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Development**



M a n a t ū Ō h a n g a

**Platforms and Portfolio Management Services:
Summary of Submissions**

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RFPP: Platforms and Portfolio Management Services Submission Summary

Issue Reference	Summary of Issue Raised by Submission
<i>General Comments on the Proposals</i>	
Application of proposed regulation to a particular submitter	<p>The submitter considers that it provides custodial services that would come within the context of the document. However, it also provides some other administrative functions, but does not believe that those other admin services come within the definition of financial adviser, platform provider or manager/broker/ financial adviser (in respect of a PMS).</p> <p>Notes that it will be important to clearly and concisely define those 3 service providers so as not to unintentionally include the non-custodial services that it provides (because the services are not similar to those provided by wrap platform providers).</p> <p>Welcomes discussions with MED if needed.</p>
Application of proposed regulation to a group of submitters	The services of its members are provided to corporate entities and institutions, not to the retail market. As for submission 1 – does not believe the services provided by its members constitute any of financial advice, administration (in terms of this document) or manager/broker / financial adviser. The definitions must be clear and concise to ensure they do not unintentionally include the non-custodial services provided by its members.
	In general, is in favour of the themes and directions outlined in this discussion document.
	Overall, the document represents a reasonable approach and the submitter supports regulation that is consistent with that required for financial products and providers.
	The discussion document appears to view matters of governance and disclosure primarily from an “end investor” perspective, and does not account for those instances where the advisor has the custodial and services relationship with the platform provider (PP) and the custodian. Often the PP has no direct legal relationship with the end investor. The adviser has a services agreement with the end investor; the PP provides services to the adviser.
Risks associated with platforms and assets held in name other than beneficial owner	Supports this review to determine the need for appropriate regulation in this area as the submitter recognises the inherent risks associated with the services outlined in the document and with investments being held in a name other than the beneficial owner.
Governance and disclosure	Supports the focus of the review at para 34, being governance arrangements and disclosure.
Cost of regulation	The cost of any regulatory requirements needs to be considered in light of the benefits gained from the regulation. The proposed regulation will impact the cost of service provision and these need to sufficiently reduce risks to investors to justify the costs.
Powers of Attorney	The modification of the law and obligations of parties surrounding powers of attorney needs to be reconsidered. Individuals may appoint an attorney as they are travelling, incapacitated or do not wish to be involved in the decision making process. To require a third party (eg a PP) to communicate directly with the investor may cause confusion and uncertainty for both the investor and the PP.
Fiduciary obligations	The potential codification of law relating to fiduciary obligations needs careful consideration. Codification can inadvertently lead to set a maximum service level, rather than a minimum. Providers will ensure they meet the minimum but may be reluctant to provide more than the minimum.
	Is the regulation targeted at the right party / pressure point? Where are the examples of failures we are trying to eliminate? Do these risks arise from the PP / PSP / custodian or a failure elsewhere. Note – there may be no direct relationship

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	between PP and investor.
	Regulation in itself does not eliminate risk. There are many instances where fully compliant offers and on-going compliance in relatively strict regulatory regimes have resulted in loss. There needs to be a clear purpose for the regulation and it needs to be targeted at the right participants.
Identification of the problem	It would be helpful to identify the problems that the document is seeking to address. It is not obvious what problems MED sees with the current regime. The paper mentions compliance with FATF. This should be dealt with in anti-money laundering etc, rather than as a separate justification for regulation in this area.
	Need to be sure that the regulatory environment does not give false hope to less experienced investors.
	Consider cost of compliance. Investors ultimately bear these costs. Reputable firms will always comply even though the risks of them causing loss to investors is low. The submitter noted that it will add costs where there are little benefits.
	Over regulation may stifle innovation and present barriers to new entrants.
	Separating the roles of issuer from admin manager, PP and custodian could well increase overall compliance costs and reduce any benefits of scale (increasing unit costs to investors).
	Supports the need to bring these types of services within the overall regulatory framework.
Securities settlement systems (SSSs)	<p>Notes that MED has confirmed that Austraclear (the RBNZ's securities settlement system) is not intended to be captured by the proposed regime for platforms.</p> <p>Submits that it should be made clear that the platforms regime does not apply to SSSs, at least where those systems largely impact only on wholesale members. Submits that SSSs involve different issues and concerns, and should be dealt with separately. An IOSCO Committee has set out recommendations for SSSs. RBNZ is working on a paper on the oversight of SSSs and has had discussions with MED and the SC about this.</p> <p>Recommends that the boundaries between what is, and is not, intended to be included in the definition of platforms should be clearly drawn in any subsequent proposals and in any legislation, to ensure that SSSs are excluded.</p>
RFPP Process	Commends MED for the process followed in the RFPP and the opportunity for the regulation of financial services to be considered in a comprehensive manner.
	Endorses the approach to financial services regulation that comparable products and services should be regulated on a comparable and consistent basis in order to increase the protection and understanding of consumers and reduce the compliance costs for providers.
Regulation governing platforms	Many believe that these services are free from regulation. There are a number of statutes which impose various obligations on such parties (eg: Fair Trading Act, Consumer Guarantees Act, Trustees Act, Securities Act). That said, consumers are generally unaware they have such protection.
Harmonisation with UK	Consider a set of high level general principles governing the NZ financial services industry. This would allow harmonisation with the more experienced UK regulatory structure.
Overriding requirements in regulatory structure	The overriding requirements of developments in the regulatory structure are that clients (a) are treated fairly; (b) are adequately informed; and (c) have a fair method of redress if a product provider fails in its duties.
Balancing different interests	A balance must be made between (a) client protection; (b) costs (which are ultimately paid for by clients); (c) clear disclosure; (d) encouraging innovation in the market; and (e) client information overload.
Compliance costs	Compliance costs for custodians and PPs may force some product providers out of the market or prevent others entering the market, thus reducing competition.
Dual regulation with NZX	Dual regulation of service providers, such as NZX Market Participants, will increase compliance costs. Consider a mechanism to allow delegation of powers to another regulator allowing authorisation and monitoring. Dual recognition would be dependent on maintaining minimum common standards.

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Standards and service expectations	Consider more detailed standards and service expectations from an approved custodian or PP. For example, set standards for appropriate conduct when dealing with client assets, reconciliations of client assets held or communicating with clients on the assets held and how to specify the appropriate level of capital applicable to the business conducted by a firm.
Regime for custodial services outside this discussion document	Custodians often provide services in areas outside those considered in this discussion document (eg: custodians are used abroad to facilitate trading in overseas markets). Consider an appropriate and enforceable regime to cover such situations.
SC to issue rulings and guidance	The SC should be able to issue rulings and guidance on interpretation of the standards embodied in the Rules and Regulations.
Consultation	Would like to be consulted on when the proposals are incorporated into draft legislation.
Comments arising from Chapter 1 of the Paper (the Executive Summary)	
Comments arising from Chapter 2 of the Paper (Introduction)	
Q1 – Definition of “platform” and “PMS”	There should be only 2 distinctions – administration and advice. Admin should cover all custodial (ie: anyone holding assets on behalf of a 3 rd party), platform and admin functions, provided they provide no advice to or influence the end investor. Advice will be covered under other MED papers. These two functions must be segregated.
Q1 – Definition of “platform” and “PMS”	The definitions are too broad and uncertain – they may cover downstream services with no direct customer relationship.
Q1 – Definition of service providers	Agrees with discussion document that the proposed boundaries between the three services are potentially problematic. However, consider the approach of the NZX Participant Rules – where a Market Participant may be accredited to provide a range of services, or alternatively just one or more selected services.
Q1 – Definition of service providers	As above: ie: because organisations structure their services in different ways, accreditation should be offered for one or a combination of services.
Q1: Definitions	<p>Custodian is the legal entity that holds assets in custody for underlying investors in a “bare trustee” capacity. The custodian should only have limited powers of discretion, and should only be able to act on investors’ direct instructions (or authorised person’s instructions). Custodians duties/obs include: to act only on proper instructions, to maintain proper accounting records, to ensure auditing processes take place and are adhered to, and to record client valuations. Note: custodian appoints PP, not the other way around (as stated in discussion doc).</p> <p>Differentiating between a platform provider (PP) and a portfolio services provider (PSP) is more difficult.</p> <p>PP = responsible for providing the underlying platform services to PSPs, as part of the PSPs’ offering to investors. PPs are <i>generally</i> only available to investors via an intermediary and provide services to assist advisors (who service investors).</p> <p>PSP = provides a wider offering to investors, of which the platform services are a component. They are usually given a broad discretion to manage client investments, often via a power of attorney. In many cases, a similar authority is granted by a client to her adviser under a platform structure.</p> <p>Whilst PPs and PSPs are defined differently, regulation should occur evenly.</p>
Q1 –	The nature and extent of contracts between investment advisers, their investors,

