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Review of Financial Products and Providers
Ministry of Economic Development
PO Box 1473
Wellington
Attention: Financial Sector Team, Regulatory and Competition Policy Branch

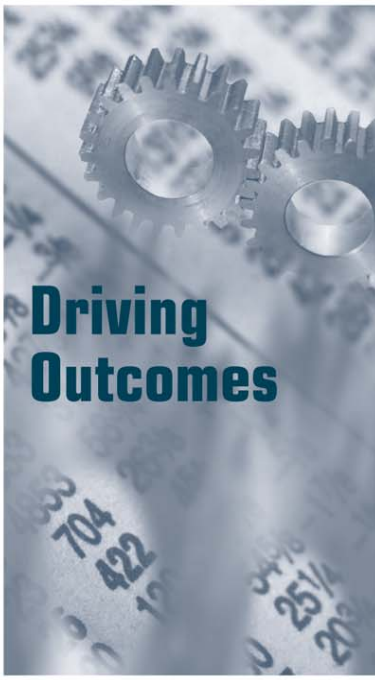
Email: fppreview@med.govt.nz

REVIEW OF FINANCIAL PRODUCTS AND PROVIDERS: SECURITIES OFFERINGS

Attached please find the Listed Companies Association response to your discussion document.

Regards

Linda Cox
Chair
Listed Companies Association



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Listed Companies Association
Submission
Application of the Securities Act 1978

1 *What protections, in addition to the prohibition on misleading or deceptive conduct in relation to any dealings in securities, should apply to private offers of securities?*

No further protections are considered appropriate. In addition to those existing under current law (eg the Fair Trading Act and general principles of Contract & Tort Law) or proposed under the Securities Market Act.

2 *Should the distinction between offers made under sections 3 and 5 of the Securities Act be retained?*

It would be preferable if Sections 3 and 5 can be rationalised into a single section.

3 *Do you agree that the exemption for relatives and close business associates can be improved by focusing on the principle of the exemption, i.e., that by virtue of their relationship with the issuer, the investor has the knowledge of or access to the information that would normally be disclosed by the issuer under the Securities Act?*

Not necessarily. The exemption in Section 3(2)(a) facilitates small offers within a tight circle of people. Adding an additional qualification will introduce further uncertainty and a potential impediment to capital raising.

4 *Should we list examples of the types of relationship that might satisfy this exemption? If yes, where should this list appear? In legislation or in guidance provided by the Securities Commission? What would it cover and why?*

A list is undesirable as it will tend to constrain the range of relationships which are considered to be within the section.

5 *Do you agree to the use of a list of criteria to define a sophisticated investor? If no, why?*

Yes. In this case the use of the list creates certainty. A number of financial intermediaries already have lists of sophisticated investors to whom non public issues are offered and certainty facilitates such offers.

6 *If yes, should a sophisticated investor be defined by reference to the following criteria:*

- *transactions of a significant size on securities markets at a specified frequency over a specified period;*
- *the size of the investor's securities portfolio;*
- *works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment; and*
- *experience in the industry to which a particular investment relates.*

All of the above, but subject to some refinement of the test in relation to each criteria.

7 *If you agree with the above criteria, how many of these criteria should an investor satisfy in order to be considered a sophisticated investor? Why?*

Two.

8 *Should sophisticated investors be able to self-certify as sophisticated investors, or should sophisticated investors be certified by a third party? Why?*

Yes. The requirement for certification by a third party is unnecessarily burdensome and that third party should not be expected to assume a responsibility to the person being certified or arguable to issuers and intermediaries.

9 *How often should investors have to certify as sophisticated investors? For example, prior to each offer? Every six months? Every 12 months?*

In practice, self-certification is likely to be included in each application form for securities and this is a convenient place for this to occur.

10 *What evidence should the investor have to provide the Registrar of Companies to show that it meets the criteria for sophisticated investors?*

None. There should not need to be a requirement to file with the Registrar of Companies.

