



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 132

Managed investments: Compliance plans

Related instruments [CO 98/50]

Chapter 5C — Managed investment schemes

Issued 3/8/1998

Updated 4/11/1998

From 5 July 2007, this document may be referred to as Regulatory Guide 132 (RG 132) or Policy Statement 132 (PS 132). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 132.1) or their policy statement number (e.g. PS 132.1).

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What this guide is about

In order to gain a full understanding of our policy in this area you should read all the parts of this guide, including the Underlying Principles and the Explanations.

RG 132.1 This guide gives you guidance on how to prepare a compliance plan for a managed investment scheme. It includes, as an Annexure, illustrative guidance on what might be included in a compliance plan.

see RG 132.2–RG 132.22

How to prepare a compliance plan

Our policy

Preparing a compliance plan

RG 132.2 In preparing a compliance plan, you should:

- (a) undertake a structured and systematic process which considers the responsible entity's obligations under the Law and the scheme constitution;
- (b) identify the risks of non-compliance; and
- (c) establish measures designed to meet these risks.

No ASIC checklist

RG 132.3 We do not have a checklist of what must be built into a compliance plan.

Level of detail

RG 132.4 A compliance plan should describe the structures, systems and processes without detailing every aspect or step in the process. The measures should be set out with enough certainty to allow us and the auditor of the compliance plan to assess whether the responsible entity has complied with the compliance plan.

Incorporating parts of other plans

RG 132.5 We have modified the Law so that a compliance plan can incorporate parts of a previously lodged compliance plan as that

first plan is amended from time to time. This assists in preparing and amending of compliance plans. See [CO 98/50].

How to lodge a compliance plan

You can lodge an application to register a managed investment scheme at your nearest ASIC Regional Office.

You can also contact the ASIC Infoline on 1300 300 630 for information and assistance.

Underlying principles

RG 132.6 Under the Law, the compliance plan for a scheme plays a key role in the range of measures designed to protect scheme members. We believe that our approach should therefore focus the preparation of compliance plans on:

- (a) the characteristics of the individual scheme; and
- (b) the protection of scheme members.

Explanations

Preparing a compliance plan

RG 132.7 We consider that the purpose of a compliance plan is to describe how a responsible entity will make sure that it is complying with the Law and the scheme constitution. We therefore consider that a compliance plan should list the key processes, systems and structures that the responsible entity will apply. For example, a compliance plan should set out the processes, systems and structures by which a responsible entity will continuously review how it is complying with its obligations under the Law and the scheme constitution.

RG 132.8 Under the Law, a compliance plan must set out adequate measures that a responsible entity will apply to make sure that it complies with the Law and the scheme constitution: s601HA. This section sets a very high standard of content for compliance plans. We consider that this does not mean that every requirement of the Law or the constitution should be dealt with exhaustively or in the same level of detail. The individual characteristics of each scheme will affect what is the appropriate content of a compliance plan for that scheme.

RG 132.9 In addition to the mandatory matters listed in s601HA(1) and s601HA(2), there will be many other matters which deserve serious treatment in a compliance plan. The Law is designed to ensure that the interests of investors are protected. A compliance plan should therefore reflect:

- (a) the major compliance risks which investors face; and
- (b) the abuses potentially associated with conducting schemes.

RG 132.10 To ensure that the interests of investors are protected, when you prepare a compliance plan you should undertake a structured and systematic process which:

- (a) considers the obligations under the Law and the constitution affecting the responsible entity;
- (b) identifies risks of non-compliance; and
- (c) establishes measures designed to address these risks.

RG 132.11 This would involve, at a minimum, responding to the following general questions:

- (a) What are the responsible entity's obligations under the Law and the constitution for this scheme? What outcomes are the Law and constitution designed to deliver?
- (b) What risks to ongoing compliance are posed by the operations of this particular scheme given the nature of the scheme, its environment, its size, its members, its asset types etc?
- (c) What is the likelihood and impact of failing to deliver this outcome against other outcomes? Therefore, how should compliance efforts be focused?
- (d) What compliance measures will deliver the intended outcome?

