

Submission to the

Ministry of Economic Development

**SUBMISSIONS AND COMMENTARY ON THE FINANCIAL MARKETS
CONDUCT BILL EXPOSURE DRAFT**

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SUBMISSION BY TRUSTEES EXECUTORS LIMITED TO THE MINISTRY OF ECONOMIC DEVELOPMENT ON THE FINANCIAL MARKETS CONDUCT BILL EXPOSURE DRAFT

INTRODUCTION

This document sets out the submissions and commentary of Trustees Executors Limited (**TEL**) on the Financial Markets Conduct Bill Exposure Draft (**Draft Bill**) released by the Ministry of Economic Development (**MED**) in August 2011.

TEL welcomes the Draft Bill and supports MED's objective of substantially revising New Zealand's securities laws.

TEL has a strong history and culture of protecting the interests of investors in a corporate trust capacity. One of its fundamental roles as a trustee company is to ensure that investors are adequately protected by monitoring the behaviour of issuers and providing collective representation for investors. As such, in reviewing the Draft Bill, TEL has focussed on investor protection and strengthening the role of supervisors and custodians. All of these points will play a part in enhancing investor confidence. In this regard, TEL supports the approach taken in the Securities Trustees and Statutory Supervisors Act 2011 and endorses the adoption of this approach with respect to managed funds within the context of Financial Markets Conduct legislation.

WHO IS TEL?

History

TEL was established in 1881 as the first trustee company to be incorporated in New Zealand. It successfully expanded its business activities when a private Act of Parliament was passed which enabled it to operate as a statutory trust company in 1882.

TEL is authorised under the Trustee Companies Act 1967 to administer the estates of deceased persons and other trust estates. TEL is a trustee corporation under the Securities Act 1978, authorised to act as a trustee and as a statutory supervisor for securities offered to the public.

TEL complies with the Trustee Corporations Association of New Zealand Inc practice guidelines for the performance of personal client services and corporate trust appointments. These guidelines set standards for integrity, competence, financial capacity, internal controls, powers and duties, standards for conflict of interest and for reports from scheme operators.

What does TEL's business involve?

TEL is a professional New Zealand trustee company that provides a full range of financial and trust services to individuals, offshore clients and the corporate sector.

TEL's Private Wealth service offers individuals and families total wealth management strategies, including financial planning, investment management and wealth protection and transfer services.

As a leading provider of corporate trustee and back office securities services in New Zealand, TEL also provides offshore trust services to overseas clients.

The main corporate services offered by TEL are briefly summarised under the headings below.

Corporate Trust

Corporate Trustee and Statutory Supervisor

TEL has established itself as a market leading corporate trustee company. Amongst other things, TEL acts as:

- unit trust trustee for PIE and non-PIE funds;
- trustee for KiwiSaver schemes;
- debt security trustee;
- group investment fund trustee to clients for wholesale and retail investment purposes;
- statutory supervisor for retirement villages, forestry, marinas and other participatory security issues; and
- superannuation scheme trustee.

Securities Services

Custody

TEL provides full custodial and reporting services for all security types, including international custodial services. It specialises in domestic custody (New Zealand and Australia), master custody and settlement services in respect of a range of financial products.

Investment Accounting and Unit Pricing

TEL provides unit pricing services for both wholesale and retail funds, PIEs, unit trusts, GIFs and superannuation funds. It also provides the following core services:

- statutory financial statements;
- periodic investment portfolio reporting;
- portfolio valuation reporting;
- compliance reporting; and
- performance reporting.

Registry for Managed Funds and Superannuation Schemes

TEL provides specialist registry services to both wholesale and retail clients, primarily for managed funds operations. Some of the services TEL offers include client maintenance, payments, statements, reporting and transaction processing.

SUBMISSIONS

TEL supports the general policy direction of the draft legislation and commends the Minister and MED officials for the consultation process that has been followed in the development of this draft Bill. TEL supports the main purposes of:

- Promoting the confident and informed participation of businesses, investors and consumers in the financial markets; and
- Promoting and facilitating the development of fair, efficient and transparent financial markets.

These are important objectives for the continued growth and development of the New Zealand economy, which TEL supports.

As a trustee company, the key areas of interest for TEL in the Draft Bill are provisions relating to managed investment schemes and governance of financial products. However, TEL has also made submissions on a range of other matters contained in the Draft Bill which may impact on its business activities.

TEL's submissions are set out in detail in the table attached as a schedule to this document. In making its submissions, TEL has focussed on the following main themes:

- strengthening the role of the supervisor;
- ensuring investors are adequately protected and informed;
- clarifying the role of the custodian; and
- the adequacy of transitional provisions.

We have briefly explained each of these themes under the headings below. TEL also supports the introduction of a new treatment for discretionary investment management schemes which recognises that while they are a service, they compete with and present many of the same concerns as managed investment schemes. Aspects require further work, which in the time available TEL has not been able to undertake. Accordingly, TEL intends to make further submissions on this area at the Select Committee.

TEL notes it has found the 4 week period for comment on the Draft Bill very demanding, and that has precluded a more extensive submission. As a result TEL may well make a submission on a wider range of issues than is covered in this submission, in its submission to the Select Committee next year.

Further, key aspects of the new regime will be set out in regulations that have yet to be drafted and the content of these regulations will have a major impact on the workability and impact of the legislation. Examples include the content and manner of presentation of the product disclosure statement and the registers. An understanding of these is crucial to understanding how the new regime will work in practice. TEL considers it essential that drafts of those regulations will be made publically available sufficiently in advance of the Select Committee process next year, to allow submitters to understand the context in which to make their submissions to the Select Committee.

Finally, TEL endorses the submissions and commentary prepared by the Trustee Corporations Association of New Zealand Inc (TCA) on the Draft Bill, to the extent not inconsistent with this submission.

STRENGTHENING THE ROLE OF THE SUPERVISOR

Supervisors have an important role in representing the interests of investors. The Draft Bill builds on the foundation created by the Securities Trustees and Statutory Supervisors Act 2011 to strengthen the oversight provided by supervisors. TEL strongly supports that approach. The role of supervisor has a long and generally successful history of protecting investors both in New Zealand and in other jurisdictions.

