ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 141

Mortgage schemes: Strengthening the disclosure benchmarks

October 2010

About this paper

This consultation paper sets out our proposals for strengthening the disclosure benchmarks in Regulatory Guide 45 *Mortgage schemes: Improving disclosure for retail investors* (RG 45). The policy proposals follow on from our review of the unlisted mortgage scheme sector and aim to make benchmark disclosure more useful for retail investors.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This paper was issued on 6 October 2010 and is based on the Corporations Act as at 6 October 2010.

Disclaimer

The proposals, explanations and examples in this paper do not constitute legal advice. They are also at a preliminary stage only. Our conclusions and views may change as a result of the comments we receive or as other circumstances change.

Contents

The consultation process **4**

A Background to the proposals **6**
- Benchmarks for mortgage schemes 6
- Our review of disclosure to investors 7
- Our proposals to improve disclosure 9

B Proposed amendments to RG 45 ..... **11**
- Benchmark 1: Liquidity 11
- Benchmark 2: Scheme borrowing 13
- Benchmark 3: Loan portfolio and diversification 15
- Benchmark 4: Related party transactions 17
- Benchmark 5: Valuation policy 19
- Benchmark 6: Lending principles—Loan-to-valuation ratios 21
- Benchmark 7: Distribution practices 22
- Benchmark 8: Withdrawal arrangements 24

C Disclosure against the benchmarks: 'If not, why not' **28**
- Improving compliance with benchmark disclosure 28

D Feeder funds **29**
- Applying the benchmarks at the feeder fund level 29

E Regulatory and financial impact **30**

Key terms **31**

List of proposals and questions **33**

© Australian Securities and Investments Commission October 2010

The consultation process

You are invited to comment on the proposals in this paper, which are only an indication of the approach we may take and are not our final policy.

As well as responding to the specific proposals and questions, we also ask you to describe any alternative approaches you think would achieve our objectives.

We are keen to fully understand and assess the financial and other impacts of our proposals and any alternative approaches. Therefore, we ask you to comment on:

- the likely compliance costs;
- the likely effect on competition; and
- other impacts, costs and benefits.

Where possible, we are seeking both quantitative and qualitative information.

We are also keen to hear from you on any other issues you consider important.

Your comments will help us develop our policy on unlisted mortgage schemes. In particular, any information about compliance costs, impacts on competition and other impacts, costs and benefits will be taken into account if we prepare a Regulation Impact Statement: see Section E Regulatory and financial impact, p. 30.

Making a submission

We will not treat your submission as confidential unless you specifically request that we treat the whole or part of it (such as any financial information) as confidential.

Comments should be sent by 26 November 2010 to:

Wen Leung
Senior Lawyer
Investment Managers and Superannuation
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2001
facsimile: 02 9911 2414
email: policy.submissions@asic.gov.au

What will happen next?

Stage 1	6 October 2010	ASIC consultation paper released
Stage 2	26 November 2010	Comments due on the consultation paper
	January-February 2011	Drafting of regulatory guide
Stage 3	31 March 2011	Regulatory guide released

A Background to the proposals

Key points

This consultation paper sets out our proposals to strengthen the disclosure requirements in Regulatory Guide 45 *Mortgage schemes: Improving disclosure for retail investors* (RG 45).

We developed the proposals in this paper to take into account the findings of our review of the unlisted mortgage scheme sector and the key issues and risks identified since RG 45 was first published in September 2008. The proposed revised benchmarks and additional disclosure requirements are also designed to make comparisons between mortgage schemes more straightforward.

Benchmarks for mortgage schemes

1 Regulatory Guide 45 *Mortgage schemes: Improving disclosure for retail investors* (RG 45) sets out eight benchmarks we expect responsible entities of unlisted mortgage schemes to disclose against on an 'if not, why not' basis. These benchmarks are designed to help retail investors understand the risks, assess the rewards being offered and decide whether these investments are suitable for them. See Table 1 for a summary of the benchmarks.

2 The 'if not, why not' approach does not require that a benchmark is complied with. However, if the benchmark is not met, the responsible entity should explain why the benchmark is not complied with and how it deals with the business factors or issues underlying the benchmark.

3 Disclosures against the benchmark should be:

(a) addressed upfront in the Product Disclosure Statement (PDS);

(b) updated in ongoing disclosures as material changes occur (e.g. in a supplementary PDS or continuous disclosure notice); and

(c) supported in, and not undermined by, advertising material.

4 Responsible entities may also choose to update disclosure against the benchmarks in other materials (e.g. monthly or quarterly fund updates).

5 RG 45 was first published in September 2008 and responsible entities should have complied with the benchmarks as outlined in the implementation timetable in RG 45.

Table 1: Benchmarks for unlisted mortgage schemes in which retail investors invest

Benchmark	Description
1. Liquidity (pooled mortgage schemes only)	Benchmark 1 addresses the scheme's ability to satisfy withdrawal requests and other operational commitments.
2. Scheme borrowing	Benchmark 2 addresses the scheme's policy on borrowing.
3. Loan portfolio and diversification (pooled mortgage schemes only)	Benchmark 3 addresses the scheme's lending practices and portfolio risk.
4. Related party transactions	Benchmark 4 addresses the risks associated with related party lending, investments and transactions.
5. Valuation policy	Benchmark 5 addresses the responsible entity's approach to valuing property over which the scheme holds security.
6. Lending principles—loan-to-valuation ratios	Benchmark 6 addresses the lending practices of the scheme.
7. Distribution practices	Benchmark 7 addresses the transparency of the scheme's distribution practices.
8. Withdrawal arrangements	Benchmark 8 addresses the transparency of the responsible entity's approach to withdrawals of investments.

Our review of disclosure to investors

6 From October 2008 to November 2008, we engaged with responsible entities of unlisted mortgage schemes to assist them to implement the benchmark disclosure in line with ASIC's implementation timetable. The responsible entities of 49 schemes (34.5% of the schemes to which RG 45 applied) took the opportunity to receive comments on their draft benchmark disclosure.

7 From 30 November 2008 to 31 January 2009, we reviewed the PDSs and other disclosure by responsible entities in the unlisted mortgage scheme sector to check that disclosure against the benchmarks was adequately made to retail investors on an 'if not, why not' basis.

8 We identified that the responsible entities for 142 schemes were required to provide disclosure addressing the benchmarks in RG 45. The responsible entities for 124 schemes (87%) provided benchmark disclosure and the remaining 18 schemes (13%) did not provide any benchmark disclosure.

