



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 137

Constitution requirements for schemes registered before 1 October 2013

July 2018

About this guide

This guide is for responsible entities of registered managed investment schemes (registered schemes) that were registered before 1 October 2013 and their advisers. It explains our approach to the constitution content requirements in the Corporations Act for these schemes.

Note: From 27 July 2020, applications for relief should be submitted through the [ASIC Regulatory Portal](#). For more information, see [how you apply for relief](#).

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 guide was issued in July 2018 and is based on legislation and regulations as at the date of issue. The note on the front page was inserted on 27 July 2020.

Previous versions:

- Superseded Regulatory Guide 134 as at September 2000
- Appendix to superseded Regulatory Guide 134, issued October 2015

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

Examples in this guide are purely for illustration; they are not exhaustive and are not intended to impose or imply particular rules or requirements.

Requirements for schemes registered before 1 October 2013

Key points

The constitution of a registered managed investment scheme (registered scheme) must meet certain requirements under the *Corporations Act 2001* (Corporations Act). This guide sets out the requirements that applied to constitutions under the version of RG 134 as at September 2000.

For schemes registered before 1 October 2013, we will not deregister the scheme or take any action against a responsible entity or its officers on the basis that a constitution does not comply with s601GA and 601GB of the Corporations Act if the constitution meets the requirements in this guide.

Application of this guide

- RG 137.1 This guide sets out the requirements that applied to constitutions under the version of Regulatory Guide 134 *Funds management* (RG 134) as at September 2000.
- RG 137.2 For schemes registered before 1 October 2013, we will not deregister the scheme or take any action against a responsible entity or its officers on the basis that a constitution does not comply with s601GA and 601GB of the Corporations Act if the constitution meets the requirements in this guide: see [RG 134](#) at RG 134.13–RG 134.15.

Note: In this guide, references to sections (s), Parts (Pts) or Chapters (Chs) are to the Corporations Act, unless otherwise specified.

- RG 137.3 This guide is not intended to state any new policy. It merely reflects the requirements that applied under RG 134 as at September 2000.

Note 1: This guidance was previously contained in an appendix to the version of RG 134 as at October 2015. There has been no change to the no-action position outlined in that guidance. A copy of previous versions of RG 134 can be obtained from [ASIC Digest](#).

Note 2: In replicating the requirements in the version of RG 134 as at September 2000, we updated relevant legislative references (e.g. changing references to ‘the Law’ to ‘the Corporations Act’). We also removed historical references to the *Managed Investments Act 1998* and superseded ASIC policy statements and class orders.

Note 3: Our no-action position for schemes registered before 1 October 2013 will not affect the rights of other persons, including members, if the responsible entity has contravened its duty in s601FC(1)(f) to ensure the constitution meets the requirements in s601GA and 601GB.

Note 4: Where a scheme registered before 1 October 2013 applies to become registered as an Australian passport fund, the responsible entity will have to amend the

constitution to comply with the Australian Passport Rules. We expect the responsible entity to make any changes needed to meet RG 134 if it has not already made those amendments.

Assessing a constitution

Our policy

Ordinary case

- RG 137.4 We assess a constitution when it is lodged with a registration application for a managed investment scheme. To help us assess the constitution, the application must state where the constitution covers the matters required by s601GA and 601GB. Ordinarily, we will only check the parts of the constitution that are identified.
- RG 137.5 We will not ordinarily review amendments to a constitution or replacement constitutions lodged after registration.

Further review

- RG 137.6 We may, however, completely review a constitution or replacement or amended constitution at any time to see if it complies with the Corporations Act.

Underlying principles

- RG 137.7 The responsible entity and its directors have a responsibility to ensure that the constitution meets the outcomes under s601GA and 601GB.

Explanations

What is a 'constitution'?

- RG 137.8 Each scheme must have a constitution that is lodged when applying for registration of the scheme.
- RG 137.9 We cannot register a scheme if its constitution does not appear to meet s601GA and 601GB. The Corporations Act does not prescribe in detail what a constitution must contain. Instead, under s601GA and 601GB a constitution must:
- (a) adequately cover some specified matters which are important to the relationship between the members and the responsible entity; and
 - (b) be a document that is legally enforceable between the members and the responsible entity.

