

Securities Trustees and Statutory Supervisors Bill

Government Bill

Explanatory note

General policy statement

Background

The Securities Act 1978 requires issuers of debt securities to appoint a trustee, and issuers of participatory securities to appoint a statutory supervisor, if securities are offered to the public. The Unit Trusts Act 1960 similarly requires that a unit trustee be appointed in respect of a unit trust. The relationship between the issuer and the trustee, statutory supervisor, or unit trustee is governed by a deed that sets out the details of this relationship.

The fundamental role of the trustee, statutory supervisor, or unit trustee is to monitor the issuer's compliance with the terms of the trust deed and offer of securities. The appropriate actions for a trustee, statutory supervisor, or unit trustee to take when an issuer gets into difficulties will vary depending on the circumstances, but may include—

- calling a meeting of investors to explain the issuer's difficulties and seek approval for further steps:
- engaging an expert to scrutinise the issuer's books:
- applying to a court to place the issuer into liquidation.

In addition, statutory supervisors of retirement villages have a broadly similar role, their duties including having responsibility for monitoring the financial position of the retirement village.

There are currently 6 trustee corporations with an automatic right under the Securities Act 1978, the Unit Trusts Act 1960, and the Retirement Villages Act 2003 to act as trustees, statutory supervisors, or unit trustees. Entities other than the 6 trustee corporations wishing to act as trustees of issuers of debt securities or statutory supervisors of issuers of participatory securities must be approved by the Securities Commission. Other than the 6 trustee corporations, only companies or banks approved by the Minister of Commerce can act as unit trustee of a unit trust. In addition, other than the 6 trustee corporations, only persons approved by the Registrar of Retirement Villages may act as statutory supervisors of retirement villages.

In recent years a number of weaknesses have been identified in the role of trustees, statutory supervisors, and unit trustees in supervising issuers of debt or participatory securities, or unit trusts. In 2004, the International Monetary Fund and the World Bank assessed New Zealand through the Financial Sector Assessment Programme. This found that New Zealand placed heavy reliance on private supervisors such as corporate trustees and that there was insufficient accountability for such supervisors.

These concerns were repeated in wide consultation undertaken by the Ministry of Economic Development in the Review of Financial Products and Providers in 2006.

Following the finance company failures in 2006–08, the Registrar of Companies reported to the Commerce Committee, noting further weaknesses in the current regime of trustee, statutory supervisor, and unit trustee supervision, including a lack of capability, poor compliance with reporting requirements, and weak trust deeds.

The main issues with the current regime that have been raised by these events are—

- a lack of capability or capacity: trustee, statutory supervisor, and unit trustee company resources and expertise have not always matched the size and complexity of the securities they supervise:
- weak trust deeds: there are insufficient minimum protections for investors in some trust deeds:

- a lack of role clarity: a lack of clear definition of trustees', statutory supervisors', and unit trustees' role has resulted in inconsistencies in the level of supervision provided by them:
- potential for a lack of independence from the issuer: trustees, statutory supervisors, and unit trustees perform a quasi-public role of supervising issuers with a view to protecting investors' interests. At the same time they are engaged and funded entirely by the entities they supervise. There is also a concern that a conflict of interest may arise or be perceived to arise if trustees, statutory supervisors, and unit trustees become involved in business activities similar to those of the issuers they supervise:
- weak accountability: for the statutorily approved trustees, statutory supervisors, and unit trustees the sole aspect of trustee accountability is the ability for individual investors to take court action.

In addition, concerns have been raised in respect of similar issues relating to the performance of some statutory supervisors of retirement villages.

Objective of the Bill

The overarching objective of the Bill is stated in clause 3. This objective is to protect the interests of investors, and enhance investor confidence in financial markets, by—

- requiring persons who wish to be appointed as trustees, statutory supervisors, and unit trustees to be capable of effectively performing the functions of trustees, statutory supervisors, or unit trustees:
- requiring trustees, statutory supervisors, and unit trustees to perform their functions effectively; and
- enabling trustees, statutory supervisors, and unit trustees to be held accountable for any failure to perform their functions effectively.

Outline of the Bill

Licensing trustees, statutory supervisors, and unit trustees

The Bill removes the automatic statutory approval for the 6 trustee corporations, and requires all trustees, statutory supervisors, and unit trustees to be licensed by the Securities Commission.

Under the Bill all trustees, statutory supervisors, and unit trustees must be bodies corporate, and their directors and senior managers must be of good character. When deciding whether to grant a licence, the Securities Commission must also assess the following matters:

- the experience, skills, and qualifications of the applicant (including, in particular, those of the applicant's directors and senior managers):
- the financial resources available to the applicant:
- the other resources available to the applicant:
- the applicant's procedures for ensuring that—
 - the applicant complies with its trustee obligations:¹
 - issuers of securities covered by the licence comply with their issuer obligations:²
- the applicant's independence from issuers of securities covered by the licence:
- the applicant's governance structure:
- the applicant's professional indemnity insurance:
- other prescribed matters relating to the applicant, securities covered by the licence, and issuers of securities covered by the licence:
- any other matter that the Commission considers are material.

¹ Trustee obligations are defined in the Bill as obligations imposed on a trustee or statutory supervisor by deeds relating to a supervised security, the Bill, a court order relating to a supervised security, Part 5D of the Reserve Bank of New Zealand Act 1989, the Securities Act 1978, or the Unit Trusts Act 1960.

² Issuer obligations are defined in the Bill as obligations imposed on an issuer by deeds relating to the security, the terms of the offer of the security, a court order relating to a supervised security, the Bill, Part 5D of the Reserve Bank of New Zealand Act 1989, the Securities Act 1978, or the Unit Trusts Act 1960.

The Securities Commission may license a person for up to 5 years, and a licence may be tailored to cover—

- securities of 1 or more classes; or
- 1 or more particular issues of securities.

The Commission will also have the power to impose conditions on a licence where it considers this appropriate.

The flexibility provided to the Commission in determining the scope of a licence will ensure that the licence can be tailored so that it is “fit for purpose” and imposes obligations that reflect the characteristics of the issuers being supervised. Once a licence is about to expire, the trustee, statutory supervisor, or unit trustee will be required to apply for a new licence if it wishes to continue to act as a trustee, statutory supervisor, or unit trustee. There is also a procedure for the review of licensing decisions by the Commission, and a right of appeal to the High Court. Finally, where an existing licence holder is not granted a new licence, the Commission may appoint a temporary trustee so that the issuer has time to engage a new trustee.

Ongoing monitoring of trustees, statutory supervisors, and unit trustees

The Bill contains a number of provisions designed to ensure that trustees, statutory supervisors, and unit trustees comply with their obligations.

Licence holders are required under the Bill to provide the Securities Commission with 6-monthly reports, which, amongst other things, will contain prescribed information about the trustee’s, statutory supervisor’s, or unit trustee’s compliance with the terms of the licence and the deeds they have entered into with the issuers they supervise.

Trustees, statutory supervisors, and unit trustees must also report to the Securities Commission any actual or potential breaches of their obligations, and any material change in their circumstances that may impact on the terms of their licence.

When a trustee, statutory supervisor, or unit trustee has breached, or is likely to breach, any of its trustee obligations or has undergone a material change in circumstances, the Securities Commission may require that the trustee, statutory supervisor, or unit trustee prepare an action plan. An action plan must outline the steps that the trustee,

statutory supervisor, or unit trustee proposes to take to deal with the breach or material change in circumstances and the date by which it will do so.

Action plans must be referred to the Securities Commission for approval. The Commission may—

- approve the action plan; or
- require that the action plan be amended and resubmitted by a specified date; or
- reject the action plan.

If the Commission elects to reject the action plan, it may—

- give a direction to the licence holder about the steps that it must take to avoid or remedy the breach of the licence holder's obligations; or
- vary the terms of the licence.

If a licence holder fails to submit an action plan or comply with an action plan or a direction of the Commission, then the Commission may—

- vary the terms of the licence:
- vary the terms of the licence so that it ceases to cover 1 or more supervised securities:
- remove the licence holder from 1 or more appointments:
- cancel the licence holder's licence altogether.

If the Commission removes a licence holder from an appointment, it may provide directions to the trustee in the period between when the removal notice was issued and when it takes effect. Once a removal notice has taken effect, the Commission may also appoint a temporary trustee so that the issuer has time to engage a new trustee.

The Commission may seek pecuniary penalty and compensatory orders against trustees, statutory supervisors, and unit trustees who fail to comply with their obligations. Pecuniary penalties may be up to \$200,000 when a breach has materially prejudiced investors' interests, and up to \$100,000 in other cases. Compensation orders will require the trustee, statutory supervisor, or unit trustee to pay compensation to security holders for any loss caused by breach of its obligations.

Securities Commission functions in respect of issuers

Under the Bill, trustees, statutory supervisors, and unit trustees are required to—

- report to the Securities Commission any breach or potential breach of any issuer obligation and notify the Commission of the steps that they intend to take as a result;
- report to the Commission when any issuer they supervise is likely to become insolvent, and notify the Commission of the steps that they intend to take as a result; and
- when requested by the Securities Commission, attest as to the issuer's compliance with the issuer obligations. In circumstances where they cannot so attest, they must state the reasons why.

