



ASIC

Australian Securities & Investments Commission

CONSULTATION PAPER 147

Hedge funds: Improving disclosure for retail investors

February 2011

About this paper

This consultation paper seeks your feedback on proposals to improve disclosure by hedge funds.

In seeking to improve disclosure, ASIC aims to ensure that retail investors and their advisers have all the information they need to make an informed investment decision. However, this should not be regarded as an indication that we consider these products to be suitable for all or most 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 24 February 2011 and is based on the Corporations Act as at 24 February 2011.

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.

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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 on the issues presented in this paper will assist us to develop more detailed proposals, including a regulatory guide. We may undertake a second round of consultation on these more detailed proposals in mid-2011.

Your comments will help us develop our policy on disclosure for hedge funds. 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 D, 'Regulatory and financial impact'.

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 21 April 2011 to:

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What will happen next?

An indicative timetable is:

Stage 1	24 February 2011	ASIC consultation paper released
Stage 2	21 April 2011	Comments due on the consultation paper
Stage 3	mid-2011	Second consultation paper released Comments due on second consultation paper
Stage 4	late 2011	Regulatory guide released

A Background to the proposals

Key points

Hedge funds, because of their diverse investment strategies, use of leverage and offshore investments, can pose more diverse and complex risks for investors than traditional managed investment schemes.

We are consulting on introducing disclosure principles and benchmarks for hedge funds which set out the specific characteristics of the fund that we think ought to be addressed in the Product Disclosure Statement (PDS).

The disclosure principles and benchmarks are designed to improve disclosure for retail investors to enable more informed decisions about investing in products of this kind, and to make comparisons between the products and business models of different issuers more straightforward.

In seeking to improve disclosure, we are aiming to ensure that retail investors have all the information they need to make an informed investment decision. However, this should not be regarded as an indication that we consider these products to be suitable for all or most retail investors.

The hedge fund market

Size of the hedge fund market

- 1 A report published by the Australian Trade Commission¹ estimates the size of Australia's hedge funds sector at \$46.8 billion. This comprises:
 - (a) \$32.7 billion managed by Australian hedge fund managers; and
 - (b) \$14.1 billion managed by Australian funds of hedge fund managers.

Note: Due to the lack of a universally accepted definition of hedge fund, these figures may not take into account some funds.

- 2 The report also found that 64% of investors in hedge funds and funds of hedge funds are Australian retail and high-net-worth investors (including self-managed superannuation funds). The remaining investor base comprises Australian institutional investors (25%) and offshore institutional investors (11%).

¹ 'Alternative investments in Australia', Australian Trade Commission, September 2010.

Profile of typical hedge fund retail investors

- 3 We understand that in excess of 48,000 investors invest in hedge funds in Australia, although the exact figure is difficult to determine precisely due to differing uses of terminology.²
- 4 While investors who have received financial advice are currently more likely to have a hedge fund investment than direct investors, the direct investment channel may become more important in the future, with a higher level of latent demand. Current hedge fund investors are more likely to use a financial adviser (58%), while research indicates that those investors who are considering, but not currently invested in, a hedge fund are more likely to invest without advice (57%).³

Disclosure to investors

The role of disclosure

- 5 The disclosure framework in the *Corporations Act 2001* (Corporations Act) requires the responsible entity for a hedge fund to:
- (a) disclose up-front to retail investors all the information they reasonably need to know to make a decision about whether or not to acquire the product;
 - (b) provide ongoing disclosure about material matters to help retail investors monitor whether their expectations are being met; and
 - (c) provide periodic disclosure.
- 6 Our proposed disclosure guidance is not designed to stop or discourage retail investors from taking investment risks, but to help them and their advisers understand the risks involved in any particular investment or type of investment. This enables them to make a more informed decision about whether the potential reward (the return on their investment) warrants the level of risk involved.
- 7 Given the risks for retail investors associated with investing in hedge funds, and that many rely on disclosure material to inform their decisions to invest, we think it is necessary to ensure that disclosure provides retail investors with all the information they need to make an informed investment decision. In some cases, this may include a decision not to invest in these products.

² 'Dec 2009 hedge funds report', *Investment Trends*, October 2010, p. 11.

³ 'Dec 2009 hedge funds report', *Investment Trends*, October 2010, p. 16.

The need for better disclosure to investors

- 8 The proposals in this consultation paper have been prompted by our experience that in some cases inadequate disclosure has contributed to investors not understanding the risks when purchasing a hedge fund product.
- 9 Hedge funds and their managers may invest in many types of securities across diverse markets and in non-mainstream asset classes, may use a wider variety of complex investment techniques than traditional funds, and may borrow money to leverage the funds' investments. Each hedge fund is different, so the Product Disclosure Statement (PDS) is a key mechanism for making sure that the investor understands the investments and strategies the investment manager will be using.
- 10 Inadequate disclosure occurs when the information required to be disclosed under the Corporations Act:
- (a) is not included in the PDS; or
 - (b) is included in the PDS, but it is not clear, concise and effective (e.g. the information is presented in such a dense and complex way that investors are unable to understand the true nature of the investment). This problem can be exacerbated if advertising and other sales practices do not highlight risks and thus give a misleading impression of the product.

International developments

- 11 The International Organization of Securities Commissions (IOSCO), in its 'Hedge funds oversight', Final Report, June 2009 (IOSCO report), and the Joint Forum in its 'Review of the differentiated nature and scope of financial regulation', January 2010 (Joint Forum report), have also made a number of recommendations relating to the regulation of hedge funds generally (not just disclosure).
- 12 IOSCO's recommendations on hedge funds addressed market stability, investor protection and market integrity concerns highlighted by the global financial crisis. IOSCO made a number of targeted recommendations to improve:
- (a) transparency to regulators and investors;
 - (b) operational and risk management standards in the industry; and
 - (c) information sharing and cooperation between regulators.
- 13 Among other matters, the IOSCO report recommended hedge fund managers/advisers be subject to ongoing requirements to make proper disclosure to investors on the risks of investment, the conditions and/or the limits for redemption, the existence and conditions of any side letters and gating structures, and the fund's strategy and performance, including audited financial statements.

