INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ INC

Submission

to

Ministry of Economic Development

on the

Review of Securities Law Consultation Document

20 August 2010

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Investment Savings and Insurance Association of NZ Inc.

1.0 Introduction

1.1 The Investment Savings and Insurance Association ("ISI") is the industry association for the companies that issue and manage life insurance, superannuation and managed funds in New Zealand. ISI members are responsible for approximately $50 billion funds under management. ISI members are also the leading providers of KiwiSaver funds and all six default providers are members of ISI.

A list of members is attached.

1.2 We welcome the opportunity to comment on the Review of Securities Law discussion document. Our response is based on consultation with our member companies. We have set out general comments below, followed by answers to specific questions from the discussion document. Not all questions have been answered.

2.0 General Comments

2.1 ISI supports the revision of securities legislation and updating of the regulatory regime, in conjunction with other regulatory changes such as the:

- Financial Advisers Act
- Financial Service Providers (Registration and Dispute Resolution) Act
- Insurance (Prudential Supervision) Act
- Securities Trustees and Statutory Supervisors Bill.

2.2 We support the objective of achieving:

- Consolidation of securities market oversight and regulation under the Financial Markets Authority; and
- Easy access for retail investors to concise and easily understood key information on potential investments and ongoing disclosure.

2.3 Our main submissions are:

Defining regulated financial products

1. We give conditional support to a call-in approach to securities legislation, with the proviso that it should be used only where it can be justified on the grounds of investor protection and should not be retrospective.
2. Life insurance policies should be excluded from the legislation unless they come within the definition of 'Investment linked insurance contracts'.
3. Non-pooled investments such as wrap accounts should not be regulated as collective investment schemes..

Exemptions

4. In general, we support the proposed categories of exempt investor, with certain conditions.
5. We support issues being voidable rather than void and that relief, considering all factors and depending on the materiality of the breach, should be available.

Disclosure

6. We support the development of a single point-of-sale product disclosure statement with prescribed length and content in order to assist retail investors in comparing products. Additional detailed product information should be available on a central web site administered by the Authority.
7. We support annual certification of key disclosure documents with additional disclosure of any material matters.

Collective Investment Schemes

8. We agree that collective investment schemes ("CIS") should not be bound to a particular legal form as long as they are able to comply with basic governance requirements e.g. separation of assets, single purpose, etc.
9. We recommend further work on the benefits of a single oversight and regulation function under the FMA rather than concluding that the single responsible entity model is not an appropriate approach.
10. There is not general support for fund manager licensing. Fund managers will be subject to oversight and accountability through the requirement to be registered under the Financial Service Providers (Registration and Dispute Resolution) Act.
11. CIS requirements should not apply to wrap accounts and platforms. They should be regulated as financial services under the Financial Advisers Act and the Financial Service Providers (Registration and Dispute Resolution) Act.
12. We support fund managers having a direct duty of care to investors. Investor protection should come from specific manager conduct obligations – managing conflicts of interest, governance, competence and administration standards and improved disclosure obligations together with a general prohibition on misleading and deceptive conduct.

Other Matters

13. We support the development of a Rulings facility within the FMA to issue binding rulings, determinations, administrative breaches, etc.
14. We do not support the FMA having the power to lead civil proceedings.
15. We support civil remedies and civil penalties but not criminal penalties for breach of directors' duties, unless the breach is fraudulent.

Securities Law Review Discussion Document– Questions

Chapter 1

1. Do you agree with problems identified with the current regime? Are there any other problems with the way that securities are defined and categorised, and if so, what impacts do they have?

Yes, we generally agree with the problems identified. Among the impacts are boundary problems arising from the broad definitions and the opportunity for regulatory arbitrage.

2. Should the new Act apply different disclosure and governance requirements to each category of financial products? Is there an alternative approach that you prefer? If so, please explain the approach and the impacts of that approach compared to the proposal.

Yes, we agree that there should be different disclosure and governance requirements for different categories of financial products, in order to enable the most appropriate requirements for each category. There should, however, be an over-riding objective that retail investors should be able to compare the features of products from different categories.

3. We propose to use four product categories: debt, equity, collective investment schemes and derivatives. What will be the impacts of using these four product categories compared to the current regime? Would alternative categories be preferable? If so, what categories and why?

We support the categories as proposed, including the 'catch-all' category of collective investment schemes ("CIS").

4.Are there any specific impacts that we should consider in defining equity securities? Is there a better definition, and what impacts would this have compared to the current definition and the proposal?

No comment on this point.

5. Are there any specific impacts that we should consider in defining debt securities? Is there a better definition, and what impacts would this have compared to current definition and the proposal?

The definition should be amended to specifically exclude insurance products.

6. Are there any specific impacts that we should consider in defining collective investment schemes? Is there a better definition, and what impacts would this have compared to the proposal?

We support the definition proposed with the proviso that it should recognise the 'pooled' nature of an investment in a CIS in which an investor delegates control of investment management, risk diversification and access to funds. The definition needs to recognise that for KiwiSaver and most superannuation schemes investors are not able "to withdraw their

investment on demand" as retirement savings are generally "locked-in" and inaccessible until a nominated future (usually retirement) date.

7. Should the scope of collective investment schemes include non-pooled schemes? If non pooled schemes are excluded, how should they be regulated?

No, we do not support non-pooled schemes being included in the CIS category. These schemes are not usually securities in their own right and a CIS needs to be a legal entity into which investments are made.

Schemes where investors have direct ownership and control of assets would be best regulated as a separate category of product if they are unable to be accommodated within the "equity" product classification.

8. Are there any specific impacts that we should consider in defining derivatives? Is there a better definition, and what impacts would this have compared to the current definition of "futures contract" and the proposal?

No comment on this point.

9. What are the costs and benefits of the Authority and regulations being able to "call in" financial products that are, in substance, similar to the regulated categories of financial products, but which fall outside the definitions adopted in statute?

We support the general principle of 'economic substance' but note that there is a potential cost to issuers who may have their products 'called in'. However, as long as the definitions of securities are sufficiently clear that should not be a major danger and should reduce further over time with the development of regulatory guidance. We would not support the Authority having the power to retrospectively 'call in' securities that have been issued.

10. What criteria and requirements should be placed on a "call in" power, and what impacts will these criteria and requirements have?

We support the general criteria outlined in Chapter 2, section 4.2, and recommend that the key requirement should be evidence that the 'call in' is necessary for investor protection and that it is not retrospective.

11. Is there an alternative way to treat products that fall outside the proposed categories? What costs and benefits would this alternative have?

No comment on this point.

12. What are the costs and benefits of the Authority and regulations being able to shift regulated financial products between categories?

We consider that a reclassification power should be used rarely and only if it can be justified on the grounds of investor protection. That would need to be balanced against significant cost to issuers in changing to different compliance requirements as well as potential market risks to the issuer's reputation.

13. What criteria and restrictions should be placed on the power to shift regulated financial products between categories, and what impacts will these criteria and restrictions have?

See comments above.

14. Is there an alternative way to treat cases where there is uncertainty about which category a product belongs to, or where a product appears incorrectly categorised? What costs and benefits would this alternative have?

An alternative would be for the FMA to have a designation power and for issuers to be able to apply to the FMA for a designation where there is doubt about the appropriate category for a new product.

