

## Questions on notice for the Scrutiny of Financial Advice inquiry

[Received from ASIC on 30 November 2015]

- Ms Grazyna Monka gave evidence to the committee that she has invested \$56,000 in two options for the Moira Park Green City development (425 Raftery Road, Kialla Victoria), which were later transferred to two options in the Botanica estate, located at 805 Archer Road, Kialla Victoria, which is part of ASIC's proceedings against 21<sup>st</sup> Century Group.<sup>1</sup> Ms Monka also paid \$3,300 for a bronze membership to the 21<sup>st</sup> Century Group.<sup>2</sup> Ms Monka told the committee that she is 'unsure of what has become of the \$60,000' outlaid on original Moira Park development<sup>3</sup>.

1. Mr Jamie McIntyre contended that:

...in trying to resolve matters with the ASIC, we have made many offers to refund option holders in projects to resolve the matter, and ASIC has continually refused, because ASIC want liquidators applied, which would cause losses...<sup>4</sup>

To ASIC's knowledge, has the 21<sup>st</sup> Century Group made offers to ASIC to refund investors in the five land banking developments which are the subject of Federal Court proceedings? If so, how many investors have the 21<sup>st</sup> Century Group proposed to provide refunds to? In addition, what has been ASIC's response to this offer?

**Answer:**

**ASIC received two refund proposals from the 21<sup>st</sup> Century Group on 2 September and 22 September 2015.**

**In the 2 September 2015 proposal, 21<sup>st</sup> Century Group offered to make the following refunds:**

- **\$372,175 to 17 Botanica investors who acquired options from the 21<sup>st</sup> Century Group itself within 120 days of the date of the letter;**
- **\$127,000 to all the Melbourne Grove investors within 120 days of the date of the letter;**
- **\$677,698 to all the Oak Valley Estate investors within 12 months' of the date of the letter;**
- **Refund to all the Secret Valley Estate investors only to be made if settlement of the land did not occur by way of payments of \$112,681 per month over 24 months; and**
- **No refunds to Bendigo Vineyard Estate investors as the 21<sup>st</sup> Century Group intended to sell the land to a licensed developer who would register the project as a managed investment scheme subject to Federal Court approval.**

**In the 22 September 2015 proposal, 21<sup>st</sup> Century Group offered to make the following refunds:**

- **\$372,175 to Botanica investors who were sold options by 21<sup>st</sup> Century Group within 30 days of the date of the letter;**
- **\$127,000 to all Melbourne Grove investors within 60 days of the date of the letter;**
- **\$677,698 to all Oak Valley Estate investors within 6 months of the date of the letter;**

<sup>1</sup> Ms Grazyna Monka, *Committee Hansard*, 30 September 2015, p. 7.

<sup>2</sup> Ms Grazyna Monka, *Committee Hansard*, 30 September 2015, p. 7.

<sup>3</sup> Ms Grazyna Monka, *Committee Hansard*, 30 September 2015, p. 7.

<sup>4</sup> Mr Jamie McIntyre, CEO of 21<sup>st</sup> Century Group, *Committee Hansard*, 30 September 2015, p. 33.

- **No refund to Secret Valley Estate investors as the 21<sup>st</sup> Century Group intended to sell the land and register the project as a managed investment scheme subject to Federal Court approval; and**
- **No refund to Bendigo Vineyard Estate investors as the 21<sup>st</sup> Century Group intended to sell the land to a licensed developer who would register the projects as a managed investment scheme subject to Federal Court approval.**

**ASIC responded to the 21<sup>st</sup> Century Group on 25 September 2015 stating that ASIC was concerned that the respondents did not provide any material in support of the offer to make refunds to investors. As a result, ASIC was concerned that the respondents did not have the financial capacity to carry out any proposal. Part of ASIC's concerns, in bringing its proceeding, was that investor funds had been removed from the development companies' bank accounts and that the option fees paid by investors have been transferred to related companies of the respondents.**

**Further, when the proposals were received, the interests of investors were already protected by undertakings to the Court provided by the respondents on 21 August 2015. ASIC did not want to disturb that protection without being satisfied that investors' interests would not be adversely affected.**

