



ASIC

Australian Securities &
Investments Commission

CIS Regulation in Australia – Hedge Funds and Other Funds

APEC Financial Regulators
26-30 March 2007

Jennifer Lewis
Jennifer.lewis@asic.gov.au

Today – regulation of collective investments industry in Australia



ASIC

Australian Securities &
Investments Commission

1. Collective Investment Schemes are “Managed Investment Schemes” (MIS)
2. Regulatory framework - hedge funds are regulated like other MIS
3. Size of managed investments industry
4. Size and nature of hedge funds
5. Other types of managed investment schemes

2



ASIC

Australian Securities &
Investments Commission

Collective investment schemes – Managed investment schemes

Definition - s9 Corporations Act 2001

Managed investment scheme (MIS)



ASIC

Australian Securities &
Investments Commission

1. **People contribute money** or money's worth **to acquire interests** – the rights to benefits produced by the scheme
2. **Contributions are pooled** or used in a common enterprise to produce benefits for the people who hold interests
3. **People** who hold interests **do not have day to day control** over the operation of the scheme

4

Forms of CIS

IOSCO principles focus on regulatory outcomes rather than structures. Globally there are differences in approach:

- **Investment company** – company law, USA
- **Unit trust** – trust law, UK
 - basis of Australian law
 - a managed investment scheme does not need to be a trust
- **Contract** – contract law, Europe



ASIC
Australian Securities &
Investments Commission

5



ASIC
Australian Securities &
Investments Commission

Regulatory framework for managed investment schemes

Development and current framework

Development in 1998: prescribed interests > managed investments

PRESCRIBED INTERESTS >1998	MANAGED INVESTMENTS
Manager Public company - dealer's licence AND Trustee	Single responsible entity •Public company - dealer's licence • Compliance Committee or Board with external members
Scheme assets held by Trustee or by a sub-custodian appointed by the trustee	Scheme assets held by SRE or another entity appointed by SRE. SRE is ultimately responsible to safeguard scheme assets
Trust deed imposes obligations on the manager and the trustee	Scheme is registered • Constitution imposes obligations on SRE • Compliance plan - must be audited annually
Compliance not required with related party provisions of Corporations Law – but some limits on related party transactions	Compliance required with related party provisions of Corporations Law



ASIC
 Australian Securities & Investments Commission

7

Managed Investments Act 1998

Entry requirements

1. Licensing as single responsible entity
2. Scheme registration – constitution and compliance plan
3. Disclosure document

Ongoing requirements

- Continuous disclosure
- Financial reporting and audit
- Compliance plan audit
- **Breach reporting** – by licensee, compliance committee, SRE auditor, scheme auditor, compliance plan auditor



ASIC
 Australian Securities & Investments Commission

8

Licensing



ASIC
Australian Securities &
Investments Commission

Responsible officers

1. Experience in investing the assets
2. Experience in operating a scheme and in complying with the law

Resources to operate the scheme

- Information technology
- Staff
- Financial resources
- Systems and procedures

9

Scheme Registration



ASIC
Australian Securities &
Investments Commission

Constitution – provision for:

- Consideration to be paid to acquire interests
- Powers of SRE to deal with assets
- Powers of SRE to borrow
- Method for investors to make complaints
- Winding up scheme
- SRE to be paid fees and to be indemnified
- Rights of investors to withdraw

Compliance plan – measures for:

- Identifying/holding/valuing scheme property
- Compliance committee / compliance plan audit
- Record keeping

10

Compliance Plan Commentary

EXAMPLE



ASIC

Australian Securities &
Investments Commission

11

Product Disclosure Statements

Provide information about:

- significant benefits to the holder of the product
- Significant risks
- Cost of the product
- Information about commissions or similar payments
- Product characteristics and rights, terms, conditions and obligations attaching to the product
- Complaints/dispute resolution
- Cooling off period



ASIC

Australian Securities &
Investments Commission

12

Duties of single responsible entity



ASIC

Australian Securities &
Investments Commission

Duties include:

- Act honestly
- Exercise care and diligence
- Act in the best interest of members
- Treat members who hold the same class of interests equally and members who hold different classes fairly
- Not use information to gain an improper advantage or to cause detriment to scheme members