- 14 A summary of the key IOSCO and Joint Forum recommendations is set out in Appendix 1. We are considering what other measures may be desirable to adopt in light of these international developments.

B Scope of our proposed guidance

Key points

There are some features that distinguish hedge funds from other managed investment schemes, such as the use of leverage and short selling to seek a return that is uncorrelated to the rise and fall of markets.

We have developed our proposals taking into account characteristics commonly associated with hedge funds and the risks faced by investors as a result of these product characteristics.

What is a hedge fund?

- 15 Although there is no accepted definition of a hedge fund, there are some features that distinguish hedge funds from other managed investment schemes, such as the use of leverage and short selling to seek a positive return for investors in both rising and falling markets. These and other features mean investors in hedge funds can be exposed to more diverse and complex risks than investors in funds pursuing more ‘vanilla’ investment strategies.
- 16 The IOSCO report identifies hedge funds as funds that display a combination of the following characteristics:⁴
- (a) borrowing and leverage restrictions, which are typically included in collective-investment-schemes-related regulation, are not applied, and many (but not all) hedge funds use high levels of leverage;
 - (b) significant performance fees (often in the form of a percentage of profits) are paid to the manager in addition to an annual management fee;
 - (c) investors are typically permitted to redeem their interests periodically (e.g. quarterly, semi-annually or annually);
 - (d) significant ‘own’ funds are often invested by the managers;
 - (e) derivatives are used, often for speculative purposes, and there is an ability to short sell securities; and
 - (f) more diverse risks or complex underlying products are involved.
- 17 A summary of various approaches that other regulators have taken to defining hedge funds is in Appendix 2.

⁴ ‘Hedge funds oversight’, Final Report, IOSCO Technical Committee, June 2009.

- 18 We have drawn on the characteristics identified by IOSCO and other regulators in determining the funds that should apply our proposed disclosure principles and benchmarks.
- 19 We note that the international position on hedge fund regulation (including on appropriate investor disclosure) is still being settled. We will continue to monitor international approaches so that, as far as practicable, Australia's position remains in line with international norms and practices.

Proposal

- B1** We propose that our disclosure principles and benchmarks apply to any registered managed investment scheme that is, or has been promoted as, or is generally regarded as:
- (a) a hedge fund; or
 - (b) a fund of hedge funds.

Your feedback

B1Q1 Do you agree with the proposed coverage of the disclosure guidance?

- B2** In determining whether a particular registered managed investment scheme falls within the scope of Proposal B1, the following factors may be relevant:
- (a) *Strategy*: The fund pursues complex strategies that aim to generate absolute returns, returns with low correlation to equity and bond indices, or a positive return in both rising and falling markets.
 - (b) *Leverage*: The fund often uses leverage to increase investment returns.
 - (c) *Derivatives*: The fund often uses derivatives to create complex investment strategies or for gearing purposes.
 - (d) *Short selling*: The fund often engages in short selling.
 - (e) *Complexity*: The fund often has exposure to diverse risks and complex underlying products.

Your feedback

B2Q1 Does our proposed approach provide a sufficient level of certainty? Are examples illustrating the application of these disclosure principles and benchmarks needed?

B2Q2 What weight should be placed on the factors in Proposal B2 when deciding if a fund is a hedge fund? Why?

B2Q3 Are there additional characteristics that should be included to appropriately capture hedge funds?

Rationale

- 20 With no widely accepted definition of a hedge fund, we have adopted an approach of focusing on funds that are promoted as or likely to be regarded as hedge funds.
- 21 We have also identified some characteristics that may be relevant in identifying hedge funds. The hedge fund sector is non-homogenous—that is, hedge funds can use a wide variety of different strategies and invest in a wide variety of different products. In this context, we are concerned that narrowing the proposed definition may exclude funds that would generally be considered to be hedge funds. We also believe this definition can be consistently applied by us in other contexts if needed (e.g. implementing other IOSCO recommendations on risk management).
- 22 If a fund is uncertain about whether it is, or is likely to be, regarded as a hedge fund, we would expect the fund to comply with the principles and benchmarks to the extent relevant.
- 23 If a scheme could be characterised as a hedge fund but also falls more specifically within a category of schemes covered by other ASIC disclosure guidance, we would expect the scheme to follow that other more specific disclosure guidance. This includes schemes that are subject to any of the following regulatory guides:
- (a) Regulatory Guide 148 *Investor directed portfolio services* (RG 148);
 - (b) Regulatory Guide 45 *Mortgage schemes: Improving disclosure for retail investors* (RG 45);
 - (c) Regulatory Guide 46 *Unlisted property schemes: Improving disclosure for retail investors* (RG 46); and
 - (d) the proposed regulatory guides following Consultation Paper 134 *Infrastructure entities: Improving disclosure for retail investors* (CP 134) and Consultation Paper 133 *Agribusiness managed investment schemes: Improving disclosure for retail investors* (CP 133).

Application of the principles and benchmarks to other entities

- 24 While the proposed principles and benchmarks set out in this paper are primarily directed to PDSs for hedge funds, we consider that there may be other entities and circumstances that pose similar types of risks to investors. As a matter of best practice, we consider that disclosure of information similar to that required by the proposed principles and benchmarks would be useful for these investors. We would encourage issuers to also have regard to any applicable industry standards.

Proposal

- B3** We are considering whether we should encourage issuers to use the principles and benchmarks when providing information to investors in similar situations, such as:
- (a) similar offers to wholesale investors; and
 - (b) offers by listed investment companies that have some of the features of hedge funds.

Your feedback

- B3Q1** Should the proposed disclosure principles and benchmarks be encouraged as best practice for offers to wholesale investors and offers by listed investment companies?

