

Ministry of **Economic
Development**



M a n a t ū Ō h a n g a

**Collective Investment Schemes:
Summary of Submissions**

April 2007

ISBN 978-0-478-31010-8 (HTML)
ISBN 978-0-478-31011-5 (PDF)

First published 24 April 2007 by the
Ministry of Economic Development
PO Box 1473, Wellington
New Zealand

<http://www.med.govt.nz>

RFPP: Collective Investment Schemes Submission Summary

	Issue Reference	Summary of Issue Raised by Submission
<i>General Comments on the Proposals</i>		
1.	N/A	The approach of having 3 top level supervisors (SC/RB/RoC) with a lower level of self-regulatory supervision is a good one.
2.	N/A	The concept of a generic form of investment vehicle has considerable merit and has some similarities to the single responsible entity and largely an expansion of the Unit Trust model. This is the most user friendly model available.
3.	N/A	Support making investment in financial products more accessible to individuals with low financial knowledge.
4.	N/A	Believe that the regime proposed would make it easier to compare products, provide more meaningful disclosure and more accessible dispute resolution mechanisms.
5.	N/A	Believe that greater regulation will lead to increased consumer confidence, but they are wary that increased regulation can also lead to increased costs that will be passed on to consumers.
6.	N/A	Supports the framework proposed for oversight by an Independent supervisor for CISs.
7.	N/A	Recommends the adoption of Global Investment performance standards for Collective Investment Schemes due to growing international recognition of these investment standards. (See submission for more information on GIPS development)
8.	N/A	Support in principal the proposals for CIS, but recommend that CIS trustees of participatory securities be exempt from the requirement to hold CIS assets and be given additional powers to veto transactions made by the manager that it does not believe is in the best interests of members.
9.	N/A	Suggest that it would be unreasonable to introduce a regime that would automatically put currently complying schemes into a non-compliant position.
10.	N/A	While it may be desirable to minimise regulatory arbitrage and ensure consistency between various CISs, if all CISs are subject to exactly the same requirements, there is the risk that product innovation may be stifled. This can be mitigated by simply rationalising the elements of regulation that pertain to similar characteristics of products and allowing differences in regulation to exist where there are distinctions in products.
11.	N/A	Supports the proposals in the CIS document, but also wishes to emphasis that they have confidence in the current regime.
12.	N/A	Supports the objectives and concepts outlined in the discussion document in terms of addressing the inconsistency of current regulation, harmonising the role of statutory supervisors and CIS trustees, providing disclosure that is meaningful for a particular type of issue, and creating a regulatory framework that is consistent with our international obligations.
13.	N/A	Supports the single regulatory framework for CISs to ensure a degree of consistency.
14.	N/A	Having a nominee separate from the issuer seriously affects the profitability of the schemes. The custodial fee is a major component of the income generated. Further, the income should sit where the risk resides. There is also doubt that this would reduce fraud.
15.	N/A	The document seems to have assumed that CISs will be unitised trusts. It needs to accommodate other possible models as well.
16.	N/A	While the document attempts to establish a minimum set of rights, it will also in effect set a maximum set of rights.
17.	N/A	Consider the role of the NZX and the GA as they appear to be changing fundamentally.
18.	N/A	They wish to retain their existing operating and supervisory arrangements

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		that are currently specified in their Trust deed, Investment statement and SIPO.
19.	N/A	Similarly, there is no need for the GSF to adhere to minimal funding levels, register as a financial institution, be subject to the proposed dispute resolution mechanism or to comply with the new disclosure requirements. (see submission for information on the CIS structure).
20.	N/A	Concerned that a narrow pursuit of consistency fails to recognise differences between Unit Trusts and Superannuation. The former is often a focused type of saving in a specific fund, whereas the latter caters to changing needs through a life span. Thus, it is more appropriate for issuers in superannuation schemes to have flexibility in developing its overall investment strategy over long periods of time.
21.	N/A	The proposals lead to a level of structural independence of trustees that is costly and has not been justified on the basis of the New Zealand experience.
22.	N/A	Do not agree that it is necessary for the trustee supervisory model to be extended to life insurance with a savings element. Given that there is not a significant amount of savings in this area, the additional costs are not justified. Further given the improved supervision for insurers, they do not believe that there will be a regulatory gap.
23.	N/A	Supports the general theme of the review but believes that any increase in regulation needs to balance the increase in costs against the real benefits of the increased regulation. They also believe that many of their existing processes are sufficiently robust to encourage appropriate investment into CISs.
Comments arising form Chapter 1 of the Paper (the Executive Summary)		
Comments arising form Chapter 2 of the Paper (Introduction)		
Comments arising form Chapter 3 of the Paper (the Proposed Framework for the Regulation of CISs)		
24.	Paras 16 - 18	They think that the problems identified in respect of the information asymmetry are valid, and that these problems arise from the investor's need to rely on the integrity of the issuer. They argue that the trustee companies' role mitigates this asymmetry to some degree.
25.	Para 20	Do not believe that the case of an independent trustee as supervisor of a CIS has been demonstrated. Alternatives to this approach can and do work adequately.
26.	Paras 26-27	Supports proposed framework for governance and supervision of all CISs.
27.	Paras 26 - 27	While the overall regulatory model proposed is sound, it may be counter productive to try to impose a single regulatory model on different products.
28.	Para 39	The definition provided here is broad enough to meet the objective of having common standards for all CISs and the proposed definition encompasses a full range of securities. It should be noted that this definition might also encompass equity shares and debt securities, although they understand that this would fall outside the definition of CIS.
29.	Paras 41-42	The aim of creating a wider encompassing definition of CIS is good and super schemes are simply forms of CIS with a specified purpose
30.	Paras 41-42	Where a 3 rd party solicits a membership arrangement, that 3 rd party is effectively acting as an issuer or a promoter. As such the relevant obligations should apply.
31.	Para 55	Existing GIFs will need surety that they can continue under the current provisions, including making amendments and adding fund options. It is also important that they not be wound up or a transitional provision be provided to allow a smooth transition into the CIS regime without the need for complete member consent.
32.	Para 55.a	Do not agree that the use of GIFs by trustee companies to offer managed

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		funds is part of its original purpose. Care will need to be taken to ensure that any legislative limitations are drafted so that they preserve all the initial purposes of GIFs.
33.	Paras 70-75	Support a transitional arrangement for employer stand alone schemes and DB schemes. Compliance costs already forcing some of these schemes to wind up or transfer to Master Trust structures.
34.	Paras 70-75	Proposed changes are not unduly onerous and the stand alone schemes will roughly fit the framework.
35.	Q1	Generally believe that the proposed definition of a CIS works towards meeting the objective for regulating CISs, but the definition alone will not be sufficient.
36.	Q1	While the aim of reducing conflicts of interests is theoretically sound, this may not be achievable in the NZ context. In fact, the proposals may merely be substituting one set of conflicts for another.
37.	Q1	Agree with the range of securities included in the definition of CISs, including KiwiSaver.
38.	Q1	The definition is broad enough to meet the objectives of having common standards for all CISs.
39.	Q1	Agree with the objectives that effective and consistent regulation of comparable financial services should increase investor confidence.
40.	Q1	There are potentially some complications with the dual role of trustee as both first step supervisor and owner of the CIS assets.
41.	Q1	Consider that the definition is sufficient to meet the objectives of regulating similar products in a similar fashion irrespective of legal form. Noted that the definition only applies to retail schemes.
42.	Q1	They believe that further consideration needs to be given to the number of fund type offerings which are being set up in a company structure with an external manager without the protections proposed for CISs.
43.	Q1	The GSF should be specifically excluded from the definition of CISs as it has a number of characteristics that are unique to the scheme, including supervision of the GSF Authority by the Minister of Finance, the duties created for the managers of the GSF under the Crown Entities Act, the crown guarantee and the fact that the GSF authority does not have a financial stake in the management of the scheme. Further, it is not clear how the regulatory model would apply to an organisation such as GSF.
44.	Q1	While they support the definition, they do not agree that it should extend to whole sale funds.
45.	Q1	Supports the scope of the scheme types to be included under the definition, but notes that there is no definition of investment with respect to life insurance products with an investment element. There appears to be a huge overlap between investment and savings policy.
46.	Q1	Supports a principle-based definition of CISs that include the following characteristics: <ul style="list-style-type: none"> ✦ Investment management is fully delegated; ✦ Allotted securities are widely held; and ✦ Securities are value by pre disclosed formulae reflecting market value of assets.
47.	Q2	The proposed definition covers a full range of securities and they note that the discussion document refers to substance over form.
48.	Q2	Contributory mortgages should not be classified as debt securities and are more appropriately categorised as CISs.
49.	Q2 - 5	GIFs should come within the definition and not disestablished, as this would have the effect of terminating a class funds available to issuers. Should also consider the valuable intellectual property that GIFs have built up
50.	Q3	The definition may also encompass equity shares and debt securities, although they appreciate that such securities will be expressly excluded.

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51.	Q3	Definition is appropriate and does not appear to have any missing elements.
52.	Q3 - 5	The definition is so general that it fails to include the 'investment' element. If the definition remains this general, there will need to be exceptions to the definition, as any collective financial enterprise will be caught, including NBDTIs, banks and debt securities.
53.	Q3, 5	Some of the older combined insurance and investment bundled products should be dealt with in the insurance legislation rather than the securities legislation. Thought needs to be especially given the products that are closed to new members.
54.	Q4	Not aware of any missing elements.
55.	Q4	Contributory mortgages should be included in the definition.
56.	Q5	A security regulated elsewhere could be excluded to avoid multiple licensing.
57.	Q5	Considers that all CISs should fall under the definition and don't think any should be excluded. While it is intended that this only apply to retail schemes, it should be noted that such practices are normally adopted at wholesale level as best practice. Does not consider that GIFs should be treated differently, as any legislative distinctions will be removed by the PIE and CIS regimes. If it is felt exemptions are necessary, all CIS can be captured by the definition with specific schemes being able to apply for exemptions.
58.	Q5	Application of the CIS supervisory structure to all wholesale schemes would be inconsistent with a regime that is primarily directed towards the protection of retail investors.
59.	Q5 (also refer questions 7, 8, 26, 78, 83, 84 and 85)	Does not consider that National Provident Fund (NPF) schemes or its global asset trust (GAT) should come under the proposed trustee supervisory framework, as NPF schemes are currently prudentially supervised by the NPF Board and the Minister of Finance. There is also no need for separation between issuers and trustees for any NPF scheme as all such schemes are closed and in 'wind down' mode.
60.	Q5 (also refer questions 7, 8, 26, 78, 83, 84 and 85)	There is no need for the regulator to monitor the NPF board by imposing fit and proper entry requirements, as the board is chosen by the Minister after consultation. Further the board is financially separate from each contributing employer and has fiduciary duties to members as well as responsibilities towards the crown.
61.	Q5	Considers that while life insurance with investment elements may share some characteristics with CISs, these products are covered by existing securities and insurance legislation, and needs only to be regulated under securities or CIS regimes. Supports, however, the ongoing monitoring of these products to ensure that the scope for regulatory arbitrage is minimised.
62.	Q6	Does not think that legal form should be prescribed for CISs.
63.	Q6	No legal form should be prescribed, but it should be noted that CISs are historically trusts and this by add to the problem of the definition encompassing schemes that should not be captured.
64.	Q6	Legal form might stifle innovation or create a loophole.
65.	Q6	Favours the principles of the CIS structure where little attention is given to legal form, as this will enable issuers to be flexible in their structural arrangements and will clarify what falls within the scope of a CIS.
66.	Q6	It is contradictory to suggest that there should be no legal form prescribed, but that these schemes would have to have trustees and trust deeds.
67.	Q2-6	Supports the proposed definition and the suggestion that CISs not be required to take prescribed legal form. The definition and the regulator's power to declare a product to be a specific type of security allows greater

