

**INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ
INC**

SUBMISSION
TO THE
MINISTRY OF ECONOMIC DEVELOPMENT
ON THE
REVIEW OF FINANCIAL PRODUCTS AND
PROVIDERS

Supervision of Issuers

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Introduction

The Investment Savings and Insurance Association ("ISI") welcomes the opportunity to comment on the Discussion Document *Supervision of Issuers* issued as part of the Review of Financial Products and Providers ("RFPP"). Our comments are made on behalf of our members who are the issuers and managers of life insurance, superannuation and managed funds listed at the end of this paper. Our members are keenly interested in the proposals put forward for regulation of the financial services industry and we have appreciated the extensive consultation on these issues with officials and advisory groups.

ISI generally supports the overall framework for regulation of the financial services industry and the registration proposal, but we do have some specific comments to make on the supervision of issuers proposals.

General Comments

ISI commends the Ministry of Economic Development for the process followed in the RFPP and the opportunity it presents for the regulation of financial services to be considered in a comprehensive manner. The discussion documents produced by MED together provide a very useful overview of the application of different pieces of legislation to the various products and services available within the industry.

We endorse the approach to financial services regulation from the point of view 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 cost of compliance for providers. One of the key outcomes to be hoped for must be an improvement in the environment for saving in New Zealand in order to raise the level of personal saving and increase the pool of local savings available for investment.

As noted above, ISI members are the companies issuing and managing life insurance, superannuation and managed funds in New Zealand. That involves various ISI members in most of the activities reviewed as part of the RFPP: insurance, superannuation, collective investment schemes, platforms and portfolio management services, the offering of securities and consumer dispute resolution and redress. Reinsurance companies (all based offshore) are also members of this association and a key participant in the life insurance industry.

All ISI members have an interest in New Zealand maintaining a robust and efficient financial services system which has the confidence and respect of the New Zealand public and local and international institutions. ISI has taken a leading role for the industry in commenting on law reform issues. Key issues in recent years have been the recommendations for review of the Life Insurance Act 1908 and the review of the Securities Act and Regulations.

We are aware of the need for financial services regulation in New Zealand to take account of responsibilities towards the security of international financial markets and

ISI has provided submissions to recent Ministry of Justice discussion documents on anti-money laundering and countering the financing of terrorism (FATF Recommendations). As most ISI members are trans-Tasman companies, we are also acutely aware of the issues around trans-Tasman mutual recognition.

A holistic approach to regulation of the financial services industry should ensure that the design of a new regime takes into account the need to improve the environment for personal saving in New Zealand while harmonising where possible with Australia and also meeting our international obligations in the area of financial security.

The RFPP discussion documents propose to apply the same regulatory regime to life insurance products with a savings component, superannuation and managed funds on the basis that they are comparable products and should be regulated on the same basis. ISI supports the general approach involving registration of financial institutions and two main regulators (prudential and market conduct), with collective investment schemes and their issuers being supervised by trustees who are approved and supervised by the Securities Commission. We do not, however, support life insurance policies with a savings component being treated as collective investment schemes.

In this submission we comment specifically on the *Supervision of Issuers* discussion document. Our comments on the application of the trustee supervisory model to collective investment schemes are in the ISI submission on the RFPP discussion document *Collective Investment Schemes*. Consequently, this submission covers supervision of disclosure and the trustee supervisory model more generally.

Supervision of Issuers

ISI supports the review's objective to develop a consistent and effective framework of regulation for financial services that is simple for financial institutions to comply with and that increases consumer confidence in the industry. We endorse the view in the discussion document that the existing regime of trustee supervision for debt and CIS issuers is fundamentally sound (and will be further strengthened when recent amendments to the Securities Markets Act take effect) and an effective framework can be developed by building on the existing regime.

ISI supports the trustee supervisory model as outlined in the discussion document, subject to further detail and clarification of the respective roles and responsibilities of the trustees, the Securities Commission, Companies Office and the Government Actuary. For example, we have commented in our submissions on other RFPP documents regarding:

- Potential conflict if trustees conduct 'fit and proper' checks on issuers who appoint them;
- Overlap in the roles of the Registrar of Companies and the Securities Commission in registration of offer documents;
- Uncertainty regarding application of the Superannuation Schemes Act to Collective Investment Schemes.

Supervision and Enforcement of Disclosure Regime

Securities Commission

ISI agrees that the supervision and enforcement powers of the Securities Commission (increased by the Securities Legislation Bill) are generally adequate but not always sufficiently flexible to ensure that remedies are proportionate to breaches.

We also agree that obtaining a relief order from sections 37 or 37A of the Securities Act is a complex and costly process. Accordingly, we would support a facility for the Securities Commission to specify in an exemption notice the consequences of a breach of that notice and how a breach may be remedied.

ISI would also support giving the Securities Commission the power to declare a product to be a particular type of security. This would help to provide certainty for issuers and thereby reduce unnecessary compliance costs.

Registrar of Companies

ISI shares the concerns expressed regarding the Registrar of Companies' role in registering offer documents. At the moment there is scope for confusion and delay in the registration of documents. The Registrar may decline to register a particular document, in which case the issuer may appeal to the Securities Commission. If the Registrar does register the offer documents, the Securities Commission may still suspend or cancel the registration if it considers that the documents do not comply with the Securities Act and Regulations.

