided;
- ASIC should consult with industry on implementation design; and
- Cross-agency coordination should be prioritised to reduce duplication and reporting overlap.

Proportionate design, sensible reporting intervals and inter-agency alignment will be critical to ensuring that enhanced data settings improve supervisory capability without diverting resources from substantive governance, risk management and investor protection functions.

RECOMMENDATION 24

Any expanded data collection regime should be proportionate, clearly specified and coordinated across regulatory agencies in accordance with the Government's "tell us once" principle, to minimise duplication, reduce compliance burden and maximise supervisory effectiveness.

Proposal 6: Alerts to ASIC about superannuation switching

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

The consultation paper proposes placing an obligation on superannuation trustees to report to ASIC suspicious or anomalous patterns of behaviour, which the trustee reasonably considers could place their membership at risk of significant detriment.

The FSC supports efforts to strengthen intelligence sharing within the industry and between industry and regulators to enable earlier identification and disruption of misconduct. A targeted and proportionate mandatory alerts regime could, in theory, contribute to that objective.

However, we consider that there are more effective and better-calibrated mechanisms to improve ASIC's visibility of emerging switching risks, including the consultation paper's alternative proposal of periodic data reporting. Our views on the most effective ways to address problematic super switching behaviour are set out in our response to Q28.

Notwithstanding this position, if Treasury is minded to proceed with a mandatory alerts regime, we have outlined below the design features and safeguards that would be necessary to ensure the framework operates proportionately, avoids duplication and supports meaningful intelligence-sharing rather than box-checking compliance behaviour.

Policy Intent of the Mandatory Alerts Regime

Assessing the potential effectiveness of introducing a mandatory alerts regime depends on the policy outcome that ASIC is seeking to achieve.

If the objective is proactive prevention before problematic super switching behaviour and member harm occurs, then a trustee-level mandatory alert regime is too far downstream. By the time a trustee identifies an indicator of concern and makes a report to ASIC, member harm has likely already occurred. Conversely, if ASIC focused on strengthening earlier intervention points such as MIS registration settings, AFSL supervision and lead generation controls, they would be more likely to prevent members falling victim to high-risk super switching,

However, if the purpose of this proposal is to support ASIC in detecting and prosecuting misconduct after the fact, then a mandatory alerts regime may assist ASIC in this endeavour. However, the FSC considers that there may be more effective and less legally complex mechanisms to achieve this end (see response to Q28).

Q25. What types of suspected conduct or patterns of behaviour should be reportable to ASIC?

The consultation paper does not expressly define 'high-risk super switching', but instead identifies a range of characteristics that such activity may exhibit, including switching that forms part of a coordinated strategy to drive funds into a particular product using cookie-cutter advice, results in material fee erosion, involves rollovers from MySuper products into managed investment schemes, or entails a shift in member responsibilities or regulatory protections (such as from an APRA-regulated fund to an SMSF).

It is important to emphasise that some of these characteristics are not inherently problematic. For example, switching from a MySuper product to a broad choice product or to an SMSF may reflect a legitimate change in a member's circumstances, advice needs or risk appetite. Such decisions are a feature of Australia's choice architecture and, in many cases, represent the intended operation of the system rather than evidence of misconduct.

The FSC considers that any new reporting obligation should be clearly distinct from existing reportable situations obligations and be confined to material, systemic or anomalous trends or patterns of behaviour that reasonably indicate a risk of significant member detriment, rather than isolated transactions or conduct that is merely unusual. Trustees and platforms observe high volumes of switching activity each day and already escalate anomalies through their internal governance frameworks. Not all anomalous activity warrants regulatory notification.

In designing any reporting framework, Treasury and ASIC should first articulate the specific risk hypothesis they are seeking to address and define, with precision, the types of patterns that would be reportable for the purposes of ASIC's risk assessment and regulatory action. Absent that clarity, there is a real risk that trustees are placed in the position of reporting large volumes of ambiguous switching activity, which may dilute the quality and usefulness of regulatory intelligence.

Importantly, any reporting obligation must also be commensurate with the trustee's visibility of the underlying activity. From a trustee oversight perspective, current rollover and switching processes do not necessarily provide sufficient detail to identify the types of concerns Treasury appears to be targeting. For example, where a member rolls out of a MySuper product to a platform, the transferring trustee will typically only see the receiving entity (e.g. the platform trustee) and will not have visibility of the underlying investments selected, the advice provided, or the ultimate destination of funds beyond that entity. Trustees cannot reasonably be expected to report on risks that are not observable within the information available to them.

