



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 119

Commentary on compliance plans: Pooled mortgage schemes

April 2004



ASIC

Australian Securities & Investments Commission

Commentary on compliance plans received by ASIC

Pooled mortgage schemes

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

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 only registered after we extensively reviewed the compliance plan. 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 Disclosure Document. 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 authorisation 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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2 Framework	
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1.1 Purpose of 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 the plan, eg:

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

- Corporations Act;
- 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 and risks

The scheme is a pooled mortgage investment fund that has been established as a trust declared by the RE.

The mortgage investment scheme accepts deposits from the public and advances money to borrowers secured by mortgage over property. Other authorised investments are permitted, which mainly represent liquid securities and investments.

Members may withdraw their funds by making a request to the RE. The RE has up to 12 months to pay the redemption as the mortgages in the scheme are fixed for 1 year, however the RE has the discretion to pay the redemption earlier if it is not to the detriment of the other members.

The return to members is not fixed and is dependent on factors including current interest rates, level of liquidity and level of risk associated with the portfolio of mortgages.

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:

- help 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 was 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.

For more information on risk management systems, see our Policy Statement 164 *Licensing: Organisational capacities* [PS 164] and Australian Standard® AS 4360 *Risk Management*. 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 and environmental risks. 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 that the compliance risk assessment is updated and that 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
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 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 2001 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 featured 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, the Board or the Compliance Committee can amend this plan. 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 on 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 dealer's 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 must 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 referred 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 entity operation as well as any further relevant points considered.

3.1 Loan applications and approval

Example

Responsible Officer: Lending Manager

Frequency of Reporting: Monthly

Function	Risks	Procedures	Monitoring of procedure
Ensure loans are only made in accordance with lending policies.	Losses to the investors in the event of default leading to forced sale.	Valuation policy and procedures implemented (refer 3.2) Lending policy implemented (refer below)	Board reviews lending policies and valuers and solicitors panels annually.
		Mortgage insurance obtained for all loans exceeding 66.66% of loan to valuation ratio	Compliance Officer reviews for all new approved applications compliance with requirements for: <ul style="list-style-type: none"> • mortgage insurance • solicitors certificate • property insurance • valuations.
Ensure mortgage investment securities are fully enforceable at all times and mortgage covenants are complied with.	Capital losses to investors in the event of security being unenforceable.	Certificate by Responsible Entity's solicitor on all fund settlements confirming validity of security. Security documents are lodged for stamping and registration within 14 days of settlement. The Lending Manager reviews insurance of security properties annually. Effective interest collection systems (refer 3.3).	Board reviews collection systems annually. Valuation reports available for review by external scheme auditor.

Lending policy

Lending policy of the scheme is based upon two major considerations:

- the value of the security property; and
- a conservative loan to valuation ratio.

Borrowers will be required to submit a statement of assets and liabilities and an income statement to demonstrate prima facie means and ability to service the loan. However, primary emphasis will be placed on the quality of the security offered (refer to appendix A4: Mortgage load compliance details, for an example of information requested from mortgage applicants).

Loans will be limited to a maximum sum from time to time determined by the Board. Presently, policy restricts any one loan to no more than \$1 million or ten per cent of scheme property.

Lending policies as determined by the Board from time to time will be recorded in the RE's standard procedures manual.

All loan applications shall be made upon a loan application form that includes:

- applicant details
- statement of assets and liabilities
- statement of income
- details of the security property
- amount requested.

The application will be processed by responsible officers. Approval of any loan must be by no less than two directors. The Board may at its discretion call for all or any application (whether or not approved) for their examination.

Approval in all cases will be made subject to:

- a satisfactory valuation of the security property
- a satisfactory title search of the security property
- a satisfactory CRAA credit check, bankruptcy search or company search
- the satisfactory completion of security documentation prior to settlement.

A letter of offer is submitted to the borrower setting out the proposed terms and conditions of the loan. This must be signed by the borrower and returned with a cheque to cover valuation fees and non-refundable commitment fee. Upon receipt of the written acceptance and the required fees, the security property is valued.

The security property will be valued by a valuer selected from the RE's panel of approved valuers in accordance with valuation policy (refer section 3.2: Valuation). No valuation commissioned by a borrower or mortgagor will be accepted.

Valuations relied upon must have been conducted no earlier than two months prior to the date of settlement of any mortgage investment loan.

Valuations must be updated every three years as part of an ongoing loan review process.

Security for any loan must be a freehold first mortgage over land in Australia. The types of acceptable security are:

- improved residential property
- improved commercial property
- improved industrial property
- improved rural property
- vacant land.

Development loans will not be made.

Loan to valuation ratio (LVR) shall not exceed:

- 66.66% of improved metropolitan property
- 50% of rural property or vacant land
- 25% of the value of any property as disclosed in the most recent municipal valuation for that property
- 80% of any property provided full mortgage guarantee insurance is obtained in respect of that loan.

The above are maximum LVRs. The LVR must be appropriate for the level of risk associated with the security property, eg if the security property is of a type or in a region unfamiliar to the RE a lower LVR will be used. The basis of selecting an LVR is documented and retained on the relevant mortgage file.