Trustees, statutory supervisors, and unit trustees are exempt from liability if they provide information to the Securities Commission in good faith in any of these circumstances.

Where action is required urgently to protect the interests of investors, and the trustee, statutory supervisor, or unit trustee has failed to act, then the Bill provides that the Commission has the power either to—

- direct the trustee, statutory supervisor, or unit trustee to take a particular action, or
- go to the court to seek an order to protect the interests of investors. Amongst other things, the order could be to convene a meeting of security holders, amend the deed, or appoint a receiver.

Retirement village statutory supervisors

The Bill provides that *Parts 1, 2, and 4* and *clauses 47 and 48* apply to retirement village statutory supervisors with all necessary modifications.

The effect of this provision is that retirement village statutory supervisors come within the ambit of the licensing regime established by the Bill. However, unlike trustees, statutory supervisors, or unit trustees who supervise other forms of entity, statutory supervisors of retirement villages are not required to report to the Securities Commission when a retirement village they supervise is in breach of its obligations.

There is also no provision for the Commission to require retirement village statutory supervisors to attest that the retirement village they are supervising has complied with its obligations, and no power for the Commission to step in to direct the retirement village statutory supervisor or to seek a court order to protect the interests of retirement village residents.

This different treatment reflects the fact that although the Securities Commission has a regulatory role in respect of issuers of securities, the Retirement Villages Act 2003 contains a separate regulatory regime for retirement village operators, tailored to the retirement village sector.

Miscellaneous matters

Finally, the Bill provides for a range of miscellaneous matters, including—

- that the Securities Commission may exercise its powers of inspection under the Securities Act 1978 for the purposes of this Bill:
- that, subject to certain exceptions, information obtained by the Securities Commission under the Bill must be kept confidential:
- that trustees, statutory supervisors, and unit trustees be exempt from liability when acting in accordance with a direction of the Securities Commission:
- that fees and levies be prescribed by regulation to fund the regime:
- the circumstances in which trustees and statutory supervisors must report to the Securities Commission and the Registrar of Companies in respect of a particular issuer they supervise:
- that auditors who report to trustees and statutory supervisors under sections 50 and 50A of the Securities Act 1978 be exempt from liability in respect of any report made in good faith.

As a transitional measure, the Bill also provides for temporary licences for existing trustees, statutory supervisors, and unit trustees, which will expire up to 9 months after the commencement of the legislation.

The Bill comes into force on the earlier of 9 months after the date on which it receives the Royal assent, or a date to be specified by Order in Council.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. The Bill comes into force 9 months after it receives the Royal assent, but it may be brought into force before that date by Order in Council.

Part 1

Preliminary provisions

Clause 3 is the purpose clause.

Clause 4 defines the main terms used in the Bill. Terms that are defined in the Securities Act 1978 and used, but not defined, in the Bill have the meaning given in that Act.

In the Bill, **trustee** means a trustee in respect of debt securities, **statutory supervisor** means a statutory supervisor in respect of participatory securities, and **unit trustee** means a trustee of a unit trust. **Issuer**, in relation to a unit trust, means the manager of the unit trust.

Clause 5 states that the Bill will bind the Crown.

Part 2

Regulation of trustees, statutory supervisors, and unit trustees

Subpart 1—Licensing of trustees, statutory supervisors, and unit trustees

Requirement to be licensed, etc

Clause 6 imposes a duty on a trustee, statutory supervisor, or unit trustee to hold a licence that covers the debt security, participatory security, or unit trust to which the appointment relates.

Clause 7 imposes a duty on a licence holder to comply with every condition imposed on the licence. Conditions may be imposed under *clause 10*.

Clause 8 makes it an offence for a person to act as a trustee, statutory supervisor, or unit trustee without an appropriate licence and for a

person to represent that the person holds a licence that covers a security without holding such a licence.

Licences: general

Clause 9 provides for the Commission to license persons to be trustees in respect of debt securities, statutory supervisors in respect of participatory securities, and trustees of unit trusts. The Commission may issue licences that cover particular securities or classes of security.

New section 37 of the Retirement Villages Act 2003 (substituted by *clause 66*) applies certain provisions of this Bill to statutory supervisors of retirement villages, the effect of which is that the Commission may also license persons to be statutory supervisors of retirement villages.

Licensing by the Commission replaces the existing system of approval by the Commission under section 48 of the Securities Act 1978 (for trustees and statutory supervisors), by the Minister under section 5 of the Unit Trusts Act 1960 (for unit trustees), and by the Registrar of Retirement Villages under section 37 of the Retirement Villages Act 2003 (for statutory supervisors of retirement villages).

Clause 10 provides that the Commission may impose conditions on a licence. A condition may limit a licence by, for example, limiting the number of appointments to which a licence holder may be appointed. A condition may also be imposed that applies only if the licence holder is appointed to be a trustee, statutory supervisor, or unit trustee in respect of a particular issue or class of security.

Clause 11 states that a licence must be issued for a fixed period of no more than 5 years.

Clause 12 states the information that must be included in a licence.

Clause 13 requires the Commission on issuing, varying, or cancelling a licence to send a copy of the licence or notification of the cancellation to the licence holder. The Commission must also send details to the Registrar of Financial Service Providers.

Applications for, to vary, or to cancel licences

Clause 14 provides for an application for a licence or to vary a licence to be made to the Commission and for a fee to be charged.

Clause 15 relates to the Commission's decisions on applications for a licence or to vary a licence.

The Commission may issue a licence only if it is satisfied that—

- the applicant is either a body corporate incorporated in New Zealand or an overseas company registered under the Companies Act 1993; and
- every director and senior manager (as defined in *clause 15*) of the applicant is of good character; and
- the applicant is either registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 or complies with section 13(a) and (b) of that Act. This means that the applicant must not be disqualified from registration as a financial service provider under section 14 of that Act and must be a member of an approved dispute resolution scheme or the reserve scheme (as defined in that Act).

Before issuing or varying a licence, the Commission must assess the matters referred to in *clause 15(3)*, which include, for example, the applicant's financial resources. Regulations under *clause 15(4)* may provide for how the Commission must conduct the assessment required under *clause 15(3)*. For example, regulations may provide that, in assessing an applicant's financial resources, the Commission must leave certain things out of account.

If the application relates to a licence that covers a debt security issued by a deposit taker (as defined in section 157C of the Reserve Bank of New Zealand Act 1989), the Commission must consult the Reserve Bank and take the Bank's views into account.

The Commission may issue or vary a licence only if the Commission is satisfied that, having regard to any conditions that the Commission imposes on the licence, the applicant will be capable of effectively performing the functions of a trustee, statutory supervisor, or unit trustee in respect of securities covered by the licence. Consequently, the Commission may issue a licence that is narrower in scope than the licence that was applied for or reject an application completely.

If the Commission issues or varies a licence, the Commission may notify the applicant of matters that the Commission wishes the applicant to consider for the purposes of reporting, under *clause 25*, a material change of circumstance (as defined in *clause 4(1)*) or the ap-

plicant's belief that the information on which the Commission based the decision was wrong, misleading, or incomplete.

Clause 16 provides for a licence holder to apply to the Commission to cancel a licence.

Clause 17 enables an applicant who is dissatisfied with the outcome of the application for a licence or to vary a licence to seek a review of the decision, on paper or at a hearing.

Clause 18 provides for an appeal to the High Court for a person who is dissatisfied with the outcome of a review under *clause 17*.

Expiry of licences

Clause 19 makes it clear that the expiry of a licence does not automatically terminate a person's appointment as a trustee, statutory supervisor, or unit trustee. However, a person who continues to hold such an appointment without obtaining a new licence that covers the security is in breach of *clause 6*.

Clause 20 provides that a licence holder who holds an appointment as a trustee, statutory supervisor, or unit trustee must, at least 6 months before the expiry of the licence, either apply for a new licence that covers the security or notify the issuer that no such application will be made. (If the licence holder holds a temporary licence under *clause 60* (which makes transitional provision for trustees, statutory supervisors, and unit trustees under the existing approval regimes), the licence holder must act within 1 month after commencement.)

Clause 21 enables the Commission, if it rejects an application by an existing trustee, statutory supervisor, or unit trustee for a new licence that covers the security, to appoint a replacement (the **Commission trustee**) to hold office for a period of 3 months. Before the end of the 3-month appointment, the issuer must either appoint a replacement or appoint the Commission trustee to be the trustee, statutory supervisor, or unit trustee on a continuing basis.

Clause 22 gives the issuer—

- a power (in addition to any power that the issuer may have under the trust deed or deed of participation) to remove a trustee, statutory supervisor, or unit trustee whose licence has expired:
- a power to remove the Commission trustee before the end of the 3-month appointment:

Clause 23 enables the Commission trustee or the person appointed by the issuer to succeed the person whose licence has expired to require that person or the Commission trustee to provide documents relating to the appointment.

