



ASIC

Australian Securities & Investments Commission

## INFORMATION SHEET 111

# Information for investors in frozen funds

## What is a frozen fund?

The term 'frozen fund' refers to a *registered managed investment scheme*, which was originally marketed on the basis that investors had an *ongoing or periodic right to redeem* their investments on request, but which has since *suspended that right*.

Schemes that offer an ongoing or periodic right to redeem are also known as open-end schemes.

Most open-end Australian managed investment schemes (e.g. cash, money market, equities and balanced funds) continued to offer redemption facilities through the global financial crisis and are not currently frozen. However, a significant number of open-end pooled mortgage schemes, and a smaller number of open-end real property schemes, enhanced cash schemes and retail hedge funds, are currently frozen.

A freeze on withdrawals does not necessarily mean that members will not receive their money back, or that distributions will cease. The length of time that it will take to have all capital returned to members seeking it will vary significantly from scheme to scheme. Current estimates range from two to five years, however this period may be longer for some schemes. ASIC expects responsible entities to take all steps consistent with their obligations to manage the assets of frozen schemes so that members who wish to withdraw their investment can do so as quickly as possible. Many frozen schemes are now providing regular withdrawal offers, often on a monthly or quarterly basis, and most are still paying distributions.

## Why are these schemes frozen?

The responsible entity (i.e. the company that operates the registered scheme) of an open-end scheme is required by the *Corporations Act 2001* (Corporations Act) to freeze redemptions if the scheme ceases to be 'liquid'. A scheme is not liquid unless at least 80% of its assets comprise cash, bills, marketable securities or other property that the responsible entity reasonably considers able to be realised for its market value within the period provided for in the scheme's constitution for satisfying withdrawal requests.

Most pooled mortgage schemes froze redemptions in or around October 2008. This followed, among other things, a substantial increase in the number of redemption requests, received in circumstances where the responsible entity could not realise sufficient assets to satisfy the requests within the time set out in the scheme's constitution for redemption payments. Subsequently, a number of other types of schemes also froze redemptions for similar reasons.

In some cases a frozen fund may be one that has 'broken the buck'. This occurs where the constitution of the registered managed investment scheme requires the responsible entity to pay redemptions at a

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

nominated price, usually \$1 per unit. If the net asset value of a unit in the scheme falls below the nominated price for a unit, redemption may not be possible without amendment of the scheme constitution to change redemption procedures.

## How can you get your money back?

Freezing the fund results from the responsible entity suspending or cancelling a members' ability to withdraw from the scheme for an indefinite period until liquidity improves. This protects the capital of all members of the scheme. There are currently three ways in which you may be able to get your money back: a withdrawal offer, a hardship application and a 'rolling' withdrawal offer.

A fund that is frozen because it has 'broken the buck' will usually have to amend its scheme constitution before it can allow members to apply for their funds. Any amendment of the constitution to reduce the amount payable on redemption of units below the nominated price can only be made by a resolution passed by members of the scheme.

## Withdrawal offers

Once frozen, members may withdraw their investments from a scheme if the scheme becomes liquid again or the responsible entity elects to make a withdrawal offer out of available cash. The offer must be in the best interests of all members of the scheme. A withdrawal offer must:

- be made in writing;
- comply with the constitution of the scheme or as required under the Corporations Act;
- be made to all members, or members of a particular class; and
- remain open for a period of at least 21 days.

If there are insufficient funds to satisfy all members who want to withdraw, members' requests are satisfied proportionately.

## Hardship relief

Under the Corporations Act as written, a responsible entity of a frozen fund cannot make any exceptions to the blanket freeze on redemptions. However, ASIC has certain powers to modify the Corporations Act and, following the freezes in October 2008, ASIC made an urgent modification of the Corporations Act to allow responsible entities to return some capital to certain members in exceptional circumstances. This is known as hardship relief. Responsible entities need to apply to ASIC for this relief; you will not be able to apply to get your money for reasons of hardship if the responsible entity for your scheme does not apply: see Media Release (MR 08-214) *ASIC facilitates withdrawals from frozen funds*.