15. Should designations be able to be made subject to terms and conditions, and be used in conjunction with powers to make exemptions?

Yes. There may be instances in which it is appropriate for a product to be subject to additional disclosures or governance because of an innovative feature that distinguishes it from other products in that category.

16. What are the costs and benefits of the Authority being able to prohibit any further allotment of a financial product, pending a decision on whether it should be called in, or shifted from one category of security to another? Is there an alternative mechanism that would be preferred, and what impacts would this alternative have?

The main costs to the issuer would arise from the uncertainty and possible reputational risk associated with having such a prohibition applied to further allotment of a financial product. It would be preferable for the product to be included in the regime until a decision is made.

17. What are the costs and benefits of restricting the Act to financial products that earn a return or allow for risk hedging? Is there an alternative that would be preferred, and if so, what impacts would it have compared to the proposal?

We agree that restriction of the Act is appropriate but recommend that it should not be worded in such a way as to include insurance risk products.

18. One way to narrow the exemption for financial products that do not earn returns or hedge risk would be to restrict it to investments in not-for-profit or mutual organisations. What impacts would this have? Is "not-for-profit or mutual" sufficiently precise, or should this be limited to (for example), incorporated societies, co-operative companies, and registered charities?

We do not consider that this proposal is necessary or appropriate.

19. Another way to narrow the exemption for non-investment products would be to require an explicit disclosure that it is not intended to earn a return and the Securities Act does not apply. What are the costs and benefits of this?

We do not consider that this proposal is necessary or appropriate.

20. Are there any other preferred ways to restrict this exemption, and what are their costs and benefits?

No comment on this point.

21. What are the costs and benefits of regulating insurance as a collective investment scheme where investment is a component of the product?

New life insurance policies with an investment component are now uncommon. We agree that the current definition of term life insurance in the Securities Regulations is unclear and has had the effect of causing a number of policies to be classified as securities, even though the "investment" component is incidental to the risk component. A full analysis needs to be done of which life insurance policies actually include a material enough investment component to qualify as collective investment schemes.
Please see the comments below.

22. Would a more tailored definition of investment be preferred for insurance products, and if so, what might this be, and what impacts would this have?

We agree that a new definition is needed in order to differentiate pure risk insurance from investment. At present, all life insurance policies are regulated as securities unless they can be brought within the definition of “term life insurance” under the Securities Regulations. The definition of “term life insurance” in the Regulations is unclear and unhelpful.

In our view, the legislation would be better targeted if it started from the point that life insurance does not fall within the ambit of the securities legislation, but will be brought in if it is shown that the particular product does have an investment component.

A definition of “investment-linked contracts of insurance” would give certainty that the legislation only applies to life policies with an investment component and this approach would also have the added benefit of consistency in terminology and application with the Financial Advisers Act 2008. The term “investment-linked contract of insurance” is set out in the interpretation section of that Act and there would be a benefit in the use of this term in the new Securities Act and in maintaining a consistent definition for the expression across the legislation.

The final wording also needs to take in to account that any definition of “investment-linked contract of insurance” will need to adequately exclude policies that provide a refund of premiums, either in whole or in part. It is not uncommon for pure risk life policies to provide a refund of part of the premiums paid as a form of loyalty reward during the currency of the policy. This is not an investment return and should not be sufficient to bring a particular policy within the definition of “investment-linked contract of insurance.” This would be consistent with the current definition of “term life” insurance, which allows for payment of an amount that does not exceed the sum of the premiums paid to the insurer.

23. Which of the current section 5 full exemptions for land etc should be carried forward to the new Act? What are the costs and benefits of these exemptions?

We agree that the current exemptions should be brought forward.

24. Should some or all of the current partial exemptions in sections 5 to 5C be set out in the Act or in regulations? What are the costs and benefits of this option?

Subject to the disclosure proposals in Chapter 3, we agree that the current partial exemptions should be brought forward.

25. Is there a better way to set the scope of these exemptions, and if so what impacts would this have compared to the current scope?

See comments above.

26. Should the current convertible securities and dividend reinvestment plan exemption notices be set out in primary legislation in current or amended form? What impacts would this have?

We agree that the provisions of these exemption notices should be included in the new Act.

27. Should any other class exemptions be reflected in legislation (that are not otherwise incorporated into the proposals in this discussion paper)? What impacts would this have?

No comment on this point.

28. We propose to implement the Taskforce proposal that nothing in 6(2) or 6(3) of the Act should apply where the original allotter has registered a prospectus and the holder of the security is not a director of the original allotter or a promoter. What are the costs and benefits of this, compared to the current regime? Would an alternative approach to regulating vendor shareholders be preferable? If so, what impacts would this have?

No comment on this point.

29. Are there any other problems with section 6 of the Act, if so, how can these problems be addressed?

No comment on this point.

30. We propose a regime for licensed investment brokers to replace the current futures dealers, contributory mortgage brokers, and venture capital scheme administrator regimes, and to accommodate peer-to-peer lending services. What impacts will this approach have compared to the current regime? Would an alternative approach to these intermediaries be preferable? If so, what, and why?

No comment on this point.

31. If the current exemptions for futures dealers, contributory mortgage brokers, and venture capital scheme administrator regimes are updated and reintroduced, what changes should be made to them? What are the costs and benefits of such changes?

No comment on this point.

32. What are the costs and benefits of removing the exemption and regulations for contributory mortgages? Is there a better alternative to the contributory mortgage regime, and what impacts would this alternative have?

No comment on this point.

33. Do you have any comments on the implications of Islamic finance for securities law?

No comment on this point.

Chapter 2

1. Do you agree with problems identified with the current regime? Are there any other problems with the way that the exemptions for offers to particular categories of investors work, and if so, what impacts do they have?

Yes, we do agree with the problems identified with the current regime. With the exception of the 'habitual investor' definition, we agree that there is uncertainty with definitions and the scope of exemptions.

2. We propose that the securities regime will apply to offers to all investors apart from investors in defined exempt categories. Would there be an alternative approach that would be preferred overall (e.g. securities regime only applies to defined retail investors)? If so, please explain what the approach is and the costs and benefits of that approach compared to the proposal.

We support the proposed approach for the regime to apply to all investors except those in defined exempt categories.

3. We propose a number of categories of investors for whom securities offers are exempt from some or all of the requirements of securities law – institutions, sophisticated investors, large entities, those making large investments of $500,000 or more, relatives, close business associates, and employees. What will be the impact of using these investor categories compared to the current regime? Would alternative categories be preferable, and if so, what categories and what impacts would they have?

We agree with the proposal and consider that the categories will provide added certainty in the interpretation of the legislation. We would, however, like to see the category of 'habitual investor' retained as some investors who are currently exempt under that category may not qualify for the proposed 'sophisticated investor' category.

4. We propose that offers made solely to investment businesses, sophisticated investors, large entities, and those making large investments be exempt from all substantive parts of the Securities Act apart from the civil liability. We also propose that offers to other exempt investors would be exempted from everything but civil and criminal liability for false and misleading statements. What impacts will this approach have compared with applying criminal liability for false and misleading statements on offers to all categories of exempt investors?
Would an alternative set of regulatory requirements for offers to exempt categories of investors be preferable? If so, what would this alternative be, and what would be the likely consequence of its adoption?

