

**The Guardian Investment Fund ARSN 168 048 057**  
**A Registered Managed Investment Scheme**

**ASIC RG46 Continuous Disclosure Requirements**  
**Policy Statement**  
**Dated 30 September 2016**



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## ASIC Regulatory Guide 46 Overview

The Australian Securities & Investments Commission (ASIC) has developed six benchmarks and eight disclosure principles for unlisted property schemes that can help retail investors understand the risks, assess the rewards being offered and decide whether these investments are suitable for them.

Responsible Entities of unlisted property schemes offered to retail investors or in which retail investors have invested are to provide a statement addressing ASIC's six benchmarks and eight disclosure principles as set out in Regulatory Guide 46.

Guardian Securities Limited (**Guardian**) as Responsible Entity (**RE**) for The Guardian Investment Fund (Fund) discloses below the requirements of Regulatory Guide 46. This disclosure should be read in conjunction with the Fund's Product Disclosure Statement Part 1 (PDS) and any relevant Part 2 Product Disclosure Statements issued by Guardian.

In accordance with the requirements of RG46, this statement will be updated for any material changes that the Guardian becomes aware of, and in any event, at least every six months. The updated statement will be included on the Guardian's website [www.guardiansecurities.com.au](http://www.guardiansecurities.com.au)

## The Fund

The Guardian Investment Fund (Fund) is a registered managed investment scheme with the ability to create special purpose companies for each specific project or investment. Investors subscribe for a Class of Units allocated to a specific Special Purpose Vehicle (SPV) that will engage in the investment or development project as set out in the Part 2 Product Disclosure Statement issued by Guardian.

This Class of Units has beneficial ownership of the SPV. The equity issued by the Fund to the SPV is beneficially held in trust by an independent Custodian for the investors in each SPV.

The Fund also runs a sub fund, Development Income Fund (DIF), which invests in SMSF Property group SPV's by way of Preference Shares.

## Information about this Policy Statement

This Policy Statement sets out the ASIC Benchmark & Disclosure Principles that relate to the SMSF Property Fund as required under Regulatory Guide 46.

With each Policy Statement provided to Investors in The Guardian Investment Fund, we will provide an Annexure 2 for each SPV outlining the Benchmark & Disclosure Principles that relate to that specific SPV.

Investors should read both this Policy Statement and the Annexure 2 for each SPV in which they have invested to gain a better appreciation of the development and our obligations under RG 46.

As at the date this Continuous Disclosure document was issued, there are 5 separate investment operated by the Fund with a total of \$17,498,536 of funds under management.

Information on the Fund including the audited financials for the year ended 30 June 2016 can be found on our website [www.guardiansecurities.com.au](http://www.guardiansecurities.com.au)

If you have any question in relation to this Policy Statement or any specific SPV, please contact us on **1800 60 11 77** or [info@guardiansecurities.com.au](mailto:info@guardiansecurities.com.au)



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# 1. Benchmarks

## 1.1 Gearing Policy

RG 46.28 - Responsible Entities (RE) of unlisted property schemes offered to retail investors and in which retail investors have invested should disclose against the benchmarks on an 'if not, why not' basis

ASIC Benchmark	Disclosure against benchmark
<b>Benchmark 1: Gearing Policy</b> RG 46.31 — The RE maintains and complies with a written policy that governs the level of gearing at an individual credit facility level.	<b>Yes - The Fund meets the benchmark</b> The Fund does not borrow in its own right. The RE maintains a gearing policy that will vary for each SPV.
<b>Benchmark 2: Interest Cover Policy</b> RG 46.36 — The RE maintains and complies with a written policy that governs the level of interest cover (ICR) at an individual credit facility level.	<b>Yes - The Fund meets the benchmark</b> Where financial accommodation is obtained in connection with a Property or project, the interest cover ratio (if any) will be calculated for the Class of Units corresponding to that development or Property, rather than for the Fund as a whole, and disclosed to investors in that Class of Units.
<b>Benchmark 3: Interest Capitalisation</b> RG 46.41 — The interest expense of the Fund is not capitalised.	<b>No - The Fund does not meet the benchmark</b> We do not meet this benchmark as the Fund intends to offer investment opportunities in development property. Where we obtain financial accommodation to assist the purchase and development of a development property, the interest will be capitalised as it is unlikely the property will generate income during the development. The interest expense and loan principal will be repaid upon sale of the completed development. The total cost of a loan is generally higher when interest is capitalised, rather than paid regularly throughout the loan term, as the interest is added to the loan principal and future interest calculated on the increased principal amount. Therefore, capitalising interest may adversely impact the returns achieved on the sale of a development property, particularly if the development's anticipated time to complete or sell takes longer.
<b>Benchmark 4: Valuation Policy</b> RG 46.45 — The RE maintains and complies with a written valuation policy that conforms to ASIC's requirements at RG 46.45, or must explain why they do not.	<b>Yes - The Fund meets the benchmark</b> The RE maintains and complies with a written valuation policy that conforms to ASIC's requirements of RG46.