9 We reviewed the disclosures provided by the responsible entities for the 124 schemes and found there was a high level of inconsistent disclosure against Benchmark 8. The responsible entities adopted different interpretations of what constitutes a 'right to withdraw', particularly in relation to frozen schemes and contributory mortgage schemes. Excluding this benchmark, we

found that the responsible entities for 47 out of the 124 schemes disclosed against the remaining seven benchmarks on an 'if not, why not' basis, including 26 schemes which met all seven benchmarks. The remaining 77 schemes disclosed against some of the seven benchmarks on an 'if not, why not' basis.

10 Out of these 77 responsible entities, some explained why the benchmark was not met. Explanations were provided for Benchmarks 1 (7%), 5 (19%) and 6 (12%). For the other benchmarks, there were no explanations as to why the benchmarks were not met.

11 The two main reasons why the 77 schemes were assessed as not providing disclosure on an 'if not, why not' basis for all the benchmarks were:

(a) Responsible entities did not address all the requirements of the benchmark. RG 45.88 states that if a benchmark contains multiple requirements and a responsible entity cannot meet all requirements, it should state that it does not meet the benchmark and clearly explain why it failed to meet particular requirements.

(b) Responsible entities that did not meet a benchmark did not explain 'why not'. Failure to meet one or more of the benchmarks does not necessarily mean that a particular mortgage scheme is a poor investment. However, additional disclosure to investors is required to address that benchmark, by explaining why the benchmark is not met, so that investors can assess its impact on their investment decision.

12 Overall, we found that out of the 124 schemes that disclosed against the benchmarks:

(a) A high proportion of responsible entities met Benchmarks 2 (77%) and 7 (75%). The reason for the higher level of compliance (as compared to the other benchmarks) is that the majority of schemes did not have borrowings (90%) and schemes largely sourced distributions from income (76%).

(b) There was a low level of compliance with the liquidity practices set out in Benchmark 1 (44%).

(c) Compliance with the portfolio diversification benchmark was low (42%), largely because responsible entities did not disclose against every element of the benchmark.

(d) A large number of responsible entities did not provide a clear statement as to whether a benchmark was met or not. For example, a small number of responsible entities stated that the benchmark was 'partially met', which does not promote comparable disclosure for mortgage schemes.

(e) There was inconsistency in how feeder funds addressed the benchmarks at the feeder fund level.

13 In RG 45, we outlined a proposal to issue a report on the results of the benchmark approach to disclosure. Since the publication of RG 45, the mortgage scheme sector has experienced significant and rapid change, including a reassessment of the fundamental risk factors in the sector.

14 We consider that a report on past disclosures made in a fundamentally changed sector would not serve the purpose that was originally envisaged, and that it would be more appropriate to consult with industry on proposals to strengthen the benchmarks.

Our proposals to improve disclosure

15 Since our first review, we have continued to review the PDSs and other disclosure provided by responsible entities of unlisted mortgage schemes. Our reviews have highlighted a need to refine the existing benchmarks in RG 45 and provide further guidance on how responsible entities should comply with the policy.

16 The unexpected impact of the global financial crisis on investors' liquidity, and resulting hardship for some investors, has also highlighted a need to refine the existing benchmarks to address specific features of a mortgage scheme that will make it easier for investors to understand and decide whether to invest in these schemes.

17 In circumstances where funds received from new investors and the proceeds from realised assets exceed withdrawal requests, responsible entities are often able to manage cash flows to provide investors with short-term liquidity. However, in circumstances where withdrawal requests exceed available cash and the proceeds from realised assets, and there is a weak (or no) market for the sale of mortgage loans, short-term liquidity is unsustainable because the scheme's mortgage loans cannot be realised.

18 Most pooled mortgage schemes froze redemptions in or around October 2008. This followed, among other things, a substantial increase in the number of redemption requests received in circumstances where the responsible entity could not realise sufficient assets to satisfy the requests within the time set out in the scheme's constitution for redemption payments. A significant number of open-ended pooled mortgage schemes remain frozen (illiquid), with a number of these (representing an estimated $21 billion) seeking to return some capital to certain members in exceptional circumstances (hardship relief). Some frozen schemes have implemented regular withdrawal offers to allow investors to partially withdraw their money monthly, quarterly or annually.

19 We propose to:

(a) revise the benchmarks to improve their effectiveness by:

(i) creating benchmarks that require disclosure to address certain risks associated with mortgage schemes (see Section B); and

(ii) specifying, as a separate requirement, the additional information responsible entities should provide in relation to each benchmark (see Section B);

(b) provide additional guidance on compliance with the 'if not, why not' benchmarks (see Section C); and

(c) clarify what disclosures are required from feeder funds (see Section D).

20 The proposals are intended to ensure that retail investors receive better information, so that they may compare similar products, and identify and more easily understand key features of an investment in an unlisted mortgage scheme. The revised benchmarks target issues and risks identified in this sector since RG 45 was first published to better address the investor protection issues that the benchmarks were designed for.

21 The revised benchmarks will be based on the existing 'if not, why not' disclosure model in RG 45. Responsible entities of unlisted mortgage schemes should disclose whether or not they meet each benchmark and if not, explain why they do not meet the benchmark. For each benchmark, there are additional matters that should be disclosed to help investors make more informed investment decisions.

22 To promote comparable disclosure, we have simplified the benchmarks where necessary, and separated the disclosure requirements from the benchmark requirement. The disclosures under each benchmark relate to matters that in any event must be disclosed under s1013D–1013E of the Corporations Act.

B Proposed amendments to RG 45

Key points

We propose strengthening the existing benchmarks in RG 45 as a result of our findings on their effectiveness.

The purpose of the revised benchmarks is to improve the consistency and quality of disclosure by responsible entities of unlisted mortgage schemes and to enhance investor confidence.

Benchmark 1: Liquidity

Proposal

B1 We propose amending Benchmark 1 to extend the period for estimating cash flow and cash needs from 3 months to 12 months and to require disclosure of additional information to investors about a scheme's capacity to meet its cash needs. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 2 on an 'if not, why not' basis; and

(b) make the additional disclosures listed in paragraph 23.

Your feedback

B1Q1 Do you agree that the proposed 12 months is an appropriate timeframe to forecast a scheme's capacity to meet expenses and cash flow needs? If not, please provide reasons and what you consider to be an appropriate timeframe.

B1Q2 Is there a more relevant or useful measure that we should consider to assess a scheme's capacity to meet its expenses and other cash flow requirements? If so, please explain why.

B1Q3 Do you consider that the proposed extension to 12 months will result in significant costs and changes to how a responsible entity operates a scheme? If so, please provide details of the likely costs and changes involved.

Table 2: Benchmark 1: Liquidity

Benchmark	'If not, why not' explanation
The responsible entity has cash flow estimates for the scheme demonstrating the scheme's capacity to meets its expenses and other cash flow needs for the next 12 months.	If the benchmark is not met, explain why not.

