

CIRCULAR



30 - 32 Grosvenor Street

Sydney NSW 2000

Australia

Telephone +61 (0)2 9256
0555

Facsimile +61 (0)2 9256
0666

To: All Members

No: 247/98

Legal Update Series

Amendments to the Corporations Law - Managed Investments Act 1998 Interim continuation of exemption for Managed Discretionary Accounts

Attached is Legal Update L3/98 in relation to the Managed Investments Act 1998 which provide clarification for a new regime for the licensing and oversight of "Prescribed Investment" schemes by replacing that concept with one of "Managed Investment" schemes. These amendments affect SFE Members who provide Managed Discretionary Accounts. The note relates to the interim continuation of the current exemption from the Corporations Law with respect to such accounts.

Please circulate to the relevant staff, in particular compliance and legal personnel in your office as soon as possible. Where Members have indicated relevant staff, the update will be directly circulated to those staff as well.

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AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION EXEMPTION OF MANAGED DISCRETIONARY ACCOUNTS

Introduction

Amendments were made to the Corporations Law ("the Law") after the promulgation of the *Managed Investments Act 1998*. The amendments establish a new regime for the licensing and oversight of 'Prescribed Investment' schemes by replacing that concept with one of 'Managed Investment' schemes. These amendments apply to all existing and future managed investment schemes. The new legislation introduces new concepts such as that of a 'single responsible entity' and then introduces new reporting obligations including the existence of compliance committees. The Australian Securities & Investments Commission ("ASIC") have issued a Policy Paper in which on an interim basis Managed Discretionary Accounts ("MDAs") operated by Members of the SFE will continue to be exempted from the

provisions of the legislation and have therefore issued an exemption and declaration which applies to any new MDAs.

Position Prior to the Amendment

Prior to the promulgation of the *Managed Investments Act 1998* Members of the SFE were permitted to offer MDAs without the need to comply with all of the "prescribed interest" provisions of the Law. Although the SFE consistently held the view that individually managed discretionary accounts were not prescribed interests it sought relief from the various prescribed interest provisions of the Law in the interest of promoting legal certainty. This resulted in relief being granted after a public hearing held by the ASIC's predecessor the Australian Securities Commission ("ASC") in March of 1991 wherein the relevant issues were presented to the Commission. An exemption and declaration was made by the ASC to the effect that MDAs operated by SFE Members who abide by the MDA provisions of the SFE were exempted from various prescribed interest provisions.

Effect of Change in Law

The Explanatory Memorandum to the *Managed Investments Act 1998* discusses the change to the definition section of the Law with respect to the new term. "managed investment scheme" and notes, in part; "...arrangements, such as those known as, managed discretionary accounts or member discretionary master funds where part of the contributions made by a member to a scheme may not be pooled, will nonetheless fall within the definition". This change in the definition may in effect capture the conduct of individual MDAs as practiced by some SFE Members.

Existing Schemes

Schemes currently in operation ordinarily must apply to ASIC within two years of the promulgation of the *Managed Investments Act 1998* which took place on 1 July, 1998. Relief applying to existing schemes under the old law and policy is still relevant during the transitional period. The Commission has determined to continue the existing policy with respect to SFE MDAs for at least a year while a review of that policy takes place. In the interim the Commission has granted relief which will be in effect until 1 July, 1999 which will apply to any new schemes.

Application for Permanent Relief

The Exchange will be seeking the continuation of this relief on a permanent basis.

If you have any queries regarding this issue, please contact Francis Cox, Senior Manager - Regulation on (02) 9256-0505.

NB: The above information is for the guidance of Members and does not purport to be legal advice. The note should be read in conjunction with the Legislation and any ASIC Practice Notes and Police Statements. Where appropriate, legal or other professional advice should be sought.

A copy of the attachment is unable to be attached with this electronic copy of the circular. Please refer to the distributed hard copy.

Tony Dreise
General Counsel; GM Legal

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SYDNEY FUTURES EXCHANGE LIMITED
ACN 000 299 392

Address all correspondence to PO Box N680 Grosvenor Place Sydney NSW 2000
Australia