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Via email only: MISReview@treasury.gov.au

To Whom It May Concern

Review of the regulatory framework for managed investment schemes

The Property Council of Australia welcomes the opportunity to make a submission to the review of the regulatory framework for managed investment schemes (the Review).

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.

The significance of managed investment schemes (MISs) to the Property Industry

As acknowledged in the Review, the Australian managed funds industry is diverse. There are multiple products, providers and investors with different objectives, financial circumstances, time horizons and risk profiles. The industry connects both retail and wholesale clients to a breadth of investment opportunities with the advantages and benefit of economies of scale.

The diversity of providers and investors in managed funds is particularly true in the property industry. Property is an essential part of a balanced and diversified investment portfolio, generating stable long-term returns. There are millions of Australians with a stake in property through various investment channels, including the 16 million Australians investing through their superannuation, and many also invest directly in property managed investment schemes.

Property managed funds (which are MISs) give retail and wholesale investors the opportunity to collectively invest in major real estate assets that they may not otherwise be able to own directly, due in part to the capital-intensive nature of commercial property investments. As property managed funds are typically structured as unit trusts, they are tax flow-through entities, meaning trust income is usually taxed in the hands of the investors.

Due to the nature of the underlying investments, property managed funds can have different features to other forms of managed funds.

There are three fund structures common to Australia's property funds industry, the majority being wholesale:

- listed internally managed stapled property groups (with both retail and wholesale investors)
- listed externally managed property funds (with both retail and wholesale investors)
- unlisted externally managed property funds (many restricted to wholesale investors but there are also unlisted retail funds).

The Australian property funds management industry is robust and diverse, with strong competition amongst property fund managers for both capital and assets. The strength of the existing regulatory framework has been fundamental in attracting global capital and opportunities to grow our funds management sector.

Previous reviews and inquires

A number of reviews and inquiries have investigated the adequacy of the regulatory framework for managed investment schemes since 2001:

- Review of the Managed Investments Act 1998 (Turnbull Review) (2001)
- Parliamentary Joint Committee on Corporations and Financial Services (PJC) Report on the Review of the Managed investments Act 1998 (2002)
- PJC Inquiry into aspects of agribusiness managed investment schemes (2009)
- PJC inquiry into financial products and services in Australia (2009)
- PJC inquiry into the collapse of Trio Capital (2012)
- Financial System Inquiry (FSI) (2014)
- Senate Economics References Committee inquiry into forestry managed investment schemes (2016) (Final report: Agribusiness managed investment schemes: Bitter harvest) (the Bitter Harvest report)
- Senate Economics References Committee: Sterling Income Trust (2022)

Successive consultations have already resulted in legislative and regulatory changes that have strengthened the regulatory framework for MISs.

In the last decade alone, a suite of regulatory changes and guidance has been implemented to strengthen investor protections, particularly for retail investors, having been informed by the findings and recommendations of these reviews and ASIC's investigations:

- Future of Financial Advice (FOFA) reforms in 2012
- ASIC's guidance to responsible entities on adequate risk management systems in 2017
- ASIC's product intervention powers (and RG 272) introduced in 2019
- Design and Distribution Obligations (DDO) in 2021

The Property Council believes that the full force of ASIC's powers are yet to be exercised and, as yet, any potential inadequacies with the full regulatory kit are yet to be identified. As such, and until these potential shortcomings are investigated fully, justification for a further regulatory response is yet to be established.

Wholesale client thresholds

MISs allow mum and dad (retail) investors the ability to invest in major real estate assets that they may not otherwise be able to own directly. The Property Council recognises the need for a distinction between retail and wholesale investors with additional regulatory measures to protect

mum and dad investors unless they can be classified as a wholesale client under the *Corporations Act 2001* (the Act).

To be classified as a wholesale client under Chapter 7 of the Act there are 4 objective eligibility tests, including the product value and individual wealth tests. The Review notes modelling that suggests that, under the current thresholds, the percentage of Australian adults above the individual wealth thresholds will increase to 29 per cent by 2031 and 44 per cent by 2041.

However, the absence of any identified shortcomings in these tests does not warrant an increase in the threshold. Individuals seeking to be classified as wholesale investors (as opposed to a retail investor) are likely to have access to professional advice to support an informed decision-irrespective of the threshold test. As such, an increase to the current product value test or the thresholds for net assets and/or gross income is not supported as it is unlikely to add any additional protection.

Furthermore, the inclusion or exclusion of certain income or assets needs to be balanced so that the full financial picture of the investor is understood. Increasing the thresholds would need to fully consider any unintended consequences, such as:

- If a wholesale investor is not grandfathered and is subsequently deemed retail they may need to be redeemed out of a fund, this may not always be possible (e.g. funds with illiquid assets such as property funds)
- If an investor is redeemed, they may be forced into a capital gains tax event
- The Australian Financial Services Licence (AFSL) of the fund may also only have a wholesale license and may not be authorised to service retail investors
- Investor equity and the ability to participate in future capital raisings so that their interests in a fund are not diluted.

