



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 120

Commentary on compliance plans: Property schemes

April 2004



ASIC

Australian Securities & Investments Commission

Commentary on compliance plans received by ASIC

Property schemes

*Practical feedback based on ASIC's review of
compliance plans submitted since 1 July 1998 and other
compliance plan related activities — including
surveillances and breach notifications*

April 2004

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How we developed this commentary

The managed investment industry asked for our feedback on compliance plans lodged with us. This commentary summarises the better compliance plans submitted to us and is a practical guidance for members of the industry.

This document is not a checklist for compliance with the *Corporations Act 2001* (Corporations Act). You should also refer to our Policy Statement 132 *Managed investments: Compliance plans* [PS 132]. Although this commentary reflects current compliance methodology it must not be used as a substitute for Australian Standard® AS 3806–1998: *Compliance programs* and other compliance information.

Review of approved compliance plans

Between 1 July 1998 and July 1999 we reviewed over 300 compliance plans that had been submitted for approval. Our reviews highlighted a wide variety of styles and content in compliance plans. We welcome this variety as it reflects the diversity in the nature of managed investment schemes and the scale of their operations.

However, some plans did not reflect how the responsible entity (RE) would operate and therefore came under greater scrutiny. Many plans were only registered after we extensively reviewed them. In our review of plans we:

- compared the plans against [PS 132], which sets out our policy on compliance plans;
- separated the plans into industry type, ie financial assets, property and agricultural;
- reviewed each plan noting which sections and operations were used consistently in plans for each industry group; and
- for each section or operation, noted examples that stood out in clarity, format and meeting compliance objectives.

Further review in 2003

Between June 2003 and August 2003 we conducted an additional review of surveillance activities, breach notifications and associated compliance plans relating to the period 1 July 2001 to May 2003. This review covered:

- qualified compliance plan audit reports lodged with ASIC;
- breach notifications about inadequacies in compliance plans or breaches of compliance plan provisions reported to ASIC; and
- surveillance activities carried out by ASIC which discovered breaches of compliance plans.

These reviews highlighted a number of concerns about the quality of compliance plans, identified a number of plans that were inadequate and a number of instances of non-compliance with plans. In some cases the inadequacies were general in nature and in other cases the issues related to specific compliance measures not being included in a plan or being inadequately set out in the plan.

Choosing examples for this commentary

The comments and suggestions in this commentary are based on compliance plans, which we believe contribute to an effective compliance program. The commentary on operational procedures includes two examples for the different activities undertaken. We found that many plans included good and bad parts. Therefore, the first example is often a combination of different plans. However, the second example is taken from an actual compliance plan we have reviewed.

Other commentaries

We recognise the diversity of the managed investments industry. Therefore we have produced separate commentaries on compliance plans for:

- financial assets;
- property;
- agricultural schemes; and
- mortgage schemes.

We have not produced separate commentaries for different operational structures.

Features of better plans

Use plain language

Better plans use:

- plain English and avoid legal or industry jargon;
- a simple structure including a contents list and clear headings; and
- meaningful words to describe what is actually done, eg “a documented due diligence process is applied to each Product Disclosure Statement. The compliance manager is responsible for ensuring the process takes place and that it has been carried out properly.” This means that compliance with the plan can be audited against these measurable standards. (Avoid vague terms such as “appropriate”, “adequate” or “sufficient”.) See [PS 132] at [PS 132.4] and [PS 132.17]–[PS 132.19].

Better plans also include:

- an overview about the plan, its scope, aim and where it sits in the RE’s compliance and management framework.
- a section to explain “how to use” the plan, eg in some plans you need to read some sections first before you can understand how other sections need to be applied. A how to use guide is helpful and assists the many users of the compliance plan.

State who must do what by when

Better plans focus on the tasks staff must do. Staff will see them as “documents for our lawyers” if plans do not tell them this. With better plans staff can easily find out:

- who is responsible for a certain task and when, or how often, that task must be done;
- how they can meet these obligations; and
- how their work will be monitored.

However, better plans also give staff enough information about the legal concepts and requirements so that they can quickly apply that knowledge in their day-to-day tasks.

Plans that state who, or what position, is responsible for certain tasks create a sense of ownership of tasks. This also makes it easier to monitor such plans.

Describes monitoring and reviewing activities

Better plans state when reporting on compliance must take place. They state specific dates or use such terms as “no less than monthly”. (“Regular” is meaningless when describing the frequency of reporting.)

When detailed procedures are described in another document, the better plans state how compliance with those procedures is monitored and how the procedures are reviewed. However, only high level procedures are described in the plan document. Individual tasks that are part of their procedures are better contained in other documents in order that they can be changed easily.

Better plans clearly outline:

- how breaches are reported and who is responsible for rectifying them; and
- what action needs to be taken if the plan is breached.

Better plans state “how and when” the plan will be reviewed so that it continues to comply with the Corporations Act and the Constitution. These plans are better equipped to ensure that the plan complies with the Corporations Act by continuing to be adequate.

There are no limitation or exclusion clauses in the better plans. Nor do they delegate the obligations of the compliance committee.

Monitoring compliance

Generally we found that the better compliance plans had been extensively reviewed by the business. We found they were more likely to reflect:

- the business processes in place to ensure compliance; and
- the measures used by the business to monitor and accurately report on compliance and the monitoring of breaches.

We note that the better plans clearly address the structure of the RE, in particular the outsourcing risks of special purpose REs (or REs for hire).

There was a great deal of variation in the level of detail in the plans. Not surprisingly, plans for smaller entities contained more detailed procedures that reflected their flatter and smaller structures. Larger entities referred to detailed procedures in internal documents.

Some plans did not contain enough detail to be audited. Often we saw plans that were so vague that the organisation would not know whether the plan had been breached.

The better plans were clear about:

- what the obligation was;
- what procedures were in place to meet that obligation;
- how those procedures were monitored; and
- who was responsible for monitoring compliance with that procedure.

The better plans, when referring to documents that contained procedures, detailed how the procedures are monitored and updated.

Compliance with procedures

In our review undertaken in 2003 it was noted that a large number of qualified compliance plan audit reports are being lodged with us due to inadequate monitoring of compliance plan procedures, or due to non-compliance with procedures. It is vital that compliance plans include adequate procedures for monitoring compliance with the compliance plan and adequate resources are devoted to this role. The key findings in this area were:

- Qualification of audit reports due to breaches of the financial conditions of a RE's licence and the failure to lodge scheme financial statements or compliance plan audit reports with ASIC within the required time period.
- Plans that included detailed compliance procedures in attachments, after the main body of the plan, had more instances of non-compliance with procedures.
- Plans that required one person to monitor a number of the procedures had more compliance plan audit qualifications for non-compliance. This highlights the need to ensure that only persons with adequate time and experience are assigned to monitor compliance with procedures.
- Persons nominated for compliance monitoring having other significant and possibly conflicting duties, eg being the compliance officer and the managing director of the RE. In these circumstances, there is a greater chance of non-compliance with the procedures in the plan. When drafting the plan care should be taken that those assigned to compliance plan roles do not have conflicting duties.
- The most common reason why compliance plan audit reports were qualified was the failure of the RE to comply with compliance plan requirements for the financial conditions of the dealers licence.
- Breaches of plans also occurred because distributions of income to investors were not paid on time, were not paid at all or incorrect payments were made. This was due to plans not dealing adequately with the requirements for calculation of distributions or because plans included inadequate procedures for the monitoring of distributions.

Adequacy of procedures

Based on our review in 2003, we have set out below a summary of the major issues that caused plans to be inadequate, which would apply to any type of compliance plan. We recommend the consideration of these issues when preparing a plan.

- Plans which were a standard or model plan (“Off the Shelf Plan”) or primarily based on an Off the Shelf Plan were found to result in a larger number of qualified audit reports and breach notifications to ASIC relating to inadequate plan procedures and/or non-compliance with procedures in a plan. This emphasises the importance of plans being prepared that are specifically written for the type of scheme and the individual business to be operated.
- Plans in which the compliance procedures were set out in a narrative style as opposed to a table format were found to result in more breaches of compliance plan procedures and more inadequate plans. We do not necessarily recommend any particular style of plan, however, it should be simple to monitor and audit compliance.
- Compliance procedures for ensuring financial conditions were complied with were sometimes inadequate. They were not detailed enough to cover all the requirements of the financial conditions set out in the licence; in particular there was often was no procedure to check compliance with all the licence conditions.
- The failure to report breaches of the plan to the board of directors of the RE and/or compliance committee was a common matter reported as a breach of plans by auditors. Plans need to include procedures for checking that the RE reports breaches of plans.
- We also noted that we are issuing an increasing number of interim and final stop orders on Product Disclosure Statements (PDSs). It was apparent that due diligence being carried out on PDSs and procedures in plans for review of PDSs needs to be improved. In particular forecasts were included in PDSs for which there was no reasonable basis and where the disclosure of fees and expenses was inadequate.

Specific issues identified from the review which relate to property schemes include:

- scheme property not being valued at periods required by the scheme constitution as the compliance plan did not include adequate provisions to ensure valuation was done;
- scheme property such as rental income being held by a real estate agent who is not a scheme custodian.

Use of references for advice

Better plans:

- refer to Australian Standard® AS 3806–1998: *Compliance programs*; and
- reflect other compliance plans they have, for example, plans for trade practices, life insurance and superannuation requirements.

1 Commentary on fundamentals of the structure of plans

1.0 Contents page

Our staff found that compliance plans containing a contents page were much easier to review.

We also anticipate that as compliance plans are a working document and are expected to be used on a frequent basis by numerous parties, a well planned contents page will:

- reduce time spent locating relevant clauses; and
- provide an overview of the scope of the compliance plan.

We found that in better plans, the contents page was not too detailed, and was only one to two pages in length.

The best plans highlighted areas users are most likely to regularly look for, eg operational matters such as valuation of scheme property.

Example of a contents page

	<i>Page</i>
1 Introduction.....	
1.1 Purpose of this plan	
1.2 How to read this plan	
1.3 The scheme.....	
2 Framework.....	
2.1 Compliance framework.....	
2.2 Role of the compliance committee	
2.3 Role of the compliance officer	
2.4 Role of audit.....	
2.5 Reviewing and amending the compliance plan.....	
2.6 Summary of compliance procedures.....	
3 Operational compliance measures	
3.1 Valuation	
3.2 Income.....	
3.3 Fees and expenses	
3.4 Unit pricing	
3.5 Applications, redemptions and distributions	
3.6 Safe keeping and segregation of scheme property	
3.7 Record keeping and disclosure	
3.8 Capital, liquidity and insurance.....	
3.9 External service providers	
3.10 Training and recruitment.....	
3.11 Promotion of scheme	
3.12 Monitoring Australian financial services licence and authorised representatives.....	
3.13 Related party issues	
3.14 Market manipulation.....	
3.15 Complaints	
3.16 Reporting breaches.....	
Appendices	
A1 Glossary	
A2 Organisational structure chart.....	
A3 Compliance committee charter	
A4 Pro forma compliance committee meeting agenda	
A5 Pro forma compliance report by responsible officer	
A6 Pro forma breach report	

1.1 Purpose of plan

We found that good plans contained contextual information to assist the users of a compliance plan. Many users are unlikely to have been involved in drafting the document or have a compliance background. These plans contained a brief explanation of:

- the scope of the compliance plan;
- the aim of the compliance plan; and
- how the compliance plan fits into the RE's compliance and other management reporting framework.

