



26 June 2013

Ms Ashley Hope
Senior Policy Adviser
Australian Securities and Investments Commission
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Melbourne VIC 3001

E-Mail: deregulation@asic.gov.au

Dear Ms Hope,

Report 391: ASIC's deregulatory initiatives

Thank you for the opportunity to comment on Report 391: ASIC's deregulatory initiatives.

The Property Council is the peak body for owners and investors in Australia's \$680 billion property investment sector. The Property Council represents members across all four quadrants of property investment, debt, equity, public and private.

We welcome ASIC initiatives to reduce company compliance costs by cutting red tape.

The current financial system is stymied by complex and costly regulation. Creating a more efficient financial system will boost Australia's economic resilience and attract patient long term global capital that is critical for investment.

The Property Council supports proposals contained in Report 391 to:

- streamline the registration of managed investment schemes;
- remove outdated forms;
- extend the electronic delivery of disclosure material;
- consult with industry on ASIC's strategic outlook; and
- regularly update the ASIC website to remove old information.

However, there are other regulatory reforms required to reduce the compliance burden for industry and ensure a more efficient financial system.

There reforms are:

- introducing short form product disclosure statements for retail property funds to provide simpler and more meaningful capital raising documentation for property investors;
- simplifying regulations for issuing corporate bonds to boost investment in debt products;

- expanding the ASX managed funds service to enable investors to electronically apply for and redeem units in unlisted property funds; and
- creating a clearing house for unlisted property funds to improve liquidity for existing investors and provide opportunities for new investors to access unlisted property funds.

If these changes are not made:

- it will make it harder for property funds to raise capital efficiently;
- there will be unnecessary complexity for investors and companies;
- investors will be blocked from achieving a diversified investment portfolio; and
- there will be higher compliance costs for property funds which will be passed to investors.

Our detailed comments on these issues and other matter raised by ASIC are contained in the attached submission.

Please do not hesitate to contact Darren Davis on (02) 9033 1936 or myself to discuss the issue.

Yours sincerely



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Report 391: ASIC's deregulatory initiatives

*Property Council of Australia
June 2014*



Property Council of Australia
Response to Report 391: ASIC's Deregulatory Initiatives

No.	Topic in Report 391	Property Council Of Australia Response
Ongoing work and recent progress		
1.	Reviewing policies and procedures	The Property Council supports ASIC continually reviewing its policies and procedures with the aim of cutting red tape and reducing compliance costs for industry.
New initiatives		
2.	Streamlining ASIC forms	We support the streamlining of ASIC forms, specifically the consolidation of Forms 5138A, 6010/A and 407 (deregistration of registered schemes). However, we would welcome the opportunity for consultation on the forms to be streamlined.
3.	Proposed legislative reform to facilitate business	<p>a) Enabling automatic registration for managed investment schemes under s601EB of the Corporations Act</p> <p>Automatic registration for Managed Investment Schemes will reduce the current compliance requirements for schemes. However, allowing ASIC to issue a stop order for an unspecified time period after a scheme is registered will lead to uncertainty for scheme operators and investors.</p> <p>We recommend that the proposal regarding automatic registration include provisions to:</p> <ul style="list-style-type: none"> • clearly specify the circumstances in which ASIC can issue stop orders; • ensure that there is a limited time period (eg. 14 days) after the scheme is registered in which a stop order can be issued; and • ensure that stop orders are subject to consultation with the responsible entity. <p>We do not support a power for ASIC to make “direct amendments to the constitution necessary to ensure compliance with the Corporations Act”. This will put companies in conflict with unit holders over a Constitution as companies will often have a different view or interpretation to ASIC on the application the Corporations Act.</p> <p>b) Replacing the requirement for an unlisted disclosing entity to lodge continuous disclosures with ASIC with a requirement to instead publish disclosures on the entity’s website</p> <p>This initiative will reduce the compliance costs for unlisted disclosing entities and make it easier for investors to access information about entities.</p>