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		flexibility and innovation.
68.	Q7	Agrees that superannuation schemes and KiwiSaver schemes can be included in the general definition of CISs, as the objectives of the various schemes are generally similar between the various categories of CISs. The primary difference is the tax treatment of these schemes, as this provides incentive to save in one form over another.
69.	Q7	Agrees that super schemes should be included in CISs and there is no reason to distinguish them simply because of retirement and lock in.
70.	Q7	While logically a superannuation scheme may have a special investment purpose, this has not been reflected in government policy since 1987. Currently, they are similar investments to other schemes.
71.	Q7	Superannuation is a form of CIS, offering some protection from creditors as benefit entitlements are held in trust.
72.	Q7	Agrees that super schemes should fall under the definition, as they become a more significant part of New Zealand's savings pool.
73.	Q7	Agrees that superannuation conflicts exist in all CIS and that separation of roles is desirable.
74.	Q7	Agrees that super should fall within the general definition, but suggest that exemptions might be used for employer based schemes.
75.	Q 7/8	In DC schemes employers roles are closer to that of a promoter and in DB, closer to that of the issuer. Use this methodology to identify how to fit super into CIS framework.
76.	Q 7/8	Does not see reason for super to be defined separately other than the stand alone schemes that will be covered by the transitional arrangements.
77.	Q7/8	While a transitional arrangement for DB and employer sponsored schemes is appropriate, this does not require different legislative treatment and could be addressed through the maintenance of trust deed provisions, locking in the benefits of the current superannuation regime, including coverage of provisions such as employer contributions, vesting scales and insured benefits.
78.	Q 8	Does not think that workplace based CISs require any different legislation over any other CISs.
79.	Q8	As the employer in these schemes will have a financial interest in the schemes, there can be a potential for conflict of interest. The current regime (being the trustee supervisory structure and the GA oversight) is effective in providing a check.
80.	Q8	In general the submitter does not believe that it is necessary to regulate either stand alone or master trust employer sponsored schemes differently from other CISs. Any regulation that is developed, however, should ensure that the employers' role is recognised and enhanced where possible.
81.	Q8	Employers will often provide a degree of supervision. This monitoring will enable employers to move investment or administration managers or even master trust providers should they choose to do so.
82.	Q8	While DB superannuation schemes also fall under the same regulatory umbrella as other CIS, the characteristics that are unique to DB schemes ought to be identified and reflected in regulation.
83.	Q8	Employer sponsored schemes are different from other CISs as the employer contributes towards the member's retirement saving, often with staggered vesting based on length of saving.
84.	Q8	Any rules developed for benefit accrual should be fair and objective.
85.	Q8	Employer schemes also differ because the employer will negotiate fees and monitor investment performance, which reduces the need for monitoring by the investment manager or an independent trustee. The employer may also be able to take such action as switching administration or fund managers.

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86.	Q8	The member will not be able to access the funds whilst still working for the sponsoring employer. The funds should accordingly be ring fenced from the employer.
87.	Q8	From a consistency perspective, there are benefits in having all super schemes under the CIS regime. Acknowledged the distinction with DB schemes, but believes that the legislation can accommodate this. Can see the argument that the costs created by the CIS regime may lead to wind up, but considers that KiwiSaver is likely to result in this anyway. Further, thinks it is inconsistent for a member to be subject to different regimes depending on whether an employer sets up his or her own scheme or invests into a master trust. Further, given the long term focus of employer schemes, arguably, these are the schemes that require the greatest protection. Hence believes that employer schemes should be included in this regime.
88.	Q8	Believes that it is desirable to retain the existing structural arrangements for stand alone employer superannuation schemes, including maintaining the status quo in respect of trustee and issuer functions.
89.	Q8	Believes that there should be provision to grandfather existing employer schemes into the new regime, and supports a transitional arrangement for these existing schemes. It is felt that the costs of the new regime may lead to wind-up and closures of such schemes.
90.	Q9	In principle there should be no implications of regulating superannuation in the same way as other CISs.
91.	Q9	It may be that there is a perception that employer schemes may go into decline because of the costs. They do not believe that this is the case because of the initiatives such as KiwiSaver and the ITA reforms.
92.	Q9	While there are benefits of consistency and the fact that the proposal is simply a development of the existing regime, the independence requirement is likely to have a significant impact on fees.
93.	Q9	Does not believe that the costs would outweigh the benefits, but recognise that the costs are incurred at the point of appointing a new trustee. However, the employer often has the choice to either accept the costs itself or whether to pay them out of the scheme. Hence, does not think that costs are an overriding issue or has been balanced against the potential benefit to be had from an independent trustee.
94.	Q9	A cost and benefits assessment of regulating employer super schemes the same way as other CISs would have to consider: <ul style="list-style-type: none"> ✓ The small costs of an independent trustee and the potential benefits; ✓ The costs are unlikely to lead to wind up; ✓ Trust deeds of most existing schemes allow for the appointment of an independent trustee; ✓ Nor is such an appointment inconsistent with any employer discretion; and such independence will allow for greater discussion of varying interests in the schemes.
95.	Q9	While DB schemes may require different attention, it is felt that their unique features build more of a case that a more stringent regulatory regime is required.
96.	Q9	The benefit of regulating super schemes as CISs is that one set of regulation will apply to all CISs, but the costs are that the aspects of the scheme relating to the employment contract may be overlooked or the protections for non expert investors may become superfluous.
97.	Q9	The largest issue will be the independence of trustees, as many schemes rely on trustee parties, rather than external trustees. Emphasis should be placed on ensuring that the actions are exercised independently, rather than ensuring that the trustees themselves are necessarily independent.
98.	Q9	The benefits include a level playing field for disclosure and regulation, ease of understanding by investors and little additional cost is envisaged.

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99.	Q10	Most life insurance contracts with an investment element separate the investment and insurance components for general purpose financial reporting and ensure that prudential reserves are maintained for both components.
100	Q10	There are few contracts where a life insurer provides an ancillary benefit for investors in a CIS by an unrelated issuer.
101	Q10	Mandatory separation of such business into 2 entities would create an extra layer of costs associated with legal form.
102	Q10	Some existing life insurance policies still have quite easily identifiable and separate components. In those instances, two contracts may be better. Also need to consider whether other insurance policies can have an investment element.
103	Q10	All of their life insurance policies, including the investment elements, are offered by one company. It would be impossible to separate out the various components and any mandatory separation would stop the sale of such policies. (See submission for more information on costs.) Further, it should be noted that the life insurance companies will already be subject to a hefty regulatory regime, and subjecting these schemes to the trustee supervisory model would be regulatory overkill in pursuit of the consistency argument.
104	Q10-11	Generally supports the proposed functions of the trustee, but is unable to provide any more in-depth answers.
105	Q11	The proposals could reduce the supply of unbundled contracts, which offer diversification and liquidity for investors who make small regular contributions.
106	Q11	While life insurance shares some characteristics with CISs as defined, the disadvantages of regulating the two consistently outweigh the benefits. The insurance regime is more appropriate.
107	Q11	Believes that requiring the insurer to develop new offer documentation will be redundant and costly for schemes that are already closed to new members.
108	Paras 89 - 93	More thought needs to be given to the role of the external trustee. Does not believe that trustee companies would be comfortable providing this change to a more active role, as they have become accustomed to providing a passive monitoring service. The new role would require different skill sets and are likely to increase their costs, which ultimately would have to be borne by employers.
109	Paras 89 - 93	The existing model works well. Trustees and managers have developed good working relationships that protect investors' interests adequately.
110	Q12	Does not believe that it is the trustee's role to make the initial assessment of whether the issuer meets the fit and proper criteria. This role is more properly performed by the Commission. In terms of ongoing monitoring of the issuer's compliance, it would be best to develop joint practice guidelines between trustees and Commission to determine where the responsibilities lie between each. The trustee should monitor compliance rather than enter into any commercial assessment of the issuer.
111	Para 97 – comments from Registration document	<p>The role for CIS trustees in relation to initial and ongoing merit assessments (of CIS issuers) should be limited to providing specified information or assessments of a type ordinarily collected or made by the trustee for its own purposes to the regulator to assist the regulator in undertaking merit assessments. The info or assessment that trustees are required to provide the regulator should be specified (in legislation or regulations) and trustees should be authorised / required to provide the info to the regulator as the occasion requires and be protected against any consequential liability.</p> <p>Concerns if trustees are required to: (a) collect, make and deliver to the regulator additional info; or (b) make a recommendation to the regulator</p>

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		as to whether the issuer satisfies any qualitative aspects of the “merit” or “fit and proper” requirements – as trustees would be exceeding their contemplated supervisory roles by becoming in effect extensions or agents of the regulator. If required to provide additional info, trustees could incur costs not relevant to the trustee’s supervisory role leading to a lack of transparency of the overall costs of the prudential supervision regime and compliance with FATF obligations.
112	Q12	Foresee some conflicts between the core duties of a trustee at law and the functions of the issuer, as the trustees should not have to second guess the decisions of the issuer. Further, to achieve the appropriate delineation between the various roles of the trustee and the issuer, the functions of the CIS trustee should be specified in the legislation and subordinate to any functions or duties of the issuer pursuant to the governing documents of the CIS.
113	Q12	Not convinced that the justification for the desirability of the CIS trustee model has been demonstrated. Believes that the artificial separation of duties between a trustee and manager is confusing and unhelpful to managers.
114	Q12 (see also question 54)	There are time and cost implications in separating the issuer from the trustee, which would be a barrier to new entrants and may stifle innovation, especially given the prescriptive requirements for trust deeds. Further, suggests that trust deeds should be guiding rather than prescriptive.
115	Q12	The functions of the CIS trustee appear to be appropriate for closed funds, but not sure how it would work for an open-ended CIS.
116	Q12	Believe that if a case can be made for the trustee model, there is nothing wrong with the proposed functions.
117	Q12	The duties seem to be comprehensive, but need to extend to risk assessment and management. Also not sure that the requirement to maintain a website is warranted unless it is replicated across all financial providers.
118	Q12	The proposed framework for the oversight and governance is appropriate.
119	Q12	Trustees do not currently monitor fit and proper criteria. This will increase costs and disincentivise some people from making offers. As this is a departure from the current disclosure based regime, the change needs to be more fully justified.
120	Para 95	It would be helpful to have a more precise definition of what the legal duties of trustees will be, including whether trustees should have a responsibility to make a judgement on the merit of offers being proposed to investors.
121	Para 97.b	Query whether the CIS trustee will have the competence to carry out the assessments proposed for supervision of issuers. Suggested that the Commission might have oversight of this function of the trustee.
122	Para 97.b	While the submitter supports the proposed functions of the CIS trustee, it queried whether the CIS trustee will have the competence to carry out the assessments proposed for supervision of issuers.
123	Para 97.c	Strongly disagree that the CIS trustee should be responsible for negotiating the form of offer documents with the issuer as this would be a material departure from the current practice.
124	Para 97.d	Believes that it is crucial for trustee to hold the scheme assets on trust separately from other property of the issuer or trustee.
125	Para 97.e (also see para 102.c and 103)	Concerns around the potential trustee liability for ensuring compliance with the terms of the offer and that the CIS operates true to label. Currently there is an analogous duty which trustees are comfortable with, and it is not currently clear whether it is intended that a higher threshold be set. A further difficulty is that CIS trustees will have to make subjective assessments and, as such, will need guidance about how far to go with

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		the assessments. Regulator guidelines are appropriate in this instance.
126	Q12/13/14 & Para 98	Concerned that the proposals will have significant impact on the manner that CISs operate and inhibit investment in higher risk investments. Some ventures are by their nature high risks, and investors should be able to accept this risk if they choose to do so. Extending trustee liability in the manner proposed will limit the amount trustees expose themselves to such ventures.
127	Q13	The trustee must be liable for his or her actions or inaction. The objectives outlined in para 95 are unlikely to be accomplished if there is no attached liability.
128	Q13	Believes that the trustee should be required to meet prudential standards under trustee law.
129	Q13	Comfortable with the existing position at law that a trustee should be liable, subject to the same qualifications that currently exist, such as the exclusion of personal liability etc.
130	Q13	A CIS trustee should be responsible for any acts or omissions that are negligent.
131	Q13	It is inevitable that trustees will be joined as a party to any action against a scheme. This will increase trustee costs. As such it is proposed that only the regulator be able to take action against trustees, which will provide a level of protection against frivolous or speculative action. Further, the trustee should be fully indemnified where the trustee acts on the direction of the Commission.
132	Q13	There may be some additional costs for investors in meeting the costs of an independent trustee, which may be especially large for smaller funds.
133	Q13	Supports the proposed remedies for investors where a trustee is not performing its duties or has breached a term of the deed. This said, there needs to be certainty about the scope of trustee's duties.
134	Q13	Any additional liability will have a flow on effect on costs and should be justified. Does not think that any such change to trustees' liabilities has been justified.
135	Para 102	Clarify the trustee's duty to act in best interests of members and whether this extends beyond questions of property.
136	Para 102.g	It should be noted that most trust deeds currently retain discretion for trustees to act where it believes that the investors' interests are under threat. In practice, most would already not act where the matter was not manifestly in the interests of investors.
137	Q14	The proposed standards impose a higher level of duty and liability on trustees of participatory securities, which will have a flow on effect on the costs to investors. These costs however are outweighed by the added benefits of the new regime.
138	Q14	Most of the proposed powers should result in the trustee becoming a more effective frontline supervisor, which they support. It may, however increase costs, which are likely to be passed on to investors.
139	Q14	Largely support the proposals in principle, particularly in reference to adopting a uniform approach to CISs and the regulation of issuers, including the granting of robust powers to independent supervisors of these schemes. However, this framework does not consider how the regime will deal with those securities that will find it difficult to meet the requirements of the proposed regime, with specific reference to participatory securities. This may in turn have a direct impact on current investors and introduce unnecessary costs.
140	Q14	The discussion document suggests that these participatory securities do not fall neatly into the proposed regime and may be dealt with through an exemption regime. This is inappropriate, as the CIS trustee will still be required to hold the assets of the CIS.
141	Q14 (see	The requirement for the trustee to hold the assets is not necessary as