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Definitions	<p>PPs and custodians take many forms.</p> <p>For example, the adviser may negotiate the terms to apply to services to be provided to investors by an independent platform and/or custodial provider, even where the investor client signs a contract establishing a direct service relationship with the platform and/or custodial provider. Alternatively, the investor may arrange their own platform and custodial service independent of the adviser. The platform and custodial provider may be part of the same corporate group as the adviser providing investment advisory services.</p> <p>The resulting regulatory environment should not preclude and should support the continued diversity of service offering.</p>
Q1 – Definitions	<p>The submitter accepts the definitions, although it believes that there is an argument that platform providers are merely service providers for advisers and they should be treated similarly (ie: they are like banking service providers).</p> <p>The inclusion of attorneys is problematic. As a service provider there is no legal separation between the investor and the attorney – many investors appoint an attorney so they do not have to deal with service providers.</p>
Q1 – Definitions / Scope	<p>Not opposed to the idea of the proposed regulatory framework. Considers it would be useful if there was more explicit identification of the systems and institutions, and business of these institutions, that will be captured by the proposals.</p>
Q1 – Definitions	<p>PP – should be defined as the entity which actually owns/ controls the wrap and provides all the supporting documentation. The PP may either own all the operative aspects of the platform or alternatively outsource or contract out to a third party some or all aspects of its operation.</p> <p>PSP – the definition in the document is appropriate.</p> <p>Custodian – the definition is appropriate. As additional info, the custodian is appointed by the PP and can be one and the same. Alternatively, a PP can delegate the admin and/or custody to a third party.</p>
Q1 – Definition of service providers	<p>PP and PSP are difficult to define as there are a variety of models in the market and the blending of functions makes it difficult to determine where one role starts and another finishes.</p> <p>Unclear as to whether wholesale service providers are included; and the extent to which the administration functions of wills, estates and trust areas of its members would be impacted.</p> <p>The definitions could see almost all intermediaries other than financial planners as either PPs or PSPs. Stockbrokers, banks, or anyone operating an order routing or execution system could fall under the current definition.</p>
Q1 – Definitions	<p>There are a wide range of different management and operating structures. Devise standards and rules that cover different operating models, but also ensure that innovation is not stifled. For example, PMS providers offer a discretionary management service to clients where the assets are in the client’s name and a power of attorney is used to transfer the shares into and out of the client’s name when trades occur. Also, may be able to offer a PMS through a PP, or to offer a pure custody service with only advice offered. None of these services should be excluded from any set of definitions.</p> <p>To allow wider scope for future developments, the definitions should be wide ranging and non-prescriptive, however they should allow for market certainty.</p> <p>A custodian has a role both inside and outside the context of PMSs and PPs. The definition should make clear that a custodian refers to the situations where the beneficial and legal owners of assets are different.</p>
Q1 – Definition of service	<p>Agree with para 17 – that the essential elements of a PP are an administration system to hold, trade and report on investments. The legal ownership of the assets needs to be separated from the business assets of the service provider,</p>

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providers	<p>and held in trust by a bare trustee. The definition of a CIS in the CIS document is extremely wide and covers the essential elements of a wrap scheme or platform, so they will need to be differentiated from a CIS.</p> <p>A PSP has delegated investment power.</p> <p>A custodian only acts as a bare trustee for investors.</p>
Comments arising from Chapter 3 of the Paper (Objectives for Regulating Platforms)	
Comments arising from Chapter 4 of the Paper (Problems with the Current Regulatory Regime)	
Comments arising from Chapter 5 of the Paper (Proposed Option for Regulating Platforms)	
Governance: generally	Supports the framework for governance and supervision of platform and portfolio management services.
Para 35 – Supervision by Commission	<p>NZX firms are already subject to regulation under the statutorily approved NZX Participant Rules in respect of providing the services proposed in this discussion document.</p> <p>Submits that duplication of regulation, potentially requiring NZX firms to report to or be controlled and monitored by 2 regulators, perhaps with differing requirements, should be avoided. The defined services should be regulated and monitored under the NZX Participant Rules, or elsewhere, but not both.</p>
Para 35: Supervision by Commission	As above re: duplication of regulation so that service providers already subject to regulation (eg: NZX Participant Rules) are not over burdened with regulations. Consider the NZX Regs for participants already subject to them and extended if necessary; and non-participants should be subject to the appropriate regulation of the Commission; but firms should not be subject to regulations from both.
Para 35: Supervision by Commission	Supports approval and supervision of these entities by the SC.
Governance requirements	As regards competency requirements, NZX Participants must be accredited by NZX before offering these types of services. These rules include qualification, experience and governance requirements. Encourages the use of these, or similar rules, to apply to the non-NZX Participant firms.
NZX as registry	There needs to be consideration to accepting NZX as a registry for providers.
Governance: generally	Minimum capital requirements should be included.
Liability of the SC	Consider the implications of having the SC standing behind the minimum standards – could a service provider advertise that they are approved by the SC. Assuming this is so, seeks clarification of the liability that the SC would face if a “SC approved platform/custodian” failed.
Q2 – paras 36 to 41: Registration of PPs and custodians	Agrees that registration appears to meet the objectives for regulating platforms.
Q2 – paras 36 to 41: Registration of PPs and custodians	Agrees that they should be registered and that registration meets the objectives for regulating platforms. It is a means to reasonably assess capability and capacity of providers in advance, for the purposes of ensuring that advisers and investors are not exposed to providers incapable of performing these roles.
Q2 – paras 36 to 41: Registration of PPs and custodians	Supports registration of providers and custodians, and considers registration meets the objectives for regulating platforms. It will identify those entities which should be regulated like other CISs.
Q2 – paras 36	Supports registration to a degree. There needs to be clear definitions and criteria

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to 41: Registration of PPs and custodians	against which capability, capacity and independence will be assessed. Platforms may have different functions and facilities, but provided they meet the minimum criteria for entry, they should not be disadvantaged.
Q2 – paras 36 to 41: Registration of PPs and custodians	<p>Platforms and PMSs need to be registered services to satisfy FATF requirements, and to bring them within the scope of the supervision redress proposals of the RFPP.</p> <p>An essential element of a platform or wrap is that the assets are held separately and by a bare trustee. This is to keep the assets of the platform separate from the PP. Considers the registration requirement is satisfied by registering the service provider and registration of the custodian is not necessary. It would then be a matter of disclosure who the custodian is.</p>
Paras 47 to 56: Entry reqs for custodians	Agree that the custodian must have appropriate levels of capital. However, any form of capital adequacy must take into account the various custodial models that are in operation, and applied appropriately. This is a critical aspect and must be accommodated.
Paras 44 to 56: Entry requirements	Supports entry and ongoing requirements, including demonstration that they have appropriate capability and capacity to perform their roles. Agrees that providers and custodians should have similar entry requirements as those proposed for CISs.
Q3: Fit and proper entry reqs	The entry requirements appear appropriate; and are reasonable and sufficient to comply with FATF Recommendations.
Q3: Fit and proper entry reqs	The entry requirements seem reasonable. What, if any, transitional arrangements are to be instigated to cater for existing PPs and custodians?
Q3: Fit and proper entry reqs	Does not consider any of the fit and proper entry requirements are inappropriate.
Q3: Fit and proper entry reqs	Consider where an overseas custodian is used to hold overseas securities. While entry requirements can be set for NZ-based PPs and custodians, where a custodian is based overseas there may be problems in ensuring the overseas custodian has the relevant qualifications to fulfil the requirements in this paper. Neither should the requirements drive NZ providers offshore.
Q3: Fit and proper entry reqs	<p>Agree that PPs need to satisfy good character requirements, but query whether custodians need to. The custodian requirement arises simply from the need to hold assets separately. While the custodian is a separate entity and the same tests could apply in concept, the custodian is likely to be close to the provider and such checks and verification will add to administration costs. Regulatory oversight will be satisfied by focusing on the provider only.</p> <p>Competence, systems and capital adequacy are necessary for any business. However, not clear why the regulatory systems and controls need to be in place to monitor them in the place of market and corporate discipline (eg: audit and reporting). There is not a demonstrable need for this level of regulatory intervention or related costs.</p> <p>A platform is not a CIS. The investments on a platform may be CISs, but the platform is simply a service to hold and report on investments. It is not necessary to apply the same regulatory oversight, reporting and controls to platforms, as to CISs.</p>
Q4: Any other fit and proper reqs?	Does not propose any other fit and proper requirements. Important that the rules are applied consistently across the industry.
Q4: Any other fit and proper reqs?	Does not propose any other fit and proper requirements.
Q5 – para 49:	Yes, custodian must be body corporate and the assets must be held on trust and

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Should custodian be body corporate?	fully segregated from those of the custodian.
Q5 – para 49: Should custodian be body corporate?	Yes - a body corporate is the most appropriate structure through which directors can be appointed, contracts for services entered and, if required, adequate capital raised.
Q5 – para 49: Should custodian be body corporate?	Yes. The activity of a custodian must be limited to that of a trustee for investors. A body corporate provides better protection for investors.
Q5 – para 49: Should custodian be body corporate?	Yes – for the perpetual succession reason outlined in document.
Q5 – para 49: Should custodian be body corporate?	Currently, securities can be held in a Nominee Company, whilst the custodian itself might be, for example, a partnership. Whilst the submitter has not experienced problems with these structures, it agrees that the holder of the securities should be a body corporate.
Q6 – paras 50 to 52: Independence of custodian	Custodian should be independent from any entity that is providing investment advice. There should be at least 1 independent director.
Q6 – paras 50 to 52: Independence of custodian	Full independence of custodian is not necessary. Complete separation is likely to lead to additional costs, without necessarily offering any additional protection to investors. There is a greater risk of non-alignment of services with appointment of a separate 3 rd party.
Q6 – paras 50 to 52: Independence of custodian	Supports having 1 independent qualified professional director of custodian: ie: skilled, and indep of custodian, PP and any associated or related companies.
Q6 – paras 50 to 52: Independence of custodian	It makes sense to have an element of independence, but not total independence (as this will possibly impose additional costs on the investor without any additional protection). Considers the PP and the custodian can be one and the same (see response to Q8), but rather than being required to have separate entities for each of the custodian and PP, would prefer the requirement to appoint an independent director. Although notes that the requirement to have an independent director would add unnecessary complexity.
Q6 – paras 50 to 52: Independence of custodian	Custodian need not be independent of PP, however the approval requirements should include at least 1 independent director. On the other hand, agrees with Submitter 1 – the custodian should be required to be independent of any person/ entity/ related party that provides investment advice to an investor on behalf of whom the custodian holds property. Otherwise there may be a potential conflict of interest and undue risk to investors if the adviser and custodian were the same or related parties.
Q6 – paras 50 to 52: Independence of custodian	Many NZX Market Participants offer a custodial service, where they act as bare trustee, to facilitate trading in NZ, Australia and overseas markets. In overseas markets an agent is often used with a sub-account in the name of the custodian company. Some of these participants are small with few directors or partners and they would struggle to have sufficient resources to appoint an independent director. Need to consider balancing the needs of smaller firms in NZ, competition

