



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 118

Commentary on compliance plans: Contributory mortgage schemes

April 2004



ASIC

Australian Securities & Investments Commission

Commentary on compliance plans received by ASIC

Contributory mortgage schemes

*Practical feedback based on ASIC's review of
compliance plans submitted since 1 January 2001*

April 2004

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April 2004

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How we developed this commentary

The managed investment industry asked for our feedback on compliance plans lodged with us. This commentary summarises the better compliance plans submitted to us and is practical guidance for members of the industry.

This document is not a checklist for compliance with the *Corporations Act 2001* (the Act). You should also refer to our Policy Statement 132 *Managed investments: Compliance plans* [PS 132]. Although this commentary reflects current compliance methodology, it must not be used as a substitute for Australian Standard® AS 3806–1998: *Compliance programs* and other compliance information.

Review of approved compliance plans

Since 1 January 2000, we have reviewed over 100 mortgage scheme compliance plans submitted to us for approval. Our reviews highlighted a wide variety of styles and content in these plans. We welcome this variety as it reflects the diversity in the nature of mortgage investment schemes and the scale of their operations.

However, some plans did not reflect how the Responsible Entity (RE) would operate and therefore came under greater scrutiny. Many schemes were registered only after we extensively reviewed the compliance plans. In our review of mortgage scheme plans we:

- compared the plans against [PS 132], which sets out our policy on compliance plans;
- reviewed each plan noting which sections and operations were used consistently;
- for each section or operation, noted examples that stood out in clarity, format and meeting compliance objectives; and
- took into account surveillance and enforcement findings on the operation of mortgage schemes.

Choosing examples for this commentary

The comments and suggestions in this commentary are based on our observations of the features in different compliance plans that we believe contribute to a compliance plan being effective. We found that many plans included good and bad parts. Therefore, the examples are generally a combination of different plans we have reviewed.

To improve the relevance of the examples to individual readers, we have produced two mortgage scheme commentaries, one concentrating on contributory schemes and the other on pooled mortgage schemes. The allocation of examples to these two types of schemes was based on the following definitions:

- contributory means that investment is through either:
 - a general authority, where the investor receives a summary after the application is approved followed by a 14 day cooling off period; or
 - a specific authority where the investor receives a second part disclosure document prior to investing,
- pooled or unitised means that investment is spread over the whole mortgage book, ie the investor has exposure to the whole scheme, not a specific mortgage.

Features of better plans

Use plain language

Better plans use:

- plain language and avoid legal or industry jargon;
- a simple structure including a contents list and clear headings;
- meaningful words to describe what is actually done, eg “a documented due diligence process is applied to each Product Disclosure Statement. The compliance manager is responsible for ensuring the process takes place and that it has been carried out properly.” This means that compliance with the plan can be audited against these measurable standards. (Better plans avoid vague terms such as “appropriate”, “adequate” or “sufficient”.) See [PS 132] at [PS 132.3];
- clear reference to operational procedures; and
- specific details on how procedures are monitored and who is responsible.

Better plans also include an overview about the plan, its scope, aim and where it sits in the RE’s compliance and management framework.

A “how to use” guide is helpful, eg in some plans you need to read some sections first before you can understand how other sections need to be applied.

State who must do what by when

Better plans focus on the tasks staff must do. If plans do not tell them this, staff will see them as “documents for our lawyers”. With better plans, staff can easily find out:

- who is responsible for a certain task and when, or how often, that task must be done;
- how they can meet these obligations; and
- how and when their work will be monitored and by whom.

However, better plans also give staff enough information about legal concepts and requirements so that they can quickly apply that knowledge in their day-to-day tasks.

Plans that state who, or what position, is responsible for certain tasks create a sense of ownership of tasks. This also makes it easier to monitor such plans. This is particularly applicable for smaller operators where a large amount of other documentation may not be in place.

Describes monitoring and reviewing activities

Better plans state when reporting on compliance with procedures and compliance in general must take place. They state specific dates or use such terms as “no less than monthly”. (“Regular” is meaningless when describing the frequency of reporting.)

When detailed procedures are described in another document, the better plans state how compliance with those procedures is monitored and how the procedures are reviewed. However, only high level procedures are described in the plan document. Individual procedural tasks are better contained in other documents so that they can be easily changed.

Better plans clearly outline:

- how breaches are reported and who is responsible for rectifying them; and
- what action needs to be taken if the plan is breached.

Better plans state “how and when” the plan will be reviewed so that it continues to comply with the Act and the scheme’s Constitution. These plans are better equipped to ensure that the plan complies with the Act by continuing to be adequate. In particular, these plans identify triggers that may impact on the plan, eg restructuring or environmental changes.

There are no limitation or exclusion clauses in the better plans. Nor do they delegate the obligations of the Compliance Committee.

Monitoring compliance

Generally we found that the better compliance plans had been extensively reviewed by the business. We found they were more likely to reflect:

- the business processes in place to ensure compliance; and
- the measures used by the business to monitor and accurately report on compliance and the monitoring of breaches.

We also found that most plans did not contain additional measures that needed to be put in place with the change to a “single responsibility regime”. The extra fiduciary duties were often not addressed and accounted for.

We note that the better plans clearly addressed the structure of the RE, in particular the outsourcing risks.

There was a great deal of variation in the level of detail in the plans. Not surprisingly, plans for smaller entities contained more detailed procedures that reflected their flatter and smaller structures. Larger entities referred to detailed procedures in internal documents.

Some plans did not contain enough detail to be audited. Often we saw plans that were so vague that the organisation would not know whether the plan had been breached.

The better plans were clear about:

- what the obligation was;
- what procedures were in place to meet that obligation;
- how those procedures were monitored; and
- who was responsible for monitoring compliance with that procedure.

The better plans, when referring to documents that contained procedures, detailed how the procedures were monitored and updated.

Use of references for advice

Better plans:

- refer to Australian Standard® AS 3806–1998: *Compliance programs*; and
- reflect other compliance plans they have, eg plans for trade practices requirements.

Matters that must be addressed

As noted earlier, this commentary is not a compliance checklist. However, there are a number of procedures that we expect to see in all plans. We view these procedures as being fundamental to operating an effective compliance framework for a mortgage scheme. These procedures include:

- obtaining a current, independent valuation of the security property before any mortgage is granted and, in some circumstances, when the mortgage is amended or rolled over;
- having the protocols in place to ensure the valuer used has the appropriate qualifications and experience for that property type;
- a requirement that detailed, written instructions are provided to the valuer that ensure the valuation is relevant for the circumstances associated with the security property and the terms of the mortgage;
- ensuring there are adequate procedures for managing mortgage defaults and disclosing defaults and progress on recovery to investors;
- ensuring the RE has the appropriate expertise to manage the risks associated with the security property or development being considered; and
- documented selection criteria of borrowers, such as credit checks and a loan valuation ratio consistent with the level of risk disclosed to investors in the scheme's disclosure document.

Main areas of concern

There are three areas that ASIC believes are systemically weak in the market:

- prudential loan management, ie poor valuation procedures, inadequate security and poor procedures and responses to defaults on mortgage payments;
- licence compliance, in particular NTA, 3 month cashflow and professional indemnity insurance; and
- insufficient segregation of duties, such that the same person deals with the investors, the mortgagees and drafts the related documents. This creates conflicts of interest that weaken or prevent controls operating effectively.

It is essential that compliance plans address these areas.

Financial services reform

- From 11 March 2002 (FSR commencement), all REs must apply for an Australian financial services (AFS) licence. The AFS licence replaces current licences issued under the Act before FSR commencement. Operators of managed investment schemes have up to two years from 11 March 2002 to apply for an AFS licence.
- Under an AFS licence, the RE has a number of legal responsibilities. We anticipate that REs will need to review their compliance plan in light of these responsibilities and other requirements under the FSR regime. For example, an RE must ensure that they have a risk management system in place.
- We also encourage all managed investment operators to review how interests in their scheme are distributed. The FSR Act introduces a new definition of “advice” and as such, some operators will need to apply to be authorised to provide advice. Unless you distribute your product through another licensee, it is highly likely that you may need to seek to be authorised to provide advice under your AFS licence.

1 Commentary on fundamentals of the structure of plans

1.0 Contents page

Our staff found that compliance plans containing a contents page were much easier to review and should benefit all users of the plan.

We also anticipate that, as compliance plans are a working document and are expected to be used on a frequent basis by numerous parties, a well-planned contents page will:

- reduce time spent locating relevant clauses; and
- provide an overview of the scope of the compliance plan.

We found that in better plans, the contents page was not too detailed, and was only one to two pages in length.

The best plans highlighted areas users are most likely to regularly look for, eg operational matters such as valuation of security property.

Example of a contents page

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1.1 Purpose of this plan

We found that good compliance plans contained contextual information to assist users of the plan, including a brief explanation of:

- the scope of the compliance plan;
- the aim of the compliance plan;
- how the compliance plan fits into the RE's compliance and other management reporting framework; and
- the importance of compliance with the plan and what constitutes non-compliance.

Many users are unlikely to have been involved in drafting the compliance plan or have a compliance background. This information is also likely to be very helpful to the auditor of the plan as well as to ASIC in understanding the RE's approach to compliance.

Plans that did not contain this type of contextual information were more difficult to understand and in our view reflected a lack of thought about the role of the plan and a lack of commitment to making it work in practice.

Example

1.1 Purpose of this plan

Set out the main objective of plan, eg:

This compliance plan sets out the key processes, systems and measures the RE will apply to ensure compliance with:

- Corporations Act 2001;
- scheme's Constitution;
- industry practice standards relevant to the scheme; and
- internal organisational standards and culture.

Comment on how the plan sets out to achieve this, eg:

This plan is a "how to" document, providing sufficient detail on:

- the obligations which must be met by the RE;
- what measures or procedures are in place to comply with these obligations; and
- how compliance with those measures and procedures will be monitored.

This plan also details the risks of not complying with these obligations, and how breaches are to be reported and addressed.

The description of measures in place allows RE staff with compliance responsibilities to identify what procedures they are responsible for monitoring and how often they have to report on compliance or otherwise with those measures.

This plan must be integrated into the operations of the business and its use is not optional.

A statement of the organisation's compliance commitment is not often seen in compliance plans. However, we feel that the better plans reflected a higher level of ownership when they clearly outlined the organisation's level of commitment to compliance, eg:

The organisation wants to achieve a compliance culture where each person in the business has a level of ownership of compliance in their day-to-day work. This means there is a high level of knowledge within the organisation about what has to be complied with and how. It also means that people take responsibility for reporting breaches and ensuring they are addressed in the appropriate way.

We want our staff to not only do the right thing, but also know how to do it. Failure to report a breach is treated seriously and, as such, the organisation adopts a "no blame" policy in relation to breaches but not so in relation to failure to report.

1.2 How to read this plan

It was not easily apparent in many plans how various parts of the plan linked or affected other parts. Indeed, on occasions when applicants were asked to explain how the plan worked, they had difficulty answering. Better plans directed users to the sections that described the scheme and where they, as responsible officers, fit into the compliance framework.

A large number of the compliance plans we reviewed were targeted at ASIC whereas the best ones targeted the RE's many users. As a result, very few REs addressed this important point.

Example

1.2 How to read this plan

It is vital that users of this plan understand their role in its effective implementation. The operational procedures noted in section 3 do not provide enough information on their own and there are several sections of the plan that must be read by all users of this document in order to fully understand their responsibilities.

Sections that are considered essential reading, in addition to comments on procedural areas specific to the user, are:

- 1.1 Purpose of the plan
- 1.3 Description of the scheme
- 2.1 Compliance framework
- 2.2 Role of the Compliance Committee
- 2.3 Role of the Compliance Officer
- A1 Glossary
- A2 Organisational structure chart
- A9 Pro forma breach report

The plan is structured in such a way that it clearly identifies the legal responsibility that must be complied with. The procedures described are part of processes used by the RE to meet that obligation. The plan identifies:

- what part of the business is responsible for carrying out those procedures;
- how compliance with those procedures will be monitored; and
- who is responsible for monitoring compliance.

That person is also responsible for reporting compliance and non-compliance with those procedures to the Compliance Officer. The frequency of reporting is also stated.

1.3 Description of the scheme and risks

Some better plans reflected the understanding that a number of users of compliance plans will not be involved in the operation of the scheme and may need to review the compliance plan in isolation.

These plans contained a brief description of the structure and purpose of the scheme for users so they could understand the risks facing the scheme, and therefore why certain compliance procedures have been included or omitted. A description also enables users to assess if the plan is adequately focused on the most important risk areas. One example is the increased importance of valuation procedures for schemes allowing development loans compared to schemes using income-based security for mortgages on existing properties.