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		<p>c) Amending the content of the forms to be lodged under s671B (information about substantial holdings) to address market concerns</p> <p>We support the proposal to amend regulations so that ASIC has the power to prescribe these forms.</p> <p>However, industry consultation on the design of the forms will ensure that they are easier to understand, complete and provide more meaningful disclosure to investors.</p> <hr/> <p>d) Proposed minor or technical law reform</p> <p>The Property Council supports ASIC’s proposed minor legislative changes and specifically the following proposals:</p> <ul style="list-style-type: none"> i) enable a responsible entity to be appointed by ordinary resolution at a meeting called by a temporary responsible entity under section 601FQ. A temporary responsible entity should be able to be appointed by a majority vote (rather than a special majority vote) in order to avoid winding up of a scheme; ii) repeal the requirement for a constitution to provide a method for dealing with complaints. We do not believe the requirement for constitutions to include a complaints procedure is necessary as AFSL holders are already required to have dispute resolution procedures in place under section 912B. Removing the additional obligation of responsible entities to have a second complaints procedure set out in their fund’s constitution would help reduce the compliance burden of responsible entities; and iii) enable alternate persons (not just registered company auditors) to audit a scheme’s compliance plan. A registered auditor is not always the most appropriate person to audit a scheme’s compliance plan. Enabling other appropriately qualified people to undertake an audit will increase competition for the provision of compliance auditing services. <p>We also agree with the suggestion to limit the required opinion to compliance with the Corporations Act “in all material respects” as this is a more practical approach.</p>
4.	Removing barriers that inhibit innovation in disclosure	<p>a) Electronic disclosure</p> <p>We supports ASIC’s proposal to facilitate further electronic delivery of disclosure material. This will:</p> <ul style="list-style-type: none"> • reduce the time spent and costs incurred in printing and distributing disclosure material; • enable more security options; and • ensure that the disclosure materials are easier and quicker to access by investors.

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		<p>b) Investor self-assessment and key facts sheets</p> <p>The Property Council agrees that issuers of simple managed investment schemes should be able to provide investors information electronically to comply with the shorter PDS regime. However, we believe that changes should also cover unlisted retail property funds to reduce compliance costs and encourage retail investment.</p> <p>Unlisted property funds are excluded from the shorter PDS regime and instead have to disclose under ASIC's Regulatory Guide 46. This means that unlisted funds can only raise capital using a long form PDS. This increases the compliance costs of direct property funds and discourages investment.</p> <p>The Property Council proposes that the shorter PDS regime should apply to unlisted property funds.</p>
5.	'Sunsetting' legislative instruments	<p>The Property Council supports the repeal of redundant instruments and the review of other instruments due to expire from 2015. However, there should be consultation on the changes that are proposed.</p> <p>Property companies may not be aware of changes to instruments that will impact them until the changes have been made. ASIC is the sole decision maker on whether reviewing or repealing an instrument is material. Consultation is required on proposed changes to instruments that impact property companies.</p> <p>We request that ASIC provide a list of all 400 instruments under consideration (identifying the 47 instruments that have been flagged for immediate repeal) so that our members can comment on the instruments to be repealed or revised.</p>
6.	Improvements to auditor resignation requirements	<p>The Property Council supports the proposal to improve the requirements for change of auditors for managed investment scheme financial reports and compliance plans.</p> <p>However, giving auditors the ability to resign at any time (subject to there being some evidence to suggest ASIC would not give consent to the resignation) could result in a registered scheme not having an auditor to audit its financial reports and compliance plans.</p> <p>Any changes made to the provisions in relation to auditor resignation should ensure that registered schemes remain required to provide audited financial reports and compliance plans, and auditors are only allowed to resign once a replacement auditor has been appointed.</p>

