

11 MARCH 2020

Product Regulation
Strategic Policy
Australian Securities and Investments Commission
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Brisbane QLD 4001

By Email: product.regulation@asic.gov.au

<p>RE: CONSULTATION PAPER 325 PRODUCT DESIGN AND DISTRIBUTION OBLIGATIONS</p>
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1. EXECUTIVE SUMMARY

We refer to the consultation on the ASIC guidance note to the product design and distribution obligations and provide comments to the proposals outlined in Part B. *Product Governance Framework* and Part C *Obligations of Issuers*.

As a professional trustee firm, we support the introduction of effective product governance across the lifecycle of financial products with a consumer-centric approach.

We provide commentary regarding the guidance being limited to obligations of issuers and distributors. The proposed guidelines fail to address obligations of other key parties to the lifecycle of financial products. As a result, the current guidance interferes with the independent role of the trustee and blurs the lines between legal, commercial and operational responsibilities for Managed Investment Scheme (MIS) products.

2. BACKGROUND

Melbourne Securities Corporation Ltd ACN 160 326 545 AFSL 428289 trading as MSC Trustees (MSC) is a professional trustee firm that provides services across a wide range of financial products. Specifically, relevant to this submission, MSC provides trustee services to retail and wholesale MIS and is the Responsible Entity for a number of Registered MIS.



A key attribute of MSC's service offering is maintaining a level of independence between the Responsible Entity (professional trustee) and the product designers, promoters and distributors. There are a number of key objectives met by offering the service in this way, that focus on the interests of the consumer:

- Risk mitigation across the financial product lifecycle.
- Act honestly and in the best interests of scheme members at all times.
- Exercise a reasonable degree of care and diligence.
- Treat each class of scheme members/unitholders equally and fairly.
Not make use of information obtained to gain an improper advantage or cause detriment to scheme members/unitholders.
- Comply with the scheme constitution and all applicable laws.
- Ensure scheme property is separated from the property of the Fund Manager and other entities.
- Assume ultimate responsibility for any complaints by scheme members/investors or enquiries by the regulator.

A service offering that maintains a level of independence between the key parties in an MIS structure supports the objectives outlined by the consultation. The oversight of an independent trustee maintains a consumer centric approach to the operational management of financial products and the deployment of retail investment monies. In addition, there is strengthened operational controls and processes across the financial product lifecycle.



3.1. Product Governance Framework

We are supportive of the concept of effective product governance across the lifecycle of financial products. The Product Governance Framework that has been proposed is limited by defining the obligations and assigning those obligations to the issuer and the distributor. The guidance fails to address other key parties to the design, promotion and ultimate distribution of the financial product.

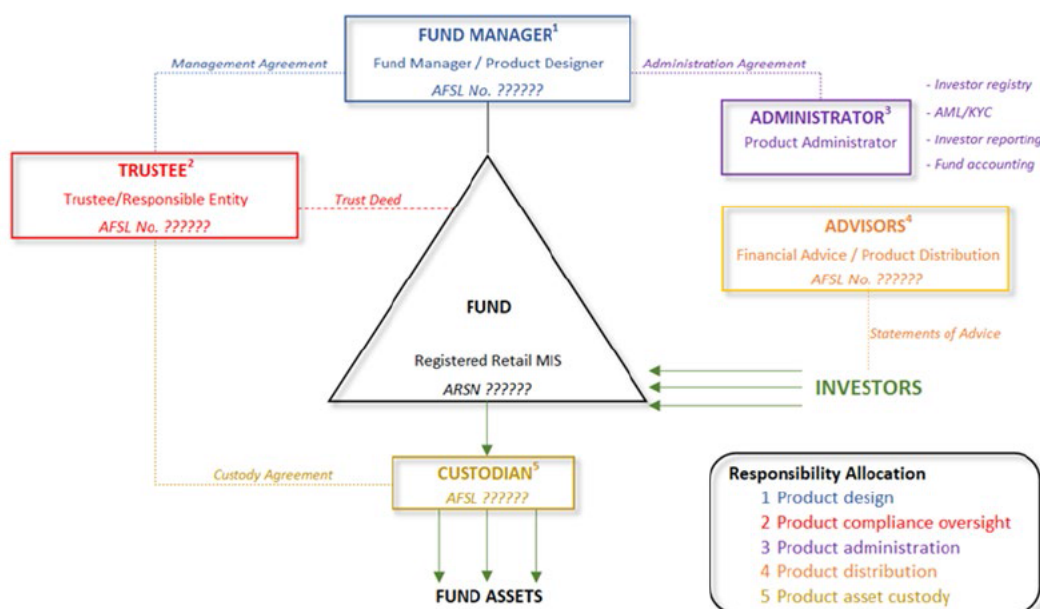
A key design of MSC's service offering is to enable the recognition of the specialist skills required at the different stages of the financial product lifecycle. It also recognises that to ensure that the best interests of the needs of consumers it is imperative that there is a separation of roles and obligations and appropriate oversight across the financial product lifecycle. Each function across the financial



product lifecycle is performed by dedicated parties that are suitably qualified and experienced is the most efficient, honest and fair method of engagement with and management of third-party investor capital.

Parties that contribute to the lifecycle of financial products in MIS include Responsible Entities (Trustees), product designers, product managers, promoters specialist fund managers, custodians and distributors.

The below diagram demonstrates the key parties and the role they have in a Registered MIS:



To support the separation of roles it is important that the trustee operates at arm's length from the specialist fund manager. The fund manager will design and promote a financial product and then manage these products operationally on an ongoing basis. The RE retains the obligations and in addition to its own frameworks ensures that the fund manager has appropriate resourcing, systems and processes in place to be compliant with these obligations.

We agree that a documented framework for design and distribution obligations should be held by the RE. We recommend that the guidance should outline that the obligations also extend to the fund managers that design and promote the financial products in a MIS arrangement. In this way the design and distribution obligations will be put into practice and fully integrated into the processes of the product designers and promoters.



3.2. Obligations for Issuers

We agree that the documented framework for design and distribution obligations should be owned by the RE in an MIS structure arrangement. However, it is important that the obligations relating to the target market determination are owned by the specialist fund manager to ensure that the framework is fully integrated across the product lifecycle. This will promote the alignment of the objectives of the fund and the members.

4. CONCLUSION

Reforms to assist consumers understand which financial products are best for them is an important aspect of maintaining a strong financial system. Reinforcement of governance across all key contributors to the financial product lifecycle and the use of data to provide product designers information to assist them to continue to provide products to suit the consumer supports this objective. We encourage additional guidance in addition to the obligations of the issuer and distributors to support the embedding of the proposed framework.

We are happy to provide additional information or to discuss this submission further at your request.

Yours sincerely



SHELLEY BROWN
Chief Compliance Officer
MSC Trustees