Unfortunately, many plans we reviewed failed to comment on the particular risks faced by the RE in operating the scheme and ultimately the risks to investors. It is even more important post FSR to understand risks and document how they are being addressed. Some plans contained a brief description of the main risks facing the scheme early in the plan, while others described the scheme later in the compliance plan with the compliance procedure addressing that risk.

ASIC certainly found a brief description of the scheme and risks early in the plan helpful.

Example

1.3 Description of the scheme

The scheme is a contributory mortgage investment scheme investing in first mortgages over freehold property in Australia. It is designed to allow investors to select individual investments from a range of approved first mortgages for agreed terms and at agreed rates of interest (mortgage investments).

Each mortgage investment will have its own fixed term and rate of interest and will be individually approved by the RE.

Investment criteria will include the credit worthiness of borrowers and valuations of the security as provided by a registered valuer. Loans are made in accordance with the preset loan to valuation guidelines.

The scheme will continue with the preset loan to valuation guidelines.

The scheme will continue for 80 years unless wound up earlier. Mortgage investments will operate for 3 to 5 years.

The overall investment strategy is to provide secure fixed interest returns for investors with minimum risk to capital.

2 Compliance frameworks described in plans

2.1 Compliance framework/structure

A feature of better plans was a clear description of the RE's compliance framework or structure. Some REs included this in the plan to:

- aid in understanding the RE's overall approach to addressing compliance;
- provide background to the RE's compliance reporting structure; and
- provide staff with a clear statement on where the compliance plan sat in the framework.

Better plans reflected the understanding that the procedures and measures in the plan needed to be supported by a sound and workable compliance structure. Even though the structure is described in the RE's licence application, some plans provided more detail in the compliance plan. Plans that did not describe the compliance framework were requisitioned. In reviewing plans, we are mindful that the compliance structure is the framework in which the compliance plan sits and, if the fundamental framework does not work, it is unlikely that the compliance plan will achieve the desired outcome.

Australian Standard® AS 3806

For more information on compliance frameworks and structures we refer you to the Australian Standard® AS 3806–1998: *Compliance programs*.

Flowcharts

Better plans contained flowcharts of the compliance reporting structure to provide a clear picture of the compliance process and allow RE staff to quickly see where they fit into the overall framework. Flowcharts also helped us assess the adequacy of the RE's compliance structure, eg the level of access the Compliance Officer had to the Compliance Committee or Board.

Monitoring compliance

Not all plans described how compliance with procedures is monitored, eg:

- are there random checks of borrower files to ensure an appropriate review has been undertaken?
- are debt files reviewed to ensure the appropriate action has been undertaken?

Again this area was the focus of many requisitions by ASIC officers.

Transparent structure

The best plans showed the compliance reporting process in enough detail to enable the Compliance Committee to determine how the reports on compliance with procedures are put together. It was not clear in some plans who was responsible for producing compliance reports.

Truth in reporting

Few plans described the methodology by which compliance reports would be put together to ensure that the report reflected the correct position on compliance. ASIC surveillances reveal that sanitisation of reports is a real risk area for an RE, as well as guess work at the basic reporting level.

2.2 Risk management system

The development of a risk management system is a requirement under an AFS licence. It is also part of good business practice.

To gain more information about risk management systems, see our Policy Statement 164 *Licensing: Organisational capacities* [PS 164]. This policy statement sets out a series of questions and guidelines on risk management. As a mortgage scheme operator, you will need to identify particular risks in relation to the services you will be providing under your licence. These risks may include compliance, operational as well as environmental. You will need to determine how you will address the risks.

Example

2.2.1 Risk analysis

The Board is ultimately responsible for ensuring compliance with all legal, regulatory and contractual duties.

The RE, with reference to Australian Standard® AS 4360 on risk management, has assessed the compliance risk having regard to:

- (a) the variety of levels of investor sophistication of members;
- (b) the primary investment which is a mortgage security;
- (c) interest income which is collected and distributed;
- (d) employees who are involved in assessing the borrower and managing the repayment/default process;
- (e) employees who are responsible for accepting new monies and applying monies to new mortgages; and
- (f) adequate segregation of duties.

2.2.2 Compliance risk assessment

The Compliance Officer is responsible for ensuring the compliance risk assessment is updated and appropriate risk management controls and procedures have been implemented and are working.

Division managers are required to review risks relating to their area of responsibility on an on-going basis and report any material issues arising to the Compliance Officer.

Amendments to the risk management controls and procedures are required to be approved by the Divisional Managers before implementation and reviewed by the Lending Committee at their next meeting.

Compliance risks and risk management controls and procedures are communicated and actioned to staff through the staff training programme, the Operations Manual and the various checklists required to be completed and reviewed within the management of the scheme.

Table 2.2.2 Compliance risk assessment

Risk type	Managed by	Risk management
Compliance risk	Compliance Officer (CO)	Compliance system review and reporting
Capital risk	Lending Committee (LC)	<ul style="list-style-type: none"> • Valuation policy and procedures • Compliance with lending criteria • Efficient management, collection and default systems • Staff training • Security property insurance tracking • Certification of legal officer on all settlements • Segregation of duties between assessment of borrowers for new loans and management of borrower repayments
Income risk	Asset Manager Lending Manager LC	<ul style="list-style-type: none"> • Efficient management, collection and default systems • Credit check on borrower applicants • Feasibility analysis on development loans
Disclosures	CO	<ul style="list-style-type: none"> • All forecasts are reviewed and independent expert reports obtained where appropriate • All investor communications (including disclosure documents) to follow review process • Continuous disclosure to members of material matters impacting their investment • Mortgage investment summaries sent to members after investment
Distribution	Financial Controller	<ul style="list-style-type: none"> • Effective IT systems for recording data and distributing income and capital payments • Reporting and tracking functions
Service providers	CEO	<ul style="list-style-type: none"> • Service agreements • Reviews • Training
Fraud	CEO	<ul style="list-style-type: none"> • Segregation of incompatible duties • Two party authorisation procedures • Fidelity insurance
Systems breakdown	IT Manager	<ul style="list-style-type: none"> • Documented disaster recovery and business continuation plan
Environmental risk	LC CEO	<ul style="list-style-type: none"> • Continuous monitoring of property and interest rate market and review of loan valuation ratios • Prompt action to inform borrowers and investors of changes in interest rates • Efficient collection and default procedures • Continuous monitoring of conditions market borrowers are operating in

2.2.3 Risk management chart

Office	Task	Reports to	Frequency
Board	<ul style="list-style-type: none"> • Policy making • Direction • Leadership • Overview, monitoring of market 	Share holders ASIC Investors	Meets quarterly for ordinary business and at other times for special business
CEO	<ul style="list-style-type: none"> • Day-to-day executive decisions on policy and direction • Overview, monitoring of market 	Board LC	Minimum of monthly
LC	<ul style="list-style-type: none"> • Implement lending policy • Overview of scheme • Implement compliance plan 	Board	Quarterly
Accounts	<ul style="list-style-type: none"> • Company secretariat • Asset management • Custodian • Director overview 	CEO	Weekly
Lending	<ul style="list-style-type: none"> • Asset assessment • Valuation 	CEO	Weekly
Investment	<ul style="list-style-type: none"> • Disclosure Document • Member registration 	CEO	Weekly
Compliance Officer	<ul style="list-style-type: none"> • Implement compliance plan • Daily oversight of compliance • Monitor all operations • Training 	LC Board ASIC	Quarterly

2.3 Role of the Compliance Committee

There was a variety in the level of detail about the function and responsibility of the Compliance Committee. Better compliance plans clearly explained the Committee members' duties and how they would achieve them, and emphasised the importance of members fulfilling their obligations.

A number of REs included a Compliance Committee Charter describing the rules and guidelines to be followed by the Committee as an appendix to the compliance plan (see appendix A6: Compliance Committee Charter).

Some plans also included the process by which a Compliance Committee member is appointed. Other plans referred to documents outlining this process. It was not always clear how this process was going to be monitored.

Example

2.3 Role of the compliance committee

Compliance Committee membership

Include details of minimum number of members, minimum qualifications and appointment process.

Responsibilities

Refer to duties per s601JC, stressing that the Committee must ensure the compliance plan meets the requirements of the Corporations Act on an ongoing basis. Many compliance plans also explained the Committee's procedure for:

- dealing with breaches, including following up on action taken by the RE following recommendations made by the Committee;
- ensuring they are made aware of all significant transactions involving scheme assets, including default on mortgage payments and significant downward movements in value of mortgage security;
- ensuring the scheme is not trading while insolvent, or is not expected to be. This will include reviewing and approving any additional funding requirements of the scheme; and
- assessing if the RE's actions are in accordance with the Disclosure Document, scheme's Constitution, Corporations Act and in the investors' best interests.

Meetings and reporting

This area included frequency of meetings, quorum and the requirement to take minutes for distribution to the Board. Better plans included a standard agenda as an appendix (see appendix A7: Pro forma compliance committee meeting agenda). This provides the Compliance Officer with a guide to the matters that need to be reported to the Committee at each meeting. Many plans disclosed the right of the Committee to access information, reports, resources, audit and experts as necessary. Some plans also contained details of when the Committee would report to ASIC.

2.4 Role of the Compliance Officer

The Compliance Officer features prominently in many plans in relation to reporting and monitoring on some obligations. Better plans explained the Compliance Officer's pivotal role in the compliance framework and their responsibility for liaising between the Compliance Committee and the officers responsible for implementing and monitoring compliance procedures. The best plans stressed the importance of this role and explained the duties clearly.

Several REs included in the compliance plan a job description for the Compliance Officer position and a pro forma report to the Compliance Committee covering matters that need to be reported on a regular basis.

Better plans emphasised that the Compliance Officer had direct access to the Board of Directors or the Compliance Committee to ensure the Officer had the appropriate seniority or "clout".

Example

2.4 Role of the Compliance Officer

Overview of the role

The Compliance Officer will ensure adequate internal systems and controls have been implemented to ensure compliance with the Corporations Act, the scheme's Constitution and internal and industry standards. These duties include promoting the compliance culture within the organisation and to external service providers.

The Compliance Officer is primarily responsible for reviewing compliance on an ongoing basis, reporting on compliance matters, including breaches, to the Committee and acting on recommendations of the Committee. Matters can be escalated to the Board or ASIC if necessary.

Qualifications, reporting line, frequency and format of reporting

The Compliance Officer must have a minimum of five years experience in the mortgage and/or property industry and report directly to the Compliance Committee quarterly or more frequently as required. The format of reporting is as per the pro forma report in Appendix A8.

Some plans included other matters such as delegating, use of experts, access to external and internal audit, ensuring Committee recommendations are implemented within a set time-frame, records, maintaining knowledge of best practice, ensuring staff have adequate access to procedures manuals, monitoring compliance of the Committee with the Compliance Committee Charter, ranking by significance the matters to be reported to the Committee etc, as applicable.

2.5 Role of audit

The best plans explained the role of both the internal (where applicable) and external auditor in the compliance framework. As noted in section 2.1: Compliance framework, many plans rely on audit to periodically review compliance frameworks that are based on a self-assessment process. It is more workable if the reader of such a compliance plan understands audit's role, so that they can understand the RE's approach to compliance.

These plans also explained who is responsible for addressing issues raised by internal and external audit and who follows up any recommendations made and ensures they are implemented in a timely manner.

Example

2.5 Role of audit

The Internal Audit Team is part of the Financial Management Division and reports directly to the Board Audit Committee, who monitors and directs the Team's work. The Team's role is to confirm that the policies and procedures are operating as expected. Its terms of reference in respect of the plan are approved by the Board Audit Committee following consultation with the Compliance Committee.

The Team will conduct a risk-based review of compliance with this plan, focusing on areas considered to be of greatest or emerging risk. All operational aspects of the plan will be reviewed at least every two years. Areas considered high risk will be reviewed at least every six months.

A key objective of the Team is to assess the adequacy of the compliance framework and to ensure major issues are promptly identified and addressed.

Copies of all internal audit reports relating to this compliance plan are sent to the Board Audit Committee, Compliance Committee and external auditor.

The role of the external auditor is to annually:

- examine the plan;
- carry out an audit of compliance with the plan;
- submit a report to the RE providing an opinion as to whether the RE has complied with the plan throughout the period and if the plan continues to comply with the requirements of the Corporations Act; and
- carry out an audit of the scheme.

