



FAWKNER
PROPERTY

COMMERCIAL PROPERTY SYNDICATORS

26-May-20



Conflicts Policy

Policy on conflicts of interest and related party transactions

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Purpose of policy

Fawkner Property Ltd (**Fawkner**) acts as the manager of unregistered managed investment schemes and registered schemes. As manager of these schemes, Fawkner is required to hold an Australian financial services license (**AFSL**) to provide financial services as part of its role as manager. In providing products and services under its AFSL, Fawkner is required to develop policies and management procedures which:

- identify potential conflicts of interest and related party transactions;
- prescribe methods of avoiding conflicts of interest;
- prescribe methods for disclosing conflicts of interest and related party transactions;
- prescribe methods of dealing with conflicts of interest;
- prescribe the actions to be taken by Fawkner to monitor and control conflicts of interest and related party transactions.

The conflicts of interest may arise wholly, or partially, in relation to the provision of financial services or funds management services by Fawkner, or its representatives, as part of the financial services business of Fawkner or its representatives.

The objectives of this policy are to:

- identify obligations with respect to management of conflicts and transactions with related parties;
- identify regulatory and common law obligations regarding conflicts of interest and related party transactions; and
- prescribe policy for the disclosure, dealing and monitoring of conflicts of interest and related party transactions.

ASIC regulatory guide 181

ASIC Regulatory Guide 181 requires AFS Licensees to develop a conflicts of interest policy and to implement appropriate procedures for the management, monitoring and controlling of conflicts of interest.

Definition of a conflict of interest

For the purposes of this policy, conflicts of interest are circumstances where some or all of the interests of people to whom Fawkner has obligations are inconsistent with, or diverge from, some or all of the interests of Fawkner or its related parties. This includes actual, apparent and potential conflicts of interest.

For example: Fawkner derives income based on total assets of a managed investment scheme managed by it, and the acquisition of assets without due diligence would result in higher fees to Fawkner. For other examples of conflict of interest, see Appendix A.

Statutory obligations

Corporations Act 2001:

Chapter 2D - Duties of directors, other officers and employees of companies

Directors, officers and employees have a duty to:

- act in good faith in the best interests of the company and for a proper purpose, and not recklessly or in an intentionally dishonest way;
- not to improperly use their position or information they obtain as a result of their position to gain an advantage for themselves or someone else or to cause detriment to the company; and
- generally disclose any material personal interest in a matter that relates to the affairs of the company.

Part 5C.7 – Related Party Transactions in the operation of managed investment schemes

Fawkner, as an agent of the trustee or responsible entity of a managed investment scheme:

- must ensure that a related party of the trustee, responsible entity or Fawkner is not given a financial benefit out of scheme property or that could endanger scheme property other than in compliance with the Corporations Act;
- the giving of such a benefit by a related party requires the approval of the members of the scheme, unless the giving of the benefit falls within an exception in the Corporations Act; and
- the exceptions in the Corporations Act are limited to:
 - the terms of the financial benefit would be reasonable if the parties were dealing at arms length (or less favourable);
 - the benefit is fees or reimbursement of expenses to which the trustee or responsible entity is entitled under the trust deed or constitution of the scheme
 - the benefit is the reasonable remuneration of an officer or employee or the reimbursement of reasonable expenses to an officer or employee;
 - the benefit is by way of a reasonable indemnity for liabilities incurred as an officer or employee or an agreement for such an indemnity or the payment of reasonable legal costs incurred as an officer or employee;
 - the benefit is given to the related party as a member of the scheme; or
 - the benefit is given in accordance with a court order.

Chapter 7 – Financial Services Licensing

There are a number of obligations of Fawkner, as an AFS Licensee, which deal with or relate to conduct potentially affected by conflicts of interest, including:

- doing all things necessary to ensure that financial services are provided efficiently, honestly and fairly (s912A(1)(a));
- have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by Fawkner or its representatives in the provision of financial services as part of Fawkner's financial services business. (s912A(1)(aa));
- having adequate risk management systems (s912A(1)(h));
- complying with financial services laws and to take reasonable steps to ensure representatives do likewise (s912A(1)(c) and (ca));
- having adequate compliance arrangements in place (reg. 7.6.03(g));

- disclosing all benefits and relationships in a Financial Services Guide before providing services to a retail client (s 941A and 941B);
- disclosing benefits and relationships in a Statement of Advice when providing financial product advice to a retail client (s946A); and
- not engaging in misleading or deceptive conduct, dishonest conduct, unconscionable conduct and insider trading (s1041A-H).

ASIC Act - Conduct

The Australian Securities Investments Commission Act 2001 contains provisions relating to the conduct of financial service providers.

The provisions principally relate to unconscionable conduct and consumer protection in relation to financial services provided by Fawkner.

Common law obligations

Common law obligations operate in addition to statutory requirements.

There are instances where Fawkner, as an AFS Licensee will act in a fiduciary capacity and has an obligation to a client where the interest is not covered under a statutory obligation. An example of a common law obligation is where an AFS Licensee acts in a trustee capacity on behalf of a client.