11 *Is an exemption for minimum subscription price needed if we have a sophisticated investor exemption?*

A minimum subscription price remains a useful "safe harbour" and should be retained in addition to the sophisticated investor exemption.

12 *If yes, what should the minimum subscription price be? And, how would this meet the objectives of the Securities Act?*

$500,000 remains a minimum, but there should be provision for further subscriptions of smaller amounts on subsequent occasions.

13 *Should the exemption for "any other person" be removed?*

The "any other person" exemption should remain as there may be circumstances not covered by the other exemptions.

14 *If no, which type of investor will it catch that will not already be covered under the proposed definitions for close associates; professional and sophisticated investors; and offers with a minimum subscription?*

The "any other person" exemption is there to provide some flexibility in appropriate circumstances. In practice, it is not construed as a broad exemption in the light of the various court decisions which have considered it.

15 *Should the exemption for wealthy investors be retained? If no, why? If yes, how does this meet the objectives of the Securities Act?*

No. As pointed out it is not an exemption which fits particularly well with the principles of the Act to the extent that they are aimed at protection for those who require it and in practice it is not technically of much utility.

16 *Do you agree that if there is a security that is offered in conjunction with an offer of land, which is not the interest in land itself, it should be excluded from this exemption and subject to Part II of the Securities Act?*

No.

17 *Is there anything else that should be changed to clarify the scope of this exemption? Do the words in paragraph 5(1)(b)(i) add anything to the provision, or should the exemption simply apply to any estate or interest in land that does not form part of a contributory scheme?*

No.

18 *Should we introduce a small offers exemption?*

Yes.

19 *Are there any policy considerations that would justify such an exemption?*

The primary consideration is one of cost and the facilitation of productive resource allocation and economic growth.

20 *Although it is inconsistent with the policy of the Securities Act, is there sufficient harm in allowing a small offer exemption to justify not doing so?*

Not applicable.

21 *Could sufficient protection be provided to investors by imposing restrictions on:*

- *who the offer can be made to?*
- *the advertising and promotion of the offer?*

Yes, restrictions of this kind are likely to be appropriate.

22 *Should issuers of investment grade rated debt have reduced disclosure obligations, by virtue of having an investment grade rating? Why?*

The proposal merits further investigation if it can lead to a reduction in compliance costs for the best quality issuers. Practical issues will arise as to which organisations will be acceptable rating agencies, what level of rating will qualify for reduced disclosure obligations, and what disclosure obligations will be reduced.

23 *Should local authorities have an exemption from the disclosure regime in the Securities Act? Why?*

Yes. The Local Authority debt market is one which retail investors would benefit from greater access and local authorities can generally be considered low risk credits on account of their ultimate ability to rate. Consideration might be given to conferring the exemption by way of an exemption so as to facilitate the imposition of some minimum standards.

24 *If no, should local authorities have an exemption from the requirement for all councillors to sign the offer document, whilst retaining liability on all councillors for the content of the offer document? Why?*

There should be mechanisms which facilitate offers notwithstanding that some councillors may have voted for political reasons against the proposed issue. Dissenting councillors may be required to explain why they have not signed.

25 *Should issuers who are subject to the continuous disclosure regime and who want to issue new securities of a class already listed, be able to use a transaction-specific offer document? If no, why?*

Yes. This is a positive proposal.

26 *Should issuers who are subject to the continuous disclosure regime and have either listed equity or listed debt securities, be able to use a transaction-specific offer document if it wants to issue new debt securities? If no, why?*

Yes.

27 *Should the transaction-specific offer document contain the following:*

- *any information material to the securities being offered that had not previously been disclosed, including as a result of any of the exceptions to the continuous disclosure regime; and*
- *reference to the information that has already been disclosed by the issuer under the continuous disclosure provisions since the latest registered statement of financial position, and where that information can be obtained;*
- *a statement by the directors of the issuer as to whether, after due enquiry by them in relation to the period since the date of the latest registered statement of financial position, there have, in their opinion, arisen any circumstances that materially adversely affect: the trading or profitability of the issuing/borrowing group; the value of its assets; or the ability of the issuing/borrowing group to pay its liabilities due within the next 12 months?*

Yes to all of the above.