RG 132.12 The specific obligations of the Law and the constitution referred to in para (a) of RG 132.11 can be analysed in terms of appreciating the risks to members. Members' interests will not be protected if there is a failure in any one of a number of key areas. Those key areas fall under a number of general headings, but would include, at a minimum, ensuring that:

- (a) scheme property is held in a way that minimises the risk of loss by misappropriation or through insolvency of the responsible entity;
- (b) the interests of the responsible entity or its related parties are not placed above the interests of the member;

- (c) the responsible entity and its officers and employees, will not profit from improper use of information;
- (d) there is adherence to the scheme's investment policy;
- (e) members are told all information necessary for them to make decisions about their holdings;
- (f) scheme members of the same class are treated equally and all scheme members are treated fairly; and
- (g) members do not suffer loss because the responsible entity, its officers or employees do not act with reasonable care and diligence or otherwise fail in their duties to the scheme.

RG 132.13 The measures identified under a process such as that described in RG 132.7–RG 132.12 should be documented in the compliance plan. They should be documented in a way that meets the detail requirements set out under the heading *Level of detail* in RG 132.17–RG 132.19.

RG 132.14 We will actively assess compliance plans when we are deciding whether or not to register a scheme under s601EB(1). We will consider, in the context of the type of scheme, whether the responsible entity has designed measures which adequately address the risks of not complying with its obligations. For example, a responsible entity must continuously monitor, review and audit the outcomes of its compliance activities. We will therefore assess whether the responsible entity's arrangements for doing this are adequate.

No ASIC checklist

RG 132.15 A compliance plan should focus on the measures and processes to achieve compliance outcomes including ongoing compliance. These outcomes will depend on the type of scheme. For this reason, we will not give checklists of detailed measures which should be included in a compliance plan.

RG 132.16 A list of some illustrative outcomes is in the Annexure to this guide at RG 132.25. It gives some guidance on the types of outcomes which might typically, as a result of the suggested process, be addressed in a compliance plan. The matters in the Annexure are not relevant to all scheme types. Nor are the suggested types of measures always suitable for addressing the outcomes. The list is included merely as an aid for preparing a compliance plan. It may help you to assess if the processes you use to prepare the plan are sufficiently robust.

Level of detail

RG 132.17 ASIC and the auditor of the compliance plan must be able to assess whether or not a responsible entity has complied with its compliance plan. A compliance plan lodged with us must describe compliance activities with enough detail and certainty for the auditor and ourselves to assess, at a later time, whether or not the plan has been complied with.

RG 132.18 Therefore, measures must be described in a way which represents more than mere platitudes or broad ambitions of compliance. Conversely, this does not necessarily mean that a compliance plan should detail each and every step, check, detailed procedure or action.

RG 132.19 Several illustrations on how measures might be described in a compliance plan are included in the Annexure to this guide at RG 132.25. These are included for guidance purposes only. They do not necessarily set out measures that will be applicable for any particular scheme. When deciding on what level of detail to include, you should consider how the responsible entity, the auditor and ASIC will use the compliance plan.

Incorporating parts of other plans

RG 132.20 After registering one scheme, a responsible entity may want to register further schemes. In this situation, any part (typically the general part) of the first scheme's compliance plan may be incorporated by reference into the compliance plan for other schemes: s601HB(1). The words "*as in force at a specified time*" in s601HB(1) and 601HB(2) mean that it is only possible to incorporate parts of that other plan as they existed at a specified date. This means, for example, if the first plan is amended, this will not result in the parts that have been incorporated into the later plan being amended as well. That later plan would have to be modified itself: s601HE(3).

RG 132.21 The incorporated parts of compliance plans will logically be those parts which have common operation across several schemes. Therefore, we have modified the Law so that a compliance plan can incorporate parts of a previously lodged compliance plan as amended from time to time. We have done this so that the incorporated parts of the second, or subsequent, plans are amended as the first plan is amended. See [CO 98/50].