The right to withdraw from a scheme

The distinction of a scheme's liquidity is significant as it informs investors of their withdrawal rights. This is particularly true during tough economic times when the regulatory framework works to preserve investors' capital, where there could otherwise have been forced selling of assets to meet short term withdrawal requests.

The Property Council believes that the existing definition of liquid assets in s601KA of the Act is suitable.

The investor experience during the Global Financial Crisis (GFC) demonstrated the importance of understanding rights to withdraw as 87 schemes with funds under management of approximately $25 billion were frozen, and withdrawals suspended for an extended period.

In contrast, ASIC found that the liquidity frameworks were generally adequate, and the liquidity challenges and market disruption were well managed during the challenging COVID period.

Therefore, definitions of liquid and non-liquid assets do not need to be changed as the COVID experience has demonstrated that investors understood/acknowledged their rights and the alignment between member expectations of being able to withdraw and their actual rights to withdraw in challenging market conditions.

This is particularly true in property where the realisation may take time. Unlike other investment products, retail investors understand the non-liquid nature of property investments particularly when coupled with the product design and distribution obligations under Part 7.8A of the Corporations Act.

Significantly, ASIC already possesses authoritative capabilities regarding the improper distribution of less liquid funds under the frameworks of Design and Distribution Obligations (DDOs) and associated Product Intervention Powers (PIPs). The DDOs stipulate that both issuers and distributors undertake 'reasonable steps' to ensure financial products are allocated to consumers within the defined target market of the issuer. The PIPs enable ASIC to make product intervention orders where ASIC has established that a financial product has resulted, will result or is likely to result in significant consumer harm. ASIC has effectively exercised its powers under both the DDOs and PIPs frameworks to ensure that less liquid funds are distributed with propriety and has provided targeted feedback to the financial market.

DDOs require financial product issuers and distributors to ensure products are designed with consumer needs in mind and distributed/marketed in a targeted manner. Financial product firms are also required to monitor outcomes and reassess their product governance arrangements over time. A target market determination (TMD) is a mandatory public document (under the DDO regime) that sets out the class of consumers a financial product is likely to be appropriate for (i.e. the target market) and matters relevant to the product's distribution and review.

ASIC's Report 762 demonstrated the strength of the current regulatory framework where it found that "inappropriate intended investment timeframe and/or withdrawal needs in the target market was a factor in 18 stop orders. For example, an issuer stated that consumers requiring 'annual or longer' withdrawal rights were in the target market despite the product not having any withdrawal rights before the end of the fixed term. ASIC's intervention resulted in the issuer amending the target market so that those consumers who needed the right to withdraw money before the end of the fixed term of the product were outside the target market."

Furthermore, Report 762 stated that "where there are limitations on the redemptions for an investment product, these should be clearly reflected in the target market for the product. For example, an issuer should not include in the target market investors who have a need to withdraw money from a product every three months, when the issuer only offers redemptions to investors twice a year. Similarly, if meeting redemptions is at the issuer's discretion, the TMD should not indicate that the product is suitable for investors who need unconditional withdrawal rights."

Regulatory Cost Savings

The Property Council welcomes the opportunity to modernise and streamline the regulatory framework to ease compliance burdens without compromising the intent of any regulation or protections. Opportunities for further investigations include:

Reducing the regulatory burden on internally managed stapled groups

Internally managed stapled groups are a common structure for listed real estate groups in Australia. The structure has been used for several decades to give securityholders exposure to integrated real estate, through both the 'passive' side of the group (being the ownership of the real

estate assets) and the active/trading side of the group (being the business of managing and providing other asset-level services in relation to those assets).

One advantage for securityholders in an internally managed stapled group is that no fees are paid to an external manager. However, the regulatory requirements - that fails to acknowledge this advantage - creates complexity and additional cost (borne by securityholders), without offering meaningful consumer protections within the spirit and intent of the relevant laws.

For the purposes of this submission, a schedule of regulatory requirements imposed on internally managed stapled groups is attached with an accompanying submission to the Australian Law Reform Commission (ALRC).

Additional opportunities for modernising the regulatory framework – as requested

These additional opportunities are not exhaustive and any investigation for potential regulatory cost savings should be undertaken by a full and extensive consultation with industry stakeholders with early engagement to ensure a balanced, informed and inclusive approach is undertaken.

- Investigating a product modernisation/rationalisation mechanism, moving investors onto more modern products without incurring capital gains tax
- Investigating moving to electronic communications on a default basis, with paper-based communication as opt-in only
- Investigating a wholesale registered scheme concept, similar to Corporate Collective Investment Vehicles (CCIVs)
- Investigating the practicalities of unanimous consent requirements for deregistering legacy registered schemes, for example moving to a special resolution of members
- Opportunities to clarify or amend the *Corporations Act 2001* to, for example, allow greater flexibility for schemes with only wholesale investors, clarify voting entitlements for responsible entities and associates, or clarify members rights under section 601G.