28 *If no, what disclosures should the listed issuer make in the transaction-specific offer document?*

Not applicable.

29 *For what time period should a listed issuer have been subject to the continuous disclosure regime before it can use the transaction-specific offer document?*

One year.

30 *Should the transaction-specific offer document be registered with the Registrar of Companies?*

Yes.

31 *Should the listed issuer have to provide a copy of the registered transaction-specific offer document to any person who requests it?*

Yes.

32 *Should the listed issuer be able to raise further capital with the transaction-specific offer document by making an offer announcement to the market and informing investors that the transaction-specific offer document is available on the NZX website and the issuer's website (if it has one)?*

Yes.

33 *Should the Securities Commission have the power to deny a listed issuer access to the transaction-specific prospectus if it has breached any provisions of the Securities Act or the continuous disclosure regime?*

Yes.

34 *Should the exemption for all contributory mortgages be removed?*

Not answered.

35 *Alternatively, should only the exemption for contributory mortgages used for development purposes be removed?*

Not answered.

36 *If the exemption for all contributory mortgages should be removed, should solicitors who offer contributory mortgages continue to have an exemption from the disclosure regime?*

Not answered.

37 *Should section 6(7) of the Securities Act extend to the content of the disclosure documents?*

Yes.

38 *Is the current definition for equity appropriate? If no, how could it be improved?*

Yes, but clarification as to the position of options/warrants to acquire equity securities may be appropriate.

39 *Is the current definition for debt appropriate? If no, how could it be improved? Is there a need for a clearer generic definition, in addition to the indicative list of specific debt security instruments?*

Yes, the current definition is appropriate, but similar clarification may be appropriate.

40 *Where should the line fall between a security and a derivative? For example, should a derivative be defined as a financial product that provides either second level or synthetic exposure to the property, rights, capital, or earnings underlying a security, or to any commodity?*

The general thrust of this proposed definition appears to be appropriate but consideration might also be given to including the concept of "exposure to the risks" of movements in the pricing of a security or a commodity and in the case of money, interest rates.

Consideration also needs to be given to the question of options/warrants if they are not dealt with in other definitions.

41 *Are there any problems with definition of "promoter"?*

There is some anecdotal evidence of issues arsing with offshore parent companies of locally incorporated financial institutions, and further consultation may be desirable.

42 *If yes, how might these problems be addressed?*

Not answered.

43 *Are promoters subject to the appropriate liabilities? If no, what liabilities should promoters be subject to?*

Yes

44 *Are there any problems with the current definitions of "issuer" in respect of each type of security?*

Generally no, but yes in the case of unit trusts.

45 *If yes, how could these problems be addressed?*

In the case of unit trusts, the relevant disclosure should be that in respect of the trust itself, rather than either of the manager or the trustee. While this requires the creation of a legal fiction, it will result in more rational disclosure. Separate disclosure might be appropriate in respect of each of the manager and trustee for certain matters such as their directors, place of incorporation and experience with respect to the respective roles they undertake.

Disclosure – Offer document

46 *Should the issuer be allowed to repeat information disclosed in Part A of the proposed offer document in Part B?*

Yes. Whether or not information is repeated should be a matter for the relevant issuer to decide.

47 *Should issuers be allowed to include additional voluntary information in Part B of the proposed offer document?*

Yes. Voluntary information should be permitted. The voluntary information should be a separate section from the statutory information.

48 *If yes, how should that voluntary information be incorporated? For example, should the voluntary information be included in the appropriate section of Part B or, at the end of the document? Should that voluntary information be highlighted as voluntary information or otherwise differentiated from the statutorily required information?*

The voluntary information should be a separate section from the statutory information.

49 *Should there be any restrictions on how the issuer may present the voluntary information? For example, should the issuer be restricted from giving the voluntary information greater prominence (e.g. printed in colour or larger font) than the statutorily required information?*

Subject to the above, no.