Interaction with the shorter PDS regime

- 25 Some hedge funds may fall under the new shorter PDS regime for simple managed investment schemes established by the Corporations Amendment Regulations 2010 (No. 5). This is because the definition of funds (simple managed investment schemes) that must produce a short PDS is based on whether the fund can realise 80% of its assets at market value within 10 days. This may include funds that would otherwise be considered or marketed as hedge funds—particularly, long/short equity funds that invest in ASX 200 stocks and managed futures funds that invest in exchange-traded futures contracts.
- 26 A hedge fund may fall within the definition of a simple managed investment scheme despite the complexity of its strategy and investment structure, or the nature of its investment exposures or activities.

Proposal

- B4** We are considering whether we should exercise ASIC's powers to exclude any fund that would fall within the proposed scope of our disclosure guidance (as set out at Proposal B1) from the definition of a simple managed investment scheme.

Your feedback

- B4Q1** Do you consider that hedge funds should be excluded from the shorter PDS regime? What compliance costs would be involved for funds affected? How many funds would be affected?
- B4Q2** Alternatively, should our proposed guidance only apply to schemes that are not simple managed investment schemes? Why?

Rationale

- 27 The exclusion of the shorter PDS regime would mean that our proposed disclosure guidance would apply consistently to all hedge funds. However, it could increase compliance costs for those funds that would otherwise be subject to the shorter PDS regime.

C Disclosure principles and benchmarks

Key points

We propose that all issuers of hedge funds should disclose information in the PDS about the following key features and risks of the fund:

- investment strategy (Proposal C2);
- investment manager (Proposal C3);
- fund structure (Proposal C4);
- assets—valuation, location, custody (Proposals C5–C7);
- liquidity (Proposal C8);
- leverage (Proposal C9);
- derivatives (Proposal C10);
- short selling (Proposal C11);
- periodic reporting (Proposals C12–C13); and
- withdrawals (Proposal C14).

The proposed disclosure principles and benchmarks

- 28 We propose that issuers of hedge funds should disclose to investors information on specific key features and risks about the fund. These disclosure requirements consist of a combination of disclosure principles and ‘if not, why not’ benchmarks. Each disclosure principle and benchmark identifies a key risk area potential investors should understand before making a decision to invest. Failure to meet the disclosure principles and benchmarks will result in an increased risk of ASIC issuing a stop order on the offer.
- 29 Where we have proposed a disclosure principle, this identifies a particular risk or feature of hedge funds that we consider an issuer should clearly and prominently address in the PDS. This disclosure will assist retail investors to understand the significant benefits, risks and characteristics of the fund.
- 30 Where we have proposed an ‘if not, why not’ benchmark in relation to a particular risk or feature, this:
- (a) sets a standard for how a product issuer should address those risks in establishing its business model and compliance procedures; and
 - (b) requires an issuer to state in the PDS and other disclosures whether it meets the benchmark, and if not, why not.

- 31 This model of disclosure provides standards by which retail investors can assess financial products for which there are typically few such external benchmarks.

Proposal

- c1** We propose that hedge funds should apply each of the disclosure principles outlined in this section, and address each of the benchmarks on an 'if not, why not' basis: see Proposals C2–C14.

Your feedback

- C1Q1 Have we identified the relevant disclosure principles and benchmarks? Are there any disclosure principles or benchmarks that are missing? Have we included anything that is not relevant?
- C1Q2 Besides disclosure principles and benchmarks, are there additional ways of dealing with the risks relating to the complexity of hedge fund structures, their investments and leverage arrangements that should be considered (e.g. investor education, enhanced licensing requirements, enhanced compliance plan requirements, statutory suitability tests and banning retail investor access to hedge funds)? Please give details of the costs and benefits of these options.

Investment strategy

- 32 This principle is intended to ensure that the investor is made aware of the details of the investment strategy for the fund, including the type of strategy, how it works in practice, and how risks are managed.

Proposal

- c2** *Disclosure principle:* We propose that a PDS for a hedge fund should disclose the following information:
- (a) a description of the fund's investment strategy, including:
 - (i) the asset classes typically invested in;
 - (ii) the typical location and currency denomination of the assets;
 - (iii) the role of leverage, derivatives and short selling; and
 - (iv) the resources available to execute the investment strategy;
 - (b) an explanation of how the strategy will produce investment returns with reference to the general market circumstances in which the fund trades;
 - (c) what the diversification guidelines are;
 - (d) any specific risks associated with the relevant investment strategy;

- (e) disclosure of the key aspects of the fund's risk management strategy; and
- (f) how the investment strategy can change and what notification would be provided to investors.

Your feedback

- C2Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?
- C2Q2 Are there any additional issues relating to investment strategy that should be highlighted in ASIC guidance?

Investment manager

- 33 This principle is intended to ensure that the investor has the necessary information about the people responsible for managing the investment, as well as the relationships between the responsible entity, the investment manager and any intermediaries.

Proposal

- c3** *Disclosure principle:* We propose that a PDS for a hedge fund should disclose a description of:
- (a) the identities and relevant commercial experience (including information on any relevant adverse regulatory findings) of the senior officers playing a key role in investment decisions;
 - (b) if the fund manager is not the responsible entity, any unusual or materially onerous (from the investor's perspective) terms in the agreement under which the fund manager is appointed and the scope of this appointment; and
 - (c) the circumstances in which the responsible entity is entitled to terminate the manager's appointment and on what terms (including any payments).

Your feedback

- C3Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?
- C3Q2 Are there any additional issues relating to the investment manager that also warrant disclosure?

Fund structure

- 34 This principle is intended to ensure that the fund explains the investment structures involved, relationships between entities in the structure, jurisdictions involved (if it involves parties offshore), due diligence

performed on underlying funds, and related party relationships within the structure.

