

20 August 2010

Securities Law Reform
Investment Law Team
Ministry of Economic Development
PO Box 1473
WELLINGTON

To the Ministry of Economic Development

WORKPLACE SAVINGS NZ Submission on the Review of Securities Law – Discussion Paper - June 2010

We wish to submit the attached in response to the Review of Securities Law Discussion Paper of June 2010

Workplace Savings NZ is a national, not-for-profit, apolitical membership organisation. Our current membership comprises around 100 major workplace superannuation and KiwiSaver schemes and another 50 organisations and individuals representing the various product and service providers for workplace savings arrangements. We have recently reviewed the principal goals and objectives of our organisation and changed name from ASFONZ to better reflect our objectives.

From the perspective of funds under management, the membership of Workplace Savings NZ covers around 90% of retirement savings held through workplace retirement saving arrangements (i.e. Corporate & Master Trust superannuation schemes and KiwiSaver).

Workplace Savings NZ's objective is to be the Voice of Workplace Savings; advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved – including the core workplace superannuation scheme members who remain at the heart of the organisation. We do this through:

- Advocating – advancing legislative and public policy initiatives beneficial to workplace savings and participation in the workplace savings industry, making submissions, engaging with policy-makers and officials and issuing media commentary to advance those causes.
- Education – promoting trustee, employer and member financial and regulatory education through dedicated training programmes, newsletters and special interest seminars.

- Networking – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.
- Promotion – publicising the benefits of workplace savings, and helping to improve public confidence in workplace savings.

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I would be pleased to discuss our comments or answer any queries in relation to the submission.

Thank you for the opportunity to make this submission.

Yours sincerely



Bruce Kerr
Executive Director

Workplace Savings NZ

Submission to the

Ministry of Economic Development

on the

**Review of Securities Law
Discussion Paper ("the Paper")**

August 2010

The Workplace Savings NZ Submission

Workplace Savings NZ welcomes the review of Securities Law being undertaken by the Ministry of Economic Development. It is a number of years since the last major overhaul of the Securities Act and Regulations and we agree that a review is timely.

As is apparent from the title of the organisation, the principal focus for Workplace Savings NZ and our members is superannuation in the workplace. Our comments on the Ministry's proposals therefore concentrate on those issues likely to impact on superannuation schemes, including KiwiSaver, that are facilitated for employees by their employers.

We recognise that such arrangements cannot be considered in isolation from the total investment market and, indeed, that there are many similarities to other types of investment. Our concern is to ensure that characteristics of arrangements that cross boundaries between an employer's remuneration strategy and the protection of employees' benefits are taken into account in designing appropriate Securities Law.

We also recognise the difficulties faced by all the various parties involved in designing, implementing, operating and regulating Securities Law. Conflict is inevitable and Workplace Savings NZ is pleased to be able to participate in the debate to establish a regime that successfully balances the need to protect investors' interests, the government's international commitments and the practicalities of actually providing the service to the investors.

Summary

The comments in our submission fall under two general headings:

- Disclosure, and
- Governance.

Disclosure

In principle we agree with the Ministry's conclusion that the existing law is not achieving its objectives. We believe that this is largely due to the 'one size fits all' nature of the requirements for Investment Statements that has resulted in Investment Statements failing to meet the needs of investors for a variety of reasons.

Workplace Savings NZ supports the proposals relating to disclosure made in the Paper, albeit with some reservations that we have detailed below. As long as, in particular, the key information statement of the proposed Product Disclosure Statement is kept succinct and is required to include prescribed information in a standardised fashion using generic terminology for each type of product, we believe that it will be capable of meeting its objective.

Governance

Given the clear failure of the 'one size fits all' regime relating to disclosure, we are somewhat disturbed by the proposal to introduce another 'one size fits all' regime for the governance of all of the various types of Collective Investment Scheme. While there is no doubt room for standardizing governance regimes for certain legal forms, particularly where there have been issues in the past, we can see no value in doing so in respect of workplace superannuation and non-retail KiwiSaver schemes.

We are not aware of any issues relating to the governance of these schemes and submit that the current regime is meeting its objectives. A change would achieve nothing other than creating unnecessary expense and would, we believe, be likely to lead to fewer employers continuing to offer their employees this valuable benefit.

The Submission

The submission is made in the form of responses to the particular questions raised where appropriate. Other comments will be made under the same chapter headings as apply in the Discussion Paper.

The nature of Workplace Savings NZ's membership means that the majority of the submission relates to "Collective Investment Schemes" (as defined in chapter 4 of the Paper) and, more particularly, to workplace superannuation and KiwiSaver schemes.