50 *What requirements, if any, should be placed on the content of the offer documents in terms of readability, conciseness and clear, plain language?*

It is impossible to legislate for such matters.

51 *What are the benefits and risks of having generic educational information extracted from the offer documents? Would this aid or detract from investor understanding of the information in offer documents?*

Financial education should be seen as a distinct and quite separate process. Many offerings will be of such a specific nature that to have generic financial information accompanying the offer document is unlikely to be of significant assistance to investors.

52 *Should the generic educational material be included in the issuer's offer documents? If so, in Part A or Part B or in a separate document (brochure/pamphlet) produced by the Government?*

Financial education is far more effectively addressed in schools and through public awareness programmes run by organisations such as the Retirement Commission and Securities Commission.

53 *If generic educational information is retained in issuers' offer documents should there be stipulated requirements around the wording and how this information is presented (for example, should it be highlighted and identified as not being product specific and being from an independent source)? If so, should the Government provide the required wording for all issuers to use?*

See answer 51 & 52.

54 *Is there sufficient standard and common information about features and risks associated with various products to make this information useful?*

See answer 51 & 52.

55 *Who should bear the costs of producing educational material?*

See answer 51 & 52.

56 *Is it important that educational material is independently sourced?*

See answer 51 & 52.

57 *Should the trust deed, financial statements and material contracts be required to be made available on the issuer's website? If not, why not?*

This is probably not an unreasonable requirement but does presuppose that all issuers have websites.

58 *What, if any, additional information should be required to be held on the issuer's website?*

Useful additional information could include the company's latest annual report and the company's latest disclosures pursuant to the continuous disclosure regime (if applicable).

59 *Is it sufficient that issuers make their financial statements (full/summary) available on their websites and the Companies Office website, and on request by investors? Or, should issuers be required to provide summary/full financial statements to all investors?*

The proposal that financial statements be made available vis-à-vis the company's website rather than in the offer document is useful. It is agreed that nevertheless financial statements should be available on request.

60 *Is there any other information that is currently required to be in the offer documents, (for debt and equity or CIS and superannuation) that might be better suited to being provided on request?*

No.

61 *Do you think relevant environmental information needs to be provided by issuers to provide appropriate disclosure of risk? If so, what type of information is important?*

There should be no general requirement of disclosure in respect of environmental matters except to the extent that such matters would otherwise be caught by the current risk disclosure requirements. Investors who are concerned about environmental impacts of the activities of the issuer are generally in a position to make their own assessment of the likely impacts without particular disclosure being required in offer documents.

62 *Do you think that current disclosure of material environmental information by issuers is adequate? If not, why not?*

Not answered.

63 *How, if at all, do you currently assess which environmental factors could affect financial returns on an investment?*

Not answered.

64 *What assistance, if any, do issuers require to ensure that disclosures of material environmental information are high quality, relevant and comparable?*

Not answered.

65 *Do you think the costs of environmental disclosure are significant, and if so, how significant would they be, and can they be justified?*

The costs associated with environmental disclosure are likely to be very significant and almost certainly require an environmental audit report to be undertaken in conjunction with each offer. There are few organisations available within New Zealand with sufficient skills to carry out appropriate environmental audits which are objective an unbiased by particular viewpoints.

66 *Do you think that current disclosure of material environmental information by issuers is adequate to allow informed consumer choice? If not, why not?*

Not answered.

67 *To enable informed consumer choice, do you think issuers should disclose whether or not they take environmental factors into account? If so, what information would be important to provide when an issuer did take environmental factors into account?*

No.

68 *How, if at all, do you currently assess which environmental information is of interest to investors?*

Not answered.

69 *What assistance, if any, do issuers require to ensure that disclosures of material environmental information are high quality, relevant and comparable?*

Same question as 65.

Disclosure – offer document for debt and equity

70 *Are these seven questions appropriate and sufficient to bring out the key features for equity and debt investors?*

Yes.

71 *Should any questions be removed or added? If so, what?*

No.

72 *Are the topics suggested under these questions appropriate and sufficient to bring out the key features for equity and debt investors?*

Yes.