<p><b>Benchmark 5: Related Party Transactions</b></p> <p>RG 46.53 — The RE maintains and complies with a written policy on related party transactions, including the assessment and approval processes for such transactions and arrangements to manage conflicts of interest.</p>	<p><b>Yes - The Fund meets the benchmark</b></p> <p>The Responsible Entity maintains a Related Party Transaction Policy and Compliance Plan that sets out the guidelines for defining related party transactions and the appropriate handling of such transactions.</p> <p>Using these guidelines the Responsible Entity must determine if the transaction will be appropriate for the Fund. Generally, the policy requires related party transactions to be in the best interest of investors and on arm's length commercial terms.</p> <p>Any related party transactions that are required are to be reviewed and approved by the RE's Board of Directors.</p>
<p><b>Benchmark 6: Distribution Practices</b></p> <p>RG 46.58 — The Fund will only pay distributions from its cash from operations (excluding borrowings) available for distributions.</p>	<p><b>Yes - The Fund meets the benchmark</b></p> <p>The RE has a policy of making distribution payments only from the distributions received from the SPV development project attached to the Class of Units issued for that project. Only Investors holding this Class of Unit will participate in this distribution.</p>

## 2. Disclosure Principles

### 2.1 Gearing Ratio

**RG 46.62** — The RE should disclose the Fund's gearing ratio as calculated in accordance with the prescribed formula:

The RE will calculate the Fund's gearing ratio and explain its relevance to investors using the following formula:

$$\text{Gearing ratio} = \frac{\text{Total interest bearing liabilities}}{\text{Total assets}}$$

The higher gearing ratio means higher borrowings (liabilities) to fund assets. A higher geared scheme has a greater risk and is more vulnerable to times of financial stress.

**RG 46.63** — The liabilities and assets used to calculate the gearing ratio should be based on the Fund's audited latest financial statements. Where the RE is aware of material changes subsequent to those statements the RE should use the latest information. If the RE does not base the gearing ratio on the latest audited financial statements, the RE will disclose the source(s) and date of the information used to calculate the ratio.

**RG 46.64** — If members' contributions (other than borrowings from members) are classified as liabilities in the financial statements, they will be excluded from liabilities in calculating the gearing ratio. If the Fund has material off-balance-sheet financing, the RE will disclose the following gearing ratios: a 'look through' gearing ratio that takes into account such financing; and a gearing ratio based on liabilities disclosed in the Fund's financial statements.

**RG 46.65** — Responsible Entities should also explain to investors what these ratios mean in practical terms and how investors can use the ratios to determine the Fund's level of risk. The gearing ratio indicates the extent to which the Fund's assets are funded by interest-bearing liabilities. It gives an indication of the potential risks the Fund faces in terms of its level of borrowings due to, for example, an increase in interest rates or a reduction in property values.



The Fund's gearing ratio is a risk factor that retail investors should weigh up against the Fund's rate of return and enables investors to compare relative risks and returns with other unlisted property schemes.

Gearing is utilised to enhance investment returns for investors. However, should a SPV development take longer to complete there is the risk that the developments assets will be depleted thus putting the development's solvency at risk.

The level of gearing will be highlighted for each SPV development individually as it directly affects the Investors holding that relevant Class of Units in the Fund.

***See Annexure 2 for information about each SPV gearing ratio.***

## 2.2 Interest Cover Ratio

**RG 46.71 - The RE should disclose the Fund's interest cover ratio calculated in accordance with prescribed formula and be based on the latest financial statements:**

$$\text{Interest cover (ICR)} = \frac{\text{EBITDA} - \text{unrealised gains} + \text{unrealised losses}}{\text{Interest expense}}$$

**where** EBITDA = earnings before interest, tax, depreciation and amortisation.

**RG 46.72** – The EBITDA (earnings before interest, tax, depreciation and amortisation) and interest expense figures used to calculate the ICR should be consistent with those disclosed in the Fund's latest audited financial statements. If the RE is aware of material changes subsequent to those statements the RE should use the latest information. The RE will disclose the source(s) and date of the information used to calculate the ratio.

**RG 46.73** – If the RE is unable to calculate the interest cover ratio (e.g. in a property development or when the interest is capitalised), the RE will disclose the reasons why it is unable to calculate the ratio and provide an explanation of the arrangements it has entered into to meet the payment obligations related to the borrowed funds and the risks associated with these arrangements

**RG 46.74** - The RE should explain how investors can use the interest cover ratio to assess the Fund's ability to meet its interest payments.

The interest cover ratio measures the ability of the Fund to service interest on debt from earnings. It is therefore a critical indication of a Fund's financial health and key to analysing the sustainability and risks associated with the Fund's level of borrowing. This consistent disclosure will allow investors to compare relative risks and returns across investments in other unlisted property schemes

The Fund's interest cover ratio is the amount of earnings to service every \$1.00 of interest on debt.