A. Introduction

- A.1. It is noted that the "improvements" to the regulation of KiwiSaver referred to in paragraph 1 have not yet been promulgated. While Workplace Savings NZ believes that the changes suggested in earlier statements by the Minister are likely to be positive and beneficial overall, we will welcome the opportunity to make submissions on the proposals when the detail is available.
- A.2. We agree that there are problems with current legislation and, in general, with the summary of problems as they relate to disclosure as summarised in paragraphs 25 to 28.
 - A.2.1. Many of these problems stem from the previous major overhaul of securities law in 1996 and the desire at that time to introduce a 'one size fits all' disclosure regime, particularly for Investment Statements. The dangers of this approach, while attractive in theory, are now readily apparent.
 - A.2.2. We believe that it is important to aim for a consistent, uniform regime as far as is practicable. However, it is equally important to recognise that different types of security will require differing considerations in certain areas if NZ is to achieve the objectives outlined in paragraphs 11 & 12.
- A.3. It is agreed that governance standards need to be as consistent as possible between like products, as suggested in paragraph 30.
 - A.3.1. We do not accept that this means, for example, that all Collective Investment Schemes (CIS) should have the same governance regime where characteristics of schemes differ. As we have seen with Investment Statements, the apparent convenience and attraction of a 'one size fits all' regime must be considered cautiously, particularly where an existing regime is working well for a specific type of scheme.
 - A.3.2. It will be critical to the success of the proposed governance model to ensure the definition given to 'retail' CIS's is workable.
 - A.3.3. Our concerns in this regard relate to workplace superannuation schemes and non-retail KiwiSaver schemes. Details of our concerns are included in Section E of this submission, covering Chapter 4 of the Paper.
- A.4. Workplace Savings NZ fully supports the overarching principles for reform stated in paragraph 32.
- A.5. In the Discussion Paper's executive summary, and throughout the document, reference is made to 'fund managers'. In the context of this submission we have interpreted this term as meaning 'manager' or 'administration manager' of a collective investment scheme, and not as investment manager as might the superannuation/KiwiSaver industry.

B. Chapter 1 – Defining regulated financial products

- B.1. Question 1 – we broadly agree with the problems identified.
- B.2. A proposed definition of "investment" has been included in paragraph 38 and we agree that a definition is helpful. It may be useful to include an *intention* on the part of the

investor to earn a positive financial return rather than there being the mere *possibility* of doing so? We question why any investor would purchase a security without this being the overriding reason for doing so.

- B.3. Question 2 – the new Act should feature standardised disclosure and governance requirements but only where this is clearly the most logical route to follow. We strongly suggest history has shown that it is essential to consider the characteristics of each category of security such that the objectives of the law are most likely to be met. Disclosure requirements must take in to account the need, ability and willingness of target investors to absorb information.
- B.4. Question 3 – the four categories proposed appear to be appropriate. The impact of using these four is likely to be minimal as long as it is recognised that differing treatment will be required in respect of sub-categories in certain situations.
- B.5. Question 6 – there are a number of aspects that need to be considered when defining CISs:
 - B.5.1. As this category includes workplace savings schemes, including KiwiSaver schemes, it needs to incorporate the concept of money being paid into the scheme on behalf of an actual investor or subscriber; typically an investor’s employer. We recognise that there is also a possibility of money being paid on behalf of an investor in respect of other categories of security that might not be a CIS – for example a share purchase arrangement;
 - B.5.2. It is unclear whether the definition proposed in paragraph 51. is that to be applied to a CIS or to equity and debt securities? While 51.i. is appropriate to a CIS, 51.ii. seems problematic in that access to an investment in a superannuation scheme, particularly a KiwiSaver scheme, is restricted.
 - B.5.3. It is important that the legislation is clear on what is and what is not included in the CIS category. It is likely to be preferable to set this by regulation so that future product developments can be included where appropriate.
- B.6. Question 7 – no comment.
- B.7. As a general observation,
 - B.7.1. We support the proposal that the regulator should have the power to designate, or redesignate after discussion, a financial service product into a particular category, as suggested in paragraph 64. However, to ensure certainty and avoid unwelcome surprises in the market, we believe it is essential that effective protocols are put in place, with grandfathering relief available to offerings that are re-classified under such a power. The response must not be disproportionate to the issue the response is seeking to address.
 - B.7.2. It would be helpful for a mechanism to be introduced enabling a provider to seek a ruling from the regulator in respect of any particular product if the provider is in doubt.
 - B.7.3. We also believe that it would be prudent to recognise that there may be a need to establish a new category at some future point, rather than being forced to make a future financial product fit into one of the proposed categories.
- B.8. Question 24 – We believe that the limited exemption that certain Employer, or Workplace, superannuation schemes have enjoyed in respect of the preparation of a prospectus has been justified. Our principal reservation with the current exemption is that it does not go far enough, meaning a number of employment-based schemes are unable to benefit from the relief provided, but that is another matter. We submit that the more detailed information that is presently included in a prospectus would be similarly unnecessary in any of the proposed revised disclosure regimes. It has been agreed that the costs associated with producing a prospectus for these schemes is not justified, as demonstrated by the granting of an exemption, and we believe that the same will apply going forward.