2.6 Role of the Lending Committee

Most plans incorporated a Lending Committee or separate individual in the operational structure of the RE. The better plans clearly explained the role and the importance of those duties in reducing risk of loss of investor assets.

A separate Lending Committee or separate individual is a key factor in addressing conflict risk in a mortgage scheme. For this reason, we see it as important to separate the lending function from the borrowing function.

Example

2.6 Lending Committee

Establishment of the Lending Committee

As at the date of adoption of this Compliance Plan, the Manager has established a Lending Committee.

The Board will appoint the members of the Lending Committee and the Compliance Officer monitors the performance of their functions. The Chairman of the Board is responsible for ensuring that the Lending Committee contains personnel with relevant experience to enable it to carry out its functions properly.

Role and Functions of the Lending Committee

- (a) The Lending Committee is an internal committee established to consider proposed and actual Mortgage Investments;
- (b) The Lending Committee must consider and approve each Mortgage Investment before the Mortgage Investment is recommended to investors;
- (c) The Lending Manager will assess all Mortgage Investments and will submit a written report to the Lending Committee on those Mortgage Investments that meet the loan application assessment guidelines established by the Manager. The report shall contain such information as the Lending Committee specifies from time to time and in any event all material information necessary to assess a Mortgage Investment;
- (d) The Lending Committee must evaluate each Mortgage Investment with regard to the loan application assessment guidelines established by the Manager;
- (e) If the proposal does not meet these guidelines it must be:
 - (i) rejected;
 - (ii) modified; or
 - (iii) referred to the Board for further consideration.

- (f) When a proposal meets the loan application assessment guidelines or any amended conditions approved by the Board, the Lending Committee may formally approve the proposed Mortgage Investment. The Lending Committee may not approve a Mortgage Investment proposal that does not meet the guidelines.
- (g) A vote of the Lending Committee to approve a Mortgage Investment will require a majority of members to approve the proposal.
- (h) Any approval must be in writing and retained for the duration of the Mortgage Investment.

2.7 Reviewing and amending the compliance plan

In spite of the obligation for the plan to “continuously comply”, most plans we reviewed failed to mention that any periodic review of the compliance plan was required. This was surprising when the environment in which the RE operates is likely to change frequently due to new regulations, (eg the Act after 11 March 2002), new products, restructuring etc.

Quality plans outlined the obligation of the RE to carry out a review of the adequacy of the plan at least annually and after any significant event that they think might impact the plan. This review sometimes included considering reasons for any breaches and the impact on the compliance plan of any issues raised.

Example

2.7 Reviewing and amending the compliance plan

To ensure the compliance plan continues to provide an adequate compliance framework for protection of investors, the RE will report to the Compliance Committee at least annually on the continued adequacy of the plan.

So that the Committee is informed of all internal developments, all staff, including internal audit, are instructed to report all proposed changes in operating structure and procedures to the Compliance Officer. These reports are included in the Compliance Officer’s monthly report to the Compliance Committee.

Part of the Compliance Officer’s role is to remain up to date with all regulatory and industry standards changes. Any such changes that impact the plan are reported to the Committee in the Compliance Officer’s quarterly report to the Committee.

Subject to the Corporations Act, this plan can be amended by the Board or the Compliance Committee. All amendments are notified to the Chairman of the Compliance Committee prior to the approval of the amended plan by the Committee.

The Compliance Officer is responsible for submitting amended plans to ASIC and ensuring all staff responsible for compliance matters receive notification of the change and an updated copy of the plan.

2.8 Summary of compliance procedures

We found it easier to review plans that clearly separated the different measures used to achieve compliance. The best plans clearly identified the following:

- legal or constitutional obligation;
- procedures in place to satisfy that obligation;
- who was responsible for reporting on whether or not the procedures had been followed;
- how compliance with procedures was monitored;
- who carried out that monitoring; and
- when reporting/monitoring took place.

Some plans were also useful in that they contained a summary of the types of procedures to be employed, identified the officer responsible for monitoring compliance with those procedures, and also indicated the frequency with which the officer must report as to such compliance. The Compliance Officer and the Compliance Committee could then use the summary as a checklist.

The “Responsible Officer” is usually the person who is responsible for ensuring a particular procedure is followed and reporting to the Compliance Officer on whether there were any breaches in following the procedure.

Example

2.8 Summary of compliance procedures

Function	Responsible Officer	Reporting frequency	Details of procedure (reference)
Loan applications and approvals	Lending Manager	Monthly	3.1
Valuation	Lending Manager	Monthly	3.2
Interest, income and default	Credit Manager	Monthly	3.3
Applications and distributions	Scheme Administrator	Monthly	3.4
Insurance	Financial Controller	Quarterly	3.5
Promotion of scheme	Director	Monthly while offer open	3.6
Disclosure and reporting	Financial Controller	Monthly	3.7
Conflict of interest	Compliance Manager	At each compliance committee meeting	3.8
External service providers	Manager Investments	Annually	3.9
Fees and expenses	Financial Controller	No less than quarterly	3.10
Record keeping	Financial Controller	Annually	3.11
Safe keeping and segregation of scheme property	Financial Controller	No less than quarterly	3.12
Monitoring licence and authorised representatives	Compliance Officer	No less than quarterly	3.13
Training and recruitment	Financial Controller	Annually	3.14
Related party issues	Compliance Officer	No less than quarterly	3.15
Complaints	Compliance Officer	No less than quarterly	3.16
Reporting breaches	Compliance Officer	No less than quarterly	3.17

3 Operational procedures

The format REs chose to present details of procedures varied considerably. The clearest format incorporated tables including details of the function, the risks of non-compliance, the relevant policies and the compliance procedures. Some REs also grouped together tables covering compliance procedures overseen by the same officer, allowing RE staff to quickly locate information on all areas of compliance they are responsible for.

The best plans showed sufficient detail to allow the responsible officer to know what the responsibilities of the role are, what procedures are required to be performed to fulfil those responsibilities, how they are to be monitored and reviewed, who to report to and whether compliance checks are automated or manual.

Many plans refer to procedures manuals and detail contained in agreements rather than including lengthy descriptions of procedures within the compliance plan. This improves clarity and allows procedures to be updated without having to amend the compliance plan. However, plans often left out what measures are used to ensure that the procedures contained in the manuals and agreements are followed, working and updated.

One area that was poorly covered in many compliance plans was the reporting of breaches. Industry best practice requires all breaches to be reported even if they have been rectified during the period. This enables the Compliance Committee to have a full picture of the level of breaches that are taking place. Many entities rated breaches according to significance so that the Compliance Committee could focus on the higher risk breaches that will impact on investors or the RE. Better plans also ensured that the Committee was aware of systematic breaches and the source of breaches.

Recent ASIC surveillances have revealed that often the operational procedures quoted are not those actually carried out. Obviously, it is important to ensure that the plan accurately reflects business practice.

Examples

The examples in this section are not meant to be procedural best practice, rather they are illustrations of the better examples noted from our review. Content will need to be tailored to the specific scheme and RE's operation as well as any further relevant points considered.

3.1 Loan applications and approval

Example

Responsible Officer: Lending Manager (LM)

Frequency of Reporting: Monthly

Function	Risks	Procedures	Monitoring of procedure
Loans are granted in accordance with lending policy principles.	Lending policy is not followed exposing investors to an increased risk of loss.	<p>Lending policies are documented in the Operations Manual. The Lending Committee (LC) reviews these procedures annually.</p> <p>Loan applications are prepared by the LM for approval by the LC in accordance with the Operations Manual and the constitution. An example of an application is included at A4. Applications will include:</p> <ul style="list-style-type: none"> ● statement of assets and liabilities of the borrower; ● income and expense statement of the borrower for the last 3 years; ● borrower's cashflow forecast for the first 12 months of the mortgage period; ● results of credit check on borrower; ● title search on property; ● valuation prepared in accordance with valuation policy (refer 3.2) and not older than 90 days. Valuations provided by applicants are not used; ● loan to valuation ratio and comments on the adequacy for security purposes in terms of property location, current market, tenants, nature of security and issues raised by the valuer; and ● additional information required for development loans (refer below). <p>Any issues raised by the panel valuer are reviewed by the LC and additional information obtained if necessary, eg advice from a quantity surveyor or town planner.</p> <p>A copy of the valuation is included in the supplementary disclosure document issued to mortgage investment members.</p> <p>Before a loan can be approved the LC will consider all the above information and assess if the loan valuation ratio and interest rate are appropriate for the level of risk associated with the loan application.</p> <p>The LM, the Legal Officer and a member of the LC must sign a Mortgage Advance</p>	<p>The Compliance Officer (CO) reviews files for all loans approved in the month to ensure the MAA is signed and all documents required by the Operations Procedures are on file.</p> <p>The Board appoints members of the LC and at least one member of the Board sits on the LC at all times.</p>

Function	Risks	Procedures	Monitoring of procedure
<p>Exposure to mortgage is adequately secured at all times.</p>	<p>Losses arising on default due to security being unenforceable or insufficient to cover the outstanding debt.</p>	<p>Approval (MAA) before settlement to confirm all required documents are on file, the LC has approved the loan and the Operations Manual has been complied with. The MAA will include:</p> <ul style="list-style-type: none"> ● name of mortgagee, mortgagor, and guarantor ● principal sum ● term of mortgage ● interest rate ● any special conditions ● address and title of the property ● confirmation of valuation ● details of certificate from council indicating the building complies with all council requirements ● details of insurance policies over the security property. <p>Mortgage security is registered in the name of the RE or mortgage investment members. The MAA certifies the mortgage security is in place and complies with the disclosure document and the loan documents approved by the LC.</p> <p>Information on security is included in the supplementary disclosure document issued to mortgage investment members.</p> <p>The Operations Manual lists certain higher risk properties that are not accepted as security, including motels, theme parks, farms and resorts.</p> <p>Security over all mortgages is reviewed by the LC annually and results of the review recorded in the minutes of LC meetings.</p>	<p>The CO reviews files for all loans approved in the month to ensure the MAA is on file and is signed.</p> <p>Minutes of LC meetings are reviewed by the CO and the Board following each meeting.</p>

Development loans – additional procedures

The Board considers there are unique risks associated with development loans that require additional procedures to address them. These procedures are recorded in the Operations Manual, though are summarised below.

The LC require certain additional documents to be provided with the loan application, including:

- valuations based on land only and value at completion of project;
- a detailed budget and cashflow forecast for the project;
- a list of proposed builders together with details of experience, reputation and financial status;
- a copy of the draft building contract;
- details of the construction management team, ie project manager, quantity surveyor, town planner, engineer, etc, including their experience on similar projects; and
- confirmation from each relevant party that the construction management team, the applicant and the RE are independent of each other, or have disclosed all conflicts of interest.

The key policy is that at all times the mortgage investment must either:

- hold sufficient funds to employ another builder to complete the building works; or
- be able to sell the development on an “as is” basis without loss to investors.

To ensure that an accurate “as is” valuation is available during the life of the development each draw down on the facility is approved on the basis of the cost to complete the project at the drawdown date and on the basis of a valuation that is no more than 3 months old. A further valuation will also be obtained as soon as practicable after completion of the development.

Factors considered by the LC at each drawdown date include:

- feasibility of the project;
- progress of works;
- financial condition of the builder;
- progress certificates signed by a quantity surveyor or civil engineer;
- updated forecast of costs to completion and future cashflows; and
- appropriateness of assumptions used in the most recent valuation.

The LC will:

- retain at all times sufficient funds to pay the cost to complete the building works;
- not release any funds until certified by the valuer or quantity surveyor that the stage to be completed before drawdown per the construction contract has been completed;
- not release any funds unless a valuation is provided that is no more than 3 months old; and
- advance no more than 50% of the most recent value of the mortgage security during construction.

All LC meetings are minuted and the minutes circulated to the CO and the Board.