RG 132.22 The modification to the Law will only have effect however when the compliance plan which incorporates parts from another plan uses words to the effect that the responsible entity will review the appropriateness of the plan at the time that any amendment is made to the part that is incorporated.

Key terms

RG 132.23 In this guide, a reference to:

“ASIC” is to the Australian Securities and Investments Commission;

“the Law” is to the Corporations Law;

“scheme” is to a registered managed investment scheme or to a proposed registered managed investment scheme;

“responsible entity” is to a responsible entity of a scheme; and

“s782” (for example) is to a section of the Law.

Related information

RG 132.24

Headnotes

Managed investment schemes, compliance plans, assessing compliance plans, adequate measures, structured and systematic process, incorporating by reference, incorporation by reference, illustrative outcomes, detail of compliance plans.

Class orders and pro formas

[CO 98/50]

Policy statements

Superseded Policy Statement 131 *Managed investments: Financial requirements* [SPS 131]

Regulatory guides

RG 130 *Managed investments: Licensing*

RG 133 *Managed investments: Scheme property arrangements*

RG 134 *Managed investments: Constitutions*

RG 135 *Managed investments: Transitional issues*

RG 136 *Managed investments: Discretionary powers and closely related schemes*

Legislation

s601EA, 601EB, 601HA, 601HB, 601HE

Consultation papers

Licensing a responsible entity

Financial requirements of a responsible entity

Compliance plans for managed investment schemes

Scheme property arrangements

Constitutional issues

Transitional issues

Exemptions and modifications

Information releases

[IR 98/9], [IR 98/10], [IR 99/12]

Annexure

RG 132.25

This Annexure to RG 132 gives some guidance about two aspects of compliance plans. While developing this guide, we were asked by some industry participants for some general guidance on what to put in a compliance plan.

Accordingly, we have set out below:

- (a) a list of some outcomes which might typically, as a result of the process suggested in paragraphs RG 132.7–RG 132.12 of the guide, be addressed in a compliance plan, and
- (b) some guidance on how compliance measures might be described in a compliance plan.

It is not suggested that the matters in these lists are relevant to any particular scheme nor that they are exhaustive. The outcomes and measures which are relevant to a particular scheme can only be ascertained by undertaking a review process along the lines set out in the guide. The two lists will however give you guidance on our current thinking on these issues, and the types of matters which we will have regard to in assessing the adequacy of compliance plans.

We will review these examples in light of our experience in administering the Law.

Examples of outcomes which might be addressed in a compliance plan

1 Safekeeping and segregating scheme property

- | | |
|--------------------------------------|--|
| (a) <i>Identifying scheme assets</i> | What controls ensure that scheme assets are identified appropriately? |
| (b) <i>Separating scheme assets</i> | What are the controls to ensure that scheme assets are separated from those of the responsible entity and other schemes as required under the Law? |
| (c) <i>Third party custodians</i> | What arrangements are in place to ensure that any person (other than the responsible entity) holding scheme property meets ASIC's standards for holding scheme property? |

Regulatory Guide 133 considers in more detail standards for custodians of scheme property: see RG 133.2.

2 Directors or compliance committee

- (a) *Responsibilities* What procedures ensure that members of the board or the compliance committee (as appropriate) are appropriately skilled, and have access to all information, reports and resources necessary for them to fulfil their responsibilities?
- (b) *Compliance committee* If a compliance committee is required, what arrangements (such as for remuneration, tenure, frequency of meetings) ensure that the committee functions as required by s601HA(b)?
- (c) *Compliance officer* If a compliance officer is appointed what measures ensure that that person has adequate authority to escalate matters if necessary? What measures ensure that compliance staff are adequately trained and independent?

Regulatory Guide 136 gives some guidance on the meaning of the phrase “substantially involved in business dealings, or in a professional capacity, with the responsible entity”: see RG 136.76A–RG 136.76E.

[Historical note: Inserted 4/11/1998.]