The terms of the hardship relief modification allow responsible entities to accept partial redemption applications from members who, for example, were unable to meet reasonable and immediate family living expenses or who were experiencing circumstances warranting compassion, including medical costs for serious illness, funeral expenses or to prevent foreclosure.

The amount available for withdrawal under the original modification was capped at \$20,000 per member, plus 50% of the balance of the member's investment in the scheme.

In August 2009, ASIC amended the cap on hardship withdrawals for each member to \$100,000 per calendar year, expanded the number of hardship withdrawals per calendar year from one to four (subject to the \$100,000 per calendar year cap), and extended the grounds for hardship to a beneficiary of a deceased estate of a member where the beneficiary is suffering hardship and to a person unemployed for at least three months without other means: see Media Release (09-148MR) [ASIC expands relief for hardship withdrawals from frozen mortgage funds](#).

ASIC's modification of the law allows responsible entities to make payments to investors experiencing exceptional hardship. It does not require them to make payments or to apply to ASIC to be able to make payments.

ASIC has announced it will also extend the terms of hardship relief to facilitate operators of frozen funds making hardship payments to members where the fund is in the process of winding up. Responsible entities of frozen funds in the process of wind up will need to apply for this relief.

A list of frozen funds that have been granted hardship relief and the type of relief granted (i.e. October 2008, August 2009 or Wind up relief) appears in Appendix A.

### **'Rolling' withdrawal offers**

During 2009, ASIC worked closely with responsible entities of many of the major frozen funds to see what could be done to improve investors' access to their money. As a result, ASIC offered to exercise its powers to modify the law to simplify the procedure for periodic withdrawal offers out of available cash. Responsible entities need to apply to ASIC for the relief if they wish to make rolling withdrawal offers to members of schemes they operate.

In December 2009, ASIC announced it would modify the law to allow responsible entities of frozen mortgage schemes to apply to be able to make 'rolling' withdrawal offer, subject to certain conditions: see Media Release (09-269MR) [ASIC grants conditional relief to improve access to capital for investors in frozen mortgage funds](#). This relief is also available to responsible entities of other types of frozen funds. The modification facilitates more efficient withdrawal procedures.

Under a 'rolling' withdrawal offer:

- the responsible entity makes a withdrawal offer, open for a calendar year, to all investors in the scheme;
- the responsible entity nominates the dates upon which the withdrawal offer will be paid (e.g. at the end of each quarter); and
- a member may lodge a standing withdrawal request at any time, in respect of future withdrawal opportunities during the year (e.g. if a member lodges a withdrawal request on 1 April, that member cannot participate in the March quarterly withdrawal opportunity).

Responsible entities must also:

- provide all members with information about the amount of the rolling withdrawal offer and the timing of payments;
- remind members regularly about the rolling withdrawal offer in any correspondence, statement or disclosure provided to members;
- notify members in writing about the outcome of each rolling withdrawal opportunity within a reasonable period;
- maintain a website with all current and relevant information about the rolling withdrawal offer;
- distribute all available cash to members who have lodged withdrawal requests while withdrawal requests exceed available cash; and
- provide ASIC with the details for each withdrawal opportunity as soon as practicable after the withdrawal amounts are paid.

A list of frozen funds that have been granted rolling withdrawal relief appears in Appendix B.

### **What duties do responsible entities have to investors?**

Responsible entities and their officers owe duties to members of the registered managed investment schemes they operate. In particular, they must exercise their powers and carry out their duties in the

best interests of the scheme members. If there is a conflict between the members' interests and those of the responsible entity, they must give priority to the members' interests.