- RG 137.10 The responsible entity has a duty to comply with a constitution when the constitution is consistent with the Corporations Act: see s601FC(1)(m).
- RG 137.11 We are aware that constitutions will be different in length and form. Apart from the matters prescribed in s601GA, constitutions will also include different matters. For example, some constitutions may refer to other rules or regulations (which may or may not be legally enforceable between the members and the responsible entity).
- RG 137.12 We are also aware that most constitutions will declare a trust in favour of the members over scheme property. This view is based on the obligation of a responsible entity under s601FC(2) to hold scheme property on trust for the members.
- RG 137.13 We consider that a constitution needs to contain those matters that Pt 5C.3 requires.

Assessing the constitution

- RG 137.14 Under s601EB(1)(e), we have to assess a scheme's constitution. A constitution must deal adequately with key matters set out at s601GA and 601GB governing the rights and obligations of the responsible entity as well as those of the members. These are:
- (a) the consideration to acquire interests in the scheme;
 - (b) investment and borrowing powers of the responsible entity;
 - (c) member complaints handling;
 - (d) winding up the scheme;
 - (e) the responsible entity's rights to be paid or indemnified from the scheme property; and
 - (f) the withdrawal rights of the members and the exit price for interests in the scheme.

Further review

- RG 137.15 Although we will not usually review all of a constitution, we may do so at any time.
- RG 137.16 We may discover, for example, that a constitution has a provision that negates the effect of other provisions that we relied on in assessing the adequacy of the constitution. In this case, we may do a thorough review of the constitution.

No compliance clause

- RG 137.17 We do not consider that a constitution needs a provision to say that it is subject to the Corporations Act. This is because the Corporations Act imposes direct obligations to comply with the Act and the constitution.

- RG 137.18 However, we do consider that the provisions of the constitution must not be inconsistent with the Corporations Act, so that the constitution will be legally enforceable as required by s601GB. For example, we may refuse registration of a scheme where its constitution contains a clause purporting to limit or exclude the liability of the responsible entity for conduct that may contravene the Corporations Act.
- RG 137.19 If such a clause is included in the constitution it may need to be qualified in the following manner:
- (a) the limitation of liability only operates to the extent permitted by the Corporations Act; and
 - (b) in no way does the limitation purport to exclude or reduce liability under the Corporations Act.
- RG 137.20 This also highlights the need for parties relying on the constitution to first examine the Corporations Act to understand the effect of such an exclusion clause.

Content needed under s601GA

Our policy

- RG 137.21 We are required by the Corporations Act to assess whether or not a constitution makes adequate provision about the matters specified in s601GA. We consider that to make adequate provision about those matters, the content must be certain and complete in a contractual sense. That is, a person reading a constitution must be able to understand how matters will be resolved without having to rely on extrinsic material or on further agreement between the members and the responsible entity. This policy gives guidance about what the Corporations Act requires to help responsible entities comply.
- RG 137.22 We have given relief to allow a constitution to include a provision that has the effect of ensuring consistency with the listing rules of an eligible Australian financial market: see [ASIC Corporations \(Chapter 5C—Miscellaneous Provisions\) Instrument 2017/125](#). The relief means that changes to the terms of the constitution as a result of the operation of this type of provision are not required to be made in accordance with s601GC(1) or 601GC(2).

Consideration to acquire

- RG 137.23 Section 601GA(1)(a) provides that a constitution must make adequate provision for the consideration that is to be paid to acquire an interest in the scheme. We consider that adequate provision has been made when a constitution provides for an independently verifiable price. However, we

have given relief from the effect of s601GA(1)(a) under [ASIC Corporations \(Managed investment product consideration\) Instrument 2015/847](#) in a number of situations when:

- (a) for commercial reasons, the consideration to acquire cannot be determined independently; and
- (b) investor protection will not be reduced.