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7.	New guidance and communication projects	<p>a) ASIC strategic outlook</p> <p>The Property Council supports ASIC engaging with industry on its strategic outlook.</p> <p>Increased engagement will result in more certainty in the market about the application of regulations and policy. If industry is clear on how regulation and policies are implemented this will reduce the regulatory burden.</p> <hr/> <p>b) Updated website</p> <p>The Property Council supports ASIC updating its website. However, ASIC should ensure that information relevant to property companies is not removed and is easy to locate. For example, it is important that Q+A documents and information releases not contained in ASIC Regulatory Guides should be retained so that the information can be easily accessed.</p> <p>We support updating ASIC Regulatory Guides which (in some cases) still refer to outdated ASIC policy, redundant legislative provisions or Class Orders.</p> <p>We recommend that ASIC consult with the Property Council on proposed changes to ASIC’s website, particularly in relation to publications such as Regulatory Guides and Class Orders.</p> <p>This will ensure that if information is moved, guidance is provided on the exact location of the replacement information. We would also appreciate being consulted before information impacting the property industry is removed from the website.</p>
8.	Additional suggestions for regulatory change	<p>Develop Shorter Product Disclosure Statements for Property Funds</p> <p>A short form Product Disclosure Statement (PDS) will provide simpler, more meaningful capital raising documentation for property investors.</p> <p>It is unlikely that a typical retail investor will read past the first several pages of a PDS. Shorter PDSs are easier to read and highlight the risk areas for retail investors.</p> <p>Unlisted property funds are excluded from the shorter PDS regime and instead have to disclose under ASIC’s Regulatory Guide 46.</p> <p>This means that unlisted funds can only raise capital using a long form PDS.</p> <p>Fund managers are reluctant to cut down the number of pages within a PDS due to liability requirements. These requirements place the onus on the product provider to disclose all relevant information to potential investors.</p> <p>Critical information should be set out in the first few pages of a PDS and non-critical information can be incorporated by reference.</p>

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		<p>There is substantial content within a PDS that is “boilerplate” (standard form information) provided in every PDS. This can be provided on a website with a suitable reference in the PDS which would remove a significant amount of paper from the PDS.</p> <p>We recommend that ASIC agrees to develop a short form PDS for property funds that will:</p> <ul style="list-style-type: none"> • disclose the generic investment advice and risk prescribed content in a separate single page educational tool that accompanies the PDS (rather than be embedded and repeated in every PDS); • allow a 8 page limit to enable adequate space for product specific disclosure (or set the limit in multiples of 4 to ensure it can be easily published); • promote the use of charts, tables, images, and navigation aids to maximise retail investor engagement and communication; • provide clear and effective liability rules that treats material that is “incorporated by reference” in the same way as information actually set out in the PDS; • give equal prominence to information on withdrawal and application (ie investment liquidity); and • ensure meaningful fee disclosure including actual and maximum fees. <hr/> <p>Proposed revised draft Class Order 03/184 and Regulatory Guide 49: Employee incentive schemes</p> <p>Listed REITs which are not part of a stapled group are not covered by ASIC Class Order 03/184. The Class Order exempts a company from preparing a prospectus or PDS in order to issue shares/units under an Employer Share Scheme.</p> <p>ASX listed REITs (or dual stapled trust REITs where there is no company in the stapled structure) are limited in their Employee Incentive Schemes to making offers to senior executives and other employees who qualify as “wholesale investors” (where a PDS does not need to be prepared).</p> <p>However, in those cases, the REIT units which are issued to employees will not qualify for the exemption from secondary sale disclosure under ASIC Class Order 04/671. This will automatically create a problem for listed REITs as any secondary trading of the units requires a PDS to be prepared.</p> <p>We recommend amending ASIC Class Order 03/184 to include offers of units in ASX listed REITs, without limiting this to REITs which are part of a stapled group. We would appreciate the opportunity to work with ASIC to draft amendments to the Class Order.</p>