B.9. Question 27 – Later in our submission, under Chapter 3, we will argue that an employer who participates in workplace superannuation scheme for the benefit of the employer’s employees through a master trust arrangement should not be regarded as the promoter for Securities legislation purposes:

B.9.1. We have previously argued that such an employer should not be required to register as a financial services provider under the Financial Services Providers Act 2008 and we were pleased that our submissions in respect of that legislation were adopted.

B.9.2. We see no benefit in such an employer being regarded as a promoter and will submit that they should be unambiguously excluded in the revised Securities legislation.

C. Chapter 2 – Offers to exempt investors

C.1. Question 1 – We agree with the problems with the current regime identified. We do not wish to comment further on the proposals for reform in respect of offers to exempt investors.

D. Chapter 3 – Disclosure

D.1. As a general comment, we do not believe that the sentiment expressed in the opening sentence of paragraph 5 is helpful to the current debate. While it would be natural for a provider to represent the details of a product in the best possible light, we consider that the vast majority go to great lengths to do so in a way that they believe will be meaningful to their target audience. Having said that, we do agree that a certain amount of regulation is required, primarily to ensure that all providers are playing by the same rules. Ideally the regulation will also be aimed at ensuring that there is comparability, between like products, of terminology and the calculation and presentation of aspects disclosed.

D.2. Question 1 – We agree that the principal target of disclosure should be retail investors and suggest that the definition of a retail investor needs careful consideration. This term is readily applied to a general member of the public who may be considering an investment as an individual and in their own right. The term is not so often associated with, for example, an employee considering joining a workplace superannuation scheme offered through their employer. We believe that the employee should be regarded as a retail investor for disclosure purposes.

D.3. Question 2 – We agree with the secondary audiences identified.

D.4. Question 3 – the main problems associated with the current disclosure regime have been identified. We add the following comments:

D.4.1. We believe that the ‘one size fits all’ nature of the requirements for Investment Statements is the cause of the majority of problems. The requirements are prescriptive in what must be included even where the items required are not particularly relevant or meaningful to a particular security and they do not allow for tailoring of the information to make it meaningful.

D.4.2. The requirements do not readily allow for the essential features of the product, as opposed to important features, to be focused upon. It is evident that there is too much ‘important’ information for the majority of investors to be willing or able to attempt to absorb.

D.4.3. Despite the prescriptive nature of the requirements, much of the wording is capable of having differing meanings (as identified). Providers have found, on occasion, that regulators have not been willing or able to provide clarity with regard to their interpretation of the requirements. Just as providers have felt obliged to act cautiously by including additional information to be ‘on the safe side’, comments from regulators have tended to be similarly cautious.

D.4.4. As indicated at D.1 above, we do not in general accept that “Issuers have a natural disincentive to make adverse information easily accessible to investors”

