

15 March 2017

Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email (Word and PDF formats)

ProductRegulation@treasury.gov.au

Dear Colleagues

**Design and Distribution Obligations and Product Intervention Power (DDO and PIP respectively):
Proposals Paper (Paper): December 2016**

Schroder Investment Management Australia Limited ("SIMAL") is one of Australia's largest independent investment managers, managing \$45.8 billion in funds under management as at 28 February 2017. SIMAL in Australia operates as a responsible entity for registered managed investment schemes offered to both retail and wholesale investors as well as acting as an investment manager to institutional clients. SIMAL has no affiliated distributors or other related parties operating in Australia. SIMAL forms part of Schroders plc which is listed on the London Stock Exchange operating in 27 countries globally with \$677.6 billion of assets as at 31 December 2016 on behalf of institutional and retail investors, financial institutions and high net worth clients from around the world, invested in a broad range of asset classes across equities, fixed income and alternatives.

SIMAL has worked as part of the Financial Services Council's ("FSC") submission, and we are supportive of the arguments and proposals in the separate FSC submission. The purpose of this submission is to add to the FSC's submission.

The Role and Responsibility of Responsible Entities ("RE's")

On page 7 in Table 1 of the Paper: Regulation throughout the product lifecycle - under Product Design the Paper notes the current approach has no specific design obligations for most products, however there is a general obligation for licensed issuers to operate efficiently, honestly and fairly. Whilst this is true, it does not take into consideration the obligation that all RE's have to act in the best interests of members (S601FC(c) of the Corporations Act 2001) in addition to the fiduciary duty that RE's have under common law. Therefore whilst not specific to product design, in all matters that SIMAL does in its role as an RE, SIMAL at all times must consider the best interests of our scheme members.

Therefore SIMAL believes that we do not require additional legislation as there is an existing obligation under the Corporations Act. We note the RE's obligation could be further clarified by ASIC in a regulatory guide as to what ASIC would expect that RE's need to do to meet this obligation if clarification is deemed necessary.

What is Expected of Issuers?

The Paper outlines the proposed role of issuers to include the following:

- i. Identify appropriate target and non-target markets for their products;
- ii. Select distribution channels that are likely to result in products being marketed to the identified target market; and
- iii. Review arrangements with reasonable frequency to ensure arrangements continue to be appropriate.

Identification of appropriate target and non-target markets – inherent in a registered MIS is the investment objective and then the implementation of that investment objective will dictate the level of liquidity, risk and complexity. These are factors to consider when determining if a registered MIS is a "simple" MIS and falls under the shorter PDS regime. Otherwise the registered MIS may be deemed to be not "simple" or otherwise a hedge fund as detailed in ASIC RG240: Hedge fund: Improving Disclosure. There is an existing framework around disclosure for RE's to work through, taking into consideration factors such as the investment universe and the degree to which derivatives are utilised, liquidity and complexity of the structure. These same principles could apply to the product design framework.

SIMAL proposes that the suitable obligation to require of RE's issuing MIS, that as part of the product design process, the RE should take into consideration the liquidity, risk and complexity of a registered MIS, to determine if it would be a suitable product to be offered to retail clients.

Selection of distribution channels – SIMAL predominantly does not make decisions as to its distribution channels. The exceptions are having products available via our own website, for settlement through the ASX's mFunds, or having a product quoted on the ASX.

SIMAL's distribution channels are predominantly intermediated. Clients may access product subject to certain financial thresholds directly, often at more favourable cost to the investor and often on the advice of the client's financial advisor. The majority of retail investors come via financial planners, or via IDPS/platforms. With the introduction of mFunds, a number of SIMAL funds are available to buy via mFunds and we have launched one actively managed fund which is quoted on the Australian Securities Exchange ("ASX"). Where retail clients invest in SIMAL funds, SIMAL as RE does not operate as a "distributor" nor is the RE able to influence the investment decision of the retail client. Typically brokers and financial advisers determine what securities in which to invest their clients' financial assets.

Possible Product Exclusions

The FSC submission provides detail on possible exclusions and a graduated approach based on product complexity and risks faced by the investor. We would make the observation as the nature of the investment options change and the nature of the risks in some quoted products increasingly resemble investment options available in a diversified unlevered pool of common shares in a managed investment trust, it is important that any recommendation is cognisant of the similarity of certain investment options. Consistency of treatment across products, whether quoted or not and consistency with existing legislative scoring of a product's complexity such as Product Disclosure regimes will benefit all participants from product issuer to product distributor to the retail client.

Finally we need to be cognisant of the existing investment exposure and an increasingly large part of the industry being the Self-Managed Superannuation Funds. There may be a risk that increasing the regulatory burden on part of the market may have the unintended consequence of pushing more of the SMSF funds into pools of assets that may have little or no financial advice. According to the ATO, as at September 2015 SMSF's held 28.99% of their total assets in domestically listed shares. Another 27.15% was held in cash and term deposits. Of the total, only 18.03% was held by SMSFs in listed trusts, unlisted trusts and other managed investments. Therefore unless a SMSF was receiving personal advice, no distributor would be required to assess whether over 50% of their investment universe was a suitable investment. Whilst these are widely understood vehicles, what is less widely understood is the risk these products hold in terms of the ability of the SMSF to meet the investment objective and keep pace with inflation and required retirement objectives.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Coble', written in a cursive style.

Murray Coble
Chief Operating Officer, Asia Pacific