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		<p>Allow a change of responsible entity without the need for a members' meeting, in circumstances where ASIC has previously given relief on a case by case basis</p> <p>Currently, a members' meeting is required to change a responsible entity of a scheme, unless ASIC grants relief on a case by case basis.</p> <p>Applying for relief from the requirement to hold a members' meeting is time consuming and costly. The circumstances under which ASIC has granted an exemption from the requirement to hold a meeting should be included in the Corporations Act so that property funds no longer need to apply for case by case relief.</p> <hr/> <p>Expand the ASX Managed Fund Service</p> <p>The ASX Managed Fund Service (AMFS) enables investors to electronically apply for and redeem units in most unlisted registered managed investment schemes.</p> <p>Access to the AMFS platform will increase liquidity for property funds and assist these funds raise capital more efficiently.</p> <p>The AMFS:</p> <ul style="list-style-type: none"> • streamlines the process of applying for and redeeming units in unlisted funds; • allows fund entry and exit prices to be displayed in one place; • enables investors to amalgamate their listed and unlisted investments in the one electronic system using a single Holder Identification Number; and • provides more asset allocation options for investors via the ASX regardless of the structure of the investment, ie. listed or unlisted. <p>However, AMFS is only open to simple managed investment schemes that can use a short form PDS. This bars unlisted property funds which are required to use a long form PDS.</p> <p>Property is an important asset class in a diversified portfolio for investors (both in the accumulation/growth phase and draw down/retirement phase).</p> <p>There are two main structures for property: listed and unlisted. Listed property provides excellent liquidity and is highly correlated to equities. Unlisted property provides regular or structured liquidity for investors, a stable capital base and consistent distributions from rental income.</p> <p>Both property structures are crucial to a diversified portfolio.</p>

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		<p>Currently, the AMFS platform:</p> <ul style="list-style-type: none"> • makes it more difficult for unlisted property funds to raise capital efficiently; • distorts the market by skewing investment way from property; and • limits the ability for investors to achieve a diversified investment portfolio. <p>The Property Council recommends that unlisted property funds are included as an asset allocation option in the AMFS platform.</p> <hr/> <p>Simplify Regulations for Issuing Corporate Bonds</p> <p>Simple changes to corporate regulations will boost domestic investment in debt products.</p> <p>Retail participation in corporate bonds is under-utilised and can provide Australia with a ready source of domestic capital.</p> <p>It is currently more difficult for mum and dad investors to invest in bonds compared to shares due to the lengthy and complex documentation requirements.</p> <p>The Property Council recommends streamlining regulations for issuing corporate bonds including:</p> <ul style="list-style-type: none"> • allow renounceable rights issues for existing shareholders to make issuance easier; • streamline prospectus documentation requirements to simplify information provided to investors; and • utilise continuous disclosure for retail corporate bond issuance to ensure the latest information is available to investors.

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		<p>Create a Clearing House for Unlisted Property Funds</p> <p>A “clearing house” for unlisted property funds will bring together retail investors seeking to buy and sell units/securities.</p> <p>This will improve liquidity for existing investors and provide opportunities for new investors to access unlisted property funds.</p> <p>Changing circumstances may force investors to sell their unlisted investment in a fund. Fund managers can bring together wholesale investors seeking to buy and sell units in unlisted property funds (a “clearing house”).</p> <p>However, fund managers are prevented from making introductions for retail investors under the financial services licensing regime. This disadvantages retail investors in unlisted funds as they do not have the same access to liquidity as wholesale investors.</p> <p>Retail investors in unlisted property funds need an introductory service or "clearing house" for their securities to provide a forum to buy and sell their securities at the best price.</p> <p>We recommend that ASIC ensure Australian Financial Services Licensing rules permit managers of unlisted property funds to offer retail investors a “clearing house”.</p>
		<p>Clarify the circumstances where a responsible entity can amend a scheme’s constitution without approval of members</p> <p>There is confusion (arising from Court decisions) of the circumstances in which a managed investment scheme’s constitution can be amended without the approval of scheme members.</p> <p>This has caused uncertainty for a responsible entity of a scheme and scheme members and has resulted in litigation, even after the new capital has been raised.</p> <p>ASIC should clarify the circumstances in which a responsible entity can amend a scheme’s constitution without the approval of members. We would welcome the opportunity to discuss this issue with ASIC.</p>