We agree that offers made solely to investment businesses, sophisticated investors, large entities, and those making large investments be exempt from all substantive parts of the Securities Act apart from the civil liability. We recommend, however, that this should be extended to all exempt investors in order to remove any potential for confusion between categories of investor.

5. Should issuers to any categories of exempt investors be required to register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008? What are the likely costs and benefits of this?

While a requirement to register would not be a problem for large issuers it would be an additional cost and compliance burden for issuers such as those whose issues come within the proposed 'small investments' category or are limited to relatives or close business associates.

6. Should offers to any categories of exempt investors be required to register on the forthcoming Register of Securities? What are the likely costs and benefits of this?

No, there should be no requirement for offers to any category of exempt investor to be registered on the Register of Securities. Such a requirement would be inconsistent with the status of those offers and would provide no additional benefit to the investors.

7. Should issuers to any categories of exempt investors be required to register under the Financial Reporting Act 1993? What are the likely costs and benefits of this?

No. Offers to exempt investors should be treated as private offers and those issuers should not be required to register under the Financial Reporting Act 1993.

8. Are there any specific impacts that we should consider in defining investment businesses? Is there a better definition, and if so, what are the impacts of this definition compared to the current definition ("persons whose principal business is the investment of money") in section 3(2)(a)(ii) of the Securities Act and the proposal?

We agree with the proposed approach on the basis that it should be no more restrictive than the current definition in the Securities Act. However, we do consider that a wholesale fund manager should be subject to basic fund manager conduct obligations.

9. Are there any specific impacts that we should consider in defining sophisticated investors? Are the proposed criteria for sophisticated investors sensible and the amounts appropriate?

We generally agree with the Ministry's preferred approach, but think that further work needs to be done in determining the appropriate thresholds.

- The first test of owning or managing a portfolio of financial products of at least $1 million is reasonable,
- The second test regarding the volume and size of financial product transactions per quarter is a potential problem as exempt investors' investment activities are often irregular
- Not all sophisticated investors will necessarily have an employee or director with a key role in the investment decision that has necessarily worked for an investment business.
- It is possible that an investor will meet at least two criteria initially and then may not qualify from time to time.

We recommend that the definition should allow some flexibility around satisfying the sophisticated investor tests and that the "habitual investor" exemption should be retained to ensure that current investors under that exemption are not unintentionally caught by securities law if they fall outside of the "sophisticated investor" definition for a short period of time.

We also recommend that the definition allow for the volume of transactions for the purpose of limb (ii) to be assessed on an aggregate or average basis, to prevent the possibility of a

person not satisfying that criterion because they did not carry out the necessary number of transactions in a particular quarter.

10. Is there a better definition of sophisticated investor, and if so, what are the impacts of this definition compared to the current definition (i.e. persons "who, in the course of and for the purposes of their business, habitually invest money") in section 3(2)(a)(ii) of the Securities Act and the proposal?

Subject to our comments above, we prefer the objective criteria approach.

11. Are there any specific impacts that we should consider in defining large entities? Is there a better definition, and if so, what are the impacts of this definition compared to the proposal?

We question why the threshold for the exemption is not aligned with the levels ($1million net assets or turnover exceeding $1 million at the end of each of the last 2 completed accounting periods) for a wholesale client under the Financial Advisers Act 2008.

12. Are there any specific impacts that we should consider in defining large investments? Is there a better definition, and if so, what are the impacts of this definition compared to the current definition in sections 3(2)(a)(iia) 3(2)(a)(iib) of the Securities Act and the proposal?

We support the proposal to retain the current exemption for persons who have made an initial subscription of at least $500,000. We recommend, however, that the exemption should not be subject to each subsequent subscription also being a minimum $500,000.

13. Should this exemption be extended to investors who are merely required to commit to paying $500,000 in future? If so, how might this be defined, and what are the costs and benefits?

No comment on this point.

14. Are there any specific impacts that we should consider in defining relatives and close business associates? Are the proposed criteria for friends and close business associates appropriate?

We do not support the proposal to include 'personal friends of the issuer or directors of the issuer' in the criteria. That extends the definition too far, particularly with the inclusion of relatives of those people.

15. Is there a better definition of relatives and close business associates to that we are proposing?
If so, what are the impacts of this alternative definition compared to the current definition in section 3(2)(a)(i) of the Securities Act and the definition we are proposing?

We support the proposed definitions, subject to the comments above.

16. Are there any specific impacts that we should consider in defining employee share schemes?
Is there a better definition, and if so, what are the impacts of this definition compared to the current Securities Commission exemption notices, and the proposal?

No comment on this point.

17. What are the costs and benefits of the proposed disclosure regime for employee share schemes, compared to (a) no disclosure; and (b) the current exemption notices? Is there alternative regulation that should apply to employee share schemes, and what would be the impacts of applying this alternative?

No comment on this point.

18. Is an exemption for persons advised by an independent financial adviser appropriate? Are there any specific impacts that we should consider in exempting investors advised by an independent financial adviser? Is there an alternative proposal that would achieve the same objective, and if so, what are the impacts of this compared to the proposal?

We expect the proposed exemption to have little application in practice. The definition of 'independent' is likely to be difficult to meet and the category of investors is likely to be limited to wholesale investors who should qualify for other exemptions.

19. Is an exemption for small offers appropriate? What are the likely costs and benefits of exempting small offers? What are appropriate thresholds, in terms of total offer size, number of investors, and amounts per investor, and what are the impacts of these compared to the proposed starting point? Is there an alternative proposal that would achieve the same objective, and if so, what would be the impact of this compared to the proposal?

Yes, we consider an exemption for small offers to be appropriate in order to reduce the compliance burden and encourage the growth of small entities. Although we support harmonisation/alignment with Australia wherever possible, it may be appropriate to pitch the threshold at the Singapore level of up to 50 people or $5million in 12 months.

20. Is an additional exemption allowing investors to "opt-out" desirable? What principles would such an exemption rest on?

We do not consider that this additional exemption would be either necessary or appropriate.

21. If such an exemption were introduced, what are appropriate criteria for controlling its use, and what are the costs and benefits of these criteria?

No comment on this point.

22. What are the costs and benefits of allowing self-certification? Is there a preferred alternative, and if so, what impacts would this have?

We agree with the comments in the discussion document regarding the cost and impracticality of any option other than self-certification.

23. If self-certification is provided for, what are the pros and cons of having an offence to encourage and assist an investor to certify, and for an investor to falsely self-certify? Is there a better way to ensure that self-certification is not abused, and what would the consequences of this alternative be?

We consider it appropriate that an issuer should be protected against charges of having encouraged or assisted an investor to certify. We agree that making false self-certification an offence would reduce the likelihood of investors being persuaded to falsely self-certify.

24. What are the costs and benefits of having a public register of exempt investors?

We would not support a public register of exempt investors. The costs involved in ensuring the information was up-to-date and not misused would outweigh any possible benefits. We recommend self-certification as the preferred alternative.

25. If a public register of exempt investors is created, should certification be renewed, and if so how often? What are the likely costs and benefits of requiring renewal of certification?

No comment on this point.

26. If a public register of exempt investors is created, what are the pros and cons of allowing issuers to access it for the purposes of finding registered investors (in addition to checking that an investor is certified)?

No comment on this point.

27. What are the costs and benefits of allowing the Authority and regulations to designate an investor or class of investors as being within or not within the scope of particular exemptions?

