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M a n a t ū Ō h a n g a

**Supervision of Issuers:
Summary of Submissions**

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RFPP: Supervision of Issuers Submission Summary

Issue Reference	Summary of Issue Raised by Submission
General Comments on the Proposals	
Gen	Supports the objectives and proposals outlined, including those proposed for supervisory trustees.
Gen	While many of the underlying policy objectives are laudable, many of the proposed solutions seem to be aimed at fixing <i>perceived</i> problems that may not exist in practice, or, if there are tangible examples, then they are often specific to particular market segments and not necessarily generic to the sector as a whole. One problem with the process is that the 'problem identification' was not necessarily driven from any real observation of problems but rather by ideology and international dictates.
Gen	A number of proposals fail to take account of the different context and considerations that are relevant to corporate issuers of debt securities offered to the NZ public who carry an investment grade credit rating (as compared to smaller-scale issuers – especially finance companies – that seem to be the primary target of many of the reform proposals)
Gen	Some of the proposed reforms risk undermining (or even negating) some of the core benefits that currently arise from the contract and relationship-based nature of the trustee supervision model;
Gen	Many of the proposals are likely to create or increase costs (for example, additional trustee and auditor supervision related enquiries) that will ultimately be passed on to issuers – in case of investment grade debt issuers, without commensurate benefits for investors.
Gen	Applauds advisory groups, the release of these papers, and eventually being able to comment on whatever legislation may eventuate.
Gen	Supports the tidying up of the myriad pieces of legislation in many parts of the financial sector.
Gen	Has not seen any analysis of the cost or benefits that may arise from this eventual legislation. This should address the impact upon issuers / deposit takers / advisors etc compared to the notional benefits from making the market marginally, at best, safer for the often wilfully uninformed.
Gen	Does not feel that convergence or conformity with overseas regimes or indeed with the dictates of international bodies should be a key driver of legislation, regulation, or market review. Rather, sees the need for the regulation of NZ markets to be undertaken in light of the peculiar circumstances of the jurisdiction.
Gen	<p>Regulation cannot in itself promote confidence in financial markets by investors and institutions. Confidence comes from performance and the appropriate operations of the price discovery process which in turn will properly reward investors for the risks they take.</p> <p>Participation in a market cannot be brought about by regulation. Investors need to have a reason to invest far beyond confidence in order to participate in capital markets. Regulation may indeed cause lower participation, by making compliance too expensive, causing promoters and potential issuers to shy away from regulated markets, thereby reducing the number and perhaps the quality of investment opportunities, which would then in turn affect market performance. Regulation may aid in making a market sound, however it is questionable whether, even with proper analysis, planning and implementation, regulation can make a market efficient. Submitter has some core objects and advocacy tenets that it has drawn upon in commenting on the discussion papers. These are:</p> <ul style="list-style-type: none"> - to promote the proper control and regulation of the NZ financial and capital markets; - to work to ensure the NZ financial and capital markets are relevant and

	<p>efficient and generally to add value to the operation of the NZ financial and capital markets.</p> <p>Also believes:</p> <ul style="list-style-type: none"> - in the main, in open and transparent disclosure as a key market tool, rather than regulation, as it greatly aids the price discovery process which leads to the appropriate pricing of and return for risk, and thereby the appropriate reward. - Investors 'owning' and taking responsibility for the investment decisions they take, the advice they seek and use, and the investment outcome arising from the markets they choose to utilise.
Gen	Care needs to be taken in making sure that the markets are left to operate effectively and efficiently in order for capital to be allocated appropriately and for risk to be properly priced and rewarded.
Gen	Care needs to be taken to ensure that investor or investment risk is not replaced or mitigated by NZ adopting regulator moral hazard risk.
Gen	Supports the RFPP's objective of a more consistent overall approach to the regulation of issuers regardless of the type of issue.
Gen	Generally supportive of the proposed framework for the regulation of NBDTs, and broadly agrees with the government's objectives in regard to supervision of disclosure, the trustee supervision model; and trustee supervision of debt issuers.
Gen	Suggests that a further objective for the supervision regime for CIS and debt securities should be incorporated (in paragraph 36). Given that it is inevitable that some security issues will fail regardless of the strength of the supervisory regime and the performance of the scheme supervisor, it is important that the stated objectives of the regime include the promotion of transparency and understanding of the roles (and, importantly, limitations) of supervisors. This is particularly important, in order to avoid investor misapprehension that a supervisor provides some form of guaranteeing or underwriting function.
Gen	<p>Submitters notes that it is intended that 'there will now only be one 'type' of trustee for the purposes of the supervisory regime...' and that 'under the proposed regulatory framework for CIS, 'statutory supervisors' will also become CIS trustees' (paras 186-7).</p> <p>While the submitter does not have any difficulty with this approach overall, it is worth noting that the original concept of a 'statutory supervisor' for participatory security offerings envisaged a supervisory entity with circumscribed duties and powers that were markedly less than those of a trustee. It was recognised that the inherent riskier nature of participatory security ventures meant it was all the more likely such ventures would have a higher failure rate and their quasi-equity nature made it inappropriate to impose full trustee responsibilities on the supervisor. The statutory supervisor's role was originally intended to be more akin to an investor representative who would co-ordinate investor decisions and action in the event of a failure.</p> <p>In this context, the submitter believes the statement in para 109 that 'the way in which a participatory security statutory supervisor fulfils its obligations will be generally similar to a debt security trustee, though more "hands-off"' to be a simplification. A debt security trustee will apply a considerably more rigorous approach given its higher standard of expected performance. In a similar way, the statutory supervisor having 'the same abilities as a trustee to apply to the Court when they think the issuer or an guarantor is unlikely to be able to repay all money owing in respect of the securities when it becomes due' (para 111) is an ineffectual provision as by their nature, participatory securities do not involve debts owing to the security holders. Submitter suggests that, for two reasons, this obligation should be revisited.</p> <p>First, from a conceptual viewpoint, CIMA is directed at preserving the assets of issuers in a distress situation in order to meet the claims of creditors. Clearly the protection offered by CIMA should be available for debt security issues, However, in the case of unit trusts and participatory securities, there are no amounts 'owing' to security holders and they should not be entitled to the same sort of expectation that their investment will be repaid.</p> <p>Second, is the desirability of reviewing a piece of legislation enacted to meet the circumstances of its time, which are now considerably different. CIMA had its</p>