This information is likely to be very helpful to the auditor as well as to us in understanding the RE's approach to compliance.

Plans that did not contain this type of contextual information were more difficult to understand and in our view reflected a lack of thought about the role of the plan and a lack of commitment to it working in practice.

Example

1.1 Purpose of this plan

Set out main objective of plan, eg:

This compliance plan sets out the key processes, systems and measures the RE will apply to ensure compliance with:

- Corporations Act;
- scheme constitution;
- industry practice standards relevant to the scheme; and
- internal organisational standards and culture.

Comment on how the plan sets out to achieve this, eg:

This plan is a "how to" document, providing sufficient detail on:

- the obligations which must be met by the RE;
- what measures or procedures are in place to comply with these obligations; and
- how compliance with those measures and procedures will be monitored.

This plan also details the risks of not complying with these obligations, and how breaches are to be reported and addressed.

The description of measures in place allows RE staff with compliance responsibilities to identify what procedures they are responsible for monitoring and how often they have to report on compliance or otherwise with those measures.

This plan must be integrated into the operations of the business and its use is not optional.

A statement of the organisation's compliance commitment is not often seen in compliance plans. However we feel that the better plans reflected a higher level of ownership when they clearly outlined the organisation's level of commitment to compliance, eg:

The organisation wants to achieve a compliance culture where each staff member owns compliance, and immediately reports and addresses breaches as far as practicable.

We want our staff to not only do the right thing, but know how to do it. Failure to report a breach is treated seriously and as such, the organisation adopts a no blame policy in relation to breaches but not so in relation to failure to report.

1.2 How to read this plan

It was not easily apparent in many plans how various parts of the plan linked or affected other parts. Indeed on occasions when applicants were asked to explain how the plan worked they had difficulty answering. In particular, the better plans focused users to read the sections that describe the scheme and where they, as responsible officers, fit into the compliance framework.

Most compliance plans reviewed are targeted at ASIC whereas the best ones targeted the many users. For this reason very few REs addressed this important point.

Example

1.2 How to read this plan

It is vital that users of this plan understand their role in its effective implementation. The operational procedures noted in section 3 do not provide enough information on their own and there are several sections of the plan that must be read by all users of this document in order to fully understand their responsibilities.

Sections that are considered essential reading, in addition to comments on procedural areas specific to the user are:

- 1.1 Purpose of the plan
- 1.3 Description of the scheme
- 2.1 Compliance framework
- 2.2 Role of the compliance committee
- 2.3 Role of the compliance officer
- A1 Glossary
- A2 Organisational structure chart
- A6 Pro forma breach report.

The plan is structured in such a way that it clearly identifies the legal responsibility that must be complied with. The procedures described are part of processes used by the RE to meet that obligation. The plan identifies:

- what part of the business is responsible for carrying out those procedures;
- how compliance with those procedures will be monitored; and
- who is responsible for monitoring compliance.

That person is also responsible for reporting compliance and non-compliance with those procedures to the Compliance Officer. The frequency of reporting is also stated.

1.3 Description of the scheme

In many instances it was not readily apparent what type of scheme the compliance plan related to. Some better plans reflected the understanding that a number of users of compliance plans will not be involved in the operation of the scheme and may need to review the compliance plan in isolation. These plans contained a brief description of the structure and purpose of the scheme for users so they could understand the risks facing the scheme and, hence why certain compliance procedures have been included or omitted. Its purpose was also to enable users to assess if the plan is adequately focused on the most important risk areas. An example is the increased importance of compliance with investment restrictions for an ethical fund compared to funds with broader investment restrictions.

Unfortunately, many plans reviewed failed to comment on the particular risks faced by the RE in operating the scheme and ultimately the risks to investors. Indeed, for a number of plans, it was difficult to even identify the type of asset managed by the scheme. Some plans contained a brief description of the main risks facing the scheme early in the plan or described the scheme later in the compliance plan with the compliance procedure addressing that risk.

ASIC certainly found a brief description early in the plan helpful in terms of review, particularly for unusual or stand alone plans.

Example

1.3 Description of the scheme

The Scheme has been formed for the purpose of acquiring 34 Hotham Street, Redfern in Sydney, New South Wales. The premises are a modern, prominent commercial building comprising two ground floor retail units, three levels of office accommodation and five split levels of basement parking. There are currently nine tenancies, with the lease over secure parking providing approximately one third of the gross rental income of the property.

A property manager independent of the RE will be appointed to manage the property.

Unless renewed or determined earlier, the RE will commence the winding up of the Scheme on the twelfth anniversary of the purchase date of the property.

The overall investment strategy is to provide moderate capital growth, stable income and depreciation allowances for investors.

2 Compliance frameworks described in plans

2.1 Compliance framework/structure

A clear description of the RE's compliance framework or structure was a clear feature of the better plans. Entities included this in the plan to:

- aid in understanding the RE's overall approach to addressing compliance;
- provide background to the RE's compliance reporting structure; and
- provide staff with a clear statement on where the compliance plan sat in the framework.

Better plans reflected the understanding that the procedures and measures in the plan needed to be supported by a sound and workable compliance structure. Even though the structure is described in the RE's licence application some plans provided more detail in the compliance plan. Plans that did not describe the compliance framework were requisitioned. In reviewing plans, we are mindful that the compliance structure is the framework in which the compliance plan sits and, if the fundamental framework does not work, it is unlikely that the compliance plan will achieve the desired outcome.

AS 3806

For more information on compliance frameworks and structures we refer you to the Australian Standard® AS 3806–1998: *Compliance programs*.

Flowcharts

The better plans contained flowcharts of the compliance reporting structure to provide a clear picture of the compliance process and allow RE staff to quickly ascertain where they fit into the overall framework. They also helped us assess the adequacy of the RE's compliance structure, eg the level of access the compliance manager had to the compliance committee or Board. These are best left as position titles, rather than names of individuals so that the compliance plan does not need to be updated when organisational changes occur.

Monitoring compliance

Not all plans described how compliance with procedures will be monitored. For example:

- will the compliance officer visit the area concerned and talk to staff?
or
- is it a self assessment process which is periodically reviewed by internal or external auditors?

Again this area was the focus of many requisitions by ASIC officers.

Transparent structure

The best plans showed the compliance reporting process in enough detail to enable the Compliance Committee to determine how the reports on compliance with procedures are put together. It was not clear in some plans who was responsible for producing reports for the compliance manager.

Truth in reporting

Few plans described the methodology by which compliance reports would be put together to ensure that the report reflected the correct position on compliance. Surveillances reveal that sanitisation of reports is a real risk area for an entity, as well as guess work at the basic reporting level.

2.2 Role of compliance committee

There was a variety in the level of detail about the function and responsibility of the Compliance Committee. The better compliance plans clearly explained the Committee Members' duties and emphasised the importance of fulfilling their obligations.

A number of REs included a Compliance Committee Charter describing the rules and guidelines to be followed by the Committee as an appendix to the compliance plan. See appendix A3: Compliance committee charter.

Some plans also included the process by which a Compliance Committee member is appointed. Other plans referred to documents outlining this process. It was not always clear how this process was going to be monitored.

Example

2.2 Role of the compliance committee

Compliance committee membership

Included details of minimum number of members, minimum qualifications and appointment process.

Responsibilities

Referred to duties per s601JC, stressing that the Committee must ensure the compliance plan meets the requirements of the Corporations Act on an ongoing basis. Many compliance plans also explained the Committee's procedure for:

- *dealing with breaches, including following up on action taken by the RE following recommendations made by the Committee, and reporting to ASIC if the RE has not taken or does not propose to take action to deal with a reported breach;*
- *ensuring they are made aware of all significant transactions involving scheme assets;*
- *ensuring the scheme is not trading while insolvent, or is not expected to be. This will include reviewing and approving any additional funding requirements of the scheme;*
- *assessing if the RE's actions are in accordance with the Product Disclosure Statement, constitution, Corporations Act and in the investors' best interest; and*
- *ensuring all members of the Committee visit the property(ies) at least once in each 12 month period.*

Meetings and reporting

This area included frequency of meetings, quorum and the requirement to take minutes for distribution to the Board. The better plans included a standard agenda as an appendix. See appendix A4: Pro forma compliance committee meeting agenda. This

provides the Compliance Officer with a guide to the matters that need to be reported to the Committee at each meeting.

Many plans disclosed the right of the Committee to access information, reports, resources, audit and experts as necessary. Better plans also contain details of when the Committee will report to ASIC and the regular consideration of whether any matters require reporting. We have noted from our review of breach notifications that very few breaches are reported to ASIC by Compliance Committees, even when a scheme RE has gone into external administration or is likely to go into external administration and as a result is unable to be able to carry out its duties as a RE.

2.3 Role of compliance officer

The Compliance Officer features prominently in many plans in relation to reporting and monitoring on some obligations. The better plans explained the Compliance Officer's pivotal roll in the compliance framework and responsibility for liaising between the Compliance Committee and the officers responsible for implementing and monitoring compliance procedures. The best plans stressed the importance of this role and explained the duties clearly.

Several REs achieved this by including in the compliance plan a job, as an appendix, a job description for the compliance officer position and a pro forma report to the compliance committee covering matters that need to be reported on a regular basis. This is not recommended as it then forms part of the compliance plan and must be updated when required.

In some plans the compliance officer has been given too much responsibility and has been made responsible for carrying out most of the compliance monitoring. This may not be appropriate if it means that the compliance officer does not have time to carry out their duties effectively, particularly when they have other duties.

Better plans emphasised that the compliance officer had direct access to the board of directors or the compliance committee to ensure the Officer had the appropriate seniority or "clout".

Example

2.3 Role of the compliance officer

Overview of the role

The compliance officer will ensure adequate internal systems and controls have been implemented to ensure compliance with the Corporations Act, the scheme's constitution, the entity's Australian financial services (AFS) licence, and internal and industry standards. These duties include promoting the compliance culture within the organisation and to external service providers.