We welcome the opportunity to discuss this submission in more detail. Please reach out to Dan Rubenach, Policy Manager DRubenach@propertycouncil.com.au to arrange a meeting.

Yours sincerely

Antony Knep

Executive Director – Capital Markets

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Attachment One:

Issue	Description	Recommendation	Impact on securityholders
Stapling relief	As noted above, ASIC commonly grants relief from aspects of Chapter 5C of the Act to REs of internally managed stapled groups in respect of the following aspects of Chapter 5C of the Act: • s601FC(1)(c) and 601FC(1)(e) – to allow an RE to consider the interests of the members or to use information, having regard to them being stapled security holders; • s601FD(1)(c), 601FD(1)(d), 601FD(1)(e) and 601FE(1)(a) – to allow officers or employees to consider the interests of the members or to use information or their position, having regard to them being stapled security holders; and • s601LC – to allow an RE to give a financial benefit to itself or a related party out of	We recommend that the individual relief-based approach with respect to Chapter 5C of the Act should be replaced with either an ASIC instrument, or legislative provisions in the Act, that enshrine the standard stapling relief described in RG 136. This would ensure that consistent relief (and conditions of relief) apply automatically to all stapled groups that fall within a definition set out in the instrument or in the legislation. The instrument or legislation (the ***New Stapling Relief***) may be updated from time to time, and any such updates would automatically extend to all stapled groups (subject to any transitional or grandfathering relief that may apply). If New Stapling Relief is introduced, as we have recommended, it would provide an opportunity to refresh and consolidate (where appropriate) all forms of relief that ASIC has granted with respect to stapled groups. Currently such relief is	Securityholders would benefit from this recommendation as internally managed stapled groups would no longer need to go through the process of applying to ASIC for individual relief (for a fee), nor run the risk of the relief application being denied which would make operating the internally managed stapled group untenable. Securityholders would also benefit from the increased efficiencies that would result from consistent relief applying to all stapled groups. We do not consider there would be any adverse effect on securityholders if this recommendation were to be implemented, particularly as this relief is already typically granted to internally

scheme property, where there is no change to the overall property of the stapled group.

A stapled group is required to apply for this relief, and it is granted by ASIC on a case by case basis, typically upon the establishment of the stapled group.

In our view, it would be preferable for the standard relief to apply automatically where the relevant conditions are satisfied, without the need to apply for individual relief.

Individual relief gives rise to inefficiencies, including timing, cost and inconsistency issues. The individual stapling relief that has been issued historically is not always consistent, and the conditions of the relief often differ between stapled groups – for example, the standard conditions have changed over time. This has meant that some stapled groups may need to comply with additional conditions, even though their structure is equivalent to other stapled groups that are not subject to those same conditions, resulting in an uneven playing field.

contained in various relief instruments, and uses inconsistent terminology. Examples of such relief include:

- the financial reporting relief that is currently contained in ASIC Class Order 13/1050 *Financial reporting by stapled entities*;
- the financial reporting relief that is currently contained in *ASIC Corporations (Stapled Group Reports) Instrument 2015/838*;
- the unit pricing relief relating to the allocation of the price between components of a stapled group currently contained in ASIC Class Order 13/655 and *ASIC Corporations (Managed investment product consideration) Instrument 2015/847*; and
- the relief that allows listed MISs (including stapled groups) to conduct on-market buy-backs, which is currently contained in ASIC Corporations (ASX-listed Scheme On-market Buy-Backs) Instrument 2016/1159.

In **Schedule 3** we have listed the ASIC class orders and instruments that currently provide relief for managed stapled groups on a case by case basis.

		stapled groups, or otherwise relate to stapled groups.	
Regulatory capital requirements	As the holder of an AFSL, the RE of a registered MIS is required to meet certain minimum financial requirements, as set out in Appendix 2 of ASIC Regulatory Guide 166 *Licensing: financial requirements* and more fully in ASIC Class Order 13/760 *Financial requirements for responsible entities and operators of IDPSs*. These requirements typically comprise: • A tailored cash needs requirement (including cash flow projections covering a period of at least 12 months); • A tailored audit requirement; • A net tangible assets ('NTA') requirement, which incorporates a liquidity requirement; and • Where applicable, a surplus liquid funds requirement. The policy rationale for these financial requirements is described in RG 166 as being to ensure that: • licensees, such as REs, have sufficient financial resources to conduct their	We recommend that REs of internally managed stapled groups be exempt from the need to satisfy the financial requirements that apply to 'external' REs under RG 166. This exemption should only apply if the RE only acts as RE of the internally managed stapled group, and does not act as RE of any other scheme As the internally managed stapled group operates as a single economic entity, it is difficult to see how the policy objectives underlying the financial requirements are appropriate for internally managed stapled groups, given that the economic owners of the RE are also the economic owners of interests in the scheme. Accordingly, the financial requirements provide no benefit to the securityholder. They do, however, increase the costs incurred by the internally managed stapled group due to increased compliance expenses and inefficient capital management (due to the need to meet the NTA requirement at that entity level).	Securityholders would benefit from this recommendation through reduced compliance costs and could employ their capital more efficiently. We do not consider there would be any adverse effect on securityholders if this recommendation were to be implemented as the regulatory financial requirements provide no meaningful benefit to the securityholders. As internally managed stapled groups are typically listed on the ASX, the adequacy of the group's working capital to achieve its stated business objectives is a matter that is assessed by the ASX on the entity's admission to the official list (as part of the assessment of its structure and operations), and on an ongoing basis through continuous disclosure and periodic reporting obligations to the market.