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	also question 12)	investors' assets will be protected through the requirements placed on trustees and issuers or managers under the new compliance framework. Thus if issuers held the assets, it shouldn't weaken the compliance focus of the reform.
142	Q14	There should be a legislative exemption for CIS trustees of participatory securities from the requirement to hold scheme assets, as the current supervisor or the proposed trustee is obliged to ensure the manager operates in compliance with the regulatory regime and furnish the supervisor with specific relevant information. The powers of the trustee will be further bolstered under the new regime, which negates the need for the trustee to hold the assets on trust.
143	Q14	If a trustee is exempt from holding property on trust, there should be further powers provided, including the ability for the trustee to veto certain transactions, and that the manager be required to notify the trustee of transactions above a mandated amount. Such safeguards ensure that the trustee has effective control over the assets without having to hold the assets itself.
144	Q14	Asset holding was only one element noted in the FSAP report on compliance with IOSCO principles. If the suggested recommendations are adopted, there should be sufficient investor protection to boost investor confidence.
145	Q14	Does not agree with the exemption approach proposed in the discussion documents for participatory securities as it is not appropriate to introduce new reform and then require these schemes to seek exemptions; as such exemptions would be discretionary and provide no business certainty.
146	Q14	The residency requirements for trustees will not have any significant adverse consequences, unless the trustee is also required to hold the assets. This would undermine the ability of overseas issuers to hold the assets of the scheme and may force the wind up of such overseas offerings.
147	Q14	None of the proposed functions of the CIS trustee will raise issues for participatory securities.
148	Q14	While there may possibly be issues raised, submits that it would be beneficial for the issuer and the trustee to be kept separate for transparency. Further suggests that trustee companies should not be eligible as both independent trustees for CISs and as issuer of CISs, as this gives rise to a conflict of interest.
149	Q15 – Should CIS trustee have any other duties?	The proposed duties of CIS trustees appear to be appropriate.
150	Q15	If an issuer operates a passive fund which tracks an index, there should be an exception for the trustees to determine whether the acquisition is manifestly not in the interests of investors. As there is no judgement being exercised by the issuer, oversight and review is unnecessary and will simply add costs.
151	Q16 – Should the CIS trustee be liable for its acts and omissions when performing its duties?	CIS trustee should be liable for any acts or omissions that are negligent.
152	Q16	The Commission should have a residual power to exempt schemes from

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		certain requirements to address issues that may arise.
153	Q17 – What is appropriate threshold for CIS trustee to not act on direction of issuer?	Enabling the trustee to not act on the direction of the issuer where the direction is manifestly not in the best interests of the investors allows the issuer the flexibility to manage the investment of the scheme, without the trustee having to determine whether each investment is in the best interests of the investors.
154	Q17	While there will always be some uncertainty in terms of judicial interpretation of the standard required by the term “manifestly,” the definition is fairly clear and has been in common use in respect of unit trusts for some time now.
155	Q17	They are comfortable with the ‘manifestly’ trigger, as this is the trustee’s power. This power does not exist for the trustee to second guess the investor, but rather for the trustee to be able to protect investors’ best interests. The terms of issue should be in the trust deed and certain to protect the interests of investors but these terms should also be flexible enough to allow the trustee to respond to changing market demands.
156	Q17	It is not reasonable to expect the CIS trustee to decide whether judgement calls made by the investment manager are in fact correct. The CIS trustee should simply ensure that the processes provided for in the trust documents are adhered to and that any decision made is not reckless.
157	Q17	Suggests that a materiality test be adopted rather than a manifestly test, as there is greater clarity around this term. If there is sufficient certainty, trustees are likely to read in a lower threshold. Also queries what the rights of appeal will be.
158	Q17	Manifestly is a high threshold and may introduce some conflict between the trustee’s duty to ensure the scheme is true to type and to act in the best interests of investors. Should be aware of the appropriate threshold to ensure that the trustee continues to act in investors’ best interests.
159	Q17	This is a considerable obligation to impose on trustees, as interpretation will be highly subjective, and it will be difficult to define the obligation.
160	Q18 – Should investors be able to call meetings and require the CIS trustee to act on their directions?	Investors ought to be able to call meetings and direct trustees. Trustees, however, should have an ability to not act on the direction of investors where it is not in the best interest of the investors for the trustee to carry out those directions.
161	Q18	A reasonable number of investors should be able to call a meeting and require the CIS trustee to act on their directions. The current Unit Trust Act provisions are appropriate.
162	Q18	While the provisions for investors seem to be appropriate, the trustee should be protected from vexatious actions taken by a minority of investors.
163	Q18	Trustees should also have the power to seek directions from the Court if they believe that the instructions are in breach of their legal obligations.
164	Q18	While investors should be able to call a meeting, any resolutions should not be binding and should be subject to the trust deed. The trustee should retain the power to apply to Court for directions where it is of the opinion that the direction may be objectionable. Further, a 10% quorum may be

	Issue Reference	Summary of Issue Raised by Submission
		appropriate for CISs.
165	Q18	There needs to be further consideration of the balance necessary between investor resolution at meetings and the trustee's responsibility to act in the interests of all members. In particular the protections of members under s9 of the SSA in relation to the ability for investors to direct trustees. The threshold for the Commission taking action should be similar to that proposed under the SLB.
166	Q18 (also refer questions 24 and 71)	Objects to the proposed power to allow the CIS trustee to summon a meeting of members and that of members to call a meeting, as members should not have a say in how NPF schemes are run, given the legislative framework and the crown's interest in the scheme. This argument is further supported by the ability of NPF members to transfer to other superannuation schemes.
167	Q18	The power for investors to be able to call meetings and direct trustees is not helpful and has the opportunity of being abused by a small group of investors. Further, investors may not necessarily be well equipped to advise or direct trustees. It should also be noted that investors always retain the ability to move their contribution elsewhere.
168	Q18	Concerned that investors should not be able to call meeting, unless the meeting is limited to matters of serious business.
169	Q19 – Should the CIS trustee have any other powers?	While a greater arsenal of trust deed powers might be appropriate, the ultimate protection for investors is to be aware of the risks associated with any specific investment.
170	Q19	The powers suggested seem to be appropriate.
171	Q19	The trustee should also be able to retain the ability to include powers in the trust deed if they need to.
172	Q19	While the powers suggested are appropriate to monitor compliance, they should not exceed that purpose. This is an issue in respect of determining whether an issuer is fit and proper. A trustee may be empowered to direct an issuer to fix a specific problem in a specific manner. This may compromise their independence, where other procedures had not been followed.
173	Q19	Do not believe that there is a need for additional powers to be included. The High Court currently has the power to amend a trust deed to provide trustees with greater powers should there be any need.
174	Q19	The obligations and powers seem to be based on the issuer doing something wrong. Queries what would happen if the trustee did something to the detriment of the issuer.
175	Q19	If the CIS trustee is of the opinion that a breach has occurred there should be dispute resolution procedures in place to allow the issuer and the trustee to find a solution before the trustee exercises its powers.
176	Q20 – Should the CIS trustee be liable for its acts and omissions when exercising its powers?	The CIS trustee should be liable for any acts or omissions that are negligent.
177	Q20	In regards to CIS trustees of participatory securities, the powers to hold the assets on trust seem reasonable, but the nature of some participatory securities do not necessarily envisage the assets being held on trust.
178	Q21 –	CIS trustees would require statutory power to require periodic reporting

	Issue Reference	Summary of Issue Raised by Submission
	Should CIS trustee have a statutory power to require periodic reporting from issuer?	from the issuer.
179	Q21	Supports a minimum level of reporting to be included in the trust deed to encourage consistency across the industry in respect of reporting standards.
180	Q21	No difficulty with this as long as the matter is dealt with during the initial negotiation of the terms of the trust. The frequency of the reporting, however, should not be prescribed as this would create inefficiencies.
181	Q21	Agrees that periodic reporting to the regulator is necessary as this is the only way the Government can require consistent reporting and ensures that CISs stay true to label.
182	Para 109.f – Commission take action to Court if CIS trustee breaches any duty owed to investors	If the trustee breaches obligation owed to investors, the Commission could take court action to seek compensation – this could overlap with External Dispute Resolution process. Therefore need clarity of process. Consumer shouldn't get compensation from both unless one is a top-up (of the other), and the CIS should not have to pay x 2. If intention is for EDR to escalate matters to the Commission then EDR rules must stipulate this.
183	Para 109 – breach by CIS trustee of obligations owed to investors	It is not clear whether the envisaged meetings would cover occasions where a breach is merely suspected as opposed to where it is known that a breach has occurred.
184	Q 22 – What orders should the Court be able to make for breach by the issuer of its duties etc?	Reasonable for orders to be made for issuer to comply with trust deed to remedy breaches and reasonable to make an order for compensation where loss occurred as a result of breach. See section 49 of the Securities Act.
185	Q22	The Commission should be able to seek High Court confirmation to remedy the consequences of any breach by the issuer, as it will be expensive for investors to do it themselves.
186	Q22	A court should be able to issue directions, award damages, appoint new issuers or wind up a scheme when an issuer is in breach of its duties.
187	Q23 – Are the proposed remedies for breach	Proposed remedies for breach by the CIS trustee are appropriate.

	Issue Reference	Summary of Issue Raised by Submission
	by CIS trustee appropriate ?	
188	Q23	Would the regulator consult the public if determining whether any direction to trustees is in the public interest? Would this be different if the issuer was listed? Who would pay the cost of court action taken by the Commission?
189	Q23	Remedies for breaches by the CIS trustee seem appropriate although there is no mention of either the issuer or the sponsoring employer being able to take any of the actions proposed.
190	Q23	The proposed remedies are appropriate in principle, but have concerns over the proposed power that the Commission be able to direct the trustee about how a breach should be addressed, rather than directing the trustee as to the outcome. The proposal may blur the lines of responsibilities between the Commission and the trustee and pose moral hazard issues for the trustee.
191	Q23	The Commission's power to take collective action against a trustee should only be exercised in cases of a serious breach. This ensures that the power is not such that it becomes unduly onerous for a trustee to exercise his or her functions.
192	Q 23/24	Supports the idea of extending the remedies proposed for a breach of duties by a CIS trustee to superannuation schemes as it will provide consistency across consumers.
193	Q24 – Should members have ability to call meetings and/or direct the CIS trustee?	Does not see any reason in enabling superannuation scheme members to call meetings. Sponsoring employers in master trusts or stand alone schemes should also be able to call meetings. This would also recognise and protect employers by ensuring that decisions that are made at these meetings that impact on them are limited.
194	Q24	The majority of members should not be able to vary the contractual rights of a minority of superannuation scheme members. In an employer scenario, it is important to ensure that the employer's rights are not overridden.
195	Q25 – What directions should Court make for breach by CIS trustee of TD or duties?	The Court should have the latitude to take various actions as may be appropriate in the particular circumstance.
196	Q25	The Courts should have the usual powers available to it where a party has breached a contractual agreement or acted negligently.
197	Q25	Why are CISs being treated more severely than companies? Further note that compliance with trust deeds may be a matter of interpretation.
198	Q25	Any remedy for a breach by a CIS trustee should be proportionate to the breach.
199	Para 117 – Purpose of the fit and proper reqs	Agrees that consistent and minimum governance standards for CISs would reinforce the need for all issuers to have the same quality of governance. One should be aware, however, that this is likely to raise the costs and remove opportunities to invest in riskier ventures with less