	genesis in the unprecedented rash of corporate failures of the late 1980s and the frustrations that arose at the time over perceived limitations in standard creditor remedies. For a number of borrowing entities (particularly large complex borrowers) it was considered that statutory management provided a better prospect of effective management of corporate failure (and enhanced returns to creditors) than the traditional avenues of receivership and liquidation. The backdrop of the times included a multiplicity of highly leveraged financiers and other corporate borrowers often characterised by extensive related company advances, and with security positions founded on extremely highly-g geared property. While it is not inconceivable that these circumstances could re-emerge, that prospect, given current attitudes to prudent lending standards appears less likely. The submitter does not have any difficulty with CIMA (or a successor) continuing to have application to debt security issues, however, its relevance in unit trust and participatory security situations should, we believe, be re-evaluated.
Gen	The trustee obligation referred to in para 120 will need to be re-addressed given the proposal for the offering document to have an indefinite term and given the further proposal that the offering document will not contain financial statements.
Gen	Supports MED's efforts towards raising not only the investing public's (both in NZ and offshore) confidence in the local financial services industry, but also the calibre and accountability of its many participants. The RFPP is a much-needed step in the right direction and should generally be welcomed by all who act professionally in the financial sector. After much failed experimentation, we seem to have finally recognised the importance of complying with international best practice and standards. This is essential in order to be successful, especially for a small and remote country like NZ. Agrees with much of the detail and principles presented in the discussion documents, and commends those who have participated to date in their development.
PART C: PROPOSED TRUSTEE SUPERVISORY MODEL	
TSM	Proposed changes are useful; any imposition of SC supervision of trustees and increasing their responsibilities (and therefore liability) will likely increase costs passed on to issuers.
TSM	Should credit unions not become a sub-tier of ADTs, NZACU would have concerns regarding increased costs relating to the supervision of trustee companies.
TSM	Proposal is too complicated. Present framework is adequate, but needs tweaking.
TSM	Only the statutory trustees should be permitted to be trustees, e.g. Perpetual, Guardian, TEA, Public Trust.
TSM	It costs a considerable sum to establish and run a provincial finance company that complies with its statutory obligations. It is completely unacceptable for non-compliant finance companies to operate in provincial New Zealand. The Securities Commission should keep a "watching brief" on finance companies in the provinces to ensure compliance with the law. It should not be reactive, or act only on complaints,
TSM	Not unreasonable to have different levels of supervisory responsibility depending upon the nature of the venture. Too rigid a model will mean that operators will seek to work outside the compliance regime (hopefully legitimately) but precluding smaller investors from participation in what may be knowingly higher-risk ventures. Supervision needs to be appropriate to the circumstances, and professional if more limited supervision is better than none at all. Trustees often have a great influence in improving investor protection and operator accountability.
TSM	The separation of issuers and regulatory trustees for all security issuers (including NBDTs) and CIS (including super) is a good idea and linked to this is a requirement for trustees to be independent. There should be a (regulatory) trustee for all Tier 2 NBDTs not just Credit Unions and Building Societies. It could be considered that even for those security issuers with a trustee as first line supervisor there is some direct role these trustees could also take in providing a level of prudential supervision. As discussed, a simplified approach to prudential reserving should be adequate; in those cases where the assets are held in specific separate vehicles and the payment / return is linked to specific assets a prudential reserving approach is not required, in other case a simplified formulaic approach may well be adequate.