**ASIC also said in its response that if the 21<sup>st</sup> Century Group had provided a detailed proposal as to a process whereby the interest of option holders could be transferred or effectively converted into interests in some lawfully constituted and registered managed investment scheme and done so in a timely manner, ASIC would have considered it. ASIC also said that any proposal put forward would have to have been approved by the Court.**

**In relation to the 21<sup>st</sup> Century Group's proposal regarding Secret Valley Estate and Bendigo Vineyard Estate, ASIC was informed by the proposed licence holder that was to purchase the land that they did not in fact intend to convert the Bendigo Vineyard Estate and Secret Valley Estate developments into managed investment schemes.**

**At a hearing on 8 September 2015, the Federal Court did not allow settlement of the Secret Valley Estate land to proceed and in so doing, noted concerns in relation to the solvency of the developer of the land, Secret Valley Estate Pty Ltd.**

2. To ASIC's knowledge, is the 21st Century Group (or related companies) able to provide investors with refunds? Do the circumstances differ for developments which are subject to ASIC's court proceedings in the Federal Court (for example, the Botanica development) versus developments marketed or operated by 21st Century Group which are not the subject of court proceedings (such as 425 Raftery Road, Kialla)?

**Answer:**

**As stated above, part of ASIC's concerns, in bringing its proceeding, was that investor funds had been removed from the development companies' bank accounts and that the option fees paid by investors have been transferred to related companies of the respondents. ASIC also has concerns in relation to the solvency of the development companies and it does not appear that there are sufficient funds to provide refunds.**

**ASIC is unaware of the status of the developments not the subject of its court proceedings (such as Raftery Road and Kialla).**

3. Specifically in the case of Ms Monka, Mr McIntyre committed to providing Ms Monka with a refund of \$60,000 within 30 days of the court hearing on 8 October 2015.<sup>5</sup> To ASIC's knowledge, are there any regulatory or legal obstacles to Mr McIntyre providing this refund to Ms Monka within this timeframe?

**Answer:**

**As noted above, the Federal Court made orders by consent on 7 October 2015 included an order restraining the 21<sup>st</sup> Century Group (including Mr McIntyre) from receiving, soliciting or disposing of any funds in connection with the schemes subject to ASIC's proceeding. The scheme in which Ms Monka invested is subject to that order and, as such, a refund could not be paid unless those orders were varied.**

4. Can ASIC provide the committee with an update on the outcome of the court hearing on 8 October 2015 (and any subsequent court hearings)?

**Answer:**

**The 21<sup>st</sup> Century Group consented to ASIC's interlocutory application and Deloitte were appointed provisional liquidators of the development companies. Deloitte will provide a report as to the affairs of the companies by 15 December 2015.**

**The proceeding has been set down for a directions hearing on 4 December 2015 where orders are likely to be made timetabling future steps in the proceeding. ASIC is still seeking final orders against the respondents, but a date for the hearing of ASIC's final relief has not yet been set.**

5. What impact do the Federal Court's interim orders have for investors in the five land banking developments?

**Answer:**

**The provisional liquidators now have control of the assets of all respondent companies.**

**The provisional liquidators will report on several matters including:**

- i. the identities of the investors and the nature and extent of their interests;
- ii. any payments made to or by investors in relation to the schemes;
- iii. any money owing to the investors;
- iv. the nature and identity of the liabilities of the schemes including, but not limited to, liabilities to the investors; and
- v. the most appropriate manner and timing of managing and realising any assets or property of the schemes so as to most benefit the investors.

**Further, the interim orders restrain the 21<sup>st</sup> Century Group from doing any act in furtherance of the schemes or receiving, soliciting or disposing of any funds in connection with the schemes subject to the court proceeding, so investors will have to await the outcome of the provisional liquidator's report.**

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<sup>5</sup> Mr Jamie McIntyre, CEO of 21<sup>st</sup> Century Group, *Committee Hansard*, 30 September 2015, p. 34.