We believe there would be a benefit in the proposal on the grounds that designation of an investor (or regulation of a class of investors) will give certainty to issuers.

28. What criteria and requirements should be placed on a designation power, and what impacts would these have?

Individual designations should be subject to appeal; class regulation should be subject to public consultation.

29. Is there an alternative way to treat investors that technically fall within the exemptions but should not? What costs and benefits would this alternative have?

We support the approach as proposed.

30. We propose that allotments currently specified in section 37 as void irregular allotments should instead be voidable at the instance of a subscriber. What are the costs and benefits of using this compared to the current treatment of such allotments? Would alternative treatment be preferable? If so, what treatment, and why would it be preferable?

We support the proposal that void irregular allotments should instead be voidable.

31. If allotments currently specified in section 37 become voidable by the subscriber, what period should the subscriber have to exercise a right to void the offer?

We consider a period of 1 year (or 6 months after becoming aware) is an appropriate length of time. We believe 7 years is definitely too long.

Chapter 3

1. Should the principal target of disclosure be retail investors?

Yes.

2. Are the secondary audiences and purposes we have identified correct?

Yes, we agree with the secondary audiences identified in the discussion document but believe that disclosure documents should be designed for the benefit of the primary audience.

3. Have the main problems with the current disclosure regime been identified?

Yes, we agree with the identified problems, particularly in respect of prospectuses and a focus on risk management in preparation of disclosure documents.

4. What are your costs of compliance with the existing regime? What benefits does the current regime provide?

We cannot provide specific costs for the industry but consider that there are minimal benefits in the current regime.

5. Should the investment statement and prospectus be replaced with a single disclosure document, with further disclosures available on a register? How much cost (e.g. printing, preparation) might this change save?

We cannot estimate specific cost savings for the industry but we would support the proposals for a single disclosure document with further disclosures online.

The proposals should provide significant benefit to investors and market participants alike. From a provider's perspective, worthwhile savings in both printing costs (through markedly smaller investment statements) and internal costs (through releasing internal resource tied up in prospectus production) would be achieved. The time and resource requirements involved in issuers' due diligence processes are considerable.

The current "one size fits all" two–tier disclosure regime has not served issuers of CIS nor their investors well. Quite apart from the identified problems with prospective investors not being able to comprehend disclosures made and the difficulties inherent in comparing similar products, applying the same disclosure regime to a CIS issue as an equity or debt security issue is fundamentally flawed. Unlike an equity issue, there is no "critical mass" required for a CIS (in terms of a level of capital necessary to establish the venture or to fund a particular project or set of strategic objectives). In most instances, a CIS can operate with $1 of unit holders' funds in the same way as it can operate with $1m of unit holders' funds. Neither is there an imperative to reach a desired level of funding within a set time period. Against these perspectives, having a set lifespan for a CIS prospectus appears arbitrary.

Perhaps even more telling is the limited value that unit holders derive from the current requirement to publish summary financial statements in the prospectus. For a CIS investor their investment is always valued on the basis of their proportionate share of the net value

of the scheme at any given point in time based on the then prevailing unit price. Given that most, if not all, CIS schemes do not borrow, the financial performance of the scheme as at the scheme's balance date becomes largely of academic interest only. The problem with emphasising historical financial information is magnified by the artificial requirement facing the directors of the issuer when looking to extend the prospectus once its initial term has expired. Although the facility to extend prospectuses by directors' resolution is helpful, the focus on certifying that the financial condition of the scheme has not materially deteriorated is quite inappropriate in the context of a CIS. Unlike a debt security issue, investors in a CIS can have no reasonable expectation that their investment will be "repaid in full". For a debt issue, the financial condition of the issuer is of course of significant importance; for a CIS investor however, the financial position of the scheme as at balance date or some other nominated date has no, or limited, significance as the member's investment is only ever worth the prevailing unit price on whatever day the member is seeking an indication of value.

6. If not, what value would be gained from keeping a prospectus?

See comments above.

7. Do you agree that the Product Disclosure Statement concept, with prescribed documents for individual products, is sensible?

Yes, we agree with the concept and with the proposal for the content and length of the documents to be prescribed.

8. Is a key information statement useful?

Yes.

9. Should other material be allowed to be included in disclosure documents?

No. The benefit of having the content and length of the documents prescribed is that it should be easier for consumers to read and compare documents for different products.

10. Should the length of Product Disclosure Statements be prescribed?

Yes, we believe there should be a maximum length with a facility for issuers to refer consumers to the register for additional information considered necessary for informed decision-making.

11. Should ongoing disclosures be included on the register?

Yes. We agree with the proposal, subject to detail about what those ongoing disclosures would be and how/when they would be placed on the register.

12. Do you have views on the three proposed options for risk disclosure and their application to different securities?

We do not have a consensus position on this point. Of the options provided, there is some support for option A. There are reservations, however, about the usefulness of the risk assessments as a means of comparing products as they will not necessarily be done on a

comparable basis by each issuer. There is also some support for the development of a standardised approach and this is an area in which further work could usefully be done by the industry.

13. What are the potential benefits and costs of an independent expert's report for equity securities?

No comment on this point.

14. Is the key information summary a useful part of the product disclosure statement?

Yes, definitely.

15. Do you agree with the proposed content of the key information summary for different types of securities?

Yes, although we have some doubts about the proposed content fitting onto 2 pages.

16. Do you agree with the proposed approach to the content of product disclosure statements for collective investment schemes?

Yes, we agree with the proposal, subject to comments made earlier.

17. What matters should appear in the PDS for an initial offer for equity securities – should it be based on the IOSCO standards?

No comment on this point.

18. What matters should appear in the PDS for an initial offer for debt securities – should it be based on the IOSCO standards?

No comment on this point.

19. Do you agree with our proposed approach to the content of product disclosure statements for derivatives?

No comment on this point.

20. Should educational material form part of the disclosure document, or be required to be provided at the same time as the disclosure document?

We do not agree that educational material should be included in the disclosure document as it could detract from the main objective of providing investors with a concise and comparable statement of key features of the security being offered. We agree that investors might be directed to the Retirement Commission and regulator's websites for explanatory information and also to the provider's own website for educational material.

21. Should the Authority be empowered to impose sophistication labels on complex products? If so, what safeguards do you think should apply?

No, we do not consider it appropriate that the FMA should be able to impose sophistication labels on products. The responsibility for disclosing information about the complexity of a product should rest on the issuer.

22. Should a distinction between short form and simplified disclosure prospectuses be maintained?

No comment on this point.

23. Are the current tests for determining when a short form or simplified disclosure prospectus may be used correct?

No comment on this point.

24. Do you agree that a comprehensive regime for information disclosure for unlisted securities equivalent to continuous disclosure is not justified? What would be the costs and benefits of such a regime?

Yes, we do agree with this view in respect of unlisted securities, subject to further comments below.

25. Do you agree that additional ongoing disclosure requirements are not necessary for equity securities or derivatives?

Yes.

26. Do you agree that additional ongoing disclosure requirements should be imposed on issuers of debt securities and collective investment schemes?

Yes, we support ongoing disclosure requirements for collective investment schemes with the proviso that the content and format should be regulated.