The responsible entity is 'the person' legally responsible to investors for operating the scheme. Decisions about whether to freeze a scheme, to apply for the ASIC relief explained above, to make withdrawal offers and pay redemptions, or to take steps to wind up a scheme, are decisions for the board and management of the responsible entity. They must make these decisions having regard to the duties they owe to investors under the terms of the scheme constitution and the Corporations Act.

ASIC expects responsible entities of schemes that are frozen or have 'broken the buck' to disclose to investors the status of the scheme, the reason for members not being able to redeem from the scheme, and the responsible entity's plans for the scheme.

## **What is ASIC's role?**

ASIC has an important role to play. Our role includes:

- monitoring the actions of responsible entities to promote compliance with the law and their duties to members;
- working with responsible entities to explore options for affected investors;
- exercising our powers to modify the law to facilitate investors' access to capital;
- collecting data and providing information to government, investors, the media and other interested parties about frozen funds; and
- investigating complaints and allegations of unlawful activity against responsible entities.

## **What rights do investors have?**

Members of registered managed investment schemes have certain options open to them if they believe that their scheme is no longer performing as intended or if the management of the scheme is not meeting their expectations, including requesting a members' meeting and applying for court orders.

### **Requesting a members' meeting**

Members collectively have the right to call meetings to consider resolutions in respect of the scheme and its management. Meetings can be held to consider a range of resolutions including to:

- amend the constitution;
- remove and replace the responsible entity; and
- wind up the scheme.

The responsible entity must call and arrange to hold a meeting of members within 21 days of receiving a request from either 100 members, or members holding 5%, who are entitled to vote on a proposed special or extraordinary resolution. The meeting must be held within two months of the request being given to the responsible entity. The responsible entity may meet the costs of holding the meeting from the assets of the scheme.

Any request for a meeting must be in writing, state any resolution to be proposed at the meeting and be signed by the members proposing to move the resolution. The responsible entity must distribute to each member a copy of the proposed resolution and any accompanying statement as soon as practicable after it gives notice of the meeting.

### ***Obtaining a copy of the register of members***

The responsible entity of a scheme is required under the Corporations Act to maintain a register of members of the scheme. The register may assist members considering calling a meeting by providing contact details for other members. A responsible entity must provide a copy of the members' register within 7 days, if a person requests it and pays the necessary fee.

### **Applying for court orders**

Individual members have 'standing' to approach the courts for a range of orders relating to the operation of registered managed investment schemes, including injunctions, winding-up orders, and orders for the appointment of temporary responsible entities.

### **Where can I get more information?**

Investors should contact the responsible entity of their scheme to obtain further information on the specific scheme they have invested in. Responsible entities are required under the Corporations Act to have in place an internal dispute resolution system and be members of an external dispute resolution scheme.

**Appendix A: Schemes granted hardship relief (at 14 May 2009)**

<b>Responsible entity and ACN</b>	<b>Scheme name and ARSN</b>	<b>October 2008 relief</b>	<b>August 2009 relief</b>	<b>Wind up relief</b>
Advance Asset Management Limited 002 538 329	Advance Mortgage Fund 098 112 540	✓		
AMP Capital Investors Limited 001 777 591	AMP Capital Enhanced Yield Fund 104 127 013	✓		
	AMP Capital Structured High Yield Fund 104 312 290	✓		
APN Funds Management Limited	APN Property for Income Fund 090 467 208	✓		
	APN Property for Income Fund No. 2 113 296 110	✓		
	APN International Property for Income Fund 101 227 534	✓		
Australian Unity Funds Management Limited 071 497 115	Australian Unity Wholesale Mortgage Income Trust 102 713 824		✓	
	Australian Unity Wholesale High Yield Mortgage Trust 113 151 947		✓	
	Australian Unity Mortgage Income Trust 090 082 803		✓	
	Australian Unity High Yield Mortgage Trust 113 151 705		✓	
Ballina Mortgage Management Limited 092 594 477	Richmond Mortgage Fund 097 151 883		✓	
Balmain Fund Administration Limited 134 526 604	Balmain (MMT) Mortgage Trust (previously known as Mariner Mortgage Trust) 107 891 967		✓	
	Balmain (MWMT) Mortgage Trust (previously known as Mariner Wholesale Mortgage Trust) 112 662 987		✓	

