



17 December 2007

For the attention of all Discretionary Mutual Funds (DMFs)

Dear Sir or Madam

Parliament passed on 13 September the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007* (DMF Act). The DMF Act amended the *Financial Sector (Collection of Data) Act 2001* (FSCODA). As a result, it is now a legal requirement that DMFs provide information to APRA. This information will enable the Government to better understand the use and operation of DMFs.

On 25 September 2007 APRA issued a discussion paper, *Reporting by Discretionary Mutual Funds*, on draft reporting requirements for DMFs. A summary of the background to this paper is attached. The paper requested comments from interested parties. This consultation closed on 2 November 2007 and submissions broadly supported the proposals.

As a result of submissions a number of changes to the APRA proposals were made:

- Minor changes to forms and instructions;
- The proposed Asset exposure form has been removed; and
- The 'Static Information Form' has been renamed 'Insurance and Sundry Information' and will be required to be lodged annually.

DMFs in existence at or after 1 January 2008 will need to lodge the compulsory Notification form by the later of 1 March 2008 and 14 days after coming into existence as a DMF.

DMFs that wind up after 1 January 2008 will need to submit an additional Notification Form within 14 days of the completion of wind up.

For financial years ending on or between 1 January 2008 and 30 June 2008, APRA requires data by 31 October 2008. For subsequent collections, data will be required to be submitted within four months of the end of the financial year of the DMF.

The final reporting forms and instructions are available at

<http://www.apra.gov.au/RFC/DMFs.cfm>

If you have any questions concerning the final forms or reporting requirements, please contact Paul Irving, APRA Statistics on (02) 9210 3569.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'J. Trowbridge', is positioned above the printed name.

John Trowbridge
Executive Member
APRA

Background

Following a recommendation by the HIH Royal Commissioner that the *Insurance Act 1973* be amended to extend prudential regulation to all discretionary insurance-like products, the Government commissioned the Potts Review in 2004.

After a series of consultations with industry, on 3 May 2007 the then Minister announced that discretionary mutual funds would be required to provide data so that the Government could better understand their use and operation. The announcement indicated that within three years of the start of this collection regime the Government would consider whether prudential regulation of DMFs is necessary.

The Government has amended the *Financial Sector (Collection of Data) Act 2001* to require DMFs to provide detailed data to the Australian Prudential Regulation Authority (APRA) on their operations. These amendments to FSCODA are contained in the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007* (DMF Act), which was introduced to Parliament on 21 June 2007 and passed on 13 September 2007.

DMF Definition

In general terms, DMFs are entities that offer 'discretionary cover', that is, an insurance-like product that may involve an obligation on the DMF to consider meeting a claim made on it, but gives the DMF a discretion as to whether it will pay the claim. DMFs may sell 'general insurance-like' and 'life insurance-like' products. A DMF may be a trust, mutual, company limited by guarantee or other structure.

The DMF Act, however, is specific and APRA's reporting requirements apply to entities that are discretionary mutual funds, as defined in the DMF Act. The DMF Act states that:

"(5) A discretionary mutual fund is a fund (however constituted) for making payments on the happening of a specified event (where there is uncertainty as to whether, or when, the event will happen), that is a fund:

(a) to which 2 or more persons contribute, and:

(i) out of which payments may be made in respect of liabilities, losses, damages or expenses of the contributors; and

(ii) that is governed by rules under which any such payment for the benefit of a contributor is subject to a discretion of a person or body; or

(b) that is declared to be a discretionary mutual fund, or included in a class of funds that are declared to be discretionary mutual funds, by regulations made for the purposes of this paragraph.

(6) However, a fund (however constituted) is not a discretionary mutual fund if:

(a) a contributor has a right, in law or equity, to a payment of a kind referred to in subparagraph (5)(a)(i); or

(b) the fund is:

(i) declared not to be a discretionary mutual fund; or

(ii) included in a class of funds that are declared not to be discretionary mutual funds;

by regulations made for the purposes of this paragraph.”

The full text of the DMF Act and Explanatory Memorandum is available at the Commonwealth of Australia Law website <http://www.comlaw.gov.au>.

The full text of the discussion paper, Reporting by Discretionary Mutual Funds is available at <http://www.apra.gov.au/RFC/DMFs.cfm>