Subpart 2—Monitoring and enforcement

Reports and investigations

Clause 24 imposes a duty on licence holders to deliver a report at regular intervals to the Commission. The report must include the information stated in *clause 24(2)*, including information prescribed in regulations about the licence holder's compliance with the terms of trust deeds and deeds of participation, continued compliance with the requirements referred to in *clause 15(2)*, and the matters referred to in *clause 15(3)*. When the Commission issues a licence, it must set a date by which the first report should be delivered, which must be between 6 and 12 months after the date of issue. Subsequent reports must be delivered at least once every 6 months after that date.

Clause 25 imposes a duty on a licence holder to deliver a report to the Commission if the licence holder believes that—

- the licence holder has breached, may have breached, or is likely to breach a trustee obligation (as defined in *clause 4(1)*); or
- a material change of circumstances has occurred, may have occurred, or is likely to occur; or
- the information on which the Commission based its decision to issue or vary the licence was, or may have been, wrong, misleading, or incomplete.

Clause 26 gives the Commission the power to investigate the breach of a trustee obligation, whether a material change of circumstances has occurred, and whether the information on which the Commission based its decision to vary a licence was wrong, misleading, or incomplete.

Action plans

Clause 27 enables the Commission to require a licence holder to submit an action plan if the Commission is satisfied that—

- the licence holder has breached, or is likely to breach, a trustee obligation; or
- a material change of circumstances has occurred in relation to the licence holder; or
- the information on which the Commission based its decision to issue or vary the licence was wrong, misleading, or incomplete in a material respect.

The action plan submitted by the licence holder must specify the steps that the licence holder will take to remedy or avoid the breach or in light of the material change of circumstances or wrong, misleading, or incomplete information.

Clause 28 provides for the Commission to approve the action plan, require the licence holder to amend and resubmit the action plan to the Commission, or reject the action plan. If the Commission approves the action plan, the licence holder must comply with it.

Clause 29 provides that, if the Commission rejects the action plan, the Commission may give a direction to the licence holder or vary the licence holder's licence under *clause 30*, or both.

Variation of licences

Clause 30 enables the Commission to vary a licence before the expiry of a licence without the consent of the licence holder. However, the Commission may not vary a licence under this clause by excluding a security in respect of which the licence holder acts as a trustee, statutory supervisor, or unit trustee from the scope of the licence.

The power to vary a licence under this clause arises in the following circumstances:

- if the Commission is satisfied that a material change of circumstances has occurred in relation to the licence holder or that the information on which the Commission based its decision to issue or vary the licence was wrong, misleading, or incomplete in a material respect; or
- if the Commission rejects the licence holder's action plan; or

- if a licence holder fails to submit or amend an action plan, fails to comply with an action plan, fails to comply with a direction of the Commission, is in administration, receivership, or liquidation, is subject to statutory management, or enters a similar process.

Clause 31 enables a licence holder whose licence has been varied under *clause 30* to seek a review of the decision, on paper or at a hearing.

Clause 32 provides for an appeal to the High Court for a person who is dissatisfied with the outcome of a review under *clause 31*.

Removal of trustees, etc, and variation and cancellation of licences

Clause 33 gives the Commission the power to—

- give a licence holder a removal notice (see *clause 34*);
- vary a licence, with or without excluding a security in respect of which the licence holder acts a trustee, statutory supervisor, or unit trustee from the scope of the licence. If the Commission wishes to exclude such a security from the scope of the licence, the Commission must do so by a variation notice;
- cancel a licence by a cancellation notice.

The Commission may take the above action if a licence holder fails to submit or amend an action plan, fails to comply with an action plan, fails to comply with a direction of the Commission, or is in administration, receivership, or liquidation, is subject to statutory management, or enters a similar process.

If the Commission gives a removal notice that applies to a security, this will have the effect of removing the licence holder from an appointment in respect of the security (see *clause 34*). If the Commission wishes to exclude that security from the scope of the licence in order to prevent the licence holder being reappointed, the Commission must vary the licence by a variation notice.

Before the Commission gives a removal notice, varies a licence by excluding a security in respect of which the licence holder acts as a trustee, statutory supervisor, or unit trustee from the scope of the licence, or cancels a licence, the Commission must give the licence holder at least 2 working days' notice and take account of representations made by the licence holder. (If the Commission varies a licence

without excluding a security in respect of which the licence holder acts as a trustee, statutory supervisor, or unit trustee from the scope of the licence, this is done in accordance with *clause 30* and is subject to the review and appeal provisions in *clauses 31 and 32*.)

Clause 34 relates to removal notices given by the Commission to a licence holder under *clause 33*. A removal notice must state the security or securities to which it applies and must be given to the issuer of every security to which the notice applies. The effect of the removal notice is to remove the licence holder from an appointment as trustee, statutory supervisor, or unit trustee in respect of every security to which the notice applies on the date stated in the notice unless removed before that date. (*Clause 39* gives the issuer a power to remove the existing trustee before that date. The issuer may also have a power to do so under the trust deed or deed of participation.)

Clauses 35 and 36 provide for the content of variation and cancellation notices under *clause 33*.

Clause 37 enables the Commission to give a direction to a trustee, statutory supervisor, or unit trustee to whom a removal notice has been given before the removal takes effect.

Clause 38 enables the Commission to appoint, for a period of 6 months, a person to replace a trustee, statutory supervisor, or unit trustee to whom a removal notice has been given if the issuer does not remove the trustee before the date stated in the removal notice. Before the end of the 6-month appointment, the issuer must either appoint a replacement or appoint the person appointed by the Commission (the **Commission trustee**) to be the trustee, statutory supervisor, or unit trustee on a continuing basis.

Clause 39 gives the issuer—

- a power (in addition to any that the issuer may have under the trust deed or deed of participation) to remove the trustee, statutory supervisor, or unit trustee to whom a removal notice has been given:
- a power to remove the Commission trustee before the end of the 6-month period.

Clause 40 enables the Commission trustee or the person appointed by the issuer to succeed the person to whom the removal notice was given to require that person or the Commission trustee to provide

documents relating to the appointment. A licence holder who is reinstated by the court on appeal has a similar power.

Clause 41 provides for an appeal against removal, variation, and cancellation notices. On appeal, the High Court may order the reinstatement of a trustee, statutory supervisor, or unit trustee who has been removed.

Pecuniary penalty and compensation orders

Clause 42 enables the High Court, on the application of the Commission, to order a trustee, statutory supervisor, or unit trustee to pay a pecuniary penalty to the Crown if the trustee or supervisor has breached a trustee obligation.

Clause 43 enables the High Court, on the application of the Commission, to order a trustee, statutory supervisor, or unit trustee to pay compensation to security holders in respect of any loss or damage caused by a breach of a trustee obligation. A compensation order under this clause and a pecuniary penalty order under *clause 42* may be made in respect of the same conduct.

Part 3 **Commission's functions in relation to** **issuers**

Duties of trustees, etc, to Commission in relation *to issuers*

Clause 44 gives the Commission the power to require a trustee, statutory supervisor, or unit trustee to attest to the Commission as to whether the trustee or supervisor is satisfied that an issuer has not breached an issuer obligation (as defined in *clause 4(1)*) in a material respect. If the trustee, statutory supervisor, or unit trustee is unable to do so, the trustee or supervisor must report details of the issuer's breach or possible breach to the Commission.

Clause 45 imposes a duty on a trustee, statutory supervisor, or unit trustee who believes that an issuer has breached, may have breached, or is likely to breach an issuer obligation to report the breach to the Commission and advise the Commission of any steps that the trustee or supervisor intends to take.

Clause 46 imposes a duty on a trustee, statutory supervisor, or unit trustee who becomes aware of information on the basis of which the trustee or supervisor could reasonably form the opinion that an issuer is unable, or likely to be unable, to pay its debts or the value of the issuer's assets is less than, or is likely to be less than, the value of its liabilities. The trustee, statutory supervisor, or unit trustee must disclose the information to the Commission and advise the Commission of any steps that the trustee or supervisor intends to take.

Clause 47 gives the Commission the power to require a trustee, statutory supervisor, or unit trustee to provide the Commission with information about an issuer.

Clause 48 provides protection for a trustee, statutory supervisor, or unit trustee who discloses information to the Commission in good faith under *clauses 44 to 47* against civil, criminal, and disciplinary proceedings and against termination of the trustee or supervisor's appointment.

Commission's powers in relation to issuers

Clause 49 enables the Commission to give a direction to a trustee, statutory supervisor, or unit trustee to take action in relation to an issuer if the Commission is satisfied that there is a significant risk that security holders' interests will be materially prejudiced and the trustee or supervisor has failed to take the opportunity to take action to eliminate or reduce the risk or the case is an urgent one.