Having two bodies involved in the registration process, with overlapping roles, adds to the uncertainty and the costs of the process. We acknowledge that the issuer has the ultimate responsibility for ensuring that the documents are fully compliant and that neither the Securities Commission nor the Registrar of Companies is in a position to check the accuracy of offer documents presented for registration.

We therefore recommend that documents should be lodged with the Companies Office rather than registered. If there is to be a registration process involving review of the documents we recommend that the review should be done by the Securities Commission in its role as market conduct regulator and the Commission should then notify the Registrar of Companies to register the documents.

Civil and Criminal Liability

ISI considers that the liabilities in the Securities Act are sufficient and adequate. However, we agree that it would be useful for investors to have a means of redress other than instigating action through the courts. Accordingly, we would support a more flexible facility such as the Securities Commission having the power to make corrective orders if a person contravenes the disclosure regime.

Proposed Trustee Supervisory Model

ISI agrees that the current trustee model is fundamentally sound. Although trustees of superannuation schemes do not have the same monitoring role as trustees in other securities, superannuation scheme members do have the benefit of oversight by the Government Actuary.

We would dispute the statement in paragraph 164a that superannuation schemes do not benefit from having a supervisor that is close to the market and able to deal flexibly with different schemes. Advice from our members indicates superannuation scheme trustees value their relationship with the Government Actuary and would be reluctant to lose the benefit of the guidance available from that office.

We accept that there are improvements that could be made to the current regime and accordingly we support the proposed trustee supervisory model. This support is subject to the proviso that stringent efforts should be made to avoid introducing unnecessary complexity and compliance costs in order to make one regulatory model fit a range of product types.

Approval and Oversight of Trustees by the Securities Commission

ISI agrees that the Securities Commission should be able to approve trustees on an all-securities basis. We expect that the professional trustee companies likely to be contracted by ISI member companies will have skills across all securities types and we see no benefit in requiring separate applications.

Entry Requirements

ISI considers the proposed entry requirements are appropriate and we agree with the need for balance between prescription and flexibility. We agree that the Securities Commission should not be limited by the listed entry requirements but any additional requirements imposed by the Commission must be 'reasonable' and subject to judicial review.

We consider the basic entry requirements should be placed in primary legislation but it would be useful to have more detailed rules in the form of regulations.

Appeals

In the event that the Securities Commission declines an application to be a trustee, ISI considers that there should be a facility for the trustees to take a case to the Securities Commission for that decision to be reviewed. If that process fails, we recommend that the trustee should have the right to appeal to the High Court on merits as well as law.

We do not agree that it would be desirable for the Minister to approve applications on the recommendation of the Commission. That would be a more cumbersome process and would not be justified, taking into account that the role of the trustee is monitoring and review rather than rule-making or standard-setting.

Reporting Requirements

ISI supports the proposals for periodic and event-based reporting, subject to consideration of detailed regulations.

Breach of Trustee Supervisory Relationship

ISI supports the proposed powers for the Securities Commission to act in the event of a breach by a trustee of its trustee obligations. We endorse the stipulation that the action taken by the Commission should be commensurate with the severity of the breach.

We agree that the Securities Commission should require an order from the Court to be able to remove a trustee from an appointment.

Role of Other Parties

ISI does see the risk of an overlap between the roles of the Securities Commission and the Registrar of Companies. We have commented above on potential overlap in the registration of offer documents. Our preference would be for the roles of the Companies Office and the Securities Commission to be clearly delineated with the Securities Commission as regulator and the Companies Office limited to registration.

With respect to the trustees' obligation to report a breach of the Corporations (Investigation and Management) Act 1989, we recommend a specific requirement for trustees to inform the Securities Commission before giving notice under section 11. Ideally, the Act would be amended to require notice to be given to the Commission rather than the Registrar, thus avoiding duplication of reporting.

List of ISI Members

ISI MEMBERS

American International Assurance
AMP Financial Services
Asteron Life Ltd
AXA New Zealand
BNZ Investments and Insurance
CIGNA Life Insurance NZ Ltd
Equitable Group
Fidelity Life Assurance Co Ltd
Gen Re LifeHealth
Hannover Life Re of Australasia Ltd
ING New Zealand Ltd
Medical Assurance Society NZ Ltd
Munich Reinsurance Co of Australasia Ltd
Public Trust
RGA Reinsurance Co. of Australia Ltd
Save and Invest Ltd
Sovereign Ltd
Swiss Re Life & Health Australia Ltd
TOWER Limited
Westpac/ BT Funds Management Ltd

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Bravura Solutions
Buddle Findlay
Burrowes and Company
Chapman Tripp
Davies Financial & Actuarial Ltd
Deloitte Touche Tohmatsu
Ernst & Young
InvestmentLink (New Zealand) Ltd
KPMG
Kensington Swan
Melville Jessup Weaver
Mercer Human Resource Consulting Ltd
Morningstar Research Ltd
Phillips Fox
PricewaterhouseCoopers
Russell Investment Management
Russell McVeagh
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