73 *Are these key features capable of being summarised meaningfully in less than five pages?*

Yes.

74 *Do you agree with the approach of an overriding principle-based disclosure requirement supported by prescriptive disclosure requirements, which are tailored for different offers and issuers, for Part B of the offer document?*

Yes.

75 *If no, do you support a principle-based disclosure requirement only?*

Not Applicable.

76 *Are the general headings listed in the First Schedule to the Securities Regulations sufficient and appropriate for equity securities?*

Yes, but note that some refinement of the specific content is required.

77 *If no, what headings would you remove or add?*

Not applicable.

78 *Are the general headings listed in the Second Schedule to the Securities Regulations sufficient and appropriate for debt securities?*

Yes, but note that some refinement of the specific content is required.

79 *If no, what headings would you remove or add?*

Not applicable.

80 *Do you agree that Part B of the offer document should contain a separate section on "Risks"?*

If the risk question in part A has been adequately answered then a further risk section in part B would seem to be both repetition and carry the potential for the part A risk section to be truncated to the detriment of those investors who rely primarily on part A.

81 *Do you agree with the proposal to require issuers to split their disclosure on risks into three sections i.e. risks relating to: the security offered; the industry in which the issuer operates; and the issuer?*

Yes.

82 *Do you agree that this proposal will make it easier for the investor to understand what risks apply to the offer of securities?*

Possibly.

83 *Should it be mandatory for first-time issuers of equity to produce prospective financial information?*

No. There are many instances of equity being raised for high risk ventures where prospective financial information will almost certainly be incorrect and it is more likely than not to give rise to retrospective allegations of misleading statements.

84 *If no, on what basis should issuers have to produce prospective financial information?*

The question of whether or not prospective financial information is included should be a matter for the issuer to decide based on its perception as to whether the market will require such information in order for the offer to be successful.

85 *Should every issuer of equity securities be required to consider whether it should provide prospective financial information, based on whether such information is likely to be material to an investor's decision?*

There is no need for a particular provision as it is already largely incorporated into the proposed principle based disclosure requirement.

86 *Should Part B of the offer document include a summary of the principal terms of the trust deed?*

Yes

87 *If yes, should the regulation prescribe what terms of the trust deed must be summarised?*

Yes.

Disclosure – Offer document for CIS and superannuation

Questions 88-136 (inclusive) are not answered.

88 *Should all of the above information be included in Part A of the offer document? If not, what information should be excluded and why?*

Yes.

89 *Should Part A of the offer document be able to stand alone as an offer document and therefore, be able to be relied upon by the investor without reference to Part B?*

90 *If Part A of the offer document is the only information that an investor reads before investing – does it tell the investor all the critical information that he or she needs to know? Is there any other information that should be included in Part A of the offer document that is useful or more relevant to investors?*

91 *What level of detail of the investment risk should be addressed in Part A of the offer document? For example, should the investment options and risk be to a level of detail that includes the asset class weightings? Or should that be addressed in Part B of the offer document?*

92 *Should Part A of the offer document be limited to a specified number of pages? For example, can the key features, benefits, risk and fees of various products be meaningfully and usefully summarised in fewer than five pages?*

93 *How should fees be disclosed in a standard format in Part A of the offer document? What is more appropriate for the investor – an MER, a worked dollar example, or both?*

94 *Should fees be required to be stated either net or gross for consistency and ease of comparison?*

95 *How could a generic worked example of fees be applied consistently and meaningfully across the various CIS products?*

96 *Can the Australian standard worked fee example be applied to products in New Zealand? If not, why not? If so, how could it be adapted to better suit New Zealand products?*

97 *Should past performance be included or excluded from Part A of the offer document? Why?*

98 *With the removal of the requirement to produce a prospectus is there any additional information from the current prospectus requirements that should be disclosed in Part A of the offer document?*

99 *Should Part A of the offer document be prescriptive rather than principle-based disclosure requirements?*