6. In ASIC's view, is it likely that options investors in land banking schemes (both those subject to ASIC's court proceedings against 21<sup>st</sup> Century Group but also other developments including the Midland Hwy development in Bendigo as well as Market First's Veneziane and Foscari developments) will be able to either see the promised return on their investment or receive a refund of their option fee?

**Answer:**

**ASIC's view is that it is unlikely that options investors in the 21<sup>st</sup> Century land banking schemes will be able to see their return on their investment or receive a refund of their option fee given that the developments do not appear to be capable of being completed because:**

- i. the relevant councils have stated that the underlying land in each development will not be, or is highly unlikely to be, rezoned as residential land for the foreseeable future;
- ii. the underlying land in each development is either:
  1. not yet owned by the 21<sup>st</sup> Century Group; and/or
  2. financed by way of mortgage;
- iii. at present, there appears to be insufficient funds available to:
  1. complete the developments;
  2. refund the money paid by Investors if the Developments cannot be completed; and/or
  3. pay money, whether in respect of any debt, by way of damages or compensation or otherwise, or to account for financial products or otherwise, to investors.

**In relation to the Midland Hwy project the Administrators of Midland Hwy Pty Ltd have stated in their report dated 14 October 2015 that of the \$24 million that had been invested by option holders in the project, only around \$1.7 million had been put towards development expenses, with the remainder of the funds being dissipated for various other purposes. The Administrators also believe the company has been insolvent as of March 2012 and potentially as early as 7 September 2011.**

7. Is it likely that off-the-plan investors in land banking schemes will be able to access their deposit monies which are being held on trust?

**Answer:**

**There were no off-the-plan investors in the land banking schemes that are the subject of the 21<sup>st</sup> Century proceeding.**

**In relation to Midland Hwy and other land banking developments where investors have paid deposits that are held on trust or by bank guarantee, the deposits may be accessed if various conditions in the Contracts of Sale are not satisfied, such as the plan of subdivision not being registered.**

8. Are any specific arrangements being made to limit losses for investors in land banking schemes?

**Answer:**

**On 14 July 2015, ASIC requested undertakings to be given by the 21<sup>st</sup> Century Group companies and Jamie McIntyre in his personal capacity that they would not:**

- **promote the developments;**
- **act in furtherance of the developments;**
- **receive, solicit or dispose of any funds in connection with the developments;**
- **remove any assets from Australia or charge any assets; and**
- **dispose of or destroy any books and records in relation to the developments.**

**The 21<sup>st</sup> Century Group and Jamie McIntyre were willing to offer limited undertakings in which they requested carve-outs to permit funds to be used in furtherance of the Secret Valley Estate and Bendigo Vineyard Estate projects. ASIC agreed to a carve out in relation to the Bendigo Vineyard Estate project to allow for interest payments on the loan entered into by Bendigo Vineyard Estate Pty Ltd with the National Australia Bank.**

**These undertakings were given to the Federal Court on 21 August 2015. The Federal Court subsequently made interim orders to this effect on 7 October 2015.**

9. What steps, if any, is ASIC taking to communicate to investors about the court proceedings as well as concerns raised about the viability of other projects, including in relation to any steps investors could be taking to protect their investment?

**Answer:**

**ASIC has issued media releases and also published a frequently asked questions (FAQ's) page dedicated to the 21<sup>st</sup> Century Group proceedings. The FAQ's page provides answers to common questions received by ASIC from investors. ASIC has also provided links to various court documents in the proceedings and links to ASIC's MoneySmart website for more information about land banking.**

10. What are the next steps for ASIC's court proceedings?

**Answer:**

**ASIC is seeking final orders against the respondents. The final orders ask the Court to order that the respondents have been operating a managed investment scheme, and to wind up the development companies that have been conducting the schemes, as well as the schemes themselves. ASIC is also seeking orders preventing Jamie and Dennis McIntyre from providing financial services.**

**A date for the hearing of ASIC's final relief has not yet been set.**

11. Can ASIC provide the committee with statistics about how many people have viewed the *MoneySmart* webpage on land banking?<sup>6</sup>

**Answer:**

**Our land banking webpage has had 1,759 visits (1,565 unique visits) since it went live on 6 August 2015. The page also received 434 clicks from the promotion in our September enewsletter.**

12. Does ASIC use any techniques or tools to try and ensure that people who search for particular key terms (such as 'land banking' or 'property investment schemes') will see the relevant *MoneySmart* webpage at the top of the search results?