	Issue Reference	Summary of Issue Raised by Submission
		<p>robust governance structures, because of a belief in the extent of the anticipated return.</p> <p>Also, sees no difference between the issue of interests in CISs and debt securities and suggests that similar minimum standards should apply.</p>
200	Para 118: Supervisor of CIS securities issued by banks: Comments from Registration document	Currently, securities such as unit trusts or superannuation funds issued by banks are subject to a CIS-like regulatory regime, including trustee supervision. Who will undertake the fit and proper assessment of CISs issued by banks – the Reserve Bank or the Commission?
201	Para 121: How registration and approval could work together: Comments from Registration document	Rather than issuers seeking a trustee first (which could be a lengthy and costly exercise if the Commission determined the entity was not suitably qualified, financially secure enough or adequately governed), prospective CIS issuers might instead go direct to the regulator in the first instance seeking provisional clearance (as to qualification, financial security, governance structure) which, if forthcoming, would only result in a positive “merit” assessment on completion of negotiations with, and certification by, a qualified trustee on the compliance/ capability issues (eg: has a trust deed, supervision, appropriate systems and procedures, reporting, etc).
202	Q26 – Are any of the F&P reqs for issuers inappropriate?	They agree with the fit and proper person entry and ongoing requirements. The Commission should also be able to set further fit and proper requirements.
203	Q26	The fit and proper requirements in respect of adequate infrastructure and appropriate levels of capital need clarification.
204	Q26 (also see questions 27 and 28)	Generally believes that an issuer should meet the fit and proper requirements, but there should be further clarification about what these requirements constitute.
205	Q26	The legislation is based on full disclosure being made and people being able to make the best decisions. Shouldn't the investor's rights to make these decisions be preserved under the new legislation? If it is necessary to impose fit and proper requirements, there should be clear and objective guidelines.
206	Q26 – paras 116 to 130: comments from Registration document	<p>It is unclear whether merit assessments of CIS issuers will be undertaken on a class basis (ie: only on the first occasion a registered financial institution seeks to register a CIS security), or on a product by product basis (ie: each time a new CIS product is registered).</p> <p>If assessment is undertaken each time an issuer issues a new CIS security – there may be different trustees for different securities. There may be potential for conflict between the assessments of the respective trustees. Because the assessments are qualitative, it is not a case of one trustee being right, and the other wrong. May lead to a lack of market confidence in the consistency of the merit assessment process.</p> <p>There may not be a level playing field if initial merit assessments are not undertaken anew. The first trustee may have incurred costs it expects to recover over the life of the relationship with the issuer. Other trustees may not have the same upfront costs and could undercut the incumbent trustee for subsequent issues.</p> <p>There remains potential for conflict between assessments by trustees in</p>

	Issue Reference	Summary of Issue Raised by Submission
		respect of the ongoing compliance by issuers with the qualitative requirements.
207	Q26 and 27	Agrees with the fit and proper person requirements, but reasons should be given for any rejection and any rejection should be appealable to the approver.
208	Q27 – Should issuers comply with any other F&P reqs?	New Zealand residency for officers and the majority of directors of the issuer should be a requirement.
209	Q27	The fit and proper requirements for issuers or managers offer substantial protection for investors, although attention needs to be paid to detail of drafting any such requirements.
210	Q27	What will be the practical implications if both the trustee and the Regulator determine that an issuer has to be removed? Who is expected to act as the replacement issuer?
211	Q27	Fit and proper entry criteria is not necessarily assurance of a successful investment. Further criteria are likely to increase costs to issuers with little benefit. However, if an issuer is able to demonstrate that the issuer exceeds the criteria, that issuer will undoubtedly have a competitive advantage in providing its services.
212	Q27	There are no other fit and proper entry criteria that issuers should have to comply with.
213	Q28 – Should CIS trustee recommend approval of issuer, with final decision resting with Commission ?	The CIS trustee will be remunerated by the issuer, which possibly creates a conflict of interest. Thus, it is appropriate that the final determination may be made by the Commission.
214	Q28	Having the trustee assess whether an issuer is fit and proper may compromise his or her independence.
215	Q28	Does not think that the Commission would be any better placed to make a decision regarding approval of the issuer. Currently, the trustee undertakes this role, and in the absence of good reason why the Commission is better placed to undertake this role, this process will simply add cost for no benefit. Further, there is little divergence in the standards applied by the trustees, as the current number of trustees operating is small. This should allow market forces to create some level of standardisation.
216	Q28	Suggests that the trustee should be able to provide information to the Commission on the assessment of the issuer against the pre-determined criteria, without any additional subjective commentary.
217	Q28/9	The issuer wishing to attract funds for investment through CISs appoints a trustee in a competitive trustee market. Trustees, thus, may not be able to look at issuers in a purely objective manner.
218	Q29 – What should process be if issuer is declined approval by Commission	If the Commission declines approval of the issuer, the issuer ought to be able to appeal to the Court. The CIS should not be allowed to proceed.

	Issue Reference	Summary of Issue Raised by Submission
	?	
219	Q29	The issuer ought to also be able to provide further information to the Commission.
220	Q29-34 – approval, ongoing monitoring, reporting and breach by issuer	Agrees with the proposed requirement and submits that all decisions should be appealable to a Court and the trustees should control the assets.
221	Q29, 31	Do not believe that approval should lie with the Commission, but if this proceeds, there should be a framework in place to allow discussion and review of the decision. There should also be a right of appeal. Further, given the possible subjectivity involved in this decision making, clear and objective guidelines should be developed about the standards expected.
222	Q30 – Should the CIS trustee monitor ongoing fit and proper reqs of issuer and report to Commission ?	The trustee should report to the Commission where it is aware of any breach of the fit and proper conditions. The trustee should be indemnified for such whistle blowing.
223	Q30	They support the criteria proposed, but suggest that the approval process may be unnecessarily cumbersome. Simplicity and ease of operation should be key objectives when designing the details of the process.
224	Q30	Agree that there is an appropriate process, including rights of response and appeal, but are concerned about what happens to the funds if an issuer is removed.
225	Q30	Reporting to the Commission could be done on an annual basis, but will need to ensure that these obligations are not prohibitive for parties to comply with.
226	Q30	The trustee should monitor the fit and proper criteria on an ongoing basis and ensure that the issuer has capacity to manage the scheme. Where there is a suspected problem, the trustee should discuss it with the issuer, and if the issue remains unresolved, then advise the Commission.
227	Q31 – Should final determination of issuer's fit and proper lie with the Commission ?	The Commission should have the final say for registration and removal of issuers.
228	Q31	There should also be an appeals process in place.
229	Q32 – Are the proposed reporting requirements appropriate?	Periodic requirements should be determined by trustee on the requirements of each CIS. A minimum of half yearly reporting should be instituted.
230	Q32	The trustee should be able to negotiate additional reporting where it considers it to be desirable.
231	Q32	Support the event based and periodic reporting proposed.
232	Q33 –	Support the powers for the CIS trustee to remedy a breach by the issuer

	Issue Reference	Summary of Issue Raised by Submission
	Remedying fit and proper issuer reqs	in graduated steps.
233	Q33	Further, suggest that it is appropriate, in the first instance, for the trustee to work through the breach without any assistance from the Commission, who should only get involved as a last resort and on the recommendation of the trustee.
234	Para 142 – breach by issuer of ongoing fit and proper reqs	Support the options proposed with the proviso that the issuer should have a facility for providing information in its defence.
235	Q34 – Appeal rights of issuer if no longer meet f&p reqs	The appeal rights should adhere to standard legal norms.
236	Q34	The issuer should have a right of redress, first to the Commission and a further right of appeal to the High Court. There is, however, a concern about the time that such a process would take where the matter needs to be resolved efficiently.
237	Q34	The provisions need to make it clear what the requirements are.
238	Q35 – Will another issuer ever take over from a issuer whose approval has been revoked?	Another issuer could take over where the trustee or the Commission decides that to wind up the scheme would be more prejudicial to members.
239	Q35	If an issuer is removed it is possible another issuer could take over. Procedure for appointing a new manager under current regime is normally part of the trust deed.
240	Q35	It is unlikely that an issuer would want another issuer to take over. It will probably seek the sale of those funds before it is considered no longer fit and proper.
241	Q35	There are difficulties with winding up schemes as a result of failings by the issuer, as this could have significant impact on members and may require their input.
242	Q35	This could happen, where the trustee considers that it is in the best interests of the security holders for a replacement issuer to be appointed. This should be subject to the replacement issuer already being approved and the outgoing issuer having exhausted any appeal rights. Care should be taken to ensure that there is a smooth transition for issuers.
243	Q35	The process for such re-appointment should be specified in the trust deed and the new issuer approved by the trustees. Investors should also be given opportunity to object.
244	Q35	When an issuer is de-registered, the Commission should appoint a statutory issuer, who will be able to appoint a new issuer, transfer members or wind up the scheme.
245	Q35	This issue should be addressed by a meeting of the investors to determine replacement issuers or whether the scheme should be wound up. Alternatively, the trustee can appoint an interim issuer, until a replacement is found or the scheme wound up.
246	Q36 – Any	The functions for an issuer are appropriate, but it may be valuable to

	Issue Reference	Summary of Issue Raised by Submission
	other issuer functions?	qualify that asset pricing is equitable.
247	Q36	The suggested functions are appropriate, but the assets should ultimately be segregated from the issuer. However, the issuer should remain responsible for the investment management and the administrative functions.
248	Q36	The terms of the security would govern the functions and thus, should not be prescribed. The proposed functions should be flexible enough to allow pricing via a redemption mechanism or by market.
249	Q36	The issuer needs to be responsible for the proper administration of the scheme. This might differ between schemes and should not be specified in legislation. The issuer should also be able to delegate its functions.
250	Para 146	Agrees that the functions of issuer should be in primary legislation, but recommends that the detailed rules should be in regulations.
251	Q36	Agrees with the functions and suggest that functions should be extended to include compliance with the terms of the offer.
252	Q36-38 – Issuer functions, duties and liability	Agrees that the duties and liabilities of the issuer should be the same as the trustee, but suggests that the following obligations be added: <ul style="list-style-type: none"> ✦ Maintain registry functions, ✦ Effect redemptions and unit transfers; and ✦ Correspond with investors as required.
253	Q37 – Should there be any other issuer duties?	Queried how prescriptive this list should be.
254	Q37	The maintenance of a website should be voluntary as some fund managers do not directly engage with consumers and channel their business through financial advisors. This is preferable as the intermediary will be able to explain things to the consumer that may not be readily understood by the consumer from the offer documents. This will result in more appropriate and efficient investments.
255	Q37	The duties described are appropriate.
256	Q37	The duties seem reasonably comprehensive, but believe that the issuer should be required to provide information reasonably requested by an expert or adviser engaged by the trustee.
257	Q37	Where a CIS is listed, the member's ability to request information is limited by the continuous disclosure provisions of the listing rules. A similar issue arises in respect of the provision of statistical information to the Companies Office. Unclear about the benefit of having this information available. Further, have concerns about the requirement to maintain a website. Note also that some existing trust deeds may be inconsistent with these provisions.
258	Q38 – Should issuer have same liability as if it were a trustee?	The issuer should have the same liability as if it were a trustee.
259	Q38	It was because issuers and trustees had identical duties, that the single responsible entity model was developed in Australia to clarify where responsibility lay between the two entities.
260	Q38	Supports the duties suggested but recommends that clarity in respect of 'acting in best interests of investors' is important.
261	Q38	This already happens in superannuation. Managers do not need an extension to their duties and obligations to make them the same as

	Issue Reference	Summary of Issue Raised by Submission
		trustees.
262	Q39 – What info should be included in a statistical data return to the Commission ? What should be confidential and what should be publicly available?	Accounting and investor information that is currently provided in financial statements and to the GA is useful and should be provided. Where the information allows specific individuals or entities to be identified, or where the information is commercially sensitive that information should be provided to the regulator on a confidential basis.
263	Q39	All statistical data should be made publicly available and issuer specific and personal information should be kept confidential. The issuer should also be required to provide information requested by any expert or adviser appointed by trustees.
264	Q39	The cost of gathering of statistical data should be balanced against the rationale and perceived benefits of collecting the information. This is currently unclear.
265	Q40 – Does the issuer require any other powers?	Trust deed should enable issuer to operate under all circumstances envisaged and power to make amendments should cover most developments that were not foreseen plus power to seek the court's assistance for anything else.
266	Q40	There are no additional powers that will be needed.
267	Q40-42	Supports the proposals and notes that in regard to participatory schemes, the financial position of the scheme will be parlous and it is unrealistic to expect that the investments are in any way protected from failure.
268	Q41 – Are options for remedying breach by issuer appropriate ?	Subject to the need for clarity in the rules, but agree that the issuer should bear the same liability as trustee for exercising its powers.
269	Q41	Generally agrees with options in respect of remedying a breach but suggests that, rather than have the investors themselves take the issuer to Court, they could direct the trustees to do so, making the costs payable from the trust.
270	Para 155	Support proposals, but stress need for clarity in rules.
271	Para 155.b	Do not agree that investors should be able to give directions to the issuer. It is preferable for investors to give directions to the trustee so that they can enforce compliance and ensure that such compliance remains in the best interests of all investors. Further, this option should only be available after the trustee and the issuer have attempted to resolve the breach, rather than a first stop remedy.
272	Q42 – Does the proposed whistle-blowing provision meet the regulatory	The proposed whistle blowing provisions should meet its objectives. It is worth considering whether information that satisfies the requirements of this provision can be provided to the Commission, which would avoid the situation of requiring a person to find out whether the problem is with the CIS trustee.