100 *Should the information that is generic to all CIS or particular CIS products (e.g. superannuation schemes) be extracted out of the offer document and be reproduced in a separate generic educational document?*

101 *What information should be required to be in Part B of the offer document and what information should be on request only?*

102 *With the removal of the prospectus is there any information that is currently contained in the prospectus that should be included in Part B of the offer document?*

103 *What level of detail of the investment risk should be addressed in Part B of the offer document? For example, should the investment options and risk be to a level of detail that includes the asset class weightings? Or is it sufficient to require that level of detail to be held on the issuer's website?*

104 *Should performance over various time periods be required to be provided or available? Is on the issuer's website sufficient, or should it be included in Part B of the offer document? Why? If included, should it be required to be disclosed or be disclosed on a voluntary basis? What prescription, if any, should there be around how performance figures are disclosed, and should they be presented in a consistent format? What qualifiers and disclaimers should be included?*

105 *Should there be a provision for "any other material matters" or information to be disclosed in Part B of the offer document?*

106 *How should fees be prescribed to be disclosed in order to ensure that the investor gets a complete picture of all fees and charges they could directly or indirectly incur?*

107 *Can the Australian standard fee template be applied to products in New Zealand?*

108 *Are there any specific issues that need to be addressed in relation to the proposed offer document disclosure for unit trusts?*

109 *Are there any specific issues that need to be addressed in relation to the proposed offer document disclosure for participatory securities?*

110 *How would the application of a standard format fee disclosure apply across all investment product types? What form of fee disclosure is most appropriate for and relevant to the investor?*

111 *What would Part A of the offer document disclosure requirements mean in relation to a master trust scheme? That is, where a product/scheme has a number of investment fund options on offer under the one product/scheme – should there be a Part A (of the offer document) for each underlying investment fund, or should all investment funds be included in the one product/scheme Part A of the offer document? What could be achieved within a short summary? What is considered to be the most useful disclosure for consumers and the easiest to understand?*

112 *Does the class exemption in clause 8(2) of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998, as renewed and amended in 2004, adequately address concerns about the confidentiality of employer participating agreements?*

113 *Should a Part A (of the offer document) be required for each employer participating scheme in a master trust – just as a supplement to the issuer-generic investment statement is required now? How would this be practically applied?*

114 *Is any of the required disclosure information not relevant for employer-sponsored stand-alone superannuation schemes?*

115 *Will some of the information proposed for the offer document be standard information about all superannuation schemes (and therefore better dealt with through the generic educational information produced by the regulator)? If so, which information?*

116 *Is it possible to achieve a useful summary of the key features and benefits of an employer-sponsored stand-alone scheme in fewer than five pages?*

117 *Are there any issues about superannuation schemes, as opposed to general CIS schemes, that would require longer disclosure?*

118 *Is there any particular additional information that should be required to be disclosed for employer-sponsored stand-alone schemes – would this differ for master trusts and stand-alone schemes?*

119 *What aspects of the suggested disclosure would be appropriate or inappropriate for defined benefit schemes? Is there any information that is useful for investors in other superannuation schemes that is not relevant for investors in defined benefit schemes?*

120 *What is the key information that needs to be disclosed for defined benefit schemes?*

121 *Is there any other information that would be useful for and important to investors in defined benefit schemes?*

122 *Should there be a requirement for issuers to summarise the trust deed? If so, what terms should be summarised? Alternatively, is it sufficient to rely on the offer document to, in effect, summarise the trust deed?*

123 *Are the issuer's material contracts considered to be commercially sensitive? If so, is it appropriate that they be required to be held with the Companies Office and publicly available on the Companies Office or issuer's websites? If not, why not? Or is it sufficient that there is only a requirement to summarise the contracts in the offer document?*

124 *Does the current provision to apply for an exemption from the Securities Commission work well in practice and adequately deal with the concerns over the commercial sensitivity of material contracts?*

125 *In light of the proposal to remove the requirement for an annual report, what additional information should be required to be usefully provided to prospective members before joining? Should this information be required to be disclosed or provided on request and on the issuer's website?*