RG 137.24 Relief is available under ASIC Corporations (Managed investment product consideration) Instrument 2015/847 for:

- (a) placements of quoted interests;
- (b) when there is no pooling, except of money pending its further investment;
- (c) rights issues to members and distribution reinvestment plans;
- (d) forfeited interests;
- (e) interest purchase plans;
- (f) fees for wholesale clients;
- (g) interests that are components of stapled securities;
- (h) the issue of interests based on the value of scheme property attributable to interests in a class, less any liabilities that may be met from that property attributable to interests in that class divided by the number of interests on issue in that class (which can be adjusted for the costs in acquiring or disposing of scheme property, for assets of the scheme that are not scheme property or otherwise) for schemes that are not quoted on a financial market and schemes that are able to be traded on the AQUA market; and
- (i) the issue of interests based on the market price for schemes that are quoted on a financial market other than the AQUA market.

RG 137.25 This means that the responsible entity does not have to include a price or the consideration in a constitution if it fits one of the situations set out in ASIC Corporations (Managed investment product consideration) Instrument 2015/847. We will consider giving relief in other situations if the criteria in RG 137.23(a)–RG 137.23(b) are met.

Note: For our general policy on exemptions and modifications, see [Regulatory Guide 51 Applications for relief](#) (RG 51). For our policy on relief for managed investment schemes, see [Regulatory Guide 136 Funds management: Discretionary powers](#) (RG 136).

How to apply for relief

RG 137.26 To apply for relief:

- (a) lodge an application with the prescribed fee at any ASIC office, or by email to applications@asic.gov.au; and
- (b) ensure the application complies with RG 51 and RG 136.

RG 137.27 You can also contact ASIC on 1300 300 630 for information and assistance.

Powers to deal with scheme property

RG 137.28 Section 601GA(1)(b) provides that a constitution must have adequate provisions about what powers the responsible entity has when dealing with scheme property, such as what investments can be made. We consider that adequate provision for the responsible entity's powers in dealing with scheme property has been made when the powers are set out in the constitution with certainty and completeness. For example, adequate provision has been made if the constitution gives the responsible entity all the powers of a natural person to invest and to borrow on security of the scheme property.

Complaints procedures

RG 137.29 Section 601GA(1)(c) provides that a constitution must have adequate provisions about the method by which complaints made by members in relation to the scheme will be dealt with. We consider that a constitution makes adequate provision about member complaints when it provides for a complaints handling procedure that will give an effective way for members to efficiently get redress if they suffer loss due to breaches.

RG 137.30 When assessing the method for dealing with members' complaints, we will refer to Australian Standard [AS ISO 10002–2006](#) *Customer satisfaction—Guidelines for complaints handling in organizations* (ISO 10002:2004 MOD) as a guide, but it is not necessary for the constitution to set out provisions relating to every aspect of the standard. We expect a constitution to at least include provisions about:

- (a) acknowledging complaints;
- (b) properly considering complaints within reasonable timeframes;
- (c) communicating with the member;
- (d) outlining remedies available to the member; and
- (e) advising the member of any further avenue for complaint.

Winding up

RG 137.31 Section 601GA(1)(d) provides that a constitution must have adequate provisions about winding up the scheme. We consider that adequate provision for winding up a scheme has been made if its constitution:

- (a) deals with all the circumstances under which a scheme may be wound up; and
- (b) provides for an independent audit by a registered company auditor of the final accounts after winding up.

RG 137.32 The provisions about winding up need to be consistent with Pt 5C.9.

Withdrawal rights of members

RG 137.33 Section 601GA(4) provides that if members have a right to withdraw, the constitution must specify the right and set out adequate procedures in a way that is fair to all members. We consider that if there are provisions for a right of withdrawal, the constitution complies if it sets out fair provisions about:

- (a) how members can withdraw; and
- (b) what exit price will apply.

RG 137.34 If there is provision for withdrawal, the constitution must include a method for calculating the exit price in a way that is fair to all members and independently verifiable. Fairness will normally require that the price depend on appropriate, and reasonably current, valuations of scheme property.

Note: [ASIC Corporations \(Managed investment product consideration\) Instrument 2015/847](#) also provides relief so that the calculation of the exit price can be based on the value of scheme property attributable to interests in a class, less any liabilities that may be met from that property attributable to interests in that class divided by the number of interests on issue in that class (and can be adjusted for the costs in acquiring or disposing of scheme property, for assets of the scheme that are not scheme property or otherwise).