	If there is a direct prudential supervision role identified for regulatory trustees, there would be merit in requiring visibility to the trustees of the simplified reserving requirements and in addition and importantly risk management / control environment attestation and assessment (including operation risks) by the managing organisation. It is noted some aspects of this are covered in the 'Fit and Proper' assessment of NBDTs.
TSM	Supports trustee supervisory model as outlined, subject to further detail and clarification of the respective roles and responsibilities of the trustees, SC, Companies Office, and the Government Actuary.
TSM	In general, supports a co-regulatory model where frontline supervision of issuers is left in the hands of approved corporate trustees working under the oversight of the SC. Fully supports contention that trustee supervision is not intended to insulate the investor from loss and that the investor must still make their own assessment of the risk posed by the securities offered.
TSM	Supports the trustee supervisory model giving trustees the primary responsibility for overseeing issuers and representing investors' interests with oversight from the SC as a market conduct regulator.
TSM	Concerned that a narrow focus on principles is leading to a level of structural independence for trustees that will be expensive for investors and not justified by the risk or a demonstrated problem in NZ. Contrary to the sentiment that comes through this discussion document and the one on CIS, superannuation schemes have been operating a trustee supervisory model with oversight from a regulator (the GA) for over 15 years; successfully in submitter's view. The proposal to further extend this model and demand corporate form and strict independence of trustees is not justified by experience and will turn out to be expensive in practice. Simply looking at independent corporate trustee direct costs under the present legislation (around 7.5bp) [?] is likely to be a conservative indicator of the costs of the proposals. Strict legislative separation and reporting requirements can only lead to a compliance focus with increased costs resulting from reporting and consultation both from the trustee and the providers' sides. This will be particularly true in applying the planned model to employer superannuation schemes where there are typically a number of situations where discretions are exercised (e.g. vested benefits, disabilities, ill-health benefits). KiwiSaver will introduce trustee responsibilities in assessing significant financial hardship, serious illness and permanent emigration. The fact that the full requirements will only apply to new employer plans will not help as these reasonable discretions will remain. The requirements for independence will be met if there is a requirement for an independent trustee on a board without going to the expense of requiring complete separation. Agrees that trustees need to be registered and meet 'fit and proper' criteria. NZ has a savings problem – heaping costs on a thin savings base is not going to help it.
TSM	Important to introduce proper checks and balances and accountability in NZ for how all (not just corporate) trustees perform their duties.
6.3 Assessment of Current Supervisory Situation Against Objectives	
Q 11: Are there any other benefits of the current regimes that need to be considered in the development of a new regime?	
11	Agrees that current regime is fundamentally sound / generally working well at the moment
11	New regime must preserve benefits
11	Improvements can be made, increase checks and balances
11	Flexibility particularly important – resolve minor issues before escalation
11	Putting trustees between issuers / SC minimises risk of role confusion that might arise if SC directly supervised trust deed compliance.
11	Yes
11	Although trustees of superannuation schemes do not have the same monitoring role as trustees in others securities, superannuation scheme members do have the benefit of oversight by the Government Actuary.
11	There needs to be more thought given to a group owning a trustee company – we

	feel this is not ideal and has the potential to create conflicts of interest.
11	Supports calls for the SC to take on responsibility for approval and oversight of trustees. Must strongly address the competence, financial capacity, character, independence and accountability of trustees.
11	Agrees with the removal of the trustee corporations' automatic approval, but notes that the extensive investment in capacity, in its many forms, made by the trustee corporations should be seen as the benchmark for the various other approved trustees. In short, there should be no implicit lowering of the standards of trustee supervision merely to satisfy a removal of this automatic approval, if anything the opposite should be the case, given the benefits of the current model.
11	Agrees that the current nomenclature has difficulties.
11	Agrees that the trustee should be independent from the issuer.
11	While the present regulatory structure for superannuation schemes does not require trustees to be independent from employers, managers or investors, trustee actions are constrained by general trust law, the requirements of the Superannuation Schemes Act, the active supervision of the GA and whistle-blowing requirements. The present arrangements allow flexibility in relationships between trustees and providers at lower costs to savers. The question that has to be asked is how many checks and balances there actually need to be, and at what cost to the consumer?
11	<p>Believe there are significant advantages to the current regime as it applies to superannuation schemes. The main advantage, from an investor's perspective, is that it is easy to determine the party responsible and accountable for ensuring compliance with legislation and the trust deed. This will be the scheme trustee. There is, therefore, only one party for an investor to rely on; one that they know has an overall obligation under the Trustee Act to act in the interests of all the members of the scheme. Note that the summary of responsibilities and obligations contained in para 133 does not seem to mention that superannuation scheme trustees are subject to the same duty to comply with common law and other legislation as a debt security trustee (per para 91) and unit trustees (per para 122).</p> <p>Anecdotal evidence suggests investors have little knowledge, or interest, in the various roles and responsibilities of the parties looking after their investment. As far as they are concerned, they will be sold an investment branded, for example, AMP, and this means that the investment is provided by AMP. They are not surprisingly confused if advised by, say, a trustee, that their query is appropriate to 'the issuer' (or unit trust manager).</p> <p>Does not believe that the advantages of artificially separating issuer and trustee responsibilities and accountabilities have been demonstrated. This view appears to be supported by the superannuation schemes regulator. Accepted that there is scope for potential conflict of interest, but feel that history has shown that trustees have generally acted responsibly.</p> <p>Trustees' responsibilities are clear under the Trustee Act and trustee must be held accountable in terms of that Act.</p> <p>Notes comments in para 149 from the Trustee Corporation, in particular, that they would be concerned to protect their reputations and therefore act in an appropriate manner. Do not doubt that this is the case, but understand that under the proposed model it is not intended to perpetuate the protected position of the Trustee Corporations as currently applies in respect of unit trusts. Agrees that it would not be appropriate to restrict the provision of trustee services as currently – the barriers to entry in the market are too high. However, the removal of the restriction does seem to imply that this 'advantage' is not likely to continue.</p> <p>Also noted that the general benefits of the trustee model summarised under pars 154 – 163 apply equally to many superannuation schemes, particularly where the master trusts are concerned. Wonder whether the comment in para 158 is accurate when separate trustees are involved (trustees funded entirely by issuers)? There is invariably an additional 'trustee fee mentioned in unit trust investment statements, correctly indicating that investors pay additional fees for this service.</p>
Q 12: Do you agree with the problems identified with the status quo? What do you consider to be the size of these problems?	
12	Yes – problems identified are real and deserve to be addressed
12	Problems identified real but minor / insignificant