3 Valuation issues: 601FC(1)(j)

- (a) *System/approach used for calculating unit price* What are the controls to ensure that the systems used to determine unit price are functioning consistently with the scheme’s offering document, that the offering document is consistent with the scheme’s constitution and that supporting systems (eg system for processing unit buying and selling activities) are adequately operated? What procedures are in place to correct pricing errors?
- (b) *Systems/approach used in valuing investments* How does the responsible entity ensure that the scheme property is valued at regular intervals appropriate to the nature of the property? How does the responsible entity ensure that the scheme property is valued in a manner appropriate to the nature of the property?
- (c) *Collecting income* What controls ensure that income earned by scheme assets is collected and recorded in a way which is timely, accurate and complete?
- (d) *Identifying and recording of corporate actions* What controls ensure that the scheme becomes aware of changes in security values, positions etc due to corporate actions on a timely basis so that changes in valuations, income accruals, and positions can be evaluated?

4 Audit

- (a) *Audit resources* What role will internal audit have in the compliance process and to what extent will the external auditor report beyond the annual compliance audit requirement?

5 Accounts and record keeping

- (a) *Record keeping* What controls ensure that accounting records and other evidence about the responsible entity's operation of the scheme will be adequate to allow the responsible entity and ASIC to conduct reviews of scheme activities? What procedures ensure that appropriate accounting and taxation requirements are adhered to? What procedures ensure all that statutory deadlines for reporting are adhered to?
- (b) *IT and accounting systems used by the responsible entity* What arrangements ensure that IT and accounting systems used by the responsible entity are secure and meet the operational requirements of the scheme?
- (c) *Custody IT systems* If the responsible entity holds scheme assets, what arrangements ensure that the IT systems used for identifying and recording scheme property are secure and meet ASIC's standards?
- (d) *Omnibus accounts* If the responsible entity holds scheme assets, what arrangements ensure that any omnibus accounts operated are conducted under the terms of ASIC relief?
- (e) *Business continuity and disaster recovery planning* What are the responsible entity's plans for ensuring its ability to resume operations if a disaster occurs (eg a computer systems failure)?
- (f) *Record retention* What are the controls to ensure that records are maintained for the statutory period? What procedures ensure that records of all compliance monitoring are kept?

6 Applications, redemptions and distributions

- (a) *Application* What controls ensure that applications are processed in a timely manner and are invested in the correct scheme at the correct price? What controls protect application monies before they become scheme property?
- (b) *Withdrawals* What are the controls to ensure that withdrawal prices are set so as not to disadvantage remaining scheme members?
- (c) *Distributions* What controls ensure that distributions to members are calculated correctly and made in a timely manner?

7 Conduct of business issues

- (a) *Timely and best execution of trades* What are the controls to ensure that trades executed on behalf of the scheme are performed on a timely basis (in real terms and in relation to other client accounts of the responsible entity), and at the best price available?
- (b) *Timely and fair allocation of trades* What are the controls to ensure that scheme trades receive fair allocations when block trades are made? How does the responsible entity ensure that allocations are completed without bias for or against any particular client or scheme?
- (c) *Investment objectives* How will the responsible entity ensure compliance with the scheme's investment strategy, mandate or restrictions?
- (d) *Investment risks (liquidity, market volatility, counterparty)* What are the controls to ensure that the responsible entity manages investment risks as specified in the scheme constitution and/or offering document?
- (e) *Fund borrowing/securities lending* If applicable, what measures are in place to ensure that the scheme will not lose assets from any security lending arrangements?
- (f) *Churning of securities* What controls ensure that the responsible entity's levels of securities trading on behalf of the scheme are appropriate and that scheme assets are not wasted on brokerage?
- (g) *Responsible entity interests in schemes* What measures ensure that any potential conflicts of interest caused by the responsible entity, its affiliates, or directors owning interests in the scheme are appropriately managed?
- (h) *Commission rebates and other inducements* If the responsible entity participates in rebate programs with brokers, what are the controls to ensure that commission rebates are credited back to the scheme and are not retained by the responsible entity or credited to another client of the responsible entity?
- (i) *Property trust specific obligations* What procedures ensure completeness and timeliness of rental collections; that expenditure is appropriately authorised and in accordance with the constitution; that valuation methodologies and frequencies are appropriate; that borrowings are within defined limits?
- (j) *Insurance of assets* What measures ensure that appropriate insurance is in place for all identifiable risks relevant to the nature of the scheme's assets?