Upon the receipt of satisfactory valuation, instructions are given to a Panel Solicitor to complete security documentation.

The RE will instruct the Panel Solicitor to ensure that:

- all transactions are property documented
- all security documentation is adequate for the purposes of the scheme and property executed
- all searches required to be done in connection with the borrower or the security property are carried out
- all security documents are stamped and registered
- all security documents are held in safe custody.

Loans will not proceed to settlement until the RE is in receipt of a certificate from the Panel Solicitor confirming that all security documentation has been completed and is enforceable with instructions received from the RE. Such solicitor's certificate shall be retained in each mortgage investment file and will be available for inspection by the Board, the Compliance Officer and the scheme Auditor.

3.2 Valuation

Example

Responsible Officer: Lending Manager (LM)

Frequency of Reporting: Monthly

There are inherent risks presented by mortgage investment schemes, due to the specific nature of mortgage investments.

The underlying safety and soundness of each member's investment in a mortgage investment scheme depends upon the value or worth assigned to the mortgage investments comprising the scheme assets.

Valuation is a key area in the process of assessing a proposed mortgage loan and procedural safeguards have been implemented to minimise the risks associated with them.

Valuation issues

Valuation issues are crucial to the viability of mortgage investment schemes. A prudent loan is based on the value of the property offered as security.

The valuation process is designed to give independent veracity to the value or worth assigned to each mortgage investment of the Scheme. The purpose of the property valuation is to ensure that the security is sufficient to cover the loan funds and interest to enable the Scheme to recover the funds fully in the event of default by the mortgagor.

The Constitution allows mortgage investments without mortgage insurance if the total of all moneys advanced does not exceed 70% of the value of the security property, as assessed by a panel valuer within 2 months prior to the date of the first advance and each subsequent advance under the mortgage.

Risks of non-compliance

The risks of non-compliance relating to security valuation issues include:

- (a) the security is insufficient to cover the loan funds and interest to enable the Scheme to recover the funds fully in the event of mortgagor default;
- (b) the Scheme Assets and Members' Interests in the Scheme Assets are not adequately protected by insurance cover.

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>Panel Valuers</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>Conflict of Interest</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>Instructions to Valuers</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 appendix A5: Request for valuation 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
There are requirements in place to address the particular risks associated with advancing development funding.	<p data-bbox="708 488 1382 544">A development loan proposal usually involves the gradual drawing of the loan funds until the total loan is drawn in full.</p> <p data-bbox="708 562 970 589">Valuation of Draw-downs</p> <p data-bbox="708 607 1401 757">At the commencement of the project, and before acceptance of the mortgage, the valuation 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. The following should always be addressed:</p> <ul data-bbox="708 779 1401 1384" style="list-style-type: none"> <li data-bbox="708 779 1401 1003">• 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. <li data-bbox="708 1025 1401 1149">• At each draw down, a Panel Valuer's or quantity surveyor's certificate as to the value of the works completed and the remaining cost to complete must be produced before advancing further funds. <li data-bbox="708 1171 1401 1227">• The Panel Valuer or quantify surveyor must be independent of the RE and of the mortgagor. <li data-bbox="708 1249 1401 1384">• 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" basis.

3.3 Interest income and default

Example

Responsible Officers: Credit Manager and Trust Supervisor

Frequency of Reporting: Monthly

Mortgage loans may be “interest only loans” (where interest is paid during the term of the loan at regular intervals and the loan principal is repaid at the end of the term) or “principal and interest loans” (where the regular repayments cover the interest component and reduce the principal gradually over the term of the loan). As a monthly income trust, it is imperative that there are procedures in place to monitor loan repayments.

Intended Outcome	Compliance Procedures
Procedures in place to monitor loan repayments ensure all income due to the scheme is received.	<p>The Scheme currently has a portfolio of approximately 10 mortgage investments.</p> <p>The Trust Supervisor (TS) is responsible for monitoring loan repayments and calculating interest payments due from borrowers. A mortgage spreadsheet is maintained by the Trust Supervisor, which records all due dates for receipt of loan repayments. Each month the Trust Supervisor checks to ensure that all loan repayments have been made.</p> <p>To increase the level of independence, and hence objectiveness, in collecting income and implementing default procedures, the TS has no other contact with the borrower.</p> <p>Income is directly debited from borrowers’ bank accounts in accordance with collection instructions receipt at the time of settlement. The system also automatically calculates interest payments due from borrowers.</p> <p>The Board determines if interest rate changes are required and informs the Credit Manager of the new rate and the effective date. The Credit Manager is responsible for ensuring borrowers and investors are notified at least 14 days before the date the new rate comes into effect.</p>
Consistent and fair procedures are in place in the event of default in payment by a borrower.	<p>Loan payment arrears are reviewed by the TS on a monthly basis and reported to the Credit Manager (CM) who in turn reports to the Lending Committee. If a payment by a borrower is 1 month overdue, the CM will issue a letter of demand upon the mortgagor, seeking payment within 30 days.</p> <p>Should the mortgagor fail to comply with the letter of demand, the CM must instruct a Panel Solicitor to serve upon the mortgagor a default notice under section 57(2)(b) of the <i>Real Property Act (NSW)</i> (or any equivalent legislation). If the mortgage is subject to the Consumer Credit Code, the notice of default must also comply with section 80(3) of that Code.</p> <p>If the mortgagor fails to comply with the default notice, the Lending Committee may recommend that proceedings be commenced to sell the property as “Mortgagee exercising power of sale” in order to recover the principal sum, interest arrears and any costs arising from the forced sale.</p> <p>In deciding whether to proceed to a forced sale, the Lending Committee</p>