RG 137.35 Generally if the withdrawal provisions meet these requirements, we will treat them as complying with the Corporations Act unless they:

- (a) unreasonably disadvantage one group of members; or
- (b) are otherwise inconsistent with the Corporations Act.

Underlying principles

RG 137.36 We consider that a constitution must address the matters in s601GA in a way that enables members to know their rights. We consider these matters must be addressed in a way that is consistent with the Corporations Act.

Incorporation by reference

RG 137.37 A provision that allows provisions in another document to override the terms of the constitution prevents the provisions of the constitution that deal with the matters in s601GA and 601GB from being adequate, because they are not certain and complete. That type of provision may require a reader to consider material that is extrinsic to the constitution itself and avoid the requirements for amendments of the constitution. The Corporations Act would not permit ASIC to register a scheme if its constitution has this type of provision.

Provisions incorporating listing rules by reference

- RG 137.38 We consider that relief to permit inclusion of a provision that has the effect of ensuring a constitution is consistent with the listing rules of an eligible Australian financial market by incorporating by reference and giving overriding effect to those listing rules is appropriate. This is because:
- (a) the listing rules are available to the public;
 - (b) amendments to the listing rules are subject to regulatory oversight; and
 - (c) amendments to the terms of the constitution are highly likely to be appropriate where the listing rules require those amendments in order to maintain listing.

Note: See [ASIC Corporations \(Chapter 5C—Miscellaneous Provisions\) Instrument 2017/125](#).

Explanations**Consideration to acquire***Independently verifiable price*

- RG 137.39 We do not consider that ‘adequate provision’ for ‘consideration to acquire’, in s601GA(1)(a), means there must be a ‘fair price’. We do not require this because the Corporations Act does not require any duty of fairness to applicants for interests. Applicants are protected, in relation to the consideration paid for interests, by the disclosure requirements of Div 2 of Pt 7.9.
- RG 137.40 To meet s601GA(1)(a), the consideration for acquiring interests needs to be set out in the constitution so that it is independently verifiable. The Corporations Act requires provisions enabling calculation of the consideration to be set out in the constitution so members have rights about the consideration for an issue of interests. This is because the consideration for an issue of an interest to another may affect the value of a member’s interest.
- RG 137.41 If the amount of consideration can be influenced by any party who has an interest in the scheme, it will not comply. This means that the consideration is not to be influenced by:
- (a) the responsible entity;
 - (b) any related party of the responsible entity;
 - (c) any person acting in concert with the responsible entity in setting the consideration; and
 - (d) any other person having an interest in the amount of consideration.

- RG 137.42 For there to be an independently verifiable price, the scheme's auditor must be able to verify the amount of consideration by referring to the constitution and without referring to the responsible entity. If the consideration is based on the value of scheme property, the constitution has to set out how the property will be valued.
- RG 137.43 We will not generally give relief so interests in a trust can be issued at the responsible entity's discretion at a discount or at an increased price as this would not be consistent with the policy of the Corporations Act. We do not accept that, because companies can issue shares at a discount or a premium, similar treatment should be applied to issuing interests in a scheme in the form of a trust.
- RG 137.44 Unitholders in a trust have different rights from shareholders. Unitholders in a trust place their funds under the responsible entity's control to invest their funds. The scheme property is held for the benefit of the members. By contrast, shareholders supply capital for running a company. Shareholders are not beneficially or legally entitled to the assets of the company.
- RG 137.45 We will, however, give relief to facilitate flexibility for the responsible entity about the price of interests in a number of situations: see [ASIC Corporations \(Managed investment product consideration\) Instrument 2015/847](#).