The ICR will be highlighted for each SPV development in annexure 2 as it directly effects the Investors holding that relevant Class of Units in the Fund.

***See Annexure 2 for information about each SPV Interest Cover Ratio (ICR).***

## 2.3 Fund Borrowing

**RG 46.78 — If the Fund has borrowed funds (whether on or off balance sheet) the RE should clearly and prominently disclose:**

- for each borrowing that will mature in five years or less — the aggregate amount owing and the maturity profile in increments of not more than 12 months;
- for borrowings that will mature in more than five years — the aggregate amount owing;
- the amount (expressed as a percentage) by which either the operating cash flow or the value asset(s) used as a security for the facility must fall before the Fund will breach any covenants in any credit facility;



- for each credit facility;
  - the aggregate undrawn amount;
  - the assets to which the facility relates;
  - the loan-to-valuation and interest cover covenants under the terms of the facility;
  - the interest rate of the facility; and
  - whether the facility is hedged;
- details of any terms within the facility that may be invoked as a result of Fund members exercising their rights under the constitution of the Fund;
- the fact that amounts owing to the lender and other creditors of the Fund rank before investors' interests in the Fund.

Any borrowing by each SPV development will be highlighted in Annexure 2 as it directly affects the Investors holding the relevant Class of Units in the Fund.

**RG 46.79** — If any Fund borrowings will mature within 12 months, if required, the RE will make appropriate disclosure about the prospects of refinancing or possible alternative actions.

If the RE has no reasonable grounds for commenting on the prospect of refinancing or possible alternative actions, the RE will state this and explain why to investors.

**RG 46.80** — The RE should explain any risks associated with the Fund's borrowing maturity profile, including whether borrowings have been hedged and, if so, to what extent.

Borrowing maturity and credit facility expiry profiles are important information if the Fund borrows to invest. Credit facilities that are due to expire within a relatively short timeframe can be a significant risk factor, especially in periods when credit is more difficult and expensive to obtain. A failure to renew borrowing or credit facilities can adversely affect a Fund's viability.

**RG 46.81** — The RE should disclose any information about Fund borrowing and breaches of loan covenants that is reasonably required by investors. The RE should update investors about the status of Fund borrowings and any breaches of covenants through ongoing disclosure.

A breach of a loan covenant may result in the lender being able to require immediate repayment of the loan or impose a freeze on further draw-downs on the credit facility. Any borrowing for each SPV development will be highlighted in Annexure 2 as it directly affects the Investors holding the relevant Class of Units in the Fund.

## 2.4 Portfolio Diversification

**RG 46.87** — The RE should disclose the current composition of the Fund's direct property investment portfolio, including:

- properties by geographic location, by number and value;
- non-development projects by sector (e.g. industrial, commercial, retail and residential) and development projects by number and value;
- for each significant property, the most recent valuation, the date of the valuation, whether the valuation was performed by an independent valuer and where applicable, the capitalisation rate adopted in the valuation;
- the portfolio lease expiry profile in yearly periods calculated on the basis of lettable area or income and, where applicable, the weighted average lease expiry;
- the occupancy rates of the property portfolio;
- for the top five tenants that each constitutes 5% or more by income across the investment portfolio, the name of the tenant and percentage of lettable area or income; and
- the current value of the development and/or construction assets of the Fund as a percentage of the current value of the total assets of the Fund.

The portfolio diversification will be highlighted for SPV development as it directly affects the Investors holding the relevant Class of Units in the Fund.



**RG 46.88 — The RE should disclose its investment strategy. The RE should also provide a clear description of any significant non-direct property assets of the Fund, including the value of such assets.**

The investment strategy of the Fund is to invest in a SPV development that is generally residential land and housing development.

There are no non-direct property assets within the Fund other than cash and fixed interest securities held.

**RG 46.89 — RE's of unlisted property schemes involved in property development should also disclose:**

- the development timetable with key milestones;
- a description of the status of the development against the key milestones identified;
- a description of the nature of the funding arrangements for the development (including the sources of funding and repayment strategies if borrowing is used to fund the development);
- the total amounts of pre-sale and lease pre-commitments where applicable;
- whether the loan-to-value ratio for the asset under development exceeds 70% of the 'as is' valuation of the asset; and
- the risks associated with the property development activities being undertaken.

**RG 46.90 — The RE for any scheme that has over 20% of its assets in development based on an 'as if complete' basis should ensure that the scheme is clearly identified as a development and/or construction scheme.**

The Fund is a property development fund and investors subscribe to Classes of Units attached to a SPV development. Investors in a Class of Unit do not have any risk exposure to other Classes of Units.

**RG.95 — the RE should ensure that investors are kept informed of the progress of the development on an ongoing basis against the development timetable and key milestones.**

The RE compares the original feasibility and its costs and milestones on a monthly basis. The RE will report to investors in accordance with these disclosure requirements.