business in compliance with the Act, and to meet their operating costs;

- there is a financial buffer that decreases the risk of disorderly or non-compliant wind-up, or transition to a new RE, if the business fails; and
- there is alignment between the interests of the RE and the interests of the scheme members by ensuring that the RE is an entity of substance and that the shareholders of the RE have sufficient equity in the business to have a real incentive to ensure its success – in other words, there are incentives for owners of the licensee to comply with the Act through risk of financial loss.

These requirements currently apply without any modification to REs within an internally managed stapled group, even though the RE is (ultimately) owned by the same securityholders who hold interests in the scheme. In our view, it is difficult to see how the policy objectives of these financial requirements are appropriate for internally managed stapled groups, given the economic owners of the RE are also the economic owners of interests in the scheme. There is no 'external' RE that needs to be sufficiently capitalised to minimise the risks to

	members of the scheme arising from the failure of that external RE. Of course, this assumes that the RE does not operate any other schemes.		
Disclosure	There are currently two parallel disclosure regimes under the Act: the offer of 'securities' (such as shares in a company) is governed by the prospectus regime in Chapter 6D of the Act, whereas the offer of 'financial products' (including interests in a registered MIS) is governed by the product disclosure statement (***PDS***) regime under Part 7.9 of the Act. As an internally managed stapled group typically comprises one or more shares in a company stapled to one or more interests in a registered scheme, an offer of stapled securities must satisfy both the prospectus and the PDS requirements. This was noted by the ALRC in paragraph 9.44 of the Interim Report. In practice, this is done by issuing a combined prospectus and PDS. There are significant structural and content differences between a prospectus and a PDS, and the legislation does not contemplate that there may be entities (such as stapled groups) that need to comply with both regimes for a single offer. The PDS content requirements are designed for 'financial products', including investment products, where an	We recommend that internally managed stapled groups be exempt from the PDS regime and, instead, be required to comply with the prospectus regime in relation to both the company and the MIS components of the stapled group. As the securityholders have an interest in both the company and MIS components of a stapled group, there is no acquisition of a 'financial product' in the way that is contemplated by the PDS regime; rather, there is an investment in an entity, with no leakage of fees or entrustment of funds with a third party manager. Accordingly, we think the prospectus regime is the appropriate disclosure regime and should apply to both the shares and the interests in the MIS as a single economic entity. The prospectus regime imposes a broad overarching obligation on the issuer to disclose all the information that investors and their professional advisers would reasonably require to make an informed assessment of: • the rights and liabilities attaching to the securities offered; and	Securityholders would benefit from this recommendation because the disclosure to new investors under the prospectus regime would be clearer, more concise and more effective than under a combined prospectus / PDS document. The disclosures would be 'fit for purpose' and there would be no need to include mandatory disclosures (e.g. fees and costs template) that are not relevant to stapled groups, and create complexity and confusion for investors. There would also be reduced compliance costs. We do not consider there would be any adverse effect to securityholders if this recommendation were to be implemented as the additional disclosure requirements set out in the PDS regime provide no additional benefit to securityholders in an internally managed stapled group.

investor is making an investment or otherwise entrusting funds with a third party manager. There are prescriptive content requirements, including in relation to fees and costs, to enable investors to compare similar products before they make an investment decision. On the other hand, the prospectus regime contemplates an investment in a company and imposes less prescriptive disclosure obligations and adopts a more principles-based approach to disclosure.

As a result, a combined prospectus and PDS is often a cumbersome document and some of the mandatory content (e.g. fees and costs disclosure in a prescribed table format) is confusing for investors who are investing in an internally managed stapled group, which has no fee leakage and operates as a single economic entity akin to a company.

There is a single reference to stapled securities in the PDS provisions of the Act, and that is to allow issuers of stapled securities to issue a 'replacement PDS' in relation to the stapled MIS, in circumstances where a 'replacement prospectus' is issued for the stapled shares (section 1014G). This section is required because there is otherwise no equivalent concept of a 'replacement PDS' in the Act. Apart from this, there has been no attempt in the legislation (or by ASIC) to align the disclosure regimes for the components of a stapled group.