Placements of quoted interests

- RG 137.46 We have given conditional relief in ASIC Corporations (Managed investment product consideration) Instrument 2015/847 to allow interests in a scheme to be issued at a price determined by the responsible entity. This relief facilitates off-market placements of quoted interests. The relief applies only if the interests are quoted on the financial market of ASX or an approved foreign market (as defined in ASIC Corporations (Managed investment product consideration) Instrument 2015/847).
- RG 137.47 Relief means that interests can be issued at a discount to the market price. The price paid will normally be the result of commercial negotiations between the responsible entity and the person taking up the issue.
- RG 137.48 The market price may reflect only dealings by holders of small parcels of interests. In this situation, the responsible entity may not be able to find anyone willing to take a substantial placement at the market price.
- RG 137.49 If interests in the scheme are quoted, the market is an independent pricing mechanism. The market regulates the depth of any discount, and establishes an appropriate reference point for measuring it. These mechanisms are not available when a scheme is not listed.
- RG 137.50 We recognise that issuing interests at a discount to the market could dilute the value of members' interests. This is justifiable because of the substantial

commercial benefit in enabling capital to be raised by a placement. There are conditions on our relief that limit the extent of any dilution of existing interests. Stricter conditions apply to issues that could involve large dilutions.

- RG 137.51 A condition of relief for placements is that unless the issue is covered by s601GAA(12) or 601GAA(13) (as notionally inserted into the Corporations Act by ASIC Corporations (Managed investment product consideration) Instrument 2015/847), the responsible entity and its associates are not issued any of the interests.
- RG 137.52 Additional conditions apply if the issue under the proposed placement, together with any related issue in the previous year, immediately before the issue, comprises more than 15% of interests in that class.
- RG 137.53 The additional conditions require 75% by value of members who hold interests in the same class to approve the issue and 25% by value to vote. If interests of members in another class are affected, then unless the responsible entity reasonably considers that the issue will not adversely affect the interests of members in that other class, those members must separately approve the issue. Those who are to be issued interests must be excluded from determining if approval is given.

Limited pooling

- RG 137.54 Sometimes the only pooling or common use is of members' contributions before they are invested or otherwise disposed of. In this situation, the price at which interests are issued to one member does not affect the interests of the others. We have given relief in ASIC Corporations (Managed investment product consideration) Instrument 2015/847 to these schemes so the responsible entity can decide the issue price.

Rights issues and distribution reinvestment plans

- RG 137.55 We have given relief so issues can be made at a discount for some rights issues and distribution reinvestment plans, because there will be no unfair dilution. Relief is available when:
- (a) the responsible entity reasonably believes that any price discount is less than or equal to the percentage stated in the constitution; and
 - (b) the interests (whether renounceable or not) are offered to all the existing members proportionately to the value of their interests and not to anyone else. Foreign members may be excluded in a number of circumstances (see s601GAA(10) (as notionally inserted into the Corporations Act by ASIC Corporations (Managed investment product consideration) Instrument 2015/847)).

- RG 137.56 We have given incidental relief from s601FC(1)(d) so foreign members can be excluded.
- RG 137.57 We also have given relief so that the responsible entity can decide the price under a distribution reinvestment plan. In a distribution reinvestment plan, the responsible entity uses money payable to a member as a distribution of capital or income to pay for additional interests. If all members may from time to time elect to participate in the distribution reinvestment plan, our relief applies. Foreign members may be excluded in a number of circumstances: see s601GAA(11) (as notionally inserted into the Corporations Act by ASIC Corporations (Managed investment product consideration) Instrument 2015/847).
- RG 137.58 Relief for distribution reinvestment plans is given on the condition that:
- (a) all the issues under the distribution reinvestment plan are in the same class;
 - (b) the same price applies to all interests issued under the distribution reinvestment plan in relation to a particular distribution;
 - (c) all interests issued under the distribution reinvestment plan in relation to any particular distribution are issued at substantially the same time; and
 - (d) the responsible entity reasonably believes that any price discount offered is not more than the percentage stated in the constitution.
- RG 137.59 The responsible entity has to consider the rights and interests of all members when deciding the price in these circumstances, particularly the rights and interests of members who do not take up the offer. This is because the responsible entity has duties under s601FC(1)(c) and 601FC(1)(d), and a fiduciary relationship with members.
- Forfeited interests*
- RG 137.60 We have given relief so the responsible entity can decide the price at which partly paid interests are resold. This relief applies if the interests are:
- (a) in a listed scheme; and
 - (b) forfeited to the responsible entity because of a failure to pay a call.
- RG 137.61 This does not imply that in these circumstances we will also give relief from the Product Disclosure Statement (PDS) requirements or other provisions of the Corporations Act.
- RG 137.62 The forfeited interests are to be sold at a public auction conducted, as far as practicable, in accordance with the provisions in the Corporations Act about forfeited shares: see s254Q.