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	in the market place and the level of risk the regulator is looking to minimise or control.
Q6 – paras 50 to 52: Independence of custodian	Custodian need not have an element of independence from PP. The custodian is simply needed to hold customer funds separate from the service provider and is likely to be a related entity. The essential simplicity of platforms needs to be retained.
Q6 – paras 50 to 52: Independence of custodian	<p>A requirement for an independent director may introduce unwarranted complications (limited market for appropriately qualified persons; impact on governance matters; will the independent director have whistle-blowing obs?). Independence needs further consideration.</p> <p>The role of the custodian is clear and easily defined. It has clear and limited powers of discretion, and there is little opportunity for a conflict of interest between the custodian and the PP.</p> <p>Should an element of independence between PP and custodian be introduced, prefers an independent director rather than complete independence from PP. If this is the preferred option, would like to comment on the functions, duties and powers of the independent director.</p>
Q7: Process if declined approval	<p>If declined by SC, applicant should have a right to present further info to the SC to further support its case.</p> <p>Appeal to court would constitute a last resort approach.</p>
Q7: Process if declined approval	SC must provide reasons if an applicant's approval is declined. Applicant has right to reapply by providing additional material. If further declined, applicant should have right to appeal that decision to court.
Q7: Process if declined approval	Applicant should be given opportunity to present further info or amend the deficiencies that have been identified, and then re-present. This is based on clear entry criteria, with little room for ambiguity. SC should liaise with existing PPs when building the fit and proper entry requirements.
Q7: Process if declined approval	The process should be consistent (eg with issuers of CISs) – ie: first to the SC (re-presenting) and with 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.
Q7: Process if declined approval	Does not support a detailed approvals regime for PPs – PPs should simply have to satisfy good character requirements (see submission to Q3). However, there should be a right of appeal if they are declined; to the SC in the first instance, and then to the court.
Q8 – paras 57 to 59: Can custodian be part of same group as PP?	Yes – custodian can be part of same group as PP.
Q8 – paras 57 to 59: Can custodian be part of same group as PP?	It is global best practice that custodians and platform providers should be separate entities, but they must be permitted to be part of the same group of companies.
Q8 – paras 57 to 59: Can custodian be part of same group as PP?	Yes, the PP and custodian can be part of the same group of companies. In its capacity as bare trustee, the custodian has limited powers of discretion, so there is little conflict of interest between custodian and PP. Independence is dealt with sufficiently by having an indep director on custodian.
Q8 – paras 57 to 59: Can custodian be part of same group as PP?	Yes, custodian, PP and adviser can be part of the same corporate group.
Q8 – paras 57	Agrees that an entity would not be able to be both the PP and the custodian.

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to 59: Can custodian be part of same group as PP?	Agrees that the two entities can be part of the same group, given that both entities will be subject to the regulatory controls around entry and ongoing supervision. Ensuring separation of function and separation of regulation should provide adequate protection for investors.
Q8 – paras 57 to 59: Can custodian be part of same group as PP?	<p>Considers that the PP and the custodian can be one and the same entity (and states that most in the NZ market currently operate like this) as long as there is a clear process to ensure monies are not intermingled as required by the Trustee Act. Complete separation is likely to incur additional costs without any additional investor protection.</p> <p>The alternative is to allow the PP and custodian to be part of the same group of companies – that creates complex structures which add cost and confusion to the investor. If they are the same entity, this submitter would prefer independence through an independent director, rather than a complete separation between PP and custodian.</p>
Q8 – paras 57 to 59: Can custodian be part of same group as PP?	<p>Considers PP and custodian can be same entity, provided custodian has 1 independent director (see response to Q6).</p> <p>Agree that PP and custodian can be part of the same group, provided processes are in place to deal with conflict of interests.</p>
Q8 – paras 57 to 59: Can custodian be part of same group as PP?	<p>Agrees that PP and custodian can be part of the same group of companies. The PPs will have invested in developing a system that suits their financial advisers' and the custodian's needs, and it would be inequitable to deny them the use of that system.</p> <p>The most common structure for custodians is where there is a nominee company, however in most instances the management of that nominee company is carried out by a related part of the custodian. It is not cost effective to separate the PP from the management aspect of custodial services, however securities should be held in a separate nominee company (within the same group is acceptable).</p>
Custodian and PP roles	Separation of the role of custodian and PP needs to be considered in conjunction with the CIS discussion document.
Q9 – paras 60 and 61: Reporting to the SC	Proposed requirements are appropriate, provided (a) specific reporting standards are adopted across all providers; and (b) an appropriate minimum benchmark is set by the SC, with consultation to the industry. This should ensure a consistent approach and provide SC with comfort around ongoing ability of providers.
Q9 – paras 60 and 61: Reporting to the SC	There is insufficient detail to comment on the proposed reporting requirements. In principle, not opposed to reporting material breaches (event based) or providing annual reports confirming reqs are met. However, more detail is required on extent of reporting fit and proper requirements.
Q9 – paras 60 and 61: Reporting to the SC	<p>Generally supports reporting to the SC on an annual basis, with the exception being that any material change must be reported as soon as it is identified, which may lead the SC to determine that the entity no longer meets the minimum criteria.</p> <p>More detail is required before full endorsement can be given to the reporting requirements.</p> <p>Additionally, any direction by the SC must contain the timeframe to rectify the issue, clear actions, and the consequences of failure to comply with the action required.</p> <p>Thought must be given to a transitional period allowing those currently in the market to implement any necessary changes to comply with the "fit and proper" requirements, without fear of repercussion.</p> <p>Need to consider what happens if an entity no longer meets the minimum criteria – what message is communicated to existing investors; what happens to investors who wish to transact; and who takes responsibility for the platform while the issues are being sorted?</p>

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	<p>There needs to be a mechanism to ensure the platform can continue to operate while issues are being resolved, as anything that affects an investor's ability to transact will undermine the confidence in the system and cause a run on funds, which could have wider implications for the service provider and the entire financial services industry.</p> <p>SC's first role should be to assist the offending party to become compliant.</p>
Q9 – paras 60 and 61: Reporting to the SC	Prudential regulation by way of annual reports may result in data being out of date before it is received by the SC. Consideration should be given to more regular reporting.
Q9 – paras 60 and 61: Reporting to the SC	<p>The proposed ongoing reporting requirements must ensure that relevant data is collected in a timely manner to allow prompt reporting of issues to the SC. Approved organisations could maintain key performance and financial info on a more frequent basis, which could be available to the SC when required. NZX receives daily financial reports from its participants.</p>
Q9 – paras 60 and 61: Reporting to the SC	The proposed reporting requirements are appropriate, within the scope of the approval (see submitter's answers to earlier questions).
Q10 – paras 62 to 66: Breach of ongoing fit and proper reqs (PP)	Proposed options are appropriate provided they are administered in the order stated – ie: no revocation of an entity's approval and de-registration without the earlier remedial actions being enforced.
Q10 – Para 64(d): SC's power to revoke an entity's approval and deregister it	Submits that a caretaker platform provider or custodian will need to be appointed in event of deregistration, and a period of consultation with the deregistered provider's customers as to how their assets are to be dealt with. A default option will also need to be established in the event that no direction or inadequate instruction is received from the customer.
Q10 – paras 62 to 66: Breach of ongoing fit and proper reqs (PP)	<p>Supports powers in 64(a) to (c). However para 64(d) – SC's power to deregister an entity – submits that deregistration should only be considered as a last resort as there may be several potentially significant negative ramifications and risk for both advisers and clients. Options could include: advising investor, recompensing for loss suffered, and advised of option to transfer.</p> <p>Supports a process where a client has input into the decision as to whether a breach/es is/are severe enough to warrant a change of provider.</p> <p>Transferral should not occur without a positive affirmation from a client (fully informed of the consequences).</p> <p>Consideration should also be given to the "Australian enforceable undertakings" approach, as a way of managing breaches.</p>
Q10 – paras 62 to 66: Breach of ongoing fit and proper reqs (PP)	<p>The SC's first role should be to assist the entity to become compliant. It needs to be very clear what the consequences are between the breach, the action required, and the timeframe to remedy the breach. The proposed options are appropriate, however para 64(d) (revocation of an entity's approval) needs to be seen as a last resort.</p> <p>The entity should be able to appeal to the court, but in reality if it is very clear why the revocation has been issued, then very few would take their case higher. This is the last stop (after all other options) and there needs to be clear definitions as to what is required to be "fit and proper".</p>
Q10 – paras 62 to 66: Breach of	Yes – appropriate.