- the assets and liabilities, financial position and performance, profits and losses and prospects of the body that is to issue (or issued) the shares, debentures or interests.

We think this standard is more suitable for a stapled group, than the corresponding overriding disclosure obligation under the PDS regime, being to disclose any information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.

Application money accounts	As a consequence of needing to comply with both the prospectus regime and the PDS regime (see above), issuers of stapled securities also need to maintain two separate trust accounts for holding application moneys in a capital raising. For the company side of the stapled group, application moneys need to be deposited and held in a trust account under section 722 of the Act until the shares are issued; for the MIS side of the stapled group, application moneys need to be deposited and held in a trust account under section 1017E of the Act until the units are issued. The rules do not allow a single trust account to be used. ASIC has, on occasion, historically granted case by case relief to allow a single trust account to be used by an issuer of stapled securities.	If, as recommended above, the prospectus regime is to apply to both the company and MIS components of a stapled group, it would follow that the trust account requirements in section 722 of the Act should apply to application moneys received in respect of the stapled securities, and a single account can be used.	Securityholders would benefit from the reduced compliance costs.
Meetings of securityholders	Similar to the need to comply with separate disclosure regimes for the company and MIS components of a stapled group, a stapled group also needs to comply with separate regimes for holding member meetings on the company and MIS components of the stapled group. Although the meeting regimes are broadly similar, there are several important differences between meetings of shareholders and meetings of MIS members, which make it difficult to hold concurrent meetings of stapled securityholders.	We recommend that internally managed stapled groups should be required to comply with the meeting requirements that apply to public companies, for both the company and the MIS components of the stapled group. They should not be required to comply with the MIS meeting requirements.	Securityholders would benefit from the reduction in costs and complexity that would result from a single set of meeting rules applying to the stapled group. The requirement for an annual general meeting (***AGM)*** applies only to company meetings, so securityholders would benefit from the AGM requirements applying to the stapled group as a whole (although, in practice, a stapled

Some of the discrepancies between meetings of shareholders and meetings of MIS members were identified by CAMAC in its 2014 discussion paper on *The establishment and operation of managed investment schemes* (sections 8.3 in relation to the chair of a meeting; 8.4 in relation to voting restrictions; 8.5 in relation to proxy voting; 8.6 in relation to the adjournment of meetings; and 8.7 in relation to other inconsistencies, such as the time for determining the percentage of votes held by members and the timing and manner of a poll).

Another example relates to voting on a poll: in respect of public companies (subject to the company's constitution) on a poll, each member has 1 vote for each share they hold (section 250E of the Act). However, in respect of MISs, a member has one vote for each dollar of value of the total interests they have in the MIS (section 253C of the Act). There is also a discrepancy in the notice period required for a members' meeting (28 days for a listed company – s249HA) and 21 days for a listed registered scheme – s252F).

These discrepancies between meetings of shareholders and meetings of MIS members give rise to unnecessary complexity and ambiguity.

group would comply with this in any event).

Periodic statements	Pursuant to Section 1017D of the Act and Class Order [CO 13/1200] *Periodic statements relief for AQUA quoted and listed managed investment scheme issuer*, read together with ASIC RG 97 and ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070, listed managed investment schemes (including internally managed stapled groups) must provide periodic statements to securityholders setting out prescribed information, which includes: • opening and closing balances for the reporting period; • the termination value of the investment at the end of the reporting period; • details of transactions during the reporting period; • any increases in contributions during the reporting period; • return on investment during the reporting period (on an individual basis if reasonably practicable to do so and otherwise on a fund basis); • details of any change in circumstances affecting the investment that has not been	We recommend that listed internally managed stapled groups be exempt from the requirement to provide periodic statements. We consider the periodic statement regime to be inappropriate for listed internally managed stapled groups for the following reasons: • the disclosure required to be made in the periodic statements is not useful and is confusing and potentially misleading for securityholders; • securityholders in listed stapled groups already receive information relevant to their holding and transactions in holding statements and transaction confirmations, and stapled groups are subject to continuous disclosure and periodic reporting obligations in relation to the performance of the stapled group; • the compliance costs associated with issuing periodic statements outweighs any potential benefit; and • there is no appropriate policy reason for treating listed internally managed stapled groups differently to listed companies.	Securityholders would benefit from this recommendation as there would be cost savings if internally managed stapled groups were not required to comply with the periodic statement requirements. We do not consider there would be any adverse effect to securityholders if this recommendation were to be implemented, given the extent of information that is required to be provided to securityholders under the ASX Listing Rules and in holding statements / transaction confirmations in relation to their investment.

notified since the previous periodic statement;

- fees and costs information, disclosed in a manner that complies with ASIC RG 97 and ASIC Corporations (Disclosure of Fees and Costs) Instrument 2019/1070; and
- information about the performance of the scheme relative to the investment objectives of the scheme.