	Don't overstate problems in absence of concrete evidence of failings
12	"Problems" are because existing regime needs tweaking only / problems more conceptual than real.
12	<ul style="list-style-type: none"> - regime fundamentally sound, has benefits. - Agrees CIS inconsistency – needs reform. - FATF obligations mean some reform - Lack of transparency justifies some reform <p>But: remaining reasons don't justify regulatory reform</p> <ul style="list-style-type: none"> - Information gathering - Trustees' incentives (litigation / reputation) adequate - 'Level-playing field' more theoretical than actual.
12	"Problems" are generally more matters of perception than reality; however, in the interests of greater transparency and to meet FATF requirements, the enhancements proposed are reasonable.
12	Lack of independence in superannuation an issue
12	Should be level-playing field and more accountability by all trustees to the SC.
12	Are significant incentives for trustees to act appropriately
12	Support direct accountability of all trustees to SC
12	There are some information asymmetries, but these can be very easily dealt with within the existing structures.
12	Accept CIS protections may not be consistent and this is usually appropriate to the circumstances.
12	<p>Superannuation – consumers may not know who to complain to in the first instance; may be even more complex than described.</p> <p>In accordance with the terms of reference of the ISO Scheme, the ISO is unable to consider complaints that involve insurance provided 'in respect of an employment-related group insurance plan or superannuation scheme', despite having the ability to do so.</p> <p>For retail super schemes, one of the more common issues raised is where a member wants to withdraw from a locked-in plan, or transfer to another locked-in plan, and the trustee will not agree to the request. Generally, the trust deed gives the trustee absolute discretion about whether to permit the withdrawal/transfer. In these situations, the ISO has no power to question a plan trustee's exercise of discretion. The Government Actuary has limited powers to act in these situations. These factors limit a consumer's ability to have a complaint considered independently.</p> <p>Para 222 states the SC may receive complaints about a trustee from an investor – this could add to the confusion about who a consumer should complain to in the first instance.</p>
12	Dispute statement in para 164a that superannuation schemes do not benefit from having a supervisor that is close to the market and able to deal flexibly with different schemes. Advice from submitter's members indicates superannuation scheme trustees value their relationship with the GA and would be reluctant to lose the benefit of the guidance available from that office.
12	No, who is seeking the information that is lacking? The reality is the investor has become over-laden with different forms of the same information (investment statement / prospectus). It appears that the MED / Reserve Bank is seeking more information from issuers with scant regard for the information needs of investors – irrespective of the investment product. The market should be allowed to find its own equilibrium to some extent.
12	The discussion document cites as a problem the lack of 'official oversight and monitoring of trust deeds'. The fact that the trust deed is a negotiated outcome between the trustee and the issuer is one of the strengths of the current model. The intervention of official oversight will only serve to protract and reduce the level of understanding each party needed to have of the other's role in the market.
12	As the discussion document notes in para 165d, under the present regulatory system superannuation trustees have a good track record with very few cases of scheme failure or misadministration. Present regulation of superannuation is an example of a

	trustee regulatory model – trustees have primary responsibility for the interests of members with oversight from the GA.
12	Believe that problems identified for superannuation schemes are overstated. No evidence or past experience to support the assertion that superannuation schemes in NZ are at any more risk of unfair and fraudulent conduct because of the perceived relationship and monitoring problems. Trustees of employer-based superannuation schemes take their responsibilities very seriously under the current regime. Doubts that defined-benefit superannuation schemes have additional potential risks of fraudulent or unfair conduct. These schemes are periodically reviewed by an actuary, and independent professional, and the actuarial report is also filed with the Regulator, in this case the GA. For the employer and / or trustee to act fraudulently or act in a way to minimise benefits would need the collusion of the scheme's actuary – an unlikely event.
Q 13: Are there any other costs of the current regimes that need to be considered in the development of a new regime?	
13	General disillusionment with new requirements and “turn off” when considering the possibility of setting up a finance company – particularly in the provinces.
13	Yes, covered elsewhere – the doubling up of costs associated with both prospectus and investment statement
13	The costs associated with any change to the status quo needs to be well thought-out and managed to ensure that an issuer does not incur unnecessary costs due to added compliance that will not directly benefit investors / shareholders. Submitter has a large number of governmental and non-governmental bodies to report to on a regular basis. Any additional costs will be passed on and officials therefore need to ensure that the costs add real value to all stakeholders, not just the supervisor.
13 / 14	The present regulatory regime for superannuation schemes provides examples of how a single regulatory structure can impose costs when applied to basically different structures. For example, the same amendment protections apply to defined benefit and defined contribution schemes with difficulties of interpretation and, perhaps, unintended consequences. It needs to be recognised that consistency is the benefit of further broadening the scope to include all CISs – the cost is likely to be poor fit, uncertainty, proliferation of regulation and stifling of innovation.
13	No
13	As mentioned in Q 12, those investments using separate trustees generally identify additional trustee fees. The duplication of information and additional reporting that is inevitable if duties are split has a cost that investors will be expected to meet.
6.4 General Direction for Reform: Trustee Supervisory Model	
Q 14: Can you see any other tensions that may arise?	
Q 14	No, assuming the trustee supervisory model is continued.
14	Too much state involvement in private enterprise, resulting in suffocation.
14	No comment on super schemes, but otherwise problems identified are minor and need to be kept in perspective.
14	Only area is potential for a separate trustee to seek information and / or indemnities from issuers that the issuer may not see the need for. Requests and negotiations for, in particular, indemnities, may suggest that the trustee is more concerned to protect their own position than that of the investors.
Q 15: What do you see as the objectives of the trustee supervisory relationship? Should these be included in legislation?	
15	See key objectives as: As between trustee and issuer for benefit of investors: - monitoring compliance with the trust deed and terms of offer; - mutual co-operation in timely and effective resolution of breaches where possible; - enforcement of the issuer's trust deed obligations where appropriate As between trustees and SC: - maintenance of authorisation standards/requirements; - reporting material non-compliance - supply of aggregated industry data and other industry-level information.
15	Yes – agree with recommendation / discussion document
15	Appreciate the principle-based approach of the duties of trustees and statutory