Proposal

- c4** *Disclosure principle:* We propose that a PDS for a hedge fund should explain:
- (a) the fund's investment structure—that is, the key entities involved (e.g. companies, schemes and limited partnerships), their relationship to each other and their roles;
 - (b) the identities of the key service providers and intermediaries (e.g. prime broker, custodian, administrator, compliance service provider, independent auditor and sub-advisers), where applicable;
 - (c) the jurisdictions involved;
 - (d) the rationale for the structure and the jurisdictions used;
 - (e) the risks of the structure, including any risks associated with holding assets overseas;
 - (f) the due diligence process performed on underlying funds and the key service providers;
 - (g) for all collective investment schemes invested in by the fund that make up, or are likely to make up, more than 10% of the fund's net asset value, the identities of the key service providers for any underlying collective investment schemes. This should be updated in periodic disclosures;
 - (h) how the responsible entity ensures that key service providers will comply with service agreement obligations;
 - (i) any related party relationships within the structure; and
 - (j) the existence and nature of material arrangements in connection with the fund that are not on arm's length terms.

Your feedback

- C4Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?
- C4Q2 In relation to Proposal C4(g), do you agree that 10% of the fund's net asset value is the appropriate trigger? If not, why not?
- C4Q3 Are there any additional issues relating to the fund structure that also warrant disclosure?

Assets: Valuation, location, custody

- 35 These principles and benchmarks ensure that hedge funds disclose the types of assets held, where they are located, how they are valued and custodial arrangements.

- 36 We also propose a benchmark that the fund provides periodic disclosure of the actual allocation the fund holds in each asset type (see Proposal C12).

Proposal

- c5** *Disclosure principle:* We propose that a PDS for a hedge fund should disclose the following information:
- (a) the key aspects of the valuation policy;
 - (b) the types of assets and the allocation range to each asset type, using the following asset types (including the assets of collective investment vehicles invested in by the fund):
 - (i) Australian listed equities;
 - (ii) Australian unlisted equities;
 - (iii) international listed equities;
 - (iv) international unlisted equities;
 - (v) Australian government bonds;
 - (vi) Australian corporate bonds;
 - (vii) international government bonds;
 - (viii) international corporate bonds;
 - (ix) structured products;
 - (x) property;
 - (xi) infrastructure;
 - (xii) exchange-traded derivatives;
 - (xiii) over-the-counter (OTC) derivatives; and
 - (xiv) other (provide details);
 - (c) any policy about asset location; and
 - (d) the custodial arrangements, including details of the roles provided by custody service providers.

Your feedback

- C5Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?
- C5Q2 Are there any additional asset classes that should be disclosed?

Proposal

- c6** *Benchmark:* We propose that a PDS for a hedge fund should disclose that valuations of assets that are not exchange traded are confirmed or provided by independent third parties. If the fund does not meet this benchmark, it should disclose why not.

Your feedback

- C6Q1 Is the proposed benchmark useful and appropriate for investors? Why?

Proposal

- c7** *Benchmark:* We propose that a PDS for a hedge fund should disclose that all custodians (including custodians of any funds invested in by the fund) involved in the fund structure are independent third party custodians. If the fund does not meet this benchmark, it should disclose why not.

Your feedback

- C7Q1 Is the proposed benchmark useful and appropriate for investors? Why?

Liquidity

- 37 This principle is intended to ensure that, if more than 20% of the fund's assets cannot be sold at market value in less than 10 days, the investor is made aware of the nature and risks of the illiquid classes of assets

Proposal

- c8** *Disclosure principle:* We propose that if more than 20% of a hedge fund's assets cannot be sold at market value in less than 10 days, the PDS for the fund should disclose the following information:
- (a) a description of any illiquid asset class that has a value greater than 10% of the fund's net asset value; and
 - (b) the key aspects of the liquidity management policy.

Your feedback

- C8Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?

Leverage

- 38 This principle is intended to ensure that the investor is made aware of the anticipated level of leverage of the fund (including leverage embedded in the assets of the fund).

Proposal

- c9** *Disclosure principle:* We propose that a PDS for a hedge fund should disclose the following information:
- (a) the sources of leverage, including the type, the amount and the providers of the leverage;
 - (b) whether any assets are used as collateral and the extent to which they are otherwise encumbered;

- (c) the anticipated level of leverage (including leverage embedded in the assets of the fund), as a multiple of the amount invested by an investor (e.g. for every \$1 the investor invests, the fund is leveraged \$x); and
- (d) a worked example showing the impact of leverage on investment returns and losses, assuming the anticipated level of leverage (including leverage embedded in the assets of the fund).

Your feedback

C9Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?

C9Q2 Is the anticipated level of leverage (including leverage embedded in the assets of the fund) an appropriate measure of gearing exposure where the fund invests in products that have leverage built in to them?

Derivatives

39

This principle is intended to ensure that the investor is made aware of the purpose and types of derivatives and structured products used by the fund and associated risks.

Proposal

c10 *Disclosure principle:* We propose that a PDS for a hedge fund should disclose the following information:

- (a) the purpose and rationale for the use of derivatives or structured products (e.g. investment, hedging, leverage and liquidity), including how they form part of the fund's investment strategy;
- (b) the types of derivative or structured product used or planned to be used;
- (c) the criteria for engaging derivative and structured product counterparties (including principal protection providers);
- (d) the key risks to the fund associated with the collateral requirements of the derivative counterparties; and
- (e) whether the derivatives and structured products are OTC or exchange traded.

Your feedback

C10Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?

Short selling

- 40 This principle is intended to ensure that the investor is made aware of how short selling may be used as part of the investment strategy and of the associated risks and costs of short selling.

Proposal

c11 *Disclosure principle:* We propose that, if a hedge fund intends or is likely to engage in short selling, the PDS for the fund should disclose the following information:

- (a) the purpose and rationale of short selling, including how short selling forms part of the fund's investment strategy;
- (b) the risks associated with short selling;
- (c) how these risks will be managed; and
- (d) an example showing the potential gains and losses from short selling.