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ongoing fit and proper reqs (PP)	
Para 66: Breach of ongoing fit and proper (PP) – the appeal process	There should be an intermediate appeal process available before having to resort to the courts.
Para 66: Breach of ongoing fit and proper – (PP) the appeal process	As above: before an entity is deregistered by the SC, an appeal process should be available to platform providers and custodians prior to being required to go through the court.
Q11 – para 66: Appeal rights from deregistration	Deregistration will have a significant impact on the entity (effectively putting it out of business) and its clients, as clients will have to be transferred to another PP or custodian. An appeal to the court for a completely independent review and arbitration on the fit and proper requirements would be desirable.
Q11 – para 66: Appeal rights from deregistration	Supports process where SC gives detailed reasons for deregistration and, in the first instance, the SC hears an appeal against its decision. If SC does not reverse its decision, the deregistered party should be able to appeal to court.
Q11 – para 66: Appeal rights from deregistration	Appeal rights must be provided: first to the SC, and with 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.
Q12 – paras 67 to 70: Governance reqs for financial advisers and PSPs	Agree with the proposed approach for ensuring competence and capacity of financial advisers and PSPs. It is critical the financial services industry as a whole is governed for the protection of the investor.
Q12 – paras 67 to 70: Governance reqs for financial advisers and PSPs	Financial advisers and PSPs should be subject to similar governance requirements as PPs, and the proposed approach supports this.
Q12 – paras 67 to 70: Governance reqs for financial advisers and PSPs	It is expected financial advisers will become subject to co-regulation under the Approved Professional Body structures, as well as having to meet industry requirements. To the extent that the proposed regulatory changes in this document might result in duplication of government regulation or supervisory oversight, consideration should be given to mitigating such an outcome. Wherever practical, the defined services should be regulated and supervised by one entity without duplication elsewhere.
Q12 – paras 67 to 70: Governance reqs for financial advisers and	There should be a minimum standard to ensure there is consistency across PSPs and platform providers.

Issue Reference	Summary of Issue Raised by Submission
PSPs	
Q12 – paras 67 to 70: Governance reqs for financial advisers and PSPs	All financial service providers offering similar services should be subject to the same level of regulation to prevent regulatory arbitrage. Any standards applicable to advisers in relation to their conduct should be applicable to PSPs that fall outside the legislation for financial intermediaries.
Q12 – paras 67 to 70: Governance reqs for financial advisers and PSPs	Agrees with proposed approach. A PSP should meet the minimum skill levels of advisers, and have the additional power to implement their recommendations on behalf of customers. Questions the need to continually demonstrate operational capacity, and why market responses and feedback supported by easy access to consumer disputes resolution is not a sufficient and proportionate response.
Q13 – paras 71 and 72: Functions of the PP	No further functions to add, and none that are inappropriate.
Q13 – paras 71 and 72: Functions of the PP	The proposed functions are loosely defined. In practice, much of the functionality associated with platforms is aimed at advisers, and not underlying clients (eg: trading methodologies, mgmt reporting, client relationship mgmt tools). Concerned that the document views governance and disclosure from an “end investor” perspective.
Q13 – paras 71 and 72: Functions of the PP	Generally agrees with the function, but considers it does not go far enough. In practice, many of the functions of PPs are aimed at advisers rather than investors.
Q13 – paras 71 and 72: Functions of the PP	No further functions to add, and none that are inappropriate. However, care will be needed in defining “administration services”.
Q13 – paras 71 and 72: Functions of the PP	The definition of “administration services” should be clarified to ensure that providers have certainty that the services provided fall into the regulatory regime.
Paras 74(f) and 89(h): Duty to hold personal profits and/or benefits on trust for investors	How does this apply to a non-unitised pool of securities and cash assets? For example – it may not be practical to identify interest earnings (in respect of unsettled securities purchases) to the benefit of each client, resulting in such interest earnings being retained by the NZX Firm. This is disclosed in client agreements. Also: where remuneration is received arising from securities lending transactions entered into by a service provider utilising client assets – with or without the knowledge and agreement of clients. Submits that further work is required to clarify the circumstances the proposal is intended to capture.
Paras 74(f) and 89(h): Duty to hold personal profits and/or benefits on trust for investors	Supports that directors cannot personally benefit beyond remuneration, and submits that shareholders of providers and custodians should similarly be subject to the same express restrictions on their ability to benefit beyond disclosed remuneration.
Q14 – paras 73 – 75: PP duties	No further duties to add to those proposed for PPs. Not clear on the intention of para 74(f) duty (to hold personal profits and/or benefits on trust for investors).
Q14 – paras	No further duties to add to those proposed for PPs.

Issue Reference	Summary of Issue Raised by Submission
73 – 75: PP duties	
Q14 – paras 73 – 75: PP duties	<p>Recommends that where the PP is also the marketer of the product, then they should be responsible for all marketing and disclosure obligations unless they are simply appointed by a third party to provide an admin solution only. In the latter situation, the 3rd party may elect to provide all marketing and disclosure info.</p> <p>The duties in para 74 are appropriate, but there should be additional clarity around what statistical data is required, and the purposes for which that data will be used and disseminated.</p> <p>Would like confirmation that statistical data will not be required to be reported to more than one agency.</p>
Q15 – paras 73 to 75: Any inappropriate PP duties, or any that should instead be imposed on custodians?	<p>The proposed duties for PSPs outlined in 5.2.2.1 are appropriate. PSPs are akin to fund manager/issuer of a CIS and therefore the duties imposed on a CIS issuer are relevant to the proposed duties for a PSP.</p>
Q15 – paras 73 to 75: Any inappropriate PP duties, or any that should instead be imposed on custodians?	<p>Some of the duties are more appropriately the responsibility of the custodian, not the PP (for example – custodian appoints PP: 74(a); custodian gives effect to investors’ authorities: 74(d); and segregation of assets automatically occurs because investors generally deposit funds with custodian, not PP).</p>
Q15 – paras 73 to 75: Any inappropriate PP duties, or any that should instead be imposed on custodians?	<p>Para 74(f) [personal profits] suggests that no director may benefit from funds held on behalf of investors. There are circumstances where it is difficult to allocate “interest” to clients when bank fees are deducted. Need to consider how to allocate both benefits and costs to clients in a fair and balanced way.</p>
Q15 – paras 73 to 75: Any inappropriate PP duties, or any that should instead be imposed on custodians?	<p>Agrees that the primary customer relationship is with the PP, and that the custodian responsibility is simply to hold funds.</p>
Q15 – paras 73 to 75: Any inappropriate PP duties, or any that should instead be imposed on custodians?	<p>A number of the proposed duties should be the responsibility of the custodian, not the PP. For example, in practice: the custodian will appoint the PP (not vice versa) and the custodian (not vice versa) has the contractual relationship with the underlying investor; and the custodian gives effect to investors’ authorities. Investors generally deposit funds or transfer assets to the custodian, not the PP. There is an automatic segregation between the assets held in trust by the custodian and the assets of the PP.</p>
Q16 – para	<p>Would like to see further detail of data to be provided to SC by custodians and</p>

Issue Reference	Summary of Issue Raised by Submission
74(h): Reporting statistical data	provide comment on that.
Q16 – para 74(h): Reporting statistical data	<p>Supports the provision of statistical data that helps define the size and trends of the platform market and the wider advisory market. All info provided to SC should be confidential, other than “total funds under administration” – which should be publicly available to show market share of each provider.</p> <p>Other info to collect includes: amount of funds under admin (showing NZ dollar denominated/international currency denominated asset split); number of portfolios; number of firms using the service; total revenue earned by PP/custodian; number of assets administered.</p>
Q16 – para 74(h): Reporting statistical data	<p>Agrees that some info should be public, and some provided to the SC in confidence.</p> <p>Public info could include: funds under management, number of users, number of products, and fees charged by the platform.</p> <p>Confidential info could include: users (by way of company and adviser name) of the platform and funds under management – this will allow the SC to cross check against the proposed register of financial advisers; and any issue that are material and have been corrected by the provider as part of their self audit process.</p>
Q16 – para 74(h): Reporting statistical data	Information to be reported could include: non-personal data that the PP has in the normal course of their business, such as cash flow, total funds, number of investors, type of assets, etc.
Para 74(h) and 89(k): Reporting statistical data	Has an interest in reviewing the options for obtaining statistical data, so that there is “one-time” data capture to serve multiple user purposes, thereby reducing the burden on respondents.
Q17 – paras 76 and 77: Proposed duties for PSPs	The proposed duties for PPs are appropriate to impose on PSPs. However, there will need to be a clear segregation of duties, thus imposing a greater duty of care on PSPs when acting in the investment of client monies.
Q17 – paras 76 and 77: Proposed duties for PSPs	Need to distinguish between advisory and administration functions when considering PSP duties. Support for similar duties imposed on PSPs as for PPs, with an additional duty on PSPs to act with due care and skill in the investment of client monies (or that the advice component of a PSP’s service is covered under financial adviser regulation). This is necessary to account for the additional advisory services that a PSP provides.
Q17 – paras 76 and 77: Proposed duties for PSPs	Supports the proposal, and refer to its submission on Q14. There should be an additional duty to act in the best interest of clients and to act with due care and skill. This is because many advisers utilising such a system take over the decision-making process on behalf of their clients by way of power of attorney.
Q17 – paras 76 and 77: Proposed duties for PSPs	Agrees that to prevent regulatory arbitrage, any standards imposed on advisers should apply to PSPs. This should include acting with due care and skill in the investment of client monies. It is not appropriate to impose the duties of CIS issuers on PSPs because CIS issuers offer a pooled product where PSPs offer an individual service and must understand the individual client’s situation before acting on their behalf.
Q17 – paras 76 and 77: Proposed duties for PSPs	PSPs do not necessarily operate in association with a platform: the two services need to be considered separately. A PSP is an adviser with the power to execute his/her recommendations. Financial adviser regulation is therefore the starting point, with the appropriate standard being to act in the best interests of the customer with due care and skill.
Q18 – para 78: Powers of	No further powers are necessary to carry out its functions and duties.