	Issue Reference	Summary of Issue Raised by Submission
	objectives for CISs?	
273	Q42	These provisions may have an impact on the extent to which issuers may feel comfortable sharing information with trustees. The role of the regulator in overseeing the trustees may also shut down some of the helpful lines of communications. While it may be desirable to have more regulatory oversight, the risk that is discussed is more perceived than real. As such, the introduction of further regulatory standards should be kept to a minimum.
274	Q42	The proposed whistle blowing provisions should be extended across CISs to provide consistent consumer protection and confidence across the industry.
275	Q42	Notes that CIMA does not apply to schemes. Submits that the CIMA functions of the ROC be moved to the Commission and extended to include schemes.
276	Q42	Supports the proposed provisions as it provides another check and balance on the issuer and trustee.
277	Q42	Suggests that the whistle blowing provisions should be aligned to the overall regime for debt securities, including the alignment of auditor obligations to section 50 of the Securities Act.
278	Q43 (Also refer to questions 52, 53, 54, 60, 63 and 70)	Strongly opposes the requirement to include the following matters in NPF trust deeds: <ul style="list-style-type: none"> ✎ Objectives of the scheme, as these are enshrined in the SSA; ✎ Methodologies for determining and amending investment strategies. Each scheme's SIPO is published for and subject to review; ✎ Methodologies of valuing assets, as full GAAP standards are adopted in their financial disclosure; ✎ Any more specificity in respect of fees, as NPF schemes only charge fees for cost recovery, not profit; and ✎ Any provisions relating to the meetings of members.
279	Q43	Agree that trust deed must include rules relating to how deeds may be amended.
280	Q43	Legislation should, where possible, include enabling clauses that imply provisions to trust deeds
281	Q43	Difficulty with dealing with older, more inflexible trust deeds. Can the review help with this?
282	Q43	Supports extending to all CIS typical provisions for amending trust deeds outlined in para 177
283	Q43	Submitter does not agree that amendments to trust deeds need to be regulated further. Trust deeds and disclosure documents are currently disclosing adequately what can be altered and method. Legislated steps re implied terms for amendments cannot adequately reflect complexities of products
284	Q43	Issuer and trustee should be able to amend deed without reference to investors where: correcting an error; no adverse effect on any member's interest; is necessary so obligations do not conflict with legislation; and to allow listing on the exchange where members have approved listing.
285	Q43	Where an amendment is referred to members then should be approval by special majority (75% by number and 25% by value).
286	Q43	Where leg changes require amendments to deeds these should not be subject to usual processes and shareholder approval which is difficult and slow = misuse of resource. Need more flexibility to amend CIS deeds.
287	Q43	Supports provisions re amendments to deeds but cautions flexibility is needed so only very broad powers are appropriate for trust deeds and does not support the latter option of legislation on a case-by case basis..
288	Q43	Note that there is no requirement for the issuer to obtain the trustee's consent or that such consent cannot be unreasonably withheld.

	Issue Reference	Summary of Issue Raised by Submission
288	Para 183	Do not support full member consent being required to alter trust deed, preferring consistency across all CIS. In an adverse change, both trustee and SC approval should be required.
290	Q44	Supports regulator having power to approve changes to trust deeds providing no significant adverse effect on member(s).
291	Q44	See no benefit in having regulator approve trust deed amendments beyond what is currently done for superannuation schemes. Any further approval will only introduce a further costly and time consuming delay.
292	Q44	If issuer and trustee agree on amendments, subject to maintaining fiduciary duties, the amendment should be acceptable. If no resolution can be found, they should be able to apply to the Commission for approval.
293	Q 44	Inappropriate to involve SC when determining amendments to trust deeds, as they are not best placed to understand the business practices of these schemes. This approach also increases the costs for investors, as the SC's costs would have to be passed on.
294	Q44	Changes to trust deed should be registered with the regulator but should not require approval.
295	Q44	Should not have to obtain SC approval where issuer and trustee agree to the change (expense and delay). Assurance of no adverse effects best judged by issuer and trustee rather than SC.
296	Q44	Agree in principle however as trustee and issuer required to be independent, the regulator should only give final approval of the change (and there should be a time limit for this).
297	Q44	Any amendments should be made by the trustee, and lodged with the regulator. If the regulator wishes to, it can object.
298	Q44/45	Disagree that regulator should have a role in approving trust deed changes where issuer and trustee agree. This would conflict with role of trustee as frontline regulator.
299	Q45	Support regulator having power to arbitrate where one party unreasonably withholds consent (to change trust deed).
300	Q45	Regulator should not have power to determine where a party has unreasonably withheld consent to amending the trust deed.
301	Q45	NZX believe unreasonable withholding of consent by one party should not go to SC to determine but to court and mechanisms for dealing with disputes usually in deed.
302	Q45	Agree regulator should have similar power due to limited number of trustee companies and the need for regulator to guide investors. Caution needed because manager most likely to be complaining party and regulator must be wary of second guessing trustee in the latter's exercise of fiduciary duty and should it override trustee then the other party entitled to protection in subsequent legal claims..
303	Q45	A court is the appropriate place for such a dispute to be resolved.
304	Q 46	Business progress stifled if unanimous consent of members required when amending trust deed, as you result in situations where members are able to hold schemes to ransom. It will also add administrative and operational consent to the amendment process. Suggested that the UTA quorum and voting procedures could be used in this respect.
305	Q46	While it is useful that to require member consent for amendments that adversely affect member's rights, there ought to be a method that this can be overridden in certain circumstances. Eg. If the trustee and issuer believe that a change is in the best interest of most members, but will adversely affect some, the trustee/issuer should be able to get approval (with conditions) from the regulator for the amendment.
306	Q46	Full consent is intended to protect all classes of members from an erosion of their benefits. Adverse compulsory changes to members' benefits

	Issue Reference	Summary of Issue Raised by Submission
		should remain unlawful.
307	Q46	Need provision for court or government official (eg government actuary) to approve where 100% member approval unlikely.
308	Q47	There should be provision enabling the transfer of members from one scheme to another in line with the ss 9BAA and 9BAB provisions, as this would lead to more efficient provision of products on wind up of schemes.
309	Q47	There should be such transfer provisions, but this include appropriate protections for policy holders interest.
310	Q47	It is the issuer who is best placed to determine whether investors are likely to be adversely affected by the transfer, as they administer the register of members and are responsible for the disclosure. This will put them in a position where they will be able to assess whether the changes are likely to adversely affect members. So the initial decision should remain with the issuer, and may be referred to the regulator on objection of the investor within a specific time frame.
311	Q47	Trustee should determine which members are not affected by a compulsory transfer, but the issuer should have appeal rights to the regulator.
312	Q47	Agrees with proposals in respect to transfers providing no member is disadvantaged.
313	Q48	They support the idea of portability provided that the terms of the new scheme are equivalent or better than their current scheme.
314	Q48	The proposed mass member transfer should only be allowed with the permission of the regulator.
315	Q48	The transfers should be permitted, but the trustee should make the decision.
316	Q48-50	Agrees and considers there may be scope for independent confirmation of transfers by the regulator or the court.
317	Q49	Supports flexibility for all CIS
318	Q49	Transfer provisions should be flexible for CISs generally, but it should be clear that transfers are only allowed to natural persons.
319	Q 49	Unless there's good reason legislation should not impose restrictions on transfer provisions and such provisions should be flexible. Transfers are permanent arrangements and assignments are temporary.
320	Q50	It would be appropriate for all superannuation schemes and all CISs to be made consistent with the KS requirement that interests may not be assigned, as this reduces the potential for confusion. Further if there are restrictions on access in superannuation, the ability to assign interests would defeat those restrictions.
321	Q50	Restricting assignments will also make these products more efficient.
322	Q50	Supports restricting assignments of interests in superannuation as it ensures that the members will be able to utilise the benefits from the scheme after having left work.
323	Q50	There should not be any restrictions on assignments in superannuation schemes. This should be a matter that is deal with in the trust deed.
324	Q51	It is appropriate for the current SSA ability for a member to defer his/her benefit to be retained for all superannuation.
325	Q51	Any provision in this respect should dovetail in with KS requirements.
326	Q51	Agrees to transitional arrangements for existing employer schemes and with the grandfathering of existing schemes.
327	Q51	Issuers should be free to design schemes how they choose subject to HRA considerations.
328	Para 200	Re fit and proper requirements not e the use of employer and employee reps usually defined in trust deed. Do not believe there should be a requirement to have an employee representative. Also making requirements on basis of size of scheme is problematic.
329	Q 52	In general matters important for investors to be aware of best covered in

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		the disclosure material. Important matters need to be in the trust deed but need to consider the purpose of each document. Do not see value in including objectives in trust deeds, other than an overall objective.
330	Q 52	Agree overall objectives should be in trust deed. Support investment guidelines being in trust deeds as a schedule and have investment management agreement refer to the guidelines in the trust deed rather than have them in two places.
331	Q52	Supports having objectives defined in trust deeds and believe that all CISs should have at least one objective to provide clarity for members about the purpose served by that CIS.
332	Q52	Agree that the CIS objectives should be in the deed, as this provides the framework for investment and the initial and ongoing direction of the trust. In a master trust the objectives should be stated in respect of each underlying trust under the master trust.
333	Q52	If the objectives were stated in trust deeds, they would have to be at a such a high level that they would serve no meaningful purpose.
334	Q52	CIS objectives should not have to be in trust deed. Investors need aims of the fund+ its positioning to evaluate re their risk appetite and timeframe.
335	Q52	Agree that CIS objectives should be in deed to assist trustee when interpreting deed and monitoring compliance. Objectives should be specific or general as determined by the settler/issuer.
336	Q52	CIS objectives should be in all CIS deeds. Insertion of wide objective provides justified limitation on activities of scheme + certainty to members. Investors can choose broad or narrow investment mandates.
337	Q52-55	Agree to broad objectives in trust deed and specifics in the offer document and that super is same as other CIS and should not require lock in per se (only for government incentives).
338	Para 203-257	Generally support the recommendations, with specific reservations.
339	Q 53	Do not support the proposal that CISs that hold themselves out as super to have lock in requirements, although it should be specified in their documents.
340	Q53	Do not support restricting the type of products that can be called superannuation scheme, unless there is further benefit provided, such as a tax benefit.
341	Q53	If a CIS holds themselves out as a superannuation schemes, there should be a provision implied into the trust deed that the scheme is linked to the provision of retirement benefits. The specific provision, however, should deal with the specific lock in of that scheme. However, the investment strategy should be retained in the disclosure documents to retain flexibility of the deed.
342	Q54	If mandatory trust deed requirements were introduced, it is imperative that these provisions maintain sufficient flexibility to permit and encourage product innovation and differentiation.
343	Q 54	If a CIS has lock in they should not have to have portability as this will cause practical difficulties,
344	Q54	Prescribing the specification of the objectives should be principled based to facilitate more flexibility.
345	Q54	Agrees that there should, be a common standard for clarity and consistency in CIS trust deeds, while maintaining flexibility for variations between product types, such as employer information for superannuation schemes.
346	Q 54	Overall generic objective maybe useful in the trust deed anything more specific has no useful purpose and likely to lead to unproductive discussion and restrict flexibility-this should be in disclosure material.
347	Q54	They welcome greater specification of objectives provided there is flexibility to change the strategy that is employed to meet the objectives.