The compliance officer is primarily responsible for reviewing compliance on an ongoing basis, reporting on compliance matters, including breaches, to the committee and acting on recommendations of the committee. Matters can be escalated to the Board or ASIC if necessary.

Qualifications, reporting line, frequency and format of reporting

The Compliance Officer must have a minimum of five years experience in the industry and report directly to the compliance committee monthly or more frequently as required. The format of reporting is as per the pro forma report in Appendix A5.

Some plans included other matters such as delegating, use of experts, access to external and internal audit, ensuring committee recommendations are implemented within a set time-frame, records, maintaining knowledge of best practice, ensuring staff have adequate access to procedures manuals, monitoring compliance of the Committee with the Compliance Committee Charter, ranking by significance the matters to be reported to the Committee, etc as applicable.

2.4 Role of audit

It was disappointing that most compliance plans make no mention of the role of internal audit. This included plans prepared by REs who are large financial institutions, with an internal audit service available, who presumably contribute in a particular way to the compliance framework.

The best plans explained the role of both the internal and external auditor in the compliance framework. As noted in section 2.1: Compliance framework, many plans rely on audit to periodically review compliance frameworks that are based on a self assessment process. It is more workable if a reader of such a compliance plan understands the audit's role in order to understand the RE's approach to compliance.

These plans also explained who is responsible for addressing issues raised by internal and external audit and who follows up any recommendations made and ensures they are implemented in a timely manner.

Some plans included provisions that require the compliance plan auditor to be responsible for checking compliance with specific matters. This is not the role of the external auditor, who should not be responsible for day-to-day compliance monitoring.

Example

2.4 Role of audit

The internal audit team is part of the financial management division and reports directly to the board audit committee, who monitor and direct the team's work. The team's role is to confirm that the policies and procedures are operating as expected. Its terms of reference in respect of the plan are approved by the board audit committee following consultation with the compliance committee.

The team will conduct a risk based review of compliance with this plan, focusing on areas considered to be of greatest or emerging risk. All operational aspects of the plan will be reviewed at least every two years. Areas considered high risk will be reviewed at least every six months.

A key objective of the team is to assess the adequacy of the compliance framework and to ensure major issues are promptly identified and addressed.

Copies of all internal audit reports relating to this compliance plan are sent to the board audit committee, compliance committee and external auditor.

The role of the external auditor is to annually:

- examine the plan;
- carry out an audit of compliance with the plan; and
- submit a report to the RE providing an opinion as to whether the RE has complied with the plan throughout the period and if the plan continues to comply with the requirements of the Corporations Act.

2.5 Reviewing and amending the compliance plan

In spite of the obligation for the plan to “continuously comply”, most plans reviewed failed to mention that any periodic review of the compliance plan was required. This was surprising when the environment in which the RE operates is likely to change frequently due to new regulations, new products, restructuring, etc. Quality plans outlined the obligation of the RE to carry out a review of the adequacy of the plan at least annually and after any significant event that they are aware would impact the plan. This sometimes included consideration of reasons for any breaches and the impact on the compliance plan of any issues raised.

Example

2.5 Reviewing and amending the compliance plan

To ensure the compliance plan continues to provide an adequate compliance framework for protection of investors the RE will report to the compliance committee at least annually on the continued adequacy of the plan.

So that the committee is informed of all internal developments, all staff, including internal audit, are instructed to report all proposed changes in operating structure and procedures to the compliance officer. These reports are included in the compliance officer’s monthly report to the compliance committee.

Part of the compliance officer’s role is to remain up to date with all regulatory and industry standard changes. Any such changes that impact the plan are reported to the committee in the compliance officer’s monthly report to the committee.

Subject to the Corporations Act, the Board or the Compliance Committee can amend this plan. The Committee notifies all amendments to the Chairman of the Compliance Committee prior to the approval of the amended plan.

The Compliance Officer is responsible for submitting amended plans to ASIC and ensuring all staff responsible for compliance matters receive notification of the change and an updated copy of the plan.

2.6 Summary of compliance procedures

ASIC found it easier to review plans that clearly separated the different measures used to achieve compliance. The best plans clearly identified the following:

- legal or constitutional obligation;
- procedures in place to satisfy that obligation;
- who was responsible for reporting on whether or not the procedures had been followed;
- how compliance with procedures was monitored;
- who carried out that monitoring; and
- when reporting/monitoring took place.

Some plans were also useful in that they contained a summary of the types of procedures to be employed, identified the officer responsible for monitoring compliance with those procedures, and also indicated the frequency with which the officer must report as to such compliance. The compliance officer and the Compliance Committee could then use the summary as a checklist.

The “responsible officer” is usually the person who is responsible for ensuring a particular procedure is followed and reporting to the Compliance Officer on whether there were any breaches in following the procedure.

Example

2.6 Summary of compliance procedures

Function	Responsible Officer	Reporting frequency	Details of procedure (reference)
Income	Financial Controller	No less than quarterly	3.1
Fees and expenses	Financial Controller	No less than quarterly	3.2
Applications and distributions	Financial Controller	Monthly until offer closes. Report at meeting prior to and after each distribution.	3.3
Safe keeping and segregation of scheme property	Financial Controller	No less than quarterly	3.4
External service providers	Financial Controller	No less than quarterly	3.5
Record keeping and disclosure	Financial Controller	No less than quarterly	3.6
Valuation	Managing Director	Annually	3.7
Investment restrictions	Managing Director	Monthly until settlement of property is completed.	3.8
Insurance	Managing Director	Annually	3.9
Training and recruitment	Compliance Officer	Annually	3.10
Promotion of scheme	Managing Director	Monthly until offer closes.	3.11
Monitoring AFS licence and authorised representatives	Compliance Officer	No less than quarterly	3.12
Related party issues	Compliance Officer	No less than quarterly	3.13
Complaints	Compliance Officer	No less than quarterly	3.14
Reporting breaches	Compliance Officer	No less than quarterly	3.15

3 Operational procedures

The format REs chose to present details of procedures varied considerably. The clearest format incorporated tables including details of the function, the risks of non-compliance, the relevant policies and the compliance procedures. Some REs also grouped together tables covering compliance procedures overseen by the same officer, allowing RE staff to quickly locate information on all areas of compliance they are responsible for.

The best plans showed sufficient detail to allow the responsible officer to know what the responsibilities of the role are, what procedures are required to be performed to fulfil those responsibilities, how they were monitored and reviewed, who to report to and whether compliance checks are automated or manual.

Many plans reviewed refer to procedures manuals and detail contained in agreements rather than including lengthy descriptions of procedures within the compliance plan. This improves clarity and allows procedures to be updated without having to amend the compliance plan. What is often missing though are the measures used to ensure that the procedures contained in the manuals and agreements are followed, working and updated.

An area that was covered poorly in many compliance plans is the reporting of breaches. Industry best practice requires all breaches to be reported even if they have been rectified during the period. This enables the Compliance Committee to have a full picture of the level of breaches that are taking place. Many entities rated breaches as to significance in order that the Compliance Committee may focus on the higher risk breaches that will impact on investors or the RE. The better plans also ensured the committee were aware of systematic breaches and the source of breaches.

Recent surveillances have revealed that often the operational procedures quotes are not the ones actually carried out. Obviously it is important to ensure that the plan actually reflects business practice.

Examples

These are not meant to be procedural best practice, rather they are illustrations of the better examples noted from our review. Content would need to be tailored to the specific scheme and entity operation as well as any further relevant points considered.

3.1 Income

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: monthly

Function	Risks	Procedures	Monitoring of procedure
Collect and record all property and investment income due to the Scheme.	Not all income due to the Scheme is received.	Rental income from tenants is paid directly to the custodian. The FC quarterly prepares an income forecast based on rentals per the lease agreements. This forecast is compared to actual income per monthly reports from the custodian. Differences are investigated as soon as detected.	Quarterly rental income forecasts are reviewed by the Board following preparation by the FC. The Compliance Officer reviews the FC's monthly reconciliation of forecast income to actual income and includes these reconciliations in reports to the Compliance Committee.

Example 2

As the property management will be outsourced, the property manager will collect most of the income of the Scheme, acting as custodian.

The property manager will be required to deposit all funds received on behalf of the Scheme to its trust account on the day of receipt.

The property manager will be required to remit to the RE by the 10th day of the following month the net income received during the month. The property manager will be required to provide on the last day of a month a reconciliation of the income and expenses recorded in the general ledger to actual income received and expenses paid during the month. The Scheme Administration must check this.

The Scheme Administration must check that interest income is paid on time and is consistent with the level of deposits held.

3.2 Fees and expenses

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of procedure
Payment of Scheme related expenses and fees payable to the RE.	Expenses and management fees paid are not valid or are overpaid.	<p>All invoices received are reviewed by the external Property Manager (PM) to ensure services or goods were received and related to the project. The PM sends a summary of approved expenses to be paid for the month with copies of related invoices to the FC who arranges payment.</p> <p>Two directors signatures are required on each cheque.</p> <p>The FC calculates the PM's and the RE's management fee monthly in accordance with details per the Product Disclosure Statement.</p> <p>The FC prepares a list of expenses paid in the month and submits this list monthly with a copy of the month end bank reconciliation to the Compliance Officer (CO).</p>	<p>The CO reviews the FC's report and bank reconciliation and includes them in the CO's report for review by the Compliance Committee.</p> <p>The CO reviews the PM and RE management fee calculation monthly.</p> <p>External audit review expenses paid during the year and recalculate management fees as part of the annual audit.</p>

Example 2

Scope

This Compliance Rule sets out the arrangements that the RE applies in operating the Fund to ensure compliance with matters arising from the reimbursement of expenses.

Functional heads

Head of Finance and Administration

Primary provisions

- The primary provision of the Constitution relevant for this Compliance Rule is clause 30.
- The primary provisions of the Corporations Act relevant for this Compliance Rule is sections 601FC(1)(k) and 601GA(2).

Reporting frequency

The frequency of reporting to the Compliance Committee is quarterly, unless stated to the contrary, or the Chair agrees that it is not necessary to receive a report for a particular quarter.

Duties and compliance activities

The duties and compliance activities of the Head of Finance and Administration are set out in the table included under the heading Expense Reimbursements. He/she is required to review and assess compliance with this Compliance Rule, and the procedures and monitoring and reporting activities outlined in the following table. Where appropriate, he/she is to report to the Compliance Manager any matter of non-compliance and recommend any changes to the procedures and monitoring and reporting activities to ensure they remain appropriate. The Compliance Manager is to report such matters to the Compliance Committee.

