



ASIC
Australian Securities & Investments Commission

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08-214 ASIC facilitates withdrawals from frozen funds

Friday 31 October 2008

ASIC today announced measures that will facilitate operators of mortgage funds providing early withdrawal for members where there is hardship.

Mortgage funds, along with other forms of unlisted investments such as unlisted property trusts, provide an important source of investment capital to the economy. These investment vehicles have been a feature of our markets and have provided risk and return opportunities for investors, for example, in real estate and have had appeal to retail investors (e.g. retirees).

Although these vehicles are outside the recently announced guarantee for bank deposits, they are regulated under the Corporations Act. Protection for investors comes from the need for product disclosure statements and, more recently, ASIC has issued guidelines for additional disclosure to investors against certain benchmarks. These benchmarks assist investors to better understand their investments and to assess on an ongoing basis their risks and returns.

The risks and returns of these products have been, and will continue to be, affected by market conditions. Recently, a number of mortgage trusts have deferred redemptions for a period of time (referred to as 'frozen').

ASIC Chairman, Mr Tony D'Aloisio said, 'Mortgage trusts freeze redemptions in the interests of all members to prevent withdrawals from destabilising the funds. A freeze does not necessarily mean that there has been a loss of asset value, and it does not necessarily mean that investors will not get their money back'.

'A freeze means that for a period, the trustees of those trusts have decided to delay redemptions until liquidity improves rather than, for example, sell down assets held at a time when such a sale could lead lower optimal values. This is a prudent measure taken by trustees to better protect all members at a time when outflow from these trusts has increased', he said.

The deferral of redemptions means that unitholders or members cannot access funds in the same way as previously. Once redemptions are deferred, the operators must follow procedures set out in the Corporations Act for withdrawals. Withdrawal from the trusts can only be in accordance with that Act:

- [members must be treated equally; and](#)
- [non-liquid withdrawal process must be followed which means operators may only provide periodic offers to members to withdraw when money becomes available to satisfy those offers. The offers need to be made to everyone, be open for at least 21 days and if there are insufficient funds to satisfy all members who want to withdraw, members' requests are satisfied proportionately.](#)

ASIC's relief

ASIC has decided to advise fund operators that ASIC will consider applications to modify the operation of these provisions of the Corporations Act so that the operators can allow withdrawals by members on hardship grounds. This relief will generally only be given on a case-by-case basis for mortgage trusts.

What are hardship grounds?

Generally, hardship withdrawals will only be permitted where the member is able to satisfy the operator that they meet one of the following criteria:

1. where the member is unable to meet reasonable and immediate family living expenses;
2. on compassionate grounds (e.g. medical costs for serious illness, funeral expenses, to prevent foreclosure);

and

3. in the case of permanent incapacity.

What conditions apply?

In allowing earlier access to some members and not to others, ASIC has balanced hardship against the interests of other members. Therefore ASIC considers that there should be a cap on withdrawals on hardship grounds. The hardship withdrawal cap would be the lesser of:

1. the specific amount requested under the hardship withdrawal request; or
2. \$20,000 per member plus 50 per cent of the balance of the member's investment in the scheme. For example, if a member has an investment value of \$100,000, the member may access \$60,000 under this proposal.

This cap means that hardship members will, along with other members, continue (but on a reduced basis) to participate in the risks and rewards of these investments.

This relief will generally only be given on a case by case basis for mortgage funds.

Download an example of this relief in its standard form (provided on 31 October 2008)

ASIC provided additional relief to permit hardship withdrawals for indirect members of frozen funds. A frozen fund that has the benefit of this relief is able to accept hardship applications from members who invested in the frozen fund through intermediate structures such as, for example, superannuation funds, other managed investment schemes or investor directed portfolio services.

[Download an example of this relief in its enhanced form \(provided on 27 November 2008\)](#)

This release is for guidance and those wishing to apply for the relief should contact Kathleen Cuneo at ASIC on (02) 9911 2166.

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