Your feedback

C11Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?

Periodic reporting

- 41 Besides the topics for periodic disclosure noted above, we propose to require as a benchmark disclosure in the PDS that the fund provides periodic disclosure of the current funds under management (FUM) of the fund and investment returns as at the end of the period.
- 42 The Corporations Act requires a fund to give investors a periodic statement at least annually. We understand that current market practice is to provide investors with more frequent reports. The Corporations Act also requires that reports of a significant change be given to investors as appropriate without waiting for the normal reporting period.

Proposal

c12 *Benchmark:* We propose that a PDS for a hedge fund should disclose that the fund will report on the following as soon as practical following the relevant period end:

- (a) the current FUM of the fund;
- (b) the actual allocation to each asset type;
- (c) the liquidity profile of the assets as at the end of the period—the representation of asset liquidity (the time required to sell an asset at its market value) in a graphical form that allows easy comparison with the maturity profile of the leverage;

- (d) the maturity profile of the leverage as at the end of the period—the representation of maturities in a graphical form that allows easy comparison with the liquidity profile of the assets;
- (e) the leverage ratio (including leverage embedded in the assets of the fund) as at the end of the period;
- (f) the undrawn amount of loan facilities as at the end of the period;
- (g) the derivative and structured product counterparties engaged (including capital protection providers);
- (h) the investment returns; and
- (i) the key service providers if they have changed since the last report given to investors (see Proposal C4(g)).

If the fund does not meet this benchmark, it should disclose why not.

Your feedback

C12Q1 Is the proposed benchmark useful and appropriate for investors? Why?

C12Q2 Is there any additional information that should be included in the periodic disclosure?

Proposal

c13 *Benchmark:* We propose that a PDS for a hedge fund should disclose that the latest periodic report is available on the fund's website. If the PDS does not meet this benchmark, it should disclose why not.

Your feedback

C13Q1 Is the proposed benchmark useful and appropriate for investors? Why?

Withdrawals

43

This principle ensures that the investor is made aware of the circumstances in which the fund allows withdrawals and how this might change.

Proposal

c14 *Disclosure principle:* We propose that a PDS for a hedge fund should disclose the following information:

- (a) any significant risk factors or limitations that may affect the ability of investors to withdraw from the fund, including any gating restrictions that may be imposed or the requirement for a statutory withdrawal offer if the scheme is non-liquid;
- (b) how investors can exercise their withdrawal rights, including any conditions on exercise;

- (c) if withdrawal is to be funded from an external liquid facility, the material terms of this facility, including any rights the provider has to suspend or cancel the facility; and
- (d) how investors will be notified of any material changes to their withdrawal rights (e.g. if withdrawal rights are to be suspended).

Your feedback

C14Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?

Timeline for implementing improved disclosure

- 44 We propose to allow a transition period after which issuers of hedge funds will be required to apply the disclosure principles and benchmarks in PDSs given to new investors.
- 45 We would also expect, in accordance with the issuers' obligations under the Corporations Act in relation to continuous disclosure and significant event reporting, that issuers of hedge funds will provide updated disclosure to existing investors addressing the principles and benchmarks.

Proposal

c15 We propose 1 July 2012 as the commencement date for:

- (a) new and current issuers of hedge funds to apply each of the disclosure principles and address each of the benchmarks in PDSs given after that date; and
- (b) existing issuers of hedge fund to provide updated disclosure to existing investors that applies each of the disclosure principles and addresses each of the benchmarks.

Your feedback

C15Q1 Do you agree with the proposed implementation timetable?

C15Q2 Are there likely to be any practical problems in complying with this timetable? If so, what approach would ensure that investors are adequately informed?

D Regulatory and financial impact

46 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) preventing the mis-selling of hedge funds to retail investors; and
- (b) not unduly interfering with the marketing and sale of financial products.

47 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).

48 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.

49 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.

Appendix 1: IOSCO and Joint Forum recommendations

IOSCO recommendations⁵

Six high-level principles on the regulation of hedge funds:

- (a) Hedge funds and/or hedge fund managers/advisers should be subject to mandatory registration.
- (b) Hedge fund managers/advisers who are required to register should also be subject to appropriate ongoing regulatory requirements relating to:
 - (i) organisational and operational standards;
 - (ii) conflicts of interest and other conduct of business rules;
 - (iii) disclosure to investors; and
 - (iv) prudential regulation.
- (c) Prime brokers and banks which provide funding to hedge funds should be subject to mandatory registration/regulation and supervision. They should have in place appropriate risk management systems and controls to monitor their counterparty credit risk exposures to hedge funds.
- (d) Hedge fund managers/advisers and prime brokers should provide to the relevant regulator information for systemic risk purposes (including the identification, analysis and mitigation of systemic risks).
- (e) Regulators should encourage and take account of the development, implementation and convergence of industry good practices, where appropriate.
- (f) Regulators should have the authority to cooperate and share information, where appropriate, with each other, in order to facilitate efficient and effective oversight of globally active managers/advisers and/or funds and to help identify systemic risks, market integrity and other risks arising from the activities or exposures of hedge funds with a view to mitigating such risks across borders.

⁵ 'Hedge funds oversight', Final Report, IOSCO Technical Committee, June 2009.

Joint Forum recommendations⁶

D. Broadening the scope of regulation to hedge fund activities

Recommendation no. 10: Supervisors should introduce and/or strengthen (in view of the risk posed) appropriate and proportionate minimum risk management regulatory standards for hedge fund operators. If necessary, supervisors should be given the authority to do so.

Recommendation no. 11: Supervisors should impose reporting requirements on hedge fund operators to identify current or potential sources of systemic risk and to enable cross-sectoral monitoring of systemically important hedge funds. If necessary, supervisors should be given the authority to do so.