- although it is not entirely clear what might be meant by “adverse information”?
The vast majority of providers do not want disgruntled investors.
- D.4.5. It appears that the disclosure regime emphasis is being placed only on printed documentation, and a risk might arise if the review does not consider the wider ambit of communication options, for example web based disclosure.
- D.5. Question 4 – the costs of compliance with the existing regime are, essentially, twofold:
- D.5.1. The actual dollars expended by providers in compiling and producing the current requirements are significant. The need to continuously monitor changing market conditions and legislation changes, with the resulting updates to material is also significant, often for no or very little gain. The inflexible wording does not allow for minor changes, often due to changes in legislation, to be by way of inserts to Investment Statements, leading to huge wastage of printed documents.
- D.5.2. Of equal significance, investors are not necessarily aware of what the essential features of a particular product that they invest in are as, generally in our view, they have not read or understood the material provided. This leads to a loss of confidence by investors who are directly affected and also by other investors who are influenced by negative media reports regarding difficulties that others have experienced. The cost impacts investors who may be invested in the ‘wrong’ product/portfolio and on providers who will need to spend significant amounts of time in resolving investor’s problems.
- D.5.3. It is agreed that a benefit of the existing regime may be that providers will put considerable effort in to ensuring that all possible details are included.
- D.6. Question 5/6 – in principle we support the Ministry’s preferred option. Please note that our comments are applicable to products that will be categorised as CISs. It is difficult to assess the direct savings that this might lead to as this would depend on what the revised requirements actually are, what the requirements are for registration and whether there is any flexibility envisaged, for example, when minor changes are made.
- D.7. Question 7 – we agree in principle that the Product Disclosure Statement (PDS) concept, with prescribed documents for individual products, is sensible.
- D.8. Question 8 – a prescribed key information statement, as Part A of the PDS, is seen as a valuable element of the proposed regime.
- D.8.1. We believe that the content of Part A, together with much of the wording used, could usefully be prescribed (descriptive & not marketing) for each product type. The meaning of a particular term or phrase should be the same irrespective of which provider is using it. Readers to be referred to a common glossary if more details are required. The glossary would be maintained on the Securities register site or, perhaps, by the Retirement Commission (or the like).
- D.8.2. In addition, calculation methods behind information presented in respect of, for example, fees and/or investment returns need, in our view, to be standardised. These will be essential if comparability is a major objective.
- D.8.3. If content is to be covered by regulation, the ability to update and/or revise prescriptive wording as and when appropriate must be recognised. The regulator must be able, and willing, to review wordings promptly if the need arises, with requests from providers being sufficient to trigger a review (not necessarily a change).
- D.9. Question 9/10 – as indicated above, we see significant advantages for investors if Part A is largely prescribed, with no room for additional information. However, we believe that it is likely to be counter-productive to apply the same requirement for Part B.
- D.9.1. Minimum requirements for the product type should be specified, as should the meaning of particular terminology, but restrictions on content should not be included.

- D.9.2. It needs to be taken into account that the PDS (Parts A & B) will commonly be used as a sales document. The danger of restricting the contents of Part B will be that providers may feel the need to produce a further document as a 'sales brochure'. Experience with the Investment Statement regime tells us that many potential investors may read some of the sales brochure but are then unlikely to bother with anything else. This seems to defeat the purpose of the PDS.
- D.10. Question 11 – inclusion of additional and ongoing requirements on the register is supported in principle. We note that it is intended to have a registry of securities and that each PDS would also be registered, although the process envisaged for registration of either has not been included. While this additional information might be provided when the PDS is registered is it proposed that the additional information itself is to be subject to registration? (The implication of 'registration' is that content is subject to scrutiny and approval by the regulator, as is currently the case for a prospectus.)
- D.11. Question 12 – again, our comments relate only to CIS. We see that the preferred option (option A) has merit and accept the logic of including such a self assessment of 'risk'. However, we believe that the basis of assessment and presentation of the assessment need to be approached with caution.
- D.11.1. Risk is one of the most crucial aspects of any disclosure regime but experience shows us that understanding of the meaning of the term 'risk' varies widely. It is important that this problem is recognised in framing regulations.
- D.11.2. Consistency of the manner in which providers are required to assess risk is clearly going to be vital.
- D.11.3. There is a wide divergence in the level of detail of risks shown in current Investment Statements. Some express risks at a high level, for example that it is possible to lose money in certain circumstances. Others will go into considerable detail to outline the types of risk that a security may be exposed to, with explanations of, for example, currency risk, interest rate risk, specific company risks etc, etc.
- D.11.3.1. We believe that if Part A of the PDS is to achieve its objectives it should not be 'cluttered' with any such detailed explanations. It is preferable for investors to understand what is meant by risk, and the security's level of risk, rather than having detailed information on where the risks may come from.
- D.11.3.2. We also suggest that it is not particularly useful for Part B of all relevant PDSs to contain detailed explanations of the many sources of risk. Rather, it would be preferable for Part B to, at most, have a note of the principal sources of risk and for readers to be referred to a common glossary if more details are required. The glossary would be maintained on the Securities register site or, perhaps, by the Retirement Commission (or the like).
- D.12. Question 14 – we agree that the key information summary is a useful part of the PDS.
- D.13. Question 15 – in principle we agree with the proposed content of the key information summary in respect of a CIS. Clearly considerable thought will need to be given to the actual content as these proposals progress and we would welcome the opportunity to contribute to this debate.
- D.14. Question 16 – we agree, in principle, with the proposed approach to the content of the PDS with the reservations expressed above at D.9.
- D.15. Question 20 – we believe that educational material should be allowed in Part B of the PDS at the option of the provider and where the provider feels it would be valuable. Educational material, in our view, should not be compulsory. Encouragement should be given to providers pointing to financial education resources as suggested by the Taskforce. The glossary of terms referred to in D.8.1 and D11.3.2. above could form part of the educational material database.