Fees and expenses

Compliance activity	Procedures followed	Monitoring and reporting
<p>Expense reimbursements are calculated and processed in accordance with the requirements of the Constitution, the Corporations Act and the most recent representations made to unit holders.</p>	<ul style="list-style-type: none"> • Allowable expenses are set out in the Constitution and in the most recent representations made to unit holders. • The RE is only reimbursed from the Fund for expenses incurred in the proper performance of the RE duties in respect of the Fund. • Expense reimbursements are appropriately allocated and paid to the RE. • The RE maintains records of expense reimbursements. 	<p>Expense reimbursements paid to the RE are subject to spot checks by the Fund's internal auditors. A report on any adverse findings is provided to the Head of Finance and Administration and the Group Audit and Compliance Committee.</p> <p>The Head of Finance and Administration and the Manager of the Property Department receive and review a monthly report detailing expense reimbursements paid by the RE to ensure payments are permitted by the Constitution and the most recent representation to unit holders, and are calculated and allocated appropriately.</p> <p>A quarterly report on findings is provided to the Compliance Committee.</p> <p>Breaches are dealt with as outlined in 3.15.</p>

3.3 Applications and distributions

Example

Separate account opened

A separate Application Account will be opened for the Syndicate, and the name of the Syndicate will be included in the name of the account.

A separate Application Account will be opened for the Trust, and the name of the Trust will be included in the name of the account.

Each Application Account must be interest bearing.

Each Application Account must be reconciled weekly, and the total reconciled to the Register.

Signatories

The MD and the Scheme Administrator will be the signatories on each Application Account.

Banking of application monies

Application Monies will be banked to the correct Application Account within 24 hours of receipt. Application accounts are reconciled weekly and reviewed by the Scheme Administrator.

Certification of minimum subscription

Once the minimum subscription has been reached (either by cleared funds or necessary binding legal documentation in circumstances where applications are to be funded from settlement monies), the MD certifies to the Board that the minimum subscription has been reached.

Transferring money from application account

No money will be transferred from the Application Account except on reaching the minimum subscription for the Scheme as set out in the Product Disclosure Statement as certified by the MD to the Board.

Minimum subscription not reached

If the minimum subscription is not reached by the closing date for the Scheme as set out in the Product Disclosure Statement, the MD must ensure all Application Monies are returned to Investors within 14 days of the closing date.

Checking applications

Each Application Form must be checked by the Scheme Administrator on receipt.

Incorrect application forms

If the Application Form is not completed correctly, the Applicant must be contacted and the Application Form corrected if that can be done by the Scheme Administrator (for example, writing in an applicant's ACN), or returned to the Applicant if not.

No application forms with cheque

The Application Form and Application Monies must be dealt with as required by the Constitution.

Recording details on register

Details from the Application Form will be recorded in the Register and the Application Form marked appropriately.

Acknowledgment

An acknowledgment will be forwarded to each Applicant within 48 hours of receiving a correctly completed Application Form.

Distributions to investors – interim

Distributions will be made each month to Investors, either by bank transfer or cheque. The distributions must be made within one month of the end of each month.

Distribution dates are diarised by the Scheme Administrator.

Cash reconciliations, Profit and Loss Statements and Cash Budgets updates are to be completed monthly by the Scheme Administrator and checked by the MD. Distributions will be made of available funds as demonstrated by these statements.

Distributions to investors – end of financial year

The final distribution for the year will be based on final accounts prepared by the Scheme Administrator, checked by the Managing Director and will be approved by the Board before payment and inclusion in the financial statements and other reports to Investors.

3.4 Safe keeping and segregation of scheme property

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Ensure scheme property is:</p> <ul style="list-style-type: none"> clearly identified as scheme property; and held separately from property of the RE and property of any other scheme. 	<p>Scheme property is mixed with that of the RE or other schemes and cannot be separately identified.</p> <p>Custodian does not meet service level agreement requirements effecting level of service to the investors.</p>	<p>Scheme funds from application monies and received as income is checked at least on a monthly basis to ensure it is all paid intact into a scheme account and is held in schemes name</p> <p>Cash held with the custodian is reconciled monthly to Scheme records by the FC. Breaches are followed up with the custodian as soon as they are detected.</p> <p>An independent investigation by the external auditor is required for unreconciled amounts exceeding \$10,000.</p> <p>The custodian holds property title and lease documents in safe custody.</p> <p>Due diligence is performed in accordance with the Due Diligence Procedures Manual (DDP) by the FC. Board approval is obtained before appointing an external custodian. Refer to section 3. 5: External Service Providers. Procedures include ensuring terms of the custodian agreement address ASIC Policy Statement 133 <i>Managed investments: Scheme property arrangements</i> [PS 133] and the Scheme's constitution.</p> <p>The FC measures performance of the custodian against service level agreement targets quarterly.</p> <p>Breaches of the service level agreement are reported to the compliance officer (CO) as soon as they are detected.</p> <p>The DDP manual is reviewed by the FC annually and after any relevant change to the Corporations Act or industry standards to ensure procedures are still adequate.</p>	<p>External audit annually confirm existence of assets and documents held at the third party custodian.</p> <p>FC confirms monthly to RE that all scheme monies have been banked into a scheme account and all scheme monies and scheme assets are held in scheme's name.</p> <p>CO submits custodian reconciliations to the Compliance Committee at each meeting.</p> <p>Custodian confirms annually to the RE that they:</p> <ul style="list-style-type: none"> continue to comply with the requirements of [PS 133] at [PS 133.2] have no conflict of interest with the Scheme. <p>The CO maintains a register of all reviews and updates of procedures manuals. The FC is required to sign the register following each review of the DDP manual.</p>

Example 2

Title

The assets of the Scheme will be:

- money in bank accounts pending distribution to Investors; and
- real estate.

Bank accounts

A separate bank account will be opened for the Syndicate and the Trust.

The Syndicate bank account is to include the name of the Syndicate in the name of the account.

The Trust bank account is to include the name of the Trust in the name of the account.

The Managing Director and the Scheme Administrator jointly are the signatories to the Scheme bank accounts.

Real property

All Scheme assets are to be registered with the Scheme name identified on the instruments of title.

The Scheme Administrator is responsible for establishing and maintaining a separate file for each Scheme, containing details of the properties owned by each Scheme and the tenants of each property.

At no time shall the assets of the Scheme be intermingled with the assets of any other scheme for any purpose whatsoever.

Scheme Property is to be registered and described to all parties involved in the acquisition, funding and operation of the property as property held in trust for Investors.

3.5 External service providers

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Carry out adequate due diligence when appointing external service providers.</p> <p>Monitor providers to ensure they comply with contractual obligations and service level agreements.</p>	<p>The Scheme may incur loss due to poor service from external providers.</p>	<p>Due diligence procedures and approvals are performed in accordance with the Due Diligence Procedures Manual (DDP).</p> <p>Contracts with service providers are reviewed and approved by the Board. Legal advice is obtained if the Board considers it necessary.</p> <p>The FC measures performance of external service providers against service level agreement targets quarterly.</p> <p>The DDP manual is reviewed by the FC annually and after any relevant change to the Corporations Act or industry standards to ensure procedures are still adequate.</p>	<p>The Board reviews all due diligence documentation prior to accepting any nominated service provider.</p> <p>Each Committee member is required to visit the property each year to form their own assessment of its condition and the performance of the property manager.</p> <p>The Compliance Officer maintains a register of all reviews and updates of procedures manuals. The FC is required to sign the register following each review of the DDP manual.</p>

Example 2

Scope

This Compliance Rule sets out the arrangements that the RE applies in operating the Fund to ensure compliance with matters arising from persons acting as its delegate, agent or contractor.

Functional heads

Head of Finance and Administration

Primary provisions

- The primary provision of the Constitution relevant for this Compliance Rule is clause 13.
- The primary provisions of the Corporations Act relevant for this Compliance Rule are sections 601FB(2), (3) and (4).

Reporting frequency

The frequency of reporting to the Compliance Committee is quarterly, unless stated to the contrary, or the Chair agrees that it is not necessary to receive a report for a particular quarter.

Duties and compliance activities

The duties and compliance activities of the Head of Finance and Administration are set out in the table included under the heading Delegates, Agents and Contractors – Custodian, Registrar, Managing Agents and Other service providers. They are required to review and assess compliance with this Compliance Rule, and the procedures and monitoring and reporting activities outlined in the following table. Where appropriate, they are to report to the Compliance Manager any matter of non-compliance and recommend any changes to the procedures and monitoring and reporting activities to ensure they remain appropriate. The Compliance Manager is to report such matters to the Compliance Committee.

Delegates, agents and contractors – Custodian

Compliance activity	Procedures followed	Monitoring and reporting
Appoint a suitably qualified Custodian to hold Fund assets.	<p>Due diligence is undertaken on prospective Custodians by the Head of Finance and Administration.</p> <p>The Head of Finance and Administration prepares a paper on the prospective Custodian.</p> <p>RE Board of Directors approves the appointment of a Custodian.</p> <p>The Head of Finance and Administration reviews the Custodian's audited annual accounts to confirm that the Custodian has sufficient net tangible assets as required by the Corporations Act.</p> <p>Information regarding the segregation of assets is obtained and assessed for adequacy by the Head of Finance and Administration.</p> <p>An assessment of the Custodian's staff is undertaken regarding their qualifications and skills.</p>	The Head of Finance and Administration reports to the Board of Directors on the progress of an appointment.
Custodian Agreement entered into with Custodian is appropriate.	<p>The Custodian Agreement entered into is at normal commercial terms and conditions.</p> <p>Legal advice is sought.</p> <p>Terms of the Custodian Agreement cover pertinent operational and systems issues that address the Constitution, the Corporations Act and RE operational requirements.</p>	<p>The Custodian Agreement is reviewed by the Head of Finance and Administration.</p> <p>The relevant parties execute the contract.</p>
Custodian is evaluated and monitored to ensure it complies with the terms of the Custodian Agreement, the Constitution, the Compliance Plan and the requirements of the Corporations Act.	<p>The Custodian is provided with a copy of the Constitution, the Compliance Plan and the most recent representation made to unit holders.</p> <p>The Custodian completes quarterly self assessment questionnaire, prepared by the Compliance Manager, addressing such matters as ownership, key staff, systems development, insurance, Year 2000 issues, disaster recovery plan and reporting of breaches.</p> <p>The Custodian produces summary reports on the various activities it performs including a declaration of compliance with the Corporations Act and the Constitution.</p> <p>The Custodian provides a positive confirmation that NTA requirements are met on a monthly basis.</p> <p>At least annual reviews of the Custodian are undertaken by the Head of Finance and Administration that may include site visits and review of audit reports.</p>	<p>Quarterly self assessment questionnaires and summary reports are reviewed by the Head of Finance and Administration and the Compliance Manager to confirm ongoing compliance.</p> <p>A quarterly report on findings is provided to the Management Compliance Committee.</p> <p>The Head of Finance and Administration reports to the Board on any adverse performance of the Custodian each quarter.</p> <p>Annual audited financial statements of the Custodian are provided and reviewed by the Head of Finance and Administration.</p> <p>Reports prepared by internal and external auditors on the Custodian's internal controls are reviewed by the Head of Finance and Administration and the Group Audit and Compliance Committee at least annually.</p> <p>Breaches are dealt with as outlined in 3.14.</p> <p>The Custodian Agreement is reviewed by the Head of Finance and Administration for ongoing appropriateness.</p>