However, in some areas, the Draft Bill removes or diminishes powers and responsibilities which trustees already have under some of the existing legislation which is to be repealed such as the Unit Trusts Act 1960 or the Superannuation Schemes Act 1989. It is not clear to TEL whether this is intentional or an unintended effect of modernising the language. However, TEL submits that those powers and responsibilities should be retained, as they are important. An example is the current ability of a trustee under section 18 of the Unit Trusts Act 1960 to seek directions from the Court if a direction given to it by a special resolution of unit holders is “objectionable”. It is important to retain this ability to allow a supervisor to protect a minority of unit holders from an oppressive direction by a majority.

ENSURING INVESTORS ARE ADEQUATELY PROTECTED

It is important that participants in schemes who would otherwise be disadvantaged because of the fragmentation of their interests and an inability to speak collectively be given the ability to be represented by one voice through the new regime. As a trustee corporation, TEL acts as a collective representative for investors and is charged with representing their collective interests. Its paramount concern is ensuring that the new regime will adequately protect the interests of investors.

The Draft Bill generally recognises and gives effect to this principle. TEL welcomes and supports that approach. However, there are some aspects of the Draft Bill which require amendment as they are not consistent with this approach. TEL makes submissions on those aspects.

One example, which may not have been intended, arises as a result of the definition of managed investment scheme and of financial benefit. The effect of the current drafting appears to remove from coverage of the Draft Bill certain types of participatory arrangements, because it may be argued that they are set up primarily to provide services to the investors, rather than a financial return. However, such arrangements have historically benefited from being treated as issues of participatory securities under the Securities Act 1978, and those benefits will, it appears, no longer be available to participants. Those benefits include provision of:

- a governance structure which provides a mechanism for participants to hold meetings, formally receive reports and information on levies and make decisions; and
- a structure for representation and collective action to enforce the rights of participants including against the manager of the arrangement.

TEL’s submission is that those participatory arrangements should not be removed from the coverage of the Draft Bill until such time as an alternative regime has been created to offer equivalent protections. The most common examples of participatory arrangements in relation to this issue are marinas, but potentially there are others such as some forms of proportional ownership arrangements. While retirement villages and unit title developments have their

own regimes to address the issues above, marinas and proportionate ownership arrangements do not.

CLARIFYING THE ROLE OF THE CUSTODIAN

The Draft Bill does not provide for the licensing of custodians for managed investment schemes and discretionary investment management regimes. TEL submits that this is a significant omission and should be rectified. Given the importance of ensuring that the assets of collective investment schemes are held in an appropriate manner, TEL considers that a licensing regime for custodians should be introduced by bringing custodians within a comparable licensing arrangement to that in the Securities Trustees and Statutory Supervisors Act 2011.

In making this submission, TEL acknowledges that there are provisions in the Draft Bill giving supervisors responsibility for custodians in relation to managed investment schemes, and giving DIMS managers responsibility for custodians in relation to discretionary investment management regimes. Given the critical role of custodians in the investment value chain, this puts New Zealand out of step with other jurisdictions including Australia.

There is a third area of concern which is not currently addressed in the Draft Bill, but which TEL requests MED to consider further before the Draft Bill is introduced into Parliament. That is the issue of custody for non-discretionary investment management services. Those are currently regulated by the broker provisions of the Financial Advisers Act 2008 which does not require:

- an independent custodian; or
- licensing of the custodian.

As the Access Brokerage collapse in 2004 illustrates, the lack of separation of the holding of assets leaves investors at serious risk in the event of a default. Further, the introduction of a licensing regime for discretionary investment management services is likely to lead to regulatory arbitrage and a movement to non-discretionary investment management increasing this risk.

We consider there may be a potential moral hazard to Government should there be another failure due to this regulatory gap.

ADEQUACY OF TRANSITIONAL PROVISIONS

The overhaul of an entire suite of financial legislation will cause significant and far-reaching change to financial markets and risks destabilising a large amount of investments, incurring significant costs. Comprehensive transitional provisions will need to be included in the legislation to ensure that the repeal and amendments of all the affected acts will not compromise the integrity of existing securities, funds, and ultimately, investors' interests. Adequate discretion will need to be afforded to supervisors and managers to ensure that the transition is effected as smoothly as possible.

A specific example is the need to call meetings of scheme participants to approve changes to trust deeds to reflect the new regime. TEL makes submissions that are designed to mitigate in part the impact by allowing the supervisor to approve required amendments without calling a meeting. The supervisor has both the capability (once it has been licensed) and the responsibility under the Draft Bill to carry out this role in the best interests of participants.

CONCLUSION

TEL would be happy to provide further information on any matter if it would be helpful to MED's review of New Zealand's securities laws. In this regard, please contact Clynton Hardy, whose details are set out below:

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SCHEDULE – SUBMISSIONS AND COMMENTARY ON THE DRAFT BILL

Clause Number	Clause heading	Submission
Part 1	Preliminary provisions	
Clause 6	Interpretation	<ul style="list-style-type: none"> The definition of insolvent should be amended to clarify the definition of “insolvent”. TEL considers the current drafting of the definition of insolvency in the Draft Bill to be unclear. For example, (a)(ii) and (b)(ii) provide that an issuer of a scheme may be insolvent if the value of its assets is less than the value of its liabilities (including contingent liabilities). Trading entities’ balance sheet solvency can fluctuate for arbitrary matters meaning that, under this definition, they would be deemed insolvent on a periodic basis. TEL also submits that it is inappropriate to have regard to an issuer’s or scheme’s contingent liabilities, especially when no account is taken of the likelihood of the contingency occurring (compare section 4 Companies Act 1993 (Companies Act)). TEL suggests that this clause should be redrafted to reflect International Financial Reporting Standards.
Clause 9	Definition of managed investment scheme and of financial benefit	<ul style="list-style-type: none"> TEL strongly believes that the current drafting of clause 9 is inappropriate and problematic. Clause 9(2)(a) should be amended so that a new sub-paragraph 9(2)(a)(iv) is added which reads: <p style="margin-left: 20px;"><i>“(iv) the scheme does not include an investment component”.</i></p> <p>All proportional property schemes which are designed to achieve a financial return should be included within the definition of “managed investment scheme”. The current construction of clause 9(2) could potentially carve out many proportional property schemes which should properly be regulated as managed investment schemes. TEL notes the intention of clause 9(2)(a)(iii) is to not exclude schemes which develop property using pooled investor money, at least in the construction phase, on the basis that the value of the interest is substantially dependent on the use of other scheme participants’ contributions. However, TEL considers that the construction of clause 9(2) does not adequately achieve this objective. The clause has the potential to allow a broader range of schemes to be excluded than is contemplated, which schemes should properly fall within the definition of managed investment scheme. Clause 9(2) should focus on the investment component or purpose behind a scheme, rather than just whether or not the scheme is dependent on other people’s contributions.</p> Clause 9(2)(a) should be amended so that it aligns with the Australian provision and so that a new sub-paragraph 9(2)(a)(v) (on the basis that 9(2)(a)(iv) is included as proposed above) is added, as follows: <p style="margin-left: 20px;"><i>“(a) the purpose or effect of the scheme is to enable persons taking part in the scheme (scheme participants) to contribute money to the scheme as consideration to acquire rights to financial benefits, <u>or benefits consisting of rights or interests in property or contract, produced principally by the efforts of another person under the scheme; and ...</u></i></p>