We acknowledge that submissions have previously been made to ASIC as to why the periodic statement disclosure requirements are not appropriate for listed MIS. We continue to hold the view that the information required to be provided to securityholders in periodic statements is of limited use to them and, having regard to the information that they already receive as securityholders in an ASX listed entity, the information in a periodic statement can be confusing and potentially misleading. Nevertheless, ASIC's clear position, as set out in Report 373 *Response to submissions on CP 196 Periodic statements for quoted and listed products and relief for AQUA products*, is that the information in a periodic statement does serve an important function because it is intended to provide information about investors' holdings at an individual level for the entire reporting period, and other

important information about their investment and the MIS that they invest in.

Even if that position is accepted for externally managed listed MISs, the position of internally managed stapled groups can be distinguished, and there is a stronger need for relief for these entities. Investors in externally managed MISs are investing in a fund that is managed by a third party manager – there is therefore leakage (by way of fees) and the need to monitor the performance of the external manager during the reporting period is heightened because of the potential conflicts between the manager and the members of the MIS.

As explained above, a securityholder in an internally managed stapled group is in a different position. The securityholder has invested in an integrated group listed on the ASX and has exposure to both the trading and investment components of the listed entity. In this way, it is no different to a listed company in which a securityholder may have invested. The main purpose of periodic reports is to enable investors to monitor the value of their investment and any fluctuations arising as a result of fees and costs. Fees and costs are not relevant for a stapled securityholder, as there is no fees and costs leakage to an external manager – to the extent that fees are charged, the securityholder will receive the benefit of those fees through dividends paid by the company side of the stapled group. The disclosure of

	"fees" in periodic statements is misleading as they are not paid by the investor. Investors in listed stapled groups can obtain current valuations of their securities from the ASX and information providers. Holders of stapled securities will receive opening and closing balances, as well as transaction details, in their holding statements issued by the share registry (albeit not covering a specific reporting period). Investors draw little distinction between listed internally managed stapled groups and listed companies. Listed companies are not required to prepare these periodic statements. We agree with the position adopted by CAMAC in its 2014 discussion paper that the regulatory regime for MIS should be aligned with that for companies, unless there are compelling reasons for treating schemes differently. We submit that there is no appropriate policy reason to treat listed internally managed stapled groups differently to listed companies in relation to periodic statements.		
Financial reports and audit	Internally managed stapled groups are required to prepare audited financial reports in respect of both the manager / its parent company (as a listed company) and the MIS components of the stapled group pursuant to Chapter 2M of the Act. However,	We recommend that internally managed stapled groups be exempt from the specific additional content requirements that apply to the annual reports of MISs.	Securityholders would benefit from this recommendation as there would be cost savings for internally managed stapled groups if they were not

the reporting regimes of listed companies and MIS are not identical, which presents a practical challenge for internally managed stapled groups to produce audited financial reports which comply with both regimes.

For example, under s300(12) the annual directors' report for an MIS must include details of:

- fees paid to the RE and its associates out of scheme property;
- the number of interests in the scheme held by the RE and its associates;
- the number of interests in the scheme issued;
- withdrawals;
- the value of scheme assets and the basis for such valuation; and
- the number of interests in the scheme on issue.

The annual directors' report for a listed company must include additional specific information, as set out in section 300A.

While relief is available to allow internally managed stapled groups to prepare consolidated financial reports on a whole-of-group basis[5], this relief does required to comply with two different financial content regimes.

In our view, much of the additional information required to be specifically included in the financial report is either covered in a standard financial report or irrelevant having regard to the structure of internally managed stapled group. For example, as there is no leakage, the requirement to set out the fees paid to the RE and its associates is irrelevant. Similarly, as the MIS is listed, there would typically be no withdrawals from the MIS.

In addition, we recommend that the existing relief that allows stapled groups to prepare consolidated financial reports on a whole-of-group basis[6]:

- should be broadened such that the entities in the stapled group that are not the 'deemed parent' for the purposes of the consolidated accounts should not be required to prepare their own financial statements – currently, Class Order 13/1050 only allows an exemption from the preparation of accounts for the 'deemed parent' and one of the conditions of the relief is that the other members of the stapled group are required to prepare financial reports for the relevant year or half-year in accordance with Chapter 2M of the Act. In our view, the need to prepare additional financial reports (in addition to the consolidated financial reports for the

We do not consider there would be any adverse effect to securityholders if this recommendation were to be implemented as the additional information required to be set out in an MIS' annual report is already covered in the report for public companies or is irrelevant for internally managed stapled groups.