Intended Outcome	Compliance Procedures
	<p data-bbox="683 257 1398 315">must consider the quality of the property and the history of the particular mortgage (eg previous arrears situations and their resolution).</p> <p data-bbox="683 331 1382 425">If the Lending Committee decides to proceed to a forced sale, it must ensure that the sale price is reasonable in the market circumstances. To satisfy this obligation, the following steps should be taken:</p> <ul data-bbox="683 439 1406 797" style="list-style-type: none"><li data-bbox="683 439 1406 533">● obtain from a Panel Valuer a valuation or a letter of update on the previous valuation if more than 12 months old to determine the reserve price.<li data-bbox="683 546 1406 667">● normally, the property should go to auction unless the lending committee is of the opinion that another method would be more advantageous to the investors. If it does not sell at auction, it may then be sold by private treaty.<li data-bbox="683 680 1406 797">● the reserve price is to be based upon a valuation provided by a Panel Valuer, confirming their opinion as to the likely price to be achieved at a properly advertised and conducted by auction sale. <p data-bbox="683 815 1406 909">When seeking to exercise a power of sale, the Panel Solicitor must prepare the necessary documentation and certify that the relevant power exists and is being used correctly.</p> <p data-bbox="683 925 1390 1019">No security can be released whilst the mortgage is current or in default, the Lending Committee can approve partial release where more than one security property is held.</p> <p data-bbox="683 1034 1362 1128">Investors cannot be substituted if more than 5% of the mortgage investment is in default greater than 60 days. The lending committee must approve all investor substitutions.</p> <p data-bbox="683 1144 1394 1265">The Compliance Officer reviews monthly all mortgages in default and reports progress on recovery to the Compliance Committee. If over 10% of scheme mortgages are in default, the Compliance Officer informs the Compliance Committee immediately.</p>

3.4 Applications and redemptions

Example

Responsible Officer: Manager Investments

Frequency of Reporting: Monthly

Function	Risks	Procedures	Monitoring of procedure
Applications and redemptions are made in accordance with the disclosure document (DD), Constitution and <i>Corporations Act 2001</i> .	<p>Applications monies recorded against the wrong investor.</p> <p>Investor has not received current DD and investor relies on out of date information.</p>	<p>All applications and redemptions are checked and approved by Manager Investments.</p> <p>Incomplete applications or those not using an original form from the current DD are returned to the investor for amendment and resubmission.</p>	<p>Trust account reconciliation reviewed by Financial Controller daily.</p> <p>Age listing of trust account reviewed monthly by the Financial Controller.</p> <p>Compliance Officer reviews monthly reconciliation of application monies received and redeemed and includes these figures in reports to the Board.</p>
Distribution or reinvestment is made according to the Constitution.	<p>Applications and redemptions are not processed in a timely manner.</p> <p>Redemptions incorrectly distributed or reinvested.</p>	<p>Application monies are deposited in the RE's trust account for investment until correct application is received.</p> <p>All application monies are banked within two working days of receipt.</p>	<p>Financial Controller conducts spot checks of 5 redemptions each quarter to ensure they are correctly calculated.</p>
Monies held pending investment or reinvestment are placed in a trust account and are not held for more than three months.	<p>Breach of licence conditions by holding funds in the trust account longer than 3 months.</p>	<p>Redemptions are returned to investors within five working days of receipt.</p> <p>Redemption requests must be in writing and be signed by the investor. Payments are only made out to the named investor.</p> <p>A panel solicitor is used to handle any discharges of mortgage. A final account is sent to the borrower setting out any outstanding fees, premiums or commissions that must be paid before discharge. The Manager Investments reports all discharges of mortgage in the month to the Compliance Officer.</p> <p>Trust account receipt issued to each application for each amount invested.</p>	<p>Compliance Officer to sample test 2 application and 2 redemption requests every six months to ensure process is in accordance with the procedures manual.</p>