Accordingly, the reporting threshold should arise where a trustee has reasonable grounds to suspect that a systemic pattern (for example, sustained concentrated switching linked to a particular distribution channel or balance erosion associated with an AFSL) presents a risk of significant member detriment. The obligation should focus on intelligence sharing and risk signalling, not on requiring trustees to form conclusions as to whether misconduct has occurred.

Q26. 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?

There are generally no structural barriers preventing trustees from reporting matters of concern to ASIC. As the consultation paper notes, trustees already have the ability to engage directly with ASIC through voluntary reports of misconduct.

However, practical and legal barriers can arise in the following areas.

- **Threshold uncertainty:** Trustees may observe activity that appears anomalous or concerning but is not clearly unlawful, nor in breach of the trustee's own statutory obligations. In the absence of clear guidance on when "suspicion" becomes reportable, trustees may err on the side of either over-reporting ambiguous activity or under-reporting matters that fall short of a defined breach.
- **Legal and reputational risk:** Characterising third-party conduct as "suspicious" without confirmed misconduct carries potential defamation, confidentiality and privacy risks. Trustees are also subject to contractual constraints and privacy obligations that may limit the sharing of identifiable information absent clear statutory authority or appropriate safeguards.
- **Liability uncertainty:** If a trustee reports concerns based on suspicion but does not take commercial action (e.g. offboarding an AFSL), and misconduct is later established, it is unclear whether this could create hindsight liability or regulatory criticism. Such uncertainty risks distorting decision-making and incentivising defensive or inconsistent behaviour.

Finally, while these factors do not prevent reporting, the administrative mechanisms for reporting to ASIC can be operationally cumbersome. Experience with breach reporting regimes demonstrates that ASIC's current information lodgement systems are often complex and rigid, and materially less streamlined than comparable APRA processes. This can discourage timely, intelligence-based engagement and instead drive compliance-focused form-filling.

If the policy objective is to increase the velocity and usefulness of supervisory intelligence, consideration should be given to streamlining reporting architecture at ASIC's end to enable more agile, principles-based information sharing, rather than layering additional obligations onto existing infrastructure.

Q27. What barriers may impact the ability of trustees to meet this new reporting obligation?

The FSC anticipates that the same issues that trustees currently experience described in response to Q26 also apply to Q27.

Q28. Under a data reporting approach:

What data should be reported?

Are there existing data or reporting lines which could be leveraged?

Alternative Proposal: Enhanced Periodic Data Reporting via APRA

If the policy objective is to provide ASIC with more useful intelligence to identify and respond to

potential high-risk super switching activity, then the consultation paper's alternative proposal of expanding periodic data reporting by superannuation trustees may be better suited to achieving this end than a mandatory alerts regime.

A structured data reporting framework should be implemented in a way that complements existing regulatory infrastructure and minimises duplication, consistent with ASIC's stated objectives in REP 813: Regulatory Simplification.

For example, all RSE Licensees could be required to periodically report to APRA the source of all newly created accounts, broken down by AFSL and/or authorised representative (where known). This reporting could follow a similar format to the existing APRA Reporting Form SRF 611.0 - Member Accounts, but with additional fields identifying each AFSL and/or authorised representative.

The potential benefits of this model include:

1. **Industry-wide visibility of AFSL activity:** Centralised reporting would allow the regulators to analyse switching behaviour for an AFSL across all RSE Licensees/platforms. This will allow the identification of patterns of conduct that are only apparent when examined from an industry-wide perspective (for example, where an AFSL distributes the opening of "high-risk" accounts across multiple platforms to obscure the scale of their activities).
2. **Preservation of regulatory intelligence:** The thresholds or rules applied to identify high-risk switching behaviour can be kept confidential by the regulators, allowing them to conduct preliminary investigations and shadow shopping in secret.
3. **Avoidance of subjective trustee judgement:** This model avoids subjectivity in superannuation trustees assessing what is deemed to be high-risk switching behaviour before lodging a report with ASIC. This also avoids requiring ASIC to publish prescriptive rules on what constitutes high-risk switching behaviour which would allow AFSLs to design mechanisms to avoid detection.
4. **Leveraging existing reporting architecture:** By using APRA returns to collect the data, this could leverage existing laws (potentially the *Financial Sector (Collection of Data) Act 2001*) and existing APRA reporting mechanisms/portals.