27. Do you agree that issuers of debt securities should be required to update on the Register of Securities certain prescribed matters that may have a bearing on the likelihood of default, should those matters change over time?

No comment on this point.

28. Do you agree that collective investment schemes should be required to publish quarterly information? Should any types of schemes be exempted from the requirements?

Yes, we agree with the proposed requirement. While we would prefer that there should not be exemptions, we question the value for insurance policies with an investment component and stand-alone superannuation schemes sponsored by employers.

29. Do you agree that these quarterly reports should contain information on fees and charges, asset holdings, any conflicts of interest, and fund returns? If quarterly reporting is required of collective investment schemes, are there any other matters that should be included in such reports?

We generally agree with the content proposed for quarterly reports and note that they will be prepared at the fund (rather than individual investor) level. We recommend that information on fees and charges should be included only where there has been a change and other matters should be included only if they are material.

30. Do you agree with the problems identified with the "all material matters" disclosure requirement?

Yes. The uncertainty as to what may be considered material contributes to the length of disclosure documents and the cost of compliance for issuers.

31. What impacts and costs does the regime have on incentives of directors and corporate governance of issuers?

The risk aversion of directors and issuers contributes to the inclusion of additional disclosure information and the costs of obtaining independent legal advice.

32. Should an "all other material matters" disclosure obligation still be retained? If so, do you agree that this disclosure should be made on the Register of Securities rather than in the PDS?

We do not have a consensus position on this point.

Some members agree that the 'all other material matters' disclosure obligation should be retained and that the disclosure may be made on the Register as long as it is referenced in the disclosure documents. There is a concern that this requirement adds uncertainty and may unnecessarily increase the amount of material on the Register. Accordingly, we recommend that interpretation guidelines are provided to limit the uncertainty.

Other members do not support the retention of this option and prefer the alternative rules based approach because of the certainty it provides to issuers and their directors as to the material that has to be disclosed.

33. What products should be exempted from the requirement to disclose "all other material matters"?

No products should be exempted although we accept that this could be overridden in the case of short-form and simplified form prospectuses.

34. Should directors be required to certify disclosures on issue periodically?

Other than the annual certification of the disclosure documents, directors should be required to certify disclosures only when there has been a material change.

35. What should directors' certificates contain?

They should contain information about any material changes since the disclosure documents were issued.

36. What disclosure failures should result in voidability?

Voidability should not arise unless the disclosure failure is material and more than a technical breach. Any decision should also take into account whether investors have suffered any detriment as a result of the breach. There should not be an opportunity for a security that has fallen in value as a result of unrelated market reasons to be voided on the grounds of a technical breach.

37. Who, and in what circumstances, should persons be civilly and criminally liable for disclosure failures?

Directors should be subject to criminal liability for serious and wilful disclosure failures and civil liability for lesser breaches.

38. What changes, if any, should be made to the current definitions and liability that attaches to promoters?

The current definition of promoter should be amended to make is clearer and more certain. We would support a narrower definition in view of the regulation provided by the new financial adviser regime and clarification of the promoter role as distinct from that of the issuer or the distributer.

39. What changes, if any, should be made to the current definitions and liability that attach to experts?

No comment on this point.

40. What changes, if any, should be made to the current regulations around the use of experts in advertising material? Would it be simpler to rely instead on the deceptive, misleading or confusing test for advertisements?

No comment on this point.

41. Should a celebrity who appears in an authorised advertisement relating to a securities offer be liable for the statements they make?

No comment on this point.

42. Do you agree that restrictions on the content of pre-prospectus advertising should be removed? If not, why not?

Yes, we agree that restrictions on the content of pre-prospectus advertising should be removed.

43. Do you agree that a principles-based approach to the regulation of advertising is appropriate?

Yes.

44. Are there any other matters regarding advertising (other than what is mentioned in the following detailed proposals) that you consider should be expressly addressed in the Act?

No. Explicitly, issuers should not be subject to both securities and consumer protection law for false or misleading statements or misrepresentation.

45. Do you agree that specific advertising requirements should only be applied to public communications, with a more general prohibition on false or misleading communications? If not, why not?

Yes, we agree that the specific advertising requirements should only apply to public communications and that the prohibition on false and misleading communications should apply generally.

We recommend that the public communications subject to the specific advertising requirements should be limited to those that refer to or contain an offer of securities and are reasonably likely to induce a person to subscribe.

46. Should certification of advertisements be required? How should this certification be achieved for websites?

No, the requirement for certification should be removed. In the new regulatory regime the costs of the requirement far outweigh any benefits it might provide.

Certification of advertisements appears in practice to be a "tick the box" exercise with limited investor benefit. Any advantage of the certification process would seem to be confined to limited support for good internal governance process. Given that the issuer remains liable for false and misleading statements and representations under a raft of existing legislative provisions, the addition of a further Securities Act compliance requirement may be seen to be redundant.

Chapter 4

1. Have all the issues with the current regulation of collective investment schemes been accurately identified? If not, what other areas should we consider?

We generally agree with the issues identified in chapter 4 of the discussion document and, as the industry association, ISI is currently working on a number of industry standards to improve the consumer experience through self-regulation of the industry.

2. Do you consider that all the issues identified need to be addressed by legislation? If not, why not?

Yes, we agree that is appropriate for these issues to be addressed by legislation in order to achieve clarity and certainty. However, the cost of regulation to the industry and to investors should not be underestimated.

3. Do you have evidence of problems with the current regulatory regime for collective investment schemes? Do you have examples of types of behaviour by fund managers and/or trustees that require a regulatory response? If so, please clarify and identify if there have been any wider associated costs to the economy.

The problems associated with the current regulatory regime have been identified in the discussion paper and we do not have any comment on the behaviour of fund managers and/or trustees.

4. Is there a legal form of collective investment scheme (e.g., unit trusts) that you consider better aligns the fund manager with investor interests than other legal forms? If so, why?

In view of the proposal to regulate on the basis of economic substance rather than form, the legal form of a collective investment scheme is less relevant and we would expect it to be left to the provider to select the form that best achieves the fund objectives within the constraints of the regulatory requirements.

5. Do you have evidence where regulation in other jurisdictions has either advanced or impeded the development of an effective collective investment schemes market?

We understand that the adoption of the UCITS regulation has significantly advanced the development of the European collective investment schemes market.

6. Do you agree that all collective investment schemes should be registered by the Registrar before offering securities to the public? If not, why not? What are the costs and benefits of this proposal?

Yes, we do agree. We believe that this more regulated offering environment (covered by the Financial Service Providers (Registration and Disputes Resolution) Act) will provide a benefit for investors.

7. Do you consider that the powers proposed for the Authority over supervisors and fund managers are sufficient, overreaching or inadequate? What are the likely costs and benefits?

The supervisory powers proposed for the FMA appear reasonable and appropriate for NZ conditions. We believe the proposed approach would provide a useful balance between enhancing investor protection and avoiding the prescriptive (and possibly intrusive) approach adopted in Australia by ASIC and APRA.

8. Do you agree with the Ministry's view that the single responsible entity model is not an appropriate approach? If not, why not? What are the likely costs and benefits?

ISI member companies do not have a full consensus on whether the single responsible entity model is an appropriate approach.

On the one hand there is a view that:

- there is insufficient evidence that such an entity would produce a superior outcome to the enhanced trustee model as proposed by MED
- the direct costs of the FMA may increase
- the FMA may not have an incentive for efficiency or may not have enough market understanding.