3.5 Insurance

Example

Responsible Officer: Financial Controller/Manager Investments

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of procedure
Ensure the RE maintains adequate insurance levels.	Breach of licence conditions.	The Board annually reviews the adequacy of PI and security property insurance cover.	Compliance Officer submits Financial Controllers confirmation to the Board quarterly.
Maintain adequate insurance protection for the RE against loss from negligence, administration or fraud by its officers or agents.	Responsible Entity has insufficient funds to compensate the scheme for loss from negligent administration or fraud by its officers or agents.	Confirmation is recorded in minutes of Board meetings. Valuers are instructed to advise of minimum insurance requirements to be in place in respect of each security property.	Compliance Officer annually obtains a copy of Board minutes confirming that the insurance cover has been reviewed and approved. Compliance Officer reviews the insurance register quarterly to check insurance is in place for all security assets.
Ensure the borrower maintains insurance protecting the security asset noting the interest of the RE as secured lender mortgagee and renews each policy annually.	Loss to investors as a result of diminution in value of security.	Manager Investments to ensure that a certificate of currency issued by an approved insurer noting the RE's interest is in hand prior to settlement of each mortgage investment and maintain a register of such insurance.	
Ensure that each mortgage in excess of 66.66% LVR is covered by mortgage guarantee insurance.	Loss to investors in the event of a shortfall upon realisation of the security.	Manager Investments to ensure annual renewal of each insurance policy. Manager Investments to ensure mortgage guarantee insurance is in place prior to settlement of any loan exceeding 66.66% LVR and remains in place for the duration of the mortgage. PI cover requirements for valuers is covered in section 3.2.	

3.6 Promotion of the scheme

Example

Overview

Scope

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

- (a) the provisions of the Corporations Act and ASIC policy relating to investment recommendations;
- (b) the Corporations Act requirements in relation to the disclosure document (DD); and
- (c) the advertising provisions of the Corporations Act.

Responsibility

Director or other person designated by the Board.

Compliance Officer monitors compliance.

Reporting Frequency

Quarterly to the Compliance Committee.

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

Within 2 Business Days after detection of a breach of Corporations Act provisions by the Compliance Officer.

Risks

Promotion and advertising of the Scheme contravenes the Corporations Act 2001 or is misleading and deceptive causing loss to investors and possible action to recover losses.

Monitoring Priority

Medium

Compliance Measures

Written sign off must be obtained from legal advisers and 2 directors in respect of any new form of advertising or promotion.

Advisers and marketers must be provided with updates in relation to material issues affecting the Scheme generally by the Board at least annually.

In the context of this Plan, advisers are the duly appointed Authorised Representatives of the RE.

The impact of amendments to the Act introduced in FSRA must be communicated to the authorised representatives, in particular the circumstances where a Financial Services Guide and a Statement of Advice must be provided to potential investors.

Appointing Advisers

New advisers must meet the minimum competency standards of the RE prior to authorisation as a representative.

A due diligence process is conducted on all new advisers including character checks, industry memberships, educational qualifications, current licensing arrangements and appropriate insurances. A file is maintained for each authority holder.

All approved authority holders are obliged to attend the introductory training session run by the RE and to maintain ongoing education in accordance with the standards set by the RE and ASIC.

Risk

The DD contains a material misstatement or omits material information, causing ASIC to issue a stop order or causing loss to investors.

Monitoring Priority

Medium

Compliance Measures

All material statements in the DD must be verifiable by reference to source documentation, which are to be kept in central due diligence files.

Written reports from professional advisers as to compliance with legal and other requirements must be obtained in respect of various parts of the DD.

A disclosure checklist setting out the minimum information required to be disclosed to investors is completed and signed off by a director.

A director will review all current DDs monthly to assess if any change in circumstances has resulted in a material misstatement or omission that requires rectification. The Compliance Officer must obtain confirmation from a director and confirm to the Compliance Committee and Board that no material matters have arisen since the issue date of the DD that would be required to be disclosed and that the DD remains accurate.

3.7 Disclosure and reporting

Example

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Monthly

Risks of non-compliance

- (a) Financial statements are not in accordance with the Act.
- (b) Investors are not informed of material events in a timely manner.

Intended Outcome	Compliance Procedures
The Scheme's financial statements are true and fair and, when required, continuous disclosure is made.	<p>A registered auditor will be appointed to audit the annual financial statements to ensure they are accurate and are prepared in accordance with applicable accounting standards and the requirements of the <i>Corporations Act 2001</i>.</p> <p>The Compliance Officer must ensure that the RE complies with its obligations relating to financial reporting to Members, under the <i>Corporations Act 2001</i>.</p>
Members are continuously informed of their investments and all material issues on a timely basis.	<p>The RE will adopt a policy of keeping Members continuously informed of their investments and all material issues on a timely basis.</p> <p>Members receive the following reports in relation to the Scheme:</p> <ul style="list-style-type: none"> monthly distribution statements, showing the amount of income paid, the rate of return, fees charged and any transactions concerning the Member's Unit holdings which have occurred during that period; an annual income statement at the conclusion of each tax year, summarising all distributions made during the year, detailing payments and reinvestments as required; and in respect of development loans, a quarterly update on the progress of the development project, expected drawdown dates, costs to completion and details of work in progress valuations received by the RE. <p>All reports must be reviewed and approved by the Financial Controller prior to being dispatched.</p> <p>Material issues arising in the conduct of the scheme are referred to the Board for advice on if and how the issue should be reported to members.</p> <p>Defaults on mortgage payments that are more than 90 days overdue on mortgages representing more than 5% of the mortgage investment assets must be reported immediately to members, including details of action taken by the RE.</p> <p>Material factors effecting security valuations are reported to investors within 14 days of the date the RE becomes aware of them.</p>

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 disclosure document 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 service providers seek advice on compliance, 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

