



KELLY AG SERVICES PTY LTD

A.C.N 125 376 838 as Trustee for Kelly Family Trust A.B.N 95 611 667 426

5 June 2009

Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
Department of the Senate
PO Box 6100 Parliament House
CANBERRA ACT 2600

Chairman and Committee

Re: Inquiry into Agribusiness Managed Investment Schemes

This submission is based on observation and analysis of certain MIS.

At the outset of this submission it must be made clear that under existing legislation and tax rulings there is nothing wrong, in broad terms, with the concept of MIS.

However when we look at the individual schemes in detail, the management of those schemes and the investor relationship with the schemes a number of issues are revealed.

These issues go to the core of the problems being experienced in the present market by a number of MIS.

Critical are these:

1. Boards and Management not having the required experience and skill in the specific industry being invested in and managed.

Many boards and senior management positions are made up of accountants, investment bankers and lawyers who to their credit understand investments, taxation implications, and legal and compliance requirements. However to propose to manage an investment where there is no distinguishable level of practical experience in the specific industry being invested in is fraught with danger. For this group to encourage investor activity in the same specific industry could be considered negligible.

Despite the best efforts of individual MIS to have in place a certain level of expertise in the field through third party consultants, the investment strategies and the practical day to day activity and the external influences on the day to day activity will inevitably mean that physical capabilities of the investment will not always meet the required investment outcomes.

If you stand back from the MIS and analyse the structures there are three distinct groups operating being the board and senior management, operational and investors. The ability of each and the aims of each it would appear contradict each other giving cause to what is being experienced.



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Notwithstanding the requirement for meeting certain compliance and regulatory needs MIS boards, senior management and operational management should achieve certain benchmarks in their individual and collective ability to fully understand the specific industry being invested in.

2. Ability of Investors to fully understand the investment, the risks involved and the proposed outcomes.

To many investors the process of making an investment in an agricultural investment, no matter the commodity or product, could be considered foreign. With this a heavy reliance is placed on the MIS managers and advisors. Again this reveals an issue as raised previously in scheme managers and advisors can not and should not purport to display a full knowledge and understanding of the specific investments without first having first hand knowledge and skill in the specific products.

This it would appear creates an investment focus more heavily weighted to generic investment strategies and taxation issues as opposed to the specific investment being able to meet the individual's investment risk and return expectations.

It would appear that not all risks involved in specific industries under MIS are fully identified or understood by the scheme managers or the investors.

To go further, observation on operation and impact of MIS has an overarching effect across not only MIS but a number of other issues in relation to the investment market.

Conflict of Interest.

The glaring and obvious conflict of interest comes from the ability for individual businesses to offer a range of financial services where it can not be considered that there is complete independence in offering services or advice.

An obvious example of this would be an accounting firm that not only provides taxation and business advice but also has a financial planning business and a finance brokerage business.

Not only does this have the ability to limit competition in the market place across these services it has the ability to 'lock' consumers into unwarranted advice and participation in activity or investments that may not be in the best interest of the client.

Why? Because generally those dealing with the clients will be set performance targets and will be remunerated by way of commissions only creating a need for the advisor to write business.

(The author supports the concept of advisors accepting commissions and/or fee's based on performance)



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An independent business providing services or advice may show that there is no external influence to 'market' to the consumer any product or service that is not in the best interest of the consumer.

How does this relate to the inquiry terms of reference?

It may be reasonable to suggest that MIS management with experience in investments, banking and legal affairs may be consumed by that focus and the results of that focus instead of the physical performance of the investment and the needs of the individual investor.

Accuracy of Material, Benefits and Returns.

All business activity is based on historical performance and anticipated future performance. Banks lend based on historical financial performance and cash flow forecasts.

It is reasonable to accept that MIS management have utilised a number of resources in determining future performance of any specific investment. However it is the ability to fully identify all associated risks with the specific investment that should be focused on.

The physical capacity of any MIS to perform to forecast is influenced by a large number of external forces. These should be identified as risks and investors should have a complete understanding of these risks.

A critical aspect of achieving return is to know and understand the market you are dealing in with the specific investment. All primary production is market driven and is heavily weighted toward international market forces.

The mistake many make is the belief that primary production is production based.

Any MIS management should have in place a reasonable secure market, particularly if the return on investment is a number of years away. The scheme should also have in place the strategies to ensure the market can be maintained and supplied. The scheme also needs to ensure that the infrastructure and resources are available and in place to ensure delivery of product.

A point on carbon credits – will it be seen in years to come that promoters will be liable for making claims that may or may not exist. The creation of carbon credits could possibly be considered as just another financial market similar to those that have caused the existing GFC. The beneficiaries of these schemes will be the advisors and bankers the losers will be the consumer and land owner.

Impact of MIS on related markets.

The defying impact is on land prices. As the investment activity grows and the MIS is able to enter the market cashed up, the focus can move away from making an



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investment based on purely commercial grounds (return on investment based on land value against ability to service borrowings and provide return) but rather to make the investment and to be seen to be active in the market to meet the short term needs of the MIS, shareholders/investors and bankers.

However, it has been the activity of MIS that has assisted in land values rising in some areas thus creating improved equity positions for other land holders. It has also opened the opportunity for landowners to quit ownership where previously this may not have been as readily available option.

In certain areas the activity of MIS has prevented other primary producers from expanding own businesses thus not allowing existing producers to become more productive and provide for longer term sustainability. This has been the impact of increased land prices.

As an agriculturist and a person whose business is heavily reliant on activity in rural and regional areas I encourage investment in Australian agriculture. In particular I encourage that investment in areas that will provide real productivity gains for the individual investor and the broader communities.

To do this any existing or future schemes must be managed by people who fully understand the specific investment and any investor must be able to prove a full and complete understanding of the specific investment and any risks involved.

Thank you

Phillip Kelly
Director
Kelly Ag Services Pty Ltd