	supervisors as set out in the 5 th and 7 th schedules of the Securities Regulations 1983.
15	Efficient tailored monitoring with independent oversight.
15	Equity, consistency of process, adequacy of standards and effective monitoring appear to be the main objectives. These tenets exist in submitter's current relationship with trustee, and should extend to the supervisors of the trustee. Do not feel you can specifically legislate for these, they are desired outcomes.
15	Changes are, in large part, being promoted to enable NZ to achieve FATF compliance. It is a matter of drafting what new objectives should be included – note their use in the SMA regarding continuous disclosure, and unless they are given some weight or purpose (e.g. interpreting the legislation) there seems little point in including them.
15	<ol style="list-style-type: none"> 1. Trustees are primarily responsible for the interests of investors and ensuring that the scheme is administered professionally and that the scheme rules and law are complied with. 2. The market is overseen by the SC to ensure that it is operating effectively and efficiently, that any problems are identified early and there is effective redress where actions warrant it.
15	No strong preference, however, if the objectives are to be included in legislation, then they should be suitably broad in order to retain some flexibility with the Securities legislation.
15	Overall objective must be to protect the interests of investors. In essence, this is already enshrined in the Trustee Act.
15	Objectives should be in legislation (74 suggests regulations)
6.5 The Trustee Supervisory Model	
Q 16: Is it appropriate that the Securities Commission may approve trustees on an all-securities basis? Would there be any benefit in requiring a trustee to hold separate approvals for different classes of issue (i.e. debt or CIS)? If so, would this be outweighed by the cost of having to make two separate applications?	
16	Yes (all-securities and class-by-class) – SC should have flexibility.
16	Needs to be on an all-securities basis, otherwise the process will become too cumbersome. NZ market too small for anything else.
16	Unless there are distinct criteria for different types of security a single approval should be all that is required. If separate criteria do exist the trustee should be able to choose.
Q 17: Do you agree with the proposed entry requirements? If no, why? Are any of the proposed entry requirements too lenient or too onerous?	
17	Generally agree
17	Agrees SC should be able to impose additional requirements, as long as must be 'reasonable' and subject to judicial review.
17	Better to call entry requirements 'authorisation criteria'
17	Devil may be in the details – e.g. proposal that financial adequacy requirement reflects financial strength trustees need to manage issuers through crises to extent of irrecoverable costs. Meaningful assessment should take risk/extent of business into account. Is it intended that the capital requirement remain fixed at entry, or fluctuate? If fluctuating, how assessed?
17	Re. monitoring systems and procedures, given that the SC will make an 'assessment of the systems and procedures that a trustee has in place in order to supervise issuers', is it intended to prescribe them, or at least their desired outcomes?
17	Requirement that trustees and / or their staff not hold securities of supervised issuers would be a disincentive to personal savings. May lead to difficulties in changing trustees. Employees will typically be members of a KiwiSaver scheme and such a requirement would prevent their employer from being a trustee of that scheme. It would be preferable for there to be a general requirement for the trustee to have processes in place to manage conflicts of interest. Portfolio investment should be allowed subject to adequate insider trading protocols (SC can assess adequacy).
17	Notes that responses have not been invited on what appears to be a decision (as