Responsible Officer: Manager Investments

Frequency of Reporting: Annually

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Carry out adequate due diligence when appointing external service providers.</p> <p>Monitor providers to ensure they comply with contractual obligations and service level agreements.</p> <p>Ensure that all contracts with external service providers contain an obligation to report compliance breaches and indemnify the scheme against liability in the event of default by the external service providers.</p>	<p>Procedures may break down or the scheme may incur loss due to poor service from external service providers.</p> <p>External service providers may fail to report breaches or escape liability from consequences of their default.</p>	<p>Due diligence procedures are performed before the appointment of service providers including confirmation of appropriate professional indemnity or fidelity insurance and evidence of experience and relevant industry qualifications and licences.</p> <p>Contracts with service providers are reviewed and approved by the Board.</p> <p>Engagement of service providers to act shall be in accordance with the procedures manual.</p> <p>Appointment of Valuers is covered in the “Valuation” section of this Plan.</p>	<p>The Board reviews all due diligence documentation prior to appointing any external service provider.</p> <p>Any breaches of obligations by any service provider are reported to the Compliance Officer.</p> <p>The Compliance Officer shall maintain a register of all service providers and update the procedures manual as required by the <i>Corporations Act 2001</i> or industry standards.</p> <p>The Board will annually review the appointment of all external service providers and their findings will be recorded in the minutes of that meeting.</p>

3.10 Fees and expenses

Example

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of procedure
<p>Payment of fees and expenses associated with mortgage advances to the RE from loan advances.</p> <p>Payment of collection fees to RE from interest payable to investors.</p> <p>Payment of fees and expenses related to redemption of investments to RE from amounts redeemed by investors.</p> <p>Fees are calculated according to the requirements of the constitution, the Act and the disclosure document in respect of the scheme.</p>	<p>Fees, expenses and collection fees paid are not valid or overpaid.</p> <p>Application and valuation fees received by the RE are not recorded in the scheme records.</p>	<p>All invoices received are reviewed by the Manager</p> <p>Investments to ensure services were received.</p> <p>Manager Investments advises scheme solicitors of agreed collection fees in respect of each mortgage investment.</p> <p>Manager Investments authorises payment by the scheme solicitors of all fees and expenses from mortgage advances or income received.</p> <p>In respect of expenses associated with lending and collection, the financial controller reviews invoices and authorises payment by the RE. This includes reimbursement to the RE for valuation and application fees paid to the scheme by investors.</p> <p>Two directors signatures are required for each cheque with each signatory reviewing the relevant invoices.</p> <p>The FC to prepare monthly management accounts listing fees received and expenses paid within the month and a cash flow forecast for the following three months. These documents are submitted monthly to the Compliance Officer (CO) and the Board, together with any proposals for additional funding.</p>	<p>The CO and the Board reviews the FC's report.</p> <p>The CO shall assess if transactions are in accordance with the disclosure document, constitution, Act and are in the investor's best interest.</p> <p>External audit review fees taken and expenses paid as part of the annual scheme audit.</p> <p>The audit report of the scheme is provided to the CO and the Board. The Board signs off on the scheme's annual financial report.</p>

3.11 Record keeping

Example

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Annually

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Correctly record and explain transactions, financial position and performance, enabling true and fair financial statements to be audited and correct tax returns submitted.</p> <p>Ensure Investors are given correct details of cover and scheme investment.</p> <p>Ensure Investors are given correct income distribution details to enable them to maintain proper records for taxation purposes.</p> <p>Ensure records are maintained for a minimum of seven years.</p>	<p>Incorrect or insufficient records resulting in qualified audit report or loss to investors.</p> <p>Tax information given to Investors is insufficient.</p>	<p>All financial records are stored electronically and in hard copy for at least seven years and are readily accessible.</p> <p>Signed documents such as loan deeds are kept in a fireproof lockable cabinet.</p> <p>Checking procedures for the epitome of mortgage are performed within 14 days of settlement (refer to A3 for details of procedures performed).</p> <p>The IT manager reviews the disaster recovery plan annually and confirms its adequacy to the Compliance Officer (CO).</p> <p>The FC is required to confirm to the CO the adequacy of record keeping annually.</p> <p>Investors will be given for their review:</p> <ul style="list-style-type: none"> ● a product disclosure statement disclosing details of the types of mortgages invested by the scheme. A monthly statement of income received and fees paid. ● An annual statement of all investments made. 	<p>Records, including those given to investors for records and taxation purposes, are reviewed by external Audit.</p> <p>The CO reviews the epitome checklist for each settled mortgage to ensure it has been completed.</p>

3.12 Safe keeping and segregation of scheme property

Example

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Monthly

Objective: to outline controls in place to ensure scheme assets are identified appropriately, separated from those of the RE and other schemes and determine the role, if any, of third party custodians in holding scheme property.

Identifying Scheme Assets

The RE maintains a computerised management system especially designed for fund management services that include asset identification and controls. This system records all information for all Schemes managed by the RE.

Each scheme is identified with a unique scheme number. This ensures:

- (a) scheme Assets are easily identifiable with the Scheme to which they belong; and
- (b) details relating to the Scheme are recorded separately from other schemes managed by the RE.