**Answer:**

**We optimise every new *MoneySmart* webpage to ensure that search engines find the content relevant and place it at the top of relevant search results. The land banking page was no exception. We ensured that the page had the right page name for the terms people are looking for and we optimised the introductory text, cascading headings, keywords and metadata.**

**Our efforts appear to working as the page is the 5th item in a google search for 'land banking'.**

**We have also included links to the Land banking page from other relevant *MoneySmart* pages such as *Property Schemes* and *Buying a home*.**

13. In ASIC's view, do retail investors understand the risks associated with land banking schemes?

**Answer:**

**ASIC is concerned that investors who get involved in land banking schemes are not aware that the schemes are often unregulated and that they have little protection if something goes wrong. Further, ASIC is concerned that because of the high pressure tactics used by promoters to sign up investors, they do not adequately read the agreements that they enter into, or seek independent advice in relation to the investment.**

**If the land banking scheme is a managed investment scheme, there are strict legal requirements that must be met, including giving investors a product disclosure statement (PDS). A PDS must include information about the scheme's key features, fees, commissions, benefits, risks and complaints handling procedure.**

**As indicated above, ASIC has information on its *MoneySmart* webpage in relation to the risks associated with land banking schemes.**

14. Should retail clients be able to invest in wholesale options for land banking schemes? Is this type of product ever going to be suitable for a retail client?

**Answer:**

**Like any complex investment strategy, ASIC considers that retail clients should carefully review all documentation, including any PDS, and obtain independent professional financial advice before they invest in a land banking scheme.**

**Investors may also want to seek independent legal advice as to whether the land banking scheme constitutes a managed investment scheme, and if so, whether the scheme is registered.**

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<sup>6</sup> <https://www.moneysmart.gov.au/investing/investment-warnings/land-banking>

**If the scheme is registered and regulated, then fully informed retail clients are able to choose whether to invest in this kind of product.**

15. Does ASIC think that changes to the regulatory framework are necessary to prevent rogue operators from 'resurfacing' or continuing to participate in property investment scams?

**Answer:**

**ASIC has power to ban persons from the Australian financial services industry if they have contravened financial services legislation. In this regard, in the 21<sup>st</sup> Century land banking proceeding, ASIC is seeking injunctions restraining Jamie and Dennis McIntyre from operating a financial services business.**

Are potential investors often referred by the operator or promoter of the scheme to other professional services agents like lawyers, accountants or financial advices who have a connection with the scheme?

**Answer:**

**Yes, ASIC has identified many instances where investors are referred by the operator or promoter of the scheme to other professional service agents who are associated with the operators or promoters of the scheme. In the case of Midland Hwy Pty Ltd (Administrators Appointed), the developer of the Hermitage Bendigo/Acacia Banks scheme, the administrators have raised concerns as to a conflict of interest by a lawyer who acted for both the operators of the scheme and the investors.**

16. How many people does ASIC estimate have invested in land banking schemes across Australia over the last five or so years?

**Answer:**

**In relation to the land banking schemes that ASIC is investigating, comprising of the 21st Century schemes and the Market First schemes, there are approximately 2000 investors who have purchased either options or off the plan contracts.**

17. ASIC recently obtained an urgent injunction against companies marketing a property development in the Pilbara in Western Australia.<sup>7</sup> Could ASIC provide the committee with an overview of ASIC's concerns about this investment seminar and an update on the court proceedings?