Delegates, agents and contractors – Registrar

Compliance activity	Procedures followed	Monitoring and reporting
<p>Appointment of a suitably qualified Registrar.</p> <p>A Registrar is engaged to perform the functions of:</p> <ul style="list-style-type: none"> • Investor services; • Unit trust registry; • Investors and advisers reporting. 	<p>Due diligence is undertaken on prospective Registrar by the Head of Finance and Administration.</p> <p>The Head of Finance and Administration prepares a paper on the prospective Registrar.</p> <p>The Board of Directors approves the appointment of a Registrar.</p>	<p>The Head of Finance and Administration reports to the Board of Directors on the progress of an appointment.</p>
<p>The Service Agreement entered into with the Registrar is appropriate.</p>	<p>The Service Agreement entered into is at normal commercial terms and conditions.</p> <p>Legal advice may be sought.</p> <p>Terms of the Service Agreement cover pertinent operational and systems issues that address the Constitution, the Corporations Act and the RE's operational requirements.</p>	<p>The Head of Finance and Administration reviews the Service Agreement.</p> <p>The relevant parties execute the contract.</p>
<p>The Registrar is evaluated and monitored to assess ongoing compliance with requirements and obligations of the Constitution, the Corporations Act, the Compliance Plan, the ASX Listing Rules and the Service Agreement.</p>	<p>The Registrar is provided with a copy of the Constitution, the Compliance Plan and the most recent representation made to unit holders.</p> <p>The Registrar completes a quarterly self assessment questionnaire addressing such matters as ownership, key staff, systems development, insurance, Year 2000 issues, disaster recovery plan and reporting of complaints and breaches.</p> <p>The Registrar produces summary reports on its various duties including a declaration of compliance with the Corporations Act and the Constitution.</p> <p>At least an annual analytical review of the Registrar is undertaken by the Head of Finance and Administration which may include a site visit and review of audit reports to assess performance and ongoing appropriateness of the Registrar.</p>	<p>The Head of Finance and Administration and the Compliance Manager review the responses to the self assessment questionnaires.</p> <p>A quarterly report on findings is provided to the Management Compliance Committee.</p> <p>The Head of Finance and Administration reports to the Board on any adverse performance of the Registrar each quarter.</p> <p>Reports provided by internal and external auditors on the Registrar's internal controls are reviewed by the Head of Finance and Administration.</p> <p>The annual audited financial statements of the Registrar are provided and reviewed by the Head of Finance and Administration.</p> <p>Breaches are dealt with as outlined in 3.15.</p>

Delegates, agents and contractors – Managing agents

Compliance activity	Procedures followed	Monitoring and reporting
Appointment of suitably qualified Managing Agents to perform the property management duties for the Fund as outlined in the Management Agreement.	<p>Prior to engaging a Managing Agent a thorough analysis of the Managing Agent's ability to perform the delegated functions is undertaken by the Property Portfolio Managers including:</p> <ul style="list-style-type: none"> • negotiation of rent reviews and leases; • collection of rent; • maintenance of property; and • payment of invoices. 	The Head of Finance and Administration approves and appoints Managing Agents.
The Management Agreement's entered into with Managing Agent's are appropriate.	<p>Terms of the Management Agreement cover requirements of the Constitution, the Corporations Act and property related functions.</p> <p>Legal advice may be sought.</p> <p>The Management Agreement entered into is at normal commercial terms and conditions.</p>	<p>The Management Agreement is reviewed by the Property Portfolio Manager prior to the Managing Agent being appointed.</p> <p>The Management Agreement entered into is executed by the relevant parties.</p>
Managing Agents' are evaluated and monitored to ensure they comply with the terms of the Management Agreement, the Constitution and the requirements of the Corporations Act.	<p>Managing Agents provide a number of reports on a regular basis, which may include profit and loss statements, arrears control, leasing, marketing and rental reviews.</p> <p>Managing Agents complete a quarterly self assessment questionnaire addressing such matters as ownership, key staff, systems development, insurance, Year 2000 issues, disaster recovery plan and reporting of complaints and breaches.</p> <p>Managing Agents may be removed in accordance with the terms of the Management Agreement.</p> <p>Material matters affecting any of the Fund's investment properties must be reported, as soon as practicable, to the relevant Property Portfolio Manager.</p>	<p>On an ongoing basis, Managing Agents are monitored by the Property Portfolio Managers to ensure that they are acting in accordance with the requirements of the Management Agreement.</p> <p>Property Portfolio Managers regularly visit the Fund's investment properties.</p> <p>Property Portfolio Managers and the Head of Finance and Administration review responses to the quarterly self assessment questionnaires.</p> <p>A quarterly report on findings is provided to the Compliance Committee.</p>
Appointment of other suitable service providers.	<p>Undertake appropriate Due Diligence procedures when selecting service providers.</p> <p>Contracts are at normal commercial terms and conditions.</p> <p>Legal advice is sought for material contracts entered into by the Fund when required.</p>	<p>Appropriate personnel monitor service providers when required.</p> <p>Breaches are dealt with as outlined in 3.15.</p>

3.6 Record keeping and disclosure

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Monthly

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Correctly record and explain transactions, financial position and performance, enabling true and fair financial statements to be audited and correct tax returns submitted.</p> <p>Ensure records are maintained for a minimum of seven years.</p>	<p>Incorrect or insufficient records resulting in qualified audit report.</p> <p>Penalty payments resulting from incorrect tax returns. Tax information to investors is insufficient.</p>	<p>All records are stored electronically for at least seven years and are readily accessible. The FC is required to confirm to the Compliance Officer (CO) the adequacy of record archiving annually.</p> <p>The IT manager reviews the disaster recovery plan annually and its adequacy confirmed to the CO.</p> <p>All external service providers confirm the adequacy of disaster recovery plans to the CO annually.</p> <p>The FC confirms to the CO annually that all relevant accounting standards have been complied with during the year.</p>	<p>Records, including those for tax purposes, are reviewed by external audit at the year end and before each interim dividend is announced.</p> <p>The CO diarises the dates when confirmations are due to be received and follows up on any that are overdue.</p>

Example 2

Scope/obligation addressed/responsible officer	Compliance activity	Inherent risk category/ Inherent risk addressed	Procedures followed	Monitoring and reporting frequency
<p>This Compliance Measure sets out arrangements of the RE in operating the Scheme to ensure that the Custodian has the system and resources to carry out the accounting function and maintain accounting records for the Scheme, which in turn enables the RE to prepare Scheme financial statements in accordance with Australian Accounting Standards and the Scheme constitution.</p> <p>Corporations Act section 601HA(1)(e) ASIC [PS 132] Head of Finance</p>	<p>The Custody Agreement sets out the Custodian's duty to maintain proper accounting and taxation records for the Scheme, and report to the RE regularly depending on the nature of the reports.</p> <p>Reports from the Custodian's external auditors on their semi-annual review of the Custodian's systems and internal control is provided to the Board.</p> <p>The Scheme financial statements are subject to semi-annual external audit or review.</p>	<p>High risk category</p> <p>The Custodian may not have adequate resources or systems to carry out accounting functions or maintain accurate accounting records for the Scheme, and makes it impossible for the RE to prepare financial statements according to Australian Accounting Standards and the Scheme constitution.</p> <p>Inaccurate Scheme accounting records leads to inaccurate pricing and distribution to Scheme members with respect to their holdings in the Scheme.</p>	<p>The RE and the Custodian have a formal agreement stating that the Custodian performs accounting for the Scheme, and detailing the accounting records to be maintained and reports to be provided.</p> <p>Custodian provides monthly accounting reports to the RE's Finance Department and Head of Investments. The Custodian also provides quarterly taxation reports to the RE's Finance Department. The Custodian is required to maintain accounting and taxation records for the Scheme in accordance with Australian Accounting Standards, Corporations Act and taxation law.</p> <p>The Finance Department prepares statutory financial and taxation reporting of the Scheme based on monthly accounting reports and quarterly taxation reports provided by the Custodian.</p>	<p>The Head of Finance reports to the Compliance Committee on a semi-annual basis on the financial statements of the Scheme.</p> <p>The Compliance Manager and/or the Compliance Officer will review the Custodian's accounting records process on a semi-annual basis in accordance with the Monitoring Plan for the Custodian, and report his or her findings to the Compliance Committee.</p>

3.7 Valuation

Example 1

Responsible Officer: Managing Director (MD)

Frequency of Reporting: Annually

Function	Risks	Procedures	Monitoring of procedure
<p>Investors have no right to require units to be redeemed by the RE. Units in the Scheme are therefore likely to be illiquid hence frequent revaluation of assets is not necessary.</p> <p>To allow performance monitoring by investors and ensure adequacy of insurance cover, the Scheme's real property will be re-valued at intervals of 3 years, or more often if the Board considers it appropriate.</p>	<p>The value of the Scheme disclosed in the annual financial statements will be out of date and hence inaccurate.</p>	<p>An independent property valuer is appointed to carry out a valuation at least every three years. The valuer must be a member of the Australian Property Institute with the rank of Fellow or Associate with the certification, Certified Practising Valuer.</p> <p>The valuation must be performed on the basis of standard practices of the Australian Property Institute, ie on the basis of a willing buyer and seller.</p> <p>The same valuer cannot be used for more than two consecutive valuations.</p> <p>In intervening years building valuations are revised according to the Board's assessment of the property market, though cannot be revised downwards.</p> <p>The Compliance Officer is responsible for monitoring market prices for similar properties sold in the same area. The CO reports to the Compliance Committee any relevant significant movements in the property market.</p>	<p>The Board must approve the appointment of each valuer.</p> <p>The Compliance Officer reviews the valuation and includes it in the next report to the Compliance Committee.</p>

Example 2

Scheme property will be independently valued at least once every three years, unless the Scheme's Constitution requires more frequent valuation or having regard to the nature of the Property more frequent valuations are appropriate.

Valuers will be selected by the Board from a panel of valuers pre-selected on the basis of qualification and experience by the Board. Valuers must be independent of the RE.

The Board will establish and maintain lines of communication with panel valuers with a view to obtaining information on a regular basis as to trends and fluctuations in property valuations generally. These are indicators that the property may need to be valued.