Note 1: In estimating cash flows, a responsible entity can take into account a reasonable estimate of investor inflows and outflows based on previous experience. Withdrawals should be determined with reference to the period within which investors would reasonably expect withdrawal requests to be processed, rather than the maximum period within which the responsible entity is able to process withdrawal requests.

Note 2: 'Cash' and 'cash equivalents' have the same meaning as in Australian Accounting Standard AASB 107 *Statement of cash flows* (AASB 107). Paragraph 6 of AASB 107 defines 'cash' as 'cash on hand and demand deposits' and 'cash equivalents' as short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value. However, for the purposes of the benchmark, a responsible entity cannot take into account undrawn amounts from bank overdraft or lending facilities.

Note 3: In Consultation Paper 140 *Responsible entities: Financial requirements*, we propose that responsible entities prepare rolling 12-month forecasts for their own cash flow. The proposal in this benchmark regarding the 12 month cash flow forecasts for unlisted mortgage schemes, is consistent with that proposal and together, they provide investors and directors with a better understanding of the capacity of the responsible entity and the scheme to meet their respective expenses and other cash flow needs.

Disclosure

23 In addition to addressing the benchmark in Table 2, the responsible entity should disclose information about:

(a) the current and future prospects of liquidity of the scheme;

(b) any significant risk factors that may impact on the liquidity of the scheme; and

(c) the policy of the scheme on balancing the maturity of its assets and the maturity of its liabilities.

Rationale

24 The global financial crisis has highlighted the importance of liquidity management. Mortgage schemes have faced significant challenges in managing their liquidity. This was evident in the wide-scale suspension of redemptions in the mortgage scheme sector when schemes with limited liquidity experienced an increased investor demand for redemptions.

25 A cash flow forecast is a key tool to measure the ability of the responsible entity of a scheme to meet its short-term commitments. For mortgage schemes, we are particularly concerned with the alignment of investor expectations regarding liquidity and the capacity of the scheme's assets to be realised to meet those expectations.

26 The proposed revised benchmark is designed to improve the comparability and consistency of disclosure on the scheme's liquidity profile and enable investors to better understand the scheme's ability to meet, for example, withdrawal requests.

27 Extending the period of estimation for cash flow estimates and cash needs to 12 months should provide a better indicator of a scheme's capacity to address expected cash requirements.

28 As the benchmark requires an estimate for 12 months, the forecast should be updated on a monthly basis.

Benchmark 2: Scheme borrowing

Proposal

B2 We propose amending Benchmark 2 to provide that a responsible entity of an unlisted mortgage scheme meets the benchmark in Table 3 if the scheme does not have any borrowings. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 3 on an 'if not, why not' basis; and

(b) make the additional disclosures listed in paragraph 29.

Your feedback

B2Q1 Do you agree with the proposed benchmark? If not, please explain why.

Table 3: Benchmark 2: Scheme borrowing

Disclosure benchmark	'If not, why not' explanation
The responsible entity does not borrow on behalf of the scheme.	If the benchmark is not met, explain why not.

Disclosure

29 If the scheme has borrowings, the responsible entity should disclose:

(a) for borrowings due in less than 2 years—the total debts due and their maturity profile, undrawn credit facility and whether refinancing or sale of assets is likely during this period;

Note: The responsible entity should make appropriate disclosure about the prospects of refinancing or possible alternative actions (e.g. sale of assets or equity fundraising). If the responsible entity has no reasonable grounds for commenting on the prospect of refinancing or possible alternative actions, then it should state this and explain why to investors: see Regulatory Guide 170 *Prospective financial information* (RG 170) at RG 170.91.

(b) for borrowings due in 2–5 years—the total debts due and their maturity profile for each 12-month period and undrawn credit facility;

(c) for borrowings due after 5 years—the total debts due;

(d) why the responsible entity has borrowed the money;

(e) any loan covenant breaches;

Note: A responsible entity should disclose any information about breaches of loan covenants that is reasonably required by investors and update investors about the status of any breaches through ongoing disclosure. Responsible entities should be aware that, in certain cases, investors would reasonably require information on likely breaches of loan covenants (e.g. if the responsible entity has approached the lender about a likely breach and been informed that the loan is likely to be terminated if the breach occurs).

(f) the fact that amounts owing to lenders and other creditors of the scheme rank before an investor's interests in the scheme; and

(g) the risks associated with the scheme's borrowing and credit facility maturity profile.

Note: A responsible entity should explain any risks associated with its borrowing and credit facility maturity profile, including whether borrowings have been hedged and, if so, to what extent.

Rationale

30 The global financial crisis highlighted the risk associated with schemes that have borrowings, particularly where the borrowings are due to mature within a short timeframe and there is a lack of alternative sources of finance. It is important that investors understand the risks associated with borrowings and are able to distinguish between schemes which borrow and those that do not.

31 We found that most responsible entities attempted to address this benchmark on an 'if not, why not' basis. However, not all responsible entities adopted the same approach in disclosing against the elements of the benchmark. For example, some responsible entities that had borrowings did not disclose against each of the elements of the benchmark. Also, regardless of whether or not a scheme had borrowings, responsible entities were required to state whether or not the benchmark was met, but this was not always clearly stated.

32 We think that the revised benchmark more directly addresses the scheme's borrowing structure and will help produce more consistent and clear disclosure. This will allow investors to easily compare risks across different unlisted mortgage schemes and make better informed decisions about their investments.

Benchmark 3: Loan portfolio and diversification

Proposal

B3 We propose amending Benchmark 3 to address the features of an appropriately diversified portfolio. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 4 on an 'if not, why not' basis; and

(b) make the additional disclosures listed in paragraphs 33–35.

Your feedback

B3Q1 Do you think that there are more appropriate ways a scheme's loan portfolio can be diversified other than in the manner set out in the benchmark? If so, please explain why.

B3Q2 Do you think that the threshold of 10% of the total scheme assets is an appropriate indicator of concentration of risk? If not, what do you consider to be an appropriate threshold and why?

B3Q3 Do you think this benchmark is effective for feeder funds? If not, please explain why.

B3Q4 Do you think the additional disclosures are appropriate for contributory mortgage schemes? If not, please explain why.

Table 4: Benchmark 3: Loan portfolio and diversification

Benchmark	'If not, why not' explanation
The scheme (other than a contributory mortgage scheme): • holds a portfolio of assets diversified by size, borrower, class of borrower activity and geographic region; • has no single asset in the scheme portfolio that exceeds 10% of the total scheme assets; and • has no single borrower who exceeds 10% of the scheme assets.	If the benchmark is not met, explain why not.
All loans made by the scheme are secured by first mortgages over real property.	If the benchmark is not met, explain why not.