Requirements in regard to conflicts of interest

Fawkner requires that all directors, employees and contractors disclose any activities they or an associate engage in if these relate to:

- property acquisition and/or management; or
- the provision of goods or consulting services of any type to the public; and in the case of contractors, the provision of services to any individual or business undertaking property acquisition or management, or fund management activities.

Such activities are considered potential areas for conflicts of interest to arise. Details of such services must be submitted to the board of Fawkner (**Board**) for approval prior to:

- the formal employment or engagement under contract with Fawkner or related entities; or
- the establishment by existing employees or contractors of any activities referred to here.

It is at the Boards' sole discretion whether to approve such applications. Approvals shall be recorded in a register maintained for that purpose.

Where application for approval is unsuccessful and the person does not undertake to not engage in the un-approved activity, then:

- for candidates for employment or engagement on contract, they will not be considered, or
- for persons already employed or engaged on contract, that employment or engagement may be terminated subject to that person's employment or engagement contract.

Requirements in regard to related-party transactions

Fawkner routinely provides the following services to the members of managed investment schemes of which it is the manager:

- property acquisition;
- property disposal;
- temporary financing, by way of subscription for special units;
- property management and leasing;
- accounting and financial control, including business activity statements and tax returns;
- registry and scheme administration.

These related-party transactions are dealt with in the manner set out in the following table.

Transaction	How Dealt With
Property acquisition	A provision for an additional management fee is set out in the trust deed or constitution and fully disclosed in the disclosure document.
Property disposal	A provision for a property fee is set out in the trust deed or constitution and fully disclosed in the disclosure document.
Temporary financing	The possibility of temporary issue of special units to related parties is properly disclosed in the disclosure document. The terms are less favourable than would be expected for arms-length underwriting.
Property management	The fees for property management and leasing must be demonstrably at industry standards for an arms-length transaction. In particular, property management fees must reflect the complexity of the management task. There is no entitlement if an agent is appointed.
Accounting and tax	This fee is properly disclosed in the disclosure document and is consistent with fees charged by professional accountants or less favourable.
Registry and administration	No fee is to be charged for this service.

In the event that a supplier of a service other than those listed in the table is a related party, this engagement will need to be approved by the Board, which must be satisfied that the terms of the engagement are such that approval from the members of the scheme is not required..

Reporting actual or potential conflicts of interest

The following parties must not be a related party (as defined in s288 of the Act) of the trustee or responsible entity of any managed investment scheme which Fawkner manages:

- the auditor or reviewing accountant;
- the auditor of the compliance plan;
- the valuer of any of the real estate assets.

At the time of engagement by the responsible entity of a managed investment scheme Fawkner may be required to provide a declaration that the providers of these services are not related to the directors of Fawkner or the Asset Manager.

All directors, responsible officers, Board members, authorised representatives, employees and contractors are required to report any actual or potential conflict of interest.

Any director or officer of the responsible entity or Fawkner is required to report any actual or potential conflict of interest at a board meeting if the director or officer has an interest in the matter being dealt with at that board meeting. The conflict will be recorded in the minutes of the relevant board. If the directors consider it appropriate, they may request the consideration of the conflict of interest to be made by the Board in the absence of the director that has disclosed the conflict of interest. The remaining directors will determine how to deal with the disclosed conflict of interest in a manner that satisfies the interests of clients, the directors and the responsible entity, which may include a determination that disclosure of the conflict of interest be made to the responsible entity and/or clients.

All employees and contractors are required to report any conflict of interest to the Fawkner Executive Director in the first instance. The Executive Director shall report and arrange for details to be submitted to the Board for consideration. The Board minutes shall record the result of the applications and the Executive Director will record the outcome in the Conflicts of Interest Register.

The onus is on a director to declare their interest in any transaction at the monthly Board meetings.

Where the Executive Director has a conflict of interest they shall report the conflict in writing to the chairman of the Board and record the conflict in the Conflicts of Interest Register.

Annually the directors will review the register of creditors to confirm that the parties who may not be related entities are not related entities and this will be documented in the Board minutes.

If the Board is unable to effectively determine the action to be taken in relation to any disclosed conflict of interest, the Board will refer the matter to Fawkner's external advisers for assistance.

It should be noted that Perpetual Trust Services as responsible entity for Cashel USA Residential Property Fund also has its own policy for managing conflict.

Conflicts of Interest Register

The Compliance Officer will maintain a Conflicts of Interest Register (**Register**) and enter all conflicts of interest related to USARFM into the Register.

The Register shall record any special incentives that are offered to directors or representatives for the distribution of a Fawkner product, or a product of another AFS Licensee.

The Register will also contain details of inter-company relationships that may provide a source of conflict, either now or in the future, for ongoing review.

Details of directors and senior employee share or unit holdings in all Fawkner managed entities shall be reported in a standing report to the Board.