The Assets in each scheme are also allocated with a unique security number that relates back to the scheme number.

The system is monitored by the Finance and Administration Manager who is responsible for monthly reporting and reconciliation of funds under management.

Separating Scheme Assets

The RE separates the Scheme Assets using:

- unique numbers to identify each scheme and each asset in the scheme;
- holding the security documents in separate colour coded, numbered and readily identifiable safe custody packets;
- updating the Scheme Assets in the computerised system on a daily basis by the Securities Manager.

The Member Register

The system contains a register that records the interests of contributing Members in each Scheme, particularly in relation to contribution amount, units allocated, maturity, income payment amounts and dates.

A Member ID number is given to each Member. When an investor becomes a Member they are given a unique Membership Account number. This Member ID is used to record applications, interest payments and redemptions from the scheme.

Custodianship of Scheme Assets

Custodianship of Scheme Assets:

- Keep proper books of account;
- Deposit all moneys received on behalf of the Scheme into the Scheme Accounts including the Trust Account. These moneys include application and income funds;
- Act as custodian of the Members until the Scheme is determined or the RE is removed or retires as Custodian; and
- Comply with any proper directions given by Members at meetings constituted by the Constitution.

The RE as Custodian holds the Scheme Assets under the terms of its Licence.

The RE will comply with the independent Custodian arrangements when required by the Scheme Constitution or the Act.

All custody, settlement and other cash flows and other financial transactions affecting the Scheme will be transacted and recorded as per the Operations Manual and reviewed by the Compliance Officer for compliance.

The Financial Controller has responsibility for the custodial systems. The procedures for this role include:

- maintaining a proper register of securities held in custody;
- maintain full Borrower and Lender records;
- receipting and depositing all scheme funds promptly when received;
- distribution of interest income to Members; and
- generating status reports periodically on the Scheme.

The Financial Controller provides reports to:

- the CEO weekly; and
- the Compliance Officer weekly.

These reports are incorporated into a monthly report to the Board and the Compliance Committee on the state of the Scheme.

The Compliance Officer performs an annual reconciliation of documents and assets recorded as held to physical holdings.

Cash Movement Procedures

The RE will hold all cash balances of the Scheme in a trust bank account.

The RE will maintain sole control of the bank account and reconcile the account daily.

The RE will nominate the Officers and employees authorised to give directions and to act as signatories to the account. Two signatories are required for each cheque.

The Financial Controller is responsible for the above procedures.

3.13 Monitoring licence and authorised representatives

Example

Scope

This Compliance Rule sets out the arrangements that the RE applies in operating the Scheme to ensure compliance with matters arising in respect of the AFS licence (other than financial conditions).

Functional heads

Head of Corporate Services

Primary provisions

AFS licence conditions.

The relevant provisions of the Corporations Act.

Reporting frequency

The frequency of reporting to the Compliance Committee is quarterly, unless stated to the contrary, or the Chair agrees that it is not necessary to receive a report for a particular quarter.

Duties and compliance activities

The duties and compliance activities of the Head of Corporate Services are set out in the table included under the heading AFS licence. He/she is required to review and assess compliance with this Compliance Rule, and the procedures and monitoring and reporting activities outlined in the following table. Where appropriate, he/she is to report to the Compliance Manager any matter of non-compliance and recommend any changes to the procedures and monitoring and reporting activities to ensure they remain appropriate. The Compliance Manager is to report such matters to the Compliance Committee.

AFS licence

Compliance activity	Procedures followed	Monitoring and reporting
Compliance with its AFS licence conditions and the requirements of the <i>Corporations Act 2001</i> .	All staff are provided with a copy of the staff Compliance Procedures Manual upon commencement of employment, which documents procedures and requirements in respect of the AFS licence. A quarterly self assessment questionnaire is completed by the Head of each Operational Unit in	Internal and external audit review compliance with AFS licence requirements at least annually. Findings are reported to the Managing Director, the Compliance Manager and Compliance Committee. Training undertaken by Authorised Representatives is assessed by the Compliance Manager each quarter

<p>respect of themselves and their staff. A section of this addresses compliance with AFS licence requirements.</p> <p>Group Secretariat ensure AFS licence returns are forwarded to ASIC when required.</p> <p>Ongoing training of Authorised Representatives is undertaken and is required to be reported to the Compliance Manager when it occurs.</p> <p>The Compliance Manager maintains registers for:</p> <ul style="list-style-type: none">• Authorised Representatives;• Authorised Representatives' ongoing training. <p>The Compliance Manager is responsible for notifying staff if there are any changes in the AFS licence requirements.</p>	<p>Compliance Manager each quarter and reported to the Compliance Committee for consideration of adequacy.</p>
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3.14 Training and recruitment