However, some of the drawbacks and implementation considerations include:

1. This proposal may require the collection of data that is not consistently captured or maintained by superannuation trustees in the ordinary course of business. Operationalising this reporting would therefore involve systems uplift and data standardisation which would impose additional regulatory costs on the superannuation industry. These costs should be carefully assessed against the value of the data to ASIC.
2. The data would also represent a lagging indicator - that is, member funds will already have moved by the time reporting occurs. While this may assist regulators in identifying patterns of concern over time, it may not enable real-time intervention to prevent member harm.
3. This proposal is well suited for wrap platform superannuation trustees but would not be

as relevant to industry-fund trustees or superannuation funds without many advised members. There may need to be other more meaningful data sources required to be collected by these trustees.

RECOMMENDATION 25

The FSC recommends that, if the policy objective is to improve ASIC's visibility of potential high-risk super switching, Treasury consider pursuing an enhanced periodic data reporting model via APRA rather than a mandatory alerts regime. Requiring RSE licensees to report the source of newly created accounts, broken down by AFSL and/or authorised representative where known, through existing APRA reporting channels would enable regulators to detect industry-wide patterns in a structured, objective manner while minimising duplication and reliance on subjective trustee judgement.

Data sharing with AUSTRAC and ATO

Potentially relevant intelligence is already collected by other regulators, including AUSTRAC and the ATO, which may be directly relevant to the conduct ASIC is seeking to detect.

If "high-risk switching" is intended to capture conduct of the kind seen in recent collapses (e.g. alleged large-scale steering into high-risk and related-party MIS products through misleading representations), then that conduct may already constitute suspected criminal or fraudulent behaviour. In those circumstances, consideration should be given to whether existing suspicious matter reporting obligations under the AUSTRAC regime (particularly under the expanded AML/CTF reforms commencing shortly) are better suited to capturing such activity.

Similarly, ATO reporting frameworks, including Member Account Attribute Service (MAAS) and Member Account Transaction Service (MATS) data, may already provide visibility over rollover volumes, account creation trends and SMSF establishment activity. These data sets could assist ASIC in identifying systemic switching patterns without imposing additional reporting burdens on trustees.

RECOMMENDATION 26

The FSC recommends ASIC explore formalised intelligence-sharing arrangements with AUSTRAC and the ATO, and assess the utility of existing data holdings, before establishing new reporting obligations that may duplicate existing frameworks.

Opportunities for greater intelligence sharing

The FSC considers that greater intelligence sharing within industry, and between industry and regulators, could materially improve the speed at which emerging risks are identified and addressed.

In relation to engagement with ASIC, there would be clear benefits to both regulatory and industry outcomes if information flow operated on a genuinely two-way basis, rather than being confined to reporting initiated by industry. For example, should a data collection requirement

be implemented, ASIC sharing aggregated data, emerging risk indicators and insights on areas requiring uplift could enhance the industry's ability to respond in a proactive and targeted way.

With regard to intelligence sharing within industry, the FSC are currently exploring the potential establishment of a platform information-sharing forum to facilitate more structured discussion of emerging risk indicators. However, a key roadblock to more candid engagement is the operation of competition and defamation laws. Similar to the barriers identified earlier, firms may observe concerning or anomalous activity but be reluctant to share details where misconduct is not yet confirmed, due to legal exposure or reputational risk.

At the same time, enhanced information sharing could allow the industry to connect disparate signals more quickly. In recent matters such as Shield and First Guardian, various operators identified distinct risk indicators, but no single entity had the full picture. On an aggregated basis, those signals may have revealed a clearer and earlier risk profile.

A coordinated industry forum, supported by clearer and more streamlined escalation pathways to ASIC, could strengthen the ability of both industry and regulators to identify systemic issues before member detriment becomes widespread.

RECOMMENDATION 27

The FSC recommends that Treasury explore providing greater clarity or safe-harbour style protections for good-faith intelligence sharing to provide confidence that firms can test and escalate concerns without disproportionate legal exposure.

Alternative Proposal: A Proportionate and Risk-Based Reform Pathway

In addition to the matters addressed above, the FSC considers that investor protection objectives may be more effectively advanced through a more explicitly risk-based approach to scheme registration and supervisory engagement. Strengthening scrutiny at the point of entry and calibrating ongoing supervision according to objective risk indicators would allow regulatory effort to be directed toward higher-risk structures, rather than applying uniform structural mandates across the sector.

