

Chapter 9 Other matters relating to scheme members

Template for submissions

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9.1 Access to scheme registers

Question 9.1.1

Are there legal or practical difficulties in the members of a scheme obtaining access to the scheme register?

Submission

Yes. Primary Securities has experienced the following strategies on the part of recalcitrant responsible entities, unwilling to be make a register available (particularly in the face of a possible attempt to replace it):

- Refusing to acknowledge that the proposed use was not a “prescribed use”, and thereby refusing to give up the register
- Providing the register only upon certain restrictive undertakings being given
- Providing the register electronically as a continuous stream of data without columns (forcing us to reformat, an expensive and time consuming exercise for a long register)
- Providing the register in an incomplete form, for example, failing to set out lot numbers in relation to an agricultural scheme
- Failing to provide all the information kept by the responsible entity in relation to the scheme members (e.g. email addresses, phone numbers and planner details) and forcing Primary Securities to communicate expensively and slowly by mail when the incumbent responsible entity conducts an aggressive and sometimes defamatory or misleading email and phone campaign to prevent takeover. To combat such dirty tactics, Primary Securities sometimes employs staff to track down email address and phone numbers using internet search engines,

an expensive and time consuming process. Primary Securities accepts that privacy legislation may prevent such information being given, but perhaps it should be given if in any proxy battle the incumbent responsible entity is itself using the information or proposes to use the information so that the combatants are on a level playing field.

Question 9.1.2

If so, should the current requirement for the RE to allow access to the register be supplemented by:

- a duty for the officers of the RE to take the degree of care and diligence that a reasonable person would take to ensure that the RE complies with the access requirement (Option 1)
- liability of the RE and its officers for damages for any loss arising from non-compliance with the access requirement (Option 2)
- a requirement for the RE to lodge a copy of the scheme's register with ASIC regularly and, if so, how often (for instance, monthly or quarterly) (Option 3)
- a combination of two or more of these measures (Option 4)
- some other measure and, if so, what?

Submission

Primary Securities does not like any of these options. We prefer ASIC having the power to direct the RE to provide the register.

Question 9.1.3

Should the right of inspection and the right to obtain copies relate to:

- anything that happens to be recorded on the scheme register, or alternatively
- only the information that the Corporations Act requires to be included on that register?

Submission

Refer to the answer to Question 9.1.1.

Telephone numbers, email addresses and planner information (including email addresses and phone numbers) should be provided if the incumbent RE proposes to use that information in response to or in anticipation of the proposed use by the person seeking the register. Or this information should be provided to any RE which asks for the register, but on the basis that the information will only be used relevant to the scheme.

Question 9.1.4 Should the Corporations Act require any additional information to be included on the register and, if so, what?
Submission No, we do not think that email addresses, phone numbers and planner details should be available to be inspected or provided in normal circumstances.

9.3 Scheme liquidity and the procedure for withdrawal

Question 9.3.1 Is the definition of liquid assets appropriate? If not, how should liquid assets be defined?
Submission
Question 9.3.2 Should the requirement for pro rata sharing of available funds in relation to withdrawal from a non-liquid scheme be modified and, if so, how and why?
Submission

Question 9.3.3

Should the procedure for withdrawal from a scheme be modified in any other way and, if so, how and why?

Submission

Question 9.3.4

Should ASIC be given any administrative powers in relation to withdrawal, for instance a power to stop a withdrawal offer?

Submission

9.4 Possible buy-back procedure for scheme interests

Question 9.4.1

Should there be a buy-back procedure for interests in managed investment schemes?

Submission

Question 9.4.2

If so, should it be based on that provided for companies or take some other form?

Submission**Question 9.4.3**

How should any buy-back procedure for schemes relate to the withdrawal procedure for schemes (either as currently set out in Part 5C.6 or as amended (see Questions 9.3.1-9.3.4))?

Submission

9.5 Ceasing to be a scheme member

Question 9.5.1

Should the Corporations Act clarify when a withdrawing member ceases to be a member of a scheme and, if so, how?

Submission

Other comments

Please insert any other comments you may have on the matters covered in this chapter.

Submission