On the other hand, there is a view that:

- costs under the SRE model would be lower overall
- the cost of supervision would be much more transparent
- Direct market oversight is likely to increase the connection between the FMA and the industry
- Separating the FMA's investigative powers from the information that direct supervision provides will only complicate both functions.
- A single regulator approach is also more consistent with the prudential supervision of banks, non-bank deposit takers and insurance companies under the Reserve Bank.

The compromise position may be that such a dramatic change of approach should not be implemented without further detailed consideration which may not be possible in the current review. There is a risk that the options may not receive the attention they deserve if they are just one part of an overhaul of securities law.

9. Should fund managers be required to be licensed? What are the costs and benefits associated with licensing?

We do not support the proposals for licensing of fund managers. There are concerns that any benefits would be outweighed by the costs of compliance and also that the licensing regime could become a barrier to entry for new managers.

10. What, if any, might be an alternative approach to ensuring accountability and the protection of investors' interests? What are the pros and cons?

The fallback position would be to rely on standards of care, skill and diligence such as those that apply under the Financial Advisers Act to advisers who are registered but not

authorised. Each registered financial service provider will also be required to belong to an approved dispute resolution scheme.

11. If licensing is required, are the proposed fit and proper requirements and licensing criteria appropriate?

We do not support the proposal for licensing but recommend that if it is introduced the fit and proper requirements and licensing criteria should be clearly defined in order to provide more certainty for fund managers.

12. Should all persons of influence (e.g. senior management, owners and directors) within a collective investment scheme be required to meet licensing requirements? What are the costs and benefits of doing so?

We do not support the licensing proposal but recommend that, if it is introduced, in order to minimise compliance costs the requirements should be clearly set out and limited to persons who have actual influence.

13. Are the proposals for oversight of fund managers by the Authority appropriate? Are there preferable options, such as placing more reliance on the supervisor? What are the costs and benefits of the options?

We agree with the proposals for oversight by the Authority. See our response to question 8 in respect of reliance on the supervisor.

14. Should supervisors have a standard set of functions, duties and liability, and powers and rights across all collective investment schemes? What are the likely costs and benefits?

Our views on the supervisor are subject to the comments given in response to question 8.

15. What are the pros and cons of the possible set of functions, duties and liability, and powers and rights of supervisors set out in this paper? Should some be omitted or others included? If so, why?

Our views on the supervisor are subject to the comments given in response to question 8.

16. Should fund managers have a standard set of functions and duties across all collective investment schemes? Should the same consequences apply to across all collective investment schemes when a fund manager breaches its duties?

Yes, we agree that fund managers should have a standard set of functions and duties although flexibility should be maintained in such areas as receipt of application money by the fund manager and ongoing receipt of fund contributions. This would ensure existing practices in this area (which have not caused problems) are not unduly impeded.

17. What are the pros and cons of the possible set of functions and duties for fund managers set out in this paper? Should some be omitted or others included? If so, why?

We agree with the proposed functions and duties.

18. Do you consider it necessary to place a direct duty on fund managers to act in the best interests of investors? If not, why not? What would be the costs and benefits?

We agree that fund managers should owe a direct duty of care to investors, subject to compliance with the constitutional documents of the fund and acknowledgement that fund managers have a commercial relationship with investors. We also note that this is not a consistent requirement at present and we believe it would be appropriate for the duties applicable to fund managers to be consistent across different forms of collective investment scheme.

19. Should fund managers be required to disclose the duties that they owe to individual investors and any restrictions on these, and annually declare that they have not breached them?

We do not support the proposal for annual declaration that duties have not been breached. This would be an additional compliance obligation that is likely to cause unnecessary anxiety for investors.

20. Should fund managers be liable for criminal penalties in certain situations? If so, why and in what situations?

We do not support the introduction of criminal penalties for fund managers. Civil remedies are sufficient to encourage compliance and penalise breaches. . However, there should be criminal liability for *intentional* misleading or deceptive conduct as it is not reasonable for there to be no criminality for fraudulent activities.

21. What do you consider to be the pros and cons of mandating external administration in New Zealand? Do you have a view as to what an alternative might be?

We do not support mandating external administration. This should be a decision of the fund manager, particularly for superannuation and KiwiSaver schemes. While a number of superannuation scheme trustees have elected to outsource administration, most collective investments are self-administered schemes. This applies to GIFs and unit trusts as well as KiwiSaver and superannuation schemes. Any concerns about possible manipulation of unit prices can be addressed in other ways. In addition, standardised administration within a few providers could over time lead to a reduction in innovation.

22. Should administrators have a standard set of functions, duties and liability across all collective investment schemes?

We would not support specifically regulating administration of collective investment schemes other than in respect of standardising reporting on asset allocations, fees and investment returns.

23. What are the pros and cons of the possible set of functions and duties of administrators set out in this paper? Should some be omitted or others included? If so, why?

See response above.

24. What do you consider to be the pros and cons of regulating custodians in New Zealand? Should a specific licensing regime be imposed, or are the requirements for FSPA registration sufficient?

There is no major objection to regulating custodians.. However, we are not aware of any problems to date relating to custodians and therefore doubt that a licensing regime is necessary in addition to the requirement for registration under the Financial Service Providers (Registration and Dispute Resolution) Act.

25. Do you consider the requirements set out above for collective investment scheme returns and pricing adequate, insufficient or excessive? Are there items that should be included or omitted? If so, why?

We agree that this is an area where additional guidance is needed and ISI is currently revising the industry standard for the calculation and disclosure of investment performance. Regarding unit pricing, we understand that the joint guideline set by APRA and ASIC in Australia is often applied in New Zealand.

26. What, in your view, are the pros and cons of the proposal regarding returns and pricing?
What are the likely costs and/or benefits?

In general there is no objection to the proposals regarding returns and pricing. While we agree that investors should have clarity the detail of valuations will not be easily understandable for retail investors comparing different retail schemes.

27. What is your view of the proposals outlined above for mandatory inclusion in constitutional documents? Are there any that should be excluded? If so, why? Are there others that should be included? If so, why?

We support the proposals, although there are differing views among ISI's members as to whether it should be mandatory for the trust deed to include statements of investment policy and objectives and specification of authorised investments. . Constitutional documents should set out the key elements of the security but there needs to be reasonable flexibility as to how they can be amended and what notice needs to be given to investors when change is made and what rights members may have to agree to change.

There is a view that there should be some flexibility around investment policy and the composition of a scheme's investments, particularly as new types of investment can emerge over time. The use of formalised statements of investment policy and objectives (SIPO) is widespread across the industry and well understood by commentators and supervisors alike. It would be a simple exercise to provide reporting on changes or exceptions as part of the proposed regular reporting regime for fund managers. We do not consider this to be an area where comparability of CIS poses particular difficulty.

There is also a view that inclusion of the level of fees and charges in constitutional documents should be accompanied by information regarding thea basis on which the level can be changed.

28. What do you consider to be the pros and cons of mandatory requirements? Are there likely to be any costs and/or benefits?

See comments above.

29. Is there an alternative approach that you consider would work better? If so, why?

No comment on this point.

30. What do you consider to be the most appropriate mechanism for changing matters that must be included in constitutional documents and why? What are the likely costs and benefits?