Issue Reference	Summary of Issue Raised by Submission
the PP	
Q18 – para 78: Powers of the PP	No further powers are necessary; and considers that the PP’s powers should not be prescribed in legislation (ie PP’s powers should be those set out in the contract, not legislation).
Q18 – para 78: Powers of the PP	Powers in the contract between the PP and the investor should be sufficient. Any other powers have potential to contravene the bare trust arrangement. All power should stem from the authority given by the investor.
Q19 – paras 79 to 82: Remedies for breach of platform provider’s duties	Agrees with SC’s proposed powers in para 81(a), (b) and (d) [assume this should be (c)]. Recommend that SC’s power to take an action to court to seek a remedy for breach (para (d)) be used only as a last resort.
Q19 – paras 79 to 82: Remedies for breach of platform provider’s duties	<p>The Commission can take an action to court to seek a remedy for the breach, including compensation where investors have suffered loss. Investors should not be able to receive compensation through both the Commission and the external disputes resolution scheme, unless only “top-up” compensation was being sought through the scheme, or the compensation was in respect of different matters.</p> <p>Also: consider if a consumer pursues a complaint through one forum and is unsuccessful, whether the other option should remain available.</p>
Q19 – para 80: Remedies for breach of platform provider’s duties	As above: the remedies available to investors should go through the consumer disputes resolution process first, rather than consumers first being required to take an action to court.
Q19 – paras 79 to 82: Remedies for breach of PP’s duties	<p>Supports accountability of the PP, but often situation may be complicated by contractual arrangements (eg: adviser may provide some of the services as well). Therefore a PP should only be liable for those services it provides either directly or indirectly to investors.</p> <p>Supports SC’s powers set out in paras 81(a) to (c). Power in 81(d) (the SC’s power to take an action to court to seek a remedy) should only be exercised as a last resort.</p> <p>Consider the “Australian enforceable undertakings” approach, as a way of managing breaches.</p> <p>Consider also imposing stricter controls for persistent breaches – eg: if breach occurs 0 to x times – impose set controls; if breach occurs x to y times – impose a stricter set of controls.</p>
Q19 – paras 79 to 82: Remedies for breach of platform provider’s duties	<p>Noting possible court action and the SC’s proposed powers to deal with breaches by the PP, consideration should be given to including consumer rights against PPs within the context of the proposed Consumer Disputes Resolution and Redress discussion document.</p> <p>The opportunity for a consumer to have access through a dispute resolution and redress structure, independent of the courts and the SC, covering the totality of the financial services being delivered, is more appropriate and more likely to deliver satisfactory outcomes to consumers.</p>
Q19 – paras 79 to 82: Remedies for breach of PP’s duties	<p>Proposed remedies are acceptable, however there must be clear guidelines regarding what is expected from a platform. SC should be able to step in where a “substantial issue” has occurred as a direct result of platform failing to deliver contracted services. SC should have the power to prohibit the PP promoting or providing a platform if the breach warrants it.</p> <p>Suggests first: remedy; second: compensation; third: penalties. Depending on the nature of the breach, the court may elect to remove the authority for the platform to continue and may instruct a transfer of assets across to another approved</p>

Issue Reference	Summary of Issue Raised by Submission
	<p>platform. Would like to see a facility for alternative dispute resolution options before going to court.</p> <p>Responsibility for provision of incorrect data by other parties (eg: inaccurate data feeds by product providers, how product providers account for tax), where there is no failure by the PP, should not lie with the PP, but with the person who provided the incorrect data.</p> <p>Where there is product failure on the platform, inclusion of the product on a platform should not constitute a product recommendation unless specifically stated.</p>
Q19 – para 81(d): Compensation as remedy for breach of PP’s duties	Supports the imposition of compensation, provided compensation is limited to restoring the investor to the position s/he would have been in if the breach had not occurred.
Q20 – paras 79 to 82: What other orders could court make to enforce PP compliance with legislation?	This is not the responsibility of the courts – but the responsibility of the SC to ensure that before acceptance of registration of the PP, it is fully compliant and aware of its role and responsibilities. If the PP breaches any of the ongoing “fit and proper” reqs, in the first instance the SC should enforce compliance (eg: revoking the PP’s licence). Approach to the court is expensive and time consuming and should be used as a last resort approach.
Q20 – paras 79 to 82: What other orders could court make to enforce PP compliance with legislation?	Submitter recommends considering “Australian enforceable undertakings” and imposing stricter controls where breaches occur persistently (as above).
Q20 – paras 79 to 82: What other orders could court make to enforce PP compliance with legislation?	In addition to restitution to clients (so they are in the position they would have been in if the provider had not failed in its duties), directors of PPs should be sanctioned in some way, which may include being restricted from acting for PPs in the future.
Q20 – paras 79 to 82: What other orders could court make to enforce PP compliance with legislation?	A court should be able to: order closure of a platform, banning orders on directors, and pecuniary penalties. The duty of care the PPs have to customers should be no different to advisers, CIS issuers and other regulated entities, so should be subject to same penalties when the standard is breached.
Q20 – paras 79 to 82: What other orders could court make to enforce PP	The “threat” of having to pay compensation is sufficient to ensure PP compliance. Supports imposition of compensation, provided it is to restore a “wronged” investor to the financial position s/he would have been in had the breach not occurred.

Issue Reference	Summary of Issue Raised by Submission
compliance with legislation?	
Q21 – paras 83 to 86: Should PP and adviser roles be regulated separately?	This depends on the role the PP is performing, if it is facilitating advice it should be regulated as part of financial advisers; if facilitating the holding of assets then it should be as per the administration role.
Q21 – paras 83 to 86: Should PP and adviser roles be regulated separately?	There is a separate advice component involved with a platform. Despite this, agrees that each role is separate and should be considered separately under legislation to ensure that each function can be separately monitored.
Q21 – paras 83 to 86: Should PP and adviser roles be regulated separately?	Agree the roles should be regulated separately – in order to ensure consistency and to avoid ambiguity.
Q21 – paras 83 to 86: Should PP and adviser roles be regulated separately?	There would be benefits of cost in both PPs and advisers being regulated together, however any regulation must be dependent on maintaining minimum common standards across any regulators or regulatory systems.
Q21 – paras 83 to 86: Should PP and adviser roles be regulated separately?	Agrees that the two roles should be regulated separately because they are different, and need not be provided together.
Q22 – paras 83 to 86: Can a PP also be a financial adviser?	Yes – a person can be both the PP and the financial adviser.
Q22 – paras 83 to 86: Can a PP also be a financial adviser?	A person can provide both a platform for the administration of investment, and advise on those investments, provided the two services are clearly distinguished from each other.
Q22 – paras 83 to 86: Can a PP also be a financial adviser?	Agrees that a PP can also be a financial adviser, as long as they are meeting the legal requirements of both and fully disclose this relationship.
Q22 – paras 83 to 86: Can a PP also be a financial adviser?	An adviser and the PP can be part of an employee/employer relationship. The PP will have invested in making a system that suits their financial advisers' needs. In addition, there is no significant risk or conflict of interest through the functions being bundled. It is common for a body corporate to provide the administration

