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ASIC finally steps up to fell dodgy operators in agribusiness industry

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Back-of-the-envelope estimates suggest more than half of the money raised has been lost in the past few years. *Photo: Erin Jonasson*

THE next phase in the overhaul of the $8 billion tax-avoidance industry that spawned operators such as Great Southern Plantations and Timbercorp fell into place yesterday when the corporate regulator issued a set of guidelines designed to improve transparency in one of the riskiest investment products on offer.

It has been a long time coming given the Australian Securities and Investments Commission was first alerted to the immense risks associated with the industry in 2003 by consumer advocate Denise Brailey. Brailey, who has won awards for her services to consumers, said she met some senior ASIC officers almost a decade ago to warn that many resembled Ponzi schemes with no protection for investors due to the low levels of capital requirements for responsible entities of these schemes.

She warned that some of the riskier ones would eventually blow up, leaving mum-and-dad investors to bear the cost. ''Why did it take them so long to get to the bottom of what was going on? Even with Timbercorp and Great Southern, it has taken them nearly four years of surveillance, which is too slow for the magnitude of losses,'' she said.

Five years after Brailey's warnings, a string of schemes collapsed, including Timbercorp and Great Southern. They left investors exposed to billions of dollars in losses.

As part of a plan to crack down on risky investments aimed at retail investors, including contracts for difference, ASIC has aimed fire at agribusiness schemes by beefing up capital and liquidity requirements and suggesting their product disclosure statements outline exactly what investors are investing in, including the risks associated with the investments.

From November these schemes will be required to hold more capital and the responsible entities will need to prepare 12-month cash-flow projections that must be approved at least quarterly by directors. This means tripling the minimum amount of capital responsible entities that oversee managed investment schemes must hold, to $150,000, and requiring larger schemes to set aside as much as $5 million in funds. Given some of them raise more than $100 million, this is still pretty light.

A liquidity requirement has also been introduced where a responsible entity must hold at least 50 per cent of its net tangible asset requirements in cash or cash equivalents. This is aimed at protecting the investment schemes from insolvency of the parent.

ASIC is giving existing schemes until November to comply with the new financial requirements. It has also issued guidelines canvassing three options to improve disclosure. The problem with two of the three options is they do little or nothing. The first option is to maintain the status quo, which as history has shown, and ASIC's own surveillance has found, is hardly an option. Option two is ASIC provides clarification on disclosure in PDSs, including benchmarks and disclosure principles that apply and on advertising and educational material for investors. Option three is that current disclosure requirements continue to apply, with increased level of supervision of agribusiness scheme PDSs by ASIC, which again isn't an option because the current disclosure system hasn't worked.

ASIC has spent three years scrutinising the standard of the product disclosure statements and found them wanting. There are 371 agricultural schemes currently operating, with 10 to 15 new schemes registered since 2009. Over that period ASIC has deregistered three schemes.

While ASIC estimates the amount of money raised in the agribusiness MIS sector is $8 billion, it can't estimate how much of that has been torched by schemes that have gone belly up because some are still being wound up. However, the best way to let any investor know about the risks associated with investments is to demonstrate how much has been raised and how much has been lost. Back-of-the-envelope estimates suggest more than half of the money raised has been lost in the past few years.

ASIC said in its regulation impact statement: "We initiated this work because we have concerns about the quality of disclosure available to retail investors in agribusiness schemes … This has resulted in retail investors investing in these schemes without an adequate understanding of the risks."

The agribusiness MIS industry came into being in 1997 when the government formed the initiative Plantations for Australia, the 2020 Vision, which called for more plantations. Plantations are costly and take years to grow so to stimulate private investment, the government provided investors with large upfront tax deductions. The ATO never liked the schemes because they were specifically set up to avoid tax. Then some clever schemes decided to offer internal finance, which made them more like a round-robin Ponzi scheme. It is these that suffered an inglorious end.

If the tax deductions were taken away, the schemes would disappear and the government's goal of getting the private sector to fund our forestry plantations would fall in a heap. Indeed, when the ATO tried to curtail the benefits in 2007, it spooked investors and put the squeeze on Great Southern and Timbercorp. Australia needs more trees, but it doesn't need investments built on tax rorts. ASIC needs to spell this out to potential investors, along with figures on how much of the $8 billion raised has been lost.

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