For example milestones reached may be: Land settlement; planning approval; construction commencement; construction completion; settlement; and project finalisation.

**RG 46.97 — Any material delays (e.g. to development works, including the underlying reason) or changes to financing circumstances are important indicators that a development may be experiencing difficulties (or may fail) and should trigger disclosure about these material matters.**

If a material delay or event occurs the RE will inform investors as soon as practicable. This may be a separate disclosure from this report and may be sent directly to the investor in the Class of Unit attached to the SPV development.

***See Annexure 2 for information about each SPV Portfolio Diversification.***

## 2.5 Related Party Transactions

**RG 46.98 — RE's that enter into transactions with related parties should describe related party arrangements relevant to the investment decision. The description should address:**

- the value of the financial benefit;
- the nature of the relationship (i.e. the identity of the related party and the nature of the arrangements between the parties);
- in addition to how the parties are related for the purposes of the Corporations Act or ASX listing rules — for group structures, the nature of these relationships should be disclosed for all group entities);
- whether the arrangement is on 'arm's length' terms, is reasonable remuneration, some other exception applies, or relief has been granted;
- whether Fund member approval for the transaction has been sought and, if so, when (e.g. if member approval was obtained before the issue of Units in the Fund);



- the risks associated with the related party arrangement; and
- whether the Responsible Entity is in compliance with its policies and procedures for entering into related party transactions for the particular related party arrangement, and how this is monitored.

Policies and procedures are in place to mitigate the risk of any actual or perceived conflict of interest, including as a result of a related party transaction. Related party transactions with the Fund are disclosed in the PDS to ensure investors are informed. These transactions are reviewed to ensure that they are in line with market expectations and are at arm's length.

All related party transactions are disclosed in the monthly management accounts, sent to the compliance committee and the board, and are ratified by the RE directors at each board meeting.

Any related party transaction with a director of the RE or an associate must be approved by the remaining directors first.

Examples of related party transactions with the RE are application fees, monthly RE and administration fees.

## 2.6 Distribution Practices

**RG 46.102 — If the Fund is making or forecasts making distributions to members, the RE should disclose:**

- the source of the current distribution (e.g. cash from operations available for distributions, or from capital, or from unrealised revaluation gains);
- the source of any forecast distribution;
- whether the current or forecast distribution are sustainable over the next 12 months;
- if the current or forecast distribution is not solely sourced from cash from operations (excluding borrowings) available for distribution, the sources of funding and the reasons for making the distribution from these other sources;
- if the current or forecast distribution is sourced other than from cash from operations (excluding borrowings) available for distribution, whether this is sustainable over the next 12 months; and
- the impact of, and any risks associated with the payment of distributions from the Fund from sources other than cash from operations (excluding borrowings) available for distribution.

The Fund invests into SPV's. Generally there is no withdrawal from these SPV's as they are illiquid and there are no distributions paid or return of capital until the project has been completed.

*See Annexure 2 for information about each SPV distribution practices.*

## 2.7 Withdrawal Arrangements

**RG 46.104 — If investors are given the right to withdraw from the Fund, the RE should disclose a clear explanation of how investors can exercise their withdrawal rights, including any conditions on exercise. The RE should clearly disclose:**

- whether the constitution of the Fund allows investors to withdraw from the Fund, with a description of the circumstances in which investors can withdraw;
- the maximum withdrawal period allowed under the constitution for the Fund (this disclosure should be at least as prominent as any shorter withdrawal period promoted to investors);
- any significant risk factors or imitations that may affect the ability of investors to withdraw from the Fund, or the unit price at which any withdrawal will be made (including risk factors that may affect the ability of the RE to meet a promoted withdrawal period);
- a clear explanation of how investors can exercise their withdrawal rights, including any conditions on exercise (e.g. specified withdrawal periods and Fund liquidity requirements); and
- if withdrawals from the Fund are to be funded from an external liquidity facility, including any rights the provider has to suspend or cancel the facility.



**RG 46.104 — The RE should ensure that investors are updated on any material changes to withdrawal rights through ongoing disclosure.**

The SPV's are not liquid and investors cannot withdraw from the Fund. Under extenuating circumstances the RE may allow an investor to withdraw from the Fund.

The RE should also clearly disclose if investors have no withdrawal rights.

Investors should treat the Fund as 'illiquid' as there is no automatic right or redemption of Units.

There is no formal secondary market for units in the Fund. However, units in the Fund are transferable. While Units may be transferred (to another investor) only the full investment balance in the Fund may be transferred. Any transfer is subject to consent of the RE.

**RG 46.106 — Responsible Entities should also clearly disclose if investors have no withdrawal rights.**

As disclosed in the PDS, the Fund is illiquid and investors do not have any withdrawal rights.

## 2.8 Net Tangible Assets

**RG 46.108 — the Responsible Entity of a closed-end scheme should clearly disclose the value of the Net Tangible Assets (NTA) of the Fund on a per unit basis in pre-tax dollars.**

Investors subscribe to a Class of Unit. Investors in one Class of Unit are not exposed to the risk of another class of unit so the Net Tangible Assets are calculated for each Class of Unit individually as opposed to the Fund as a whole.

