

DRAFT-FOR-CONSULTATION
EXPLANATORY STATEMENT
Select Legislative Instrument 2008 No

Issued by the authority of the Assistant Treasurer and Minister for Competition Policy
and Consumer Affairs

Financial Sector (Collection of Data) Act 2001

Financial Sector (Collection of Data) Regulations 2008 (No.)

Section 30 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 5(5) provides that the Regulations may declare funds, or classes of funds, to be discretionary mutual funds (DMFs).

The proposed Regulations declare single contributor funds to be discretionary mutual funds.

DMFs provide an insurance-like product offering 'discretionary cover'. Unlike traditional insurance the DMF does not have a contractual obligation to meet a claim if a risk eventuates. Instead, the DMF has a contractual obligation to consider the claim and a discretion as to whether it meets the costs of the claim.

The proposed Regulations relate to the collection of information on the nature and scope of DMF business and are subsequent to the *Financial Sector Legislation Amendment (Discretionary Mutual Funds and Direct Offshore Foreign Insurers) Act 2007* (the DMF/DOFI Act).

The proposed Regulations have been the subject of consultation with a range of stakeholders. In 2003, *Review of Discretionary Mutual Funds and Direct Offshore Foreign Insurers* (the Potts Review) was conducted. After further consultation, a Treasury discussion paper was released in 2005 seeking stakeholders views on how to implement the review's recommendations. Treasury conducted ongoing consultation with industry in the development of the DMF/DOFI Act.

Details of the proposed Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The proposed Regulations would commence on 1 July 2008.

Authority: Section 30 of the *Financial Sector (Collection of Data) Act 2001*

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Details of the proposed *Financial Sector (Collection of Data) Regulations 2008* (No.)

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Financial Sector (Collection of Data) Regulations 2008* (No.).

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2008.

Regulation 3 – Definition

This regulation sets out the definitions for the Regulations, including that **Act** is defined to be the *Financial Sector (Collection of Data) Act 2001*.

Regulation 4 – Discretionary Mutual Funds

This regulations declares a single contributor fund to be a discretionary mutual fund for the purposes of paragraph 5(5)(b) of the Act.

This will mean that data collected under the Act will also be collected from single contributor funds.

A **single contributor fund** is a fund where only one person makes a contribution out of which payments may be made in respect of loss or liabilities of a contributor or another person which is governed by rules where payment is subject to the discretion of a person or body who is not the contributor or a person covered by the fund.

The requirement that the discretion is exercised by a person or body who is not the contributor or a person covered by the fund is to distinguish single contributor funds from forms of self-insurance. For example, it is not the intention that a person who establish a bank account as a fund to cover contingencies would be required to report that to the Australian Prudential Regulation Authority (APRA).