Disclosure of Conflicts

Where Fawkner determines that a conflict exists but can be managed through appropriate disclosure to clients, Fawkner must ensure that adequate disclosure is made. This requires providing a clear, concise and effective form of disclosure to allow clients to make an informed decision about how the conflict may affect the service being provided to them.

Typically, the disclosure would be made in the offer document for the relevant financial product. However, where appropriate, disclosure can be made by a specific communication to clients on its website or by letter.

Fawkner must ensure that disclosure about a conflict of interest:

- is timely, prominent, specific and meaningful to the client;
- occurs before or when the relevant financial service is provided, but in any case at a time that allows the client a reasonable time to assess its effect; and
- refers to the specific service to which the conflict relates.

In situations in which a conflict of interest arises that is confidential, Fawkner must assess whether any disclosure can be given and whether the conflict can be adequately managed through other mechanisms. In such circumstances, it may be appropriate that the conflict be avoided altogether.

Controlling Conflicts of Interest

The Board will:

- Identify conflicts of interest relating to the business of Fawkner;
- Assess and evaluate those conflicts of interest; and
- Decide upon, and implement an appropriate response to those conflicts of interest.

Depending on the circumstances and the nature of any conflicts of interest, it may be appropriate to:

- Disclose the conflict of interest;
- Provide an alternative source of service to a client or member;
- Decline to provide services to the client; or
- Initiate internal disciplinary action.

In considering Fawkner's obligations in response to any actual or potential conflict, Fawkner should consider, amongst other things, the following questions:

- Is Fawkner providing its financial service in a manner that unfairly puts the interests of Fawkner or any of its directors ahead of the members of the scheme?
- Is Fawkner providing financial services in a way that unfairly puts the interests of one member ahead of the interests of other members?
- Is Fawkner using knowledge about the members in a way that is likely to advance the interests of Fawkner without sufficient disclosure to those affected?

Monitoring Conflicts of Interest

The Board will monitor all conflicts of interest on a routine basis to ensure all conflicts of interest are identified and disclosed where necessary.

Conflicts of interest will form part of the Fawkner Compliance Measures Plan and the Compliance Measures Plan for each managed investment scheme which Fawkner manages. This policy and its enforcement will form part of the Risk Register of Fawkner, reviewed by the Board.

Compliance Measures

The Board will monitor all conflicts of interest and maintain the conflicts of interest register.

Where a conflict of interest has not been adequately disclosed it will be recorded in the Fawkner Breach Register and referred to the Board in the first instance and tabled at the Board meetings where the conflict relates to the operation of a managed investment scheme which Fawkner manages.

POLICY REVIEW

This policy will be reviewed on an annual basis. As appropriate, that review may be carried out with the assistance of external compliance advisers and/or the auditor of Fawkner.

Date of most recent management review: 26 May 2020

Date of approval by the Fawkner Board: 31 May 2012

CONTACT

Unit holders or advisers who have any questions or would like to request more information available to existing or potential investors, are invited to contact Fawkner investor relations:

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APPENDIX A

Examples of Conflict of Interest Activities and Relationships

The following activities illustrate types of potential or actual conflicts of interest that should be avoided and disclosed, as applicable, in accordance with this policy. The list is not all inclusive and is intended to provide guidance only.

- **Conflicting duties:** participating in decisions relating to another party that may conflict with the interests of Fawkner.
- **Self-benefit:** Using your position or relationship within Fawkner to promote your own interests or those of your family, including using confidential or privileged information gained in the course of your participation or employment at Fawkner for personal benefit or gain or for the personal gain or benefit of family members.
- **Conflicting relationships:** Where outcomes may benefit others rather than Fawkner.
- **Influence peddling:** Soliciting benefits for yourself or your family from outside organisations in exchange for using your influence to advance the interests of that organisation within Fawkner.
- **Other business relationships and dealings:** Approving contracts with organisations in which you or your family have a significant financial or other interest or relationship, particularly if you are in a position to influence major decisions, are responsible for review, negotiation and approval of contracts, or otherwise direct Fawkner business dealings with that entity or business.
- **Intellectual Property:** Inappropriate or unauthorised use of resources/materials developed under the aegis of USARFM or potential conflicts relating to the development and use of resources.
- **Outside commitments:** Participating in social or political activities is not restricted as long as you participate as an individual and not as a representative of Fawkner.
- **Business transactions:** Directly or indirectly leasing, renting, trading, or selling real or personal property to Fawkner.
- **Use of Fawkner property for personal advantage:** Using or taking Fawkner resources, including facilities, equipment, personnel, and supplies, for private use or other unauthorised non-Fawkner activities.
- **Recording or reporting false information:** Misrepresenting, withholding, or falsifying relevant information required to be reported to external parties, or used internally for decision making purposes, in order to derive personal benefits.
- **Gifts:** Personally accepting anything of value (unless nominal), including without limitation, payments, gifts, or loans from organisations or individuals that have dealings with Fawkner.
- Employees or their associates providing services to Fawkner.