**RG 46.109 — We consider that Responsible Entities should calculate the NTA of the Fund using the following formula:**

$$\text{NTA} = \frac{\text{Net assets - intangible assets} + / - \text{any other adjustments}}{\text{Number of units in the Fund on issue}}$$

The RE bases the NTA calculation on the Fund's latest audited financial statements. Where the RE is aware of material changes since those statements were issued and the RE does not base the NTA on the latest financial statements, the RE will disclose the source(s) and date of the information used to calculate the NTA.

**RG 46.111 — the RE should also explain to investors what the NTA calculation means in practical terms and how investors can use the NTA calculation to determine the Fund's level of risk.**

The NTA can be utilised by investors to understand the value of the assets upon which the value of their unit is determined.

The Fund is a closed fund. Therefore the unit price set out in the PDS (generally \$1) is set at the time the PDS is issued and the funds are raised.

The Fund may update its unit price when the Fund's audited financial accounts are lodged.

The nature of a development is such that the NTA will decrease over the life of the project, which is due to non-capitalised expenses, until completion and the assets are realised.

In some cases where a development is staged, assets will be realised which will cause the NTA to fluctuate.

***See Annexure 2 for information about each SPV Net Tangible Assets ratio.***



## Annexure 1 – Policy Statements- Gearing Policy Statement

The Fund does not borrow in its own right.

The Fund raises capital from Investors for the purpose of investing into a Special Purpose Vehicle ('SPV'). Each SPV has its own Class of Units and this Class of Unit is issued in accordance with the disclosures to investors set out in the Part 1 and Part 2 Product Disclosure Statements ("PDS").

The Fund uses the monies raised from the issue of a Class of Units to acquire all of the ordinary shares in the SPV on the terms set out in a Part 2 PDS. The SPV owns the asset to which the Class of Units relates.

A SMSF Property SPV may issue redeemable preference shares to the Development Income Fund ("DIF") at a rate of 12% p.a. The SPV can only issue redeemable preference shares up to 35% of the total development costs.

The issue of redeemable preference shares is designed as short term capital raising by the SPV to assist with completion of a development. DIF is designed to eliminate investor capital remaining idle from the initial fund raising by the SPV.

In accordance with RG 46.64 redeemable preference shares and its ongoing liability will be excluded from the gearing ratio calculations.

The Fund and SPV Constitutions do not have any restriction on gearing ratio limits.

Timing is critical when gearing a development. Any delays in the completion of the development will add additional costs or put the SPV development in jeopardy if the loan cannot be continued or replaced by another facility.

The RE must disclose in the Part 2 PDS to investors its policy on gearing and its intention to do so.

The RE will use the following formula to calculate the gearing ratio:

$$\text{Gearing Ratio} = \frac{\text{Total interest bearing liabilities}}{\text{Total assets}}$$

The RE does not calculate the gearing ratio for the Fund as it serves no purpose. When a SPV development has been geared the RE will use the SPV's financial statements to calculate the gearing ratio for the development.

Taking into account the length of the term of the development and the speed that it is developed the RE may use the latest reconciled monthly management accounts to calculate the gearing ratio.

## Interest Cover Policy Statement

The Gearing Ratio indicates the extent to which the Fund's assets are funded by interest-bearing liabilities. It gives an indication of the potential risks the Fund faces in terms of its level of borrowings due to, for example, an increase in interest rates or a reduction in property values.

The Fund and Special Purpose Vehicle ("SPV") Constitutions do not have any restriction on Interest Cover Ratios ("ICR").

If a SPV development is seeking a loan facility it will be subject to loan covenants and ICR. If the RE is aware of any such restrictions prior to the Product Disclosure Document ("PDS") being issued, the RE will disclose this in the Part 2 PDS issued to investors.

Otherwise, the RE will keep investors informed as part of its continuous disclosure obligations under RG46.

The RE will:

- a) act in accordance with any loan covenants required by the lender;
- b) calculate the ICR monthly and disclose this in the management reports to the board and compliance committee;
- c) project ICR over the next 12 months or to the end of the development whichever is the lesser; and
- d) use the following formula to calculate the ICR:





$$\text{Interest cover (ICR)} = \frac{\text{EBITDA} - \text{unrealised gains} + \text{unrealised losses}}{\text{Interest expense}}$$

**where** EBITDA = earnings before interest, tax, depreciation and amortisation.

If at any time the ICR has not been maintained the RE will:

- e) inform the board and compliance committee of non-compliance;
- f) notify the lender;
- g) create a breach report; and
- h) as soon as possible remedy the non-compliance.

