

SUPPLEMENTARY REPORT

REVIEW OF THE MANAGED INVESTMENTS ACT

Summary

Labor and Democrat members of the Committee support the conclusions reached by the Committee as presented in the report.

However, Labor and Democrat members believe that Responsible Entities (REs) should be required to appoint an independent custodian of fund assets unless ASIC deems otherwise. This is consistent with world's best practice.

The appointment of an independent custodian should result in a significant increase in investor protection without any increase in costs, since the fee already paid to an RE for custody services would be redirected to the independent custodian.

General Comments

The MIA regime does not require the RE to appoint an independent custodian for fund assets unless directed to by ASIC. The MIA review supported the status quo arguing that mandating third-party custodians 'would not sit easily with the rationale for replacing the dual fund manager/trustee structure with a single RE'.¹

However, the Committee heard evidence that the failure to appoint an independent custodian and therefore separate the management and control of fund assets undermines investor protection without providing any cost saving for investors and is out of step with the approach adopted in a large number of other regulatory jurisdictions.

In particular Standard and Poor's were quoted as saying that 'the failure to mandate that fund assets must be held in safekeeping by an independent custodian is of concern and in contrast to all other major financial centres in the world where an independent custodian is a minimum standard'.

The presence of an independent custodian would add to investor protection for two reasons. Firstly, unlike trustees, an independent custodian would provide a meaningful real-time check on fund manager compliance. Secondly, in the event of the failure of an RE, fund assets would be out of the control of the manager and therefore fully protected.

The appointment of an independent custodian should not result in any additional cost to the investor, since the fee currently paid to the RE for custody services would

1 *Review of the Managed Investments Act 1998*, p. 30.

instead go to the independent custodian. The cost of custody may, in fact, be reduced because specialist custodians could achieve economies of scale.

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Senator Stephen Conroy
Labor Senator for Victoria

Mr Anthony Byrne MP
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Senator Andrew Murray
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