DERIVATIVES RISK STATEMENT – FAQ

2025-26 Financial Year

Document provided by
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This FAQ document has been prepared to provide some background information on the pro forma Derivatives Risk Statement template.

Q1. Why does an SMSF need a Derivatives Risk Statement?

SMSFs investing in derivatives are required (by SIS Reg 13.15A(1)) to have a Derivatives Risk Statement if:

(a) the derivatives give rise to a charge over the assets of the fund, and

(b) that charge is being given in order to comply with the rules of an 'approved body'.

Note: The "approved bodies" are listed in Schedule 4 of the *Superannuation Industry (Supervision) Regulations 1994*.

The Statement is required so the trustees can be seen to have properly assessed the impact derivatives can have on the investment profile of a fund. A Derivatives Risk Statement evidences that a trustee has properly considered risk and risk management in relation to the SMSF investments. A Derivatives Risk Statement is part of the fund's investment strategy.

There are a number of types of derivatives that do not involve a charge and therefore do not require a Derivatives Risk Statement; for example, see ATO Interpretative Decision ID 2007/56 (Contracts for Differences – no fund assets deposited with CFD provider). Refer ATO ID 2007/57 where amounts were deposited by the trustee to an account in respect of which a charge was granted by the trustee.

The ATO requires that SMSF auditors ensure that if the SMSF wants to undertake a derivatives transaction on exchanges operated by approved bodies (including the Australian Stock Exchange) and in doing so a charge is created over asset(s) of the fund (for example, to meet the obligations of the exchange for collateral), then the fund must have a Derivatives Risk Statement, the derivatives transaction must be in accordance with the Derivatives Risk Statement, and the charge must be consistent with and permitted by the Derivatives Risk Statement.

Q2. What is a derivative?

A "derivative" is a financial asset or liability the value of which depends on or is derived from other assets, liabilities, or indices.

Derivatives transactions include a broad assortment of instruments such as options, futures, warrants, swaps or CFDs (contracts for difference).

Q3. What does a Derivatives Risk Statement do?

A Derivatives Risk Statement outlines:

(a) what policies the trustees will adopt in the use of derivatives;

(b) how the trustees will analyse and assess the risks associated with the use of derivatives;

(c) how the use of derivatives fits in with the investment strategy of the fund;

(d) what restrictions and controls the trustee will put in place to regulate the use of derivatives, particularly taking into account the expertise available to the Fund; and

(e) the compliance processes to ensure the controls are effective.

Q4. When should a fund not use derivatives?

Derivatives should not be used:

(a) except as part of the investment strategy as a whole;

(b) for speculation where the exposure of the fund to an asset class would then be outside the limits set out in the fund's investment strategy; or

(c) if the fund's total portfolio would effectively be geared in a manner circumventing the borrowing limitations imposed by s67 of the SIS Act.

Q5. Reporting obligations

The Derivatives Risk Statement will enable the trustee to comply with reporting obligations where applicable.

Q6. If a fund has acquired an investment on a limited recourse basis, does the fund need a Derivatives Risk Statement?

If the asset which has been acquired on a limited recourse basis, is real estate (or an interest in real estate), shares or units in a unit trust, the trustee does not need to prepare and adopt a Derivatives Risk Statement.

If the asset which has been acquired on a limited recourse basis is a derivative, then the trustee will need to prepare and adopt a Derivatives Risk Statement.

Q7. If a fund only has exposure to derivatives through a collective investment, does the fund need a Derivatives Risk Statement?

If the only exposure of a fund to derivatives is through a collective investment – such as a pooled superannuation trust, unit trust or life insurance policy – the trustee does not need to prepare and adopt a Derivatives Risk Statement.

However, the trustee should, before investing in the collective investment (and at any review of the investment) consider the manner and purpose of using derivatives by the collective investment and the impact of such use on the return provided by the collective investment.

Q8. What should be in a Derivatives Risk Statement?

The SIS Regulations require the Derivatives Risk Statement to contain:

(a) policies for the use of derivatives;

(b) analysis of the risks associated with the use of derivatives within the investment strategy;

(c) restrictions and controls on the use of derivatives that take into consideration the expertise available to the Fund; and

(d) compliance processes to ensure that the controls are effective (for example, reporting procedures, internal and external audits, and management procedures).

The ATO does not provide a precedent document for a Derivatives Risk Statement, nor is there anything in the SIS Act or Regulations that at assists or regulates the format of such a Statement. Previously, APRA set out its views for superannuation funds it regulated in its Circular II.D.7 *Derivatives (dated 17 February 1997 and revised July 2006).* That circular summarised the relevant law, set out APRA's views, and provided guidance on the structure of such a statement. That circular has been withdrawn and replaced by the much more general APRA Prudential Practice Guide SPG220 – Risk Management which deals with how funds should deal with a number of risks including derivatives risk.

The ATO, which regulates SMSFs, has not issued a guideline on this topic so it is believed that the most appropriate course for the trustees of an SMSF is to adopt a Derivatives Risk Statement generally in line with APRA's Practice Guide.

The now withdrawn APRA circular suggested that the Statement be in two parts:

(a) Part A of the document is called the "Fund Reference Statement" and sets out the framework for derivatives investment and links it to the SMSF's investment strategy.

(b) Part B is the detailed Derivatives Risk Statement which covers all detailed aspects of derivatives use and control by the trustee for the implementation of derivatives investment decisions.

It is believed that this remains a viable structure for the Statement notwithstanding that the circular has been withdrawn.

It may be a good idea to attach a copy of the fund's investment strategy to the Statement.

Q9. How does the fund formally implement the Derivatives Risk Statement?

The Trustee should by resolution or minute adopt an appropriate Derivatives Risk Statement. A pro forma minute is included with the Derivatives Risk Statement.

Q10. Additional requirements

Under the SIS Act, if a trustee of a self managed super fund is creating a charge over assets of a fund as part of a derivatives transaction on an Australian or international exchange, the charge must be in relation to the derivatives contract for the purpose of securing the trustee's obligations.

Please contact us with any queries or requests for further information.

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