Clause Number	Clause heading	Submission
		<p><i>(v) the scheme participants would not benefit from collective representation”.</i></p> <p>The definition of managed investment product in clause 8 should also be amended to this effect. Large proportional property schemes which do not have a profit motive and are not intended to generate financial returns but which still need a mechanism for collective action (such as marinas) should be included within the definition of “managed investment scheme”. Investors’ collective interests in such schemes are currently protected. Repealing existing legislation will mean stripping these investors of their current rights. Investors will cease to have an effective statutory framework underpinning their collective voice. The mechanics of participatory securities work well under current legislation. Before the current protections and provisions for proportional property schemes are repealed, reasonable regard should be had to how they will be replaced. Participants still need the collective right to meet, approve and receive accounts and sue, regardless of whether their investment generates a financial return. Often, these investors have invested large capital sums and while they do not receive a financial return, they do receive rights, including the right to on-sell their interests in the scheme. Analogous structures regulated under retirement village or unit title legislation confer such rights. Proportional property schemes which do not have a unifying structure equivalent to a body corporate representing their collective needs are therefore insufficiently protected under the Draft Bill.</p> <p>TEL supports the submissions made by TCA in this regard in their submissions paper.</p>
Clause 11	Meaning of associated person and related body corporate	<ul style="list-style-type: none"> • A new paragraph should be inserted into clause 11(1) which would include in the definition of “associated person” an arrangement where a power of attorney is granted by a person (A) to another person (B) under which the effective management or operational control of A is passed to B. This is proposed as a measure to curtail the practice of a custodian appointing the manager as its attorney for all purposes (with an unlimited indemnity of the custodian) as a means to circumvent legislative controls on custodian/manager independence. Ostensibly, under such an arrangement, the manager carries out its custodial functions under the custodian’s control. In reality, however, this arrangement has often seen the manager acting of its own accord without being truly answerable to the custodian.
Part 2	Misleading or deceptive conduct or false or misleading representations	
		TEL has no particular comments under this part.

Clause Number	Clause heading	Submission
Part 3 and schedules 1 and 2	Disclosure offers of financial products	
Clause 39	Disclosure of material information and content of PDS and register entry	<ul style="list-style-type: none"> • Clause 39(2) relates to the lodging on the register of any material which has been excluded from the PDS and is required in the PDS. TEL suggests that this clause is extended by the inclusion of the following words “<i>and in the case of debt securities or managed investment schemes must inform the supervisor immediately prior to issuing</i>”. <p>The inclusion of these additional words will inform the relevant supervisor of any defects with the PDS which will enable them to facilitate any payments required under clause 62. This will also assist the supervisor in monitoring the issuer’s compliance with its regulatory obligations.</p> <ul style="list-style-type: none"> • TEL queries whether it is intended that a PDS is included in the documents which register entries are required to contain under the regulations. TEL believes that, as a fundamental offer document effectively replacing investment statements under the current regime, it will be necessary that PDSs be included in the register entry in order to maintain an accurate record of the offer of securities. • As a general comment, given that the register of offers of financial products will, in many respects, replace the prospectus, it is very important that the regulations are clear and precise as to how the register, and more broadly, the disclosure regime, will operate. To the extent that the disclosure regime is dealt with in the regulations, sufficient opportunity for consultation will need to be given before they are promulgated.
Clause 40	Meaning of material information in this part	<ul style="list-style-type: none"> • TEL supports option B. As discussed in TEL’s previous submissions on the securities law review document released last year, the broadness of option A will have the effect of diminishing the value of any disclosure made pursuant to this section. Issuers have previously demonstrated a risk averse approach to broadly drafted material information disclosure requirements. This results in the disclosure of a great deal of information which is not necessarily material information in relation to a specific issue and creates a risk that potentially material information is obscured by generic disclosures.
Clause 41	Consent of person to whom statement is attributed	<ul style="list-style-type: none"> • As currently drafted, sub-clause 41(1)(c) only requires that the consent of a person to whom a statement in a PDS is attributed not be withdrawn prior to the lodging of the PDS. Sub-clauses (a) and (b) above provide for the need for consent where statements are included either in register entries or in a PDS. For consistency we suggest that sub-clause (c) is amended so that consent to a statement contained in a register entry may be withdrawn before the relevant register entry is lodged.

Clause Number	Clause heading	Submission
Clause 45	Registrar must notify FMA of lodgment of PDS	<ul style="list-style-type: none"> TEL suggests that this clause is amended to require the Registrar to also notify the supervisor. In many cases the supervisor will be aware of details surrounding the relevant offer. However, this may not always be the case so there should be a statutory requirement. During the pre-offer vetting period it would be beneficial if the supervisor was provided with a copy of the lodged documents to ensure that it is not aware of any contrary information or considers any statement to be misleading.
Clause 51	When supplementary document or replacement PDS may be lodged	<ul style="list-style-type: none"> TEL suggests the inclusion of a clause 51A which reads as follows: <i>“51A When supplementary document or replacement PDS must be lodged</i> <i>An issuer of debt securities or a managed investment scheme that lodges a PDS must lodge a supplementary document or replacement PDS with the Registrar at the request of the supervisor where the supervisor considers that the PDS or registry entry is misleading as to material information in respect of the supervisor or the powers the supervisor may exercise”.</i> <p>Where a PDS is required to contain information in respect of a supervisor and such information is incorrect the supervisor should have the power to make the issuer amend the relevant PDS or document. Incorrect information in respect of the supervisor is to the detriment of investors as it may mislead investors as to the rights and abilities which the supervisor can exercise on their behalf.</p>
Clause 55	Consents needed for lodgement	<ul style="list-style-type: none"> TEL suggests that a new clause 55(1)(c) be inserted as follows: <i>“(c) in the case of an offer of debt securities or a managed investment scheme the supervisor”.</i> <p>As discussed above, where a PDS is required to contain information in respect of a supervisor and such information is incorrect, incomplete or misleading, the supervisor should have the power to require that the PDS or document is amended before it is lodged. Incorrect information in respect of the supervisor is to the detriment of investors as it may mislead investors as to the rights and abilities which the supervisor can exercise on their behalf.</p>
Clause 64	Application of section 62	<ul style="list-style-type: none"> TEL suggests that clause 64(1) is amended by adding the wording <i>“and, in the case of debt securities or managed investment schemes, the supervisor”</i> after the words “must notify the offeror”, is also notified of any of the circumstances in sub-clauses 64(1)(a) to (c). This will facilitate any payment of funds which must be made under clause 62 from funds held by the supervisor as well as assisting the supervisor in its monitoring of the issuer.