	<p>opposed to a proposal) that trustee corporations will no longer have an automatic right to act as trustees for debt and CIS issues. The policy justification is the creation of a level playing field for entry.</p> <p>Current barriers to the market are minimal, though they will be raised by new regulatory requirements. Hard to see how ease of entry to the market will be enhanced by requiring existing TCs to undertake initial qualification. It should be remembered that the existing statutory TCs have undergone rigorous 'fit and proper' testing over a long period by obtaining approval of parliament and having that approval renewed every time an amendment to the specific empowering Act was required.</p> <p>Existing TCs currently hold/obtain the great bulk of debt security and CIS appointments in absence of any real competition apart from amongst themselves (where it is fierce).</p> <p>It is not clear what the alternatives might be should one or more of the trustee corporations choose not to undertake a time-consuming and expensive qualification process. The cost of changing trustees is substantial and issuers will not want to bear that in the absence of clear benefits.</p> <p>It is accepted that trustee corporations should not be exempt from having to demonstrate compliance on a continuing basis.</p> <p>A solution may lie in transitional arrangements. Existing qualification could be recognised and carried forward, to be confirmed as and when ongoing authorisation criteria compliance takes place.</p>
17	Agree all trustees should be corporate entities. (74) cannot see how an individual can adequately meet ongoing needs of supervision
17	Only [existing] statutory trustees should be permitted.
17	Submitter has previously commented on the Commission's "Policy for Approval of Statutory Supervisors" and shares the Ministry's view that these criteria 'are beneficial and should be retained'. Considers that the policy provides a good balance of considerations with respect to entry.
17	The key assumption with the entry requirements is that the SC is the right entity to manage the supervision role. There is a potential conflict of interest that may need to be addressed.
17	What purpose does a minimum capital adequacy requirement serve for the trustee? If there is distress in an issuer under their charge the damage has already been done.
17	Professional indemnity insurance is both expensive and difficult to source in a small market as NZ. There is the potential for additional costs to be borne by the issuer that offer no direct value to the investor
17	Infrastructure – again, this has a direct bearing on the costs of the trustee that will need to be passed on. More discussion is required to understand the form of this entry requirement.
17	Has significant concerns about the potential for delay associated with the approval of both issuer and trustee, and the disincentives this creates for new issues to be brought to market. There must be service levels imposed on the SC, against which they must publicly report, including timeliness to obviate the impact of these proposals on the cost and time of bringing a product to market. SC fees must also be reasonable and account for the obvious learning that is going to be necessary on the Commission's part.
17	Suggests that 'key personnel' provisions be added to the specific criteria with regard to initial and ongoing monitoring of trustee approval.
17	Suggests that the existing model employed by the key trustee corporations of having a 'corporate board' separate from the directors or owners of the trustee, so that the internal supervision of the trustee work is held separate from the business of the trustee-owning entity, be used as a required industry practice.
17	Share reservations in the application of these to stand-alone superannuation schemes. Believe that special arrangements are appropriate to these schemes, particularly avoiding the more onerous requirements for individuals so as to encourage participation. This could involve looking at the Board of Trustees as a whole, and specification of particular training programmes for new trustees.
Q 18: Are there any other requirements that trustees should be required to demonstrate to the	

Securities Commission before they are approved? For example, section 3 of the Superannuation Schemes Act requires that at least one trustee be a New Zealand resident before the trustees of the superannuation scheme can apply to the Government Actuary for registration of the scheme. Should such a residency requirement be extended to all trustees? Should a trustee company be required to have a physical place of business in New Zealand before it receives Securities Commission approval?	
18	All trustees should be NZ-resident bodies corporate. Capabilities, governance and assurances of continuity necessary to carry out functions are inconsistent with individual appointments.
18	All trustee companies should be required to have a physical place of business in NZ. 'Physical presence' and 'place of business' need to be clearly defined. NZ-based trustee closer to market / forms better relationship with issuer
18	Suggest logical that say, 75% of trustees or directors of trustees should be NZ residents.
18	If a trustee has corporate form it would be appropriate for it to be resident in NZ (or an approved overseas jurisdiction such as Australia). It would be inappropriate to introduce the sorts of uncertainties of enforcement that offshore residency would introduce to a body so central to the overall regulatory framework. For non-corporate trustees the Superannuation Schemes Act requirement is reasonable.
18	One, if not all, of the trustees must be a NZ resident.
18	As the discussion documents have highlighted, there are points of difference between the CIS regime in NZ and those overseas. Would be sensible to require an approved trustee company to be based in NZ. Similarly, a majority of individuals that make up the trustee, or Trustee Board, should be NZ resident.
Q 19: Do you consider any of the proposed entry requirements are inappropriate? If they are only inappropriate for a particular kind of trustee, could this be addressed through an exemption?	
19	None inappropriate.
19	If so, address through exemption.
19	Capital adequacy is a minor requirement. The trustee function is not a capital-intensive one, and trustee liability management is best handled by the requirement for professional indemnity insurance.
19	SC should be enabled to vary the requirements if appropriate.
Q 20: Should the proposed entry requirements be placed in primary legislation, or in regulation?	
19/20	In regulation – ensure flexibility for SC.
20	See Q 17 – accept that FATF requirements may need to be published in legislation, but consider that published policy will otherwise balance transparency and flexibility.
20	The trustee function is fundamental to the overall regulatory framework and some of the key requirements therefore need to be in primary legislation; e.g. NZ residency, level of independence. The primary legislation should set the general entry criteria with regulatory power to set detailed rules; e.g. criteria or rules for professional indemnity insurance, qualifications of individuals.
Q 21: What sort of appeal process do you think is appropriate for the application process?	
21, paras 207 (a) and (c)	Combination of 207 (a) and (c) – initial right of appeal to SC, with further right of appeal to the HC on both law and merits. There is a need to ensure the decisions of the SC on such important matters are capable of independent review. An applicant should be entitled to know why an application has been declined and given the opportunity to address the matters of concern to the SC.
21	Appeals to the Courts are expensive and cumbersome. Given the significantly increased scope and powers of the SC being planned, it would be appropriate to also consider a specific specialist Securities Review Authority under the RFPP which would be the first line of appeal for and SC decision. Such an authority would have wide business, government and consumer representation.
Q 22: Would it be desirable to have the Minister making approvals on the recommendation of the Securities Commission? Would the benefits (e.g. independence, balance) outweigh the costs (e.g. length of time for approval to be given)?	
22	No. SC should have statutory power to grant or decline approval subject to Q 21 right of appeal. Ministerial approval would add delay. Would just be a rubber stamping