INFORMATION FOR INVESTORS IN FROZEN FUNDS

Responsible entity and ACN	Scheme name and ARSN	October 2008 relief	August 2009 relief	Wind up relief
Centro MCS Manager Limited 051 908 984	Centro Direct Property Fund 099 728 971	✓		
	Centro Direct Property Fund International 114 635 657	✓		
Challenger Managed Investments Limited 002 835 592	Challenger Howard Mortgage Fund 090 464 074		✓	
	Challenger Howard Wholesale Mortgage Fund 093 720 159		✓	
	Challenger Mortgage Plus Trust 091 029 248		✓	
	Challenger Hybrid Property Fund 090 850 294		✓	
	Challenger Wholesale Hybrid Property Fund 090 790 962		✓	
	Challenger High Yield Fund 099 212 647		✓	
	Colonial First State Investments Limited 002 348 352	Colonial First State—FirstChoice Investments—Fixed Interest Fund Number 2 100 130 685		✓
	Colonial First State Wholesale Income Fund 087 406 942		✓	
	Colonial First State Mortgage Income Fund—Entry Fee Option 088 902 783			✓
	Colonial First State Mortgage Income Fund—Nil Entry Fee Option 096 011 988			✓
	Colonial First State Bricks & Mortar Fund 092 184 168		✓	
	Colonial First State Wholesale Guaranteed Mortgage Fund 088 902 425			✓
Cromwell Property Securities Limited 079 147 809	Cromwell Property Fund 119 080 410		✓	

INFORMATION FOR INVESTORS IN FROZEN FUNDS

Responsible entity and ACN	Scheme name and ARSN	October 2008 relief	August 2009 relief	Wind up relief
Equititrust Limited 061 383 944	Equititrust Income Fund 089 079 854		✓	
ING Funds Management Limited 003 002 800	Mortgage Pool 089 455 425		✓	
	Mortgage Trust No. 2 089 938 929		✓	
	ING AJ Mortgage Fund 089 940 401		✓	
	ANZ Mortgage Fund 090 385 167		✓	
	Monthly Income Trust 089 038 924		✓	
	ANZ OA ING Mortgage Trust 104 469 427		✓	
	ANZ OA ING Income Plus Trust 104 468 573		✓	
	Income Plus Fund 089 037 856		✓	
	OneAnswer—AMP Capital Enhanced Yield Trust 115 528 688		✓	
	OneAnswer—AXA Australian Property Trust 115 529 005		✓	
	OneAnswer—Challenger Howard Mortgage Trust 115 529 283		✓	
Kingsway Group Limited 089 265 127	Kingsway Premium Income Fund 099 747 663		✓	
Lismore Management Corporation Limited 010 695 566	East Coast Mortgage Trust 090 631 637		✓	
LM Investment Management Limited 077 208 461	LM First Mortgage Income Fund 089 343 288		✓	
	LM Currency Protected Australian Income Fund 110 247 875		✓	