Recommendation no. 12: In view of the operational risks posed and in order to allow for orderly winding down of a fund operator in the event of bankruptcy, supervisors should impose minimum initial and ongoing capital requirements on operators of systemically relevant hedge funds. If necessary, supervisors should be given the authority to do so.

⁶ 'Review of the differentiated nature and scope of financial regulation: Key issues and recommendations', Joint Forum, January 2010.

Appendix 2: International approaches to defining hedge funds

A number of jurisdictions have defined hedge funds for regulatory purposes by reference to the common characteristics of such funds.

Singapore

The Singapore Code on Collective Investment Schemes (issued under the *Securities and Futures Act 2001* and administered by the Monetary Authority of Singapore (MAS)) defines hedge funds in the following way:

There are different characteristics and investment strategies that define hedge funds. In general, a hedge fund seeks to deliver an ‘absolute’ return independent of the directional move of equity, fixed income or cash markets. In considering whether a fund falls within these Guidelines, the MAS would look at, among other aspects, the following:

- a) strategies that use leverage, short selling, arbitrage, derivatives; and
- b) investment in non-mainstream asset classes i.e. investments other than listed equities, bonds and cash.

Hong Kong

In Hong Kong, the Securities and Futures Commission’s (SFC’s) ‘Handbook for unit trusts and mutual funds, investment linked assurance schemes and unlisted structured investment products’ (June 2010) identifies ‘collective investment schemes commonly known as hedge funds (or alternative investment funds or absolute return funds)’ as funds that are ‘generally regarded as non-traditional funds that possess different characteristics and utilize different investment strategies from traditional funds’. It states that the SFC will, in considering an application for authorisation of a fund, take into account:

- (a) the choice of asset class; and
- (b) the use of alternative investment strategies such as long/short exposure, leverage and/or hedging and arbitrage techniques.

United Kingdom

In the United Kingdom, the Financial Services Authority (FSA) conducts a bi-annual survey of hedge funds. Its April 2010 FSA Hedge Fund Survey states that there is no formal definition of a hedge fund, but notes that ‘it is

generally accepted that such funds share a number of similar characteristics'. It provides a list of such characteristics, warning it should not be considered as 'definitive'. Hedge fund investment management techniques can include the use of:

- (a) short selling;
- (b) derivatives for investment purposes; and
- (c) economic (debt) leverage, as well as leverage embedded in financial instruments such as derivatives.

Other characteristics of hedge funds are that they:

- (a) take in external client money (i.e. not solely the assets of one institution or entity);
- (b) are not Undertakings for Collective Investment in Transferrable Securities (UCITS) funds;
- (c) pursue absolute returns, rather than measuring their investment performance relative to a benchmark;
- (d) charge performance-based fees in addition to a management fee based solely on assets under management;
- (e) have broader mandates than traditional funds, which give managers more flexibility to shift strategy;
- (f) have high trading volumes/fund turnover; and
- (g) frequently set a very high minimum investment limit (e.g. at least US\$100,000 for most funds).

United States

The United States, for reasons related to the structure of its pre-existing regulatory regimes, has not needed to define hedge funds.

The recent *Dodd-Frank Wall Street Reform and Consumer Protection Act 2010* brings within the ambit of the *Investment Advisors Act 1940* advisers to 'private funds' who had enjoyed the benefit of an exemption from the scope of that Act where they had fewer than 15 'private clients' by abolishing that exemption. As most US hedge funds were structured as 'private funds' (i.e. funds that are not offered to the public and have fewer than 100 investors), their advisers, with certain limited exceptions, now have to comply with extensive disclosure and other requirements under the Investment Advisors Act and new reporting obligations under the Dodd-Frank legislation.

European Union

Similar to the approach in the United States, the Directive on Alternative Investment Fund Managers, which was passed by the European Parliament in November 2010, will apply to all managers of funds not covered by the UCITS subject to limited exceptions. As the UCITS restrictions make implementing many hedge fund strategies difficult or impossible, most European hedge funds were not UCITS funds. Accordingly, managers of these funds marketed in the European Union will now be subject to the extensive disclosure and other obligations imposed by the Directive.

Key terms

Term	Meaning in this document
ASIC	Australian Securities and Investments Commission
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
CP 134	An ASIC consultation paper (in this example, numbered 134)
FSA	Financial Services Authority (UK)
FUM	Funds under management
IOSCO	International Organization of Securities Commissions
MAS	Monetary Authority of Singapore
OTC	Over the counter
PDS	Product Disclosure Statement
Product Disclosure Statement	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 146	An ASIC regulatory guide (in this example, numbered 146)
SFC	Securities and Futures Commission (Hong Kong)
UCITS	Undertakings for Collective Investment in Transferrable Securities