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		Greater specificity will help address the information imbalance.
348	Q54	Greater specification of objectives is not needed in trust deeds –inflexible as every change in strategy would require a change of deed.
349	Q 55	Agrees that any conditions for entry or exit should be specified in the trust deed. Issuer should not be able to unilaterally increase exit charge or backdate entry charges for investors.
350	Q55	There should also be flexibility to allow the manager to override these conditions in unique circumstances.
351	Q55	A provision relating to entry and exit conditions would serve little purpose as most deeds already have such provisions.
352	Q55	Entry and exit conditions should not be in deed but in the offer documents as same underlying security(trust) may be offered through different distribution channels.
353	Q55	Agree it is important that conditions of entry and exit are specified in deed- but allow manager discretion to override in unique circumstances and should be clear in the offer documents.
354	Q55	Yes conditions of entry/exit should be in trust deed.
355	Q56	It shouldn't be compulsory to offer portability but it should be encouraged. There will be cost implications for both providers and investors in providing portability and providers should not have to bear the cost by themselves.
356	Q56	They agree that lock in provisions not linked to employment in an open ended CIS should have a provision for portability of funds. This may be difficult with a closed fund that invests in non liquid assets.
357	Q56	Generally support the portability of funds, which also necessitates the preservation of the lock ion features. This is not impossible to record in electronic systems. This will help encourage long term savings in New Zealand.
358	Q56-58	Agrees but notes investors should not be locked in to poor performing funds
359	Q56/57/58	No lock provisions and portability should be matters for scheme design, but it should be a matter of disclosure.
360	Q57	Deferring charges on locked in funds disguises the costs for investors. Portability allows a consumer to change products if the charge is no commensurate with the returns. All charges should be transparent and investors should not be held captive simply to allow an issuer to recoup their costs in a long terms product.
361	Q57	If there is specific lock in, transfers should be restricted to once or twice a year to prevent churn.
362	Q57	While unnecessary churn is detrimental to an investors welfare, this can be resolved by requiring schemes with longer than 5 year portability to allow portability. This timeframe is likely to cover a full market cycle and minimises churn created by short-run investment performance.
363	Q 57/58	Emphasis should be put on clear upfront disclosure of provisions for accessing funds: costs/restrictions and lock- in/portability if those provisions are included.
364	Q59-60	Cautions against overly restrictive legislation, and minimum contribution and methodologies for determining investment strategy are not appropriate in a trust deed.
365	Q 58	Agrees clear disclosure of any lock-in provision required up front.
366	Q 58	Agrees clear disclosure of any lock-in is needed. Often it's at 'trustee's discretion' which leads to disputes
367	Q59	Minimum contributions or process these are established should NOT be in the trust deed but fact that issuer may impose a minimum upon say 3 months notice should be. This info belongs in the disclosure documents. Should also state if any revised minimum can be applied to existing investors. (see submission p9/10 reasoning)

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368	Q59	Minimum contribution or process for establishing and amending these SHOULD be defined in the trust deed.
369	Q59	Minimum contribution levels and processes to amend these levels are usually covered in the trust deed and the deed usually allows the manager to set the minimum investment levels from time to time. This process works well, so long as investors are made aware of the contribution levels. There is also no problem with managers having the discretion to accept a lower level if they deem it to be suitable.
370	Q59 (also refer to questions 60, 61, 62, 65, 67, 68, 69, 70, 74)	Extent to which terms of a CIS should be specified in trust deed- therefore subject to protections against adverse amendment without investor consent. Issuers need flexibility to design products. Also principles approach rather than prescriptive.
371	Q60	It should be noted that while incorporating processes for determining investment strategies in trust deeds may be appropriate for unit trusts, they are not suited to long term vehicles such as superannuation schemes. If the objectives were in the trust deeds, constant amendment would be required to update the investment strategies.
372	Q 60	Agree method for determining and amending investment policy should be disclosed in trust deed and disclosure documents. Current investment strategy should be included in the disclosure documents.
373	Q60	Amendments to investment policy should be done through the disclosure document, as investment practices change and new research and technology develops.
374	Q60	Method for determining and amending investment strategy should not be in the trust deed. Guidelines and disclosure documents should do this.
375	Q60	Including investment methodology in deed provides investors with protections but inhibits issuer limiting ability to respond to market changes. Restrictive effect contradicts key objectives of the paper. Providing wording in deed is clear whether the deed does or does not contain prescribed investment strategy then this should be sufficient. Agree where fund markets itself with restrictive investment strategy then this should be in deed and disclosure documents.
376	Q 61	A link between trust deed and disclosure documents would not necessarily impede investment strategy. A distinction between whether a scheme has a material strategy could lead to regulatory arbitrage.
377	Q61	Similar provisions should apply to all CISs, although how one defines a material investment strategy for the purposes of determining what needs to be in the trust deed needs to be considered.
378	Q61	A materiality test would be welcome as changes to investment strategy can often be minor as new technology and research develop.
379	Q61	No
380	Q61	No- provided investors have access to info to make an informed decision
381	Q61-64	Flexibility to tailor schemes to future developments needs to be retained so detailed info belongs in the offer docs rather than the trust deed. Deed should provide direction to the manager issuer trustee as to pricing, valuation ,redemptions etc. no investor expected to understand the legal language therefore will be repeated in the offer docs. Flexibility to amend schemes needs to be retained. Consistency in pricing not practicable as different systems used to upload prices and sub contracts with offshore fund managers with different pricing systems.
382	Q 62	Agrees trust deeds should specify conditions re pricing, withdrawals,

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		redemptions(including when they can be withheld) and distribution.
383	Q62	Agree that conditions of pricing, withdrawals and redemptions should be in the trust deeds, although the level of detail should not be too restrictive for the practical operation of the scheme.
384	Q 62	In relation to the timing of valuations, it should be noted that PIE funds are likely to be unit priced daily. For these funds, this could be provided for in the deed.
385	Q62	They have developed a model that they feel may make fees more transparent and would like to see this model developed further.
386	Q62	Yes
387	Q62	These are necessary material items which should be specified in trust deeds- need to allow for differences for listed CIS.
388	Q62	All provisions relating to withdrawals should be specified in trust deeds, but deeds are not the appropriate place to specify how assets are priced. (See submission for more information)
389	Q62, 63	All will need to be specified either 'hard coded' in the deed or by refer to a power of the issuer or trustee- again TCA supports principles approach over prescriptive.
390	Q63	Support the view that trust deeds specify a process for evaluation of assets.
391	Q63	This should be a general requirement rather than prescriptive to allow for any changes to be made.
392	Q63	Process of valuation of assets should be in trust deeds and should be consistent with IFRS. Net values that are consistent with change in unit prices are better understood and tracked.
393	Q63	Needs to stay very general because system /accounting /tax changes need to be made.
394	Q63	No. If qualitative rules imposed: need guidance eg Aus 'adequate' rule. Remember difference for listed CIS.
395	Q64	Valuations per scheme should be consistent over time (in that they relate to the same periods of time). There is no value, however, in prescribing the time periods or currency conversions, as this pre-supposes that the assumptions that underlie such valuations and conversions will be consistent between schemes.
396	Q64	Not support consistent timing of valuations as different products may have different timings for valuations (eg. A multi manager scheme may require less frequently due to the complexity of the valuations required)
397	Q64	Do not believe it beneficial to have consistent timing of valuations across all schemes.
398	Q64	Disagree- most efficient outcome is to let industry to develop norms
399	Q 65	Process for valuation should be in trust deed and disclosure documents and include how expenses are dealt with.
400	Q65	A prescribed valuation method may not always be flexible. A principled based approach, consistent with IFRS is more suitable.
401	Q65	This can be effectively covered in the trust deed, but should not be so prescriptive to unnecessarily restrict the operation of the scheme when changes are required.
402	Q65	As valuation of scheme assets can vary considerably across the industry, and some schemes have been more cautious in their valuations, there is scope for improving the valuation process. However, standardisation of valuations may not accomplish this.
403	Q65	If a process is required it should not be too prescriptive.
404	Q65-67	Information on fees appropriate for offer documents but payment of benefits should be in trust deed as trustee will look to this for guidance to minimise risk of action from investors.
405	Q 66	Trust deed must include discretionary powers. Do not agree that only trustees can ex discretionary powers as long as trust deed states who is.

	Issue Reference	Summary of Issue Raised by Submission
		Eg. In super, employers may be in a position to exercise discretionary powers, as long as these powers are appropriately disclosed to members.
406	Q66	Agree that the discretions should only be exercisable by trustees, as the trustee is the only truly independent party.
407	Q 66	Discretions exercised by trustee could have consistency and arms length application of guidelines in the trust deed.
408	Q66	Yes deed can accommodate changes in peoples' lives and act on humanitarian grounds. Should not necessary be exercisable only by trustee- power can be delegated
409	Q66	All powers including discretions should derive from the deed or legislation, but discretions about benefits should not only be exercisable by, or with consent of, trustee. Common law re discretions of employers or other non-trustee party-provides some protection.
410	Q 67	Specifying types of fees in trust deed not necessary-full disclosure of fees and provisions for varying them in future belong in the disclosure documents.
411	Q67	Issues of fees and returns should be dealt with in the offer documents as the trust deed will only be able to cover the issues in general terms.
412	Q67	Agree that deeds should specify the fees that are deducted and how they may be calculated. This provides clarity for all parties. Specific fee levels should be in the offer documentation.
413	Q67	Broad information only (about fees) in deed. Detail in prospectus + disclosure documents.
414	Q67	Generally trust deed specifies types of fees and offer document details likely quantum.
415	Q67	Should note specify the fees in trust deed, as this may lock the scheme into certain practices irrespective of changes in the market or regulation.
416	Q 68	Support proposal that provisions for the appointment of trustees and issuers should be in the trust deed.
417	Q 68	Trust deed should include provisions re appointment and removal of trustees, provided they do not limit the power of the regulator or conflict with legislation.
418	Q68	Yes there will be times when trustee need to be changed and this should be covered in governing document rather than relying on the regulator or legislative rules.
419	Q68	No benefit in involving regulator in this process.
420	Q68-70	Agree to inclusion of wind up provisions in trust deed but no to standard triggers for wind up for all schemes.
421	Q 69	Many unit trust deeds include a power for the manager to wind up - suggests under proposals issuer would have this power? And support the wind up process in the SSA.
422	Q 69	Procedure for wind-up and distribution of assets should be in trust deed. These could include when membership falls below a certain size.
423	Q69	The wind up provisions should be specified either in legislation (which would have to operate at a general level) or in the deed.
424	Q69	Yes
425	Q69	To give certainty wind up provisions should be in deeds
426	Q 70	Circumstances triggering wind-up and the procedure for it should be in trust deed but no need for standard trigger points.
427	Q70	Difficult to foresee all possible triggers and as such do not support standard triggers, but rather to trigger wind up on agreement between trustee and manager.
428	Q70	Standard triggers would need to be carefully considered. Perhaps, standard triggers can be used as a point where the matter is referred to the regulator for consideration to wind up.
429	Q70	Standard triggers for consistency is desirable, but they query whether "significant impairment" is the correct threshold as this is arguably open to

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		many interpretations.
430	Q70	No. Unreasonable and unnecessary to have standard triggers for wind up for all schemes..
431	Q71	Agree with the proposals relating to the initiation of meetings. 5% of members of holders of value seems an appropriate threshold.
432	Q71	Do not think it is appropriate to release personal information to other investors, especially where an employer is involved in a superannuation scheme. Further, issuers may not have all the relevant addresses in some employer schemes, where contact is made through the employer.
433	Q71	They has no particular opinion but acknowledges case for consistency across classes of securities.
434	Q71	Proposals for initiation of meetings threshold of 10% for unit trusts is instructive. Re smaller threshold investors in listed CIS can sell out.
435	Q71	The deed should set out the circumstances in which a meeting may be called.
436	Q71-73	Supports proposals in principle subject to previous comments on meetings.
437	Q72	The quorums and voting procedures suggested seem fine.
438	Q72 (see also question 18)	The ability for investors to direct the trustee or the issuer seems contradictory to the underlying assumption that the investor are inexperienced and non expert. If this provision is included, qualifying parameters should be provided, and consideration had for non unitised schemes.
439	Q72	Agree quorum and voting should remain as per the Unit Trust Act. Agree distinction between general business and significant decisions. Assumption that CIS investors only have authority to vote on significant issues is no reason to dismiss relatively small quorum as appropriate. Unit Trust Act test should apply across all CIS. See also Q 43.
440	Q72	75% by value of interests is appropriate threshold to pass resolutions- because listed investors can sell then relief for listed CIS is justified.
441	Q72	It is not clear what will be covered by investor resolution.
442	Q73	The costs of the meeting should be borne by those calling the meeting, unless they secure a reasonable level of support for their motions.
443	Q73	Costs include trustee's fees, mail out costs, manager's costs, venue hire, refreshments, legal and auditor fees as appropriate.
444	Q73	Significant costs surround meetings and staffing as well.
445	Q73	Depending on the number of investors and the complexity of the issue, it could easily cost man 10's of thousands of dollars.
446	Q73	The costs depend on the number of members and the size of the scheme. The major costs are advertising, room hire, legal costs and trustee time.
447	Q74	The proposals appear to give trustees sufficient powers.
448	Q74	Other matters cab be included in a trust deed and these can be decided by the CIS trustee in line with the trust deeds.
449	Q74	No trustees have broad powers and RFPP proposals will put more than enough power and duties on trustees.
450	Q74-77	Suggests one further inclusion in trust deeds-: provisions for interim suspension of allotment/redemptions. May precede a wind up or may be followed by recommencement of normal allotment and redemption, Where reversion of superannuation scheme assets to employer supports need for approval by the regulator if employer representative on board of trustees.
451	Q75	Supports the use of the UTA quorum and voting tests for CISs
452	Q75	The relevant legislation provides sufficient rights duties and powers.
Comments arising form Chapter 4 of the Paper (Superannuation Schemes)		
453	Para 272	Do not believe that an employee's perception of the role of the employer is not necessarily different for employer stand alone schemes as opposed to employer master trusts, as master trust providers often "disguise" their