**Answer:**

**ASIC has power ASIC alleges that the proposed Pilbara property investment was marketed and promoted by 21<sup>st</sup> Century Property (Property Tuition Pty Ltd), 21<sup>st</sup> Century Education (Education Holdings Pty Ltd) and Macro Realty Developments Pty Ltd using the tagline "Do you know how to buy Australian property, no money down?". The proposed investment was to involve investors being appointed as directors and shareholders of a company and creating a trust. Investors were then to cause that company to acquire certain properties from Macro in Newman Estate, Western Australia. The investors were to be paid a director's fee but agreed that Macro would be the sole decision-maker for the company.**

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<sup>7</sup> ASIC, 'ASIC restrains Macro Realty Developments Pty Ltd and Jamie McIntyre's 21<sup>st</sup> Century Property and 21<sup>st</sup> Century Education from promoting Pilbara property investment', Media release 15-250MR, 14 September 2015.

**ASIC was concerned that by agreeing to become a director of a company where Macro will remain the sole decision-maker for all business associated with that company, 21<sup>st</sup> Century and Macro are counselling and procuring investors to contravene their director's duties under the Corporations Act. ASIC is also concerned the investment documents in relation to the proposed Pilbara property investment are misleading and deceptive, and that the investment proposal is a financial product.**

**The provisional liquidators appointed to 21<sup>st</sup> Century Property and 21<sup>st</sup> Century Education have informed ASIC that they did not object to the relief sought in the proceeding. Macro Realty Developments Pty Ltd has agreed to injunctions in the proceeding, but objects to the declarations that ASIC is seeking against it. The hearing of the matter is set down for Monday, 21 December 2015.**

18. What are the risks for people who attend investment seminars? What concerns or complaints have been raised with ASIC about conduct or representations made at investment seminars?

**Answer:**

**Property spruiking events and investment seminars are often high pressure environments and participants can be rushed into making a decision. People are usually not given enough time to consider the investment carefully or to receive independent advice before they sign up.**

**ASIC has received numerous complaints over a number of years and spanning over different investment products in relation to misrepresentations, unlicensed financial product advice and high commissions (to name a few).**

**More information on the risks associated with investment seminars can be found on ASIC's MoneySmart website:**

**<https://www.moneysmart.gov.au/investing/investment-warnings/investment-seminars>.**

19. Some investors have reported purchasing options in land banking schemes through a self-managed superannuation fund (SMSF).<sup>8</sup> Could ASIC outline the regulatory regime for establishing SMSFs and developing an investment strategy for an SMSF?

**Answer:**

**A superannuation fund is a special type of trust, set up and maintained for the sole purpose of providing retirement benefits to its members (the beneficiaries). SMSFs have fewer than five members and all members are also trustees, or directors of the corporate trustee (if applicable) (see s17A of the Superannuation Industry (Supervision) Act 1993 (SIS Act)).**

**SMSFs are overseen primarily by the Australian Taxation Office (ATO). ASIC's role in relation to SMSFs, however, is to regulate the 'gatekeepers', i.e. those who provide advice and services to SMSFs, including:**

- **financial planners;**
- **accountants;**
- **SMSF auditors;**
- **providers of products and services to SMSFs.**

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<sup>8</sup> For example, Ms Grazyna Monka, *Committee Hansard*, 30 September 2015, p. 7.

**These services are primarily regulated by the Corporations Act 2001 (Corporations Act) and the SIS Act.**

**The ATO's role is to regulate SMSFs in accordance with the superannuation and income tax laws. This regulatory framework is provided primarily in the SIS Act, the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) and the Income Tax Assessment Act 1997. Unlike APRA-regulated funds, SMSFs are not subject to prudential regulation. The ATO's focus is on compliance with the regulatory requirements. It has no role in overseeing the quality or appropriateness of an SMSF's investments.**

**In order to establish an SMSF, a trust must first be created. Creating a trust generally requires:**

- appointment of trustees;
- consideration of assets;
- identifiable beneficiaries; and
- the intention to create a trust.