Issue Reference	Summary of Issue Raised by Submission
	<p>service, whereas providing advice is usually an individual with the client relationship. It is unlikely there will be a conflict of interest between the advice given and providing an administration service.</p> <p>The key conflict is where a PP is also a product provider with an associated adviser network, eg: a firm that provides a wrap service that also sells its own products and is used by the firm's adviser network.</p>
Q22 – paras 83 to 86: Can a PP also be a financial adviser?	Yes – advisers should be able to offer a complete service. Advisers will need to fully disclose all product, platform and advice fees, and manage any conflict of interests. The issues are similar to intermediaries receiving commissions from product providers – intermediary regulation, particularly APBs, will address them.
Comments arising from Chapter 6 of the Paper (Functions, Duties and Powers of the Custodian)	
Q23 – para 89: Custodian's duties	No further duties to add to those proposed for custodians. Do not understand the need or purpose of para 89(h) duty (to hold person profits and/or benefits on trust for investors).
Q23 – para 89: Custodian's duties	<p>Supports proposed duties in 89(a) to (h), and (j).</p> <p>Supports, in principle, the duty to provide statistical info (para (k)), but this should be limited to statistical info that helps identify the size of the custodial services and the wider advisory market. There should not be unnecessary duplication of provision of info from PP and custodian, given they are often related parties. The assets in custody will (generally) be a subset of the assets administered by the platform: some assets will not be held custodially (eg: insurance policies and investments in super schemes).</p> <p>Supports para 89(l) duty (to provide the SC with info), but the SC should be required to give reasonable notice prior to inspecting records, and to contain an exhaustive list of documents to be inspected.</p> <p>Supports para 89(m) duty (to comply with SC requests, directions or orders), but the SC should be required to only issue <i>reasonable</i> requests, directions and orders.</p> <p>Notes that, for this submitter, the onus is on the custodian to appoint the PP (cf: para 89(a)).</p>
Q23 – para 89: Custodian's duties	The duties are sufficient. Duty in para 89(g) to ensure investors are promptly paid – will be determined by the underlying product. Eg: custodian cannot make a direct payment if the fund they are withdrawing from has a 90 day notice period or the assets are illiquid (eg: some debentures).
Q23 – para 89: Custodian's duties	<p>It is proposed that the custodian would have an independent director which will ensure compliance with these duties. This assumes the custodian to be of sufficient size to absorb the high fixed costs.</p> <p>If there is no independent director an additional method of ensuring compliance must be considered, such as regular self-assessment against international good practice followed with targeted reviews based on the answers in the self-assessment.</p>
Q23 – para 89: Custodian's duties	It would be preferable for a platform to have the standard financial controls of both financial and systems audits in preference to reporting and oversight by the SC.
Q23 – para 89: Custodian's duties	Implication in the discussion document that custodians will only take instructions from a PP. Custodians have a range of clients, including private individuals and offshore investors. It should be acknowledged that a custodian can take instructions from parties other than a PP.
Q24 – para 89(k): Provision of	Would like to see further detail of data to be provided to SC by custodians and provide comment on that.

Issue Reference	Summary of Issue Raised by Submission
statistical info	
Q24 – para 89(k): Provision of statistical info	See comments re para 89(k) above.
Q24 – para 89(k): Provision of statistical info	<p>Para 89(k) – statistical reporting – should be limited to data identifying the size of the custodial services market. Ensure no unnecessary duplication of data collected from the PP.</p> <p>Would like confirmation that statistical data will be provided to one agency only.</p>
Q24 – para 89(k): Provision of statistical info	Information to be reported could include: non-personal data that the PP has in the normal course of its business, such as cash flow, total funds, number of investors, type of assets, etc.
Q25 – paras 90 to 93: Audit reqs	There should be both a financial and systems audit carried out by an external audit firm independent to the party being audited. The auditors should perform to a specific audit standard specified by the appointed governing body, to ensure a consistent approach for all providers. The auditor should initially report to the party being audited, and then the governing body with a pass/ fail.
Q25 – paras 90 to 93: Audit reqs	The audit needs to extend beyond a systems audit, thereby implying that a financial audit is also required to ensure proper accounting of assets held and cash movements is being conducted.
Q25 – paras 90 to 93: Audit reqs	<p>Considers that an annual audit for the <i>controls and systems</i> of the custodian and PP is appropriate. Audit should be able to be carried out by a “related company” of the custodian, provided it has appropriate capabilities to perform audit. An internal audit gives more flexibility than an external audit, which may be regimental in practice. External audits often involve greater costs, which could negatively impact on the value of the investments. <i>Financial audit</i> should not be included as it is likely to be covered under a separate corporate audit of the entity.</p> <p>Should not be strict requirements regarding provision of audit reports, but auditor should provide, within a reasonable time frame, a report to the SC on request.</p>
Q25 – paras 90 to 93: Audit reqs	<p>Appropriate to have an annual systems audit of the custodian and PP. An audit by a “related company” of the custodian should not be precluded, provided the related company has the appropriate capabilities to perform the audit.</p> <p>Some of the submitter’s members consider there are benefits to an internal audit, and there are often greater costs associated with external audits, which could impact negatively on investments and be passed on to the investor.</p> <p>Submits that there should be a limited external audit requirement in relation to client monies held under the control of the custodian.</p> <p>Should not be strict requirements regarding provision of audit reports, but auditor should provide, within a reasonable time frame, a report to the SC on request.</p>
Q25 – paras 90 to 93: Audit reqs	<p>A full system and financial audit should be required because the size of the assets held by custodians implies significant financial risk to consumers if a platform or custodian fails, is negligent, or commits fraud or error. There are also indirect risks to the reputation of members of the Institute of Financial Advisers and the Institute arising from such failure.</p> <p>These risks also require consideration of the best method of mitigating an adverse outcome in such a circumstance. For example, assessment should be completed of whether service providers should be required to carry insurance cover appropriate to the type and level of business being conducted, or whether there are other solutions available for use alongside or in place of insurance to reduce risk of consumer losses arising from fraud, negligence or error.</p>
Q25 – paras 90 to 93: Audit reqs	Considers a financial audit, once a year, by independent auditor, is necessary. Audit report should be provided to SC. The custodian is the integral component of a wrap and without it performing correctly the whole integrity of the platform is destroyed. Query whether the cost of a financial audit would be significant as this

Issue Reference	Summary of Issue Raised by Submission
	<p>is part of current operating costs and can be part of the wider audit to the company.</p> <p>Reasonable for a systems audit to be conducted every 2-3 years on a rolling basis: annual is not practical.</p>
Q25 – paras 90 to 93: Audit reqs	<p>An audit should occur, including a requirement to regularly reconcile the assets held. The internal reconciliation requirements and scope for the external audit should be specified centrally.</p> <p><i>Financial audit:</i> Costs are higher than in systems audit because it is more extensive and time consuming. The costs will be restrictive for small providers. The main benefit is that it provides additional assurance over financial positions of custodian itself, but unless specific additional testing is performed it would not provide assurance over protection of assets.</p> <p><i>Systems audit:</i> Costs are that systems audits are intrusive and restrictive for small custody providers. Main benefit is that costs should be less than a financial audit.</p> <p>Any audit should be carried out by an independent party and conducted in line with international standards.</p> <p>An alternative could be regular self-assessment against international good practice followed with targeted reviews based on the answers to the self-assessment. This could be more cost effective.</p>
Q25 – paras 90 to 93: Audit reqs	<p>The public can expect clear oversight and controls of financial systems to trust their money. Financial systems and audits are what can be expected of service providers handling and having control of client money and assets.</p> <p>Auditor should be independent.</p> <p>Auditor should report to PP and the SC, and the report should be public and available to investors on request using the PP or the PSP. An annual report should be sufficient.</p>
Custodian as fiduciary – paras 94 and 95	<p>Supports assertion that the relationship between custodian and investor is fiduciary in nature, and that the custodian effectively is required to perform its obligations with the same care, diligence and skill as a professional custodian trustee.</p>
Q26 – paras 96 and 97: Powers of the custodian	<p>Agrees that the limited powers proposed are appropriate.</p>
Q26 – paras 96 and 97: Powers of the custodian	<p>Does not consider the custodian needs any other powers in addition to those set out, or that any are inappropriate.</p>
Q26 – paras 96 and 97: Powers of the custodian	<p>Limited powers are appropriate for the custodian. Also recommends that responsibilities/powers are set out in terms of business between the service users and the custodian.</p>
Q26 – paras 96 and 97: Powers of the custodian	<p>Supports limiting powers of the custodian to those necessary for it to perform its prescribed and contractual functions.</p>
Q27 – paras 98 to 100: Remedies for breach by custodian of duties	<p>Proposed options are appropriate provided they are administered in the order stated.</p>

Issue Reference	Summary of Issue Raised by Submission
Q27 – paras 98 to 100: Remedies for breach by custodian of duties	<p>Supports the proposed powers in para 99, but considers (a) through (c) should be subject to an element of reasonableness (eg: only directions, orders and conditions that are reasonable, and that are aimed at correcting the breach, should be imposed).</p> <p>Considers it appropriate for the SC to act on behalf of investors in this context to remedy such breaches. However, there should be some ADR options prior to litigation.</p> <p>Compensation as a remedy should only restore “wronged” investors to the financial position they would have been in had the breach not occurred.</p>
Q27 – paras 98 to 100: Remedies for breach by custodian of duties	<p>Consider the Australian enforceable undertakings approach as a way of managing breaches.</p> <p>Consider also imposing stricter controls for persistent breaches (see Q19, submitter 61, above).</p>
Q27 – paras 98 to 100: Remedies for breach by custodian of duties	<p>Proposed powers are appropriate. SC should have power to prohibit the custodian from providing custodial services if the breach warrants it.</p> <p>If determined that custodian should be removed, need to consider how this practically could be done, as the legal relationship is between the custodian and the investor. If custodian was removed – then the relationship would be dissolved.</p> <p>Recommend all powers in para 99 should be subject to a requirement for “reasonableness”.</p> <p>Agree compensation is appropriate, provided it is limited to restoring investors to the position they would have been in if the breach had not occurred.</p>
Q28 – paras 98 to 100: What other orders could court make to enforce custodian compliance with legislation?	<p>This is not the responsibility of the courts – but the responsibility of the SC to ensure that before acceptance of registration of the custodian, it is fully compliant and aware of its role and responsibilities. In the first instance the SC should seek the custodian to correct the breach.</p>
Q28 – paras 98 to 100: What other orders could court make to enforce custodian compliance with legislation?	<p>Consider the “Australian enforceable undertakings” approach as a way of managing breaches, and to impose stricter controls where breaches occur persistently.</p>
Q28 – paras 98 to 100: What other orders could court make to enforce custodian compliance with legislation?	<p>A court should be able to make banning orders on directors, and pecuniary penalties.</p>