3.2 Valuation

Example

Responsible Officer: Managing Director (MD)

Frequency of Reporting: Annually

Function	Risks	Procedures	Monitoring of procedure
Valuations are performed in accordance with lending policy and valuations are appropriate for the property and mortgage terms.	Valuations may not accurately reflect the worth of the property, resulting in mortgages being approved with insufficient security or full value not being realised on sale of security.	<p>Valuation policies are documented in the Operations Manual. The Lending Committee (LC) review procedures annually.</p> <p>The LC appoints valuers to a Valuation Panel. A minimum of two valuers are appointed for each type of property the scheme invests in, as determined by the LC. Appointments are made after considering:</p> <ul style="list-style-type: none"> • current registration with the valuer’s professional body; • appropriate experience and academic qualifications relevant to the property to be valued; • level of independence from the RE, mortgage applicants, builders or other related parties; and • currency and adequacy of professional indemnity insurance. Valuers may be required to take out additional transaction specific PI cover if their existing PI cover is thought to be insufficient. <p>Appointments to the panel are noted in the minutes of LC meetings.</p> <p>Valuations can only be performed by a valuer currently on the valuation panel.</p> <p>The LM maintains a file for each panel valuer containing a CV and a copy of PI cover, neither over 12 months old. Each file also contains a list of security valuations the panel valuer has performed for the RE and conflicts of interest the valuer has reported to the RE.</p> <p>The LM will appoint a panel valuer by rotation depending on the location and nature of security and the experience and knowledge of the valuer in respect of similar securities. A valuer is not used if the valuer has a perceived or actual conflict of interest.</p> <p>Valuation instructions reflect the purpose of the valuation, eg an assessment of value of security based on a forced sale by</p>	<p>The CO reviews monthly all loan application files to check the valuer used was on the panel, was appropriately experienced for the security valued and valuation procedures were followed.</p> <p>The CO conducts an annual review of all panel valuer files to determine that there has been a rotation of valuers for securities, that there is a copy of the valuers current PI insurance cover on file, that the cover is for an appropriate level and does not exclude valuations for mortgage schemes.</p>

auction after 5-6 week advertising campaign with 10% deposit and 60 day payment terms.

Valuation instructions are prepared in the format set out in A5, detailing the type of valuation to be performed (eg EMV based on reasonable persons at arms length with no time pressure, FMV or forced sale) and the information on the security required to be included in the valuer's report, eg quality of tenants, vacancy rates, comments on local property market.

The instruction also states the valuer must report any actual or perceived conflicts of interest to the RE.

The LM informs the LC of any information received on panel valuers indicating they should be removed from the panel, eg:

- allegations of professional negligence;
 - valuation reports received that are consistently not in accordance with instructions;
 - inadequate PI cover; or
 - valuations received that are misleading, deceptive or prepared in an unprofessional or incompetent manner.
-

Intended Outcome	Compliance Procedures
<p>All properties to be offered as security for a mortgage are valued by an independent valuer prior to settlement of each transaction and, if necessary, re-valued after settlement of the transaction.</p>	<p>All properties to be offered as security for a mortgage must be valued prior to settlement of each transaction, and again prior to the conduct of a mortgagee in possession (forced sale) by the RE.</p> <p><i>Panel Valuers</i></p> <p>Valuations may only be carried out by approved Panel Valuers with relevant experience of the security to be valued. The Operations Manual sets out the criteria that a valuer must meet in order to be included in the Scheme’s panel of Valuers. The Manual also specifies the manner in which the RE will monitor the performance of Panel Valuers.</p> <p>The membership and performance of the panel of valuers is reviewed by the Board at least annually.</p> <p><i>Conflict of Interest</i></p> <p>Panel Valuers are required to disclose any potential conflict of interest in the subject property or the proposed transaction concerning the subject property. This requirement must be embodied in the valuation instructions to Panel Valuers.</p> <p>Disclosed or perceived conflicts of interest must be referred to the Compliance Committee for consent. The Compliance Committee may obtain independent advice in relation to the proposed transaction. Generally, a new valuation from another Panel Valuer will be required to resolve potential or actual conflicts of interest and any relevant disclosures to Members made.</p> <p><i>Instructions to Valuers</i></p> <p>Appropriate instructions for mortgage security purposes must be given to the Panel Valuer having regard to the type of valuation required (eg “as is”, “fair market” or “on completion”). Refer to A5 for an example of a valuer instruction.</p> <p>Original valuation reports are filed in the relevant mortgage investment file.</p>

Development Loans

A mortgage proposal may involve providing loan funds for the development of a property. There are additional obligations to be performed by the RE to address the particular risks associated with development loans.

Intended Outcome	Compliance Procedures
<p>There are requirements in place to address the particular risks associated with advancing development funding.</p>	<p>A development loan proposal usually involves the gradual drawing of the loan funds until the total loan is drawn in full.</p> <p>Valuation of Draw-downs</p> <p>At the commencement of the project, and before acceptance of the mortgage, the valuation (which must be no more than 3 months old) must indicate the current value of the property (usually vacant land at that stage) as well as an estimated value of the development at completion and an estimate of the forced sale value of the property. The following should always be addressed:</p> <ul style="list-style-type: none"> ● Loan funds should only be advanced on the basis of the value of works completed as at the date of the advance (and not a forward value or value on completion) and in accordance with a fixed price contract from a registered builder. Should the latter occur, the terms of the Constitution would be breached as the loan as a percentage to valuation would be incapable of calculation or exaggerated. ● At each drawdown, a Panel Valuer’s valuation that is no more than 3 months old stating the value of the works completed (on an “as is” basis) and the remaining cost to complete must be produced before advancing further funds. ● The Panel Valuer must be independent of the RE and of the mortgagor. ● For development loans where the draw down period continues over 12 months, a new valuation must be obtained each 12 month period which updates the current value of the property – on an “as is” and “forced sale” basis and a final valuation must be obtained once the development is complete.

3.3 Interest income and default

Example

Responsible Officer: Credit Manager (CM)

Frequency of Reporting: Monthly

Function	Risks	Procedures	Monitoring of procedure
Collect and record all income due to the Scheme.	Not all income due to the Scheme is received.	Interest income is paid directly to the trust account of the RE. Receipts are reconciled to payments expected per the mortgage accounting system. Reconciling items are provided on an exception report for review and investigation by the CM.	The Compliance Officer (CO) reviews the CM monthly reconciliation of forecast income to actual income and includes these reconciliations together with the CM's explanations in reports to the Compliance Committee.
	Default by mortgagee.	<p>The CM will arrange for interest statements to be generated and forwarded to each borrower at least fourteen days before each interest payment is due.</p> <p>Borrowers are given seven days after the due date to effect payment of interest. All borrowers who have not paid after seven days are sent a reminder letter and advised that penalty interest now applies. Should payment of interest at the penalty amount not have been made at the expiration of the further seven days a notice of default will be issued by the CM seeking payment of penalty interest and costs within a further seven days.</p> <p>If payment is not made within the expiration of this period, the CM will contact any defaulting borrower and seek an explanation of the reason payment has not been made. If no satisfactory explanation is given leading to an arrangement whereby the payment is made or no contact can be established or at the discretion of the RE the matter will be immediately referred to the scheme external solicitors for the issue of proceedings for possession.</p> <p>If a property is to be sold as a mortgage in possession, then the following actions are taken:</p> <ul style="list-style-type: none"> ● Arrange for a sale by auction ● Updated valuation obtained from a panel valuer ● Timetable for sale drafted and approved by the Board ● Insurer is notified of action taken 	<p>The CO reviews monthly all mortgages identified as in default to ensure action has been taken for recovery and is being actively managed.</p> <p>The CO checks if greater than 5% of the Mortgage investment is in default and, if so, checks that no investor substitutions have occurred during the month.</p> <p>All substitutions must be approved by the lending committee.</p>

Function	Risks	Procedures	Monitoring of procedure
Apportion and pay income to investors.	Income is incorrectly apportioned and paid.	<ul style="list-style-type: none"> • Notification of action taken and plans for sale sent to investors. <p>The CM is responsible for the above process.</p> <p>The CM advises the Compliance Officer of defaults immediately he becomes aware of them.</p> <p>The Constitution prohibits substitution of investors in the Mortgage investment if greater than 5% of the Mortgage investment by value is in default over 60 days.</p> <p>Investors are informed of defaults in accordance with disclosure procedures outlined in 3.7.</p> <p>The roles of credit manager and lending manager are segregated. This reduces the risk that close customer relationships will hinder the default process.</p>	All complaints received from investors are reviewed by the Compliance Officer. As the mortgage investments are fixed income schemes, investors are aware how much interest they should receive each month.

3.4 Applications, redemptions and distributions

Example

Responsible Officer: Managing Director (MD) and Scheme Administrator

Frequency of Reporting: Monthly

Separate account opened

A separate Application Account will be opened for the mortgage investment, and the name of the mortgage investment will be included in the name of the account.

Each Application Account must be interest bearing.

Each Application Account must be reconciled weekly, and the total reconciled to the Register. The reconciliation is checked and approved by the financial controller.

Signatories

The MD and the Scheme Administrator will be the signatories on each Application Account.

Banking of application monies

Application Monies are made payable to the custodian and will be banked to the correct Application Account within 24 hours of receipt. Application accounts are reconciled weekly and reviewed by the Scheme Administrator.

Certification of minimum subscription

Once the minimum subscription has been reached, the MD certifies to the Board that the minimum subscription has been reached.

Transferring money from application account

No money will be transferred from the Application Account except on reaching the minimum subscription for the Scheme as set out in the Disclosure Document (DD) as certified by the MD to the Board, or if funds have been held in the account for longer than 3 months.

Minimum subscription not reached

If the minimum subscription is not reached by the closing date for the Scheme as set out in Part 2 of the DD, the MD must ensure all Application Monies are returned to Investors within 14 days of the closing date.

Checking applications

Each Application Form must be checked by the Scheme Administrator on receipt.

The compliance officer will review a sample of 5 applications once the mortgage investment is fully subscribed to ensure process per the operations manual has been followed.

Incorrect application forms

If the Application Form is not completed correctly or is a fax or not from the current DD, the Applicant must be contacted and the Application Form corrected if that can be done by the Scheme Administrator (for example, writing in an applicant's ACN), or returned to the Applicant if not.

No application forms with cheque

The Application Form and Application Monies must be dealt with as required by the Constitution.

Recording details on register

Details from the Application Form will be recorded in the Register and the Application Form marked appropriately.

Acknowledgment

An acknowledgment will be forwarded to each Applicant within 48 hours of receiving application monies and a correctly completed Application Form.

Distributions to investors - interim

Distributions will be made each month to Investors, either by bank transfer or cheque. The distributions must be made within 14 days of the end of each month.

Distribution dates are diarised by the Scheme Administrator.

Cash reconciliations, and Cash Budget updates are to be completed monthly by the Scheme Administrator and checked by the MD. Distributions will be made of available funds in accordance with the DD.

Distributions to investors - End of financial year

The final distribution for the year will be based on audited financial statements prepared by the Scheme Administrator, checked by the Managing Director and approved by the Board before payment and inclusion in the annual financial report of the scheme and other reports to Investors.

Redemptions

Each mortgage investment is illiquid for the term of the mortgage investment. On maturity funds are deposited in the mortgage investment trust account and monies paid net of fees to investors in proportion to their investment.

Redemptions are calculated by the scheme administrator and checked and approved by the financial controller prior to payment. Once all monies are paid out the trust account is closed.

3.5 Insurance

Example

Overview

Scope

The arrangements the Manager must make to ensure that it has and maintains adequate insurance in relation to its activities and the conduct of the Scheme.

The arrangements the Manager must make to ensure that the Scheme Property and Mortgaged Property are adequately and appropriate insured.

The arrangements the Manager must make to ensure that the External Service Providers are adequately insured.

Responsibility

Director or other person designated by the Board.

Compliance Officer and executive director monitor compliance with regard to the Manager's insurances.

Compliance Officer and administration manager monitors compliance for Scheme Property, Mortgaged Property insurance and External Service Provider insurance.

Reporting Frequency

Quarterly to Compliance Committee

Nature

The failure of the Manager to ensure that adequate insurance is maintained over security properties may result in a loss to Scheme Members in the event of damage to the property.

Monitoring Priority

High

Compliance Measures

The Manager must ensure that all security properties are adequately insured throughout the term of the Mortgage Investment.

A register is to be maintained by the Manager wherein the expiry of all security property insurances is noted.

Where a borrower fails to supply a certificate of currency of insurance within a reasonable time of it being demanded the Manager will consult with its insurance broker and take out insurance over the property to the amount of the valuation of the property.

The interest of the Trustee on behalf of Scheme Members will be noted on all security property insurance policies.

The Manager must ensure that each mortgage in excess of 66% LVR is covered by mortgage guarantees insurance prior to settlement and for the duration of the mortgage.

Nature

The failure of the External Service Providers to maintain adequate insurance may result in a loss of an avenue to recover potential losses of Scheme Members and the Manager in the event negligence or fraud on the Behalf of the External Service Provider.

Monitoring Priority

Medium

Compliance Measures

All external service providers will, where appropriate, maintain adequate insurances. The Manager will receive a certificate of currency of such insurance at the time of the engagement of the External Service Provider and on each renewal date of the cover.

A failure of an External Service Provider to maintain adequate insurance cover shall be grounds for the dismissal of that External Service Provider.