Disclosure

33 In addition to addressing the benchmark in Table 4, the responsible entity of an unlisted mortgage scheme should disclose the nature of the scheme's investment portfolio, including:

(a) by number and value:

(i) loans by class of activity (e.g. development projects, industrial, commercial, retail, residential, specialised property, reverse mortgages);

(ii) loans by geographic region;

(iii) what proportion of loans are in default or arrears;

Note: A responsible entity should disclose, by number and value, the proportion of loans that are in both default and arrears if these terms have different meanings in the scheme's lending policy.

(iv) the nature of the security for loans made by the scheme (e.g. first or second ranking);

(v) loans that have been approved but have funds that have yet to be advanced and the funding arrangements in place for any of these undrawn loan commitments;

(vi) the maturity profile of all loans in increments of not more than 12 months;

(vii) loan-to-valuation ratios (LVRs) for loans, in percentage ranges;

(viii) interest rates on loans, in percentage ranges; and

(ix) loans where interest has been capitalised;

(b) the proportion of the total loan money that has been lent to the largest borrower and the 10 largest borrowers;

Note: We acknowledge that, for reasons of privacy or commercial confidence, it may not be appropriate to name the largest borrowers. The total loan money lent to the 10 largest borrowers can be disclosed as an aggregated amount.

(c) the use of derivatives (if any);

(d) a clear description of the non-loan assets of the scheme, including the value of such assets; and

(e) the scheme's diversification policy and how the assets correlate with that policy.

34 The responsible entity must disclose their policy on the above matters and on how the scheme will lend funds generally. For example, disclosure should cover:

(a) the maximum loan amount for any one borrower;

(b) the method of assessing borrowers' capacity to service loans;

(c) the responsible entity's policy on revaluing security properties when a loan is rolled over; and

(d) the responsible entity's approach to taking security on lending by the scheme (e.g. what types of security they take and in what circumstances, and whether the security must be income producing).

35 If an unlisted pooled mortgage scheme invests in, or may invest in, other unlisted mortgage schemes (whether registered or unregistered), the responsible entity must disclose their policy on investing in those schemes, including the extent to which the responsible entity requires those schemes to satisfy the benchmarks in RG 45 (see Section D).

Rationale

36 The primary assets of a mortgage scheme are the loans it makes to others. We consider the revised benchmark sets out features of an appropriately diversified portfolio. The inclusion of these requirements in the benchmark is also designed to improve the comparability and consistency of disclosure in the mortgage sector. The additional disclosures will enable investors to better understand the scheme's approach to diversification of its loan portfolio and the degree of concentration of risk.

37 We consider the proposed revisions to the benchmark will enhance an investor's understanding of the loans and the risk that an adverse event affecting one borrower or one type of loan will have on the majority of borrowers and the scheme's overall portfolio.

Benchmark 4: Related party transactions

Proposal

B4 We propose amending Benchmark 4 to address related party loan transactions and to require disclosure of how the responsible entity complies with relevant legislative provisions for all related party transactions. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 5 on an 'if not, why not' basis; and

(b) make the additional disclosures listed in paragraph 38.

Your feedback

B4Q1 Do you agree with our proposal that responsible entities should explain whether the scheme has related party loans? If not, please explain why.

B4Q2 Do you agree with this proposal? If not, please explain why and what level of disclosure you think is appropriate.

B4Q3 Should the proposed disclosure be confined to only some arrangements with related parties? If so, which arrangements should it apply to and why?

B4Q4 Do you anticipate any difficulties in providing the additional disclosures? Please explain.

B4Q5 Do you think there are more effective ways of addressing the risks associated with related party loans and other transactions? If so, please explain why.

Table 5: Benchmark 4: Related party transactions

Benchmark	'If not, why not' explanation
The responsible entity does not lend to related parties of the responsible entity or its directors.	If the benchmark is not met, explain why not.

Disclosure

38 If the responsible entity enters into related party transactions, the responsible entity should disclose its approach to these transactions, including:

(a) details of any transactions, including loans, investments and other transactions the responsible entity has made to, or with, any related party (including the value of the financial benefit, related parties and terms of the transaction);

(b) the nature of the relationship;

Note: The identity of the related party and the nature of the arrangements between the parties, in addition to how the parties are related for the purposes of the Corporations Act, should be disclosed. For group structures, the nature of these relationships should be disclosed for all group entities and related parties involved in each transaction.

(c) the responsible entity's policy on related party transactions (including the assessment and approval process for related party lending and arrangements to manage conflicts of interest) and how compliance with the processes and arrangements are monitored to ensure the policy is complied with;

(d) whether the arrangement is on arm's length terms, is reasonable remuneration or some other Ch 2E exception applies; and

(e) whether member approval for the transaction was sought and if so, when.

Note: The term 'related party' is defined in s228 (as applied to the scheme by Pt 5C.7) and includes the responsible entity.

Rationale

39 Our review found that most responsible entities disclosed details of related party loans. The benchmark applies to lending transactions only as we found that this was the most common type of related party transaction affecting mortgage schemes.

40 We found that the disclosure of related party transactions that did not involve lending was deficient, as it appears some responsible entities

misunderstood that the benchmark only applied to related party loan transactions. Examples of services provided by related parties include investment management and mortgage and legal services. In some cases, the disclosures under this benchmark did not cover these types of related party transactions. We propose that while the benchmark will be confined to lending transactions, the additional disclosures will remain relevant to all types of related party transactions.

41 We found that not all responsible entities disclosed the value of the financial benefit provided under related party transactions. This makes comparison of the risks across different unlisted mortgage schemes difficult. Overall, there was generally poor disclosure of the responsible entity's policy on related party transactions, and how such transactions are assessed and monitored.

42 The amendments are aimed at improving disclosure so that investors may better assess whether the transaction is made with the same rigour and independence as transactions made on an arm's length commercial basis.

Benchmark 5: Valuation policy

Proposal

B5 We propose amending Benchmark 5 to clarify our expectations on the approach that responsible entities should take to valuations. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 6 on an 'if not, why not' basis; and

(b) make the additional disclosures listed in paragraph 43.

Your feedback

B5Q1 Is there any other relevant or useful information that the valuation policy should address? If so, please explain why.

B5Q2 Will there be any practical difficulties in requiring valuers to confirm the basis of the valuation as set out in the benchmark? If so, please explain why.

B5Q3 Do you consider it is appropriate for an external valuation to be obtained when the property decreases in value such that it is likely to have caused a breach of loan covenant? If not, please explain why.