Also, the current requirement to prepare separate financial statements for the 'non-parent' members of the stapled group does provide any meaningful information to securityholders and other stakeholders given that this information is already consolidated within the accounts of the stapled group; rather, it creates confusion and an additional cost ultimately borne by securityholders.

	not apply to the content requirements. As such, the consolidated financial reports for a stapled group must still meet the content requirements for listed companies and MISs. Furthermore, the existing relief that allows stapled groups to prepare consolidated financial reports on a whole-of-group basis does not eliminated the need to prepare separate accounts for each of the other issuers of the stapled group.	stapled group) dilutes the benefits provided by the class order relief; and • should be redrafted and simplified to clarify how Class Order 13/1050 and ASIC Instrument 2015/838 are intended to operate in parallel and to ensure that there are no inconsistencies or areas of overlap between the two forms of relief.	
Financial statements and audit of licensee	Pursuant to section 989B of the Act, a financial services licensee must, in respect of each financial year, prepare a true and fair profit and loss statement and balance sheet. As the operator of a registered scheme, each RE must have an AFSL and is therefore required to comply with section 989B.	It is possible for an RE of a stapled group to avail itself of the consolidated reporting relief through the provision of cross-guarantees in accordance with ASIC Corporations (Wholly -Owned Companies) Instrument 2016/785 (***Reporting Relief Instrument***). If the RE is not also the RE of a registered scheme that is not part of the stapled group, the potential liability of any such guarantee will not count as a liability for the purposes of the RE's NTA requirements (see above).[7] The relief, however, does not extend to relief under section 989B, meaning that the RE of an internally managed stapled group would still need to prepare standalone audited financial statements. We recommend that internally managed stapled groups be permitted to include the RE of the stapled MIS in their consolidated financial reports, rather than being required to prepare standalone	Securityholders would benefit from this recommendation as there would be cost reductions if internally managed stapled groups were not required to prepare standalone financial statements for the RE, where they have availed themselves of the consolidated reporting relief. We do not consider there would be any adverse effect to securityholders if this recommendation were to be implemented as the requirement for REs in stapled groups to prepare standalone financial reports provides no meaningful benefit to securityholders, given that it is not external to the stapled group.

		reports for the RE, where they availed themselves of consolidated reporting relief through the provision of cross-guarantees in accordance with the Reporting Relief Instrument. This assumes that the RE does not act as RE for any other scheme. In our view, an RE within an internally managed stapled group should not be required to prepare standalone audited financial reports as this does not provide any additional benefit to the securityholders, as the RE is embedded within the stapled group and not external to it.	
Compliance plans	Like all registered MIS, the registered scheme that forms part of an internally managed stapled group is required to prepare and comply with a compliance plan for the scheme. While there are limited prescribed content requirements for a compliance plan (see section 601HA), ASIC has produced extensive guidance on what a compliance plan ought to contain (see Regulatory Guide 132 *Funds Management: Compliance and oversight*). The compliance plan is required to set out 'adequate measures that the RE is to apply in operating the scheme to ensure compliance with the Act and the scheme's constitution' (section 601HA). This principle assumes that the RE is an external party, with owners separate to the securityholders, that is	We recommend that internally managed stapled groups be exempt from the requirement to prepare and comply with a compliance plan. In our view, compliance plans do not provide meaningful benefits for the security holders of an internally managed stapled group and increase compliance costs for the group. The policy reason for compliance plans is to establish an effective compliance system and play a key role in protecting investors and promoting investors' interests. While this makes sense for externally managed MISs, in the context of internally managed stapled group it is not relevant. As there is common ownership of the RE and the MIS in an internally managed staple group, the	Securityholders would benefit from this recommendation as there would be cost reductions if internally managed stapled groups were not required to prepare and implement measures to comply with a compliance plan. We do not consider there would be any adverse effect to securityholders if this recommendation were to be implemented as compliance plans do not provide meaningful benefits to the securityholders in an internally managed stapled group.

required to operate the scheme in a manner that is consistent with law and minimises the risk of loss to securityholders.

In an internally managed stapled group, these same risks do not apply, because the members of the scheme are also the (indirect) owners of the RE.

Like all listed entities, an internally managed stapled group will have compliance arrangements and operational policies in place, but these will not relate *only* to the registered scheme component of the business. In this sense, a compliance plan for the registered scheme does not provide a meaningful compliance framework for managing the overall risks of the stapled group.

same need does not arise for a compliance system that protects and promotes the interests of members of the MIS by imposing compliance obligations on the RE (which is not external to the stapled group).

Furthermore, by imposing an obligation to have a compliance plan that relates to the operation of the scheme, rather than the operation of the stapled group as a whole, the focus is only on one component of the stapled group (being the scheme). This can result in a 'tick the box' approach to compliance, where procedures are implemented in order to satisfy the statutory requirements, even though the risks that those procedures are intended to manage are often not relevant to internally managed stapled groups – e.g. ensuring that scheme property is held separately to the property of the RE (which assumes an external RE), unit pricing, redemptions, etc (which are not relevant to listed stapled groups).