Clause 50 enables the High Court to make, on the application of the Commission, the same orders that the court may make under section 49 of the Securities Act 1978 on the application of a trustee or statutory supervisor (or under *new section 19A* of the Unit Trusts Act 1960 on the application of a unit trustee). The Commission's power to apply to the court arises if the Commission is satisfied that there is either a significant risk that the interests of security holders will be materially prejudiced or the provisions of the trust deed or deed of participation are no longer adequate to give proper protection to security holders and the trustee, statutory supervisor, or unit trustee has failed to take the opportunity to make an application under section 49 or *new section 19A* or the case is an urgent one.

Clauses 47 and 48 apply in relation to statutory supervisors of retirement villages. The other provisions of *Part 3* do not. (See *new*

section 37 of the Retirement Villages Act 2003, substituted by *clause 66.*)

Part 4

Miscellaneous and amendments to other Acts

Subpart 1—Miscellaneous

Commission's powers under Securities Act 1978

Clause 51 makes it clear that the Commission may exercise any of its powers under the Securities Act 1978 in performing its functions under the Bill and that Part 3 of that Act (which includes, for example, provisions about the Commission's power to receive evidence) applies to decisions and proceedings under the Bill.

Information

Clause 52 states that the Commission may use information communicated to it under section 157ZO(2)(e) of the Reserve Bank of New Zealand Act 1989 in the exercise of its functions under this Bill.

Clause 53 states that the Commission may use information obtained for the purposes of the Bill in the exercise of its functions under any other enactment.

Clauses 54 and 55 contain provisions protecting the confidentiality of information obtained for the purposes of the Bill.

Directions

Clause 56 provides for the Commission to vary or cancel directions given under *clauses 29, 37, and 49*.

Clause 57 provides protection for a trustee, statutory supervisor, or unit trustee who complies in good faith with a direction given under *clauses 29, 37, and 49* against civil, criminal, and disciplinary proceedings and against termination of the appointment.

Levy

Clause 58 relates to a levy to be paid by licence holders to meet, in whole or in part, the Commission's functions under the Bill. Regulations will set the amount of, or a method for calculating, the levy.

Regulations

Clause 59 relates to regulations that may be made for the purposes of the Bill.

Transitional provision

Clause 60 makes transitional provision for those who currently act as trustees, statutory supervisors, and unit trustees under the existing approval regimes. A current trustee or supervisor is deemed to have a temporary licence that covers the current appointment. A temporary licence expires 9 months after the commencement of this Bill. Under *clause 20(3)*, a trustee or supervisor who holds a temporary licence must, within 1 month after commencement, apply for a new licence that covers the security or notify the issuer that no such application will be made. If a person who holds a temporary licence wishes to accept an appointment in respect of a different security, the person must make an application under *clause 15* for a licence that covers the new security, whether or not the new security is within the scope of an approval under the existing regime.

Subpart 2—Amendments to other Acts

Amendments to Corporations (Investigation and Management) Act 1989

Clause 61 states that *clauses 62 and 63* amend the Corporations (Investigation and Management) Act 1989.

Clause 62 substitutes a *new section 11*. The effect of the amendment is to align the circumstances in which a trustee in respect of debt securities, a statutory supervisor in respect of participatory securities, and a statutory supervisor of a retirement village must disclose certain financial information about an issuer or an operator of a retirement village to the Registrar of Companies with the circumstances in which a trustee in respect of a debt security issued by a deposit taker must disclose information under Part 5D of the Reserve Bank of New Zealand Act 1989.

Clause 63 repeals section 12. The effect of the amendment is that a trustee or statutory supervisor in respect of debt or participatory securities or a statutory supervisor of a retirement village is no longer required to take reasonable steps to inform the issuer or operator before disclosing information under *new section 11*.

*Amendment to Financial Service Providers
(Registration and Dispute Resolution) Act 2008*

Clause 64 amends Schedule 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 by making acting as a trustee, as a statutory supervisor in respect of participatory securities, as a unit trustee, or as a statutory supervisor of retirement villages a licensed service as defined in that Act. The effect of the amendment is that a person who proposes to be a trustee or supervisor must first obtain a licence from the Commission before being registered as a financial service provider.

Amendments to Retirement Villages Act 2003

Clause 65 states that *clauses 66 to 68* amend the Retirement Villages Act 2003.

Clause 66 substitutes a *new section 37*, which applies certain provisions of this Bill to statutory supervisors of retirement villages. The new licensing regime applicable to trustees, statutory supervisors (in respect of participatory securities), and unit trustees established by the Bill applies also to statutory supervisors of retirement villages, replacing the existing system under which the Registrar of Retirement Villages approves statutory supervisors. In particular,—

- the Commission will license persons to be statutory supervisors of retirement villages using the criteria in *clause 15*;
- a licence may cover acting as a statutory supervisor of retirement villages as well as acting as a trustee, statutory supervisor (in respect of participatory securities), or unit trustee;
- a statutory supervisor of a retirement village must hold a licence that covers the retirement village, and an offence is committed if the supervisor does not hold such a licence;
- as licence holders, statutory supervisors must pay the levy under *clause 58*;
- existing statutory supervisors who are approved by the Registrar of Retirement Villages are deemed to have temporary licences under *clause 60*.

Clause 67 amends section 38. The amendment makes it clear that the operator of a retirement village must appoint as statutory supervisor a person who holds a licence that covers the village.

Clause 68 amends section 39. The effect of the amendment is that the consent of the Registrar of Retirement Villages is not needed if the operator exercises the power to remove a statutory supervisor given to an operator under *clause 22 or 39*.

Amendments to Securities Act 1978

Clause 69 states that *clauses 70 to 79* amend the Securities Act 1978.

Clause 70 amends section 33. The effect of the amendments is to make it clear that issuers of debt and participatory securities that are offered to the public for subscription must appoint trustees and statutory supervisors that are licensed by the Commission.

Clauses 71 and 78 amend sections 45 and 70 respectively. The effect of the amendments is that regulations made under the Securities Act 1978 may prescribe a clause to be implied into trust deeds and deeds of participation that enables the trustee or statutory supervisor to amend the deed (with the consent of the issuer but without the need for security holders to consent) if the amendments do not adversely affect the interests of security holders.

Clause 72 substitutes a *new section 48*. Existing section 48 contains provisions relating to the current regime for the approval of trustees and statutory supervisors, which is being replaced by the licensing regime under this Bill.

Clause 73 amends section 49. The effect of the amendment is that a trustee or statutory supervisor is able to apply to the court for orders under that section if the trustee or supervisor is of the opinion that there is a significant risk that the interests of security holders will be materially prejudiced, rather than if the trustee or supervisor is of the opinion that the issuer and any guarantor of the securities are unable to be able to pay all money owing in respect of the securities when it becomes due. The power to apply to the court if the trustee or supervisor is of the opinion that the provisions of any deed relating to the securities is no longer adequate is unaffected.

Clause 74 inserts a new section 50B. This provides protection for an auditor who discloses information to the Commission in good faith under section 50(2) or (3) or 50A(2) or (3) against civil, criminal, and disciplinary proceedings and against termination of the auditor's appointment.

Clause 75 amends section 60A. The effect of the amendment is that the court may make a management banning order in respect of contraventions of this Bill.

Clause 76 amends section 69P. The effect of the amendment is to make it clear that appeals under the Bill are not limited to questions of law.

Clause 77 amends section 69U. The effect of the amendment is that a self-incriminating statement by a person summonsed by the Commission under section 69D is not admissible in proceedings for a pecuniary penalty order against the person under *clause 42*.

Clause 79 amends Schedule 1. The effect of the amendment is that the Commission may exercise its inspection powers in section 67 of the Securities Act 1978 for the purposes of this Bill.

Amendment to Securities Markets Act 1988

Clause 80 amends section 43F of the Securities Markets Act 1988. The effect of the amendment is that the court may make a management banning order in respect of contraventions of this Bill.

Amendment to Takeovers Act 1993

Clause 81 amends section 44F of the Takeovers Act 1993. The effect of the amendment is that the court may make a management banning order in respect of contraventions of this Bill.

Amendments to Trustee Companies Act 1967

Clause 82 amends section 7 of the Trustee Companies Act 1967. The effect of the amendment is to remove the automatic right of trustee companies (as defined in that Act) to be trustees, statutory supervisors, or unit trustees without the need for approval. Trustee companies will need to be licensed by the Commission before accepting such appointments.

Amendments to Unit Trusts Act 1960

Clause 83 states that *clauses 84 to 90* amend the Unit Trusts Act 1960.

Clause 84 repeals section 5. The effect of the amendment is to remove the automatic right of trustee corporations (as defined in the

Trustee Act 1956) such as Public Trust or the Maori Trustee to be unit trustees. The amendment also removes the requirement for other unit trustees to be approved by the Minister. After this Bill is enacted, unit trustees will be licensed by the Commission.

Clause 85 amends section 8. The effect of the amendment is to make it clear that units in a unit trust may not be offered to the public unless a person who holds a licence that covers the unit trust has been appointed as unit trustee.

Clause 86 substitutes a *new section 10*. The effect of the amendment is that the Minister ceases to have the power in relation to the removal of unit trustees. *New section 10* also makes it clear that the restriction on the manager's power to remove a unit trustee do not apply to a removal under *Part 2* of this Bill.