B5Q4 Will this proposal result in significant changes to the way a responsible entity operates a scheme and additional costs? If so, please provide details of the steps involved in implementing the measures and the likely costs?

B5Q5 Do you think this benchmark is effective for feeder funds? If not, please explain why.

Table 6: Benchmark 5: Valuation policy

Benchmark	'If not, why not' explanation
The board of the responsible entity appoints valuers in accordance with the valuation policy of the responsible entity.	If the benchmark is not met, explain why not.
The valuation policy of the responsible entity requires: • a valuer to be a member of an appropriate professional body in the jurisdiction in which the relevant property is located; • a valuer to be independent; • procedures to be followed for dealing with any conflict of interest; • rotation and diversity of valuers; • in relation to security property for a loan, an independent valuation to be obtained: – prior to the issue of a loan: o for development property, on both an 'as is' and 'as if complete' basis; and o for all other property, on an 'as is' basis; and – within a month after there is a decrease in the value of the security property, if the decrease is likely to have caused a breach of loan covenant.	If the benchmark is not met, explain why not.

Disclosure

43 In addition to addressing the benchmark in Table 6, the responsible entity of an unlisted mortgage scheme should disclose where investors may access the scheme's valuation policy—for example, by disclosing that the policy is available on a relevant website. Any material inconsistencies between any current valuation over security property and the scheme's valuation policy should also be disclosed. For a contributory mortgage scheme, the responsible entity only needs to provide an investor with information about the valuation of the property securing a loan in which the investor has, or is being offered, an interest.

Rationale

44 The proposed revised benchmark aims to clarify our expectations on the approach that responsible entities should take to valuations. In particular, the benchmark refers to a valuation policy that states that responsible entities must obtain a subsequent external valuation if there is a decrease in the value

of the secured property which is likely to have caused a breach of loan covenant.

45 It is important that up-to-date valuations are obtained for properties over which responsible entities are to take security. Existing properties and the scheme's loan assets should also be valued at relevant times to ensure that the mortgages held in the scheme are appropriately valued. Such valuations should be undertaken by suitably qualified independent experts.

46 We consider that the revised benchmarks provide clearer guidance on specific aspects of a scheme's valuation policy, so that investors may better assess the reliability of the valuations. In particular, the disclosures on the appointment and rotation of valuers, the standards applying to the preparation of the valuation, the independence of valuers, the frequency of valuations, any conflicts and the instructions upon which the valuations are undertaken have been identified as areas where the benchmark disclosure needs to be strengthened.

Benchmark 6: Lending principles—Loan-to-valuation ratios

Proposal

B6 We propose amending Benchmark 6 to address the risk exposure associated with property-related loans and loans relating to property development. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 7 on an 'if not, why not' basis; and

(b) make the additional disclosures listed in paragraph 47.

Your feedback

B6Q1 Do you think that the proposed LVR of 70% for both non-development and development properties is an appropriate indicator of how conservative or aggressive a scheme's lending practices are? If not, please explain what you consider to be an appropriate ratio and why.

B6Q2 Do you think that the 'as is' valuation is appropriate for both non-development and development properties? If not, please explain the valuation method which you consider appropriate and why.

B6Q3 Do you consider that the proposed guidance will result in significant cost and changes to how a responsible entity operates a scheme? If so, please describe the changes and likely costs involved.

Table 7: Benchmark 6: Lending principles—Loan to valuation ratios

Benchmark	'If not, why not' explanation
If the scheme directly holds mortgage assets, the scheme does not lend more than 70% of the 'as is' value of property over which security is provided.	If the benchmark is not met, explain why not.
If a loan relates to property development, funds are provided to the borrower in stages based on independent evidence of the progress of the development.	If the benchmark is not met, explain why not.

Disclosure

47 In addition to addressing the benchmark in Table 7, the responsible entity of an unlisted mortgage scheme should disclose:

(a) the LVR for the scheme; and

(b) the basis on which funds lent for property development are drawn down.

Rationale

48 A responsible entity's approach to LVRs for a scheme is important information for investors when they are comparing the relative risks and returns of unlisted mortgage schemes. A higher LVR means that the investment is more vulnerable to changing market conditions, such as a downturn in the property market.

49 The global financial crisis, which led to falling asset prices, highlighted the vulnerability of schemes with a higher LVR—especially when the valuations do not meet this benchmark. Our proposed revised benchmark aims to promote disclosure against a common standard to enhance the ability of investors to assess the risks of different unlisted mortgage schemes and make fully informed investment decisions. We consider that disclosure against a single benchmark LVR of 70%, calculated on an 'as is' basis, is a more consistent indicator of the risk exposure associated with property-related loans and for loans relating to property development.

Benchmark 7: Distribution practices

Proposal

B7 We propose amending Benchmark 7 to address the payment and funding of distributions to investors. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 8 on an 'if not, why not' basis; and

(b) make the additional disclosures listed in paragraphs 50–51.

Your feedback

B7Q1 Are the disclosure benchmarks we propose appropriate? If not, please explain why.

B7Q2 Do you think there are more effective ways of addressing the issues relating to sensitivity analysis? Please explain your answer.

Table 8: Benchmark 7: Distribution practices

Benchmark	'If not, why not' explanation
The responsible entity will pay distributions in accordance with the scheme's distribution policy.	If the benchmark is not met, explain why not.

Note: For a contributory mortgage scheme, the responsible entity will meet this benchmark for a particular investor if it discloses the above information to the investor for distributions or returns made or forecast to be made to that investor.

Disclosure

50 In addition to addressing the benchmark in Table 8, if a responsible entity of an unlisted mortgage scheme is making or forecasts making distributions to members, the responsible entity must disclose:

(a) the source of the current distribution (e.g. from income earned in the relevant distribution period, operating cash flow, financing facility, capital, application money);

(b) the source of any forecast distribution;

(c) if the current or forecast distribution is not solely sourced from income received in the relevant distribution period, the reasons for making those distributions and the risks associated with such distributions;

(d) if the current distribution or forecast distribution is sourced other than from income, whether this is sustainable over the next 12 months; and

(e) when the responsible entity will pay distributions and the frequency of payment of distributions.

Note: Any forward-looking statements should comply with s769C and RG 170. If a responsible entity does not have reasonable grounds for disclosing whether current or forecast distributions (from sources other than realised income) are sustainable, it should explain this to investors: see RG 170.91.

51 If the scheme promotes a particular return on investments, the responsible entity must clearly disclose details of the circumstances in which a lower return may be payable, together with details of how that lower return will be

determined. The responsible entity should include a table identifying three to five main factors that would have the most material impact on forecast distributions, the risks of changes to those factors on distributions and a sensitivity analysis based on changes to those factors. It must also explain how any excess return actually earned by the scheme will be applied.

