Australian Capital Territory

Superannuation Management Guidelines 2011

Disallowable instrument DI 2011—169

The Treasurer makes the following guidelines under the *Territory Superannuation Provision Protection Act 2000*, section 16 (Superannuation management guidelines).

Dated: 28 June 2011

KATY GALLAGHER MLA
Treasurer

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made under the

Territory Superannuation Provision Protection Act 2000

Contents

Part 1 Preliminary

1 Name of guidelines

These guidelines are the *Superannuation Management Guidelines 2011*.

2 Commencement

These guidelines commence on 1 July 2011.

3 Dictionary

The dictionary at the end of these guidelines is part of these guidelines.

Note 1 The dictionary at the end of these guidelines defines certain words and expressions used in these guidelines, and includes references (***signpost definitions***) to other words and expressions defined elsewhere in these guidelines.

For example, the signpost definition '***debt instrument***—see section 5 (Meaning of ***debt instrument***).' means that the expression 'debt instrument' is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire guidelines unless the definition, or another provision of the guidelines, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

A note included in these guidelines is explanatory and is not part of the guidelines.

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

4A Investment Plan

To facilitate investment undertaken in accordance with section 16 of the *Territory Superannuation Provision Protection Act 2000*, investments will be made in accordance with an investment plan approved by the Treasurer.

5 Meaning of *debt instrument*

(1) In these guidelines, ***debt instrument*** includes securities (other than stocks that are equities) and other commercial paper, whether issued in or outside Australia.

Note ***Securities*** is defined in the Act, dict, as follows:

securities includes stocks, debentures, notes, bonds, promissory notes, bills of exchange, and any other securities approved in writing by the Treasurer.

(2) However, ***debt instrument*** does not include an instrument issued by or in relation to an entity that is, when the instrument is offered for sale for investment under section 6, rated by Standard & Poor's or Moody's as less than the relevant rating set out in the following table:

rating	instrument issued in Australia	instrument issued outside Australia
Standard & Poor's short-term	A-2	A-1
Moody's short-term	P-2	P-1
Standard & Poor's long-term	BBB-	B
Moody's long-term	Baa3	B2

(3) If an instrument is rated by Standard & Poor's and Moody's, each rating is a relevant rating for subsection (2).

Part 2 Investments

6 Prescribed investments—Act, s 11 (1) (c)

The following are prescribed investments:

(a) cash and a cash equivalent;

(b) a debt instrument;

(c) a derivative;

(d) shares (whether issued in or outside Australia);

(e) an investment in property (whether in or outside Australia);

(f) private equity;

(g) infrastructure;

(h) development capital;

(i) natural resources and commodities;

(j) currency;

(k) an investment fund that invests in an investment mentioned in paragraphs (a) to (j).

7 Use of derivatives

(1) This section applies to derivatives prescribed by section 6 (1) (c).

(2) The Territory, or an investment fund manager, may use derivatives only for the following purposes:

(a) to protect a Territory superannuation investment portfolio against, or minimise the effect on the portfolio of—

(i) interest rate movements; or

(ii) currency exchange rate movements; or

(iii) fluctuations in underlying financial markets of investments in the portfolio;

(b) to reduce the transaction cost of investing;

(c) to reduce transaction costs of achieving a required market exposure in investment;

(d) to promote transactional efficiency in investing;

(e) to obtain prices for investments unavailable in the physical market;

(f) to promote the best execution of security transactions;

(g) to provide additional liquidity to a Territory superannuation investment portfolio without selling the underlying investments of the portfolio;

(h) to adjust the duration of a fixed interest Territory superannuation investment portfolio;

(i) to reduce the volatility of investments in a Territory superannuation investment portfolio;

(j) to rapidly adjust the exposures of a Territory superannuation investment portfolio to financial markets;

(k) for any other investment purpose for which derivatives may be lawfully used by a State or by a superannuation fund regulated by Commonwealth law.

(3) The Territory, or an investment fund manager, must not use derivatives for—

(a) speculation; or

(b) gearing or leveraging a Territory superannuation investment portfolio.

(4) The Territory, or an investment fund manager, must not use—

(a) an uncovered derivative; or

(b) a derivative for which the potential exposure cannot be reliably measured.

8 ET derivatives

The Territory, or an investment fund manager, may enter a transaction for an ET derivative for a Territory superannuation investment portfolio only if the derivative is traded on a recognised exchange.

9 OTC derivatives

(1) The Territory, or an investment fund manager, may enter a transaction for an OTC derivative for a Territory superannuation investment portfolio only if—

(a) the agreement for the terms of the derivative is confirmed in writing; and

(b) the counterparty to the transaction is rated, when the transaction is to be entered, by Standard & Poor's or Moody's as not less than the relevant rating set out in the following table:

rating	counterparty in Australia	counterparty outside Australia
Standard & Poor's short-term	A-1	A-1
Moody's short-term	P-1	P-1

(2) If a counterparty is rated by Standard & Poor's and Moody's, each rating is a relevant rating for subsection (1).

(3) The Territory, or an investment fund manager, must not enter into an OTC derivative transaction with a counterparty if the transaction would give a Territory superannuation investment portfolio a total exposure to the counterparty of more than 5% of the net asset value of the portfolio.

10 Limitation on exposure to derivatives

An investment fund manager must ensure that if derivatives are held for a Territory superannuation investment portfolio—

(a) the net market exposure of the portfolio will not result in the portfolio's actual asset allocation exceeding the strategic asset allocation limits specified in the agreement of engagement of the investment fund manager under section 12; and

(b) the total net market exposure of the portfolio at no time exceeds the net market value of the portfolio; and

(c) the liquid assets of the portfolio at all times have a total value sufficient to cover the total derivative exposure of the portfolio.