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		relationship, so it seems that the employee is contracting with the employer.
454	Para 278-280	The transitional framework is not in fact transitional, as the structure will apply until the schemes are wound up, which may be for some time.
455	Q76	There are a number of decisions that may need to be made within the employment context. In these instances, it is the employer rather than the trustee or the issuer who is best placed to make these decisions. Further the removal of these discretions may result in a diminished engagement in these schemes from employers. Guidelines may be used to ensure that employer discretions are properly exercised.
456	Q76	There is no need to specify the type of discretions that should not be left to the employer or third parties.
457	Q76	The parties should determine how to allocate responsibilities in the trustees and other parties as they will be most in tune with the circumstances surrounding the scheme.
458	Q76	As the trustee and the manager bears the liability, they should also be the ones who are able to make discretionary decisions. They should be allowed to delegate any decision making function to another party where they feel that the decision is more appropriately exercised by that other party.
459	Para 286-291	Agrees with the proposals for stand alone schemes with both transitional arrangements for existing schemes and non-transitional arrangements for new schemes
460	Q77	While the trustee should have to agree to any proposed reversion, the final say should rest with the regulator rather than trustee, as this deters employers from making requests that might have very little merit. This would also ensure a greater level of consistency between various providers.
461	Q77	The trustee should be required to consent to any proposed reversion of assets to a third party. There is no problem with the current SSA process and no reason why an employer representative on the board should make a difference.
462	Q77	If the existing structures are not retained for standalone schemes, they recommend that these schemes be provided an exemption that provide for the following elements: <ul style="list-style-type: none"> ✎ Employee/Employer representation on the board of trustees; ✎ An independent trustee director; and ✎ Appointed external support, including investment, legal and audit.
463	Q77	Employer representatives in the board of trustees will inevitably create conflicts of interest when considering the reversion of assets to the employer. This could be mitigated by having clearly drafted reversion provisions that set out the circumstances in which assets can revert to the employer. Perhaps the regulator can be responsible for vetting the circumstances of the reversion provisions.
464	Q77	The power empowering any reversion may be drafted in various ways. The trustee should not be required to provide consent to that term, although it may be part of the negotiation process.
465	Q 78	The definition of master trusts versus stand alone need to be looked at , as there are industry based schemes that run as stand alone schemes, but have participating employers.
466	Q78	Agree with the transitional framework and note that the cost of transition will be fairly modest where there is already a separation of duties.
467	Q78	Disagrees with the transitional structure simply applying to employer standalone schemes, as the costs involved with implementing the new regime will be equally applicable across all schemes. It is not the case that employer stand alone schemes will not be able to bear the costs of the new regime better than master trusts as many standalone schemes

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		are in fact larger than some master trust schemes. This also avoids the need to define employer stand alone schemes.
468	Q 78	It is better not to legislate the definition but provide guidelines to the regulator to decide on a case by case basis.
469	Q78	Given that there are only 300 such schemes, it would be more appropriate to list these schemes.
470	Q78	There should also be provision to add new schemes to the list, where the new schemes are created to mirror existing schemes on amalgamations or takeovers of the sponsoring employers.
471	Q78	Agree that proposed transitional framework should apply to assisting stand alone schemes.
472	Q78	Definitions of Master Trusts and employer stand alone schemes need to be clearly looked at. Industry based schemes are an example of a stand alone scheme with a participating employer. Suggest that a definition is not included in legislation and guidance be provided to the legislator to determine which definition is most appropriate.
473	Q78	There is no valid argument why standalone schemes should not be included in the overall framework. A transitional period of about 12-36 months is necessary for all schemes and allowances will be made to charge the costs of compliance with the new regime onto members.
474	Q78	They support the proposed transitional framework in respect of standalone employer super schemes. They believe that the definition of such schemes should include schemes where there is more than 1 employer and where those employers are related companies or part of the same industry.
475	Para 289	There does not seem to be an earlier reference to the "specification of the number of units in a scheme." What was this intended to cover?
476	Q79	The proposals for power and duties of trustees seem to be appropriate, apart from the duty to maintain a website and to act on directions of investors at a meeting. The requirement for a website may be reasonable where the scheme a minimum number of members. Similarly, the requirements that trustees act in the best interests of the members and the position of the employer may at times make acting at the investors' direction impractical.
477	Q79	They support the introduction of fit and proper criteria, but do not believe that: <ul style="list-style-type: none"> ✎ Investors should be able to give binding directions to trustees; ✎ There should be a duty on trustees to maintain a website; ✎ The requirement that the trustee hold any personal profit or benefit on behalf of members should not extend to benefits that trustees derive as members in the scheme; ✎ The methodology of determining the scheme's investment strategy should be included in the trust deeds, as this is too prescriptive. It is sufficient that fees are disclosed in the relevant disclosure document.
478	Q79	They do not agree with any of the proposals, as these schemes should come under the wider framework.
479	Q79	Agree with the proposed duties, although the requirement to maintain a website could be expensive.
480	Q 80	Some of the proposals may speed up the process of stand alone schemes winding up or moving to Master Trusts, but the proposed changes are not unduly onerous and these schemes should fit roughly in the CIS framework.
481	Q80	The costs of the proposals are not outweighed by any benefits. Although costs relating to things such as trust deed amendments may be reduced though the use of implied terms.
482	Q80	They do not think that any amendments should be required for trust deeds

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		of stand alone schemes. Such costs could amount to at least \$10000 with little or no benefit to members. The changes should be implied through to trust deeds
483	Q80	There is a base level of cost to employer in relation to stand alone schemes, which should be able to accommodate the costs of an independent trustee. Therefore costs should not be higher, and in any event, the benefit of this regime, should outweigh any modest increase in costs.
484	Q80-82	Agree with the status quo for existing schemes.
485	Q 81	Existing compliance costs have caused stand alone schemes to wind up or to move to Master trust arrangements.
486	Q81	The costs of the proposed CIS structure for stand alone schemes may result in many of these schemes winding up to avoid the need to comply with the new requirements.
487	Q81	The costs associated with the transitional framework do not seem to be significant, whereas the costs of totally re-writing the trust deeds, appointing a CIS trustee and modifying registry and reporting systems could be major.
488	Q82	It is not obvious why any significant change to the current regime is required. Specifically, the duty to review documentation is not necessary in light of the Commission's existing functions to review these documents.
489	Q82	They support the proposed power of the regulator. In respect to the power to review disclosure documentation, they believe that it is necessary to ensure that the documents be registered and reviewed by one regulator. Further there needs to be the right to appeal on the merit of the regulator's decision as well as on the process, to ensure that the regulator exercises his or her power appropriately.
490	Q83	There shouldn't be a requirement for an employee representative for stand alone schemes.
491	Q83	Agree with the fit and proper person requirements and the independence requirements applying to the Board.
492	Q82	The powers reflect the GA's powers at present and this regime has been effective. Review of disclosure documentation.
493	Q83	Fit and proper entry requirements for the transitional arrangement, especially the requirement that the trustee be independent would undermine the objective of having a transitional arrangement.
494	Q83	The board of trustees require 3 predominant skills to discharge its duties, including monitoring the investment managers, monitoring other contractors such as actuaries, auditors and insurers and exercising its discretion under the trust deeds.
495	Q83	Independence in this context seems to have only been contemplated in respect of trustee's discretions. Independence from the other parties is often too difficult to establish because of the small size of the industry. The independence for the purpose of the discretions isn't sufficient reason to warrant the costs of independence.
496	Q83	There are significant advantages to having employee representation among trustees. This would be undermined if a third party such as a regulator could overturn the election of a trustee representative.
497	Q83	There should, however, be some competency requirements. However, this should be grandfathered in for existing schemes and the competency assessment for such trustees should only be carried out after a specified period of time. Further the competence can be assessed through formal trustee training.
498	Q83	While they support the fit and proper criteria, they believe that the discussion document has over-emphasised the conflict between the members' interests and that of the employer. It is suggested that such tensions are typically limited to how surplus funds should be applied (by

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		either allowing the employer to take a contribution holiday or using the surplus to enhance benefits).
499	Q83	It should be further noted that standalone schemes are not just about providing benefits to members, but also serves an important role in the attraction and retention of employees. Employee representation on the board of trustees may also serve to polarise the board of trustees to the detriment of members. Independence will be achieved more by the quality of the trustees on the board, than by factional representation. The appointment of an independent trustee may assist a board to achieve independence, but it is difficult to justify the cost on the basis of the minimal benefit that it afford.
500	Q83	Agree that the independence requirements should be considered in the context of the scheme, while representation from all parties is desirable, the efficiency of such a system will depend on the relationships between the various parties involved.
501	Q83-85	Existing standalone schemes often set out the composition of the Board in their trust deeds, and they see no reason to interfere with this. Changes to existing stand alone scheme supervision is not justified.
502	Para 102	Trustee duties need to extend to risk assessment and management.
503	Para 149	Not sure requirement of issuer to maintain a website is warranted and if it is then this requirement should be replicated across all financial providers. Need is for clear, precise, up-to-date information and static website does not always do this.
504	Para 295	Creating requirements for schemes based on size is problematic, but maybe the distinctions can be made on new and existing schemes.
505	Q 83	The use of employer and employee reps are usually defined in the trust deed, and there shouldn't be a requirement to have an employee representative.
506	Q84	The idea of a transitional framework is such that an independence requirement is not applicable. Further, given the principles regarding the role of the trustee, it is also believed that there is no need for specific representation from a particular source.
507	Q84	Oppose any requirement for there to be either employee or employer representatives on the board. The costs would be that of paying the trustees. It would either be at the employers cost or the employee's own costs. This may also raise questions about whether other trustees should be paid.
508	Q84	Would not expect the costs of an independent trustee to have a material impact on the returns generated by the scheme. The benefit of having an independent trustee on the board, should outweigh the costs.
509	Q84	While they believe that the board should meet fit and proper requirements, they do not think that it would be mandatory for schemes to have employee or member representation. Board competency should be a matter of the quality of trustees, rather than the nature of their relationship to the employer.
510	Q85	The case for independent trustees has not been made. The perception that there are insurmountable conflicts of interests are simply perceptions.
511	Q85	It was understood that any new scheme would have to comply with the normal CIS requirements.
512	Q85	For consistency, it should apply to both new and existing stand alone schemes.
513	Q85	The requirement for independence should not extend to either new or existing schemes.
514	Q86	It may be necessary for trust deeds to reflect the legislation as interpreted and expressed by the regulator, which may require the publication of clear and express guidelines by the regulator.
515	Q86	The regulator's fit and proper assessment should not be legislatively