Example

Responsible Officer: Manager Human Resources (MHR)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of Compliance Procedures
Staff recruited are competent and receive sufficient training for them to be able to be able to perform their duties and to be familiar with the requirements per the compliance plan.	<p>Staff do not have the skills necessary to competently perform their duties.</p> <p>Key staff have specific knowledge that is lost if they leave the employment of the RE.</p>	<p>Staff are recruited according to the Recruitment Procedures Manual (RP), which is designed to ensure appointees have adequate experience and ability.</p> <p>Staff competency and development needs are reviewed by line managers every six months in accordance with the staff review process detailed in the staff handbook.</p> <p>The MHR maintains a register detailing when each staff member last had a review, the training they have attended and areas identified for training in the future. The MHR reviews this register quarterly and follows up any overdue staff reviews or training needs.</p> <p>All compliance personnel are required to attend compliance training for a minimum of one day per annum.</p> <p>The MHR maintains a succession plan for all staff the Board considers to be key personnel. The MHR reviews this plan every six months and submits any recommendations for amendments to the Compliance Officer (CO).</p> <p>The staff handbook and the RP manual are reviewed by the MHR annually and after any relevant change to the Act or industry standards to ensure procedures are still adequate.</p>	<p>The CO reviews the register maintained by the MHR annually.</p> <p>The Board reviews the key personnel succession plan annually.</p> <p>The CO maintains a register of all reviews and updates of procedures manuals and handbooks. The MHR is required to sign the register following each review of the RP manual and staff handbook.</p>

3.15 Related party issues

Example

Disclosure by directors to board and investors

Directors and related entities must disclose to the Board at meetings and to Investors in quarterly reports particulars of proposed financial benefits and obtain their approval at an Investors meeting before the benefit is given. If a conflict arises it will be discussed by the Board and if the conflict provides a long-term independence problem for the director that director must resign immediately.

Voting at board meetings

Directors will abstain from voting on matters in which they have a personal involvement after declaring that conflict to the Board.

Contracts with related parties

All major contracts will be approved by the Board. If a related party is involved at least two competitive quotes must be obtained and assessed against the criteria established by the Board for that purpose.

Purchase of interests by staff

If at any time an employee wishes to purchase any interest in a Scheme they must obtain MD's approval or if the employee is MD, the Board's approval.

Disclosure by members of compliance committee

Compliance Committee members must disclose their interests as required by the Corporations Act.

3.16 Complaints

Example

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
Handle investor, tenant and other parties' complaints in a manner consistent with the <i>Corporations Act 2001</i> , constitution and ASIC requirements relating to the RE's AFS licence.	Complaints are not adequately addressed and are escalated to litigation. Breach of licence and constitution.	<p>All complaints are referred to the CO who records the details in a complaints log. The CO is responsible for investigating and responding to complaints.</p> <p>If a complaint relates to the CO the matter is dealt with by the Managing Director.</p> <p>Complaints are acknowledged within 2 days of receipt and are responded to within 1 month of receipt. If the matter is not finalised within 1 month the response will detail what has been done to date in response to the complaint.</p> <p>The CO reports all complaints to the Board and the Chairman of the Compliance Committee within one month of receipt of the complaint. Details reported include reason for complaint, the officer or service provider responsible for the subject of the complaint, any impact on the Scheme or the RE, if the complaint revealed a systematic error or weakness in the compliance plan and recommendations for addressing complaint and any compliance plan or systems issues raised.</p> <p>The RE will become a member of an approved external complaints resolution scheme in accordance with the conditions of its licence, within the time frame specified by ASIC.</p> <p>The acknowledgment to complaints also informs investors that they have the right to have their complaint</p>	<p>The Compliance Committee reviews the complaints log and associated responses quarterly to ensure they have been informed of all complaints and that the complaints have been or are in the process of being satisfactorily resolved.</p> <p>The CO maintains a training register noting who has received complaints training and when. This register is reviewed by external audit annually.</p> <p>The CO reviews membership of an approved external complaints resolution scheme as part of the annual completion of the AFS licence requirements checklist.</p>

dealt with under the external complaint resolution scheme if they are unsatisfied with the handling of the complaint by the RE.

New staff of the RE are trained in complaints procedures by the CO on induction and are updated on an annual basis.

The complaints procedures have been developed using the Australian Standard® AS 4269 as a benchmark.

3.17 Reporting breaches

Example

The Committee Members must report to ASIC and the Board of Directors on the RE's compliance with this Compliance Procedure as the Corporations Act requires.

It is the responsibility of the Compliance Committee to report to the Board of Directors all known and suspected exceptions of the Act and the Constitution. The following guidelines have been established for detecting, rating and addressing exceptions. These procedures apply to all relevant Compliance Procedures unless otherwise stated.

An exception is broadly classified as a violation of a service agreement by a service provider, a violation of the Corporations Act, the Constitution or this Plan.

Each exception is communicated in writing by staff or a service provider to the Functional Head of the relevant Operational Unit as soon as practicable after detection. The Functional Head summarises the exception in a predetermined format (refer appendix A9: Pro forma breach report) and immediately reports the exception to the Compliance Manager. The Compliance Manager must record all exceptions in the Exceptions Report, which is presented at Compliance Committee meetings. Records of communications regarding the exception are maintained by the relevant Function Head.

The Functional Head of an Operational Unit uses his or her expertise to determine what may represent an actual exception or a short-term failure by an operational unit and assesses the significance of that exception. Where the Functional head deems the exception to be significant, he/she must report the exception to the Managing Director in addition to the Compliance Manager, who will advise the Compliance Committee.

