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Dear Michelle

### **ASIC Funds Management regulatory guidance – consultation paper**

The Property Council welcomes the opportunity to comment on ASIC's proposed guidance in relation to managed investment schemes (MIS), corporate collective investment vehicles (CCIV) and passport funds, as set out in Consultation Paper 296.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent, owners, fund managers, superannuation trusts developers and investors across all four quadrants of property investments: debt, equity, public and private.

#### **Interaction with CCIV consultation**

Industry supports the introduction of a CCIV regime and appreciates the significant work being undertaken by Treasury and ASIC to ensure the regime is fit for purpose and commercially viable. Given the legislative framework for the CCIV regime is still being developed, and there are significant aspects of the legislation that has yet to be exposed, it has been difficult to properly assess the potential impacts of the proposed ASIC guidance for CCIV.

We recommend that there be further time to provide comment on the CCIV aspects of the ASIC guidance, once industry has had the opportunity to review the holistic CCIV legislative package. Our below feedback focuses on the proposed changes to the existing MIS regime.

#### **Implications of proposed guidance for MIS regime**

Industry supports the proposed approach to consolidate 'funds management' guidance for MIS, CCIV and passport funds into a core set of regulatory guides. However, we have three main areas of concern with the draft guidance.

##### **1. *Lack of visibility on the proposed changes to existing MIS guidance***

We understand that, in developing the draft guidance for CCIVs and passport funds, ASIC has also taken this opportunity to update and refresh the existing MIS guidance to reflect changes in ASICs views and practices.

Industry is concerned that by undertaking this consultation as part of the CCIV/passport funds consultation, there has not been sufficient opportunity to properly assess the implications of the proposed changes to the existing MIS guidance. The release of draft consolidated guidance covering MIS, CCIV and passport funds has also made it difficult for industry to properly identify the substantive changes that have been made to the existing MIS guidance.

As such, industry recommends that, at a minimum:

- ASIC provides greater clarity on the changes being proposed to existing MIS guidance, for example, in the form of a table or matrix; and
- Appropriate transitional measures are provided to give existing funds sufficient time to understand and comply with the new regulatory guidance.

## **2. Extending ASIC oversight of unregistered MIS**

Currently, in the context of unregistered MIS, ASIC's regulatory oversight is focused on the licensees who operate unregistered MIS, and not the schemes themselves. This approach recognises the different level of regulatory oversight required for wholesale funds given the sophisticated nature of the investors.

However, we are concerned that proposed Regulatory Guide 132 (compliance and oversight) notes on the covering page that it is intended to apply to wholesale MIS. This would seem to be a broadening of ASIC's regulatory oversight beyond the current rules, and potentially impose unnecessary compliance costs on wholesale funds.

Industry recommends this is clarified in the final version of Regulatory Guide 132 to ensure the unregistered scheme itself is excluded from the guidance.

## **3. Removal of ASIC guidance on controlled sub-trusts**

Currently, Regulatory Guide 136 provides guidance on controlled sub-trusts and, relevantly, provides that any property held through a controlled sub-trust is scheme property of the registered scheme that controls the sub-trusts (para 57).

The text of paragraph 57 on controlled sub-trusts does not appear in the proposed consolidated funds management guidance. This is a material issue for property funds as property assets are typically held through special purpose vehicles.

We understand from the ASIC information session on 24 November that this omission does not reflect a change in ASIC's approach to controlled sub-trusts, and guidance on controlled sub-trusts will be reflected in the final proposed guidance.

We would be happy to meet to discuss these issues with you further.

Please contact me (02 9033 1929) if you have any queries.

Yours sincerely



Belinda Ngo  
**Executive Director, Capital Markets**