Issue Reference	Summary of Issue Raised by Submission
Q29 – para 101: Should functions, duties and powers of custodian of a PP extend to custodian of a PMS?	Yes – all custodians /admin providers should be treated the same across the industry regardless of whether it's a professional custodian, wrap provider, or lawyer holding assets on behalf of a client.
Q29 – para 101: Should functions, duties and powers of custodian of a PP extend to custodian of a PMS?	Considers that the functions of the custodian of a platform service are the same for the custodian of a portfolio management service.
Comments arising from Chapter 7 of the Paper (Other Protections)	
Q30 – paras 102 to 106: Whistle blowing provisions for PPs and custodians	<p>The SC proposes to introduce various “checks and balances” designed to control / oversee the performance of the industry. These include assurance reports, month end reports, etc. If these reports / processes are efficient and effective, the whistle blowing provisions will be redundant.</p> <p>This provision already exists in the market, and is not widely known or exercised. Reliability of this provision needs to be approached with caution, disgruntled staff can have the tendency of exaggerating a situation and reporting it to the SC. Care is advised.</p>
Q30 – paras 102 to 106: Whistle blowing provisions for PPs and custodians	Yes, in principle, whistle blowing provisions should apply to PPs and custodians. Both play a fundamental role in the security and delivery of services to the end client.
Q30 – paras 102 to 106: Whistle blowing provisions for PPs and custodians	Submits that each platform should have a published complaints process plus a whistle blower process for product providers on the platform.
Q30 – paras 102 to 106: Whistle blowing provisions for PPs and custodians	Considers the same whistle blowing standards should apply to all providers of financial services.
Q31 – paras 102 to 106: Should whistle blowing provisions extend to PMSs?	Yes – there should be no distinction between whistle blowing provisions for platforms and portfolio management services.
Comments arising from Chapter 8 of the Paper (The Role of the Regulator)	
Para 107: SC	Supports the concept of the SC regulating this sector of the industry.

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as regulator	
SC's powers	<p>In respect of PPs, PSPs and custodians, supports the SC having the power to: (a) request info and carry out inspections where necessary; issue directions and order compliance with their duties; and take an action to court where service provider is alleged to have committed a breach of duty.</p> <p>The SC should follow a step-by-step plan of identifying the breach, directing the service provider to comply with their duties and, where it fails to comply, take court action.</p> <p>Appropriate for the SC to seek compensation on behalf of investors as a result of the breach, but only in limited circumstances (eg: where a large number of individuals are affected, and it would be costly for an individual to take action against a service provider). However, opposes the taxpayer funding a case seeking compensation on behalf of private investors who have suffered a private loss as a result of a breach. This is not in the public interest. Investors should have recourse to the courts in the event they suffer sufficient loss to warrant seeking compensation. Courts should take into account any findings in a case brought by the SC, subject to the laws of evidence.</p>
Functions of the SC – para 108	<p>Supports the proposed functions of the SC.</p> <p>Note: a number of financial advisers offer PMSs, and there is potential for overlap between the regulation of advisers offering financial advice and PMSs.</p>
Comments arising from Chapter 9 of the Paper (Disclosure)	
Disclosure: generally	<p>There may be a risk that, if separate disclosure requirements relating to investment advice, products and the portfolio mgmt / platform / custodial services are not structured correctly, the consumer will become confused.</p> <p>As the services and financial products may be provided independently or as part of a package, the disclosure requirements will need to be flexible to provide for either.</p> <p>Where solutions/services are provided / contracted for independently of one another at the decision of the investor, no one provider (eg the adviser) should be legally responsible for ensuring that disclosure has been completed by other providers.</p> <p>The regulations should be clear as to when disclosure by an adviser may be consolidated with disclosure about a financial product or other platform, PMS or custodial service fees, where there is a clear advantage to the consumer in doing so.</p> <p>Where the PMS, platform and custodial service are being provided together as one package promoted by an adviser, the option of providing a composite disclosure document should be permitted, disclosing, for example, individual and/or total costs across all of the services.</p>
Disclosure: generally	Agrees that there could be greater disclosure, although the submitter, as an NZX Participant, already complies with a range of product, fee, position and transaction reporting to clients who use these types of services. Encourages the use of these or similar rules to apply to the non-NZX Participant firms.
Disclosure: generally	There needs to be further consideration to what disclosure is required and how it is disclosed. It may be confusing for investors to receive info from a PP, that the investor may or may not be aware of.
Disclosure: generally	Supports the proposal that investors receive adequate disclosure relating to services provided by the provider and the custodian.
Disclosure: generally	Agrees that there should be disclosure to investors about PPs, custodians and fees. This info will be useful to investors and ensure that they are fully informed and in a better position to compare services being offered.
Disclosure: generally	The underlying investor should be made aware of the contents of a PSDS even when they have given a power of attorney to an adviser to manage their investments.

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	The disclosure could occur at the time the client signs the agreement so that they are aware of the costs and benefits to them, the advisor, the custodian and the PP.
Disclosure: generally	<p>Supports a PSP/adviser providing a PSDS, rather than the custodian, as custodian has no marketing role and acts only on instructions.</p> <p>Considers the PSP should generate a PSDS. Where an investor has a direct relationship with the custodian, the PSDS should be presented to that investor directly. Most likely that investor's relationship is through an adviser or service provider. Submits that advisers and service providers should incorporate the PSDS into their investor disclosure required under the financial intermediaries disclosure regime. PMSs are well placed to make full and complete disclosure to investors; custodians will have insufficient info to generate a PSDS on behalf of the adviser.</p>
Q32 – paras 109 and 110: Should there be a PSDS for platforms and what info should it contain?	Yes. Considers the detail in 9.2, 9.2.1 (platform service), 9.2.2 (PP), 9.2.5 (investor rights) and 9.2.6 (fees) are appropriate.
Q32 – paras 109 and 110: Should there be a PSDS for platforms and what info should it contain?	A PSDS should be provided to the party that is contracting with the end client, so that that party can provide info in the PSDS to the end client. Submits that both the custodian and the PP need to have a PSDS and the recipient of these will be the contracting party (eg: the custodian or the financial adviser). The PSDS should be restricted to info about core services provided by the PP and the custodian.
Q32 – paras 109 and 110: Should there be a PSDS for platforms?	Yes. Considers the detail in section 9.2 appropriate. It is crucial that investors receive the necessary info prior to making any decision.
Q32 – paras 109 and 110: Should there be a PSDS for platforms and what info should it contain?	<p>Yes – it is important that PSDSs are made to the underlying client. Some info under section 9.2 may not be relevant to an investor's decision, for example: the directors of the custodian (para 123) or whether the issuers have agreed their securities can be offered through the platform (para 125). Some of the proposed info may be difficult to obtain or result in information overload.</p> <p>There should be disclosure regarding any material risks associated with investing overseas and that overseas markets have different practices.</p>
Q32 – paras 109 and 110: Should there be a PSDS for platforms and what info should it contain?	<p>Yes. Agrees with the content proposed in section 9.2. Agrees it is difficult to accurately calculate costs. Supports an assumed average fee schedule, in both dollar and percentage terms, which is very close to the real costs, and can be used as a guide.</p> <p>Consider including that the investor's assets are held on trust and will only be dealt with on the direct instructions of the investor (or PSP, if that model applies).</p> <p>To prevent duplication, disclosure requirements should be under financial intermediaries' regulations.</p>
Q33 – paras 111 to 113: Adviser making decisions on behalf of	<p>If an adviser is making investment decisions on behalf of an investor – the investor should be able to request disclosure of the service level agreement between the adviser and the PP (submitter seeks clarification about who the service level agreement is between).</p> <p>Likewise, disclosure about the underlying investment products should be made to</p>

Issue Reference	Summary of Issue Raised by Submission
investors	the investor on request, not just the adviser.
Q33 – paras 111 to 113: Adviser making decisions on behalf of investors	Agrees that the adviser should disclose the service level agreement to investors. Agrees, where adviser is acting under a power of attorney, disclosure of the underlying investments should be made to the adviser and not the investor.
Q33 – paras 111 to 113: Adviser making decisions on behalf of investors	Agrees that all disclosure may be made to the person holding the power of attorney. What is disclosed to the investor should be covered in the adviser’s contract of engagement or, if an attorney, via that agreement. Presumes that the definition of Service Level Agreement is where adviser has full discretion to act on the investor’s behalf with respect to platforms.
Q33 – paras 111 to 113: Adviser making decisions on behalf of investors	Agrees that the SLA must be disclosed to the investor.
Q34 – paras 111 and 135 to 139: Disclosure for investors who do not make investment decisions	The content of service level agreements (SLA) will vary between clients/investors. The suggested information to be contained in SLAs is appropriate; however, each SLA may well be different.
Q34 – paras 111 and 135 to 139: Disclosure for investors who do not make investment decisions	Agrees that the proposed information to be disclosed is appropriate: investors should receive all pertinent info to enable them to make an informed decision about services and fees.
Q34 – paras 111 and 135 to 139: Disclosure for investors who do not make investment decisions	The Service Level Agreement should clearly spell out what is expected from both parties and be signed by both parties.
Q34 – paras 111 and 135 to 139: Disclosure for investors who do not make investment decisions	Proposed contents are appropriate. The SLA would cover the scope of the power of the portfolio manager, and the agreed reporting on investments and investment decisions by the manager. Minimum standards should be left to APBs as we expect portfolio managers to be regulated as financial advisers. Precise contents should be developed by APBs under the adviser regulatory model.
Paras 115 to 118: Disclosure by financial	Agrees that where the portfolio management, platform and custodial services are being provided together promoted by a single financial intermediary, disclosure should be provided by the financial adviser (as per paras 115 to 118).