8 Disclosure and reporting

- (a) *Advertising* What procedures ensure that publicity (including advertising, media releases etc) which includes performance information, is not misleading? What procedures ensure that no material is published in breach of s1025?
- (b) *Prospectus* What procedures ensure that the prospectus or other public offer document contains all relevant information and is not misleading? What are the procedures to ensure that representations made in the offer document are carried out?
- (c) *Reporting* What are the procedures to ensure that the financial statements are true and fair and, when relevant, appropriate continuous disclosure is made?
- (d) *Member reporting* What procedures ensure that disclosure and reporting to scheme members is not misleading?

9 Related party issues

- (a) *Functional separation of group operations* What are the controls to ensure that information flows between companies within a group are appropriately protected?
- (b) *Use of related brokers, banks and other service providers* What are the controls to ensure that the decision to use a related party service provider is in the best interests of the scheme?
- (c) *Underwriting* What are the controls to ensure that if the responsible entity or a related party underwrite the issue of securities, any allocation to a scheme is in the best interest of the scheme, particularly in relation to the allocation of shortfalls?
- (d) *Trading on inside information* What are the controls to ensure that information obtained about the responsible entity's intentions to trade in specific securities is not used by employees for their own benefit?
- (e) *Personal and house account dealing* What controls ensure that dealings by the responsible entity or its employees do not disadvantage the scheme or free ride on it in any way?

10 Fees and expenses

- (a) *Fees charged are authorised* What are the controls to ensure that only authorised fees are charged to the scheme and that fees are calculated and deducted correctly?

11 Use of external service providers

- (a) *Selection of external service providers* What are the procedures to ensure that the use of third parties will be appropriately evaluated?
- (b) *Contracts* What are the procedures to ensure that contracts with external service providers are appropriate?
- (c) *Custodian* What arrangements are in place to ensure that any external custodian used meets ASIC standards?
- (d) *Monitoring* What procedures will the responsible entity use to monitor the activities of external service providers to ensure that the service provider is complying with the scheme's constitution and the Corporations Law?
- (e) *External service providers* What procedures ensure that external service providers are meeting the terms of the contractual arrangements?

12 Complaints handling

- (a) *Complaints handling* What are the controls to ensure that complaints relating to the scheme or the actions of employees of the responsible entity are appropriately handled in accordance with the method set out in the scheme constitution?

13 Compliance

- (a) *Compliance plan* How will the responsible entity ensure that necessary changes are identified and that the compliance plan is updated for them and any changes in procedures? What arrangements are in place to ensure that the compliance plan adequately deals with new investment products and the changing regulatory environment? How will the responsible entity ensure that changes are reported to ASIC?
- (b) *Licensing* What measures ensure that, in operating the scheme, the responsible entity continues to comply with any conditions of its licence, for example meeting financial requirements? (*Superseded Policy Statement 131 discusses the financial requirements for responsible entities: see [SPS 131.3]*)

14 Identifying, rectifying and reporting of breaches

- (a) *Identifying* How are breaches identified and rated?
- (b) *Rectifying* What are the controls to ensure that all breaches in obligations are appropriately rectified?
- (c) *Reporting* What are the controls to ensure that all breaches are

reported to the appropriate level of management, the compliance committee and the directors? What are the controls to ensure all breaches are reported to ASIC as required by s601JC(d)?