## Related Party Transactions Policy Statement

Main features of this policy are:

- i) to specify the principles to be adopted in relation to the conduct of a Related Party Transaction between a fund and a party related to the fund or in the funds interests by, or on behalf of, a Related Party;
- j) to provide guidance in the interpretation and application of those principles;
- k) to standardise the practices and procedures relating to the conduct of Related Party Transactions; and
- l) to specify the basis of proper disclosure of such Related Party Transactions.

The Responsible Entity (RE) considers that the nature and extent of Related Party Transactions is information that prospective and existing Investors in a Fund would reasonably expect to be disclosed. Knowledge of the nature and extent of Related Party Transactions and the relationship between the transacting parties may affect the perceptions of investors in the fund.

There are a number of legal requirements that are applicable to the operation of the Fund.

Accordingly, where there are points of law at issue or there are relevant Industry Standards, including Accounting Standards, it is of critical importance that the RE obtains appropriate and timely advice.

Failure by the RE to adopt or implement these policies is material if such failure has the potential to adversely affect the confidence of Investors, prospective Investors, and other interested parties involved.

### General Principles

#### Definitions

**Investors** means those persons, whether they be natural persons or not and including responsible entities, managers and trustees, in whose name an interest in a Fund may be registered from time to time;

**Related Party** definitions of related party are set out in sections 228 for public companies and s601LA-601LE of the Corporations Act 2001 for registered schemes; and

**Related Party Transaction** means a transaction between a Related Party and the Fund.

#### Related Party Transactions

Related Party Transactions occur when the Fund is operated by the RE. The RE is either beneficial or at least neutral as far as the interests of Investors are concerned.

However, there is the potential for abuse and this topic requires considerable attention. A Related Party Transaction may expose a Fund to costs, risks and opportunities that would not have existed in the absence of the relationship.

Related Party relationships may, therefore, have a material effect on the performance, financial position, and financing and investing of a Fund.





## **The Importance of Disclosure**

Disclosure of a Related Party Transaction allows prospective and existing Investors and others to better understand the effects of the Related Party Transaction on the Fund, and provides an opportunity to assess situations which could give rise to a conflict of interest. Full disclosure must be disclosed in the Fund's offer or other documents of prospective and on-going Related Party Transactions. In addition, disclosure of completed Related Party Transactions must be included in the financial reports of the Fund.

Proper disclosure of Related Party Transactions assists the transparent operation of the Fund by describing and defining the effect of Transactions subject to conflicts of interest between a Related Party and the Fund.

Although a Related Party Transaction may give rise to a conflict of interest, such a Related Party Transaction might not be prohibited under the Law provided the Related Party Transaction is entered into in the best interests of Investors. The existence of a general obligation for the RE to act in the best interests of Investors generally means that the RE should ensure that Related Party Transactions are conducted at arm's length and on a commercial basis and not to diminish or endanger the Fund's property. The RE should achieve 'best execution' for the interests of the Fund and act independently of any other affiliations.

Accordingly, prospective and existing Investors in the Fund should be adequately informed of any significant Related Party Transactions (e.g. outsourcing the unit pricing to a Related Party) carried out or proposed to be carried out by the RE. Consideration must be given to the need for the RE to issue a specific notice informing existing Investors and others of the occurrence of the Related Party Transaction and the action proposed to be undertaken by the RE.

The procedures for entering into a Related Party Transaction should be adequately documented to clearly evidence the due diligence carried out by the RE. Each Related Party Transaction will be properly documented and disclosed.

## **Definition of Related Party**

Whilst it is not currently possible to precisely define who might be a "Related Party" in the context of the Fund, the definition of a Related Party of a public company in Part 2E.2A of the Law (especially section 243F) serves as a useful guide.

The categories of related parties could include:

- a) the RE, or its agents of the Fund;
- b) a related body corporate of the RE;
- c) an associate of the RE (i.e. a director or secretary of the RE or of their related bodies corporate);
- d) a parent, spouse, child or other close relative of a director or secretary of the RE (or of their related bodies corporate); and
- e) an entity over which any of the people mentioned above exerts significant control or significant influence.

## **Disclosure Requirements**

The RE must disclose all Related Party Transactions, which would involve the conferring of a material financial benefit on/from a Related Party. It is reasonable that Investors in the Fund are advised that a RE intends that the Fund enter into, or has completed Related Party Transactions which confer a material financial benefit to/from a Related Party.

Guidance as to the meaning of a "financial benefit" can be found in section 243G of the Act. Section 243G provides that in deciding whether a financial benefit is given the economic and commercial substance of the Related Party Transaction should prevail over its legal form.

Also, the consideration given by the Related Party in return for receiving the benefit should be disregarded in establishing what needs to be disclosed, but of course is significant in justifying Related Party Transactions.

For additional guidance, six examples of the giving of a financial benefit are provided in Section 243G (4):



- a) acquiring or supplying services;
- b) lending money, guaranteeing or providing security for a loan;
- c) forgiving a debt or releasing or not enforcing an obligation;
- d) selling or leasing assets;
- e) issuing securities or granting options; or
- f) giving money or property.