List of proposals and questions

Proposal	Your feedback
<p>B1 We propose that our disclosure principles and benchmarks apply to any registered managed investment scheme that is, or has been promoted as, or is generally regarded as:</p> <p>(a) a hedge fund; or</p> <p>(b) a fund of hedge funds.</p>	<p>B1Q1 Do you agree with the proposed coverage of the disclosure guidance?</p>
<p>B2 In determining whether a particular registered managed investment scheme falls within the scope of Proposal B1, the following factors may be relevant:</p> <p>(a) <i>Strategy</i>: The fund pursues complex strategies that aim to generate absolute returns, returns with low correlation to equity and bond indices, or a positive return in both rising and falling markets.</p> <p>(b) <i>Leverage</i>: The fund often uses leverage to increase investment returns.</p> <p>(c) <i>Derivatives</i>: The fund often uses derivatives to create complex investment strategies or for gearing purposes.</p> <p>(d) <i>Short selling</i>: The fund often engages in short selling.</p> <p>(e) <i>Complexity</i>: The fund often has exposure to diverse risks and complex underlying products.</p>	<p>B2Q1 Does our proposed approach provide a sufficient level of certainty? Are examples illustrating the application of these disclosure principles and benchmarks needed?</p> <p>B2Q2 What weight should be placed on the factors in Proposal B2 when deciding if a fund is a hedge fund? Why?</p> <p>B2Q3 Are there additional characteristics that should be included to appropriately capture hedge funds?</p>
<p>B3 We are considering whether we should encourage issuers to use the principles and benchmarks when providing information to investors in similar situations, such as:</p> <p>(a) similar offers to wholesale investors; and</p> <p>(b) offers by listed investment companies that have some of the features of hedge funds.</p>	<p>B3Q1 Should the proposed disclosure principles and benchmarks be encouraged as best practice for offers to wholesale investors and offers by listed investment companies?</p>
<p>B4 We are considering whether we should exercise ASIC's powers to exclude any fund that would fall within the proposed scope of our disclosure guidance (as set out at Proposal B1) from the definition of a simple managed investment scheme.</p>	<p>B4Q1 Do you consider that hedge funds should be excluded from the shorter PDS regime? What compliance costs would be involved for funds affected? How many funds would be affected?</p> <p>B4Q2 Alternatively, should our proposed guidance only apply to schemes that are not simple managed investment schemes? Why?</p>
<p>C1 We propose that hedge funds should apply each of the disclosure principles outlined in this</p>	<p>C1Q1 Have we identified the relevant disclosure principles and benchmarks? Are there any</p>

Proposal	Your feedback
<p>section, and address each of the benchmarks on an 'if not, why not' basis: see Proposals C2–C14.</p>	<p>disclosure principles or benchmarks that are missing? Have we included anything that is not relevant?</p> <p>C1Q2 Besides disclosure principles and benchmarks, are there additional ways of dealing with the risks relating to the complexity of hedge fund structures, their investments and leverage arrangements that should be considered (e.g. investor education, enhanced licensing requirements, enhanced compliance plan requirements, statutory suitability tests and banning retail investor access to hedge funds)? Please give details of the costs and benefits of these options.</p>
<p>C2 <i>Disclosure principle:</i> We propose that a PDS for a hedge fund should disclose the following information:</p> <p>(a) a description of the fund's investment strategy, including:</p> <ul style="list-style-type: none"> (i) the asset classes typically invested in; (ii) the typical location and currency denomination of the assets; (iii) the role of leverage, derivatives and short selling; and (iv) the resources available to execute the investment strategy; <p>(b) an explanation of how the strategy will produce investment returns with reference to the general market circumstances in which the fund trades;</p> <p>(c) what the diversification guidelines are;</p> <p>(d) any specific risks associated with the relevant investment strategy;</p> <p>(e) disclosure of the key aspects of the fund's risk management strategy; and</p> <p>(f) how the investment strategy can change and what notification would be provided to investors.</p>	<p>C2Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p> <p>C2Q2 Are there any additional issues relating to investment strategy that should be highlighted in ASIC guidance?</p>
<p>C3 <i>Disclosure principle:</i> We propose that a PDS for a hedge fund should disclose a description of:</p> <p>(a) the identities and relevant commercial experience (including information on any relevant adverse regulatory findings) of the senior officers playing a key role in investment decisions;</p> <p>(b) if the fund manager is not the responsible</p>	<p>C3Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p> <p>C3Q2 Are there any additional issues relating to the investment manager that also warrant disclosure?</p>

Proposal	Your feedback
<p>entity, any unusual or materially onerous (from the investor's perspective) terms in the agreement under which the fund manager is appointed and the scope of this appointment; and</p> <p>(c) the circumstances in which the responsible entity is entitled to terminate the manager's appointment and on what terms (including any payments).</p>	
<p>C4 <i>Disclosure principle:</i> We propose that a PDS for a hedge fund should explain:</p> <p>(a) the fund's investment structure—that is, the key entities involved (e.g. companies, schemes and limited partnerships), their relationship to each other and their roles;</p> <p>(b) the identities of the key service providers and intermediaries (e.g. prime broker, custodian, administrator, compliance service provider, independent auditor and sub-advisers), where applicable;</p> <p>(c) the jurisdictions involved;</p> <p>(d) the rationale for the structure and the jurisdictions used;</p> <p>(e) the risks of the structure, including any risks associated with holding assets overseas;</p> <p>(f) the due diligence process performed on underlying funds and the key service providers;</p> <p>(g) for all collective investment schemes invested in by the fund that make up, or are likely to make up, more than 10% of the fund's net asset value, the identities of the key service providers for any underlying collective investment schemes. This should be updated in periodic disclosures;</p> <p>(h) how the responsible entity ensures that key service providers will comply with service agreement obligations;</p> <p>(i) any related party relationships within the structure; and</p> <p>(j) the existence and nature of material arrangements in connection with the fund that are not on arm's length terms.</p>	<p>C4Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p> <p>C4Q2 In relation to Proposal C4(g), do you agree that 10% of the fund's net asset value is the appropriate trigger? If not, why not?</p> <p>C4Q3 Are there any additional issues relating to the fund structure that also warrant disclosure?</p>
<p>C5 <i>Disclosure principle:</i> We propose that a PDS for a hedge fund should disclose the following information:</p>	<p>C5Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p>