Clause Number	Clause heading	Submission
Schedule 1 Clause 18	Offers of category 2 products or debt securities by registered banks	<ul style="list-style-type: none"> Clause 18 of schedule 1 should be amended so that a new sub-clause 18(2) (making the existing provision clause 18(1)) which reads as follows: <i>“(2) This exclusion does not apply to a unit in a cash or term portfolio investment entity (as defined in regulations made under the Financial Advisers Act 2008)”.</i> <p>The prudential supervision of the Reserve Bank of registered banks supports the general exclusion of bank issued financial products from part 3 disclosure requirements. However, this argument does not work in the case of a cash PIE managed by a bank because while the bank is the “issuer” it is not the debtor.</p> <p>TEL supports the submissions made by TCA in this regard in their submissions paper.</p>
Part 4 and schedule 3	Governance of financial products	
Part 4, subpart 2	Governing document requirements (general comment)	<ul style="list-style-type: none"> Under the Draft Bill, the definition of debt security includes a redeemable share in an entity. TEL supports this on the basis that the investment is economically comparable to a debt security. However, the governance provisions in the Draft Bill do not adequately address this concept, especially in connection with the governing document requirements under part 4, subpart 2. Under that part, there must be a trust deed for a regulated offer of a debt security. However, debt securities that are redeemable shares in an entity are brought into existence under company constitutions. Accordingly, to account for this distinction, TEL suggests that a definition of “trust deed” should be included which would include the constitution of a company in the case of debt securities that are redeemable shares in an entity.
Clause 85	Part applies to all regulated products.	<ul style="list-style-type: none"> Non-bank deposit takers (NBDTs) are subject to a robust regulatory regime under the Reserve Bank of New Zealand Act 1989 (Reserve Bank Act) which would overlap significantly with the regulatory regime proposed under the Draft Bill. The Draft Bill should be properly drafted to ensure that provisions relating to the regulation of issuers of debt securities work with the controls in place under the Reserve Bank regime and deal with the potential for differing priorities between regulators. In particular, the Draft Bill should provide that supervisors of NBDTs are only required to report to and take directions from one regulator. TEL submits that where the two regimes overlap, the Reserve Bank should take primacy over the FMA. TEL proposes that a section be included in the Draft Bill which provides that, where supervisors’ obligations in respect of issuers of debt securities conflict or coincide with NBDT obligations under the Reserve Bank Act, a supervisor is taken to have fulfilled its obligations under the Draft Bill if it has fulfilled its obligations under the Reserve Bank Act.
Clause 90	Contents of trust deed for debt securities	<ul style="list-style-type: none"> This clause should be expanded to address the right to enforce an issuer’s duty to repay in respect of capital note type instruments given their unique hybrid features. In this regard, TEL supports TCA’s submissions in their submissions paper.

Clause Number	Clause heading	Submission
Clause 97 and clause 128	Functions of supervisor	<ul style="list-style-type: none"> • TEL endorses TCA’s submission contained in its submissions paper relating to the deletion of the wide monitoring obligations imposed on supervisors under clauses 97(1)(a)(iv) and clause 128(1)(a)(iv).
Clause 109	Need to register managed investment scheme for regulated offer of managed investment product	<ul style="list-style-type: none"> • TEL submits that the Draft Bill should include requirements that all registered schemes should be required to file financial statements under the Financial Reporting Act 1993.
Clause 117	Contents of governing document for a registered scheme	<ul style="list-style-type: none"> • The word “financial” should be deleted from clause 117(1)(e) because, in line with our comments in connection with clause 9 above, TEL considers that the definition of a managed investment scheme under the legislation should not turn on whether financial benefits are derived from the scheme. • A new paragraph should be added as clause 117(1)(k) which reads as follows: <p data-bbox="667 904 1484 1088"><i>“(k) whether or not the manager has an obligation to buy back investment products in the managed investment scheme if requested to do so and the manner in which and the conditions on which any such interests are to be bought back, and the method of calculating the minimum price at which interests are to be bought back”.</i></p> <p data-bbox="667 1115 1484 1451">The obligation to buy back interests may fall on managers in the event that investments are in breach of the legislation, a governing document or a SIPO. In these circumstances, the manager may be required to buy back that investment and indemnify the fund for any diminution in value in on-selling the investment. Whether the manager is obliged to buy back investments should be spelt out in a governing document. Including the above paragraph aligns this clause with section 16 of the Unit Trusts Act 1960 (Unit Trusts Act) and would provide an investor with a clearer picture of a manager’s accountability in respect of any buy back obligations, thus better equipping them to make informed investment decisions.</p>
Clause 118		<ul style="list-style-type: none"> • TEL considers that the approach taken in clause 118 is incorrect. The correct approach with respect to the exemption and indemnification of supervisors and managers from liability is the approach taken in section 116J of the KiwiSaver Act 2006 (KiwiSaver Act). Supervisors should be able to be indemnified for all matters except for knowing or reckless breaches of core duties.