- D.16. We note that the section relating to ongoing disclosure for CISs at paragraph 4.2.1.5 of the Paper omits any reference to superannuation schemes, including KiwiSaver schemes. The Superannuation Schemes Act 1989 and KiwiSaver Act 2006 do, of course, both contain requirements for reporting to members on a regular basis.
- D.17. Question 26 – we believe that some additional ongoing disclosure requirements in respect of CISs may be useful.
- D.17.1. To make the information meaningful the content and methods of calculation and presentation would need, in our view, to be prescribed.
- D.17.2. Content and prescription must be considered carefully as, in some circumstances, standardised presentation of generic information could misinform investors.
- D.17.2.1. For example, levels of fees within a product may differ between individual investors depending on when they invested, the amount invested or the total value of the relationship with the providers. While the basis for determining fees for the individual will have been disclosed at the point of investing, it is likely that only the fees actually deducted will be disclosed on an ongoing basis – arguably, this is precisely the information that the investor wishes to know.
- D.17.2.2. Expenses charged to the scheme as a whole can also lead to confusion as they may or may not be considered as fees by an investor. They will commonly not have been identified on a member statement as such as they may have been taken into account when calculating unit prices or otherwise setting investment returns.
- D.18. Question 28 – the frequency for publishing information may, ideally, be allowed to vary between different CISs, some requiring more frequent information than others. On balance quarterly is not unreasonable but investors would need to be aware that the more frequent the publication of information the more expensive that information becomes.
- D.18.1. There may be value in specifying that certain information is published and sent to investors on, say, an annual basis but that providers must update other information on web sites, say, quarterly? This would mean that some investors, those without access to the internet, would not have the same access to information as those that do. However, a regime like this could be seen as a cost efficient compromise that would make information available to the majority.
- D.19. Question 29 – in principle we agree that regular reporting on the topics mentioned would be appropriate. As above (see D.17.2.) the shortcomings of generic reporting of the impact of fees and of fund returns should be considered.
- D.19.1. Again, considerable thought needs to be given to the information provided, the basis of any calculations included and the method of presentation. It would be important for investors to recognise why they are receiving the information and what, if anything, they should or are able to do with it.
- D.19.2. For example, fund returns, in particular, should be treated with caution. What period(s) is it proposed that returns be shown over? Should comparisons against indexes or benchmark returns be included? Should investors be warned against taking too much notice of short term returns, and why?
- D.19.3. Not all products that would be categorised as a CIS immediately reflect the latest performance of the underlying fund assets in returns to members. Certain securities operate on the basis of allocating a fund earning rate to investors' accounts, commonly annually, based on fund earnings over the year as a whole. These products are not generally unitised at the individual member level. Some investors are more comfortable with an investment of this nature because it avoids daily fluctuations in the value of their investments.
- D.19.4. Certain types of CIS do not provide a ready mechanism for an investor to take action if, say, the last quarter's earnings disappoint. For example, a workplace

superannuation scheme may not give an employee member the option of transferring to another investment manager while retaining the benefits of the employer's contributions to the scheme.