That will depend on the type of scheme and exactly what change is proposed and should be set out in the constitutional documents.

For example, change mechanisms may include simple notification to investors or a vote of scheme members.

31. What is your preference for provisions regarding meetings and written resolutions and why? What are the pros and cons of your choice? What are the likely costs and benefits?

We generally agree with the proposals, and consider that the proposed higher threshold of 75% is more appropriate for collective investment schemes.

32. Do you agree with the Ministry's assessment as to the importance of whistle-blowing provisions? If not, why not? Who should they apply to?

Yes, we agree with the assessment.

33. Is there an alternative approach that you consider would work better? If so, why?

No.

34. Should the legal forms that can be collective investment schemes be limited? If so, why? If not, why not?

No, there should not be a limitation on the legal form of a collective investment scheme. We do not see the fact of there being more than one current legal form of CIS as generating confusion or disadvantage for investors. A single legal form of CIS would also be potentially restrictive of innovation.

35. Do you consider the proposal to provide for a statutory overlay for collective investment schemes to be appropriate? What are the costs and benefits of this proposal?

We agree that it would be appropriate to provide for a statutory overlay for collective investment schemes if a particular legal form is not required.

36. What, in your view, are the pros and cons of having a statutory overlay to the Companies Act as compared to a new schedule to the Companies Act defining investment companies? Do you have a view as to whether the company form should be permitted for collective investment schemes and how did you come to that view?

We consider that a statutory overlay is more appropriate for collective investment schemes than a new schedule to the Companies Act defining investment companies. In accordance with our previous comments, we consider that a company structure should be permitted with a statutory overlay.

37. What are the costs and benefits of applying the proposed collective investment schemes regime to all defined contribution superannuation schemes, including employer-sponsored schemes?

We agree that the proposed regime should apply to all public offer superannuation schemes. However, we consider that stand alone superannuation schemes sponsored by employers (including defined benefit schemes) do not fit readily into the proposed regime. Accordingly, we recommend they should be eligible for exemption rather than being grandfathered and closed to new members.

The trustees of workplace schemes should be able to elect to either continue to offer scheme membership under the current governance structure or, alternatively, move to the type of governance structure being proposed for CIS generally.

38. How do you consider master trusts be dealt with under the proposed regulatory framework?

We consider that master trusts should have little difficulty in fitting within the governance and disclosure regime proposed for CIS generally and accordingly we do not think they call for an exemption from the standard CIS approach.

39. How do you consider that defined benefit and employer sponsored schemes should be dealt with under the proposed regulatory framework?

See response to question 37.

40. Do you see any practical problems with regulating insurance policies that have an investment component as if they were two separate contracts – one for insurance and one for investment?

There are problems with this proposal as it would be difficult, if not impossible, to separate the investment and insurance components for traditional whole of life and endowment policies. As this is a diminishing category of business, we recommend that an exemption from the proposals should be available for existing policies.

41. What are the likely costs and benefits of this proposal and any alternative that you consider preferable?

See above. In view of the fact that this is a diminishing category of business it would not be in anyone's interests to implement a proposal that would require significant systems changes.

42. Should any classes of collective investment scheme products be exempt from some or the entire proposed collective investment scheme regime? If so, which requirements should they be exempt from and why?

In general we would not support exemptions from the proposals for certain classes of collective investment scheme, subject to our comments on platforms in response to question 44.

43. In particular, should the Securities Act (Externally Managed Group Investment Funds) Exemption Notice 2003 be replicated? What are the costs and benefits of doing so?

We support the proposal that the exemption notice should not be replicated.

44. If platform management services are included as collective investment schemes, which of the collective investment schemes regime requirements should apply? What are the costs and benefits associated with regulating them in this way?

We consider that there are problems in regulating platforms as collective investment schemes. While a collective investment scheme is a pooled investment entity, a platform is a facility under which a number of CISs or other assets are made available to an investor by the manager or investment adviser. They allow reporting and management of underlying investments and the provision of advice and enable asset allocation to be managed by the adviser.

We recommend that regulation of platforms should be limited to the Financial Advisers Act and Financial Service Providers (Registration and Dispute Resolution) Act.

45. Do you have any comments on the implications of the UCITS regime for regulation of collective investment schemes in New Zealand? Should New Zealand's domestic regime comply with UCITS? What are the pros and cons?

The general view is that the UCITS regime would be appropriate for the regulation of collective investment schemes in the event that New Zealand establishes itself as an international hub for funds domicile and servicing. The UCITS regime is recognised as international best practice but the additional cost of applying it to funds sold only to New Zealand investors would not be justified as long as there is a sufficiently robust domestic regime. Accordingly, we would support a dual regime in order to keep costs down for local savers while assisting with the development of NZ as a funds domicile.

Chapter 5

1. Are there any other issues that the Ministry should consider when rewriting securities legislation?

We support the rewrite of the securities legislation and look forward to clarification of boundaries and definitions and alignment with other legislation such as the Companies Act, Financial Advisers Act and Financial Service Providers (Registration and Disputes Resolution) Act.

2. Do you consider that financial market participants should be required to treat customers fairly, in accordance with certain principles developed by the Authority as part of a code of practice?

We do not agree that this is necessary in order to require fund managers not to treat their customers unfairly. It is a subjective concept that should not be an express obligation but would be more appropriately incorporated into a code of practice.

3. If so, do you agree with one of the options we have set out above, or, is there a better option to of the various options?

No comment on this point.

4. Are the current mechanisms in the Securities Markets Act for registering, requiring registration of, and exempting securities markets working? How could they be improved?

No comment on this point.

5. What are the pros and cons of allowing partial and full exemptions for registered exchanges (apart from the main board of NZX) from the Securities Markets Act? If so, what allowances should be made, and what conditions should apply? Is there preferred alternative to achieve the Taskforce's objective?

We have no comment other than that the requirements for disclosure and dealing misconduct should apply consistently.

6. Should alternatives to continuous disclosure be able to be used for particular registered markets? What are the pros and cons of this option? What alternatives to continuous disclosure might be suitable?

We consider that the continuous disclosure requirements should be a minimum standard for public issuers. Refer to Chapter 3 Question 24 for unlisted securities.

7. How might securities law in New Zealand regulate alternative trading systems (such as electronic communication networks)? What are the pros and cons of this approach, compared to not specifically recognising them?

No comment on this point.

8. What are the pros and cons of issuers being entitled to refuse access to securities registers? If so, on what grounds, and what process should be followed?

No comment on this point.

9. Are there other options, such as allowing the issuer or a trustee to require a statement to be included in any unsolicited offer made as a result of accessing the securities register, and what are the pros and cons?

No comment on this point.

10. Do you support or oppose the proposal to align New Zealand law with the Hague Convention on indirectly held securities? Would the proposal have additional costs or benefits (e.g. will it help to enhance and develop New Zealand's capital markets)?

No comment on this point.

11. Should New Zealand adopt the Convention (rather than just align New Zealand law with it)?

No comment on this point.

12. What effect will the proposal have on your business operations? In dollar terms, what average costs (e.g. legal fees) would alignment with the Convention mitigate?

No comment on this point.

13. On an annual basis how often do you encounter a conflict of laws in respect to securities as addressed by the Convention? Do you anticipate this number will increase or decrease over the coming years and why?