Clause Number	Clause heading	Submission
Clause 125	General duties applying in exercise of manager's functions	<ul style="list-style-type: none"> • A new sub-paragraph should be added as clause 125(1)(c)(iii) which provides: <i>“(iii) use its best endeavours to ensure that the scheme is carried on in a proper and efficient manner”.</i> This is an important requirement in the proper management of a scheme and is not adequately addressed elsewhere in clause 125. • A new paragraph should be added as clause 125(1)(e) which provides: <i>“(e) pay into a separate bank account all money received by the manager or its agent in respect of purchases or subscriptions of interests in the scheme”.</i> Separation of scheme funds is an important check on the security of scheme property. This would carry over similar requirements under the Unit Trusts Act and the KiwiSaver Act. • A new sub-clause should be added as clause 125(3) which provides: <i>“(3) If the manager is a subsidiary, the constitution of the manager must not include any provision under which directors of the manager may act otherwise than in the best interests of the manager”.</i> This mirrors a requirement relating to NBDTs under the Reserve Bank Act It avoids a potential conflict of interest by prohibiting the manager from acting in the best interests of its holding company to the potential disadvantage of scheme participants pursuant to a clause in its constitution (this would otherwise be permitted under the Companies Act).
Clause 126A	Duties of directors or senior managers of manager	<ul style="list-style-type: none"> • A provision should be included in clause 126A which provides that any director or senior manager who gains an improper advantage holds on trust any profits or benefits so gained for the benefit of scheme participants. Those profits or benefits should be transferred to, or be able to be recovered by, the supervisor. Otherwise, this clause does not address what becomes of any improperly obtained profits.

Clause Number	Clause heading	Submission
Clause 129	General duties applying in exercise of supervisor's functions	<ul style="list-style-type: none"> • TEL recommends that clause 129(1)(e) is separated from clause 129(1) so that it appears as its own separate sub-clause (2) and new sub-clauses (3) and (4) are added (with the existing sub-clauses renumbered accordingly) providing that: <p style="margin-left: 40px;"><i>“(2) The supervisor of a registered scheme <u>may</u> act in accordance with any direction given by a special resolution of the scheme participants in relation to –</i></p> <p style="margin-left: 40px;"><i>(a) seeking a remedy to a breach referred to in section 128(1)(a); and</i></p> <p style="margin-left: 40px;"><i>(b) any other matter connected with its functions.</i></p> <p style="margin-left: 40px;"><i>(3) A supervisor is not required to act in accordance with a direction given by a special resolution of the scheme participants to the extent it is that is inconsistent with any enactment, rule of law or the governing document or is otherwise objectionable.</i></p> <p style="margin-left: 40px;"><i>(4) In any case where the supervisor is of the opinion that any direction given by the scheme participants conflicts with any enactment, rule of law or the governing document or is otherwise objectionable, the supervisor may apply to the Court for an order giving directions in the matter under section 182”.</i></p> <p>This change gives the supervisor the right to intervene or not act as is currently the case under the Unit Trusts Act. TEL considers there are other circumstances in which a supervisor should be able to refuse to act, in particular, as indicated above, when a direction is inconsistent with a rule of law or when it is objectionable. Allowing the supervisor to apply to the Court for directions in the matter will assist the supervisor in exercising this discretion.</p>
Clause 132	Duty of manager to provide requested information and reports to the supervisor	<ul style="list-style-type: none"> • The words “<i>issuer and</i>” should be inserted before “scheme” in clause 132(1)(a). TEL notes that an issuer of a debt security is required to make available to the supervisor all documents and records relating to itself under clause 101(1)(a) and consider the requirement should be no different in the context of managed investment schemes. Supervisors should have the benefit of inspection of the whole of a manager's books and papers to ensure that a manager is carrying on its business in a proper manner.

Clause Number	Clause heading	Submission
Clause 135	Requirement to have supervisor or other independent person as custodian	<ul style="list-style-type: none"> • The words “<i>in writing</i>” should be added after the word “contract” in clauses 135(1), (2) and (3). “Contract” is not defined in the Draft Bill and TEL considers that an argument is left open that any informal arrangement is a “contract” for the purposes of the provision. This aligns this clause with section 6 of the Unit Trusts Act which requires the nomination by a trustee of another person in which the trust property is to be vested to be in writing. • The words “<i>Each person contracted to hold scheme property under this section may, if authorised in writing by A, in turn contract in writing the holding of the scheme property to another person who meets the external custodian requirements.</i>” should be added at the end of clause 135(3). As currently drafted, clause 135 only permits one level of sub-custodianship. TEL is of the view that custodians should have the power to nominate sub-custodians, who in turn should have the power to nominate further sub-custodians, and so forth, provided that each nominated sub-custodian is legislatively bound by the same terms of custodianship as the principal custodian. TEL is of the view that clause 135(5) adequately encapsulates this requirement if this recommendation is taken on board. However, TEL notes that care should be taken to guard against custodians delegating operational functions. • TEL considers that there should be some legislative recognition that certain types of property may be held directly by scheme participants. In particular, custodians should not be required to hold property for which they would be directly liable. For example, under New Zealand climate change laws, the liability in respect of carbon emissions vests in the owner of the land, even if that owner is a nominee. The response to this has been for custodians to transfer ownership of carbon credits to scheme participants. TEL supports the inclusion of clause 135(6) for this reason. However, the reality remains that forcing direct holding of the scheme property by participants is often cumbersome and inefficient. Accordingly, it is submitted that either a clause should be included in the Draft Bill to the effect that despite any other legislation, custodians and supervisors are not personally liable where they hold property, and instead, the scheme is liable, or the climate change legislation should be amended. • TEL considers that the drafting of clause 135(5)(b) is ambiguous with respect to the function for which custodians of scheme property are to be jointly and severally liable. Under 153(5)(a), the nominating person must take all reasonable steps to ensure that the function of holding scheme property is performed by the nominee in the same manner and subject to the same duties and restrictions as if that person were performing it directly. Clause 135(5)(b) should be amended so that the nominating person is only liable for taking reasonable steps to ensure that the function is performed in accordance with paragraph (a), rather than being liable for the performance of the function itself. Otherwise, a supervisor may be exposed to significant potential liability in the event of failure of one of the large international custodian banks, despite the supervisor having taken all reasonable steps in the selection and supervision of that custodian.