- D.20. Question 30 – we agree with the problems identified with the “all material matters” requirements. Different people will always consider the question of materiality differently and there is a lack of clarity in the existing regime as to what material may mean. We also note that materiality tends to differ over time – what may generally not be considered material today may well be with the benefit of hindsight at some point in the future. Perhaps this is another instance where prescription would be a useful remedy.
- D.21. Question 31 – we believe that the impacts and costs are similarly identified as under problems.
- D.22. Question 32 – we believe that the “all material matters” requirement should be retained but that significantly more guidance as to what might be considered to be material should be readily available. It is more appropriate to include this on the Register rather than in a PDS.
- D.23. Question 38 – we believe that employer's who establish a workplace superannuation scheme for their employees through a superannuation master trust arrangement should not be regarded as a promoter for Securities Law purposes.
- D.23.1. As stated earlier, we have previously argued that such an employer should not be required to register as a financial services provider under the Financial Services Providers Act 2008 and we were pleased that our submissions in respect of that legislation were adopted.
- D.23.2. The Securities Act defines a promoter as “a person who is instrumental in the formulation of a plan or programme pursuant to which the securities are offered to the public.”
- D.23.3. A superannuation master trust arrangement will invariably be established by a provider who will be the manager of the product and under current law will often also be the trustee. These are the people who are “instrumental in the formulation of a plan or programme”. The scheme will offer participating employers a menu of options which they can select from to apply to the employee members of that employer. Options will commonly include a choice of investment portfolios, contribution levels, vesting scales and whether or not to provide associated insurance benefits.
- D.23.4. In reality, an employer will select from the options and that will be the extent of their involvement, other than to deduct contributions through their payroll and forward these to the provider.
- D.23.5. We are aware of employers who had intended to provide superannuation benefits to employees, over and above any KiwiSaver obligations, deciding against doing so as they were not prepared to take on the risks and potential costs of being classified as a “promoter”. They considered that they would not be able to influence the operation of the scheme and that the provider is expected to have the necessary competence to undertake the compliance requirements inherent in the promoter role.
- D.23.6. We see no benefit in such an employer being regarded as a promoter and submit that they be unambiguously excluded in the revised Securities legislation.

E. Chapter 4 – Collective Investment Schemes

- E.1. As a general comment, we do find the tone of the introductory sections in this chapter surprisingly negative. Of course it is recognised that this may not have been intended.
- E.1.1. The implication is that providers universally seek to take advantage of any potential weakness in the current legislation so as to profit at the expense of investors. In practice Workplace Savings NZ believes that the vast majority of providers, certainly those involved in providing workplace superannuation schemes, genuinely attempt to provide a valuable service to the public, working

- with regulations that are, at best, lacking in clarity and insufficiently focused on providing information to the investors it was designed to assist.
- E.1.2. Paragraph 13 emphasises that for the market to be competitive, the barriers to entry must be low (amongst others). We believe that this means that the interests of providers, which are not necessarily financial, particularly for an employer provider, should also be included amongst the principles and objectives for regulation covered by paragraph 12. Regulations should be made with regard to this principle.
 - E.1.3. We note that Investment related insurance contracts have not been included in the overview of current legal forms of CIS in Table 1.
- E.2. Question 1 – we agree that the issues with the current regulation of CISs have been identified, although we do not agree that all issues necessarily apply to all types of CIS. We also have reservations about the need to license managers and do not find the arguments included in the paper for doing so compelling.
- E.2.1. Paragraph 26 lists inconsistent governance regulation across legal forms as an issue. We believe that the current governance legislation recognises that different types of CIS may operate most effectively in different ways. It is accepted that it may be more convenient from the regulators perspective to have a common governance regime for all products but this would not necessarily be of any value to investors or in their best interests.
 - E.2.2. The same list includes unclear duties and supervision of fund managers.
 - E.2.2.1. This has certainly been an issue for certain CISs that have operated on what could be called the “split responsibilities” model (e.g. Unit trusts). However, this has not been an issue for superannuation schemes where the trustee has retained full responsibility for all activities of the scheme and supervision has been performed by the Government Actuary.
 - E.2.2.2. We do not generally believe that altering the governance regime for superannuation schemes to an ‘improved’ split responsibilities model as proposed can satisfy the principle of putting investors’ interests first. However, we accept that in respect of purely retail superannuation and KiwiSaver schemes the government have decided that this change will occur. We strongly believe that it is neither necessary nor desirable to make the proposed change in respect of non-retail employer sponsored schemes or non-retail KiwiSaver schemes.
- E.3. Question 2 – we have reservations about the need to license managers as indicated above. The other issues can be addressed by legislation but care will be needed in determining how prescriptive the legislation is. We comment further on this below.
- E.4. Question 4 – in general we believe that the “total responsibilities” model used for superannuation schemes is the most appropriate model to align manager and investor interests, with supervision by the regulator. We emphasise that we speak primarily in respect of workplace superannuation schemes. Our belief is based on:
- E.4.1. The trustee having full responsibility for all activities of the scheme has operated for many years and, certainly since the introduction of the 1976 version of the Superannuation Schemes Act, the Government Actuary has acted in a supervisory capacity. To the best of our knowledge, no issues have arisen as a result of this governance regime.
 - E.4.2. There is no lack of clarity around the responsibilities of the parties. While administration of the scheme is commonly provided by an administration manager, the trustee retains responsibility and accountability to the members.
 - E.4.3. Members understand the regime and seem comfortable with it. There is no question of managers or trustees passing the buck to the other party.
 - E.4.4. The regime is efficient when compared to the split responsibilities model where a number of activities tend to be carried out by both manager and trustee.
 - E.4.5. Under the split responsibilities model, the trustee will inevitably charge fees for their services which will be in addition to those of the manager. It is unlikely that the manager’s fees can be correspondingly reduced as overall expenses for