The instructions to the valuer will be prepared by the board in accordance with the Scheme's Constitution.

One valuer will be permitted to carry out only two consecutive valuations of the same property. Valuations will be considered when preparing the financial statements of the Scheme.

New valuations must be reflected in the Scheme Accounts within one month of receiving from valuer.

3.8 Investment restrictions

Example

Responsible Officer: Managing Director (MD)

Frequency of Reporting: Monthly until settlement of property is completed

Compliance activity	Procedures followed	Monitoring and reporting
<p>Ensure that the Fund only invests in assets of the type and within the limits as set out in the Constitution, the Corporations Act and the most recent representation made to unit holders.</p>	<p>The MD employs suitably qualified and experienced Property Portfolio Managers to manage the investment process.</p> <p>Properties that fit the Scheme's acquisition and disposal strategy are researched, and if thought appropriate, the MD submits a written proposal to the Board of Directors.</p> <p>The Property Portfolio Managers maintain comprehensive files to the Fund's investment properties.</p> <p>The MD may invest scheme money in other investments in accordance with the requirements of the Constitution and Corporations Act.</p>	<p>The MD reviews Scheme performance and investment proposals to monitor that investments continue to meet the Schemes strategy.</p> <p>A monthly report on findings is provided to the Compliance Committee.</p>

3.9 Insurance

Example 1

Responsible Officer: Managing Director (MD)

Frequency of Reporting: Annually

Function	Risks	Procedures	Monitoring of procedure
<p>Maintain appropriate insurances in respect of:</p> <ul style="list-style-type: none"> • insurable Scheme assets, • professional indemnity and • fraud by its officers and agents. 	<p>Loss of scheme assets due to events that could have been insured against.</p>	<p>An insurance risk appraisal is undertaken by the MD as part of the due diligence process on acquisition of a principal property in order to identify risk.</p> <p>Thereafter the insurance risk appraisal is updated annually with the results communicated to the Board.</p> <p>After consultation with and approval from the Board a minimum of three quotes are obtained for insurance policies to cover the risks identified. The quotes are submitted to the board by the MD with his recommendation based on price and experience and past performance of the broker and underwriter. Board approval is required before entering into any insurance policy.</p> <p>Policies will cover areas such as property damage, loss of rent and public liability.</p> <p>The appropriate level of insurance is determined on the basis of building valuations undertaken at least every three years as per section 3.7: Valuation of this Plan. In intervening years building valuations are revised according to the Board's assessment of the property market, though cannot be revised downwards.</p> <p>The level of public liability insurance is determined by reference to industry practice and the level of recent court awards.</p> <p>A copy of all notifiable events is sent to the Board and the Compliance Officer (CO).</p>	<p>The CO reviews annually the documentation supporting the MD's and the Board's assessment of risk and reports the findings to the Compliance Committee.</p> <p>The CO will diarise renewal dates for insurance policies and check that the MD has implemented the review/renewal process.</p> <p>The CO informs the Committee of all notifiable events occurring in the period immediately prior to the Committee meeting.</p>

Example 2

Scope

This Compliance Rule sets out the arrangements that the RE applies in operating the Funds to ensure that the RE meets the insurance requirements of the Corporations Act and conditions of the RE's AFS licence.

Functional heads

Head of Finance and Administration

Group Secretariat

Primary provisions

- The primary provisions of the Corporations Act relevant for this Compliance Rule are section 912B.
- Conditions specified in the AFS licence.

Reporting frequency

The frequency of reporting to the Compliance Committee is quarterly, unless stated to the contrary, or the Chair agrees that it is not necessary to receive a report for a particular quarter.

Duties and compliance activities

The duties and compliance activities of the Head of Finance and Administration and the Group Secretariat are set out in the table included under the heading Insurance. They are required to review and assess compliance with this Compliance Rule, and the procedures and monitoring and reporting activities outlined in the following table. Where appropriate, they are to report to the Compliance Manager any matter of non-compliance and recommend any changes to the procedures and monitoring and reporting activities to ensure they remain appropriate. The Compliance Manager is to report such matters to the Compliance Committee.

Insurance

Compliance activity	Procedures followed	Monitoring and reporting
<p>Service providers maintain adequate insurance as required by the Corporations Act and the AFS licence conditions.</p>	<p>The Group Secretariat annually review insurance cover to ensure that levels are appropriate for the Fund and meet the RE's licence requirements.</p> <p>On a quarterly basis service providers complete a self assessment questionnaire confirming, where appropriate, their ability to fulfil their obligations in respect of their insurance requirements.</p> <p>The Head of Finance and Administration reviews insurance cover for each investment property annually.</p>	<p>The Head of Finance and Administration and the Compliance Manager review the responses to the quarterly self assessment questionnaires.</p> <p>The RE is subject to an annual audit, which includes assessing compliance with the requirements of the Corporations Act and the AFS licence Conditions.</p> <p>Breaches are dealt with as outlined in 3.14.</p>

3.10 Promotion of scheme

Example 1

Responsible Officer: Managing Director (MD)

Frequency of Reporting: Monthly until offer closes then six monthly

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Issue Product Disclosure Statement (PDS) that complies with the Corporations Act and which provides the RE with the maximum due diligence protection and defences.</p> <p>Ensure all non-PDS marketing and promotional material is complete, accurate and in accordance with the Corporations Act.</p>	<p>PDS or advertising material is misleading to investors.</p> <p>Action by investors to recover losses.</p> <p>PDS is subject to an ASIC stop order.</p> <p>Forecasts in PDSs do not have a reasonable basis. Refer ASIC Policy Statement 170 <i>Prospective financial information</i> [PS 170] which deals with forecasts in PDSs.</p>	<p>External legal counsel review and sign off on all new, supplementary and rolled over PDSs as applicable.</p> <p>Relevant external expert sign off is obtained for all PDSs issued.</p> <p>All marketing material is authorised by two directors prior to release.</p>	<p>Compliance Officer (CO) checks appropriate sign-offs have been obtained prior to release of PDS.</p> <p>CO reviews marketing file every 6 months to check appropriate director approval was obtained.</p>

Example 2

Scope

This Compliance Rule sets out the arrangements that the RE applies in operating the Funds to ensure compliance with matters arising from the Product Disclosure Statement and advertising requirements of the Corporations Act.

Functional heads

Head of Finance and Administration.

Primary provisions

- The primary provisions of the Corporations Act relevant for this Compliance Rule are contained in Divisions 2, 3 and 4 of Part 7.9.
- AFS licence conditions.

Reporting frequency

The frequency of reporting to the Compliance Committee is quarterly, unless stated to the contrary, or the Chair agrees that it is not necessary to receive a report for a particular quarter.

Duties and compliance activities

The duties and compliance activities of the Head of Finance and Administration are set out in the table included under the heading Promotion of the Scheme. They are required to review and assess compliance with this Compliance Rule, and the procedures and monitoring and reporting activities outlined in the following table. Where appropriate, they are to report to the Compliance Manager any matter of non-compliance and recommend any changes to the procedures and monitoring and reporting activities to ensure they remain appropriate. The Compliance Manager is to report such matters to the Compliance Committee.

Promotion of the scheme

Compliance activity	Procedures followed	Monitoring and reporting
<p>The RE maintains procedures to ensure all promotional material including publications; presentations and advertisements comply with the relevant provisions of the Corporations Act and other disclosure requirements.</p>	<p>Relevant members of staff review and sign off all promotional material.</p> <p>Legal advice may be sought.</p> <p>All promotional material is assigned an authorisation number and is recorded in a register.</p> <p>Authorised Representatives have access to copies of the Compliance Manual, which details their obligations under Chapter 7 of the Corporations Act.</p> <p>Authorised Representatives receive product training before they are allowed to market it to advisers and stock brokers. The Head of Finance and Administration coordinates this activity.</p> <p>Authorised Representatives are required to undertake industry training.</p>	<p>Internal audit perform periodic reviews of promotional material. A report on the findings is provided to the Compliance Manager and the Group Audit and Compliance Committee.</p> <p>A summary of all approved promotional material is tabled at the Management Compliance and Due Diligence Committee Meetings.</p> <p>The Compliance Manager maintains registers for:</p> <ul style="list-style-type: none"> • Authorised Representatives • Authorised Representatives ongoing training.
<p>Offer documents are complete and accurate and comply with the requirements of the Corporations Act and other disclosure requirements.</p>	<p>The Board of Directors authorise the issue of all offer documents.</p> <p>Legal advice is sought.</p> <p>Appropriate staff review and sign off the document on a management questionnaire.</p> <p>The Head of Finance and Administration compiles a comprehensive due diligence file on each offer document.</p>	<p>The Due Diligence Committee review all new offer documents and ensures those offer documents have been subject to the procedures approved by the Board of Directors.</p> <p>When appropriate, the Head of Finance and Administration reviews the existing offer document for ongoing appropriateness. Any adverse findings are reported to the Management Compliance and Due Diligence Committees.</p> <p>Internal Audit performs periodic checks. A report on the findings is provided to the Compliance Manager and the Group Audit and Compliance Committee.</p>

3.11 Training and recruitment

Example 1

Responsible Officer: Manager Human Resources (MHR)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of Compliance Procedures
Staff recruited are competent and receive sufficient training for them to be able to be able to perform their duties and to be familiar with the requirements per the compliance plan.	<p>Staff do not have the skills necessary to competently perform their duties.</p> <p>Key staff have specific knowledge that is lost if they leave the employment of the RE.</p>	<p>Staff are recruited according to the Recruitment Procedures Manual (RP) which is designed to ensure appointees have adequate experience and ability.</p> <p>Staff competency and development needs are reviewed by line managers every 6 months in accordance with the staff review process detailed in the staff handbook.</p> <p>The MHR maintains a register detailing when each staff member last had a review, the training they have attended and areas identified for training in the future. The MHR reviews this register quarterly and follows up any overdue staff reviews or training needs.</p> <p>All compliance personnel are required to attend compliance training for a minimum of one day per annum.</p> <p>The MHR maintains a succession plan for all staff the Board considers to be key personnel. The MHR reviews this plan every six months and submits any recommendations for amendments to the Compliance Officer (CO).</p> <p>The staff handbook and the RP manual are reviewed by the MHR annually and after any relevant change to the Corporations Act or industry standards to ensure procedures are still adequate.</p>	<p>The CO reviews the register maintained by the MHR annually.</p> <p>The Board reviews the key personnel succession plan annually.</p> <p>The CO maintains a register of all reviews and updates of procedures manuals and handbooks. The MHR is required to sign the register following each review of the RP manual and staff handbook.</p>