	process.
Q 23: Do you agree with the proposed reporting requirements? If no, why?	
23	Yes
23	<p>Need to make distinction between:</p> <ol style="list-style-type: none"> 1. reporting directed to informing SC as to whether an approved trustee is continuing to comply with the authorisation criteria; and 2. reporting on individual issuer conduct. <p>Agree in principle with authorisation criteria compliance reporting. Individual issuer conduct – only current requirement of this kind arises under CIMA, and is directed to the Registrar of Companies. See also Q 31-2 responses. No objection to statistical data reporting provided confined to aggregate level. (Though considers outcome can be achieved voluntarily, rather than compelled). Information on individual issuers, reported by trustees to Commission, should be confidential, not subject to OIA, and have protections equivalent to those in ss 15 and 23 of CIMA – to ensure that information that may mislead is not in the market.</p>
6.5.2.2	Any requirement for reporting to be within prescribed timeframes will need to take account of different balance dates across different funds and schemes and not require that all reporting will be audited.
23	Does not agree. Perceived issues in the sector do not warrant such a regulatory response.
	With regard to reporting to the SC, whether it be periodic or event-based, the submitter believes that the business of being a trustee and the responsibility it implies for investors means that any publication of the reports and the handling of any breaches, if and when they arise, needs to be dealt with carefully so as to ensure that the underlying business and reputation is not impugned unnecessarily or with any disregard. Frontline regulators under a co-regulatory model need to be seen as professional and worthy of respect. This also needs to carry over into the approval process.
23	Yes, however there need to be regulatory incentives to encourage self-reporting.
24	No (subject to Q 23)
24	No (possibly subject to detail in regulation)
24	Given the perceived problems in the discussion document, the reforms in themselves are too onerous.
Q 25: What sort of data do you think should be kept confidential, and what should be able to be made public?	
25	See 23 – any info other than that of a factual nature at aggregate level should be confidential and protected from disclosure.
25	Para 219 is acceptable
25	<p>Subject to specific proposals, it is unlikely that any statistical data needs to be confidential. Through annual reporting, statistical data is generally public at present without presenting issues.</p> <p>There is generally no wider interest in reporting on fulfilling trustee responsibilities or incident reporting unless a particular incident warrants it, and then that would most likely be at the direction of the SC. In fact, open disclosure of incident reporting could easily lead to unreasonable outcomes depending on how the information was presented, e.g. mass withdrawals from funds.</p>
25	Only data that might allow individuals or specific entities to be identified, or that is claimed with good reason to be commercially sensitive, should be regarded as confidential.
Q 26: Should there be some statutory protection given to the information passed between a trustee and the Securities Commission (like that given in section 23 of the Corporations (Investigation and Management) Act 1989 or the Reserve Bank Act 1989)? If so, to what extent?	
26	Agree that such protection should be given. Encourages openness and dialogue
26	Perhaps information could be made public by agreement between the SC and trustee.
26	Effect of the OIA needs to be considered – does not consider that the SC has sufficient ability to resist disclosure under that legislation.
26	The presumption needs to be confidentiality with disclosure depending on the

	circumstances.
Q 27: Are the Securities Commission's powers of inspection appropriate in relation to trustees? Is there any reason that the Securities Commission should not have these powers in relation to trustees?	
27	Yes, appropriate.
27	These powers should apply in relation to trustees, but only to the extent relevant to the trustee's securities law role
27	No difficulty with this per se but wonder if in some circumstances this places the SC in the position of second-guessing the commercial decisions of the trustee and possibly create liability issues.
27	Would not expect the SC to second-guess the decisions of trustees in their frontline capacity without having good cause to believe that a reasonable trustee could not have made that decision.
Q 28: Do you agree with the suggested Securities Commission powers and actions in case of a breach? Are any of them inappropriate?	
28	Agrees with proposed powers (129 – trust deed breaches a matter for the parties to the deed) (134 – subject to appeal rights)
28	Inappropriate for SC to have power to require directors/management of trustee be added to, removed, or replaced. This is a matter for shareholders (or, for Public Trust, Ministers). The desired outcome could in most cases be achieved by negotiation if necessary, in the shadow of the potential exercise of the power of suspension or removal.
28	Have reservations over the proposed power of direction being extended to how a breach should be addressed, as opposed to directing a specified outcome. Power of direction could pose risk for the SC, and could blur the line between the roles of SC/trustee – place trustee in position of being 'second-guessed by the SC. May be preferable to empower to Commission to require the trustee to specify the action it proposes to take, and when, to rectify the breach. If the Commission is not satisfied with the response, it can if necessary fall back on the power of suspension or removal. Accept that proposed powers should apply equally to trustee corporations.
28 / para 226	Acknowledges there may be occasions when, due to the urgency of the circumstances, the SC will be best-placed to exercise these powers. However, there will be other occasions where there would be time for these powers to be exercised, or subsequently confirmed by the issuer and/or relevant stakeholders. Greater effort to place this discretion in the hands of the issuers and relevant stakeholders would have the benefit of keeping key decision-making in the hands of those most affected and reduce moral hazard risk.
28	These powers raise serious issues for the submitter's members. In particular, the power to remove a trustee has significant potential impacts. At present s 48(4) of the Securities Act allows the Commission to revoke its approval of a trustee but this has prospective effect and does not require a trustee to resign from existing trusteeships. Creating such a power raises many issues, including: <ul style="list-style-type: none"> - Would there be a requirement for the SC to consult with the relevant issuer(s) before using these powers? We would hope so. - There is a risk that a SC application might be seen as reflecting not just on the trustee but also on investor perception of the issuer. This might create liquidity issues. The problem so created may be much more serious than the breach. - For these reasons such applications should presumably be in chambers and be 'fast-tracked'. It could be very difficult for an issuer to operate with this sort of uncertainty hanging over it. - If a trustee were removed, how would they be replaced? Some interim appointment procedure may be necessary, which raises issues around whether the approval of issuers would or should be required. - Costs would arise from the above.
28	If the SC has the power to remove a trustee it must also have the power to install a temporary trustee or in some way cover any period where there is no trustee, if it