Issue Reference	Summary of Issue Raised by Submission
adviser	Can the disclosure be consolidated with other disclosure, for example, the disclosure required to be made by the financial adviser? Otherwise separate disclosure could potentially be unwieldy and confusing.
Paras 115 to 118: Disclosure by financial adviser	The clients of platform providers are intermediaries and financial advisers, not investors. Disclosure made to end investors should be put together by the intermediary or adviser. Submits that information that is required to be disclosed by platform providers must only be to the platform provider's clients, which in some cases, does not include investors.
Paras 115 to 118: Disclosure by financial adviser	The adviser is responsible for putting the "bundled offer" together for investors and therefore should take overall responsibility for disclosure issues.
Q35 – para 115: Should the PP be required to ensure info in PSDS is accurate?	The PP should be responsible for the integrity of the information for which it is responsible for delivering.
Q35 – para 115: Should the PP be required to ensure info in PSDS is accurate?	The PP should be required to ensure the accuracy of the info that relates to itself that is contained in the PSDS. Where a PSDS is prepared by (for example) a PSP, the liability of the PP should only relate to the accuracy of the info that it provides.
Q35 – para 115: Should the PP be required to ensure info in PSDS is accurate?	Yes – ultimately it is the entity promoting the vehicle.
Q35 – para 115: Should the PP be required to ensure info in PSDS is accurate?	The PP should be required to ensure the info it provides to the adviser is correct. The PP should not provide info where it cannot be certain it is correct (eg: internal controls or fees). Submits it is responsibility of the adviser to verify the info and provide a complete and accurate picture to the client.
Q36 – paras 116 to 118: Should adviser ensure investor receives PSDS?	Agrees that the adviser should ensure the investor receives the PSDS as the investor is the client of the adviser, and the adviser has the relationship with the investor.
Q36 – paras 116 to 118: Should adviser ensure investor receives PSDS?	Yes, as this is where the face to face communication occurs. Does not know of any platform with a bare trustee that accepts investors directly (without intro of a financial adviser)
Q36 – paras	The PSDS should come from one contact point covering all aspects of the service

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116 to 118: Should adviser ensure investor receives PSDS?	provided. The client should not be sent separate statements from each of the separate service providers.
Para 125: Investment option disclosure: issuers must agree that their securities can be offered on the platform	The obligation to obtain consent from every issuer whose securities are or might be held on the platform is impractical (some platforms already hold thousands of individual securities), and would potentially limit investment choice if this obligation was introduced. This requirement should be removed.
Para 125: Investment option disclosure: issuers must agree that their securities can be offered on the platform	As above: gaining agreement from issuers for their securities to be offered on the platform should not be required. The fundamental point should remain that the securities offered on the platform are legally able to be offered to investors pursuant to relevant securities law.
Q37 – paras 129 to 131: Should adviser be responsible for fee and service level agreement disclosure?	Agrees that adviser should be responsible for disclosing all fees, costs and expenses payable, and all terms, not only “material” terms.
Q37 – paras 129 to 131: Should adviser be responsible for fee and service level agreement disclosure?	Agrees that the financial adviser should be responsible for disclosing to investors the total fees etc and the material terms of the service level agreement.
Q37 – paras 129 to 131: Should adviser be responsible for fee and service level agreement disclosure?	Responsibilities of advisers should be consistent with the recent amendments to the Securities Markets Act and the MED proposals for financial intermediaries. Adviser should be responsible for making disclosure on their fees/expenses and providing info which discloses platform and investment fees. Material terms in SLA should be disclosed. Need clarity around what is “material”.
Q38 – paras 133 and 134: How should fees be	Agrees that the disclosure of all fees should be made in the PSDS. Adviser should have an obligation to use best endeavours to accurately calculate the total costs of all fees, charges and expenses to the investor. The obligation to

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calculated/ disclosed?	use best endeavours should not stand on its own, but be in addition to a specific methodology for calculating fees whether they be variable or fixed. A method needs to be set to provide a standardised, consistent and measurable approach to calculating fees. "Best endeavours" is not sufficient on its own, and too open to potential abuse.
Q38 – paras 133 and 134: How should fees be calculated/ disclosed?	<p>There should be a schedule of fees that itemises each component and identifies the proportion (if any) that is deductible against other income.</p> <p>Indicative fees should be shown in dollar and overall percentage based on preset examples (eg: a portfolio of \$50k, \$100k, \$500k, \$1m).</p> <p>Disclosure of fees prior to investment is problematic as it is required to be forward looking rather than historical. There needs to be consistency across fees from fund managers, brokers, custodians, platforms and advisors when disclosed. A schedule that itemises fees is useful, but will not necessarily help investors identify the total costs. "Percentage of funds invested" are relatively easy to calculate, but may vary over time when fees are scaled. Transactional fees are dependent on volume and the volume may not be well understood in advance.</p>
Q38 – paras 133 and 134: How should fees be calculated/ disclosed?	Fees should be based on the current fee structure at the time of investing, with a note that the fees will change over time, subject to volume, rebates, new negotiated pricing, new managers etc. Investors need to be aware of what triggers can cause changes to their fees, whether that change is advantageous or not.
Q38 – paras 133 and 134: How should fees be calculated/ disclosed?	There must be rules for how fees are to be calculated where the fee is part fixed (eg, a fixed fee of \$250 for opening an account), and part based on receiving part of the dealing commissions (eg, 50% of all brokerage or a trail commission).
Q38 – paras 133 and 134: How should fees be calculated/ disclosed?	<p>The PSDS should provide the basis on which fees will be calculated. Fee disclosure needs to be consistent with those for securities offerings. Depending on the fee basis (eg: average daily balance) it may not be possible to determine the fee accurately in advance.</p> <p>The PP should report at least annually on transactions through the platform, and value of assets, including total platform fees actually charged.</p>
Q39: How should fees be disclosed?	Disclosure of the total cost of all fees, charges and expenses should be made in both dollar and percentage terms. The dollar terms will express those fixed costs present, and the percentages will assist in the methodology of how the remainder of the costs are derived.
Q39: How should fees be disclosed?	<p>See submitter 61's answer to Q38 – a schedule of fees and example calculations. This can be expressed both as dollars and on a percentage basis.</p> <p>The most meaningful numbers will be net of tax, assuming that investors have sufficient taxable income to offset fees, though it will be important to show both.</p>
Q39: How should fees be disclosed?	Adviser and wrap fees are deducted from client's cash account, so cannot be disguised. Therefore, advisers should be given the option to either disclose in \$ or % terms. Investors have to understand what they are paying, and what they are receiving for this payment. Illustrative MERs could cloud the issue and create additional confusion.
Q39: How should fees be disclosed?	<p>Fees and costs should be easy to understand, clearly displayed in a consistent format over the whole financial services industry so that products are comparable.</p> <p>On a new account, it may be more appropriate to disclose a typical \$ or % fee for the amount of money invested and the expected return to the service provider. This could be confirmed in an annual statement of remuneration from the adviser providing details of actual earnings in arrears. If the amounts are substantially different there should be a right of appeal for clients to reduce the fees.</p>
Q39: How	Actual fees should be in dollars, but prospective fees should be the fee basis

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should fees be disclosed?	(percentages, minimum fixed dollar amount, performance fee, etc). Fee disclosure requirements need to be consistent with those for securities offerings.
Q40 – paras 140 to 144: Are the offences and penalties appropriate?	Agrees the proposed offences and penalties are appropriate. The penalties should be consistent with that of other providers of investment services.
Q40 – paras 140 to 144: Are the offences and penalties appropriate?	Query whether a PP can commit an offence if it has info in the PSDS that is confusing. Should use best endeavours to make wording simple, by their nature platforms are complex and difficult for some investors to understand. Agree that PP commits an offence where info in the PSDS is deceptive or misleading. Misleading = as per definition in the Fair Trading Act.
Q40 – paras 140 to 144: Are the offences and penalties appropriate?	Submits that PP and adviser liability and penalties for failure to disclose or inadequate disclosure should align with the proposed financial intermediary regs.
Q41: Should the regulation for disclosure extend to PMSs?	The disclosure requirements must be the same, as the level of responsibility to the client/investor is similar.
Q41: Should the regulation for disclosure extend to PMSs?	Agrees the proposed regulation in respect of disclosure should extend to portfolio management services. Where a PSP outsources platform or custodial services to a 3 rd party, it should ensure the 3 rd party supplier can meet the requirements of the legislation; ie: responsibility and performance should be able to be outsourced, but not liability.
Q41: Should the regulation for disclosure extend to PMSs?	Disclosures should be made to clients whatever service they are provided with. However, it may be more appropriate to rely on disclosures made by an adviser although additional disclosure should be made where the service provided to the client involves a custodian.
Q41: Should the regulation for disclosure extend to PMSs?	Agrees that disclosure should extend to PMSs. A PMS is a greater level of service to customers and authority over their financial affairs, and therefore demands at least the same level of disclosure.