Clauses 87 and 90 amend sections 12 and 28 respectively. The effect of the amendments is to enable regulations to require that certain information be included in trust deeds and to prescribe provisions that are deemed to be implied into trust deeds for unit trusts, including a provision that enables the unit trustee to amend the deed (with the consent of the manager of the unit trust but without the need for unit holders to consent) if the amendments do not adversely affect the interests of unit holders.

Clause 88 amends section 18. The effect of the amendment is that unit holders may not give a direction to a unit trustee that is inconsistent with a direction given by the Commission under the Bill.

Clause 89 inserts a *new section 19A*. *New section 19A* enables the High Court to make, on the application of a unit trustee, orders similar to those which the court may make under section 49 of the Securities Act 1978 on the application of a trustee or statutory supervisor. A unit trustee's power to apply to the court arises if the unit trustee is satisfied that there is either a significant risk that the interests of unit holders will be materially prejudiced or the provisions of the trust deed are no longer adequate to give proper protection to unit holders.

Regulatory impact statement

Two regulatory impact statements were prepared for this Bill. The first accompanied Cabinet paper—Improving the Supervision of Issuers by Trustees (August 2009). The second accompanied Cabinet

paper—Securities Trustees and Statutory Supervisors Bill: Approval for Introduction (December 2009).

The explanatory note contains only the executive summaries of the regulatory impact statements. The statements are available on the Ministry of Economic Development's website at <http://www.med.govt.nz/Trustee-Licensing-Regime-RIS> (August 2009 RIS) and <http://www.med.govt.nz/Retirement-Village-Statutory-Supervisors-RIS> (December 2009 RIS) and on the Treasury's website at <http://www.treasury.govt.nz/publications/informationreleases/ris>.

Executive summary (August 2009 RIS)

At present, issuers of debt and participatory securities, and interests in certain collective investment schemes, are required to obtain the services of a corporate trustee who will monitor the issuer's compliance with the terms of the offer of securities. A number of problems have been identified in the supervision of issuers by trustees, in particular, the competence, capacity, and accountability of trustees conducting this supervision. Concerns have also been raised about the weaknesses of trust deeds, and a lack of clarity around the role trustees are expected to play when supervising issuers.

To address the weaknesses in trustees' supervision of issuers, it is proposed that a licensing regime be established for trustees. This regime would be administered by the Securities Commission. For a trustee to be licensed they would have to meet approval criteria set out in regulations that relate to matters such as competency, monitoring systems and processes, and financial strength. The Commission would have an ongoing role in monitoring individual trustees' compliance with the approval criteria.

In addition, it is proposed that a range of other measures should be introduced to strengthen the quality of supervision provided by trustees. These measures include providing greater minimum standards for trust deeds, providing trustees with additional powers to call on in carrying out their supervisory role, and providing the Securities Commission with enhanced powers of enforcement in respect of trustees who have acted negligently or failed to carry out their role to the required standard.

It is expected that these measures will result in a major improvement in the quality of supervision provided by trustees, and that this benefit will outweigh the additional costs the proposals will place on trustees.

Executive summary (December 2009 RIS)

The role of retirement village statutory supervisors is broadly analogous to that of securities trustees and statutory supervisors, as both act on behalf of residents or investors to supervise the village operator or issuer. Similar problems have been identified in both industries. Some firms have clients that fall in both categories. However, the trustee licensing regime as currently drafted will not cover retirement village statutory supervisors. Subjecting the two to differing levels of regulation is anomalous and means retirement village residents receive a lower level of protection. Accordingly, the preferred option is to include retirement village statutory supervisors within the trustee licensing regime agreed to by Cabinet in August 2009, and described in the “Status quo and Problem” section of this RIS.

Hon Simon Power

Securities Trustees and Statutory Supervisors Bill

Government Bill

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**Securities Trustees and Statutory
Supervisors Bill**

*Removal of trustees, etc, and variation and cancellation
of licences*

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Securities Trustees and Statutory Supervisors Act **2009**.

2 Commencement
This Act comes into force at the end of the period of 9 months 5
beginning with the day on which it receives the Royal assent
unless it is earlier brought into force on a date appointed by
Order in Council.

Part 1
Preliminary provisions 10

3 Purpose
The purpose of this Act is to protect the interests of security
holders, and enhance investor confidence in financial markets,
by—

- (a) requiring persons who wish to be appointed as trustees, 15
statutory supervisors, or unit trustees to be capable of
effectively performing the functions of trustees, statu-
tory supervisors, or unit trustees; and
- (b) requiring trustees, statutory supervisors, and unit
trustees to perform their functions effectively; and 20
- (c) enabling trustees, statutory supervisors, and unit
trustees to be held accountable for any failure to per-
form their functions effectively.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—
- Commission** has the meaning given in section 2(1) of the Securities Act 1978
- deed of participation** means a deed of participation relating to a participatory security that is required under section 33(3) of the Securities Act 1978 and includes every instrument that amends the deed of participation 5
- issuer** has the meaning given in section 2(1) of the Securities Act 1978 10
- issuer obligation** means an obligation imposed on the issuer of a security by or under—
- (a) the trust deed or deed of participation that relates to the security:
 - (b) the terms of any offer of the security: 15
 - (c) a court order relating to the security:
 - (d) this Act:
 - (e) Part 5D of the Reserve Bank of New Zealand Act 1989:
 - (f) the Securities Act 1978:
 - (g) the Unit Trusts Act 1960 20
- licence** includes a temporary licence
- material change of circumstances**, in relation to a licence holder, means—
- (a) a change that adversely affects the licence holder’s capacity effectively to perform the functions of a trustee, statutory supervisor, or unit trustee in respect of a security covered by the licence; or 25
 - (b) a change that means that the licence holder no longer meets the requirements referred to in **section 15(2)**
- Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act 30
- prescribed** means prescribed in regulations made under this Act 35
- security** means—
- (a) a debt security:
 - (b) a participatory security:

- (c) a unit in a unit trust
- statutory supervisor** has the meaning given in section 2(1) of the Securities Act 1978
- supervised issuer**, in relation to a trustee, statutory supervisor, or unit trustee, means the issuer of a supervised security 5
- supervised security**, in relation to a trustee, statutory supervisor, or unit trustee (**T**), means a security in respect of which T is the trustee, statutory supervisor, or unit trustee
- temporary licence** has the meaning given in **section 60**
- trust deed**,— 10
- (a) in relation to a trustee, has the meaning given in section 2(1) of the Securities Act 1978 and includes every instrument that amends the trust deed:
- (b) in relation to a unit trustee, has the meaning given in section 2(1) of the Unit Trusts Act 1960 15
- trustee** has the meaning given in section 2(1) of the Securities Act 1978
- trustee obligation** means an obligation imposed on a trustee, statutory supervisor, or unit trustee by or under—
- (a) every trust deed or deed of participation relating to a supervised security: 20
- (b) this Act:
- (c) a court order relating to a supervised security:
- (d) Part 5D of the Reserve Bank of New Zealand Act 1989:
- (e) the Securities Act 1978: 25
- (f) the Unit Trusts Act 1960
- unit trustee** has the same meaning as the meaning of **trustee** in section 2(1) of the Unit Trusts Act 1960
- vary**, in relation to a licence, includes—
- (a) imposing a condition on the licence; and 30
- (b) varying or removing a condition previously imposed on the licence.
- (2) Unless the context otherwise requires, a term or expression that is defined in the Securities Act 1978 and used, but not defined, in this Act has the same meaning as in that Act. 35

5 Act binds the Crown

This Act binds the Crown.

Part 2

**Regulation of trustees, statutory
supervisors, and unit trustees**

Subpart 1—Licensing of trustees, statutory
supervisors, and unit trustees 5
Requirement to be licensed, etc

6 Trustee, etc, must be licensed

A trustee, statutory supervisor, or unit trustee in respect of a security must hold a licence that covers the security.

7 Licence holder must comply with conditions imposed on licence 10

A licence holder must comply with every condition imposed on the licence.

8 Requirement to be licensed: offences

(1) A person commits an offence if— 15

- (a) the person is a trustee, statutory supervisor, or unit trustee in respect of a security; and
- (b) the person does not hold a licence that covers the security.

(2) A person commits an offence if— 20

- (a) the person represents that the person is licensed to be a trustee, statutory supervisor, or unit trustee in respect of a security; and
- (b) the person does not hold a licence that covers the security. 25

(3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding \$300,000.