Fees

- RG 137.63 We consider that some fees such as an entry fee are a part of the consideration payable to acquire an interest in a scheme. Without the relief available under ASIC Corporations (Managed investment product consideration) Instrument 2015/847, these fees would have to be specified in an independently verifiable manner in the constitution.
- RG 137.64 We recognise that fee arrangements involving negotiated rates for wholesale clients are a means by which responsible entities can attract those investors to a scheme. Such arrangements may assist in more efficient structuring of schemes by facilitating economies of scale.
- RG 137.65 Under the conditions of [ASIC Corporations \(Managed investment product consideration\) Instrument 2015/847](#):
- (a) fee arrangements must be disclosed to:
 - (i) existing members of the scheme; and
 - (ii) persons being offered interests in the scheme under a PDS; and
 - (b) the fee arrangement agreed with any member must not adversely affect the fees that any other member will incur.
- RG 137.66 In some circumstances, discounted fee arrangements for related parties may be used to provide incentives for effective performance by officers and employees. We have given individual relief to a scheme so that a differential fee arrangement could apply to employees of a related body corporate of the responsible entity of the scheme and their relatives where:
- (a) the number of employees as a proportion of all members in the scheme was insignificant (and therefore unlikely to materially affect other members in voting or takeover); and
 - (b) the differential fee arrangement involving the waiver of entry and exit fees did not affect the scheme to the disadvantage of other members of the scheme.
- RG 137.67 We will consider applications for relief to allow differential fees for employees or officers on a case-by-case basis, taking these matters into account. Applications should include proposals for disclosing such fee arrangements.
- RG 137.68 This relief is consistent with the relief we have given from s601FC(1)(d) to allow individually negotiated fees: see [ASIC Corporations \(Registered Schemes: Differential Fees\) Instrument 2017/40](#).

Powers to deal with scheme property

- RG 137.69 We do not consider that a scheme's investment policy must be set out in its constitution. This is because s601GA(1)(b) relates to powers of investment,

rather than how the responsible entity intends to exercise its powers. We expect PDSs will specify the investment policy for a scheme.

Complaints procedures

- RG 137.70 A constitution must adequately deal with how members' complaints will be handled: see s601GA(1)(c). This implies there must be a complaints handling system. The complaints handling system may also be seen as a measure to ensure compliance that will need to be addressed in the compliance plan. Further, because the complaints handling method will be in the constitution, the scheme's compliance plan is required by the Corporations Act to include adequate measures to ensure that the scheme's complaints handling method is complied with.
- RG 137.71 The intention of the Corporations Act is that there must be an appropriate complaints handling system set out in the constitution so that it is a right of members.

Winding up

- RG 137.72 The Corporations Act sets out the framework for winding up of schemes. A constitution should set out members' rights in a winding-up process consistently with Pt 5C.9.
- RG 137.73 The appointment of the auditor is terminated when a winding up commences: see s331AD. The accounts of winding up should be independently audited to ensure compliance with the Corporations Act. We consider that provision in a constitution for the independent sign off of the accounts of a winding up is a part of adequately dealing with winding up.

Withdrawal rights of members

- RG 137.74 We do not prescribe how fairness is to be achieved. Because the constitution must provide for the withdrawal price, we consider that the basis for the price set out must be independently verifiable based on the terms of the constitution.

Note: [ASIC Corporations \(Managed investment product consideration\) Instrument 2015/847](#) provides relief so that the calculation of the withdrawal price can be based on the value of scheme property attributable to interests of the relevant class, less any liabilities that may be met from that property attributable to interests in that class divided by the number of interests on issue in that class (and can be adjusted for the costs in acquiring or disposing of scheme property, for assets of the scheme that are not scheme property or otherwise).

- RG 137.75 The withdrawal provisions in a constitution must be consistent with Pt 5C.6, which restricts withdrawal from non-liquid schemes.