- the manager will be similar. There is no evidence, based on experience, to suggest that investors have received any value for these additional costs.
- E.4.6. A change for existing schemes would be expensive in establishing a different regime, producing new trust deeds and explaining changes to members. Costs involved could be significant and would generally be met by the current membership, with no apparent advantage to the members.
- E.4.7. It is the only model that allows for the participation in the operation of the scheme by both of the major contributing parties of a workplace superannuation/KiwiSaver scheme – employers and the employees. A representative of the employer will commonly become a trustee(s) of the scheme and many schemes provide for a trustee(s) to be elected from within the scheme’s membership.
- E.4.7.1. This is seen as an important factor for participation in a scheme by employers and employees alike.
- E.4.7.2. Many employers (including some of NZ’s largest employers) would not offer or continue a scheme if they felt that they could not participate in its operation. The scheme is often seen as part of the employer’s remuneration policy and some degree of involvement and control of this policy is seen as being very important.
- E.5. Question 6 – in principle we agree that a CIS should be registered before offering securities. It is difficult to see where the differences are between this registration and that proposed under chapter 3, as mentioned in paragraph 57.
- E.6. Question 21 – we see no evidence to support the need to insist on external administration, particularly in relation to workplace superannuation schemes, and we can see no advantage in doing so. We agree with the sentiment in paragraph 98 that external administration is likely to incur high costs for little or no benefits.
- E.7. Question 24 – we are not aware of any evidence suggesting that the investors experience would be enhanced by requiring custodians to be regulated in NZ.
- E.8. Question 25/26 – we believe that it is appropriate for trustees/managers to have policies in place to deal with the issues raised in section 4.6.1 of the Paper regarding returns and pricing.
- E.8.1. However, we believe that any detail relating to these policies should be included in the disclosure requirements rather than the constitutional documents (trust deed). Reference to any such policies could be included in the trust deed but would generally need to indicate that policies are reviewed by the trustee/manager to ensure that they are still appropriate. The trustee still has an overriding duty to act in the interests of members.
- E.8.2. It needs to be taken into account that unit pricing is not an exact science. Pricing of units at any time will involve the use of a number of assumptions – the trustee’s role is to ensure that assumptions used are reasonable in the circumstances and are equitable between investors.
- E.8.3. Opinions will differ on how unit prices are to be applied.
- E.8.3.1. By way of example, should units be sold to investors at a ‘purchase’ price and sold by the investor at a ‘release’ price – a device used to load prices with purchase or sale costs as estimated by the manager? Some units are bought/sold on this basis.
- E.8.3.2. On the other hand many schemes have a single price that is used for both buying and selling, with transaction costs debited to the fund as a whole. This may be more equitable if sales and purchases largely cancel each other out as actual transaction costs to the scheme may be minimal.
- E.8.3.3. Neither basis is incorrect yet neither will be accurate in the strict sense. It is important that the basis used is disclosed but that there is sufficient flexibility for the trustee to ensure that differing criteria are applied to ensure equity is broadly maintained between investors.