3.6 Promotion of the scheme

Example

Responsible Officer: Head of Finance and Administration

Frequency of Reporting: Monthly while offers are open

Compliance activity	Procedures followed	Monitoring and reporting
<p>The RE maintains procedures to ensure all promotional material including publications, presentations and advertisements comply with the relevant provisions of the <i>Corporations Act 2001</i> and other disclosure requirements.</p>	<p>A due diligence committee is formed to oversee the development and issue of any product disclosure statement (PDS).</p> <p>A director of the RE reviews, obtains legal advice if required and signs off on all promotional material prior to release.</p> <p>Authorised representatives have access to copies of the Compliance Manual, which details their obligations under the <i>Corporations Act 2001</i> and FSRA.</p> <p>Authorised representatives receive product training before they are allowed to market it. The Head of Finance and Administration coordinates this activity.</p> <p>Authorised representatives are required to undertake industry training.</p>	<p>The compliance manager reviews promotional material annually, including record of sign-off.</p> <p>A summary of all approved promotional material is tabled at the Management Compliance and Due Diligence Committee Meetings.</p> <p>The Compliance Manager maintains registers for:</p> <ul style="list-style-type: none"> ● Authorised representatives ● Authorised representatives ongoing training.
<p>Offer documents are complete and accurate and comply with the requirements of the <i>Corporations Act 2001</i> and other disclosure requirements and disclose all material matters to potential investors.</p>	<p>The Board of Directors authorise the issue of all offer documents.</p> <p>Legal advice is sought.</p> <p>Appropriate staff review and sign off the document on a management questionnaire.</p> <p>The Head of Finance and Administration compiles a comprehensive due diligence file on each offer document.</p> <p>The Part 2 PDS disclosure includes:</p> <ul style="list-style-type: none"> ● Nature of the project ● Borrower ● Borrower's financial history ● Type of property ● Assessment of risks in relation to the security property and mortgage terms ● Capacity to pay and credit history ● Valuation ● Loan to valuation ratio ● Interest rates and distribution dates ● Term of mortgage 	<p>The Due Diligence Committee review all new offer documents and ensures those offer documents have been subject to the procedures approved by the Board of Directors.</p> <p>When appropriate, the Head of Finance and Administration reviews the existing offer document for ongoing appropriateness. Any adverse findings are reported to the Management Compliance and Due Diligence Committees.</p> <p>Internal Audit perform periodic checks. A report on the findings is provided to the Compliance Manager and the Group Audit and Compliance Committee.</p>

- Nature of security
 - Details of drawdowns and default procedures
 - Ability to alter the mortgage in the future
 - Fees
 - If no unlimited authority, confirmation that no further mortgage advances will be made and that the security rights of the investors will not be altered.
 - If the mortgage investment allows unlimited authority to invest by the RE, this must be clearly stated in a prominent position in the PDS.
-

3.7 Disclosure and reporting

Example

Scope

The arrangements that the Manager is to apply in operating the Scheme to ensure compliance with provisions of the Constitution and Corporations Act to ensure:

1. Disclosure of information and reporting to Members; and
2. Disclosure and reporting to ASIC as required.

Responsibility

Director or other person designated by the Board

Financial Controller

Reporting Frequency

Monthly to the Compliance Committee

Nature

The failure to ensure that the financial statements are true and fair and make appropriate disclosure may result in a breach of the Corporations Act 2001.

A failure to report to or lodge any documents with ASIC and to do so within the requisite time may result in a breach of the Corporations Act 2001 and the provision of incorrect or incomplete information.

Monitoring Priority

Low

Compliance Measures

The financial statements and reports must comply with the Corporations Act requirements and be audited annually.

The Manager must ensure that the financial statements are true and fair.

The Compliance Officer must ensure that reporting to members is in accordance with the Constitution, the disclosure document and the Corporations Act.

The Financial Controller must prepare a schedule of deadlines for reporting for each year and distribute it to the key personnel involved in the preparation of the reports to Members.

Nature

A failure to report material events to investors and other related parties is a breach of the RE's policy of keeping investors informed.

Monitoring Priority

High

Compliance Measures

1. Material issues arising in the conduct of the Scheme will be referred to the MD for advice on how to present the issue to investors and when. The Financial Controller is responsible for ensuring that the recommendation made by the MD is immediately actioned.

The CO is responsible for determining any other interested parties required to be informed of the material issue such as valuation firms or insurers. In the case of threatened legal action, the RE's insurer must be informed of the details of the intended action.

A copy of reports to members on material issues is presented to the Board at the next Board meeting.

Mortgage defaults are reported to investors in the specific mortgage where payments are greater than 14 days overdue. Such reports will include details of actions and progress of the RE on this matter.

2. An investor cannot be substituted without their written consent.
3. The RE has adopted a policy of keeping investors informed of their investments and all material issues on a timely basis.

On settlement of each mortgage investment, an investment summary is sent to each investor setting out details of the mortgage investment for which they have applied and been accepted and any other mortgage investment in which they already hold an investment. The summary includes information on:

- The reference number of the mortgage investment for use in correspondence with the RE
- A short description of the mortgage investment including security property details and loan to value ratio
- The investment amount
- The monthly income amount and frequency of payment
- The relevant interest earning rate
- The date of maturity of the investment
- The duration of the cooling off period.

4. Where there is a change in an investor's circumstance in relation to their investment, eg changes impacting a security valuation, a new investment summary is issued reflecting those changes.

An investment summary is produced annually detailing all mortgage investments in which an investor has an interest. This summary is also available at any time on request.

A taxation statement is produced annually detailing all interest payments credited and fees charged during each preceding financial year. This statement is also available on request.

Development loan investors are sent a quarterly update detailing:

- progress against budget and timetable;
- estimate of costs to complete;
- details of work in progress valuation; and
- expected future drawdown dates.

3.8 Conflict of interest

Responsible Officer: Compliance Manager

Frequency of Reporting: At each compliance committee meeting

Service Provider Independence and Conflicts of Interests of the RE

The RE will assess the suitability of any entity or person engaged for the provision of services and will have total discretion to approve such services.

Often the RE and related entities may act for the investor and borrower and operate the Scheme. They may also act for a developer or have other interests in the proposed security property. All conflicts of interest are recorded in a register maintained by the compliance officer and reported to the compliance committee quarterly.

There is also full disclosure in the Product disclosure statement of any conflict of interest and of any service provider that is a related entity to the RE, together with a detailed description of the services to be provided.

Valuers are required to disclose any potential conflict of interest in the subject property or the proposed transaction concerning the subject property. This requirement is embodied in the standing instructions to valuers and is a continuous condition to their appointment. Disclosed or perceived conflicts of interest are referred to the Compliance Committee and the Board of Directors of the RE for resolution. Generally a new valuation from another approved valuer will be required to resolve potential or actual conflicts of interest and any relevant disclosures to investors made.

Where advice on compliance is sought by service providers, the Compliance Committee costs will be borne by the RE.

Scheme Participation by RE Personnel

Acquisition of an interest in a mortgage investment by RE personnel or related entities shall be in accordance with the Act. Acquisitions of interests in the scheme by the RE or its officers and employees (related third parties) must be made on an identical basis to all other investors as regard the consideration and the terms and conditions of issuance. The RE must ensure that all staff of service providers have a “staff dealing rule” covenant acknowledged by all staff to ensure employees investing in the scheme receive the same treatment as others. The cost of any interest acquired must not be less than the cost to another (unrelated) person nor on terms and conditions that could disadvantage other scheme members.

Confidential Dealings and Insider Information

All persons within or related to the RE and any Compliance Committee members must treat confidential information as fully confidential.

Where information is deemed to be “inside information” the Act must be observed. Any person or entity in a position of privilege is not allowed to gain any financial advantage by virtue of information available to them. Therefore, all employees, upon employment, are required to sign strict undertakings of Confidentiality and ethical behaviour restricting insider trading. These staff declarations are renewed annually and are reviewed for completeness by the Compliance Officer each year.

Procedures to deal with confidential information include:

- restricting access to documents, files and computer systems to those who require access for a specific purpose
- security access to computer systems
- disposal of documents
- copying faxing and filing of sensitive documents
- restricting access to information by temporary staff, or staff without proper authority.

3.9 External service providers

Example

Power to Appoint

The RE has ultimate responsibility for the management of the scheme though intends to outsource a number of functions for which it has responsibility under the Constitution and the Act in accordance with best industry practice.

Appointment

The RE will conduct detailed due diligence, including reference checks on key personnel with respect to its key service providers and may assess the internal compliance and control procedures of each service provider.

The due diligence process may include addressing the following issues depending on the nature of the services to be supplied by the service provider:

- Evidence of relevant licence or registration;
- Evidence of experience;
- Evidence of relevant industry qualifications;
- Confirmation of appropriate professional indemnity or fidelity insurance;
- Obtaining details of the size of the organisation;
- Obtaining information on its corporate structure, reporting processes and chain of management and decision making processes; and
- checking personal and business references usually from existing clients (preferably in the same or equivalent industry to the RE).

Before the actual appointment the RE will:

- Negotiate an agreed commercial fee for the services before the services are provided;
- Obtain an engagement letter or Service Provider Agreement setting out the scope of work to be undertaken, length of assignment, performance benchmarks and conditions for early termination if necessary. The document should be signed by both parties to confirm agreement; and
- Assess the service provider's capacity to perform its duties based on these factors.

The responsible officer will present the findings of the due diligence to the Board for approval prior to appointment.

Monitoring Service

The Manager of each division relying on the external service provider will continuously monitor the performance of all service providers relevant to that division.

The responsible officer will report to the compliance officer at least quarterly to:

- confirm the service provider is fulfilling its legal and contractual obligations; and
- identify any breakdown in the controls or compliance procedures within the service provider.

The RE will apply the following specific criteria when monitoring performance of external service providers:

- ability to work within set time frames;
- ability to deliver results within generally agreed parameters;
- ease of access to key personnel;
- report presentation and outcomes, especially from formal advice; and
- quality of advice and reports.

The Compliance Officer will investigate any evidence indicating that the service provider is not fulfilling its obligations and report findings to the Lending Committee.

Currently Appointed External Service Providers

When appropriate, service providers are to be selected from a predetermined panel by tender or other appropriate criteria designed by the Compliance Officer to ensure that the chosen party has relevant skills, experience and resources to fulfil their particular role. Within these constraints, service providers will be selected having regard to the cost of their services, their quality and their comprehensiveness and their commitment to an ethical and compliance based culture.

The RE will obtain legal advice in significant transactions to verify that the contracts or terms of engagement for each service provider are appropriate for the intended purpose and contain adequate compliance related measures.

The RE has appointed external providers at the commencement of the Scheme in relation to the ongoing administration of the Scheme as detailed below.

Function	Service Provider	Monitored by and when
Audit of Schemes		Financial Controller yearly
Audit of Plan		Board yearly
Building Inspections Service		Lending Manager ongoing
Interstate Settlements		Legal Manager ongoing
Legal documents & Due Diligence		Legal Manager ongoing
Market analysis		Lending Committee
Marketing of Mortgage Securities under Supervision of RE		Compliance Officer ongoing
Property valuations		Lending Committee/Lending Manager
Quantity Surveyors – Construction Costs		Lending Manager ongoing

3.10 Fees and expenses

Example

Scope

The arrangements that the Manager is to apply in operating the Scheme to ensure that:

- (a) only authorised fees are charged to the scheme and to members;
- (b) that fees and expenses are calculated and deducted correctly; and
- (c) any indemnity out of scheme property is made in compliance with the Act, the Constitution, and the disclosure document.

Responsibility

Internal financial controller appointed by the Board.

Compliance Officer monitors compliance.

Reporting Frequency

Annually to the Compliance Committee.

Next Compliance Committee meeting held following detection of any breach of this Compliance Rule.

Risks

An incorrect calculation or payment of fees or expenses to the Manager, or the incorrect indemnification of the Manager, may result in a breach of the Act or in a loss to Scheme Property.

Monitoring Priority

Medium

Compliance Measures

The Compliance Officer must ensure procedures in relation to scheme fees and expenses are in accordance with the Operations Manual.

The Financial Controller must engage appropriately qualified and experienced persons to maintain the financial records of the Scheme.

The Financial Controller must ensure that those financial records are audited as required by the Corporations Act.

The Financial Controller must ensure that any fees and expenses paid or reimbursed to the Manager are authorised by the Constitution and the relevant Mortgage disclosure document.

The Financial Controller must ensure that any authorised fees and expenses are correctly calculated, recorded and properly incurred. For each claim for fees and expenses there must exist sufficient records of the calculation of the fees and expenses to enable an audit to be conducted of the calculations.