**Once the trust deed is executed the SMSF is established, and must be registered with the ATO by applying for an Australian Business Number (ABN).**

**Before an SMSF can make an investment, the SMSF must have in place an investment strategy. This sets out the fund's investment objectives and specifies the types of investments the fund can make. The SMSF must make investments within the framework of the fund's investment strategy.**

**There is no requirement that a person seek advice before deciding to establish an SMSF. However, the engagement of professionals at some point is generally necessary in order to either establish the SMSF, seek advice on the type of investments to make or prepare annual financial statements. An SMSF auditor must be engaged to conduct an audit on the SMSF's financial statements and compliance with the superannuation laws each year.**

20. What qualifications or licencing requirements must be met when providing advice in regards to SMSFs?

#### ***Licensing requirements***

**A person who carries on a financial services business in this jurisdiction must hold an Australian financial services (AFS) licence: s911A of the Corporations Act 2001 (Corporations Act). This includes where a person carries on a business of providing financial product advice about an SMSF.**

**A number of licensing exemptions do apply, for example:**

- a person who is authorised by another AFS licensee: s911A(2)(a) of the Corporations Act;
- a 'recognised accountant' providing advice to establish or windup an SMSF: reg7.1.29A of the Corporations Regulations 2001 (Corporations Regulations) (this exemption will be repealed from 1 July 2016); and
- advice on the administration requirements of an SMSF: reg7.1.29(3)(c).

#### ***Training requirements***

**A person who holds an AFS licence (or is authorised by an AFS licensee) must be competent to provide the financial services covered by the licence: s912A of the Corporations Act. The current training requirements for financial product advisers giving advice to retail clients are set out in ASIC Regulatory Guide 146 Licensing: Training of financial product advisers (RG 146).**

**Whether a person is giving general or personal advice, a person must complete a course that provides:**

- generic knowledge relevant to the products the person is advising on and the markets in which they operate (e.g. the economic environment, operation of financial markets and financial products); and
- specialist knowledge about the specific products the person is advising on.

**A person who provides personal advice must also be able to apply appropriate skills in relation to the activities and markets in which they operate. This includes establishing a relationship with a client, identifying and analysing the client's objectives, needs and financial situation, developing and presenting appropriate strategies and solutions, implementing the agreed approach and maintaining appropriate documentation.**

**Advice on 'Tier 1' products (e.g. investments, superannuation and life insurance) requires a higher standard of training compared to 'Tier 2' products (e.g. basic deposit products and general insurance). A person giving advice on Tier 1 products must have qualifications that are broadly equivalent to a Diploma level under the Australian Qualifications Framework. A person giving advice on Tier 2 products must have qualifications that are broadly equivalent to a Certificate III.**

**A person may also be individually assessed by an authorised assessor against the relevant training standards.**

**Note, the Government has recently announced it will develop legislative amendments to raise the professional, ethical and educational standards of financial advisers.**

21. Have the Future of Financial Advice (FOFA) reforms changed any aspects of the regulatory regime for SMSFs over the past couple of years, particularly in regard to consumer protection?

**Answer:**

**The FOFA reforms made a number of changes to the obligations that apply to financial product advice (Pt 7.7A of the Corporations Act). This includes advice to establish an SMSF or to use an SMSF to make a particular investment.**

**The objectives of the reforms were to improve the trust and confidence of retail investors in the financial planning sector. They sought to achieve this by increasing the standard of financial advice and removing certain conflicts of interest, such as commissions.**

**Key elements of the FOFA reforms include:**

- **amendments to the conduct obligations for financial advisers including an obligation to act in the client's best interests and to prioritise the client's interest when giving personal financial product advice (previously advisers were required to have a reasonable basis for advice);**
- **a prospective ban on conflicted remuneration, including commissions and volume-based payments;**
- **a requirement to send an annual fee disclosure statement (FDS) to clients with ongoing fee arrangements;**
- **a requirement that advisers obtain their client's consent every two years to continue the ongoing fee arrangements ('opt-in'); and**
- **enhanced licensing and banning powers for ASIC.**

**The FOFA reforms also remove the exemption for 'recognised accountants' to hold an AFS licence for advice to establish or windup an SMSF (reg7.1.29A of the Corporations Regulations). Accountants relying on this exemption must be licensed from 1 July 2016 in order to continue to provide this type of advice. A new limited licensing regime was introduced from 1 July 2013 to provide an alternative to a traditional AFS licence for accountants and other professionals. This effect of this change will mean that all advice to establish or windup an SMSF will fall within the AFS licensing framework and will also be subject to other obligations such as the best interest's duty and the requirement to provide a Statement of Advice.**

22. What type of investments are SMSFs able to invest in? Are there any restrictions on what investments can be made using SMSF funds or any procedural safeguards (for example, needing to receive advice from an adviser before being able to establish an SMSF or invest SMSF funds)?

