



ASIC
Australian Securities &
Investments Commission

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and Investments Commission**

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Sent by email

Dear Directors,

RESPONSIBLE ENTITY OBLIGATIONS IN THE CURRENT CHALLENGING ENVIRONMENT

In light of the current high levels of market volatility and the disruption caused by COVID-19, ASIC is writing to you to:

- remind you of your legal obligations and duties to members, especially your obligations and duties in relation to managing scheme liquidity;
- ask that you assist ASIC in monitoring the current situation, by notifying us immediately if any registered scheme becomes non-liquid; and
- set out the relief that ASIC may be able to provide to assist members if a scheme becomes non-liquid.

Duties to Members

We remind you that under Chapter 5C of the *Corporations Act 2001* (**Corporations Act**), a Responsible Entity (**RE**) and its officers owe duties to members of each of the registered schemes operated by the RE (**Schemes**) and must exercise their powers and carry out their duties in the best interests of Scheme members. Further, we refer you to your general licensee duties to:

- do all things necessary to ensure that the financial services covered by your Australian financial services licence (**AFS licence**) are provided efficiently, honestly and fairly;
- to treat members who hold interests of the same class equally and members who hold interests of different classes fairly;
- have adequate risk management systems;
- maintain adequate financial and other resources; and
- comply with the conditions of your AFS licence.

Scheme Liquidity

For your Schemes, ASIC expects that:

1. You are actively monitoring the levels of redemptions and applications for interests in each of the Schemes.
2. You are actively reviewing the terms on which redemptions are made available for each Scheme and whether this remains consistent with the liquidity of the underlying assets of the Scheme. Where there is a material mismatch between the redemption terms and the underlying assets, we expect you to take active steps to address this (e.g. to revise the terms on which redemptions are being offered, such as moving from daily redemptions to less frequent redemptions).
3. You are actively assessing whether Schemes remain liquid or become non-liquid. Should a Scheme become non-liquid you would need to determine whether redemptions should be suspended to protect the interest of all members, having regard to the duties you owe to members, the terms of the Scheme constitution, and your obligations under the provisions that apply to redemptions from non-liquid Schemes in Part 5C.6 of the Corporations Act. We would also expect you to consider whether suspending all member related cashflows (including applications, distributions and distribution re-investments) would be necessary in order to act in the best interests of all members.

We note that Scheme liquidity should be assessed from the perspective of meeting investor redemptions both in the short term and with a view to whether the Scheme will remain liquid in the longer term to meet future redemption requests.

4. You are monitoring the valuation of Scheme property and its flow through to unit prices upon which member transactions are processed. This also extends to consideration of appropriate buy/sell spreads.
5. You are carrying out your obligations in line with our expectations under Regulatory Guide 259 *Risk management systems of responsible entities*, relating to liquidity, risk management systems and stress testing.
6. You are meeting your disclosure obligations and are communicating with Scheme members in a timely manner. When communicating with Scheme members we expect that you will treat members equally and fairly (e.g. not affording preference to one member over another when providing information).

Notification to ASIC of suspension or illiquidity

Should you form the view that any Scheme is non-liquid or decide to suspend redemptions in any Scheme, we ask you to notify ASIC immediately (email the ASIC contact in the Investment Managers team who sent this letter). This will

assist us with monitoring activity in this area and inform actions that we can take to assist entities and members in these challenging circumstances.

Redemption-related Relief

Should a RE find itself in the position of declaring a Scheme non-liquid for an extended period of time, the RE may wish to consider applying to ASIC for hardship relief via the usual process (email applications@asic.gov.au).

Taking into account individual circumstances and on a case-by-case basis, ASIC is able to modify the law to facilitate partial investor access to funds in cases of hardship.

Should the need arise, ASIC may also provide rolling withdrawal relief to REs to simplify the procedure for periodic withdrawal offers (out of available cash) in appropriate cases.

REs are able to apply for one or both types of relief. ASIC Regulatory Guide 136 *Funds Management: Discretionary Powers* refers to ASIC's powers to grant hardship relief and rolling withdrawal relief and outlines the factors we may consider when determining whether to grant relief.

Should you have any questions in relation to this letter please contact the ASIC Investment Managers team member who emailed this letter.

Yours sincerely,



Rhys Bollen
Senior Executive Leader
Investment Managers | Wealth Management Group