Example 2

Responsible Officer: Compliance Officer

Activity	Risk Category and Risk	Procedures Followed	Monitoring and Reporting Frequency
<p>Ensuring that: All new staff are adequately trained; and All key staff are adequately trained and kept up to date with legal and compliance issues.</p>	<p>Inherent risk category: Low Staff are not properly qualified or trained</p>	<p>Relevant officers ensure that only appropriate personnel hold positions of trust and that key staff, including compliance staff, are competent to perform their roles.</p> <p>Relevant officers ensure that there is formal delegation of duties whenever a key staff member is away from the office for an extended period.</p> <p>No staff appointments are made without assessment of the candidate by the relevant officer.</p> <p>All new staff are required to attend an induction program which includes specific compliance/legal training conducted by the Compliance Officer.</p> <p>All staff are provided with a copy of the RE's Investment Management Framework manual. The manual is reviewed and updated annually by the managing director. New manuals are provided to staff within 1 month of the update.</p>	<p>The compliance manager conducts random reviews of educational background and experience of staff members including interviews with staff and their managers, to ensure that existing and new staff members are given responsibilities commensurate with their competence and that the RE's recruitment and delegation policies have been followed.</p> <p>The Compliance Manager reports his or her findings to the Compliance Committee at the next meeting after the review.</p> <p>All staff are subject to a performance assessment at least annually conducted by the relevant manager. This involves evaluation of performance against established criteria/goals. Assessment process includes assessment of training requirements for staff.</p> <p>All assessments are reviewed by the HR manager on an annual basis and reported to the Board.</p> <p>The compliance officer reports the outcomes of the review to the Board within 1 month to report that the review is undertaken and new manuals were provided to staff.</p>

3.12 Monitoring Australian financial services licence and authorised representatives

Example 1

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
Ensure the RE complies with the licence conditions at all times and ensures the licence remains current.	Licence suspended or revoked.	<p>All Authorised Representatives (AR) must meet the requirements of Policy Statement 146 <i>Licensing: Training of financial product advisers</i> [PS 146] if necessary prior to appointment as an AR. They must also receive training on responsibilities under the Corporations Act, industry standards and other relevant information.</p> <p>The CO maintains a training register and a register for staff who are [PS 146] compliant.</p> <p>During the period applications to invest are being accepted, compliance questionnaires are completed by all ARs quarterly and returned to the CO for review and sign off.</p> <p>An AFS licence requirements checklist is completed quarterly by the CO.</p>	External audit review the AFS licence requirements annually.

Example 2

Scope

This Compliance Rule sets out the arrangements that the RE applies in operating the Scheme to ensure compliance with matters arising in respect of the AFS licence (other than financial conditions).

Functional heads

Head of Corporate Services.

Primary provisions

- Australian financial service licence conditions.
- The primary provisions of the Corporations Act relevant for this Compliance Rule are contained in Divisions 3, 4 and 5 of Part 7.6 of the Corporations Act.

Reporting frequency

The frequency of reporting to the Compliance Committee is quarterly, unless stated to the contrary, or the Chair agrees that it is not necessary to receive a report for a particular quarter.

Duties and compliance activities

The duties and compliance activities of the Head of Corporate Services are set out in the table included under the heading AFS licence. He/she is required to review and assess compliance with this Compliance Rule, and the procedures and monitoring and reporting activities outlined in the following table. Where appropriate, he/she is to report to the Compliance Manager any matter of non-compliance and recommend any changes to the procedures and monitoring and reporting activities to ensure they remain appropriate. The Compliance Manager is to report such matters to the Compliance Committee.

AFS licence

Compliance activity	Procedures followed	Monitoring and reporting
Compliance with its AFS licence conditions and the requirements of the Corporations Act.	<p>All staff are provided with a copy of the staff Compliance Procedures Manual upon commencement of employment which documents procedures and requirements in respect of the AFS licence.</p> <p>A quarterly self assessment questionnaire is completed by the Head of each Operational Unit in respect of themselves and their staff. A section of this addresses compliance with AFS licence requirements.</p> <p>Group Secretariat ensures AFS licence returns are forwarded to ASIC when required.</p> <p>Ongoing training of Authorised Representatives is undertaken and is reported to the Compliance Manager when it occurs.</p> <p>The Compliance Manager maintains registers for:</p> <ul style="list-style-type: none"> • Authorised Representatives; • Authorised Representatives ongoing training. <p>The Compliance Manager is responsible for notifying staff if there are any changes in the AFS licence requirements.</p>	<p>Internal and external audit review compliance with AFS licence requirements at least annually. Findings are reported to the Managing Director, the Compliance Manager and the Group Audit and Compliance Committee.</p> <p>The Compliance Manager assesses training undertaken by Authorised Representatives each quarter.</p> <p>Breaches are dealt with as outlines in 3.15.</p>

3.13 Related party issues

Example 1

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
To ensure financial benefit is not given to the RE or a related party unless approved by the Board and disclosed to investors.	<p>Investors suffer loss.</p> <p>Detrimental to the reputation of the RE and the Scheme.</p>	<p>A register of related parties is held by the CO. A copy of this register is available to all staff.</p> <p>All RE staff are trained in related party transaction procedures when they commence employment. A register is maintained noting details of all staff who have attended this training. These procedures are also detailed in the staff handbook, which is available to all staff.</p> <p>All transactions are subject to approval by the financial controller and two directors prior to payment.</p> <p>Authorisation is only given if the transaction is considered in the best interest of the investor. External legal advice is obtained if best interest cannot be determined.</p> <p>All contracts with external service providers require approval by the Board.</p>	<p>All related party transactions are reported to the CO when they are proposed.</p> <p>The training register is reviewed annually by the CO to ensure all new starters have attended.</p> <p>Compliance with appropriate authority rules for non-investment transactions are reviewed on a sample basis by the CO annually.</p> <p>Related party transaction procedures in the staff handbook are reviewed for adequacy by the CO annually. This includes a check to ensure procedures are consistent with the IFSA Standard on Related Party Transactions. The results of the review and any recommendations are reported to the Compliance Committee.</p>

Example 2

Disclosure by directors to board and investors

Directors and related entities must disclose to the Board at meetings and to Investors in quarterly reports particulars of proposed financial benefits and obtain their approval at an Investors meeting before the benefit is given. If a conflict arises it will be discussed by the Board and if the conflict provides a long-term independence problem for the director that director must resign immediately.

Voting at board meetings

Directors will abstain from voting on matters in which they have a personal involvement after declaring that conflict to the Board.

Contracts with related parties

The Board will approve all major contracts. If a related party is involved at least two competitive quotes must be obtained and assessed against the criteria established by the Board for that purpose.

Purchase of interests by staff

If at any time an employee wishes to purchase any interest in a Scheme they must obtain MD's approval or if the employee is MD, the Board's approval.

Disclosure by members of compliance committee

Compliance Committee members must disclose their interests as required by section 601JJ of the Corporations Act.

3.14 Complaints

Example 1

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
Handle investor, tenant and other parties' complaints in a manner consistent with the Corporations Act, constitution and ASIC requirements relating to the RE's AFS licence.	<p>Complaints are not adequately addressed and are escalated to litigation.</p> <p>Breach of licence and constitution.</p>	<p>All complaints are referred to the CO who records the details in a complaints log. The CO is responsible for investigating and responding to complaints.</p> <p>If a complaint relates to the CO the Managing Director deals with the matter.</p> <p>Complaints are acknowledged within 2 days of receipt and are responded to within 1 month of receipt. If the matter is not finalised within 1 month the response will detail what has been done to date in response to the complaint.</p> <p>The CO reports all complaints to the Board and the Chairman of the Compliance Committee within one month of receipt of the complaint. Details reported include reason for complaint, the officer or service provider responsible for the subject of the complaint, any impact on the Scheme or the RE, if the complaint revealed a systematic error or weakness in the compliance plan and recommendations for addressing complaint and any compliance plan or systems issues raised.</p> <p>The RE will become a member of an approved external complaints resolution scheme in accordance with the conditions of its licence, within the time frame specified by ASIC.</p> <p>The acknowledgment to complaints also informs investors that they have the right to have their complaint dealt with under the external complaint resolution scheme if they are unsatisfied with the handling of the complaint by the RE.</p> <p>New staff of the RE are trained in complaints procedures by the CO on induction and are updated on an annual basis.</p> <p>The complaints procedures have been developed using the Australian Standard AS 4269 as a benchmark.</p>	<p>The Compliance Committee reviews the complaints log and associated responses quarterly to ensure they have been informed of all complaints and that the complaints have been or are in the process of being satisfactorily resolved.</p> <p>The CO maintains a training register noting who has received complaints training and when. This register is reviewed by external audit annually.</p>

Example 2

Outcome

Complaints procedures as set out in the Constitution are established allowing members to register complaints and have those complaints dealt with in a reasonable and efficient manner by the RE.

Risk: That complaints of members are not appropriately addressed.

Law: Section 601GA(1)(c) and section 912A(2)

Constitution: Clause 58 (Complaints).

General responsibility

The Compliance Officer must oversee the RE's complaints handling procedures.

Licence conditions

The RE must comply with the conditions of its licence to act as a RE and accordingly:

- the RE adopts the Australian Standard on Complaints Handling (AS 4269) or other or replacement standard, if any, required to be complied with by the RE as a condition of its licence subject to any modifications required by the nature of the Fund or terms of the constitution; and
- the RE must become a member of an external complaints resolution scheme approved by ASIC as provided for in the RE licence and must maintain membership of such a scheme for the currency of the RE licence.

Notification to employees

The Compliance Officer must notify all relevant employees:

- of the existence of the complaints handling procedure and Complaints Register;
- that details of all complaints must be recorded in the Complaints Register;
- that they must be courteous to members making complaints and refer them immediately to the Compliance Officer.

Complaints procedure

The Complaints Officer must:

- acknowledge all complaints in writing within 14 days of the receipt of the complaint; and

- attempt to resolve the complaint within 30 days, and if this is not practicable give the members committee reasons why this cannot be achieved.

Complaints register

The Complaints Officer must maintain a Complaints Register containing the following details:

- the name, address and telephone number of each complainant (to the extent that the complainant provides such information);
- the date and time each complaint was received;
- the employee of the RE to whom the complainant first spoke and such employee's record of the conversation;
- all correspondence concerning the complaint;
- a report detailing how each complaint was resolved;
- any other information the Compliance Officer deems appropriate.

Complaints review

Within two months of the end of each financial year, the Compliance Officer must prepare a written review for the previous year of the complaints handling procedures for the Board and Compliance Committee. Such review must include:

- number of complaints received;
- nature of complaints received;
- services or products about which complaints were made;
- business practices about which complaints were made;
- response time;
- staff resources analysis;
- actions taken including remedies, determinations and results;
- trend analyses; and
- such other matters that the Compliance Officer deems appropriate.