Rationale

52 It is important for investors to understand how distributions are funded because this is an important indicator of the performance of the scheme. The benchmark has been revised to require responsible entities to address the distribution policy upfront.

53 We consider that if distributions are funded (wholly or in part) from sources other than scheme income for the relevant distribution period, this may indicate that distribution practices are unsustainable over the long term or may be insufficient to meet advertised returns. In these cases, detailed disclosure on the scheme's distribution practices and policies is important so that investors may assess whether the scheme's distribution policy is sustainable.

Benchmark 8: Withdrawal arrangements

Proposal

B8 We propose to revise Benchmark 8 to address the withdrawal arrangements that apply when a scheme is liquid and when it is illiquid. We propose that the responsible entity of an unlisted mortgage scheme must:

(a) disclose whether the scheme meets the benchmark in Table 9 on an 'if not, why not' basis:

(i) if members may withdraw from a liquid scheme in accordance with the constitution of the scheme, the responsible entity should disclose whether the scheme meets the benchmark for liquid schemes; and.

Note: A liquid scheme is defined in s601KA(4) of the Corporations Act.

(ii) if members may withdraw from an illiquid scheme in accordance with s601KB–601KE of the Corporations Act, the responsible entity should disclose whether the scheme meets the benchmark for illiquid schemes; and

(b) make the additional disclosures listed in paragraphs 54–57.

Your feedback

B8Q1 Do you agree that the period of up to 90 days allowed in the constitution for the payment of withdrawal requests for liquid schemes is appropriate? If not, please explain why and the appropriate timeframe.

B8Q2 Do you think it is appropriate that a responsible entity only provides members with withdrawal rights if at least 80% (by value) of the scheme property is of a liquid nature as described in the benchmark? If not, please explain what you consider to be an appropriate test for assets held, including the time that a responsible entity can reasonably expect to realise assets for market value.

B8Q3 Do you think there are other more effective ways in dealing with the mismatch between investors' expectations and the ability of responsible entities to realise mortgage assets to meet redemptions?

B8Q4 Do you think the benchmark adequately takes into account arrangements for contributory mortgage schemes that offer withdrawals?

Table 9: Benchmark 8: Withdrawal arrangements (liquid and illiquid schemes)

Benchmark	'If not, why not' explanation
Liquid schemes	
The period allowed for in the constitution for the payment of withdrawal requests is less than 90 days.	If the benchmark is not met, explain why not.
The responsible entity will pay withdrawal requests within the period allowed for in the constitution.	If the benchmark is not met, explain why not.
The responsible entity only provides members with withdrawal rights if at least 80% (by value) of the scheme property is: • money in an account or on deposit with a bank and is available for withdrawal immediately, or otherwise upon expiry of a fixed term not exceeding 90 days, during the normal business hours of the bank; or • assets that the responsible entity can reasonably expect to realise for market value within 10 business days.	If the benchmark is not met, explain why not.

Benchmark	'If not, why not' explanation
Illiquid schemes	
The responsible entity intends to make withdrawal offers to investors at least quarterly.	If the benchmark is not met, explain why not.

Disclosure

54 In addition to addressing the benchmark in Table 9, the responsible entity of an unlisted mortgage scheme should disclose:

(a) the fund's withdrawal policy and any rights that the responsible entity has to change the policy;

(b) the ability of investors to withdraw from the scheme when it is liquid;

(c) the ability of investors to withdraw from the scheme when the scheme is not liquid;

(d) any significant risk factors or limitations that may impact on the ability of investors to withdraw from the scheme;

(e) how investors can exercise their withdrawal rights, including any conditions on exercise;

(f) the approach to rollovers, including whether the 'default' is that investments in the scheme are automatically rolled over;

(g) if the withdrawals from the scheme are to be funded from an external liquidity facility, the material terms of this facility, including any rights the provider has to suspend or cancel the facility;

(h) the maximum withdrawal period that applies to withdrawal requests when the scheme is liquid;

(i) any rights the responsible entity has to refuse withdrawal requests; and

(j) the policy of the scheme on balancing the maturity of its assets and the maturity of its liabilities (e.g. if a scheme has a policy of ensuring that sufficient assets are held in readily realisable investments to meet future withdrawal requests, the responsible entity should state this in its PDS and report against this in its ongoing disclosures).

55 We propose that if the responsible entity makes representations to investors about their future ability to withdraw, there should be disclosure on:

(a) the grounds (which must be verifiable) for the statement;

(b) supporting assumptions (which must not only be hypothetical) for the statement;

(c) the basis for the statement (which must not be based only on an opinion of the directors of the responsible entity if there are no objective grounds to support that opinion); and

(d) any significant risk factors that mean that withdrawal requests might not be satisfied within the expected period.

56 We propose that if the PDS contains a statement to the effect that, historically, withdrawal requests have been satisfied within a particular period, the responsible entity should ensure the statement clarifies that investors should not conclude that there is such a link if none is intended (such a statement may suggest a link between historic periods and withdrawal periods that are likely to apply in the future).

57 If the scheme promotes a fixed redemption unit price for investments (e.g. $1 per unit), the responsible entity must clearly disclose details of the circumstances in which a lower amount may be payable, details of how that amount will be determined and the impact of a default under the scheme's loan assets on investors (e.g. on investor distributions and the unit price). The responsible entity of a contributory mortgage scheme will meet this benchmark for a particular investor if the responsible entity discloses the above information to the investor as it relates to the investor's ability to withdraw.

Rationale

58 We found that responsible entities adopted inconsistent approaches to disclosure against this benchmark, particularly in relation to frozen schemes and contributory mortgage schemes. We consider it necessary to clarify our expectations so that it is clear that responsible entities must provide benchmark disclosure to address the withdrawal arrangements that apply both when a scheme is liquid and illiquid. This includes if a scheme is expected to operate as a liquid or illiquid scheme in the future.

C Disclosure against the benchmarks: 'If not, why not'

Key points

A consistent approach should be adopted for disclosures against the benchmarks on an 'if not, why not' basis.

Improving compliance with benchmark disclosure

Proposal

C1 We propose to amend RG 45 to clarify:

(a) that responsible entities of unlisted mortgage schemes should adopt terminology consistent with the 'if not, why not' methodology explained in RG 45.6; and

(b) our expectation that benchmark disclosure requires a clear statement that the relevant benchmark is met or not met. If the benchmark is not met, the benchmark should be disclosed as not being met with an explanation as to why the benchmark is not met.

Your feedback

C1Q1 Do you agree with this proposal? If not, please explain why.

