

21 December 2017

Ms Michelle Reid
Senior Manager, Investment Managers and Superannuation
Australian Securities and Investments Commission
Level 9, 120 Collins Street
MELBOURNE VIC 3000

Dear Michelle

RE : ASIC CONSULTATION PAPER 296: FUNDS MANAGEMENT

The Financial Services Council (FSC) has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees. The industry is responsible for investing more than \$3 trillion on behalf of 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the third largest pool of managed funds in the world. The FSC promotes best practice for the financial services industry by setting mandatory Standards for its members and providing Guidance Notes to assist in operational efficiency.

We thank ASIC for releasing draft regulatory guides to facilitate the new Corporate Collective Investment Vehicle (CCIV) and Asia Region Funds Passport (ARFP) and for providing the opportunity to comment on these drafts. We note that the regulatory guides cannot be finalised prior to implementation of the legislation for the CCIV and ARFP and note it is unclear when these two regimes will commence.

We ask that ASIC provide further opportunities for industry to comment on the regulatory guides after the relevant legislation receives Royal Assent and before the regulatory guides are finalised. We strongly recommend that ASIC adopt a facilitative approach to compliance once the regulatory guides are finalised.

The CCIV and ARFP are significant changes to the existing regulatory landscape and industry will require time to digest the changes and make appropriate system and process changes. These changes cannot be fully understood until the legislation, final regulatory guides, information sheets and illustrative guidance are all finalised. We recommend that at least 12-18 month transition period is provided in order to allow industry sufficient time to consider, implement and internally approve the changes required to comply with ASIC's guidance and expectations contained within the new and updated regulatory guides.

In the Appendix we set out our responses to the draft regulatory guides under the relevant headings.

Should you wish to discuss this submission further please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carla Hoorweg', with a stylized flourish at the end.

CARLA HOORWEG
Senior Policy Manager – Investment, Innovation & Technology

Appendix

General comments

We strongly encourage ASIC to provide the industry with adequate time to review the draft guidance once the CCIV and ARFP legislation has been finalised, including all tax provisions.

We appreciate the approach of releasing the draft guidance now, so as to provide maximum time for the industry to engage with the proposals, however we note that the industry should also have the opportunity to make further submissions once the CCIV and ARFP regimes have been settled. We see this as a particular issue given the weight of feedback to Treasury around greater flexibility on the use of sub-funds across a CCIV's investment structure, and hence the associated implications for guidance relating to the CCIV's constitution.

1. Consultation Paper 296 – Funds Management

Our understanding is that CCIVs will be eligible for registration as an Australian passport fund under the ARFP. The consultation paper suggests that only registered Managed Investment Schemes (MIS) can be eligible however our reading of the ARFP Memorandum of Cooperation (MoC) is that it provides that “a CIS *registered* under the Corporations Act” can be an Australian ARFP fund. We would appreciate clarification from ASIC that CCIV's are eligible.

2. Draft Regulatory Guide 000 Funds management: Establishing and registering a fund

- ASIC's proposed minor changes to existing guidance about registering an MIS:

Comment: the registration process should be improved to achieve consistency in the constitutions and ASIC's requirements. The current process is very much dependent on the assessment of each individual officer which can result in significant inconsistencies in the volume and type of requisitions asked of funds with very similar constitutions. RG 000.62 refers to a process of review before lodgement, which has previously only been available in relation to unit pricing provisions that do not rely on Class Order [CO 13/655], which is still referred to in the proposed new RG 134.31. It would be helpful if ASIC could expand pre-lodgement review to be broader than unit pricing, and outline the process. It would help efficiency and cost control for both product issuers and ASIC to have a clear pre-approval process by referencing prior lodgements or submitting a pro forma document, so that only variations for the particular fund need to be reviewed.

- Registered schemes: ASIC proposes more granular asset kinds to be stated in the registration application – see asset kinds in Table 1 of CP 296. The same requirement will apply to CCIV's.

Comment: The asset kinds are reflective of the industry common asset classes. Consideration needs to be given to AFSL implications, although ASIC does not propose to change asset classification for the purposes of the AFSL's. We also note that this may require further consideration in relation to a fund structure where multiple sub-funds are on offer with different asset classes/investment strategies.

- New guidance on CCIV registration, ASIC notification of a new sub-fund of a CCIV and registration of an Australian passport fund: The registration process for an Australian passport fund is quite different to the registration process for the MIS and is more aligned to the process of granting an AFSL. A PDS is also required to be lodged with and reviewed by ASIC as part of the registration process.