Recent cases demonstrate that governance and structural risks often manifest in identifiable characteristics. A framework that differentiates between lower-risk and higher-risk schemes at registration and throughout their lifecycle, without creating moral hazard inherent in ASIC 'approving' a scheme, may therefore be more proportionate and effective than across-the-sector structural prescription.

Enhanced Scrutiny at Registration

The scheme registration process provides an opportunity to assess governance arrangements, structural complexity and risk settings before retail investors are exposed.

Objective indicators that may warrant enhanced registration scrutiny could include:

- Schemes investing predominantly in illiquid or hard-to-value assets;
- Use of material levels of leverage or structured financing arrangements;

- Material related party exposures (other than fund of fund investments where the ultimate assets held by the underlying funds are not, or mostly not, related party investments) or vertically integrated distribution models;
- Concentrated asset exposures or single-counterparty reliance;
- Rapid capital raising prior to establishment of operating history;
- Heavy reliance on outsourcing of core functions without demonstrated oversight capability.

Enhanced scrutiny in these circumstances may involve deeper review of valuation governance, liquidity management, conflict management frameworks and board oversight arrangements Where elevated risk characteristics are identified, ASIC's response could include targeted information requests, early supervisory engagement meetings, requirements to provide additional data on a defined basis, or closer post-registration monitoring for a specified period.

Such an approach would not require all schemes to undergo heightened review, but would enable proportional calibration based on identifiable risk characteristics while preserving certainty in the registration process.

As an alternative consideration, given the documents required to be lodged on registration are generally generic, a different approach would require all MIS to lodge a PDS with ASIC at the time of registration in the same manner as quoted MIS (refer to 1015B of the Corporations Act). This would not introduce a merits-based approval process, but would enable ASIC to have visibility of the offer document describing the operations of the fund and what investors are being told.

These offer documents describe more fully the operations of the fund, enabling ASIC to better understand the scheme's risk profile at the point of entry. For example, neither the constitution nor a compliance plan is required to disclose details about related party transactions, whereas these matters must be disclosed in a PDS.

RECOMMENDATION 28

The registration framework should incorporate objective risk indicators that allow enhanced scrutiny of higher-risk or more complex schemes, while preserving efficient registration pathways for lower-risk and well-governed structures.

Ongoing Risk-Tiered Supervision

Beyond registration, a more formalised risk-tiered supervisory model may further strengthen oversight.

ASIC already adopts risk-based supervision in practice and has access to a range of existing data sources, including breach reports, complaints data, Design and Distribution Obligations (DDO) reporting, financial reporting and compliance plan audit reports. Greater clarity around how such information informs supervisory prioritisation may enhance predictability and transparency.

Objective indicators that may justify elevated supervisory engagement could include:

- Sustained rapid growth in funds under management;
- Increased related party transactions or intra-group exposures (other than fund of fund investments where the ultimate assets held by the underlying funds are not, or mostly not, related party investments) ;
- Breach reporting patterns that may indicate governance weaknesses, including:
    - sustained elevated volumes of reportable breaches; or
    - an absence of breach reporting that is inconsistent with the nature, size or complexity of the scheme;
- Repeated compliance plan audit findings;
- Deterioration in liquidity buffers relative to asset profile;
- Material shifts in redemption patterns or investor concentration;
- Persistent valuation adjustments or audit qualifications.

Where such indicators are present, ASIC's response could include targeted information requests, thematic or entity-specific surveillance, additional reporting or audit requirements for a defined period, supervisory meetings with directors and senior management, or, where appropriate, enforceable undertakings or licence conditions. Calibrating supervisory intensity in this way would enable ASIC to focus regulatory effort on higher-risk schemes without imposing uniform structural mandates across the sector.

RECOMMENDATION 29
Supervisory engagement should be explicitly calibrated according to identifiable and objective risk indicators, informed by existing regulatory data sources, enabling regulatory resources to focus on higher-risk schemes and emerging vulnerabilities.

The FSC welcomes the opportunity to further discuss the matters outlined in this submission and look forward to discussing with you and your team in our upcoming meeting.

In the meantime, if you have any questions relating to our submission, please do not hesitate to reach out to Aidan on 0421 944 648 or by email (ajohnson@fsc.org.au).

Yours sincerely

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