Licences: general

9 Commission may license trustee, etc

(1) The Commission may license a person to be 1 or more of the following: 30

- (a) a trustee in respect of debt securities:
- (b) a statutory supervisor in respect of participatory securities:

- (c) a unit trustee in respect of units in unit trusts.
- (2) A licence may cover all securities or either or both of the following:
- (a) securities of 1 or more classes:
 - (b) 1 or more particular issues of securities. 5
- (3) A class may be defined (to include or exclude a security) in any way, including by reference to a particular issuer or class of issuer.
- 10 Commission may impose conditions on licence**
- (1) The Commission may impose conditions on a licence. 10
- (2) The Commission may impose conditions that—
- (a) limit a licence (for example, by limiting the number of appointments as trustee, statutory supervisor, or unit trustee that may be held by the licence holder or by setting a maximum value for supervised securities): 15
 - (b) apply only if the licence holder is appointed as trustee, statutory supervisor, or unit trustee in respect of a particular security or class of security.
- (3) **Subsection (2)** does not limit **subsection (1)**.
- 11 Duration of licence** 20
- (1) A licence must be issued for a fixed period of no more than 5 years.
- (2) A licence takes effect on the date stated in the licence.
- (3) Subject to **section 18(2)**, a licence expires on the earlier of—
- (a) the date on which the licence is cancelled under **section 16 or 33(2)(d)**; and 25
 - (b) the date on which the fixed period ends.
- 12 Information to be stated in licence**
- A licence must state the following information:
- (a) the name of the licence holder: 30
 - (b) the security or securities covered by the licence:
 - (c) the conditions imposed on the licence:
 - (d) the date on which the licence takes effect:
 - (e) the date on which the fixed period for which the licence is issued ends: 35

- (f) the date by which the first report under **section 24** must be delivered.

13 Commission must send licence to licence holder and details to Registrar of Financial Service Providers

- (1) If the Commission issues a licence, the Commission must send the licence to the licence holder and details of the licence to the Registrar of Financial Service Providers. 5
- (2) If the Commission varies a licence, the Commission must send a replacement licence to the licence holder and details of the replacement licence to the Registrar of Financial Service Providers. 10
- (3) If the Commission cancels a licence, the Commission must notify the former licence holder and the Registrar of Financial Service Providers.

Applications for, to vary, or to cancel licences 15

14 Application for, or to vary, licence

- (1) A person may apply to the Commission—
 (a) for a licence; or
 (b) to vary a licence.
- (2) An application must be— 20
 (a) made in the form required by the Commission; and
 (b) accompanied by the prescribed fee.
- (3) For the purpose of making a decision on an application, the Commission may require the applicant to supply information in addition to that contained in the application. 25

15 Decision on application for, or to vary, licence

- (1) The Commission may issue or vary a licence only if the Commission is satisfied that, having regard to any conditions imposed on the licence, the applicant is capable of effectively performing the functions of a trustee, statutory supervisor, or unit trustee in respect of securities covered by the licence. 30
- (2) Despite **subsection (1)**, the Commission may not issue a licence unless the Commission is satisfied that the applicant meets the following requirements:
 (a) the applicant is— 35

-
- (i) a body corporate that is incorporated in New Zealand; or
 - (ii) an overseas company (as defined in the Companies Act 1993) registered under that Act:
 - (b) every director and senior manager of the applicant is of good character: 5
 - (c) the applicant—
 - (i) is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008; or 10
 - (ii) complies with section 13(a) and (b) of that Act.
 - (3) Before making a decision under **subsection (1)**, the Commission must assess the following matters:
 - (a) the experience, skills, and qualifications of the applicant (including, in particular, of the applicant's directors and senior managers): 15
 - (b) the financial resources available to the applicant:
 - (c) the other resources available to the applicant:
 - (d) the applicant's procedures for ensuring that—
 - (i) the applicant complies with the trustee obligations; and 20
 - (ii) issuers of securities covered by the licence comply with the issuer obligations:
 - (e) the applicant's independence from issuers of securities covered by the licence: 25
 - (f) the applicant's governance structure:
 - (g) the applicant's professional indemnity insurance:
 - (h) other prescribed matters relating to the applicant, securities covered by the licence, and issuers of securities covered by the licence: 30
 - (i) any other matter that the Commission considers is material.
 - (4) Regulations may provide for the manner in which the Commission must assess the matters referred to in **subsection (3)**, including providing for methods of assessment and things to be taken into, or left out of, account in making an assessment. 35
 - (5) Before making a decision on a licence that covers a debt security issued by a deposit taker (as defined in section 157C of the Reserve Bank of New Zealand Act 1989), the Commission

must consult the Reserve Bank of New Zealand and take the Bank's views into account.

- (6) After making a decision on an application, the Commission must notify the applicant in writing of—
- (a) the decision; and 5
 - (b) if the Commission does not issue a licence or does not issue or vary a licence as proposed in the application, the Commission's reasons for the decision; and
 - (c) if the Commission issues or varies a licence (whether as proposed in the application or not), any matters that the Commission wishes the licence holder to consider for the purposes of **section 25(2)**. 10

- (7) In this section,—
- director** has the meaning given in section 126 of the Companies Act 1993, but also includes, in the case of a body corporate that is not a company, a person who occupies a position comparable to that of a director 15
- senior manager**, in relation to an applicant, means a person who is not a director but occupies a position that allows the person to exercise significant influence over the management or administration of the applicant (for example, a chief executive or a chief financial officer). 20

16 Application to cancel licence

- (1) The Commission may cancel a licence on the written application of the licence holder. 25
- (2) Before cancelling a licence, the Commission must be satisfied that the licence holder does not hold an appointment as a trustee, statutory supervisor, or unit trustee.

17 Review of Commission's decision on application

- (1) A person (the **applicant**) who is dissatisfied with a decision under **section 15(1)** may, within 20 working days after receiving written notice of the decision, request the Commission to review the decision. 30
- (2) The request must be in writing, must set out the grounds on which the applicant believes the decision should be reviewed, and must state whether or not a hearing is requested. 35

- (3) For the purpose of the review, the Commission may, within 10 working days after receiving the request, require the applicant to supply information in addition to that contained in the request.
- (4) If a hearing is requested, the Commission must hold a hearing and give the applicant the opportunity to be heard— 5
- (a) within 10 working days (or any longer period agreed by the applicant) after receiving the request; or
 - (b) if the Commission requires the applicant to supply additional information under **subsection (3)**, within 10 10 working days (or any longer period agreed by the applicant) after the additional information is supplied.
- (5) On a review, the Commission may confirm, vary, or cancel the decision.
- (6) The Commission must notify the applicant in writing of— 15
- (a) the Commission’s decision on the review; and
 - (b) the Commission’s reasons for the decision; and
 - (c) the date on which any variation or cancellation of the decision in respect of which the review is requested takes effect. 20
- (7) Notification under **subsection (6)** must be given,—
- (a) if a hearing is requested, within 20 working days after the hearing; or
 - (b) if the Commission requires the applicant to supply additional information under **subsection (3)** and no hearing is requested, within 20 working days after the additional information is supplied; or 25
 - (c) in any other case, within 20 working days after the request is received.
- (8) A decision in respect of which a review is requested remains 30 valid pending the outcome of the review.

18 Appeal to High Court against Commission’s decision on application

- (1) A person who is dissatisfied with a decision under **section 17(5)** may appeal to the High Court within 20 working days 35 after receiving written notice of the decision.

- (2) If a trustee, statutory supervisor, or unit trustee in respect of a security lodges an appeal against a decision not to issue a new licence that covers the security, the court may extend the validity of the trustee’s or supervisor’s current licence, to the extent that it covers the security, until the appeal has been determined or withdrawn. 5
- (3) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise.
- (4) On appeal, the court may— 10
 - (a) confirm, cancel, or vary the decision; or
 - (b) refer the decision back to the Commission with a direction to reconsider the whole or a specified part of the decision.

Expiry of licences 15

19 Effect of expiry of licence

- (1) The expiry of the licence of a person who holds an appointment as a trustee, statutory supervisor, or unit trustee does not, of itself, terminate the appointment (but, if the person continues to hold the appointment and does not obtain a new licence, the person breaches **section 6**). 20
- (2) This section is for the avoidance of doubt.

20 Trustee, etc, must apply for new licence or notify issuer before licence expires

- (1) A trustee, statutory supervisor, or unit trustee in respect of a security who holds a licence issued under **section 15** must, at least 6 months before the expiry date, either— 25
 - (a) make an application under **section 15** for a new licence that covers the security; or
 - (b) notify the issuer of the security and the Commission in writing that the trustee or supervisor does not intend to make the application referred to in **paragraph (a)**. 30
- (2) If the trustee, statutory supervisor, or unit trustee makes an application referred to in **subsection (1)(a)**, the Commission must make a decision on the application within 3 months after receiving the application or, if the application is received more 35

than 9 months before the expiry date, at least 6 months before the expiry date.

- (3) A trustee, statutory supervisor, or unit trustee in respect of a security who holds a temporary licence must, within 1 month after the commencement of this Act, either— 5
- (a) make an application under **section 15** for a new licence that covers the security; or
 - (b) notify the issuer of the security and the Commission in writing that the trustee or supervisor does not intend to make the application referred to in **paragraph (a)**. 10
- (4) In this section, **expiry date** means the date on which the fixed period for which a licence is issued under **section 15** ends.