This policy is designed to ensure that the assets of the Fund are applied only for the benefit of the existing Investors in the Fund. This means that, in general, this policy is concerned with the payment or receipt of financial benefits that relate to goods or services or both to a Related Party that:

- g) come out of the Fund property;
- h) could diminish or endanger the Fund property; or
- i) could adversely affect those interests.

### **Application of Materiality**

This policy applies to a Related Party Transaction, which confers a material financial benefit on the Related Party. The RE must consider whether the “materiality” of a financial benefit will differ depending on a number of factors, including:

- j) the magnitude of the benefit;
- k) the financial impact on the Fund (e.g. the proportion of the Fund’s assets affected by the Related Party Transaction); and
- l) the number and frequency of Related Party Transactions with one or more Related Parties.

Therefore, in determining whether an individual event or an aggregate of events would be considered material, both the amount and the nature of the event must be considered. An event may not be material in amount, but be considered to be material in nature and therefore, must be disclosed to Investors.

Disclosure of transactions involving directors and their director related entities, as these transactions are considered to be material because of their nature.

### **Principles Applicable to Related Party Transactions**

The RE will, prior to initiating, and during the term of an agreement governing, a Related Party Transaction, ensure that such a Transaction meets and continues to meet the following criteria:

- m) it should be in the best interests of potential and existing Investors as a whole;
- n) it should be fair value and be reasonable;
- o) it should be properly documented; and
- p) it should be appropriately disclosed.

Maintenance and retention by the RE of proper documentation relating to and recording of the Related Party Transaction allows a Related Party Transaction to be scrutinised by regulators and others. Such documentation should be readily accessible to regulators and other interested parties and should be kept for 7 years.

### **Transactions between a Fund and a Related Party to a Fund**

A Related Party Transaction (either as principal or as agent) between the Fund and a party related to the Fund should be demonstrably conducted in the best interests of Investors as a whole.

Examples of Related Party principal Transactions include, but are not limited to the following:



- q) the purchase and sale of Fund interests by a Related Party;
- r) the rental by a Related Party of real property owned by the Fund;
- s) the acquisition of investments from - or the disposal of Fund assets to - a Related Party;
- t) the provision of credit facilities to a Fund by a Related Party;
- u) the provision of investment management services to a Fund by a Related Party; and
- v) the provision of Administration Services, such as unit pricing or Fund accounting, to a Fund by a Related Party.

The general obligation to act in the best interests of Investors means that the RE is required to ensure that principal and agent Transactions with a Related Party are conducted at arm's length and on a commercial basis or better. In originating such a Related Party Transaction, the RE should maintain appropriate records to justify such Transaction, the price, and any other terms and conditions upon which the Related Party Transaction was entered into.

This should, for example, include the rationale for the Related Party Transaction as well as details of the terms upon which the Related Party Transaction was made. The records must be similar to those maintained for transactions with non-related parties. A report by an independent party as to the reasonableness of the price and any other terms and conditions upon which a Related Party Transaction has occurred may be appropriate in certain circumstances.

### **Reimbursable Expenses**

In accordance with the Constitution or Governing Rules of a Fund, the RE may be entitled to reimburse itself for specified expenses incurred in relation to the operation of the Fund. Where such reimbursable expenses are incurred, the amount reimbursed should be no more than that which would be payable by a fund for a similar Transaction conducted on an arm's length, commercial basis by a non-related party to the fund.

Where a party provides services provided to a fund related to the Fund, the amount of a reimbursable expense may incorporate an amount representing an allocation of overheads. Such allocations are, at least in part, subjective. The method of allocation of overhead expenses included in an amount reimbursed from the assets of the Fund is fair and reasonable, and is properly documented. It may be appropriate for the RE to obtain an independent third party review of the basis and terms upon which an amount of reimbursable expenditure is calculated.

An amount of reimbursable expense incurred in relation to more than one fund may be required to be apportioned among several funds. The methodology adopted to determine the apportionment of such expenses among those funds should be fair and reasonable, and properly documented. An independent review of the basis of apportionment may also be appropriate.

### **Soft Dollar Arrangements**

Soft dollar arrangements in relation to the Fund should be of demonstrable benefit to the prospective or existing Investors and should be properly disclosed. Soft dollar arrangements may arise where a Related Party receives services from another entity in return for an undertaking to place business on behalf of a fund with the provider. The services provided are generally of a type which will benefit the RE by allowing it to provide a better service itself, and for which the Fund derives no direct cash payment.

### **Transactions in Fund Interests by a Related Party**

Investment in the Fund by a Related Party should be for bona fide investment purposes.

Unless the nature of the Fund involves short term investment, investment in the Fund by a Related Party should be for a period of time similar to that expected by a non-Related Party in the Fund, and should be determined in relation to the bona fide investment objectives of the prospective or existing Investor.