13

Financial Services Reform Act



ASIC

Australian Securities &
Investments Commission

- commenced 11 March 2002 - 2 years for existing industry participants to transition
- amended the Act to introduce uniform licensing, conduct and disclosure requirements

Changes included

- Licensing - 4,500 licensees including about 450 single responsible entities
- Breach reporting – if the event is “significant” – additional obligation
- Management of conflicts of interest
(CLERP 9 – a subsequent amendment to FSRA)

14

Principles-based regulation



ASIC

Australian Securities & Investments Commission

- Rethinking Regulation Review - “Australia has undergone a relatively rapid rise in regulation over the past couple of decades, in response to a succession of social, environmental and economic needs and pressures.” “The relentless forces of globalisation mean that Australia needs to continue to drive reforms aimed at removing impediments to efficiency and innovation” (Commonwealth of Australia, 2006)
- **Principles** rather than **prescriptive rules** enable introduction of new products and new businesses
- **Regulatory discretion** must be exercised carefully
- Principles may increase demands on the regulator – **providing guidance** to assist entities to understand and comply with the requirements

15

Policy Statements – guidance available on web



ASIC

Australian Securities & Investments Commission

Policy Statement 130	<i>Managed investments: Licensing</i>
Policy Statement 131	<i>Managed investments: Financial requirements</i>
Policy Statement 132	<i>Managed investments: Compliance plans</i>
Policy Statement 133	<i>Managed investments: Scheme property arrangements</i>
Policy Statement 134	<i>Managed investments: Constitutions</i>
Policy Statement 135	<i>Managed investments: Transitional issues</i>
Policy Statement 136	<i>Managed investments: Discretionary powers and closely related schemes</i>
Policy Statement 140	<i>Serviced strata schemes</i>
Policy Statement 144	<i>Mortgage investment schemes</i>
Policy Statement 148	<i>Investor directed portfolio services</i>
Policy Statement 149	<i>Nominee and custody services</i>
Policy Statement 160	<i>Time-sharing schemes</i>
Policy Statement 178	<i>Foreign collective investment schemes</i>
Policy Statement 179	<i>Managed discretionary account services</i>

16

Types of regulatory action



ASIC

Australian Securities &
Investments Commission

Surveillance or investigation may lead to:

- Prosecution of illegal schemes operators
- Enforceable undertaking
- Court orders to remove SRE and appoint temporary SRE
- Court orders to wind up scheme
- Banning company officers
- ASIC directs change compliance plan
- Licence revocation
- Additional conditions imposed on licence
- Stop order on disclosure document

17

Types of regulatory action



ASIC

Australian Securities &
Investments Commission

EXAMPLES

18



ASIC

Australian Securities &
Investments Commission

Size of Managed Investment Industry in Australia

Funds – Managers - Assets

Managers and Schemes



ASIC

Australian Securities &
Investments Commission

Prescribed interests in 1998

- about **350** management companies
- about **1,385** schemes

Managed investments in 2000

- About **350** responsible entities
 - Some are authorised to operate many types of scheme
- About **2,150** registered schemes

20

Managers and Schemes

Managed investments in 2007

- About **450** responsible entities
 - Some are authorised to operate many types of scheme
- About **5,000** registered schemes



ASIC

Australian Securities & Investments Commission

21

Assets invested by managers

Rank	Fund Manager	Assets \$M	Market Share
1	Commonwealth/Colonial Group	95,301	11%
2	Macquarie Bank Group	80,353	10%
3	AMP	70,538	8%
4	AXA Group	58,285	7%
5	ING/ANZ Group	50,056	6%
6	Barclays Global Investors Australia	43,334	5%
7	BT/Westpac Group	37,873	5%
8	Perpetual Ltd	36,469	4%
9	Vanguard Investments Ltd	33,034	4%
10	Deutsche Asset Management Australia Limited	31,983	4%
	Top 10 Total	537,227	64%
	Industry Total	838,731	



ASIC

Australian Securities & Investments Commission

S&P December 2006

22

Assets invested via platforms



ASIC

Australian Securities & Investments Commission

Rank	Fund Manager	Assets \$M	Market Share
1	National/MLC Group	64,308	17%
2	BT/Westpac Group	46,608	12%
3	AMP	43,184	12%
4	Commonwealth/Colonial Group	38,950	10%
5	St George Group	32,983	9%
6	ING/ANZ Group	32,980	9%
7	AXA Group	25,508	7%
8	Macquarie Bank Group	24,751	7%
9	Navigator	16,552	4%
10	Australian Wealth Management Limited	13,548	4%
Top 10 Total		339,372	90%
Industry Total		375,216	