The fees and expenses of the manager must only be paid to the Manager when authorised as per below and from moneys held in Scheme accounts. This includes application and valuation fees.

The trust accounts maintained by the manager shall require the signature of both the Executive Director and the Custodial Officer before any application of Scheme funds is made. An analysis must be provided with each cheque specifying the application to which the moneys are applied.

The Custodial Officer shall reconcile, each month, payments made from the Scheme accounts per the trust bank account to the accounting records.

3.11 Record keeping

Example

Frequency of Reporting: all responsible officers report to the compliance officer monthly.

Record Keeping

The RE maintains records in physical and electronic form in compliance with the Act.

Each mortgage investment has its own “Mortgage Security File” containing key information for the mortgage investment from start to maturity. An epitome of mortgage check (refer to appendix A3: Epitome of Mortgage) is completed within 14 days of settlement to ensure the file contains all required information and that it has been recorded accurately.

Every Member has a “Membership File” that contains all historical information on that Member including every disclosure document Application and other relevant information, eg correspondence, while a Member of the Scheme.

The Investment Manager has responsibility to:

- register Members;
- allocate Members to mortgage investments;
- monitor membership for roll over, maturity and reinvestment;
- monitor mortgage investments pending settlement;
- monitor loan applications for inflow and outflow; and
- monitor repayment of investment to Members on maturity.

The Lending Manager has responsibility to:

- register Borrower applicants;
- register the mortgage investment;
- monitor the progress of a mortgage security from application to settlement;
- monitor the Scheme from settlement for insurance;
- record any matter that effects the mortgage investment, eg loan variation, loan extension, loan reduction, progress payments on development loans, updated valuations etc; and
- prepare of Supplementary disclosure document and Mortgage Information Summary for Members following settlement.

The Asset Manager has responsibility to monitor/prepare:

- mortgage investments pending settlement;
- mortgage investments pending repayment;
- Member Contributions for mortgage investment settlement;
- registration of Members and the total amount of their investments in each mortgage investment;
- interest Income payment details;
- interest payment amounts;
- set fees payable by the Member;
- regulatory information, eg tax file number, withholding tax, tax exemption;
- compliance with critical dates;
- weekly reports for interest income; and
- monthly reports for repayments, total mortgage investments under management, default mortgage investments for interest or repayment of capital.

The Financial Controller is responsible for ensuring:

- the records of the Scheme are appropriately established and maintained separately from those of other interests of the RE;
- scheme financial statements are provided to the Scheme Auditor for audit;
- certification is given that the accounting and taxation standards applied are adequate for the purpose required by the Scheme;
- appropriate physical and logical controls are in place to preserve the confidentiality of sensitive information;
- any audit adjustments arising from the auditor's work are recorded in the accounting system of the RE to reconcile the audited adjustments with the Scheme accounting records;
- there is proper accounting for gross income received, commissions and fees and any other Scheme expenses of reimbursements have been properly incurred and allowed under the Constitution; and
- the monthly financial reports disclose all relevant information including the gross income collected, management fees and commissions paid during the month.

Record Retention

Material documents including original loan agreements, mortgages, leases, valuations and similar or collateral security documents are held by the RE as self Custodian. The RE maintains a computerised document management and custody system. The Financial Controller maintains the computerised system while the Securities Manager controls the registration, access and release of all mortgage security documents while they are under the RE's management.

The safe custody system identifies the documents held with the appropriate Scheme and contains a diary system for alerting the Securities Manager with key dates (*for example: statutory retention period for archived records, mortgage security maturity date, etc*).

The Compliance Officer retains all records with respect to the Compliance Program. This will include:

- Compliance Register containing Reports of the Compliance Officer to the Board;
- Compliance and Rectification Reports;
- Member complaints Register;
- Service Providers Correspondence and Agreements;
- Compliance Audit Reports;
- Scheme Audit Reports; and
- ASIC Correspondence and any other relevant matters.

The Compliance Auditors will review these records as part of their Plan Audit.

The Compliance Officer will report any matters of concern to the Board.

Computer Systems

The RE maintains various computerised systems in the conduct of its business.

The IT Manager is responsible for IT operations with assistance from the Financial Controller and external qualified consultants. The RE has a hierarchical IT support infrastructure as follows:

- self help manuals are included as electronic documentation with computerised applications;
- the IT Systems Administrator is the first level of technical support;
- the IT Manager oversees the support role of the Systems Administrator and assists technical matters; and

- the RE maintains support contracts with its technology suppliers for advanced support issues. The Financial Controller and the IT Manager are authorised persons to log support calls under this contract.

The IT Manager is responsible for internal IT systems modifications however may obtain the assistance of external computer analysts or programmers as required. Material changes to processes and/or high security issues are referred by the IT Manager to the CEO.

Disaster Recovery and Business Continuation

The Operations Manual contains policy and procedures in a “Disaster Recovery and Business Continuation Strategy Plan” to be followed in the event of a system break down or loss graded to the level of the disaster.

Data is protected by daily tape backup in accordance with a rotating tape back up strategy involving multiple backup tapes and rotating offsite storage.

Computer System Recovery is based on restoration of system data and all system applications from tape back-ups.

The IT Manager and Systems Administrator test the data recovery plan in a controlled environment every six months to verify the back up data is functional and the recovery process is adequate.

3.12 Safe keeping and segregation of scheme property

Example

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Ensure scheme property is clearly identified as scheme property; and held separately from the property of the Responsible Entity and property of any other scheme or mortgage investment</p> <p>Maintain an investment register which records:</p> <ul style="list-style-type: none"> all investors in the scheme all mortgage investments all investors in each mortgage investment all deeds of trust issued in respect of each mortgage investment. <p>Maintain a securities register that records all security documentation held in connection with each mortgage investment.</p>	<p>Scheme property is mixed with that of the Responsible Entity or other scheme or mortgage investment and cannot be separately identified.</p> <p>Unauthorised dealings with security documentation.</p>	<p>Monies held pending investment in a mortgage investment and repaid after maturity are held in a separate trust account for each investor.</p> <p>Upon settlement of each mortgage investment and redemption, the RE shall execute a Deed of Trust setting out the total invested in the mortgage investment and the entitlement of each separate investor and forward same to each investor.</p> <p>All income collected shall be paid into the trust account opened for each mortgage investment and then credited to a separate income trust account held for each Investor.</p> <p>The trust account balances are reconciled daily.</p> <p>All property titles, mortgages and other security documentation relating to each mortgage investment shall be held in the strongroom by the RE as custodian.</p> <p>Security documentation held in the strongroom shall be filed/maintained and labelled separately from other safe custody items.</p> <p>A register shall be maintained of the date each document is received and released and the reason for release.</p>	<p>CO to monitor:</p> <ul style="list-style-type: none"> the timely execution of Deeds of Trust in respect of each mortgage investment settled and substitutions and the delivery of deeds to each investor. that original Deeds of Trust are consecutively numbered and retained in respect of each mortgage investment. The existence of documents held by the Responsible Entity as custodian That documents held are stored and labelled and recorded separately from other documents. That records of the receipt and release of documents are maintained.

Manager Investments shall authorise the release of any security documents in writing and sign a receipt.

Keys to the strongroom shall be held only by Manager Investments and Financial Controller.

A quarterly reconciliation of scheme property held is submitted to the Compliance Officer (CO) for review.

3.13 Monitoring dealer’s licence and authorised representatives

Example

AFS licence

The Compliance Officer (CO) is responsible for reviewing licence conditions attaching to the Licence.

Issue	Who	When
<p>1. Responsible Entity Capital adequacy – The Net Tangible Assets (NTA) requirement must be calculated with reference to the definition of “Net Tangible Assets” set out in the schedule to the Licence. The Financial Controller is primarily responsible for performing the calculation based on the most recent financial statements and comparing with the minimum NTA requirement under the Licence based on the current level of scheme assets.</p>	Financial Controller	Quarterly
<p>2. Self-Custodian Capital adequacy – The NTA of the RE as Custodian must be calculated with reference to Clause 10 of the Licence. The Financial Controller is primarily responsible for performing the calculation based on the most recent financial statements and comparing with the minimum NTA requirement under the licence based on the current level of scheme assets.</p>	Financial Controller	Quarterly
<p>Cash Deposits The Asset Manager will produce a computerised exception report for any cash held in the Trust Account that has been held for longer than two months.</p>	Asset Manager	Monthly
<p>The Financial Controller will use this Report to verify to the Board in the Quarterly Financial Statement that no funds have been retained in the Trust Account for any period longer than 3 months.</p>	Financial Controller	Monthly Quarterly
<p>The Investment Manager will use this Report to verify that any payments falling within this category are paid to the Investor or invested in a mortgage scheme under the terms of the disclosure document within 3 months of receipt of the payment.</p>	Investment Manager	Monthly
<p>Self Custodian Net Tangible Assets The Asset Manager will provide the Financial Controller with a monthly computer generated report disclosing –</p> <p>(a) Total Funds under management for each of:</p> <ul style="list-style-type: none"> - Sole Mortgages - Contributory Mortgages - Nominee Mortgages <p>(b) Total amount of interest collected from borrowers under each mortgage for distribution to Members</p>	Asset Manager	Monthly
<p>The Financial Controller will prepare a report to the CEO to confirm that the net tangible assets are a minimum \$500,000 or exceed 0.5% of the Scheme Assets under</p>	Financial Controller	Monthly Quarterly

management.

The Financial Controller will repeat this information in the Quarterly Financial Report to the Board.

3	Three-month solvency – The Financial Controller is responsible for providing a cash flow forecast, for the next twelve months of the operation for the RE and its Schemes. The Board must provide an opinion on whether there are sufficient financial resources to meet ongoing Scheme related cash requirements for a minimum of three months as at the date of the review.	Financial Controller	Quarterly
	Issue	Who	When
4	Insurance – Currency and adequacy of professional and fidelity/fraud insurances.	Financial Controller	Annually
	<u>Nominate</u> Responsible Officers and determining if any event has occurred that may <i>disqualify</i> the Officer from continuing to hold that position. Check continuing membership of appropriate <i>industry associations</i> .	CO	Annually
	<u>Review</u> the nature of the business and determine that the managed schemes, products or services have not changed in any material way that may require a <i>variation</i> to the existing licence.	CO	Annually
	<u>Identify</u> additions or changes to any business or trading names that may require <i>modification</i> to the licence.	CO	Annually
	<u>Verify</u> <i>research</i> facilities are maintained and deemed appropriate for the activities undertaken.	CO	Annually
	Ensure reviews of employees, Officers and advisers have been conducted satisfactorily and the appropriate remedial action has been undertaken where appropriate. Ensure employees, Officers and advisers have not contravened the Act, FSRA or any conditions of the AFS licence.	CO	Annually
	Ensure relevant employees and advisers have been acquainted with and comply with the Financial Transactions Reports Act and s243D of the Act.	CO	Annually
	Ensure the Compliance Officer and Compliance Auditor have issued unqualified reports during the year in relation to compliance related issues. Ensure where deficiencies have been noted, appropriate remedial action is undertaken in a timely manner with reference to specific directives of the Board.	Financial Controller	Annually
	Ensure all company secretarial matters have been properly performed during the year and a copy of the auditor's report to the board and any board directives issuing in that regard are properly actioned by the CO and/or company director.	Financial Controller	Annually

3.14 Training and recruitment

Example

Recruitment Policy

The RE employs qualified and experienced individuals who can demonstrate a commitment to maintain quality work standards, intent on maintaining their professional development, unquestionable ethics and ability to perform the operations required in their employment.

Recruitment

The RE recruits staff generally from specialist professional employment agencies.

A due diligence check on applicants checking for:

- Prior experience in the relevant field;
- Demonstrated enthusiasm, initiative and honesty;
- Criminal and credit checks;
- Personal references for honesty;
- Employment references for work experience and ability;
- Qualifications against accredited institution;
- Psychological assessment, to verify the candidate is a suitable employee.

Performance appraisals of all staff:

- Initially three months after commencement of employment; then
- Annually using face to face and exchange of information between supervisor and employee; then
- Management review of all appraisal forms before salary and bonus reviews are determined.

The CEO and Financial Controller are responsible for the employment of staff and oversee the performance appraisal of staff.

Orientation Program

All new staff have two mentors appointed to assimilate them into the organisation over the first two weeks of their employment. The Divisional Manager will appoint the mentors.

During the first three months the employee will be introduced to:

- Aspects of the Operations Manual that effect their operations;
- Training in the computerised management system;
- Training in access to information on custodial requirements;
- Training in special aspects of their job.