Clause Number	Clause heading	Submission
Clause 136	Custodian holds scheme property on trust	<ul style="list-style-type: none"> We interpret section 136(2) as meaning that scheme property must be kept separate from the property of the custodian or of any other person involved in operating the scheme but that it is not required to be kept separate from the property of other schemes (including other schemes with the same manager/supervisor). This is important because in practice it is common to operate omnibus accounts, using the custodian's systems to identify scheme ownership. If our interpretation is correct, no amendment is needed.
Clause 138	Duty of supervisor to refuse to act on wrongful directions	<ul style="list-style-type: none"> Clause 138(1) should be amended so that each of the words "must" are replaced with the word "may." To mandatorily require supervisors and custodians to refuse to act on a wrongful direction is commercially unworkable. Many situations may arise where a transaction would be in breach of a governing document or a statement of investment policy and objectives through no fault of the manager and to default on the transaction would unreasonably disrupt the market. In practice, supervisors will refuse to act on directions if they are manifestly in breach of the scheme. The general duty of supervisors to act in the best interests of scheme participants under clause 129 would act as a check to ensure that supervisors properly exercised this discretion. TCA also identifies concerns in connection with this clause and make submissions in respect of those in their submissions paper.
Clause 139	Meetings of scheme participants	<ul style="list-style-type: none"> To the extent it is not included in any regulations, a requirement should be included in clause 139 which obliges the manager to send a notice to all scheme participants specifying the time and place of the meeting at least 14 days before the date of the proposed meeting.
Clause 140	Power of supervisor to attend meetings and appoint chair	<ul style="list-style-type: none"> The words "if the meeting was called by scheme participants" should be deleted from clause 140(2)(c) because, in TEL's view, these words impinge on a supervisor's power to supervise the proceedings of a meeting of scheme participants. The appointment of a chairperson of a meeting of scheme participants should not turn on who called the meeting but should relate to the subject matter of the meeting. The deletion of these words aligns this clause with section 18(1) of the Unit Trusts Act. In practice, the supervisor can decide whether or not to appoint an independent chair or to allow the manager to chair. As a general comment, TEL notes that the Draft Bill represents a general dilution of the function of meetings of scheme participants. For example, there is no requirement that a meeting of scheme participants be called in the event of a vacancy in the office of the manager (compare section 23(2) of the Unit Trust Act). Meetings of scheme participants are an important procedural tool in the regulation of managed investment schemes and should be adequately provided for in the Draft Bill.

Clause Number	Clause heading	Submission
Clause 142	Requirement for statement of investment policy and objectives	<ul style="list-style-type: none"> This clause should be amended so that it incorporates a provision similar to those contained in clauses 145 and 146 that any breach of the statement of investment policy and objectives should be reported to a supervisor or to the FMA. TEL proposes that new clauses 142(3) and (4) be added as follows: <p><i>“(3) if, in relation to a registered scheme, there is a material breach of any of the provisions of the statement of investment policy and objectives, the manager of the registered scheme must report the breach to the supervisor or to the FMA (if there is no supervisor) in the prescribed circumstances and in the prescribed manner.</i></p> <p><i>(4) The supervisor of the registered scheme must report a material breach in the statement of investment policy and objectives to the FMA in the prescribed circumstances and in the prescribed manner”.</i></p>
Clause 151	General prohibition on transactions giving related party benefits	<ul style="list-style-type: none"> Another sub paragraph 151(2)(b)(iii) should be added which reads <p><i>“or ... (iii) the related party benefit is adequately disclosed in the opinion of the supervisor in the PDS”.</i></p> <p>Otherwise, in the first instance, bank PIEs may potentially be prohibited under the Draft Bill, given that the investments in the PIE are investments in the manager itself.</p>
Clause 153	Additional restrictions on transactions of restricted scheme	<ul style="list-style-type: none"> TEL considers that this clause does not work and should be deleted. TEL understands that the intent behind this clause is to regulate against restricted schemes essentially investing scheme funds in their own interests. However, in reality, TEL considers that this section will be unworkable, and will capture many legitimate arrangements. If this section is not deleted, the alternative is that a whole raft of carve-outs and exemptions would need to be given in order to clear legitimate investments, such as the investment by a bank staff restricted scheme in a deposit at the bank, or a defence force staff restricted scheme in government stock. TEL understands that this is an area of some concern but consider that the imposition of a licensed independent trustee appropriately addresses the objectives behind this clause. The duties of governance imposed on supervisors set out in clauses 129 and 130 will require supervisors to ensure that restricted schemes do not enter into the inappropriate transactions contemplated by clause 153. <p>More generally, in the context of superannuation schemes with more than one trustee, it is important that trustee approval is contingent on unanimous approval by all trustees. This gives the independent trustee the ability to veto improper transactions.</p>
Clause 156	Transfer of substantial numbers of scheme participants with scheme participation consent	<ul style="list-style-type: none"> The words <i>“the FMA and”</i> should be inserted after the words <i>“be given to”</i> in clause 156(3)(a) because, although clause 156(3)(b)(iv) requires a notice to set out that it has also been sent to the FMA, there is no provision actually requiring it be sent to the FMA.

Clause Number	Clause heading	Submission
Clause 160	Removal of manager of a registered scheme	<ul style="list-style-type: none"> A new sub-clause should be added as clause 160(3) which provides: <i>“(3) Where a manager ceases to hold office under clause 160(1), that manager and any delegate of the manager must immediately desist from all activities relating to the registered scheme unless the supervisor agrees to the contrary”.</i> <p>This is provided for under the Unit Trusts Act. Even after being removed, it is possible that a delinquent manager could continue to act and put scheme property at risk. There needs to be a statutory prohibition on managers continuing to act after having been removed in order that they be liable if they continue their activities as manager in breach of the legislation.</p>
Clause 168	Change of supervisor	<ul style="list-style-type: none"> A new sub-clause should be added as clause 168(3) which provides <i>“(3) Except as provided in section 168(1)(a) and (b), no supervisor of a registered scheme shall be removed or resign until another supervisor has been appointed or has assumed that position under the governing document or the Trustee Act 1956”.</i> <p>This aligns this clause with section 10 of the Unit Trusts Act and protects a managed investment scheme from operating without the oversight of a supervisor in certain circumstances.</p>
Clause 172	Duty of auditor to report to supervisor	<ul style="list-style-type: none"> TEL strongly supports the inclusion of this clause in the Draft Bill. TEL further submits that a new paragraph 172(7) should be added which provides that auditors owe an express duty of care to investors. Suggested wording is as follows: <i>“(7) In performing its duties as an auditor, an auditor owes a direct duty of care to holders of debt securities and scheme participants to take reasonable care, and any holder of the products referred to in subsection (1). The auditor must acknowledge this duty in writing to the supervisor and to each holder of the products referred to in subsection (1) prior to the performance of any of its duties. An auditor has a duty to report to the supervisor notwithstanding that an engagement letter has been sent”.</i> <p>TEL considers that the legislation should make it explicit that auditors should not be able to invoke the precedent enshrined in the <i>Royal Bank of Scotland v Bannerman</i> in order to promote a position that is inconsistent with New Zealand law. The <i>Bannerman</i> case suggests that, under certain circumstances, the absence of a suitable disclaimer in an audit report leads to the inference that an auditor has assumed responsibility for the audit report to a third party. Consequently, auditors have developed a practice of including disclaimers against third parties in their reports. TEL considers it improper for auditors to be able to disclaim liability in this regard. Auditors’ reports are essential in providing an accurate snapshot of issuers’ accounts, and trustees rely on these in their supervision of the financial position of the issuer and scheme.</p> <p>TEL supports the submissions made by TCA in this regard in their submissions paper.</p>