126 *Is it reasonable to expect issuers to, on request by investors, provide a hard copy of any information that is held on their website (in particular to cater for those people who do not have internet access)?*

Disclosure – Ongoing disclosure

127 *Should the offer document for CIS have a prescribed and definitive life? For example, should it be updated annually? Or is it appropriate for the life of the offer document to be based on changes to material information? Is there a risk that the information becomes outdated? Should there be a prescribed timeframe for updating the offer document following any such material changes?*

128 *If the offer document for CIS does not have a definitive life, how would an investor know that the offer document given to them is the latest version? Should it be dated, and should the issuer be required to state when it will expire?*

129 *Would it be sufficient for the offer document for CIS to be signed off by the trustee and issuer annually as part of the requirements to report to the regulator – i.e., a confirmation statement provided to the regulator as part of the ongoing annual reporting requirements?*

130 *For CIS, should any material changes to either Part A or Part B require re-issue and re-registration of the offer document in its entirety, or can supplements adequately deal with any amendments?*

131 *Should there be a limited number of supplements that can be applied to any one offer document by an issuer – to avoid cluttering the offer document and making it unreadable and confusing for the investor?*

132 *Should only adverse material changes trigger the updating and re-issue of offer documents, or should any material change trigger a re-issue?*

133 Should material changes be advised to investors at the time they are made? Or within a defined time period?

134 How should investors be advised of material changes?

135 Should all trust deed amendments be advised to investors? Or, should the issuer only be required to advise investors of material changes?

136 If the issuer should only be required to advise investors of material changes, what should be defined as "material"? Who should determine what is considered to be "material" – the trustee or the regulator?

137 What are the benefits of a continuous disclosure regime?

The principal benefit of a continuous disclosure regime is the promotion of efficient pricing through a fully informed market.

138 Are these benefits manifested for all issuers?

Theoretically yes but there is a point at which the costs of disclosure outweigh the benefits.

139 Which issuers should be required to comply with a continuous disclosure regime?

The point at which the benefits outweigh costs of a continuous disclosure regime are probably correlated with levels of liquidity in the relevant issue of securities which in turn is probably correlated with the number of holders of securities. An arbitrary threshold is probably unavoidable. In the case of equity securities 200 holders may be appropriate (with look-through mechanisms for custodial arrangements) and perhaps 1000 for debt securities having regard to the typically lower levels of liquidity in debt securities.

140 What are the costs of applying a continuous disclosure regime to these issuers?

The costs are unclear and vary considerably between issuers.

141 How should these issuers make their continuous disclosures to the market?

In the case of non-listed issuers disclosure should be their web page.

142 What information would the regulator need to effectively monitor the issuer? And what should the regulator do with the information?

No further information gathering by the regulator should be undertaken in relation to debt and equity issuers. The Government Actuary has no role in monitoring such issuers.

143 *What information should be included in any statistical data return (at a common date) to the regulator? How should this differ from any information required to be reported to the regulator (at the issuer's year end)?*

See A142.

144 *How useful would statistical information that is currently produced by superannuation schemes be to the industry if it was applied across all debt and equity and CIS? Would additional or different data be more useful?*

See A142.

145 *How accessible is the above statistical data at dates other than the products'/issuers' respective year end?*

See A142.

146 *Should issuers of all CIS products be required to produce an annual report to the regulator? If so, what information should be included in the issuer's annual report to the regulator?*

Not answered.

147 *Alternatively, should the requirement to produce an annual report to the regulator only apply to existing employer-sponsored stand-alone superannuation schemes, which are exempted from the proposed trustee supervisory model?*

Not answered.

148 *Is there any other information that is currently provided for in the prospectus that would be useful and important to include in the annual report to the regulator?*

Not answered.

149 *Should there be a requirement to provide investors with an annual report? If so, why? And what information should be included?*

Not answered.

150 *Should it be a legal requirement for issuers to provide investors with an annual member statement of the value of their investment in a product? If so, what information should be required to be contained in the statement?*

Not answered.