Compliance Training

The Compliance Officer will develop and conduct training sessions for all responsible officers to familiarise them with the requirements of:

- The Act
- ASIC Policy Statements
- Operations Manual
- Scheme Constitution,
- Compliance Plan.

Responsible officers will develop and conduct training sessions for all employees in their divisions and ensure each employee understands and complies with the Compliance Plan.

All employees are required to attend annual refresher training courses covering compliance requirements and the contents of the Operations Manual.

The Compliance Officer is responsible for:

- ensuring changes in the Act, the Scheme Constitution, the Compliance Plan and industry best practice standards are reflected in the program;
- arranging additional training for responsible officers and other affected employees to ensure that they are familiar with these changes; and
- maintaining a Compliance Training Register to record details of all training sessions.

Career Training

Internal training is conducted by the responsible officers or using guest trainers to conduct internal sessions to cover the investment product, management processes, changes in the Act or Market requirements.

External training is arranged by the responsible officer in conjunction with the CEO for responsible officers and employees to attend courses that will enhance their productivity, knowledge or service in the Scheme.

The Financial Controller maintains a training register for each staff Member setting out all internal and external training activities undertaken. Staff earn accreditation points for successfully completing approved training, which in turn forms part of the staff appraisal process.

Authorised Representatives

The RE is required to ensure Authorised Representatives are sufficiently trained in relation to the activities they are to carry out on its behalf, before they commence those activities. The RE is also required to ensure that Authorised Representatives keep up to date through use of continuing training programs.

The Authorised Representative is required to provide satisfactory evidence of competence and expertise as part of the process of qualifying for appointment as an Authorised Representative.

All Authorised Representatives of the Scheme, by 30 June 2002, must be adequately trained and supervised in accordance with ASIC Policy Statement 146 "Training of Authorised Representatives". The responsibility for demonstrating this rests with the Financial Controller.

In addition to this the RE provides a one day training session for new Authorised Representatives – Introduction to the Investment Product, Prospectus Features, Compliance & Regulatory Features, Authorities, Features of the Scheme, Chain of Responsibility and Management Processes as part of its ongoing training series.

The RE ensures internal training programs are made available to Authorised Representatives, it also imposes a parallel obligation on Authorised Representatives to undertake continuing external training in all subjects relevant to their activities on behalf of the RE. Authorised Representatives are expected to undertake continuing education at least sufficient to comply with the Financial Planners Association Standards.

The RE will maintain a record of training undertaken by each Authorised Representatives. The training completed by Authorised Representatives is reviewed to ensure the topics actually completed by the Authorised Representatives reasonably cover all areas of activity engaged in by the Authorised Representatives.

3.15 Related party issues

Example

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
To ensure financial benefit is not given to the RE or a related party unless approved by the Board and disclosed to investors.	Investors suffer loss. Detrimental to the reputation of the RE and the Scheme.	<p>A register of related parties is held by the CO. A copy of this register is available to all staff.</p> <p>All RE staff are trained in related party transaction procedures when they commence employment. A register is maintained noting details of all staff that have attended this training. These procedures are also detailed in the staff handbook that is available to all staff.</p> <p>All transactions are subject to approval by the financial controller and two directors prior to payment. Authorisation is only given if the transaction is considered in the best interest of the investor. External legal advice is obtained if best interest cannot be determined.</p> <p>All contracts with external service providers require approval by the Board.</p>	<p>All related party transactions are reported to the CO when they are proposed.</p> <p>The training register is reviewed annually by the CO to ensure all new starters have attended.</p> <p>Compliance with appropriate authority rules for non-investment transactions are reviewed on a sample basis by the CO annually.</p> <p>Related party transaction procedures in the staff handbook are reviewed for adequacy by the CO annually. This includes a check to ensure procedures are consistent with the IFSA Standard on Related Party Transactions. The results of the review and any recommendations are reported to the Compliance Committee.</p>

3.16 Complaints

Example

Outcome

Complaints procedures as set out in the Constitution and each scheme disclosure document are established allowing members to register complaints and have those complaints dealt with in a reasonable and efficient manner by the RE.

Risk: That complaints of members are not appropriately addressed.

Constitution: Clause 58 (Complaints).

General responsibility

The Compliance Officer must oversee the RE's complaints handling procedures.

Licence conditions

The RE must comply with the conditions of its AFS licence to act as a RE and accordingly:

- the RE adopts the Australian Standard on Complaints Handling (Australian Standard® AS 4269) or other or replacement standard, if any, required to be complied with by the RE as a condition of its licence subject to any modifications required by the nature of the Fund or terms of the constitution; and
- the RE must become a member of an external complaints resolution scheme approved by ASIC as provided for in the AFS licence and must maintain membership of such a scheme for the currency of the AFS licence.

Notification to employees

The Compliance Officer must notify all relevant employees:

- of the existence of the complaints handling procedure and Complaints Register;
- that details of all complaints must be recorded in the Complaints Register;
- that they must refer complaints immediately to the Compliance Officer.

Complaints procedure

The Complaints Officer must:

- acknowledge all complaints in writing within 14 days of the receipt of the complaint; and

- attempt to resolve the complaint within 30 days, and if this is not practicable give the members committee reasons why this cannot be achieved.

Complaints register

The Complaints Officer must maintain a Complaints Register containing the following details:

- the name, address and telephone number of each complainant (to the extent that the complainant provides such information);
- the date and time each complaint was received;
- the employee of the RE to whom the complainant first spoke and such employee's record of the conversation;
- all correspondence concerning the complaint;
- a report detailing how each complaint was resolved;
- any other information the Compliance Officer deems appropriate.

Complaints review

Within two months of the end of each financial year, the Compliance Officer must prepare a written review for the previous year of the complaints handling procedures for the Board and Compliance Committee. Such review must include:

- number of complaints received;
- nature of complaints received eg are there systematic complaints indicating weaknesses in systems or processes;
- services or products about which complaints were made;
- business practices about which complaints were made;
- response time;
- actions taken including remedies, determinations and results and any future action required;
- such other matters that the Compliance Officer deems appropriate.

The Compliance Officer must each calendar quarter, if any complaints have been received in the quarter, review the complaints handling process. The Compliance Officer must prepare a summary of any complaints received, any unresolved complaints from prior quarters and actions taken to resolve each complaint for presentation to each meeting of the Compliance Committee.

3.17 Reporting breaches

Example

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly or following each significant breach

Function	Risks	Procedures	Monitoring of compliance procedures
Breach of the <i>Corporations Act 2001</i> , Scheme constitution, industry or internal standards or this compliance plan are identified, reported and rectified.	Refer to risks of non-compliance referred to in 3.1 to 3.16.	<p>At each month end all Responsible Officers are required to report verbally to the CO whether any breaches or potential breaches have occurred that month. Written reports are sent to the CO at the reporting frequencies noted in section 2.8: Summary of Compliance Procedures.</p> <p>Significant breaches are reported to the CO immediately.</p> <p>A sequentially numbered breach report is prepared for each reported breach, detailing its nature, its significance, whether it is systematic or an isolated event and any remedial action taken. (Refer to appendix A9: Pro forma breach report.)</p> <p>All breach reports are presented to the Compliance Committee.</p> <p>Breach reports remain open until the chairman of the Compliance Committee has signed the report as closed.</p>	<p>The CO maintains a list of all Responsible Officers who have reported to the CO each month. Any missing reports are followed up.</p> <p>Breach report files are reviewed each quarter by the CO to ensure sequential numbering is complete and that all reports closed in the previous quarter have been signed by the Chairman of the Compliance Committee.</p> <p>A file of all open breach reports is reviewed by the Compliance Committee at each meeting.</p> <p>The CO and Compliance Committee consider each breach's significance and if the action taken was sufficient to prevent further breaches.</p>

Appendices in a plan

A1 Glossary

Some plans were very helpful in that they included a glossary. If the plan includes technical or organisation specific terms, or if the users are unlikely to have a financial or legal background, then a glossary can be a helpful tool for users.

Example (refers to this document)

A1 Glossary

Compliance Committee

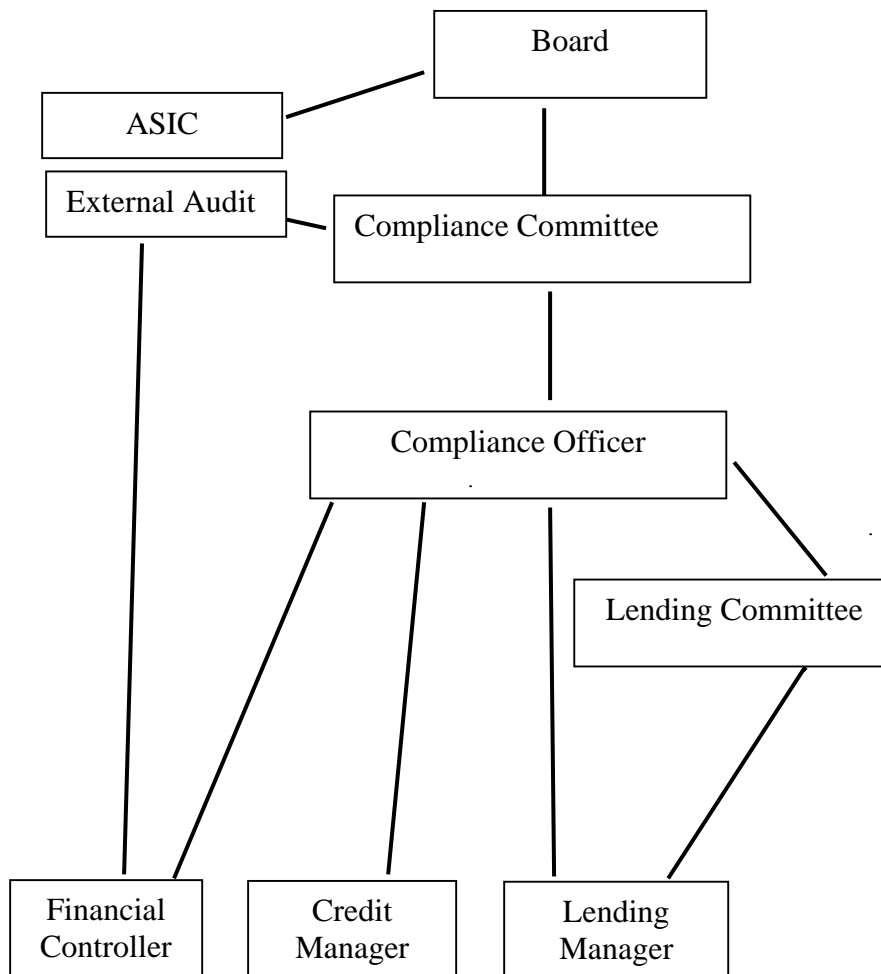
When a Compliance Committee is not required per the Act, any reference to the Compliance Committee in this document applies equally to the Board of Directors. Refer to section 2.2 for details of the role of the Compliance Committee.

A2 Organisational structure chart

Some plans contained more than one organisational chart, eg one each for compliance reporting, business reporting as well as a wider chart illustrating outsourced activities and the lending process.

Example

A2 Organisation Compliance Reporting Chart



A3 Epitome of mortgage

Epitome of Mortgage Checking Procedures

Overview

As the potential for errors on settlement exist, it is important that any errors are located as soon as possible after settlement so that rectification can be implemented. For this reason the thorough checking of the mortgage documentation cannot be understated.

The word “epitome” means a summary or extract, and in relation to mortgages this is normally covered in two or three typed pages. The accuracy of the mortgage documentation however, should not be checked from these pages. All details should be checked from the source documents themselves.

- (a) Obtain the loan application form, proposal for mortgage investment and offer of finance.
- (b) Check that the panel solicitors have provided an insurance policy/certificate of currency for each property in accordance with the details recorded on the mortgage data section for this loan. Any anomalies should be amended by arranging for the accounting department to undertake file maintenance. The insurance/certificate of currency should then be filed in the insurance binder for the manager to whom the loan relates.
- (c) Peruse the loan application, offer of finance and most particularly the proposal for mortgage investment to ensure that the following details have been accurately recorded in the deed of loan:
 - Borrowers
 - Mortgagors
 - Guarantors
 - Principal sum
 - Interest rate
 - Term
 - Security
- (d) In relation to Borrower, Principal Sum, Interest Rate, Term and security details contained in the epitome and proposal for mortgage investment these should also agree with the details on the mortgage trust data section.

A4 Mortgage loan compliance details

Mortgage Loan Application

Instructions for Completion

This application form captures the necessary information for the evaluation of a mortgage loan.