- E.8.4. It also needs to be taken into account that not all schemes are unitised, especially at the individual investor level. Investment income, usually net of investment related fees and taxation, particularly in a non-PIE fund, may be allocated periodically to member accounts.
- E.8.5. We believe that the process dealing with unit pricing errors should be dealt with in a similar manner, with details in disclosure documents.
- E.8.6. We agree with the Ministry's conclusion that the flexibility to determine the timing of valuations should be left with providers. Again the policy on valuations timing and process should be subject to disclosure.
- E.9. Question 27 – while mention of the topics outlined in the proposal should, and usually is, made in trust deeds, we believe that the detail should be included in disclosure documents. A useful example is the practice adopted by many managers and supervisors (trustees) whereby they create a Statement of Investment Policies, Standards & Procedures which can also be used for in-depth disclosure, say for institutional investors.
- E.10. Question 34 – we would agree that there is value in reviewing the various legal forms used by CIS. It may be found that there is no justification for all forms currently used. However, we do not necessarily agree that there will be value in applying any limits.
- E.11. Question 37 – as will be evident from comments made above, we do not believe that there is any evidence to support the proposed changes in respect of superannuation schemes. There are no apparent benefits but there would be considerable costs.
- E.12. Question 38 – Superannuation master trusts have operated satisfactorily under the existing governance regime for many years and there do not appear to be any advantages to investors in making changes. While we do not believe that a change would result in widespread closure of existing master trust schemes or would act as a major disincentive to new schemes being established there would be costs associated with a change that do not appear to have any possibility of adding value. We do not believe that operating a regime that applies only to superannuation master trusts, as distinct from one that applies to all superannuation schemes, is an attractive option.
- E.13. Question 39 – Workplace Savings NZ strongly suggests that the current regime for all workplace superannuation and KiwiSaver schemes is continued as it is. This would include defined benefit schemes, almost all of which are employer stand-alone schemes and many of which are hybrids (with both defined contribution & defined benefit sections comprised within a single trust structure) will remain governed by the existing legislative framework.
 - E.13.1. It is recognised that minor improvements may be justified but the structure of the existing regime has worked well and it is difficult to see any advantages to investors in forcing a change as proposed.
 - E.13.2. Workplace Savings NZ does not support the suggested grandfathering of existing schemes (closed to new members). While this avoids the immediate costs associated with changing an existing scheme, it is unlikely to be attractive to employers.
 - E.13.2.1. The closed nature of the existing scheme would inevitably result in the existing scheme becoming less viable to operate over time and it would likely be terminated.
 - E.13.2.2. If superannuation scheme membership has formed part of the remuneration strategy of the employer, the employer would be forced to consider whether this strategy should continue. To continue to offer scheme membership to new employees would mean that a new scheme would also need to be established incurring significant additional costs. The alternative would be to cease to offer a scheme to any employees, with the existing scheme wound-up.
 - E.13.2.3. The employer, if wishing to offer scheme membership to employees not already members, would need to establish a new scheme for these employees. It is difficult to envisage that the costs involved in operating two schemes side by side could be an efficient outcome. The doubling

- up of administration and reporting requirements would inevitably have significant cost implications.
- E.13.2.4. Having two schemes in operation, one using the existing governance regime and one a different regime would be confusing to employers and to employees who are members. It could result in differing rules being applied to similar situations as those responsible for making discretionary decisions are different.
- E.13.2.5. We believe that the suggested grandfathering would lead to a reduction in the number of existing employers offering superannuation benefits to their employees. This would be unfortunate and, we submit, is contrary to recent government efforts to encourage all New Zealanders to save more for their retirement. KiwiSaver offers a good base for retirement savings but, in itself, is unlikely to lead to adequate provision for many. We believe that it is counter-productive to make it even more difficult for employers to assist their employees with their retirement savings planning.
- E.13.2.6. Whilst our preferred approach is for workplace superannuation schemes and non-retail KiwiSaver schemes to be allowed to continue on a form of 'single responsible entity' model, if that approach is not adopted we believe the only viable alternative is to allow grandfathering relief for all existing schemes of this nature, to apply in relation to both new and existing members. To do otherwise would be inconsistent with the Government's policy objective of increasing the nation's savings. We urge policy makers to consider alternative measures to achieve the objectives of the current reforms to avoid this inconsistency.

F. Chapter 5 – Other matters

- F.1. Question 2 – We fully support the concept of treating customers fairly and agree that a code of practice for financial market participants might well be a useful aid to restoring and maintaining investor confidence.
- F.2. Question 3 – in principle, a code of practice developed by the industry with the Authority and incorporated into the various dispute resolution schemes appears to have merit.
- F.3. Question 8 – There is currently no access to registry details of members of superannuation schemes and we see no advantage to investors in allowing access. We are not aware that this has been an issue for investors in these schemes and cannot see any benefit to making any change.
- F.4. Question 14/15 – We believe that it would be beneficial for providers to be able to seek guidance from the Authority as to their interpretation of any aspect of Securities Law. We are, however, conscious of the potential costs of a binding rulings facility and do not believe that providers, in most circumstances, are seeking that degree of certainty. The ability, and willingness, of the Authority to give its opinion may, in most cases be sufficient – even if this is accompanied by a warning that this is only an opinion.
- F.5. Question 25 – Workplace Savings NZ is supportive of the proposal that the Authority has a function of promoting financial literacy in NZ. We believe that this is a vital function that has only recently been taken seriously at government level. The work of the Retirement Commission in this area has done much to assist in raising awareness of the need for more, easily accessible, information and has been of an excellent quality. However, investment is a much broader subject than envisaged by the concept of the Retirement Commission and we can see that the Authority would be well positioned to coordinate a much wider financial literacy programme.

Ends.