



<b>Committee</b>	Parliamentary Joint Committee on Corporations and Financial Services
<b>Inquiry</b>	Oversight of ASIC, the Takeovers Panel and the Corporations Legislation No.1 of the 46th Parliament
<b>Question No.</b>	QoN 004
<b>Topic</b>	Managed investment schemes
<b>Reference</b>	Spoken, 11 February 2022, Hansard page 17
<b>Committee member</b>	Senator Louise Pratt

## Question

**Senator PRATT:** That's terrific. I'm just looking at recent media on PE Capital. Notwithstanding the fact that it had some products that it was selling without a licence at all, it seemed to have some similarities to Sterling in relation to it being a managed investment scheme. What's going on in the managed investment scheme space, particularly in the context of real property rights or a link to some kind of tenancy, for example?

**Ms Court:** I can answer if you would like more details on the PE Capital case per se. I might hand over to a colleague if you want some more information about what we're doing in managed investment schemes. I think one important piece of information on PE Capital is, as you quite rightly say, that it does relate to investments in various property interests, but the difference between it and the Sterling set of facts is that PE Capital all related to commercial developments, not retail tenancies. So it was a quite different set of circumstances, if you like, from the Sterling Group, which was in the business of developing vacant land on the outskirts of Melbourne into various business opportunities—for example, converting commercial land from one commercial enterprise into another. I can go into that case some more if you'd like to know more. That's just been in court this week, as you may know, and orders have been made for that group to be wound up, so liquidators are now doing their work and working out moneys there to return to investors.

If you'd like more information about the work we're doing on the managed investment schemes more broadly, I might hand to a colleague who is better informed.

**Senator PRATT:** Yes, I would like some information on managed investment schemes more broadly.

**Mr Longo:** I'm not sure who I can call upon for that subject. I know Reece Boland is with us. I'd say, more broadly—

**CHAIR:** Would it be more productive to park it for another day and to broadly take it on notice and provide some briefing material to the committee? I think that might be easier.

**Mr Longo:** Yes.

## Answer

Managed investment scheme is a broad concept. A wide variety of arrangements can fall within the definition of a managed investment scheme (**scheme**) in the *Corporations Act 2001* (**Corporations Act**). Generally, in a managed investment scheme:

- multiple investors contribute money or money's worth and get an interest in the scheme. 'Interests' in a scheme are a type of financial product and are regulated by the Corporations Act;
- Money from the different investors is pooled together (often many hundreds or thousands of investors) or used in a common enterprise; and
- A 'responsible entity' (sometimes referred to as a 'fund manager') operates the scheme. Investors do not have day-to-day control over the operation of the scheme.

Some examples of schemes include:

- cash management trusts;
- property schemes;
- Australian equity (share) schemes;

- international equity schemes;
- exchange traded funds (ETFs);
- mortgage schemes;
- agricultural schemes (e.g. horticulture, aquaculture, viticulture);
- horse-breeding and horse racing schemes;
- time-sharing schemes; and
- serviced strata schemes.

As of 23 February 2022 there were 3,690 *registered* schemes.

ASIC's current priorities specific to the managed investment scheme sector include:

- marketing and disclosure – risk and return for schemes, monitoring marketing in traditional and digital media using search terms that are likely to appeal to retail investor and taking enforcement action where appropriate;
- assisting to implement the new Corporate Collective Investment Vehicle regime;
- assisting to implement the new Litigation funding regime; and
- governance of schemes and responsible entities.

In addition, there are a range of cross sector priorities that are relevant in the context of schemes including supporting and monitoring the implementation of new design and distribution obligations, breach reporting and hawking legislative regimes and contributing more broadly to ASIC's work on areas such as retail investor scams and crypto assets.

If ASIC identifies concerns with a particular scheme or responsible entity, we will carefully consider how to respond to any potential contraventions of the law. However, we cannot undertake a formal investigation of every matter that comes to our attention. Instead, we are selective about the matters we pursue to ensure we use our resources to target misconduct effectively.

As outlined in [ASIC Information Sheet 151](#), the factors we consider when deciding whether to investigate and take enforcement action vary according to the nature and circumstances of the suspected misconduct. However, we typically consider the following four factors when selecting matters for formal investigation and possible enforcement action:

- areas of significant harm;
- broader public benefit;
- issues specific to the case; and
- alternatives to formal investigation.

Included below are links to ASIC media releases during the period January 2021 to February 2022 about enforcement actions ASIC has taken relating to schemes. ASIC's enforcement actions have responded to issues in registered and unregistered schemes and have included administrative actions to suspend or cancel Australian financial services licenses and ban persons involved in the operation of schemes. ASIC has also taken a range of civil and criminal actions and in one case obtained a significant penalty of \$750,000 against the responsible entity of a registered scheme for false and misleading conduct.

In September 2020, we also published the results of a proactive review which looked at whether a selection of schemes were 'true to label'. That is, did the name of the scheme align with the underlying assets. ASIC undertook a targeted surveillance of 37 schemes operated by 20 responsible entities that collectively held, at the time, approximately \$21 billion in assets (refer [20-218MR](#)). The proactive review was in response to ASIC's concerns in regards to product labelling practices (refer [20-107MR](#)). The schemes were identified after data analysis and an initial assessment of the product names and labelling practices of more than 350 schemes in the cash, fixed-income, mortgage and property sectors across funds collectively holding more than \$65 billion in assets.

Following the review, ASIC sought corrective action from 13 responsible entities where significant concerns were identified. As a result:

- ten responsible entities voluntarily changed the names and branding of thirteen schemes in total to reflect the scheme composition;
- one responsible entity changed the asset allocation of the scheme to reflect its name;
- one responsible entity withdrew misleading promotional materials from its website and subsequently wound up its scheme.

ASIC would be happy to provide any further information in relation to any aspect of the scheme sector or ASIC's regulation of that sector, as requested.

**ASIC Media Releases about enforcement actions relating to schemes during 2021 and 2022:**

1. [22-014MR Managed investment schemes operator ordered into liquidation](#)
2. [21-359MR Former MFS Ltd CEO, Michael Christodoulou King, declared bankrupt](#)
3. [21-322MR ASIC brings criminal charges against former Courtenay House director and contractor for alleged Ponzi scheme](#)
4. [21-319MR La Trobe Financial Asset Management to pay \\$750,000 penalty for false and misleading marketing](#)
5. [21-300MR ASIC cancels the AFS licence of Future Asset Management International](#)
6. [21-288MR ASIC sues timeshare company Ultiga for poor financial advice outcomes](#)
7. [21-253MR ASIC bans former dealer and portfolio manager Dylan Rands for market manipulation](#)
8. [21-214MR ASIC issues court action alleging unlicensed advice in relation to unregistered managed investment scheme](#)
9. [21-178MR Dr Roger Munro pleads guilty to fraud charges following ASIC investigation](#)
10. [21-117MR ASIC bans director of Global Mercedes Funds Management Ltd](#)
11. [21-109MR Former managing director Holly Grofski charged](#)
12. [21-102MR Former managing director of responsible entity of Sterling Income Trust banned for four years](#)
13. [21-100MR ASIC takes Court action to wind-up PE Capital Funds Management Ltd and managed investment schemes](#)
14. [21-076MR ASIC secures 20-year ban for Mayfair 101 director James Mawhinney from fundraising and promoting investment products](#)