Clause Number	Clause heading	Submission
Clause 173	Duty of investment manager, administration manager, and custodian to report serious problems.	<ul style="list-style-type: none"> • This clause should be extended to impose the duty to report serious problems on actuaries and auditors in line with section 18A of the Superannuation Schemes Act 1989 (Superannuation Schemes Act). This is because auditors and actuaries are in a unique position to be able to effectively report on whether the financial position or the security of benefits of the scheme or issuer is inadequate. • Paragraph 173(2) should be amended by inserting the words “, or becomes aware of information on the basis of which that person could reasonably form an opinion,” after words “reasonable grounds to believe.” This is intended to extend reporting requirements to circumstances where the reporting person ought to believe that a serious problem has occurred. This mitigates against the opportunity for reporting persons to sidestep reporting obligations based on the argument that they had subjectively not formed an opinion that a serious problem had occurred. • Paragraph 173(2)(a) should be amended to include the words “in a material respect” after the words “issuer obligation”. <p>With the same effect, paragraph 173(2)(c) should be amended to include the words “materially” before the word “inadequate”.</p> <p>Paragraph 173(2)(d) should be amended to include the word “materially” before the words “breached” and “breach”.</p> <p>There should be a threshold as to when a problem becomes a “serious problem” to forestall over-zealous reporting.</p>
Clause 181	Power of supervisor or FMA to apply for order to remedy problems	<ul style="list-style-type: none"> • A new paragraph 181(1)(f) should be added which reads: <i>“(f) the issuer of the relevant financial product has materially breached, or is likely to materially breach, an issuer obligation”.</i> <p>TEL considers that the grounds on which a supervisor or the FMA may apply for an order to remedy problems under clause 181 are unnecessarily narrow. Unnecessarily narrow grounds not only hinder the ability of a supervisor, or the FMA to effectively carry out their functions, but also leave scope for argument that the applicant has no standing to apply for necessary remedies. A breach of an issuer obligation is an important ground on which a supervisor or the FMA should be able to apply for a court order.</p>

Clause Number	Clause heading	Submission
Clause 183	Power of court to appoint a new manager, provide for manager powers and deal with changes of managers	<ul style="list-style-type: none"> • The words “<i>or expedient in the management or administration of scheme property</i>” should be added after the words “that a court considers to be” in clause 183(1)(b) in order to give the court broader powers of discretion to make orders affecting the administration and management of scheme property. TEL considers that if an order is “expedient in the management or administration of scheme property” such an order is likely to also be “in the best interests of the scheme participants”. However, the better approach would be to guard against the possibility of the section being read too narrowly and should therefore confer greater, rather than less powers on the court to step in. • The words “<i>or the supervisor</i>” should be inserted after the words “confer an additional power of the manager” in clause 183(1)(b). Clause 183(1)(b) reflects section 22 of the Unit Trusts Act which allows the court to confer an additional power on a manager or a supervisor to effect a transaction which would be expedient in the management or administration of scheme property or in the best interests of unitholders. Clause 183 does not permit the court to confer such a power on the supervisor. This provision must be included to give the supervisor the necessary tools to carry out its functions. • A new clause should be inserted which reflects 183(1)(b) but which gives that manager the ability to apply to the court for to confer an additional power on the manager. Section 22 of the Unit Trusts Act allows the manager itself to apply for this power, however this ability does not appear in clause 183. TEL considers that it should be in the interests of efficacy.
Clause 205	Financial statements to be audited	<ul style="list-style-type: none"> • TEL endorses TCA’s submissions contained in its submissions paper regarding carrying over reporting and audit provisions from the Securities Regulations 2009.
Part 5	Dealing in financial products on markets	
		TEL has no particular comments under this part.

Clause Number	Clause heading	Submission
Part 6	Licensing and other regulation of market services	
Clause 370	When provider of market services must be licensed	<ul style="list-style-type: none"> • A new paragraph should be added to clause 370(1)(e) which provides: <i>“(e) acting as a custodian of a registered scheme”.</i> <p>Custodians are required to be licensed under Australian legislation. TEL is strongly of the view that this approach should be followed in New Zealand. Custodians should be subject to licensing controls along with managers and supervisors given the importance of ensuring assets are held in an appropriate and secure manner to better protect investors’ interests. TEL appreciates that licensed supervisors are responsible for appointing custodians, and would therefore breach their duties if they appointed a custodian that was manifestly unfit for the function. However, if the overarching goal of the regime is to protect the integrity of investments, it is imperative that the person who is responsible for holding those investments be licensed. TEL notes that imposing a licensing requirement on custodians may become more problematic in the context of sub-custodianship structures where the ultimate security holder is an off-shore entity. In these cases, TEL considers it unnecessary that each off-shore sub-custodian be licensed in New Zealand, provided that the original New Zealand licensed custodian takes responsibility for functions of its sub-custodians. Instead, the parent custodian, whether a subsidiary of a trustee corporation or an international custodian bank, would be permitted to operate through its network of subsidiaries and agents without those subsidiaries and agents being required to be licensed, provided that it is licensed itself.</p> <p>In this regard, TEL supports the submissions made by TCA in their submissions paper.</p> <ul style="list-style-type: none"> • A new paragraph should be added as clause 370(1)(f) which provides: <i>“(f) acting as a custodian of a discretionary investment management service”.</i> <p>The same reasons discussed above apply here. However, TEL considers the licensing of custodians is even more pertinent in the context of discretionary investment management services which do not have the benefit of oversight by an independent supervisor. Where there is no supervisor, and without a licensing regime, there is no protective mechanism relating to the way in which assets are held. Please see our comments below in relation to the supervision of DIMS.</p> <p>Furthermore, TEL considers that all nominee services which are offered to retail clients should be subject to the licensing regime, regardless of whether they are discretionary or not. Often, where assets are pooled in a nominee entity, irregular holdings are allocated out to investors. TEL strongly submits that a licensed custodian is necessary in these situations in order to protect the interests of retail investors, especially where there is no supervisor</p>