Rationale

59 The purpose of the benchmark disclosure is to achieve consistent and clear disclosure to enable investors to assess a scheme and more easily compare it with other unlisted mortgage schemes. We found that there was some confusion about how disclosures should be made against the benchmarks. This gave rise to the following issues:

(a) responsible entities stating that a benchmark was met on a partial basis;

(b) a lack of explanation as to why a benchmark was not fully met; and

(c) some elements of a benchmark not being addressed in the disclosure.

60 When disclosure against the benchmark is required on an 'if not, why not' basis, the disclosure should be on the basis that the benchmark is either 'met' or 'not met' (i.e. a benchmark that is not fully met is considered 'not met'). We consider that responsible entities should provide a clear statement as to whether the benchmark is met or not. Further, each individual element of a benchmark and the required disclosure should be addressed (i.e. it is not usually sufficient to explain in general terms why a benchmark has not been met or to address only some aspects of a benchmark).

D Feeder funds

Key points

Feeder funds must disclose against the benchmarks in RG 45.

Applying the benchmarks at the feeder fund level

Proposal

D1 We propose to revise RG 45 to ensure that:

(a) investors in a feeder fund (a scheme that invests all or most of its assets in other unlisted mortgage schemes) receive disclosure of how the benchmarks apply at the feeder fund level; and

(b) where the disclosure will be the same for the feeder fund and the underlying fund(s), the responsible entity of the feeder fund incorporates by reference the disclosure for the underlying fund(s).

Your feedback

D1Q1 Do you agree that feeder funds should provide separate disclosure? If not, what alternative approach do you think would be effective for feeder funds to provide benchmark disclosure to their investors?

D1Q2 What information do you think is useful to investors at a feeder fund level?

D1Q3 Will this proposal cause any practical difficulties? If so, please provide details.

61 We consider that it is important that feeder funds provide disclosure for the fund because the risks associated with investing in the feeder fund may differ from the underlying fund(s), even if the underlying unlisted mortgage fund in which the feeder fund invests has already provided the benchmark disclosure.

62 We expect that a feeder fund would take into account information about the underlying fund(s) it plans to invest in when making a decision to invest in the fund(s). Accordingly, the feeder fund should have information regarding the underlying fund(s) in which it has a material investment and which is pertinent to the disclosure benchmarks.

E Regulatory and financial impact

63 In developing the proposals in this paper, we have carefully considered their regulatory and financial impact. On the information currently available to us we think they will strike an appropriate balance between:

(a) ensuring that retail investors have appropriate information to make investment decisions in relation to interests in unlisted mortgage schemes; and

(b) not unduly interfering with the market and flexibility of the public fundraising process.

64 Before settling on a final policy, we will comply with the Australian Government's regulatory impact analysis (RIA) requirements by:

(a) considering all feasible options, including examining the likely impacts of the range of alternative options which could meet our policy objectives;

(b) if regulatory options are under consideration, notifying the Office of Best Practice Regulation (OBPR); and

(c) if our proposed option has more than minor or machinery impact on business or the not-for-profit sector, preparing a Regulation Impact Statement (RIS).

65 All RISs are submitted to the OBPR for approval before we make any final decision. Without an approved RIS, ASIC is unable to give relief or make any other form of regulation, including issuing a regulatory guide that contains regulation.

66 To ensure that we are in a position to properly complete any required RIS, we ask you to provide us with as much information as you can about:

(a) the likely compliance costs;

(b) the likely effect on competition; and

(c) other impacts, costs and benefits,

of our proposals or any alternative approaches: see 'The consultation process' p. 4.

Key terms

Term	Meaning in this document
AASB 107 (for example)	Australian accounting standard made for the purposes of s296(1) of the Corporations Act (in this example numbered 107)
ASIC	Australian Securities and Investments Commission
'as if complete' valuation	An estimate of the market value of a property, assuming certain specified improvements are made
'as is' valuation	An estimate of the market value of a property in its current state (i.e. without any further improvements)
benchmark disclosure information	A statement for each benchmark that the scheme either: • meets the benchmark; or • does not meet the benchmark *and* an explanation of how and why the responsible entity deals with the business factors or issues underlying the benchmark in another way
cash or cash equivalents	Has the same meaning as in Australian Accounting Standard AASB 107 *Statement of cash flows*: see Note 2 to RG 45.38
Ch 2E (for example)	A chapter of the Corporations Act (in this example, numbered 2E)
contributory mortgage scheme	A mortgage scheme under which an investor invests in a single mortgage loan through: • a general authority, where the investor receives a summary after the application is approved followed by a cooling-off period; or • a specific authority where the investor receives a supplementary PDS before investing
Corporations Act	*Corporations Act 2001*, including regulations made for the purposes of that Act
feeder fund	A scheme that invests all or most of its assets in other unlisted mortgage schemes
liquidity	For the purposes of Benchmark 1, the proportion of cash or cash equivalents in a scheme's assets Note: 'Liquidity' for the purposes of this benchmark is not the same as 'liquidity' for the purposes of Pt 5C.5 (which relates to satisfying a statutory test).
LVR	loan-to-valuation ratio
mortgage loan	A loan secured by a mortgage over real property (including residential, commercial, industrial or retail property, or vacant land)

Term	Meaning in this document
mortgage scheme	A managed investment scheme that has or that is likely to have at least 50% of its non-cash assets invested in mortgage loans and/or unlisted mortgage schemes Note: This definition includes contributory mortgage schemes.
PDS	A Product Disclosure Statement, which is a document that must be given to a retail client in relation to the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act Note: See s761A for the exact definition.
RG 45 (for example)	An ASIC regulatory guide (in this example numbered 45)
related party	Has the meaning given to that term in s228 of the Corporations Act (as applied to a scheme by Pt 5C.7) and includes the responsible entity
retail client	A client as defined in s761G of the Corporations Act and Ch 7, Pt 7.1, Div 2 of the Corporations Regulations 2001
s601KB (for example)	A section of the Corporations Act (in this example, number 601KB)