**Answer:**

**As a general rule, an SMSF may make any type of investment provided it is made on a commercial 'arm's length' basis.**

**Restrictions apply to some investment related activities, for example:**

- **acquiring assets from related parties;**
- **lending money to fund members or relatives; and**
- **borrowing.**

**Investments in collectables and personal-use assets must comply with the relevant investment restrictions and meet the requirements of reg13.18AA of the SIS Regulations.**

**An exception to the restrictions on borrowing is provided for borrowing under limited recourse borrowing arrangements subject to the requirements under ss67A-67B of the SIS Act.**

**There are no legislative requirements that an SMSF receive financial product advice before making any particular type of investment.**

23. Are there any reasons why a person (particularly a retail client) could not use their SMSF to invest in products or schemes promoted at investment seminars?

**Answer:**

**There are no restrictions on a person, including a retail client, using their SMSF to invest in products or schemes promoted at an investment seminar, provided the investment type is permitted (see answer above).**

24. Through its investigations, is ASIC aware of investors who have invested in land banking schemes through SMSFs?

**Answer:**

**Yes, approximately 60% of investors who invested in land banking schemes have invested through SMSF's. The promoters or scheme operators refer investors to particular companies to establish the SMSFs.**

25. In particular, are there any reasons why a person (particularly a retail client) could not use their SMSF to invest in options in a land banking scheme?

**Answer:**

**There are no regulatory legal impediments to stop a person, including a retail client, investing in options in a land banking scheme by utilising their SMSF.**

**However, the trust deed of a particular SMSF may dictate in which assets a fund can invest.**

26. If an adviser or accountant established a SMSF and assisted a retail client to invest the majority of their SMSF in options in a land banking scheme, for example, would ASIC consider this advice to be appropriate and (if applicable) in the best interests' of the client?

**Answer:**

**The obligations to provide advice that is in the best interests of the client and to provide appropriate advice applies only when a person provides personal advice to a retail client (see ss766B and 961B of the Corporations Act).**

**Whether personal advice is appropriate and in the best interests of a client will depend on an individual client's objectives, financial situation and needs (i.e. the client's relevant circumstances).**

**We often closely scrutinise personal advice which recommends a high risk strategy or high risk product. However, each case is assessed on its merits to determine whether the recommendation was in the best interests of the client and appropriate given their relevant circumstances.**

27. What guidance has ASIC released about the risks and benefits of SMSFs aimed at retail clients who may be considering establishing a SMSF?

**Answer:**

**ASIC's MoneySmart website provides information about what an SMSF is, the risks and costs associated and outlines a number of factors that a person should take into account when considering whether to establish an SMSF:**

**<https://www.moneysmart.gov.au/superannuation-and-retirement/self-managed-super-fund-smsf>**

**The ATO provides similar information on its website.**

**ASIC has also issued guidance for financial advisers setting out the risks and costs associated with SMSFs that an adviser should consider, discuss and disclose to a retail client when giving advice to establish, or switch to, an SMSF. For example, see Information Sheet 205 Advice on self-managed superannuation funds: Disclosure of risks (INFO 205), Information Sheet 206 Advice on self-managed superannuation funds: Disclosure of costs (INFO 206) and Report 337 SMSFs: Improving the quality of advice given to investors.**

28. Does ASIC have any concerns about retail clients using their SMSFs to invest in real property or other property-related investment schemes?

**Answer:**

**We would be concerned about retail clients using their SMSFs to invest in real property or other property-related investment schemes if doing so was not appropriate for a client or in their best interests, taking into account the client's relevant circumstances.**