Clause Number	Clause heading	Submission
		<p>to safeguard their interests. Despite having different structures to traditional forms of collective schemes (such as unit trusts and superannuation schemes), wrap platforms and portfolio management services offer investors an essentially similar economic outcome. To ensure that the interests of investors are protected, TEL believes that custodians of wrap platforms and portfolio management services should be licensed.</p> <p>It is necessary that all custodians should be licensed to avoid a form of regulatory arbitrage. A consequence of imposing licensing requirements on specific sectors of the finance industry, but not all sectors, could result in financial services being pushed into the least regulated area of the market in order to circumvent regulatory controls.</p> <ul style="list-style-type: none"> Given that a substantial portion of the regulatory provisions relating to the licensing regime under this legislation will appear in regulations, it will be necessary that sufficient opportunity is given for consultation on the make-up of these regulations before they are promulgated.
Subpart 6	Provision of discretionary investment management services	<ul style="list-style-type: none"> A clause requiring discretionary investment management services to have an independent supervisor should be included in this subpart. We note that this would require some change to the Draft Bill to ensure that DIMS supervisors are subject to the same controls as supervisors of managed investments schemes under Part 4. However, in the interests of investor protection, TEL considers that it is necessary that discretionary investment management services are regulated in a manner comparable to the regulation of managed investment schemes given their essentially similar economic outcomes. Please also see our comments above in relation to the licensing of DIMS custodians. Without the benefit of a supervisor or a licensed custodian, there is no regulation of the manner in which assets are held. We consider this may give rise to a potential moral hazard to Government, should there be a failure due to this regulatory gap. The words in brackets “(unless the licence permits otherwise)” should be deleted from clause 426(2)(b). TEL considers this qualification has the potential to result in inappropriate pressure being placed on the FMA to provide an escape route for DIMS providers, effectively undermining the entire DIMS licensing regime.
Part 7	Enforcement and liability	
		TEL has no particular comment under this part.
Part 8	Regulations and exemptions	
		TEL has no comment under this part, save its comments on giving sufficient opportunity for consultation before regulations are promulgated.

Clause Number	Clause heading	Submission
Part 9 and schedule 4	Miscellaneous provisions	
Subpart 9	Amendments to other enactments	<ul style="list-style-type: none"> • We note MED’s comments in the request for submissions and commentary that amendments to the Personal Property Securities Act 1999 (PPSA) are contemplated. In this context, TEL submits that such amendments should include a provision that registrations against property subject to a managed investment scheme on the Personal Property Securities Register (PPSR) are ineffectual unless registered against the scheme itself and not the custodian. This is to address the practical problem that most registrations on the PPSR in respect of scheme property are against the custodian as the holder of the scheme property. This gives an inaccurate reflection of the true beneficial ownership of that property and inaccurately suggests that the property of relevant custodian is subject to a great number of security interests. Correspondingly, PPSA amendments should provide that a financing statement which is properly registered against a managed investment scheme as the debtor will perfect a security interest in the scheme property which is the subject of the registration (provided that the other requirements for perfection are satisfied). Current practice is to register security interests in such property against the custodian of the scheme. However, TEL is of the view that this practice is erroneous and misleading given that the beneficial owner of scheme property is the scheme itself. TEL considers that such amendments are appropriate given the new status of managed investment schemes under the proposed legislation. Managed investment schemes are required to be registered and the supervisors or custodians may change from time to time. It is therefore in the investor’s interests that personal property securities registrations are against the managed investment scheme.

Clause Number	Clause heading	Submission
Section 546	Repeals	<ul style="list-style-type: none"> • TEL notes that comprehensive transitional provisions will need to be drafted to ensure that the repeal of any Act does not compromise the existence of existing trust funds. A large number of trusts rely on the Unit Trusts Act and the Superannuation Schemes Act for their legal existence including some that are no longer offered to the public. In particular, TEL suggests that the transitional provisions of the Draft Bill should include a power for supervisors and managers to change trust deeds without being required to hold a meeting of scheme members for the purpose of ensuring that the trust remains duly constituted under the new regime. With the same effect, a section should be included implying a provision in every trust deed that the manager and supervisors have the power to amend a trust deed without consulting scheme participants in order to give effect to regime changes which are embodied in the Draft Bill and repeals of existing law. Sufficient time should be allowed to give effect to these changes (TEL proposes a minimum of 24 months). • As a general comment, due to the omnibus nature of the Draft Bill, a great deal of detail has been lost from the Acts which are set to be repealed. To the extent they are not covered in regulations, the Draft Bill needs to appropriately provide for all material matters under the new regime which are currently covered under existing legislation. <p>For example, the treatment of bankruptcy of a superannuation scheme member or KiwiSaver member needs to be appropriately addressed under the new regime to preserve their existing treatment and to clarify other uncertain aspects. TEL submits that where retirement benefits have accrued in respect of beneficiary who becomes bankrupt, the official assignee of that bankrupt should have the same, but no greater access to the assets of the beneficiary at that time as the beneficiary does. TEL is concerned that by repealing existing legislation wholesale, investors will become exposed to gaps in the legislation where rights and protections such as these have been inadvertently removed. Further, TEL submits that the ownership of a member account should be returned to the member on his or her discharge from bankruptcy. In this regard, TEL supports the submissions made by TCA in their submissions paper.</p>

Clause Number	Clause heading	Submission
Clause 570	Amendments to Trustee Companies Act 1967 and Public Trust Act 2001	<ul style="list-style-type: none"> <li data-bbox="624 342 1474 918">• We note the passage of this bill will cause significant disruption to Group Investment Funds (GIFs). GIFs' activities are to be prohibited and/or restricted pursuant to the amendments set out in clause 570. If any such GIFs intend to continue to make regulated offers of managed investment products, they will need to switch to a permitted managed investment scheme model. As such, the bill should include appropriate transitional provisions recognising practical concessions that will need to be made to ensure a smooth transition to regulation under the new regime. In this regard, the model that should be followed should be the approach taken in the Securities Trustees and Statutory Supervisors Act 2011 in relation to KiwiSaver schemes (for example the transitional time allowed should be at least 24 months). In particular, we note that sufficient time should be allowed for constitutional and governing documents to be amended to comply with the regime, and that GIFs should not be required to hold meetings of scheme participants. Further, it should be confirmed that the required changes should not give rise to any income tax or goods and services tax charges which would not have arisen but for the regulatory change.