No comment on this point.

14. What are the costs and benefits of a specialist Rulings Panel being able to make rulings on matters relating to securities law, or is there a better option?

We are not convinced that having a separate Rulings Panel would provide more benefits than developing the specialist skills for a Rulings Panel within the Authority.

15. Should any rulings power of the Rulings Panel be binding on the Authority and third parties and on matters of fact or law or both, and be subject to rights of appeal?

Yes, it should be binding on all parties with a right of appeal available to applicants.

16. What are the costs and benefits of a retrospective exemption-making power for a breach of securities law, or is there a better option to deal with this issue?

We support the proposal. A retrospective exemption-making power similar to that of the Takeovers Panel would be appropriate for situations where technical breaches lead to unreasonable outcomes.

17. What are the costs and benefits of providing for 'no action' letters in legislation?

We believe there would be minimal cost but significant benefit.

18. What are the costs and benefits of individual exemptions coming into force when they are made, rather than on or after notice in the Gazette?

Immediate application would be a benefit.

19. Are there options to improve the provisions that enable the Authority to lead compensation claims for investors (for example, laws to facilitate class actions)? What are their costs and benefits?

We do not generally support the Authority having additional power to lead compensation claims for investors, beyond the powers for enforcement action existing under the Securities Act and Securities Markets Act. There is a concern that increasing these powers may lead to issuers having difficulty attracting directors.

20. Do you agree with the policy intent reflected in the Illegal Contracts (Unlawful Limitation on Regulators' Powers) Amendment Bill? What are its costs and benefits?

We do not have an agreed view on this point.

21. What are the pros and cons of the Authority using the Securities Markets Act's general dealing misconduct prohibition to regulate behaviour in exempt securities markets?

No comment on this point.

22. What are the pros and cons of the Authority having an enforcement role under the Fair Trading Act, or of other rules in the Fair Trading Act being replicated in securities law?

We would support the consolidation of enforcement for security issues under the Authority.

23. What are the pros and cons of the Authority being able to cause civil proceedings to be begun in a similar manner to ASIC's power in section 50 of the Australian Securities and Investments Commission Act 2001?

We do not have an agreed view on this point.

24. Should the Authority, rather than the Commerce Commission have responsibility for enforcing the CCCFA? What are the pros and cons?

We agree that there would be a benefit in coordinating the enforcement of the CCCFA under the Authority.

25. What are the pros and cons of the Authority having a function of promoting investment literacy, or do you prefer other options for improving investment literacy?

We do not consider that the Authority should have a specific function of promoting investment literacy. It would be preferable for this function to be consolidated and funded under the Retirement Commission.

26. What are the pros and cons of the Authority having powers allowing it to collect written information from persons raising capital? Are there alternative sources for this information?

We would support the Authority having powers to collect and report on statistical information.

27. If the Authority has such powers, what are the costs and benefits of different ways of collecting such information such as requests of issuers or requiring information to be provided in an annual return?

The costs for issuers would be minimised if the information could be taken from financial accounts.

28. If the Authority has such powers, what restrictions should be placed on its exercise of them, and what impacts would this have?

The information should be of a statistical nature only and reported on an aggregated basis.

29. What are the costs and benefits of public enforcement of civil statutory directors' duties?

No comment on this point.

30. If there is to be public enforcement of civil statutory directors' duties, what are the pros and cons of introducing pecuniary penalties?

No comment on this point.

31. What are the costs and benefits of introducing a new criminal offence provision in relation to directors' duties? What should any mental element for the offence be?

We do not have industry support for the introduction of criminal offence provisions in relation to directors' duties.

32. If criminal offence provisions are to be introduced, what are the pros and cons of following the model in section 184 of the Australian Corporations Act 2001 – or do you prefer a different approach?

See above. No comment on this point.

33. If criminal offence provisions are to be introduced, what are the costs and benefits of imprisonment as an option?

See above. No comment on this point.

34. Do you consider that the five year automatic disqualification provision provides adequate protection of the public interest? If not, what alternative would you propose and what are the pros and cons of your proposal?

No comment on this point.

35. What are the pros and cons of the preliminary proposal to change the ten year maximum period for court-imposed bans to an indefinite period?

No comment on this point.

36. What are the pros and cons of the preliminary proposal to change the five year maximum period for regulator-imposed bans to ten years?

No comment on this point.

37. What are your views on the costs and benefits of the preliminary proposals (or alternative options) to empower the OA to extend the term of bankruptcy for up to seven years beyond
the original three years in relation to culpable bankrupts?

No comment on this point.

38. What are your views on the costs and benefits of the preliminary proposals (or alternative options) to impose the onus of proof on a person who has been bankrupted on two or more occasions to demonstrate why they should be discharged after three years?

No comment on this point.

39. What are the pros and cons of infringement notices being available in respect of contravention of securities laws and, if so, what laws and what should be the maximum infringement fee?

No comment on this point.

40. What are the pros and cons of the regulator being able to seek administrative penalties?

No comment on this point.

41. Do you have any comments on the levels of offences and penalties under the Securities Act and the Securities Markets Act, and their relationship with Crimes Act offences?

No comment on this point.

42. What are the pros and cons of retaining reverse onus for offences under the Securities Act?

No comment on this point.

43. Do you have any comments on the interrelationship between civil and criminal causes of action under the Securities Act and the Securities Markets Act?

No comment on this point.

44. What impact do civil penalties have on behaviour? Should they be retained and, if so, for what conduct?

No comment on this point.

45. What are the pros and cons of a specialist judicial-type body to deal with civil breaches of securities law and other laws enforced by the Authority?

No comment on this point.

46. Do you have any comments on the design of such a body and its jurisdiction?

No comment on this point.

47. Do you prefer any alternative options, such as establishing a specialist Financial Court which would have jurisdiction over financial matters? If so, why?

No comment on this point.

48. Do you agree legislation is required to clarify that a special partnership that re-registers as a limited partnership succeeds to the rights and liabilities of the special partnership?

No comment on this point.

49. What are the pros and cons of this intervention?

No comment on this point.

List of ISI Members

ISI MEMBERS

AIA NZ
AMP Financial Services
Asteron Life Ltd
AXA New Zealand
BNZ Investments and Insurance
CIGNA Life Insurance NZ Ltd
Dorchester Life
Equitable Group
Fidelity Life Assurance Co Ltd
FNZ
Gen Re LifeHealth
Hannover Life Re of Australasia Ltd
ING New Zealand Ltd
Kiwibank Ltd
Medical Assurance Society NZ Ltd
Mercer
Munich Reinsurance Co of Australasia Ltd
Pinnacle Life
Public Trust
RGA Reinsurance Co. of Australia Ltd
Sovereign Ltd
Southsure Assurance
Swiss Re Life & Health Australia Ltd
TOWER New Zealand
Westpac/ BT Funds Management Ltd

Associate Members

Bell Gully
BNP Paribas
Bravura Solutions
Burrowes & Co
Chapman Tripp
Davies Financial & Actuarial Ltd
Deloitte
DLA Phillips Fox
Ernst & Young
InvestmentLink (New Zealand) Ltd
KPMG
Kensington Swan
Melville Jessup Weaver
Minter Ellison Rudd Watts
Morningstar Research Ltd
PricewaterhouseCoopers
Russell McVeagh
Simpson Grierson