15 Training recruitment and experience

- (a) *Compliance staff* What procedures ensure that compliance staff have appropriate experience and have adequate resources?
- (b) *Compliance plan* What training is performed to ensure that existing and new staff are familiar with the compliance plan?
- (c) *Staff competency* What procedures are in place to ensure that only appropriate personnel hold positions of trust and that key staff are competent to perform their relevant roles?

16 Distribution channels

- (a) *s849 and 851* What measures ensure that sales/distribution staff comply with the know your client/know your product rules (s849 and 851)?

Examples of the detail which may be required in a compliance plan

Calculation of unit price

What are the controls to ensure that the systems used to determine unit price are functioning consistently with the scheme's offering document, that the offering document is consistent with the scheme's constitution and that supporting systems (eg system for processing unit buying and selling activities) are adequately operated? What procedures are in place to correct pricing errors?

Compliance plan example

The unit pricing procedures are documented in a procedures manual (which has been approved by the compliance officer) and are subject to a detailed review by external/internal audit on a six monthly basis to ensure they are consistent with the prospectus/constitution.

Daily unit pricing calculations (which include details of all assets and liabilities of the scheme, and the number of units on issue) are approved by a person independent from the preparer.

Daily movements in unit pricing are reviewed and explained by a person independent from the preparer.

Any unusual or unexpected movements are reported to management and investigated by the compliance officer.

Errors identified are corrected in a manner consistent with IFSA's Guidance Note "Incorrect Pricing of Scheme Units".

Valuation of investments

How does the responsible entity ensure that the scheme property is valued at regular intervals appropriate to the nature of the property?
How does the responsible entity ensure that the scheme property is valued in a manner appropriate to the nature of the property?

Compliance plan example

All equities are valued daily by way of automatic price feeds from a third party.

Manually priced stocks are identified as such, signed off by the head of the department and periodically verified against independent sources.

All valuations are viewed by scheme accountants independent of the portfolio managers.

The valuation procedures are regularly checked for consistency with the constitution by the compliance officer.

Any significant or unexpected fluctuations are reported to management and investigated by the compliance officer.

Collection of income

What are the controls to ensure that income earned by scheme assets is recorded in a way which is timely, accurate and complete?

Compliance plan example

A dividend diary incorporated into the system ensures dividend capture. Accrued income is compared to actual dividend income and differences investigated.

Interest income is accrued daily by the systems.

Management reviews daily income accruals and periodically checks projected and actual yields.

Audit

What role will internal audit have in the compliance process and to what extent will the external auditor report beyond the proposed annual compliance audit requirement?

Compliance plan example

Internal audit's role is set out in their internal audit charter. Their annual plan is discussed and agreed with the board audit committee. This includes a quarterly review of adherence to the content of the compliance plan.

The scope of the annual external audit of the compliance plan is set down in the auditor's engagement letter dated 1 July 1998. Terms of engagement are agreed annually with the compliance committee and the board audit committee.

Applications

What controls ensure applications are processed in a timely manner and are invested in the correct scheme at the correct price? What controls protect application monies before they become scheme property?

Compliance plan example

Application monies are banked into the applications bank account and are reconciled daily to application form monies recorded as received.

Application forms are checked for completeness, accuracy and relevancy.

Missing, incomplete or incorrect application forms are followed up with applicants within 24 hours.

Registry input data of application details and daily unit pricing are approved by an independent person.

Daily registry applications and redemptions are reviewed for reasonableness.

Application monies are transferred on acceptance to a scheme specific bank account.

Disclosure and reporting

What procedures ensure that the prospectus or other public offer document contains all relevant information and is not misleading?

What procedures ensure that representations made in the offer document are carried out?

Compliance plan example

Each prospectus is subject to a rigorous due diligence procedure whereby all significant statements, all assertions and all financial data are subject to sign-off by senior management, external auditors and legal advisers as appropriate. The prospectus and supporting representations are reviewed and discussed at a due diligence committee meeting. The committee consists of three directors with attendance by the chief legal officer, the chief financial officer and external auditors.

Procedures to monitor representations made in the prospectus are covered elsewhere in this compliance plan.