21 Rejection of application for new licence: Commission may replace existing trustee

- (1) This section applies if— 15
- (a) the Commission rejects an application by a trustee, statutory supervisor, or unit trustee in respect of a security (the **existing trustee**) for a new licence that covers the security; and
 - (b) the existing trustee no longer holds a licence that covers the security; and 20
 - (c) the existing trustee has not been replaced.
- (2) The Commission may—
- (a) remove the existing trustee as trustee, statutory supervisor, or unit trustee in respect of the security by written notice to the existing trustee; and 25
 - (b) appoint a person (the **Commission trustee**) to that position for a period of 3 months.
- (3) The Commission must notify the issuer of the security of the appointment. 30
- (4) The issuer must reimburse the Commission for the Commission trustee's charges during the period of the Commission trustee's appointment; and the amount due is recoverable as a debt due to the Commission.
- (5) Subject to **subsection (6)**, the Commission trustee is bound by the terms of the trust deed or deed of participation under which the existing trustee was appointed. 35

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- (6) The Commission may approve a change to those terms (including a change that increases the charges payable to the Commission trustee) during the period of the Commission trustee’s appointment if—
 - (a) the issuer and the Commission trustee agree that the change should be made; and 5
 - (b) the Commission is satisfied that the change does not adversely affect the interests of holders of the security.
 - (7) Before the end of the 3-month appointment, the issuer must either— 10
 - (a) appoint a replacement for the Commission trustee; or
 - (b) appoint the Commission trustee as the trustee, statutory supervisor, or unit trustee on a continuing basis.
 - 22 Expiry of licence: issuer may replace existing trustee or Commission trustee** 15
 - (1) This section applies if—
 - (a) the licence of a trustee, statutory supervisor, or unit trustee in respect of a security (the **existing trustee**) expires; and
 - (b) the existing trustee no longer holds a licence that covers the security. 20
 - (2) This section also applies if a Commission trustee has been appointed by the Commission under **section 21(2)(b)**.
 - (3) If the issuer of the security appoints a person (the **issuer trustee**) as the trustee, statutory supervisor, or unit trustee in place of the existing trustee or Commission trustee, and the issuer trustee accepts the appointment, the issuer may remove the existing trustee or Commission trustee by written notice to the existing trustee or Commission trustee. 25
 - (4) The issuer must give a copy of the notice to the Commission. 30
 - (5) The removal of the existing trustee takes effect on the date stated in, or calculated in accordance with, the notice.
 - (6) But if the notice is given to the Commission trustee, the removal of the Commission trustee cannot take effect until at least 15 working days have passed since the date on which the notice was given to the Commission trustee. 35

- (7) **Subsection (6)** does not apply if the Commission trustee agrees in writing that the subsection does not apply.
- (8) The power in **subsection (3)** may be exercised to remove the existing trustee or Commission trustee despite anything to the contrary in the trust deed or deed of participation. 5
- (9) Nothing in this section limits the issuer's power to remove the existing trustee apart from under this section.
- 23 Expiry of licence: trustee, etc, must provide documents**
- (1) The Commission trustee may, by giving notice in writing to the existing trustee, require the existing trustee to provide the Commission trustee, at the existing trustee's expense, with all documents held by, or in the control of, the existing trustee that relate to the functions of the position to which the Commission trustee has been appointed. 10
- (2) The issuer trustee may, by giving notice in writing to the existing trustee or Commission trustee (**trustee A**), require trustee A to provide the issuer trustee, at trustee A's expense, with all documents held by, or in the control of, trustee A that relate to the functions of the position to which the issuer trustee has been appointed. 15
- (3) A notice under this section— 20
- (a) must be given within 6 months after the date of the appointment of the person who gives the notice:
- (b) ceases to be effective if the person who gives the notice ceases to hold the position referred to in **subsection (1) or (2)**: 25
- (c) must specify the time by which the documents must be provided.
- (4) A person who, without reasonable excuse, fails to comply with a notice under this section commits an offence and is liable on summary conviction to a fine not exceeding \$100,000. 30
- (5) A document provided pursuant to a notice under this section may be used only for the purpose of performing the functions of the position referred to in **subsection (1) or (2)**.
- (6) A person who, without reasonable excuse, uses a document provided pursuant to a notice under this section other than for the purpose of performing the functions of the position to 35

which the Commission trustee or issuer trustee has been appointed commits an offence and is liable on summary conviction to a fine not exceeding \$100,000.

- (7) In this section,—
- Commission trustee** has the meaning given in **section 21(2)(b)**
- existing trustee** has the meaning given in **section 21(1)(a)** or **22(1)(a)**
- issuer trustee** has the meaning given in **section 22(3)**.

Subpart 2—Monitoring and enforcement 10

Reports and investigations

24 Licence holder must deliver regular reports to Commission

- (1) A licence holder must deliver a report to the Commission—
- (a) by a date determined by the Commission when a licence is issued, which must be between 6 and 12 months after the date on which the licence is issued; and 15
- (b) at least once every 6 months after that date.
- (2) The report must contain—
- (a) prescribed information about the following: 20
- (i) the requirements referred to in **section 15(2)**;
- (ii) the matters referred to in **section 15(3)**;
- (iii) the licence holder’s compliance with any conditions imposed on the licence;
- (iv) supervised securities: 25
- (v) the licence holder’s compliance with the terms of every trust deed or deed of participation that relates to a supervised security;
- (vi) other prescribed matters; and
- (b) any information required by a condition imposed on the licence. 30

25 Licence holder must report breach of trustee obligation, etc

- (1) This section applies if a licence holder believes that—

- (a) the licence holder has breached, may have breached, or is likely to breach a trustee obligation; or
- (b) a material change of circumstances has occurred, may have occurred, or is likely to occur in relation to the licence holder; or 5
- (c) the information on which the Commission based the decision to issue or vary the licence was, or may have been, wrong, misleading, or incomplete.
- (2) For the purposes of **subsection (1)(b) and (c)**, the licence holder must consider any matters notified by the Commission under **sections 15(6)(c) and 30(5)(d)**. 10
- (3) The licence holder must, as soon as practicable after the licence holder forms the belief referred to in **subsection (1)**, deliver a report to the Commission containing details of the belief and the licence holder's grounds for the belief. 15
- 26 Commission may investigate breach of trustee obligation, etc**
- (1) The Commission may investigate—
- (a) whether a person who is or was a trustee, statutory supervisor, or unit trustee has, or may have, breached a trustee obligation: 20
- (b) whether a material change of circumstances has, or may have, occurred in relation to a person who holds a licence:
- (c) whether the information on which the Commission based the decision to issue or vary a person's licence was, or may have been, wrong, misleading, or incomplete. 25
- (2) An investigation may be initiated by the Commission or based on a third party's complaint. 30
- (3) For the purposes of an investigation, the Commission may, by notice in writing to the person referred to in **subsection (1)**, require the person to supply the Commission with any information relating to the matters referred to in **subsection (1)** that are specified in the notice. 35

- (4) The notice may specify the periods for which, the form in which, and the time by which the information must be supplied.
- (5) A person who fails, without reasonable excuse, to comply with the notice commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 5

Action plans

27 Commission may require licence holder to submit action plan

- (1) This section applies if the Commission is satisfied that— 10
- (a) a licence holder has breached, or is likely to breach, a trustee obligation; or
 - (b) a material change of circumstances has occurred in relation to a licence holder; or
 - (c) the information on which the decision to issue or vary a licence holder's licence was based was wrong, misleading, or incomplete in a material respect. 15
- (2) The Commission may, by written notice to the licence holder, require the licence holder to submit an action plan to the Commission. 20
- (3) The notice must—
- (a) give details of the breach, material change of circumstances, or wrong, misleading, or incomplete information; and
 - (b) specify the date by which the action plan must be submitted to the Commission. 25
- (4) The action plan must specify—
- (a) the step or steps that will be taken to remedy or avoid the breach or in light of the material change of circumstances or wrong, misleading, or incomplete information; and 30
 - (b) the date by which each step will be taken.

28 Approval or rejection of action plan

- (1) If a licence holder submits an action plan, the Commission may— 35
- (a) approve the action plan; or

- (b) require the licence holder to amend the action plan and resubmit it to the Commission by a specified date for approval or rejection; or
- (c) reject the action plan.
- (2) If the Commission approves the action plan or amended action plan, the licence holder must comply with the plan. 5
- (3) An action plan that has been approved by the Commission may be varied at any time by the licence holder with the consent of the Commission.

29 Commission's powers if action plan rejected 10

- (1) If the Commission rejects a licence holder's action plan or amended action plan, the Commission may do either or both of the following:
 - (a) give a written direction to the licence holder:
 - (b) vary the licence holder's licence in accordance with **section 30**. 15
- (2) A direction under **subsection (1)(a)** must specify—
 - (a) the step or steps that the licence holder must take to avoid or remedy any breach of a trustee obligation or in light of any material change of circumstances or wrong, misleading, or incomplete information; and 20
 - (b) the date by which each step must be taken.
- (3) The licence holder must comply with the direction.