The Compliance Manager must report any exception to ASIC in writing no later than 14 days after becoming aware of any matter that may constitute a breach of the Act, the Constitution of a Scheme, or the Plan that has had, or is likely to have, a material adverse effect on investors' interests.

The Compliance Manager issues a self assessment questionnaire to the Functional Head of each Operational Unit on a quarterly basis. This questionnaire includes a declaration of compliance with the procedures outlined in this Compliance Plan in relation to exceptions.

The Compliance Committee must report to the Board:

- any breach of the Corporations Act involving any scheme; or
- any breach of the provisions included in each scheme's Constitution of which the Compliance Committee becomes aware of, or suspects.

The Compliance Committee must report to ASIC any exception it becomes aware of, and has reported to the Board if the Compliance Committee is of the view that the RE has not taken, or does not propose to take, appropriate action.

Subsequent communication to ASIC is also forwarded to the Compliance Committee as well as subsequent communications addressing the issue.

The Compliance Committee must satisfy itself that documentation from management and ASIC is adequate to indicate that the matter has been resolved before deeming the issue closed.

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

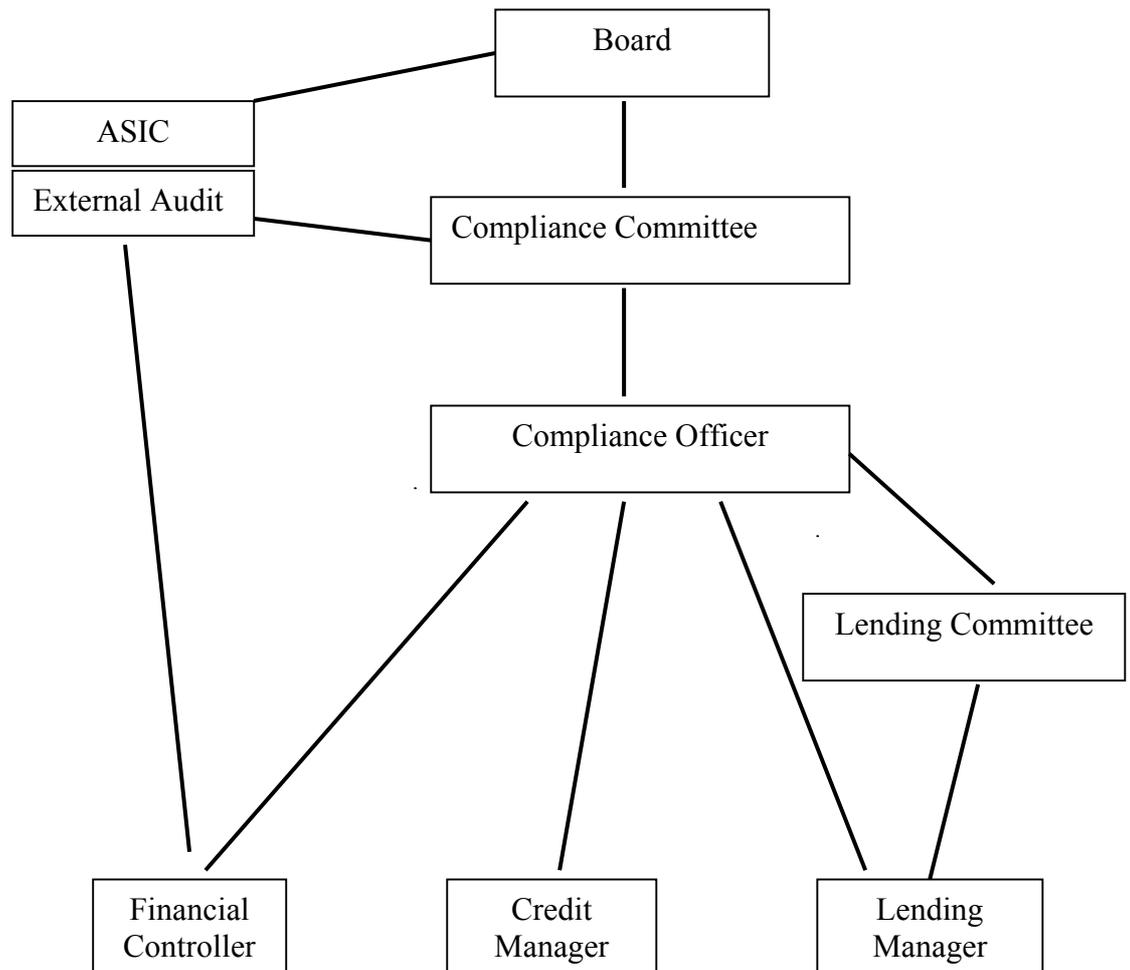
When a Compliance Committee is not required per the Act, any reference to the Compliance Committee in this document applies equally to the Board of Directors. Refer to section 2.2 for details of the role of the Compliance Committee.

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. e.g. "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	\$105,000
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”

COMPLIANCE PLAN COMMENTARY — POOLED MORTGAGE SCHEMES

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