Comment: We question why the proposed registration for CCIVs is so different to the MIS registration process (noting that PDS's for unlisted MIS's are not subject to ASIC review). ASIC is notified of a PDS issue through a PDS in use notice. The approach proposed in the draft guidelines may also result in differences between a PDS of a MIS that is an Australian Passport fund and a MIS which is a not an Australian Passport fund. We would suggest this should be streamlined.

- Differences in the registration process between MIS and CCIV: When an application for an MIS is lodged with ASIC, an assessment by ASIC is made whether the MIS complies with the requirements of the Corps Act. When an application to register a CCIV is lodged with ASIC, the CCIV application is not required to be assessed by ASIC as to whether it meets the requirements of the Corps Act. However, ASIC will refuse the application if the requirements of s1137 of the draft legislation are not met. ASIC may choose to assess an application based on the risk assessment.

Comment: This is very subjective and creates uncertainty.

- Unlike MIS constitutions and compliance plans, ASIC is not required to assess whether the constitution or compliance plan for a retail CCIV meets the requirements of the Corps Act as part of the registration process. However, ASIC may choose to do so.

Comment: We would support this approach for retail CCIVs and suggest that it should also apply to retail MIS constitutions and compliance plans.

3. Draft Regulatory Guide 000 Foreign passport funds

This regulatory guide only provides guidance to foreign passport funds and their operators who are looking to enter, or operate in, Australia under the ARFP regime.

Comment: the Foreign Passport RG by its nature does not offer guidance in relation to Australian passport funds looking to enter foreign markets (i.e. the type of passport fund that Australian entities are likely to establish). We believe it would be useful to the Australian market if ASIC developed a regulatory guide outlining the application process and steps required for Australian entities looking to enter the regime, rather than having this material interspersed through other regulatory guides.

4. Draft updated Regulatory Guide 132 Funds management: Compliance and oversight

As a general comment we encourage ASIC to consider ensuring that new Compliance Plan requirements stemming from the draft Regulatory Guide 132 do not have retrospective application to closed-ended schemes and/or schemes that are in run-off.

Further, we believe any additional guidance on compliance management systems should be addressed in RG259, recognising that compliance risk can (and should be) more appropriately managed as part of overall enterprise risk management.

Also we note that APRA has also recently issued draft guidance for consultation covering similar aspects as ASIC's guidance on compliance risk management systems. We would suggest ASIC considers whether a joint ASIC and APRA 'good practice guide'.

Comments in relation to D1Q1 – D1Q6:

Members have raised concerns regarding the extent of prescription for wholesale schemes, noting that appears excessive and contrary to the nature of such schemes as being accessed by sophisticated, wholesale investors. These comments have also been included in our submissions to Treasury on the design of the CCIVs.

The requirements for compliance plans of REs and corporate directors of CCIVs appear to extend beyond the measures required for the purposes of s.601HA and draft s.1161A respectively. We suggest that the guidance better distinguish between the key content requirements of the compliance plan and the required elements of the investment fund operator's overall compliance management system. We note that the draft guidance already acknowledges that the compliance plan is one part of the operator's overall compliance management system. This distinction is important, given the focus in the guidance on alignment with the operator's values, purpose and strategy on the one hand, and the requirement on the other hand for compliance plans to have the level of detail and certainty in their controls that enable the audit of compliance with the controls to occur.

In addition, in light of s.601HA and draft s.1161A, compliance obligations other than under the Corporations Act and the constitution should form part of the operator's broader compliance management system. By way of example, measures relating to overseas regulatory regimes (such as Dodd-Frank) are beyond the jurisdictional scope of the compliance plan.

5. Draft updated Regulatory Guide 133 Funds management and custodial services: Holding assets

No comments.

6. Draft updated Regulatory Guide 134 Funds management: Constitutions

Comment: Could ASIC please confirm that the intention of the commentary at the top of page 4 of the new RG 134 is to preserve the position for existing schemes registered before 1 October 2013, that the release of a new RG 134 will not mean that their constitutions need to be amended?

7. Draft updated Regulatory Guide 136 Funds management: Discretionary powers

The existing ASIC RG 136 gives helpful guidance in paragraph 57 regarding the status of controlled sub trusts of registered schemes, and how the property of those trusts will be treated for regulatory purposes. It does not appear in the proposed new RG 136. Could this guidance be retained in the appropriate place in one of the Regulatory Guides?

8. Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017

Comment on legacy MIS products:

The FSC continues to advocate for a mechanism by which legacy fund products can be closed and unitholders migrated to newer, more cost-effective product options. We anticipate that some form of relief will be incorporated into the CCIV rules to ensure effective transfer from existing MIS into the new structure. We expect that if this is permitted then ASIC would look to produce guidance on how such transfers should occur and we would recommend a streamlined transition based on the previous relief provided for transitions to the Attribution Managed Investment Trust taxation regime through ASIC Instrument 2016/489.