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Retirement, Advice, and Investment Division  
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Dear Review Team,

## Review of the regulatory framework for managed investment schemes - consultation

The Australian Banking Association (ABA) welcomes the Federal Government's review into the regulation of Managed Investment schemes (MIS).

Managed Investment Schemes have varied risk profiles and the financial risks arising from MIS are fundamentally different from personal advice-based financial products. When a MIS fails, it results in considerable customer harm.

It should be noted that the financial losses associated with MIS products are not just borne by the consumers who invest in them, but may also be borne by the broader financial services sector as a result of the broad definition of 'personal advice' to a retail customer within the Compensation Scheme of Last Resort (CSLR) regime.

This letter details further feedback on this point and the role of ASIC as below.

### Compensation Scheme of Last Resort

While beyond the stated scope of this review, the ABA asserts that the newly implemented CSLR introduces an unintended, yet problematic, incentive. This is because the scheme allows losses instigated by a single sub-sector's oversight to be allocated amongst uninvolved sub-sectors. As a result, this risks deterring some financial entities from modifying their behaviour to better serve the interests of Australian consumers, especially when it comes to losses tied to poorly run managed investment schemes.

Although the regime omits claims directly related to managed investment scheme losses, its expansive definition of 'personal advice provided to a retail customer concerning one or more products, including at least one relevant financial product' makes it feasible for claims centred around investment risk or product failure to be incorporated into the CSLR, provided they can be connected to personal advice.

Even though managed investment schemes are excluded from the CSLR's purview, the major ten firms in banking and insurance are mandated to contribute an upfront levy of \$250 million. This is to offset the previously unsettled decisions of AFCA. This levy is primarily attributable to Dixon Advisory's 2022 collapse, which led to an estimated total loss of \$368 million from claims associated from the failed Dixon Advisory's US Masters Residential Property Fund (URF) managed investment scheme.

## The role of ASIC

The ABA considers that the role of ASIC in both a proactive and reactive context is critical to the effective operation of MIS and the protection of consumers.

From a proactive viewpoint, since the collapse of the Sterling Income Trust, ASIC has been granted powers to make product intervention orders, and issuers and distributors must also comply with their respective Design and Distribution Obligations (DDOs).

Further, the wider application of these product intervention powers to complex and high-risk related MIS funds such as Dixon's URF should be considered given the demonstrated potential for customer harm. Retail investors in these schemes should have access to similar levels of disclosure available to them under other investment products within ASIC's supervision. Our understanding is that the URF is still operating today with E&P Financial (Dixon Advisory's parent company) as the Responsible Entity. Given the losses endured by consumers, the ABA is concerned that further losses may yet arise from the URF.

From a reactive viewpoint, the current ASIC registration process for Managed Investment Schemes, as outlined in section 2.3 of the consultation paper, does not require ASIC to undertake further due diligence or consider the suitability of a MIS offering for retail clients. In light of new powers available to ASIC, the ABA recommends that ASIC examine how the two regimes can work together, in particular, ASIC should take steps to ensure appropriate checks are conducted at the point a MIS is registered as opposed to automatically registering such schemes and conducting checks that are triggered by customer harm / performance concerns.

Please do not hesitate to contact me if you require further information.

Yours sincerely,



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