11 Guidelines of Australian Prudential Regulatory Authority

In relation to the use of derivatives under section 7, the Territory, and an investment fund manager, must act consistently with the guidelines for the use of derivatives contained in Insurance and Superannuation Commission Superannuation Circular No II D 7 issued by the Australian Prudential Regulatory Authority as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the *Legislation Act 2001*, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the *Legislation Act 2001*.

Note 3 The text of the Insurance and Superannuation Commission Superannuation Circular No II D 7 is also available on the Australian Prudential Regulatory Authority website at www.apra.gov.au.

12 Engagement of investment fund managers

(1) The Territory may engage a person to manage a Territory superannuation investment portfolio (***an investment fund manager***).

(2) The Territory must engage the person by a written agreement that—

(a) sets out how the person may invest for the Territory; and

(b) requires the investment fund manager to comply with sections 6 to 11.

(3) The director-general Treasury must set up procedures to—

(a) monitor the performance by an investment fund manager of his or her obligations under the agreement; and

(b) ensure that an investment fund manager complies with his or her obligations under the agreement.

13 Risk management statements

An investment fund manager may use derivatives in relation to the management of a Territory superannuation investment portfolio only if the investment fund manager has given the director-general Treasury a risk management statement prepared in accordance with the Australian Prudential Regulatory Authority guidelines on the use of derivatives in relation to the use of derivatives for the portfolio.

14 Monthly report on exposure to derivatives

Within 15 working days after the end of each month, the director-general Treasury must give the Treasurer a report on the exposure of Territory superannuation investments to derivatives during the month.

Part 3 Miscellaneous

15 Revocation

DI2002-155 notified on the legislation register on 12 August 2002 is revoked.

Dictionary

(see s 3)

Note The *Legislation Act 2001* contains definitions and other provisions relevant to these guidelines.

commercial paper includes both negotiable and non-negotiable instruments (for example, bearer bonds, bearer debentures and warehouse certificates).

counterparty, to a derivative an investment fund manager has entered into, is the other party to the contract.

cover, in derivative positions to increase exposure, means assets covering potential liabilities in the position that are cash, equivalent to cash or can be converted to cash within the settlement period for the derivative.

cover, in derivative positions to reduce or eliminate exposure, means the assets for which the derivatives are a reasonable hedge.

debt instrument—see section 5 (Meaning of debt instrument).

derivative means a financial asset or liability whose value depends on, or is derived from, the value of an underlying asset or liability or performance of an index, and includes the following:

(a) forward rate agreements;

(b) futures;

(c) forwards;

(d) swaps;

(e) options;

(f) share ratio futures;

(g) warrants.

derivative exposure, for an investment portfolio, means the total derivative exposure of the portfolio.

ET derivative (exchange traded derivative) means a derivative created and traded on a recognised exchange.

forward means a binding agreement to buy or sell a commodity, currency or security at a fixed time in the future at a price agreed on or before a future date.

forward rate agreement means a contract for borrowing or lending at a stated interest rate over a stated period that begins on a future date.

future means a binding agreement to buy or sell a commodity or security at a fixed time in the future at a price fixed when the agreement is entered into.

gearing or leveraging, for an investment, means the use of various financial instruments or borrowed capital to increase the potential return of the investment or increase the exposure without making the underlying cash available.

investment fund manager—see section 12 (Engagement of investment fund managers).

liquid assets means cash, cash equivalents or assets readily convertible into cash.

Moody's means Moody's Investors Service Pty Ltd.

net market exposure, for an investment portfolio, means the total derivative exposure and physical exposure of the portfolio.

option means a right, without an obligation, to buy or sell a commodity, currency, security or futures contract.

OTC derivative (over-the-counter derivative) means a derivative not listed on any exchange that has been structured to meet the particular needs of the person buying it.

physical exposure, for an investment portfolio, is the net market value of the portfolio's underlying assets and securities that do not depend on the value of an underlying asset.

recognised exchange means a formal exchange for trading derivatives and securities which is regulated under the relevant law where the trading takes place.

Examples of recognised exchanges

- Australian Stock Exchange
- Sydney Futures Exchange
- New York Stock Exchange
- New York Mercantile Exchange
- London Stock Exchange
- London International Financial Futures and Options Exchange
- Tokyo International Financial Futures Exchange
- Chicago Mercantile Exchange
- Chicago Board of Exchange.

share ratio future means a futures contract based on the relative movements between the price of a specified share and a market index.

speculation means investment activity of any of the following kinds:

(a) investment activity that takes the exposure of an investment portfolio to a class of assets beyond the exposure appropriate in accordance with any investment strategy, guideline or requirement formulated for the portfolio;

(b) investment activity that takes the risks for an investment portfolio beyond the risk allowed by any investment strategy, guideline or requirement formulated for the portfolio;

(c) investment in uncovered derivatives;

(d) investment activity that circumvents limitations on borrowing for the portfolio.

Standard & Poor's means Standard & Poor's Pty Ltd.

strategic asset allocation, for an investment portfolio, means the long-term target weightings given to particular investments such as shares, fixed interest, property or cash.

swap means a binding agreement between 2 parties to trade the cashflows corresponding to different securities without exchanging the securities directly (including currency swaps and interest rate swaps).

Territory superannuation investment portfolio means a portfolio of investments made under the Act, section 11 (Investment of amounts in superannuation banking accounts) and money provided for making the investments.

underlying asset means an asset on which a derivative contract is based.

warrant means a right, without an obligation, to buy shares at a fixed price over a specified time period.

Endnote

Notification

Notified under the *Legislation Act 2001* on 30 June 2011

(see www.legislation.act.gov.au)