	takes the product provider some time to negotiate the terms of a new trustee appointment. The SC should also have the power to require a trustee to supervise a scheme or perform their role in a particular way, as opposed to just fixing a breach.
Q 29: Should the Securities Commission have to go to court for orders to do certain things? If so, which ones?	
29	Court approval should be a prerequisite to the SC exercising to remove a trustee from appointments, or removing the Board of a trustee.
29	No
29	Removing or replacing the board, management or trustee.
29	Removal of a trustee from a specific or general appointment – consider process carefully.
Q 30: Will there ever be a situation where the market will not step in and take on an appointment where the trustee has been removed? If so, what should happen?	
30	Yes, will be such situations
30	Address past breaches by statute – substitute trustee has power to sort out problems without fear of being sued
30	SC appoint 'special trustee' with powers similar to statutory manager (for cases where no other trustee will pick up particular appointment)
30	Funding of trustee costs needs to be assured
30	Public Trustee step in – 'trustee of last resort' as per personal client services.
30	Issues to address – who assumes liability under the original trust deed? SC, until new appointment made? What is position of investors? If the issuer business displayed problems, or these liability issues added undue complexity, might not be that easy to find a new trustee except on a lower-liability basis
30	SC take on real or contingent obligations of this sort – perhaps set remuneration (to new trustee), or have power to wind up product (117)
30	Issuers must be able to continue to manage the assets
	Wind up trust in accordance with trust deed – issuer and regulator act jointly.
6.6 Role of Trustees Under the Trustee Supervisory Model	
6.7 Role of Other Parties	
Q 31: Do you see a potential overlap between the Securities Commission and the Registrar of Companies? If so, what? What problems might arise? Are they significant? How might they be addressed?	
31	Yes, overlaps
31	Should be clear distinction – Registrar directed primarily to registration of conforming documents. The ambit of CIMA is wider than just issuers. Equally, that Act does not apply to 'schemes' under securities laws. The underlying issue is whether there should be a dual reporting obligation on trustees in respect of corporate issuers. Considers that dual reporting has the potential to lead to parallel investigations, with attendant duplication of costs and time commitments for all parties involved. Recommends that, in respect of corporations that are issuers, the functions and powers of the RoC under CIMA be transferred to the SC. Recognises that this has implications for the: <ul style="list-style-type: none"> - resourcing and structure of the SC – an issuer investigation group may need to be demonstrably separate and independent of the trustee monitoring group to minimise risks of role confusion and encourage openness by trustees; and - the current investigative roles of the Registrar in relation to corporations that are not issuers. Consistent with their submissions on the CIS document, considers that the SC should have equivalent functions and powers in relation to 'schemes' under securities laws. Protections equivalent to those in ss 15 – 23 of CIMA should apply.
31	Present overlap is satisfactory.
31	Not aware of any confusion between roles of SC and Registrar but if in doubt the transfer of responsibility for reports under CIMA to the SC could be considered.
31-33	Generally happy with proposals that trustees must report issuer insolvency or significant trust deed breaches to the SC.
31	Trustees should be required to report to only one entity and that entity should be

	required to pass the information on to the other regulator.
	Q 32: Do you think there should be an obligation on trustees to consult with the Securities Commission at an earlier stage than giving notice under s 11? Is this practical? What sort of threshold would be required to trigger the obligation to inform the Securities Commission?
32	Ability, but no obligation
32	Should be at trustee discretion, and protected as if notice had been given under s 11.
32	Yes, should be obligation
32	Triggers – should be a matter of judgement and circumstance. Need to get away from prescriptive rules, as they stop people thinking and can be avoided by sticking to the wording rather than looking at the broader picture or events.
32	To maintain the primary regulatory role of trustees, and to avoid the trustees consulting the regulator on every minor issue, there needs to be a minimum threshold before trustees are required to consult. S 18A of the Superannuation Schemes Act is a similar provision (and an example of a requirement to report the principal regulator).
33	Ability, but no obligation
33	Yes
33	Do not regard this as being essential but have no difficulty if this is required. Most s 11 notices deal with a failure to comply with the Financial Reporting Act requirements regarding overdue audited financial statements. This level of detail may not serve much purpose.
32 / 33	The requirement to report under section 11 should be shifted from the Registrar to the SC. Given the SC's role it would be expected that trustees consult with the SC in similar circumstances, which would mean that the roles of the two agencies overlap.