**INFORMATION FOR INVESTORS IN FROZEN FUNDS**

<b>Responsible entity and ACN</b>	<b>Scheme name and ARSN</b>	<b>October 2008 relief</b>	<b>August 2009 relief</b>	<b>Wind up relief</b>
	LM Institutional Currency Protected Australian Income Fund 122 052 868		✓	
	LM Wholesale First Mortgage Income Fund 099 857 511		✓	
MQ Portfolio Management Limited 092 552 611	Macquarie Equinox Asia 2 Trust 117 868 336	✓		
Mayne Investments Limited 000 339 211	Northern Investment Trust Fund 090 693 986		✓	
Mirvac Funds Management Limited 067 417 663	Mirvac AQUA Income Fund 110 222 850		✓	
	Mirvac AQUA Enhanced Income Fund 119 299 179		✓	
	Mirvac AQUA High Income Fund 110 223 348		✓	
	Mirvac AQUA Senior Debt Pool 110 223 240		✓	
	Mirvac AQUA Construction Debt Pool 110 223 133		✓	
	Mirvac AQUA Mezzanine Debt Pool 110 223 044		✓	
National Mutual Funds Management Ltd 006 787 720	Australian Monthly Income Fund 091 553 856		✓	
	Generations Mortgage No. 1 Trust 109 858 004		✓	
	Australian Income Fund 088 999 679		✓	
	Wholesale Australian Income Fund 088 919 359		✓	
	Wholesale Australian Monthly Income Fund 091 553 954		✓	

INFORMATION FOR INVESTORS IN FROZEN FUNDS

Responsible entity and ACN	Scheme name and ARSN	October 2008 relief	August 2009 relief	Wind up relief
	Wholesale Australian Property Fund 088 996 392		✓	
	Australian Property Fund 096 853 619		✓	
Navigator Australia Limited 006 302 987	Access Fund No 3 (otherwise known as Access Challenger Howard) 114 703 678	✓		
	Access Fund No 2 (otherwise known as Access AXA Australian Monthly Income) 114 703 472	✓		
	Access Fund No 7 (otherwise known as Access AMP Enhanced Yield) 114 704 326	✓		
IOOF Global One Limited (previously known as Old Mutual Australia Limited) 093 415 251	IOOF Global One Fund # 109 (previously known as Skandia Mortgage Fund # 1) 121 765 517	✓		
	IOOF Global One Fund # 41 (previously known as Skandia Australian Fixed Interest Fund #5) 100 903 982	✓		
	IOOF Global One Fund # 124 (previously known as Skandia Non-Monitored Fund # 23) 125 073 869	✓		
	IOOF Global One Fund # 9 (previously known as Skandia Fixed Interest Fund Number 6) 096 871 242	✓		
Perpetual Investment Management Limited 000 866 535	Perpetual's Mortgage Fund 106 129 659		✓	
	Perpetual's Monthly Income Fund 088 692 808		✓	
	Perpetual's Liquidity Pool Fund 105 128 336		✓	
	Perpetual's Mortgage Pool Fund 094 407 066		✓	

INFORMATION FOR INVESTORS IN FROZEN FUNDS

Responsible entity and ACN	Scheme name and ARSN	October 2008 relief	August 2009 relief	Wind up relief
	Perpetual's Term Fund 092 387 874			✓
	Perpetual's Wholesale Monthly Income Fund 093 211 682		✓	
	Private Investor Mortgage Fund 092 603 873		✓	
	Perpetual's Fund 4 (otherwise known as APN Property for Income Fund) 106 135 424		✓	
	Perpetual's Fund 47 (otherwise known as Challenger Howard Mortgage Fund) 116 306 140		✓	
	Perpetual Fund 57 (otherwise known as Perpetual WealthFocus Investments Australian Unity Mortgage Income Fund) 128 338 965		✓	
Shakespeare Haney Securities Limited 087 435 783	Shakespeare Haney Premium Income Fund 106 223 483	✓		
Suncorp Metway Investment Management Limited 068 147 651	Suncorp Income Fund 092 025 744		✓	
	Suncorp Conservative Fund 092 026 161		✓	

**Appendix B: Schemes granted rolling withdrawal relief (at 14 May 2009)**

Responsible entity and ACN	Scheme name and ARSN
National Mutual Funds Management Ltd 006 787 720	Australian Monthly Income Fund 091 553 856
	Generations Mortgage No. 1 Trust 109 858 004
	Australian Income Fund 088 999 679
	Wholesale Australian Income Fund 088 919 359
	Wholesale Australian Monthly Income Fund

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Responsible entity and ACN	Scheme name and ARSN
	091 553 954

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