© Australian Securities and Investments Commission October 2010

List of proposals and questions

Proposal	Your feedback
B1 We propose amending Benchmark 1 to extend the period for estimating cash flow and cash needs from 3 months to 12 months and to require disclosure of additional information to investors about a scheme's capacity to meet its cash needs. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 2 on an 'if not, why not' basis; and (b) make the additional disclosures listed in paragraph 23.	B1Q1 Do you agree that the proposed 12 months is an appropriate timeframe to forecast a scheme's capacity to meet expenses and cash flow needs? If not, please provide reasons and what you consider to be an appropriate timeframe. B1Q2 Is there a more relevant or useful measure that we should consider to assess a scheme's capacity to meet its expenses and other cash flow requirements? If so, please explain why. B1Q3 Do you consider that the proposed extension to 12 months will result in significant costs and changes to how a responsible entity operates a scheme? If so, please provide details of the likely costs and changes involved.
B2 We propose amending Benchmark 2 to provide that a responsible entity of an unlisted mortgage scheme meets the benchmark in Table 3 if the scheme does not have any borrowings. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 3 on an 'if not, why not' basis; and (b) make the additional disclosures listed in paragraph 29.	B2Q1 Do you agree with the proposed benchmark? If not, please explain why.
B3 We propose amending Benchmark 3 to address the features of an appropriately diversified portfolio. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 4 on an 'if not, why not' basis; and (b) make the additional disclosures listed in paragraphs 33–35.	B3Q1 Do you think that there are more appropriate ways a scheme's loan portfolio can be diversified other than in the manner set out in the benchmark? If so, please explain why. B3Q2 Do you think that the threshold of 10% of the total scheme assets is an appropriate indicator of concentration of risk? If not, what do you consider to be an appropriate threshold and why? B3Q3 Do you think this benchmark is effective for feeder funds? If not, please explain why. B3Q4 Do you think the additional disclosures are appropriate for contributory mortgage schemes? If not, please explain why.

Proposal	Your feedback
B4 We propose amending Benchmark 4 to address related party loan transactions and to require disclosure of how the responsible entity complies with relevant legislative provisions for all related party transactions. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 5 on an 'if not, why not' basis; and (b) make the additional disclosures listed in paragraph 38.	B4Q1 Do you agree with our proposal that responsible entities should explain whether the scheme has related party loans? If not, please explain why. B4Q2 Do you agree with this proposal? If not, please explain why and what level of disclosure you think is appropriate. B4Q3 Should the proposed disclosure be confined to only some arrangements with related parties? If so, which arrangements should it apply to and why? B4Q4 Do you anticipate any difficulties in providing the additional disclosures? Please explain. B4Q5 Do you think there are more effective ways of addressing the risks associated with related party loans and other transactions? If so, please explain why.
B5 We propose amending Benchmark 5 to clarify our expectations on the approach that responsible entities should take to valuations. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 6 on an 'if not, why not' basis; and (b) make the additional disclosures listed in paragraph 43.	B5Q1 Is there any other relevant or useful information that the valuation policy should address? If so, please explain why. B5Q2 Will there be any practical difficulties in requiring valuers to confirm the basis of the valuation as set out in the benchmark? If so, please explain why. B5Q3 Do you consider it is appropriate for an external valuation to be obtained when the property decreases in value such that it is likely to have caused a breach of loan covenant? If not, please explain why. B5Q4 Will this proposal result in significant changes to the way a responsible entity operates a scheme and additional costs? If so, please provide details of the steps involved in implementing the measures and the likely costs? B5Q5 Do you think this benchmark is effective for feeder funds? If not, please explain why.

Proposal	Your feedback
B6 We propose amending Benchmark 6 to address the risk exposure associated with property-related loans and loans relating to property development. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 7 on an 'if not, why not' basis; and (b) make the additional disclosures listed in paragraph 47.	B6Q1 Do you think that the proposed LVR of 70% for both non-development and development properties is an appropriate indicator of how conservative or aggressive a scheme's lending practices are? If not, please explain what you consider to be an appropriate ratio and why. B6Q2 Do you think that the 'as is' valuation is appropriate for both non-development and development properties? If not, please explain the valuation method which you consider appropriate and why. B6Q3 Do you consider that the proposed guidance will result in significant cost and changes to how a responsible entity operates a scheme? If so, please describe the changes and likely costs involved.
B7 We propose amending Benchmark 7 to address the payment and funding of distributions to investors. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 8 on an 'if not, why not' basis; and (b) make the additional disclosures listed in paragraphs 50–51.	B7Q1 Are the disclosure benchmarks we propose appropriate? If not, please explain why. B7Q2 Do you think there are more effective ways of addressing the issues relating to sensitivity analysis? Please explain your answer.

Proposal	Your feedback
B8 We propose to revise Benchmark 8 to address the withdrawal arrangements that apply when a scheme is liquid and when it is illiquid. We propose that the responsible entity of an unlisted mortgage scheme must: (a) disclose whether the scheme meets the benchmark in Table 9 on an 'if not, why not' basis: (i) if members may withdraw from a liquid scheme in accordance with the constitution of the scheme, the responsible entity should disclose whether the scheme meets the benchmark for liquid schemes; and Note: A liquid scheme is defined in s601KA(4) of the Corporations Act. (ii) if members may withdraw from an illiquid scheme in accordance with s601KB–601KE of the Corporations Act, the responsible entity should disclose whether the scheme meets the benchmark for illiquid schemes; and (b) make the additional disclosures listed in paragraphs 54–57.	B8Q1 Do you agree that the period of up to 90 days allowed in the constitution for the payment of withdrawal requests for liquid schemes is appropriate? If not, please explain why and the appropriate timeframe. B8Q2 Do you think it is appropriate that a responsible entity only provides members with withdrawal rights if at least 80% (by value) of the scheme property is of a liquid nature as described in the benchmark? If not, please explain what you consider to be an appropriate test for assets held, including the time that a responsible entity can reasonably expect to realise assets for market value. B8Q3 Do you think there are other more effective ways in dealing with the mismatch between investors' expectations and the ability of responsible entities to realise mortgage assets to meet redemptions? B8Q4 Do you think the benchmark adequately takes into account arrangements for contributory mortgage schemes that offer withdrawals?
C1 We propose to amend RG 45 to clarify: (a) that responsible entities of unlisted mortgage schemes should adopt terminology consistent with the 'if not, why not' methodology explained in RG 45.6; and (b) our expectation that benchmark disclosure requires a clear statement that the relevant benchmark is met or not met. If the benchmark is not met, the benchmark should be disclosed as not being met with an explanation as to why the benchmark is not met.	C1Q1 Do you agree with this proposal? If not, please explain why.

Proposal	Your feedback
D1 We propose to revise RG 45 to ensure that: (a) investors in a feeder fund (a scheme that invests all or most of its assets in other unlisted mortgage schemes) receive disclosure of how the benchmarks apply at the feeder fund level; and (b) where the disclosure will be the same for the feeder fund and the underlying fund(s), the responsible entity of the feeder fund incorporates by reference the disclosure for the underlying fund(s).	D1Q1 Do you agree that feeder funds should provide separate disclosure? If not, what alternative approach do you think would be effective for feeder funds to provide benchmark disclosure to their investors? D1Q2 What information do you think is useful to investors at a feeder fund level? D1Q3 Will this proposal cause any practical difficulties? If so, please provide details.