Mortgage Loan Application

1. **Name of Applicant:** Individual(s) — full name of applicant(s)
— full company name
2. **Lending Manager:**
3. **Address:**
4. **Telephone:**
5. **Amount Requested:** The proposed loan amount that can be offered on the basis of information supplied and being within the lending guidelines.
6. **Source of Enquiry:**
 - 6a. **Broker:**
7. **Purpose of Loan:** A brief outline of the purpose of the loan facility. A typical example could be:

Repay bank loan	\$450,000
Working Capital	\$130,000
Costs & Expenses	<u>\$ 20,000</u>
Total Facility	<u>\$600,000</u>
- 7a. **Previous Dealing:** Indicate any previous dealings with this applicant.
8. **Applicant's Solicitors:** The name of the solicitor's firm, address, contact (i.e. individual solicitor handling the transaction) and phone number.
- 8a. **Applicant's Accountants:**
9. **Lender's Solicitors:** The name of the solicitor's firm acting for the RE.
10. **Security:**

11. **Address:** The full address of the property over which the mortgage is to be taken.
12. **Owner/s:** The name of the registered owner of the property.
13. **Description of the property:** If residential, type of construction (brick veneer, weather board, etc), number of bedrooms, pool, and any other key features of the property. If retail, commercial or industrial, describe the property briefly to give a guide to its suitability as a security property.
14. **Estimated Current Value \$:** Provide the estimate of the current value of the subject property, based on the material provided in the loan submission details. Some adjustment may be necessary to values included in balance sheets or statements of Assets & Liabilities if other details indicate that these values could be overestimated.
15. **Person(s) To Contact For Access To Security Properties:**
16. **Ratios:** (Approved Minimum) CMV (Current Market Value) or FMV (Fair Market Value)
17. **Name of Valuers:** Name of panel valuer and value of property (CMV and FSV following the property valuation)
18. **Ratios:** (Actual) CMV and FSV following valuation

Particulars of Applicants - Companies

19. **Borrower/Guarantor:**
20. **Name of Company:**
21. **A.C.N.:** Australian Company Number - must be provided and is used to facilitate Credit Reference checks.
22. **Address:**
23. **Registered Office:** The address of the Registered Office of the company.
24. **Trading Name:** The name under which the company conducts its business.
25. **Main Activity:** Provide a brief description of the core activities in which the company is involved.
26. **Directors:** List full name and address of all Directors.
27. **Shareholders:** List full name and address of all Shareholders.

28. **Year Commenced Operating:** If there has been a significant change in the type of business conducted, make a note of when the current business activities commenced.

28a. **CRAA:** To be obtained on each company.

28b. **Financial Statements:** These should be obtained in nearly all cases.

28c. **Previous Dealings:**

29. **Credit References:** Record details of previous credit performance with banks and/or finance companies.

Particulars of Applicants - Individuals

(One form to be completed for each individual)

30. **Borrower/Guarantor:**

31. **Full Name:**

32. **Present Address:**

33. **Period at Residence:** Insert the months or years the individual has resided at this address.

33a. **Previous Dealings:**

34. **Spouse:**

35. **Date of Birth:**

36. **Occupation/Employer:** Insert details of current employer, occupation, period with current employer, and previous employer if changed employment within last 2 years.

36a. **Assets & Liabilities Statement:** A signed Statement should be obtained for each individual. The application form should be marked:
Net assets \$.....

36b. **CRAA:** To be obtained on each individual.

36c. **Evidence of Income:** This should be obtained for all Borrowers, particularly where their personal income will be required to demonstrate serviceability, as distinct from income from a property or company. The comment to be made should either be: Not applicable, Tax return/s held, Letter from Employer, Letter from Accountant, Unemployed or Cashflow projection only.

37. **Credit References:** Record details of previous credit performance with banks and/or finance companies.

Personal Financial Statement Of Assets And Liabilities

38. **Background To Application:** Provide a concise background to the proposal which should include the rationale for the proposed facility, note any particular strengths and any peculiarities that could require special conditions being imposed for approval.
39. **Drawdown Requirements:** Briefly specify requirements for drawdown. eg “Drawdown in full at settlement”. If staged drawdowns are required outline the prerequisites for each drawdown.
40. **Principal Shall Be Repaid By:** this is required for interest only loans - typical response would be repayment “upon refinancing or sale of properties”.
41. **Opinion Of Serviceability:** Provide a brief statement in support of the borrower’s ability to service the proposed facility. A summary of financial details that show evidence of this should also be included. Examples of serviceability are as follows:

(A) COMPANY

Net Profit to 30/6/01	\$10,000
Add back interest on current facilities	<u>\$95,000</u>
Adjusted Net Profit	\$105,000
Less facility (\$750,000 @10% p.a.)	<u>\$75,000</u>
Surplus	<u>\$30,000</u>

Note: Cash flow projections to 30/6/01 indicate that Net Profit after all expenses,(including interest and costs) will exceed \$100,000. This has been discussed with the accountant advising the company and cash flow projection support the benefits of the restructure.

(B) COMPANY

Company has purchased a block of home units that are strata titled and in the process of being sold. To date half of the units have contracts exchanged. From the settlement proceeds it is proposed to retain 6 months interest to allow for the shortfall in cash flow pending settlement of the sales.

(C) INDIVIDUAL

Gross income (Husband)	\$70,000
Gross Income (Wife)	<u>\$35,000</u>
Total	<u>\$105,000</u>
Less Facility	<u>\$30,000</u>
SURPLUS	<u>\$75,000</u>

(This surplus has to be sufficient to meet "PAYE" tax, other commitments and living expenses including food & clothing.)

Sundry

42. Obtain a declaration that company information contained in this application is true and correct - to be signed by the appropriate company officer and returned prior to credit checks being conducted.
43. **Requirements of Privacy Act and Code of Conduct for Credit Providers:** This authorisation must be completed and signed by the individual(s) concerned prior to conducting a CRAA credit check.
44. **Assets and Liabilities:** Complete particulars of personal assets and liabilities in as much detail as possible.
45. **Contingent Liabilities and Guarantees:** Record all relevant details if contingent liabilities and/or guarantees exist.
46. **Signature(s):** It is most important that the statement of Assets and Liabilities, whether completed on this form or supplied in another format, be signed by the individual(s) concerned.

A5 Request for valuation

“Date”

“Panel Valuer”

Dear “Salutation”,

RE: MORTGAGE TRUST

MORTGAGE LOAN TO: “BORROWER”

FIRST MORTGAGE OVER: “ADDRESS OF SECURITY PROPERTY”

Would you please carry out a valuation of the above property and provide a written report in accordance with the following:

UNDER INSTRUCTIONS FROM	Mortgage Management Limited
ON BEHALF OF	Mortgage Management Limited as responsible entity and Trustee Limited as Custodian on behalf of the Mortgage Trust.
PURPOSE OF VALUATION	To assess both the “current market” and “forced sale” value of the subject property for mortgage purposes.
<u>VALUE “AS IS”</u>	The property is to be assessed “as is”, including but not limited to its present state and condition, any existing tenancies and the present zoning regulations. The valuation should ignore proposed improvements, proposed tenancies and possible zoning changes or possible consents from a Council to development. The valuation should also ignore development consent if it is dependent on the inclusion of any adjoining property.
CAPITALISING RENTAL	If the property is valued by capitalising rental, the rental should be the market or actual rental, whichever is less. The market rental should reflect the zoning or Council approved usage of the property. If the market rental is less than the actual rental, you may wish to indicate the additional value (if any) temporarily derived.
<u>PRESENTATION OF REPORT</u>	One original report together with one copy. Both reports should contain colour photographs of the subject property and those listed as comparable sales.
PROPERTY DESCRIPTION	“Description of Property”
LAST RECORDED SALE	When available, the last recorded sale price of the subject property should be stated.
<u>REGISTERED PROPRIETOR</u>	The valuation should state the registered proprietor of the property.
<u>INSURANCE VALUE</u>	The valuation should give an insurance value on an “R & R” basis.
PROPERTY IDENTIFICATION	The property should be identified by the legal title, the street address, the site area and a general description.
ACCESS DETAILS	“Contact & Number”
COST	\$“Cost” (including G.S.T) - to be invoiced to Howard Mortgage Management Limited.

RELIANCE

We note that Mortgage Management Limited as responsible entity and Trustee Limited as Custodian on behalf of the Mortgage Trust will rely upon your valuation report when lending up to 65% of your estimate of the CMV value.

“Sign Off”

A6 Compliance committee charter

A number of compliance plans included Compliance Committee Charters. Developing a Compliance Committee Charter that sets out the goals of the Committee may aid in providing clarity of roles and increasing levels of commitment in organisation as well as making the Committee more accountable.

Many Charters aimed to be a practical document describing the rules and guidelines that should be followed by the Committee to fulfil their obligations.

The Compliance Officer's role was sometimes expanded to periodically assess if the Committee is complying with the Charter and whether the Charter reflects any changes to the scheme or the RE's procedures.

In ASIC's view, a Charter can assist the RE to ensure the compliance committee will achieve the role legislation has given it. Assistance to the committee on how the Entity perceives the committee's role is helpful. Indeed, the difficult question of the line between compliance monitoring and business management could be addressed in the Charter.

It would also be helpful if the Charter addressed the importance of "minutes" of meetings. ASIC will review minutes on its surveillance visits. Some minutes reviewed during surveillance failed to reflect the committee as pro-active and asking the hard questions, particularly about the cause of breaches and whether this indicates any potential causes of further breaches or indicates other problems within the organisation. For example, some technical breaches may in fact indicate poor training, accounts backlog, poor record keeping or fraud.

A7 Pro forma compliance committee meeting agenda

A standard agenda for Committee meetings is seen as useful by some entities:

- for the Compliance Officer as a guide to what is required to be prepared for each meeting; and
- as a reminder to Committee members of the issues that need to be addressed at each meeting.

To ensure the Committee focuses on the most important issues some entities prioritise points on the agenda.

Example

A7 Pro forma Compliance Committee Meeting Agenda

- (a) Compliance Officer's summary;
- (b) Breach reports;
- (c) Licence conditions;
- (d) Complaints and other correspondence with investors;
- (e) Minutes from previous meeting;
- (f) Proposed amendments to the compliance plan, procedures or agreements;
- (g) Proposed amendments to Act, industry or internal standards; and
- (h) Other matters.

A8 Pro forma compliance report by responsible officer

Very few plans reviewed addressed the issue of the format of reporting by responsible officers. Compilation of responsible officer compliance reports for reporting to the compliance committee can be simplified if standard format reports are used. Use of a standardised format also ensures that all the areas considered essential by the Compliance Officer are reported on by all responsible officers.

Example

A8 Pro forma Compliance Report by Responsible Officer

Name

Position

Compliance Plan Section Reference

Period

I confirm that the requirements of the above compliance plan section have been complied with throughout the period. In particular:

- (a) all procedures stated in the compliance plan section have been complied with;
- (b) all breaches of procedures have been reported to the Compliance Officer;
- (c) I am not aware of any potential breaches of procedures that have not already been reported to the Compliance Officer;
- (d) all changes to procedures have been reported to the Compliance Officer and approved by the Compliance Committee;
- (e) I am not aware of any matter that may need to be disclosed to investors or which may cause investors to be disadvantaged; and
- (f) records exist to demonstrate compliance with the above.

[Signature]

[Date]

(Evidence to support any exceptions to the above statements should be attached to this report.)

A9 Pro forma breach report

Example

A9 Pro forma Breach Report

Compliance Plan Breach Report No: X/x

(Reference number is the compliance plan section number followed by the sequential number for breaches reported relating to that section, eg for the second breach reported for valuations (compliance plan section 1) the Breach Report Number would be 1/2)

Report Date:

Name of Responsible Officer:

Position:

Date breach was detected:

Compliance plan section relevant to breach:

Significance of breach:

(Rate breach as very significant, significant or minor)

Is the breach considered an isolated event or systematic?

Details of circumstances giving rise to the breach:

(Attach supporting documentation, if required, to fully explain effects of the breach and why the breach occurred.)

Details of remedial action taken or recommendations to minimise effects of the breach:

Recommendation to report to ASIC:

Timing of rectification:

Potential cost:

How it will be actioned / Why it will not be actioned:

[Signature of Responsible Officer]

Comments by Compliance Committee:

Action required:

Officer responsible for ensuring action is carried out:

Date for completing implementation of the Committee's recommendations:

[Signature of the Chairman of the Compliance Committee]

To be signed by the Chairman when satisfied