Proposal	Your feedback
<p>(a) the key aspects of the valuation policy;</p> <p>(b) the types of assets and the allocation range to each asset type, using the following asset types (including the assets of collective investment vehicles invested in by the fund):</p> <ul style="list-style-type: none"> (i) Australian listed equities; (ii) Australian unlisted equities; (iii) international listed equities; (iv) international unlisted equities; (v) Australian government bonds; (vi) Australian corporate bonds; (vii) international government bonds; (viii) international corporate bonds; (ix) structured products; (x) property; (xi) infrastructure; (xii) exchange-traded derivatives; (xiii) over-the-counter (OTC) derivatives; and (xiv) other (provide details); <p>(c) any policy about asset location; and</p> <p>(d) the custodial arrangements, including details of the roles provided by custody service providers.</p>	<p>C5Q2 Are there any additional asset classes that should be disclosed?</p>
<p>C6 <i>Benchmark:</i> We propose that a PDS for a hedge fund should disclose that valuations of assets that are not exchange traded are confirmed or provided by independent third parties. If the fund does not meet this benchmark, it should disclose why not.</p>	<p>C6Q1 Is the proposed benchmark useful and appropriate for investors? Why?</p>
<p>C7 <i>Benchmark:</i> We propose that a PDS for a hedge fund should disclose that all custodians (including custodians of any funds invested in by the fund) involved in the fund structure are independent third party custodians. If the fund does not meet this benchmark, it should disclose why not.</p>	<p>C7Q1 Is the proposed benchmark useful and appropriate for investors? Why?</p>
<p>C8 <i>Disclosure principle:</i> We propose that if more than 20% of a hedge fund's assets cannot be sold at market value in less than 10 days, the PDS for the fund should disclose the following</p>	<p>C8Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p>

Proposal	Your feedback
<p>information:</p> <ul style="list-style-type: none"> (a) a description of any illiquid asset class that has a value greater than 10% of the fund's net asset value; and (b) the key aspects of the liquidity management policy. 	
<p>C9 <i>Disclosure principle:</i> We propose that a PDS for a hedge fund should disclose the following information:</p> <ul style="list-style-type: none"> (a) the sources of leverage, including the type, the amount and the providers of the leverage; (b) whether any assets are used as collateral and the extent to which they are otherwise encumbered; (c) the anticipated level of leverage (including leverage embedded in the assets of the fund), as a multiple of the amount invested by an investor (e.g. for every \$1 the investor invests, the fund is leveraged \$x); and (d) a worked example showing the impact of leverage on investment returns and losses, assuming the anticipated level of leverage (including leverage embedded in the assets of the fund). 	<p>C9Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p> <p>C9Q2 Is the anticipated level of leverage (including leverage embedded in the assets of the fund) an appropriate measure of gearing exposure where the fund invests in products that have leverage built in to them?</p>
<p>C10 <i>Disclosure principle:</i> We propose that a PDS for a hedge fund should disclose the following information:</p> <ul style="list-style-type: none"> (a) the purpose and rationale for the use of derivatives or structured products (e.g. investment, hedging, leverage and liquidity), including how they form part of the fund's investment strategy; (b) the types of derivative or structured product used or planned to be used; (c) the criteria for engaging derivative and structured product counterparties (including principal protection providers); (d) the key risks to the fund associated with the collateral requirements of the derivative counterparties; and (e) whether the derivatives and structured products are OTC or exchange traded. 	<p>C10Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p>
<p>C11 <i>Disclosure principle:</i> We propose that, if a hedge fund intends or is likely to engage in short</p>	<p>C11Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p>

Proposal	Your feedback
<p>selling, the PDS for the fund should disclose the following information:</p> <ul style="list-style-type: none"> (a) the purpose and rationale of short selling, including how short selling forms part of the fund's investment strategy; (b) the risks associated with short selling; (c) how these risks will be managed; and (d) an example showing the potential gains and losses from short selling. 	
<p>C12 Benchmark: We propose that a PDS for a hedge fund should disclose that the fund will report on the following as soon as practical following the relevant period end:</p> <ul style="list-style-type: none"> (a) the current FUM of the fund; (b) the actual allocation to each asset type; (c) the liquidity profile of the assets as at the end of the period—the representation of asset liquidity (the time required to sell an asset at its market value) in a graphical form that allows easy comparison with the maturity profile of the leverage; (d) the maturity profile of the leverage as at the end of the period—the representation of maturities in a graphical form that allows easy comparison with the liquidity profile of the assets; (e) the leverage ratio (including leverage embedded in the assets of the fund) as at the end of the period; (f) the undrawn amount of loan facilities as at the end of the period; (g) the derivative and structured product counterparties engaged (including capital protection providers); (h) the investment returns; and (i) the key service providers if they have changed since the last report given to investors (see Proposal C4(g)). <p>If the fund does not meet this benchmark, it should disclose why not.</p>	<p>C12Q1 Is the proposed benchmark useful and appropriate for investors? Why?</p> <p>C12Q2 Is there any additional information that should be included in the periodic disclosure?</p>
<p>C13 Benchmark: We propose that a PDS for a hedge fund should disclose that the latest periodic report is available on the fund's website. If the PDS does not meet this benchmark, it should disclose why not.</p>	<p>C13Q1 Is the proposed benchmark useful and appropriate for investors? Why?</p>

Proposal	Your feedback
<p>C14 <i>Disclosure principle:</i> We propose that a PDS for a hedge fund should disclose the following information:</p> <ul style="list-style-type: none"> (a) any significant risk factors or limitations that may affect the ability of investors to withdraw from the fund, including any gating restrictions that may be imposed or the requirement for a statutory withdrawal offer if the scheme is non-liquid; (b) how investors can exercise their withdrawal rights, including any conditions on exercise; (c) if withdrawal is to be funded from an external liquid facility, the material terms of this facility, including any rights the provider has to suspend or cancel the facility; and (d) how investors will be notified of any material changes to their withdrawal rights (e.g. if withdrawal rights are to be suspended). 	<p>C14Q1 Is the proposed disclosure principle useful and appropriate for investors? Why?</p>
<p>C15 We propose 1 July 2012 as the commencement date for:</p> <ul style="list-style-type: none"> (a) new and current issuers of hedge funds to apply each of the disclosure principles and address each of the benchmarks in PDSs given after that date; and (b) existing issuers of hedge fund to provide updated disclosure to existing investors that applies each of the disclosure principles and addresses each of the benchmarks. 	<p>C15Q1 Do you agree with the proposed implementation timetable?</p> <p>C15Q2 Are there likely to be any practical problems in complying with this timetable? If so, what approach would ensure that investors are adequately informed?</p>