While the price at which a Related Party Transaction of interests in the Fund is evaluated it is determined in accordance with the Constitution or Governing Rules of the Fund there may be benefits of investment in interests of the Fund that are not reflected in the price at which those interests are transacted.

The timing of a Related Party Transaction in the Fund interests by a Related Party may also confer a short-term advantage to the Related Party. For example, an income distribution payable by the Fund may be 'bought' at the expense of a fall in the capital value of the investment purchased.



Further, a Related Party, especially the RE, may have knowledge in relation to the Fund that is not generally available to others. For example, knowledge of aggregate sales and redemptions of Fund interests may provide an indication of the level of realised capital gains to be distributed by the Fund and a prospective revaluation of Fund assets may not be reflected in the price at which interests in a Fund are transacted.

The RE should be aware of regulations relating to insider trading and should have in place appropriate policies in relation to staff dealings.

The terms and conditions under which a Related Party Transaction in Fund interests is entered into should be no more favourable than the terms and conditions that would be available to a non-Related Party transacting a similar transaction.

The RE should ensure that no preference is given to a Related Party who enters into a Related Party Transaction in Fund interests, which would be to the detriment of the existing Investors in the Fund. In particular, no priority of treatment in relation to a disposal of interests in the Fund should be offered to a Related Party.

In view of the sensitivity of Related Party Transactions between the Fund and a Related Party, it may be appropriate for a member to obtain an independent review of the Related Party Transaction prior to its initiation. In any event, there should be proper documentation relating to the basis under which the Related Party Transaction was entered into.

## Valuation Policy Statement

Different methods may become more or less appropriate from time to time or from development to development as more or less information relevant to that method may be available at different times. Taking these factors into account, the RE maintains this Valuation Policy for the Fund, which is reviewed at least annually or as market circumstances dictate.

### Valuation method

There are two main methodologies for compiling the likely value of an individual development property and the methodology used will be determined by the result required.

“As is” valuation determines the value of a property in its current state and condition; whereas an “on completion” valuation values the property in its proposed completed state. The RE will need to consider which type of valuation is best required before commissioning a Valuer from the RE’s Panel of Valuers.

### Panel of Valuers

The RE will review the Panel of Valuers at least annually taking into account the current or changing business conditions and the appropriateness of the current Valuers on the Panel. When applicable the RE will change the makeup of the Panel of Valuers to meet the changing circumstances.

### Valuation process

Each SPV development will be independently valued by a registered valuer annually and at any other times that the RE, the Fund’s Compliance Committee or Auditor may deem necessary or as required by the Act and/or Regulations from time to time.

All new SPV developments acquiring land or other assets will be valued, prior to acquisition, by an independent Valuer.

When selecting a Valuer from the Panel of Valuers, the RE will ensure that:

- a) the Valuer is currently licensed and registered in the state where the property or asset is located;
- b) has current PI insurance;
- c) is a member of the Australian Property Institute;
- d) has past experience in valuing the type of property or asset to be valued; and
- e) is independent and has no conflicts of interest.

Generally the Valuer will be given the following instructions:



Details	Information
Instructing Party	Guardian Securities Limited as Responsible Entity for the Fund.
Purpose of valuation	To assess the current market value (on an unencumbered basis) of the subject property or asset exclusive of GST.
Property description	A full real property description is required to enable Fund lawyers to adequately produce required documents.
Valuation “as is”	The property or asset is to be assessed “as is” including but not limited to its present state and condition, any existing tenants, and present zoning regulations unless instructed by the RE. The valuer should ignore proposed improvements, proposed tenants or possible zoning changes. The valuer should also ignore development consent if it is dependent upon the inclusion of any adjoining property not part of the security property.
Valuation “as if complete”	The property or asset is to be assessed “as if complete” excluding GST on the basis that the SPV development is completed as per the plans supplied. Valuation to include comparable sales and a summation approach where applicable.
The Valuer shall consider the following	<ul style="list-style-type: none"> <li>- a willing but not anxious buyer or seller;</li> <li>- a reasonable period has been allowed for the sale of the property or asset, having regard to the nature of the property or asset and market for properties of the same kind;</li> <li>- the property or asset is reasonably exposed to the market; and</li> <li>- the buyer does not have a special interest in the property or asset.</li> </ul>
Registration	That the firm or valuer is a member of the Australian Property Institute.
Presentation of report	We require 2 original reports signed by a director of the valuation firm. That the signatory to the report is a registered valuer and quotes the registration number.
Written consent	That the valuer or firm gives its consent to be named in a (S)PDS as independent valuers and has not withdrawn that consent prior to the issue of the (S)PDS subject to qualifications.
Insurance value	The valuation should include an estimate of the replacement value of any improvements on the land.
PI Insurance	Valuer to provide details of current PI Insurance with the report.
Invoice	The invoice should be addressed to the lender or other company as directed by the RE.
Conflict of interest	The valuer should declare any conflict of interest with either the borrower or the instructing party which they believe may exist with any of the directors or staff of the valuation firm prior to undertaking the valuation.