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		prescribed, but should be principle driven, to assist decision making on a case by case basis.
516	Q86	The regulator's approval should only extend to an assessment of the good character of the trustee.
517	Q87	It could be a requirement that any prospective trustee be approved as fit and proper before the trustees take office (or before an election to appoint a trustee is held, if applicable.) For stand alone schemes, does the whole board fail the fit and proper requirements if one member of the board is deficient?
518	Q87	They do not believe that there is a need for a further definition of unallocated funding. Simply providing principles from which the issue may be determined allows greater flexibility. It may also be useful for the regulator to determine whether or not a scheme operates on the principle of unallocated funding.
519	Q87	The starting point for this definition should be the super schemes Act definition.
520	Q87	DB schemes are schemes " <i>which operate on the principal of unallocated funding, provides benefits that are contingent on human life and the risks associated with those benefits are not fully insured with a company engaged in the business of life insurance, or where the employer has a legal or constructive obligation to pay further contributions id the scheme does not hold sufficient benefits to pay all accrued benefits.</i> "
521	Q87	Further thought needs to be given to DB schemes and any applicable transitional arrangement.
522	Q87-102	These issues are best discussed with people from the actuarial profession. The SSA description seems reasonable. They support transparency for members, and members should be able to seek information from employers and trustees about funding levels. Further the regulator should have a medium term perspective when considering funding levels. Appeal rights from the regulator to the Court should be retained. The regulator should be able to consent to amendments to deeds, with the member having appeal rights to the courts.
523	Para 301 - 3	They do not believe that any scheme guarantees a defined benefit for a member. The defined benefit is never guaranteed. It is simply provided. The description further does not reflect the position of a member's own contributions to the scheme, which is usually a guaranteed benefit. It should also be noted that it is the scheme that provides the benefit and not the employer. While it is not uncommon for DB schemes to provide pensions, it should also be noted that this is not a prerequisite for such schemes.
524	Para 306	One of the primary differences between DB schemes and other investments is that the investment is not allocated to members, and as such there investment decision required by members. As such, it may be that we are incorrect in attempting to treat DB schemes as securities.
525	Para 307	One of the key factors that determine the type of benefit that a member will take is taxation.
526	Q88	If there is general comfort that DB schemes should come under this legislation, then a transitional arrangement would be appropriate.
527	Q88	They are not aware of any problems arising out of the current SSA requirements.
528	Q89	DB schemes will often go through periods where they may be over funded or under funded, which often reflects fluctuations in investment income, salaries, employee turnover and the like. There will always be in the normal course of events schemes that are under funded, but these will fluctuate back to being ok in the due course of time.
529	Q89	It should also be noted that a major disincentive to over funding a scheme arises because it is extremely difficult for an employer to recover the costs

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		of that funding.
530	Q89 (also refer to questions 90, 92, 100 and 102)	They strongly oppose any proposal to introduce target funding levels or greater Government Actuary powers for NPF schemes, as the Government guarantees the benefits, and is thus, intimately concerned with the funding levels of these schemes. Further the Minister already has the power to direct trustees in respect of funding levels.
531	Q90	Do not agree that specifying target funding levels is helpful.
532	Q90	It is important that regular disclosure of the actuary's recommendations regarding funding are disclosed to members and the regulator. The regulator should also be responsible for ensuring that the prevailing actuarial standards are used in the valuations. Employers also should be responsible for disclosing any funding liability in their financial statements.
533	Q90	Do not think that specifying target funding levels is helpful as schemes will only fund to the specified amount, which may mean a lower level of funding overall. It may also push some schemes towards winding up, which would be an unfavourable result for beneficiaries.
534	Q90	Assume that the target funding levels will not apply to GSF as the GA has oversight of the scheme, the crown underwrites all the benefits and the scheme is not required to make the actuarial valuations required by s15 of the SSA.
535	Q91	Agree that actuarial assumptions should be transparent and internally consistent. Nevertheless, the assumptions will need to be appropriate for the given situation, and prescriptive consistency may be incompatible with this concept. A possible solution is to use a range of generally accepted assumptions.
536	Q91	Consistency in assumptions may not give schemes sufficient flexibility to deal with differing circumstances. There is already some level of consistency and transparency with the standards issued by the society of actuaries. Greater consistency would simply lead to specifying target funding levels.
537	Q92	The governance setting proposed for insurance seems to be an equally appropriate structure for superannuation. Further the powers of the regulator may also need to be strengthened when differing assumptions are used from those generally accepted.
538	Q92	They suggest that it is perhaps more appropriate to focus the reform on the qualifications of actuaries to ensure that the actuaries are sufficiently competent, rather than focus on the governance arrangements.
539	Q92	Actuarial advice is covered by an industry code of conduct, which also develops standards that are developed specifically for each industry, which allows for the standards to be updated and developed to meet changing circumstances. The industry conforms to international best practice.
540	Q93	Full actuarial valuations every three years should be sufficient. More frequent valuations will only increase costs. The regulator may be given the power to request additional valuations in certain circumstances.
541	Q94	The method of valuing benefits should be included in the relevant trust deeds. This would provide for the assumption that all withdrawal benefits are payable at the valuation date.
542	Q94	Do not consider that more prescription around the calculation of withdrawal benefits is warranted. However, more prescription around the treatment of surplus assets on wind up of a scheme may be helpful, but this should only apply to new schemes.
543	Q95	Members who have made similar contributions may not necessarily be entitled to similar benefits, as some trust deeds may give precedence to specific groups of members.
544	Q95	It would not be appropriate for the Government to intervene in re-distributing entitlements on wind up.

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545	Q96	If the concept of equity on scheme important is important, this can be addressed by prescribing wind up provisions. The legislation could require benefits to be divided equitably, and the regulator be given the power to make rulings on such matters.
546	Q96	They do not believe that restricting the wind up provisions in these schemes will be necessary. The inequity in the wind up scenario arises because some of the schemes are compelled to continue providing pensions to members. Due to the lack of annuities market, current members often end up with some of the benefit going towards paying pensioners. This, however, is a historical issue that was related to the tax benefits of providing pensions. There are no longer any such benefits.
547	Q96	They consider that it is desirable that there be greater prescription of entitlement on wind up. They think it is fair that pensioners receive a priority, but that they should not have any rights to participate in the surplus. Contributing members should be entitled to their vested benefits plus an equitable share of any surplus (or deficit). Further a solvent employer should not be permitted to wind up an under-funded scheme and how the assets may be reverted to the employer.
548	Q96	Agree with the general requirement of fair and equitable treatment between members in terms of applications process and formulas.
549	Q97	It would be helpful for trustees to be able to amend the trust deed with the approval of the regulator, although it should be noted that this should be exercised with caution, as it might prejudice those members who have priority under the current trust deeds.
550	Q97	The trustees should have the discretion to continue the scheme in a limited form that allows them to continue paying the pension and trustees should be allowed to pay pensioners lump sums if they are not satisfied that they can get appropriate annuities. The trustee should be required to get the approval of the regulator and the scheme actuary, with a regular review of the scheme.
551	Q97	The trustees and the regulator should not be given discretion to amend priorities on wind up provisions. If this is felt to be necessary, it can be included through an application to Court or the Regulator.
552	Q97	Current wind up provisions have established entitlement priorities , and changing these would override the protections in s9 of the SSA
553	Q98	No view, but suspects that if tax incentives were provided, an annuities market would emerge.
554	Q98	Cannot see how the lack of an annuities market has any impact on the equity situation which has come about due to precedence provisions in the trust deed. The existence of an annuities market would aid in establishing the costs of the benefits to be purchased and avoid the need of any assumptions to be made.
555	Q98	The limited annuities market may be contributing to the perceived inequity of distribution on wind up. This market could be bolstered by legislative support.
556	Q98	There is a link as the costs of maintaining sufficient funds to fund a pension are higher compared to the cost of purchasing an annuity. This can be improved by establishing a scheme to which pensions that are currently being paid could be transferred, allowing the transfer of pensions between schemes, changing the tax basis for annuities, relaxing the reserving requirements for insurers and creating economies of scale by requiring annuities to be purchased in certain circumstances.
557	Q98	Wind up issues are separate from the issues of annuities.
558	Q99	The current powers are sufficient.
559	Q99	There is a possible need for greater powers, but the current regime has proven to be effective.
560	Q99	It would be beneficial for the regulator to have increased powers in

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		relation to DB schemes.
567	Q99	Acknowledge that there is a need for the regulator to have greater powers to deal with DB schemes, but also believe that it is important that there are controls on the regulator to exercise those powers in an objective manner.
562	Q99	Believe that the CIS framework can accommodate DB schemes.
563	Q100	Support the inclusion of provisions that enable the regulator, employers and the trustees to work together towards a satisfactory solution about funding levels.
564	Q100	The current powers are sufficient.
565	Q101	It is essential to have principles developed to guide the regulator in terms of applying its directions. This would provide certainty to the industry. It would be preferable for these guidelines to be developed by an independent body.
566	Q100	On the surface, the power for the regulator to direct an employer seems desirable, but it may create disincentives for employers establishing new DB schemes or winding up their existing ones.
567	Q100	The problem is that there are no regulatory powers to address funding shortfalls. It is necessary to address this when considering the security of member's interests against the uncertainties of the financial markets. They support the idea of the regulator working with the parties to address the shortfall, including having the ability to direct the employer. However, the legislation should not be prescriptive and should remain flexible enough to take into account all relevant factors.
568	Q101	There is no need to provide for further powers.
569	Q101	If further powers are granted it is important that there are controls on these powers, developed by an independent body. There also needs to be appeals on merits.
570	Q101	If the regulator is given additional powers, to guide funding shortfalls, it should be driven by principle to find practical solution. The regulator should be able to issue directions about funding, but this necessitates actuarial skills, scheme experience and judgement.
571	Q102	They are very uncomfortable with the idea of giving the regulator the power to direct the employers in relation to funding levels. The regulator should rely on his ability to persuade the employer or alternatively wind up the scheme. The employer is always best placed to make judgements about his or her business and it is not the position of the regulator to determine the fate of the company.
572	Q102	They are comfortable that the regulator should have the power to direct the employer.
Comments arising form Chapter 5 of the Paper (Participatory Securities)		
573	Q103 – Should the CIS trustee be a trustee in legal terms and, should trustee obs be imposed on statutory supervisors?	The trustee should be a trustee in legal terms.
574	Q104 – Are there any products that come within the definition of “PS” that	There are no products that are currently regulated as participatory securities that should not be regulated as securities.

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	should not be regulated as securities under securities legislation?	
575	Q104-106	Participatory securities should be classified by activity rather than entity, irrespective of whether they are caught or not. They should not be subject to the same trustee obligations as other CISs, and are often at one extreme of the risk/return spectrum. These schemes are intended to have features similar to equity securities.
576	Q105 – Are there any products / securities that are currently not, but should be, regulated as securities under securities legislation?	Time share schemes should also be included in the definition of CISs.
577	Q105	There are no products that currently do not come under the definition that should fit into the new framework.
578	Q106 – Are there any current participatory securities that may not fit the regulatory regime for CISs?	There are no products that currently come under the definition of a participatory security that would not fit under a CIS structure.
579	Q107 – Should definition of “contributory scheme” be used in conjunction with “security” to ensure present and future products are given like regulatory treatment?	As the purpose of the proposed regime is to provide a common governance standard to all CISs, it makes sense to draft a definition as wide as possible.
580	Q107-110	Contributory mortgages can be difficult to deal with due to the spectrum of single/multiple borrowers and lenders. Submits that not all contributory mortgages can be classed as debt securities.
581	Q108 – Examples of products that will fall in the back-stop class of securities.	No products will fall into the back stop class of securities.

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582	Q109 – Should Commission be given flexibility to determine most appropriate way to regulate the back-stop class of securities?	Participatory securities are likely to include a wide variety of securities that trustees may not be well placed to assess and manage, especially if new duties begin to apply and there are historic issues that make the governance for that scheme fall short of the standard imposed by the new regime.
583	Q109	Agree that the Commission should have the power to exempt particular issuers from specified requirements and designate that a particular issuer be supervised in a manner other than what the legislation may expressly provide for (as if a CIS was a debt security, for example).
Comments arising from Chapter 6 of the Paper (Other Issues)		
584	Q110	They emphasised the need to consider the costs in implementing changes at different times. This should be considered in developing transitional provisions.
585	Q110	Support the use of transitional provisions to encourage the continued existence of employer stand alone schemes.
586	Q110	The transitional framework is not in fact transitional, as the structure will apply until the schemes are wound up, which may be for some time.
587	Q110	Once the PIE changes take effect, GIFs will be largely indistinguishable from CISs. The key issue will be the development of a transitional arrangement who currently rely on the GIF structure and enabling these funds to continue using this structure.
588	Q110	While they agree that the position of a statutory supervisor should be harmonised with that of the CIS trustee, they think that there is a case for a transitional regime to apply to participatory securities, where the duties of the supervisor/trustee would be fundamentally different under the new regime.
589	Q110	Need to consider how the new trust deed requirements will impact on existing deeds, and how those deeds and the relevant duties will be amended to fit into the new structure.
590	Q110	If changes are required for existing funds, the legislation should allow the issue to cut through other legal constraints given the costs of implementing the new regime. Or the new regime could only apply to new funds. Also note that the Commission would require greater resources to undertake the proposed role.