The asymmetrical compliance burden has been exacerbated by the broadened mandatory breach reporting regime in the Corporations Act. For example, if a RE becomes aware it has not complied with its compliance plan, it will be in breach of its obligations under s601FC(1)(h) of the Corporations Act (duties of responsible entity) and must report this to ASIC (a breach of s601FC(1)(h) contravenes s601FC(5) and incurs a civil penalty

As an ASX listed entity, an internally managed stapled group would have compliance arrangements and operational policies in place, but these will not relate *only* to the registered scheme component of the business. In this sense, a compliance plan for the registered scheme does not provide a meaningful compliance framework for managing the overall risks of the stapled group.

		under s1317E which is deemed to be significant and must be reported to ASIC). This outcome is disproportionate given compliance plans do not address the compliance risks of the stapled group when taken as a whole and do not apply to companies.	
Industry funding levy	Given their unique features, internally managed stapled groups have attracted two overlapping levies under the ASIC Supervisory Cost Recovery Regulations (2017) (the ***Regulations***) – namely, the levy that applies to the 'listed corporations' subsector and the separate levy that applies to the 'responsible entities' subsector. Listed stapled property groups are currently being charged two relevant levies under the Regulations: • a listed corporations levy based on market capitalisation under regulation 19; and • a responsible entities levy (***RE levy***) based on assets under management under regulation 35. We understand that the industry model can result in an entity being charged levies in respect of more than one sub-sector. For example, an entity that is both an RE and an IDPS operator would be subject to levies under each of those categories. This is	We recommend that listed internally managed stapled groups are only charged the listed corporation levy. In part this assumes the recommendations above are adopted to disapply some of the duplicated regulation applying to MISs and REs. In the alternative, currently listed internally managed stapled groups cannot adjust the listed corporations levy charged in the invoices issued to them, as the market capitalisation and fee amounts are pre-populated fields. This could be remedied to allow listed stapled property groups to adjust their market capitalisation so that it is referable only to the shares in the listed company and disregards the units in the trust (which should not be taken into account in calculating the listed corporations levy).	In our view, securityholders would benefit from this recommendation as internally managed stapled groups would have reduced industry funding levy commitments. We do not consider there would be any adverse effect to securityholders if this recommendation were to be implemented.

appropriate as those regulated activities relate to distinct sets of clients and distinct pools of assets.

By contrast, it is our view that the application of both of the levies described above to listed stapled property groups is distinguishable because both levies:

- are calculated, in large part, by reference to the same pool of assets (that is, the value of the assets of the MIS is used as the reference point for calculating both levies) – which results in double-counting. This is contrary to the policy objective of the Cost Recovery Implementation Scheme, as evidenced by various carve-outs to avoid similar examples of double counting, such as that contained in regulation 35(3); and
- relate to functions / services provided to the same group of securityholders (being the holders of stapled securities – that is, the shareholders of the listed corporation who are also the unitholders of the listed MIS operated by the RE).

ASIC's current methodology for calculating the listed corporations levy has resulted in listed stapled groups being charged twice in respect of the same assets, and in total levies that are disproportionately high when compared to:

	• ASX-listed companies with a similar market capitalisation (because listed stapled groups are also charged an RE levy calculated by reference to assets that have already been taken into account for the listed corporations levy); and • other REs with a similar level of assets under management because listed stapled groups are also charged a listed corporations levy calculated by reference to their market capitalisation (which takes into account the assets that have already been taken into account for the RE levy).		
Design and distribution obligations ('DDO')	As internally managed stapled groups contain a registered MIS, they are required to comply with the design and distribution obligations set out in Part 7.8A of the Act, including the preparation of a target market determination and other ongoing obligations relating to the distribution of interests in the MIS. We note that this is only relevant for the MIS side of the staple as the design and distribution regime does not apply in respect of fully paid ordinary shares in Australian companies (excluding listed investment companies) ie, the company side of the stapled group. As discussed above, from the perspective of investors, an internally managed stapled group is treated as a single economic entity. An investor is	We recommend the design and distribution obligations set out in Part 7.8A of the Act be amended to exclude from their scope an interest in an MIS that is stapled to an ordinary share and quoted, as a stapled security, on the ASX.	In our view, securityholders would benefit from this recommendation as the design and distribution regime when applied to internally managed stapled groups is confusing and potentially misleading. There would also be cost savings for the stapled group if this compliance obligation was removed. We do not consider there would be any adverse effect to securityholders if this recommendation were to be implemented.

not investing in the MIS part of the stapled group separately from the company side – it is a single, integrated investment in the stapled group.

We understand that the policy reason for not excluding MISs related to the third party fee arrangements for REs. As explained above this is not relevant for listed internally managed stapled groups.

The policy reason for excluding fully paid ordinary shares from the design and distribution regime was due to such shares being fundamental to corporate fundraising and not a complex financial product. In our view, an interest in an MIS that is stapled to an ordinary share should be excluded from the regime for the same reason. The interest in the MIS cannot be traded separately from the share, and securityholders cannot hold a unit in the MIS unless they also hold a stapled share.