S&P December 2006

23



ASIC

Australian Securities & Investments Commission

Hedge Funds in Australia

Retail investors can buy any MIS product including hedge funds

IOSCO and US Federal Reserve 2006

Alternative investment

- More complex investment styles
 - Long and short positions
 - Derivatives used for speculation
 - Use leverage - counterparty risk management needs to constrain excessive leverage
- Success depends on skill of manager > performance fee payments



ASIC

Australian Securities & Investments Commission

25

Assets invested in hedge funds

- Assets under management in the 111 hedge funds in Australia
 - US\$17B (AU\$22B) single managers
 - US\$27B (AU\$35B) including funds of hedge funds
- Two thirds invested in global and regional strategies
- Assets under management in all fund types in Australia
 - US\$692B (AU\$909B)



ASIC

Australian Securities & Investments Commission

Axiss Australia - 2005

26

Regional comparison - AUM



ASIC

Australian Securities & Investments Commission

	Assets under Management US\$M	Number of hedge fund products
Australia	17,098	111
Hong Kong	8,591	98
Japan	4,583	63
Singapore	2,809	62
Total	33,081	334

Axiss Australia - 2005

27

Regional comparison - costs



ASIC

Australian Securities & Investments Commission

	Start up costs US\$ low to high	Annual costs US\$ low to high
Australia	81K to 195K	162K to 340K
Singapore	54K to 117K	212K to 319K
Hong Kong	60K to 305K	195K to 612K
Japan	190K to 530K	357K to 880K

Axiss Australia - 2005

28

Hedge fund Investment strategies



ASIC

Australian Securities & Investments Commission

Strategy used in Australia	Assets AU\$M	Number of funds
Global fixed income	1,062	9
Global managed futures	23	4
Global macro	3,290	19
Japan Long/Short & Absolute	1,070	6
Global Long/Short & Absolute	7,522	14
Asia Long/Short & Absolute	1,854	4
Australian Event Driven	219	6
Australian Long/Short & Abs	6,261	37
Australian Market Neutral	1,087	12

Axiss Australia - 2005

29

Largest managers



ASIC

Australian Securities & Investments Commission

Fund Manager	Assets AU\$M	Fund of Fund	Assets AU\$M
Platinum AM	7,332	Man Invest	4,540
PM Capital	3,031	Warakirri	1,211
Barclays Global	1,823	Everest Capit	1,200
Ginham MF	1,712	UBS GAM	960
Portfolio Ptrns	853	FRM	760
WestLB AM	780	GMO Aust	686
Artesian CM	730	HFA Asset M	630
Basis Capital	589	Colonial FS	560
Optimal	486	Barclays Global	558
K2 Asset Mgt	372	AMP	444
TOTAL	17,712		12,962

Axiss Australia - 2005

30



ASIC
Australian Securities &
Investments Commission

Other types of managed investment scheme in Australia

Many types of asset can be used in a MIS structure

Different asset classes



ASIC
Australian Securities &
Investments Commission

- **Financial assets** – shares, bonds, cash
- **Derivatives** – options, futures
- **Property** – direct and property securities – often includes infrastructure
- **Film** – production and distribution (**tax**)
- **Primary production** – forestry, beef, tea tree oil, emus and ostriches, olives, grapes, coffee, nuts (**tax**)
- **Serviced strata** – management rights
- **Timeshare** – direct and points-based
- **Horse racing** – syndicate
- **Mortgages** – pooled and contributory

32

Questions and Thanks

Jennifer Lewis

Assistant Director

Australian Securities & Investments Commission

jennifer.lewis@asic.gov.au



ASIC

Australian Securities &
Investments Commission

More information

<http://www.asic.gov.au/asic/asic.nsf/byheadline/Managed+investment+schemes?openDocument>

<http://www.asic.gov.au/fido/fido.nsf/byheadline/Managed+Investment+Schemes+Home+Page?openDocument>