151 *What information that is currently required to be reported annually to investors is useful and should continue to be a requirement?*

Not answered.

152 *What information, if any, should be extracted from the financial statements and given to investors?*

Not answered.

153 *What enhancements should be made to the information currently provided in the member/investor annual statements and what additional information should be required to be included?*

Not answered.

154 *What level of comfort could be provided in the annual statement to investors? For example, that the trustee and issuer have complied with all legal requirements in terms of their financial reporting and audit obligations?*

Not answered.

155 *Should the statement also include advice of any material changes that affect investors? If so, what are examples of material changes that should be advised to investors?*

Not answered.

156 *Should the statement also be required to include advice of any trust deed amendments or just material amendments?*

Not answered.

157 *In light of the absence of a requirement to register a prospectus, should the trustees or the issuer be required to produce a statement to confirm that the terms of the trust deed have been adhered to?*

Not answered.

158 *If there is a requirement to produce an annual report for investors, should it be allowed to be provided electronically (on request, or with the consent of the investor)?*

Not answered.

159 *Should there be a requirement to issue annual statements to members within a specified time period and, if so, what is a reasonable time period?*

Not answered.

160 *Are there any specific issues for any particular type of CIS that need to be addressed differently or explicitly?*

Not answered.

161 *What additional information, if anything, would be important for investors in superannuation schemes to have access to?*

Not answered.

162 *Is the current information which is required to be produced useful for members of a superannuation scheme? Are any changes required? Does it provide sufficient information for members of employer schemes participating in master trusts, employer stand-alone schemes, and defined benefit schemes, or should additional/different information be required for these schemes?*

Not answered.

163 *If there is a requirement to produce an annual report, should investors in master trust participating schemes receive a tailored annual report that provides information specific to their investment?*

Not answered.

164 *Should the financial statements of employer stand-alone superannuation schemes be required to be publicly available on the Companies Office website?*

Not answered.

165 *How useful is the statistical information that is currently produced by the Government Actuary to the industry? Would additional or different data be more useful?*

Not answered.

166 *What information would the regulator need to be able to effectively monitor the trustee and the scheme more generally (for employer schemes)? Would this differ from the current requirements in the Superannuation Schemes Act?*

Not answered.

167 *Is all of the above information currently required for the regulator in respect of superannuation schemes necessary and relevant? What information, if any, could be extracted?*

Not answered.

168 *Should the annual reporting requirements (to the regulator) for employer-based stand-alone superannuation schemes also apply to master trust superannuation schemes in respect of the underlying participating employer schemes?*

Not answered.

169 *What additional information should be reported to members in defined benefit schemes and what "comfort statements" could and should be included in the annual member statement?*

Not answered.

170 *Should there be a requirement for disclosure of an employer's capacity to discharge its obligations under the scheme to meet any actuarial deficit and to continue to fund members' benefits? If so, how could such a requirement be applied in practice?*

Not answered.

Disclosure – Registration of disclosure documents

171 *Should documents be able to be filed electronically?*

Yes.

Disclosure - Advertising

172 *Are the current Securities Act and Securities Regulations requirements for advertisements appropriate?*

Yes.

173 *If no, what issues need to be addressed and what improvements could be made?*

Not applicable.

174 *Is there a problem with persons other than the issuer or promoter advertising an issuer's product? If yes, do you agree that this problem should be addressed by giving only the issuer and promoter the ability to advertise a product?*

There will be a number of occasions where a person other than the issuer or a promoter will advertise an issuer's product. This is particularly the case for previously allotted debt and equity securities. Care should be taken in restricting advertising in the manner proposed. The restrictions should potentially be more targeted to address the Ministry's particular concerns.

175 *Are the current Securities Act requirements for pre-prospectus advertisements appropriate? For example, is the exemption for pre-prospectus advertisements wide enough?*

The restrictions to pre-prospectus advertisements should not catch issuers who are contemplating an issue which would not be caught by the disclosure requirements of the Act.

176 *If no, what issues need to be addressed and what improvements could be made?*

See A175.