The Compliance Officer must each calendar quarter, if any complaints have been received in the quarter, review the complaints handling process. The Compliance Officer must prepare a summary of any complaints received, any unresolved complaints from prior quarters and actions taken to resolve each complaint for presentation to each meeting of the Compliance Committee.

3.15 Reporting breaches

Example 1

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly or following each significant breach

Function	Risks	Procedures	Monitoring of compliance procedures
Breach of the Corporations Act, Scheme constitution, industry or internal standards or this compliance plan are identified, reported and rectified.	Refer to risks of non-compliance referred to in sections: 3.1 to 3.13.	<p>At each month end all responsible officers are required to report verbally to the CO whether any breaches or potential breaches have occurred that month. Written reports are sent to the CO at the reporting frequencies noted in section 3: Summary of Compliance Procedures.</p> <p>Significant breaches are reported to the CO immediately.</p> <p>A sequentially numbered breach report is prepared for each reported breach, detailing its nature, its significance, whether it is systematic or an isolated event and any remedial action taken. Refer to appendix: A6: Pro forma breach report.</p> <p>All breach reports are presented to the Compliance Committee.</p> <p>Breach reports remain open until the chairman of the Compliance Committee has signed the report as closed.</p>	<p>The CO maintains a list of all responsible officers who have reported to the CO each month. Any missing reports are followed up.</p> <p>Breach report files are reviewed each quarter by the CO to ensure sequential numbering is complete and that all reports closed in the previous quarter have been signed by the Chairman of the Compliance Committee.</p> <p>A file of all open breach reports is reviewed by the Compliance Committee at each meeting.</p>

Example 2

The Committee Members must report to ASIC and the Board of Directors on the RE's compliance with this Compliance Procedure as the Corporations Act requires (s601JC(1)(b), (c)).

In accordance with s601JC(b) of the Corporations Act, it is the responsibility of the Compliance Committee to report to the Board of Directors known and suspected breaches of Corporations Act and the Constitution. The following guidelines have been established for detecting, rating and addressing breaches. These procedures apply to all relevant Compliance Procedures unless otherwise stated. A breach is broadly classified as a violation of a service agreement by a service provider, a violation of the Corporations Act or the Constitution.

- Each breach is communicated in writing by staff or a service provider to the Functional Head of the relevant Operational Unit as soon as practicable after detection. The Functional Head summarises the breach in a predetermined format and immediately reports the breach to the Compliance Manager. The Compliance Manager must record all breach in the Breach Register that is presented at Compliance Committee meetings. Records of communications regarding the breach are maintained by the relevant Function Head.
- The Functional Head of an Operational Unit uses his or her expertise to determine what may represent an actual breach or a short-term failure by an operational unit and assesses the significance of that breach. Where the Functional head deems the breach to be significant, he/she must report the breach to the Managing Director in addition to the Compliance Manager who will advise the Compliance Committee. The Compliance Manager must report any breach to ASIC in writing no later than 14 days after becoming aware of any matter that may constitute a breach of:
 - Corporations Act, or
 - the Constitution of a Scheme
 - that has had, or is likely to have, a material adverse effect on unit holders interests.
- The Compliance Manager issues a self assessment questionnaire to the Functional Head of each Operational Unit on a quarterly basis. This questionnaire includes a declaration of compliance with the procedures outlined in this Compliance Plan in relation to breaches.

- The Compliance Committee must report to the Board:
 - any breach of the Corporations Act involving any Fund; or
 - any breach of the provisions included in each Fund’s Constitution
 - of which the Compliance Committee becomes aware of, or suspects.
- The Compliance Committee must report to ASIC any breach it becomes aware of, or suspects and has reported to the Board if the Compliance Committee is of the view that the RE has not taken, or does not propose to take, appropriate action.
- Subsequent communication to ASIC (if required by s601FC(1)(l), s601JC(c) or s912D of the Corporations Act) is also forwarded to the Compliance Committee as well as subsequent communications addressing the issue.
- The Compliance Committee must satisfy itself that documentation from management and ASIC is adequate to indicate that the matter has been resolved before deeming the issue closed.

Appendices in a plan

A1 Glossary

Some plans were very helpful in that they included a glossary. If the plan includes technical or organisation specific terms, or if the users are unlikely to have a financial or legal background, then a glossary can be a helpful tool for users.

Example (refers to this document)

A1 Glossary

Compliance committee

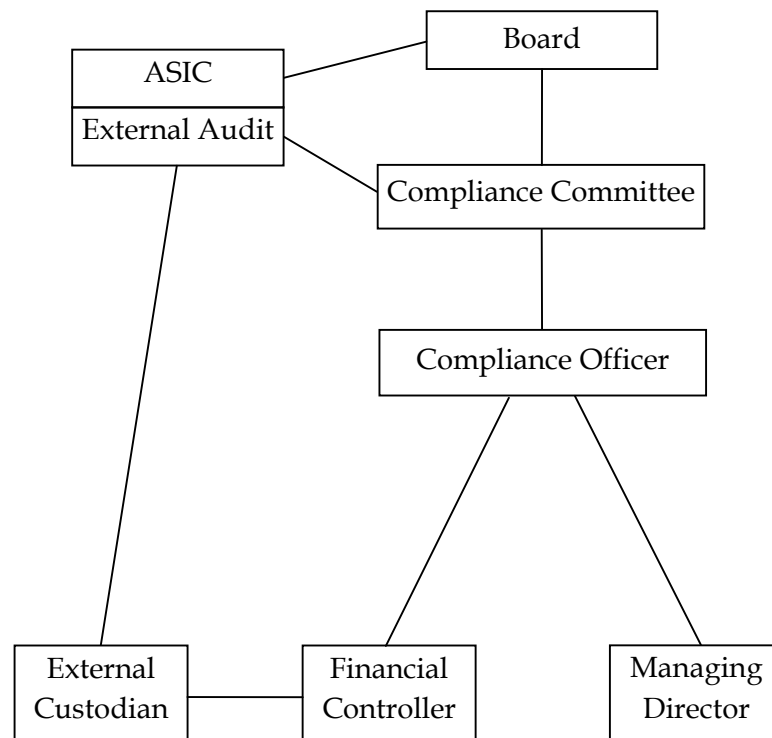
When a Compliance Committee is not required per the Corporations Act, any reference to the Compliance Committee in this document applies equally to the Board of Directors. Refer to section 2.2 for details of the role of the Compliance Committee.

A2 Organisational structure chart

Some plans contained more than one organisational chart, eg one each for compliance reporting, business reporting as well as a wider chart illustrating outsourced activities.

Example

A2 Organisation compliance reporting chart



A3 Compliance committee charter

A number of compliance plans included Compliance Committee Charters. Developing a Compliance Committee Charter that sets out the goals of the Committee may aid in providing clarity of roles and increasing levels of commitment in organisation as well as making the Committee more accountable.

Many Charters aimed to be a practical document describing the rules and guidelines that should be followed by the Committee to fulfil their obligations.

The Compliance Officer's role was sometimes expanded to periodically assess if the Committee is complying with the Charter and whether the Charter reflects any changes to the scheme or the RE's procedures.

In ASIC's view, a Charter can assist the RE to ensure the compliance committee will achieve the role legislation has given it. Assistance to the committee on how the Entity perceives the committee's role is helpful. Indeed, the difficult question of the line between compliance monitoring and business management could be addressed in the Charter.

It would also be helpful if the Charter addressed the importance of "minutes" of meetings. ASIC will review minutes on its surveillance visits. Some minutes reviewed during surveillance failed to reflect the committee as pro-active and asking the hard questions, particularly about the cause of breaches and whether this indicates any potential causes of further breaches or indicates other problems within the organisation. For example, some technical breaches may in fact indicate poor training, accounts backlog, poor record keeping or fraud.

A4 Pro forma compliance committee meeting agenda

A standard agenda for Committee meetings is seen as useful by some entities:

- for the Compliance Officer as a guide to what is required to be prepared for each meeting; and
- as a reminder to Committee members of the issues that need to be addressed at each meeting.

To ensure the Committee focuses on the most important issues some entities prioritise points on the agenda.

Example

A4 Pro forma compliance committee meeting agenda

- (a) Compliance Officer's summary;
- (b) Breach reports;
- (c) Complaints and other correspondence with investors;
- (d) Minutes from previous meeting;
- (e) Proposed amendments to the compliance plan, procedures or agreements;
- (f) Proposed amendments to Corporations Act, industry or internal standards; and
- (g) Other matters.

A5 Pro forma compliance report by responsible officer

Very few plans reviewed addressed the issue of the format of reporting by responsible officers. Compilation of responsible officer compliance reports for reporting to the compliance committee can be simplified if standard format reports are used. Use of a standardised format also ensures that all the areas considered essential by the Compliance Officer are reported on by all responsible officers.

Example

A5 Pro forma compliance report by responsible officer

Name

Position

Compliance Plan Section Reference

Period

I confirm that the requirements of the above compliance plan section have been complied with throughout the period. In particular:

- (a) all procedures stated in the compliance plan section have been complied with;
- (b) all breaches of procedures have been reported to the Compliance Officer;
- (c) all breaches of licence conditions have been reported to the Compliance Officer;
- (d) I am not aware of any potential breaches of procedures that have not already been reported to the Compliance Officer;
- (e) all changes to procedures have been reported to the Compliance Officer and approved by the Compliance Committee;
- (f) I am not aware of any matter that may need to be disclosed to investors or which may cause investors to be disadvantaged; and
- (g) records exist to demonstrate compliance with the above.

[Signature]

[Date]

Evidence to support any breaches to the above statements should be attached to this report.

A6 Pro forma breach report

Example

A6 Pro forma breach report

Compliance Plan Breach Report No: X/x

Reference number is the compliance plan section number followed by the sequential number for breaches reported relating to that section, eg for the second breach reported for valuations (compliance plan section 1) the Breach Report Number would be 1/2

Report Date:

Name of Responsible Officer:

Position:

Date breach was detected:

Compliance plan section relevant to breach:

Significance of breach:

Rate breach as very significant, significant or minor

Is the breach considered an isolated event or systematic?

Details of circumstances giving rise to the breach:

Attach supporting documentation, if required, to fully explain effects of the breach and why the breach occurred.

Details of remedial action taken or recommendations to minimise effects of the breach:

Recommendation to report to ASIC:

Timing of rectification:

Potential cost:

How it will be actioned/Why it will not be actioned:

[Signature of Responsible Officer]

Comments by Compliance Committee:

Action required:

Officer responsible for ensuring action is carried out:

Date for completing implementation of the Committee's recommendations:

[Signature of the Chairman of the Compliance Committee]

To be signed by the Chairman when satisfied all issues raised have been resolved.