Variation of licences

30 Commission may vary licence because of material change of circumstances, etc 25

- (1) The Commission may, by written notice to a licence holder, vary the licence—
 - (a) if the Commission is satisfied that—
 - (i) a material change of circumstances has occurred in relation to the licence holder; or 30
 - (ii) the information on which the Commission based the decision to issue or vary the licence was wrong, misleading, or incomplete in a material respect; or 35

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- (b) if the Commission rejects the licence holder’s action plan or amended action plan; or
 - (c) if the licence holder—
 - (i) fails to submit or amend an action plan by the date specified by the Commission; or 5
 - (ii) fails to comply with an action plan by the date specified in the plan; or
 - (iii) fails to comply with a direction of the Commission under **section 29, 37, or 49** by the date specified in the direction; or 10
 - (iv) is in administration, receivership, or liquidation, or is subject to statutory management, or enters any other process (whether in New Zealand or another country) under which the assets and affairs of the licence holder are administered, or the assets of the licence holder are realised, for the benefit of creditors of the licence holder. 15
 - (2) Before varying a licence, the Commission must assess all of the matters referred to in **section 15(3)**.
 - (3) Subject to **subsection (4)**, the Commission must exercise the power to vary a licence so that (after the licence is varied) the Commission is satisfied that, having regard to any conditions imposed on the licence, the licence holder is capable of effectively performing the functions of a trustee, statutory supervisor, or unit trustee in respect of securities covered by the licence. 25
 - (4) The Commission may not vary a licence so that the licence ceases to cover a supervised security.
 - (5) The notice under **subsection (1)** must state,—
 - (a) if **subsection (1)(a)** applies, the material change of circumstances or information that the Commission considers was wrong, misleading, or incomplete; and 30
 - (b) the Commission’s reasons for varying the licence; and
 - (c) the date on which the variation takes effect; and
 - (d) any matters that the Commission wishes the licence holder to consider for the purposes of **section 25(2)**. 35

31 Review of Commission's decision to vary licence

- (1) A person (the **applicant**) who is dissatisfied with a decision under **section 30(1)** may, within 20 working days after receiving written notice of the decision, request the Commission to review the decision. 5
- (2) The request must be in writing, must set out the grounds on which the applicant believes the decision should be reviewed, and must state whether or not a hearing is requested.
- (3) For the purpose of the review, the Commission may, within 10 working days after receiving the request, require the applicant to supply information in addition to that contained in the request. 10
- (4) If a hearing is requested, the Commission must hold a hearing and give the applicant the opportunity to be heard—
- (a) within 10 working days (or any longer period agreed by the applicant) after receiving the request; or 15
 - (b) if the Commission requires the applicant to supply additional information under **subsection (3)**, within 10 working days (or any longer period agreed by the applicant) after the additional information is supplied. 20
- (5) On a review, the Commission may confirm, vary, or cancel the decision.
- (6) The Commission must notify the applicant in writing of—
- (a) the Commission's decision on the review; and
 - (b) the Commission's reasons for the decision; and 25
 - (c) the date on which any variation or cancellation of the decision in respect of which the review is requested takes effect.
- (7) Notification under **subsection (6)** must be given,—
- (a) if a hearing is requested, within 20 working days after the hearing; or 30
 - (b) if the Commission requires the applicant to supply additional information under **subsection (3)** and no hearing is requested, within 20 working days after the additional information is supplied; or 35
 - (c) in any other case, within 20 working days after the request is received.

- (8) A decision in respect of which a review is requested remains valid pending the outcome of the review.

32 Appeal to High Court against Commission’s decision to vary licence

- (1) A licence holder who is dissatisfied with the Commission’s decision under **section 31(5)** may appeal to the High Court within 20 working days after receiving written notice of the decision. 5
- (2) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise. 10
- (3) On appeal, the court may—
- (a) confirm, cancel, or vary the decision; or
 - (b) refer the decision back to the Commission with a direction to reconsider the whole or a specified part of the decision. 15

*Removal of trustees, etc, and variation and
cancellation of licences*

33 Commission’s powers if action plan not submitted, etc

- (1) This section applies if a licence holder— 20
- (a) fails to submit or amend an action plan by the date specified by the Commission; or
 - (b) fails to comply with an action plan by the date specified in the plan; or
 - (c) fails to comply with a direction of the Commission under **section 29, 37, or 49** by the date specified in the direction; or 25
 - (d) is in administration, receivership, or liquidation, or is subject to statutory management, or enters any other process (whether in New Zealand or another country) under which the assets and affairs of the licence holder are administered, or the assets of the licence holder are realised, for the benefit of creditors of the licence holder. 30
- (2) The Commission may take 1 or more of the following steps:
- (a) vary the licence holder’s licence in accordance with **section 30**: 35

- (b) give a written notice (a **removal notice**) to the licence holder that applies to 1 or more supervised securities:
- (c) by written notice (a **variation notice**) to the licence holder, vary the licence holder's licence so that the licence ceases to cover 1 or more supervised securities: 5
- (d) by written notice (a **cancellation notice**) to the licence holder, cancel the licence holder's licence.
- (3) To avoid doubt, a removal notice may apply to any supervised security, whether or not the action plan or direction referred to in **subsection (1)** relates to that security. 10
- (4) If the Commission varies a licence under **subsection (2)(c)** so that the licence ceases to cover a supervised security, the Commission must give a removal notice under **subsection (2)(b)** that applies to the security.
- (5) If the Commission cancels a licence, the Commission must give a removal notice under **subsection (2)(b)** that applies to every supervised security. 15
- (6) Before taking any of the steps referred to in **subsection (2)(b) to (d)**, the Commission must—
 - (a) give the licence holder at least 2 working days' notice in writing of the step or steps that the Commission is proposing to take and the reasons for taking the step or steps; and 20
 - (b) give the licence holder the opportunity to make representations to the Commission; and 25
 - (c) consider any representations made.

34 Removal notice

- (1) A removal notice must—
 - (a) state the Commission's reasons for giving the notice; and 30
 - (b) specify a date (the **final removal date**), which must not be more than 40 working days after the date on which the removal notice is given to the existing trustee; and
 - (c) specify the supervised security or securities to which the removal notice applies. 35
- (2) The Commission must give a copy of the removal notice to every affected issuer.

- (3) The removal of the existing trustee as trustee, statutory supervisor, or unit trustee in respect of an affected security takes effect on the final removal date unless the existing trustee is removed from that appointment before that date (whether under **section 39(1)** or otherwise). 5
- (4) In this section and in **sections 37 to 41**,—
affected issuer means the issuer of an affected security
affected security means a security to which a removal notice applies
Commission trustee has the meaning given in **section 38(1)** 10
existing trustee means the licence holder to whom a removal notice is given
final removal date has the meaning given in **subsection (1)(b)**
issuer trustee has the meaning given in **section 39(1)**. 15
- 35 Variation notice**
A variation notice must—
(a) state the Commission’s reasons for varying the licence;
and
(b) specify the date on which the variation takes effect. 20
- 36 Cancellation notice**
A cancellation notice must—
(a) state the Commission’s reasons for cancelling the licence; and
(b) specify the date on which the cancellation takes effect. 25
- 37 Removal notice: Commission may give direction to existing trustee**
- (1) During the period beginning when a removal notice is given and ending when the existing trustee is removed from every appointment as trustee, statutory supervisor, or unit trustee in respect of an affected security, the Commission may give a written direction to the existing trustee. 30
- (2) The direction must specify—
(a) the step or steps that the existing trustee must take; and
(b) the date by which each step must be taken. 35

- (3) The existing trustee must comply with the direction.
- (4) A person who, without reasonable excuse, fails to comply with a direction under **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$200,000.
- (5) Nothing in this section makes the Commission liable to pay 5
any of the existing trustee's charges.
- 38 Removal notice: Commission may replace existing trustee**
- (1) If an affected issuer does not remove the existing trustee by written notice under **section 39(1)** or otherwise appoint a person as the trustee, statutory supervisor, or unit trustee in place 10
of the existing trustee before the final removal date, the Commission may appoint a person (the **Commission trustee**) to that position for a period of 6 months beginning on the final removal date.
- (2) The Commission must notify the affected issuer of the appointment. 15
- (3) The affected issuer must reimburse the Commission for the Commission trustee's charges during the period of the Commission trustee's appointment; and the amount due is recoverable as a debt due to the Commission. 20
- (4) Subject to **subsection (5)**, the Commission trustee is bound by the terms of the trust deed or deed of participation under which the existing trustee was appointed.
- (5) The Commission may approve a change to those terms (including a change that increases the charges payable to the Commission trustee) during the period of the Commission trustee's appointment if— 25
- (a) the affected issuer and the Commission trustee agree that the change should be made; and
- (b) the Commission is satisfied that the change does not adversely affect the interests of holders of the security. 30
- (6) Before the end of the 6-month appointment, the affected issuer must either—
- (a) appoint a replacement for the Commission trustee; or
- (b) appoint the Commission trustee as the trustee, statutory supervisor, or unit trustee on a continuing basis. 35

- 39 Removal notice: affected issuer may replace existing trustee or Commission trustee**
- (1) If an affected issuer appoints a person (the **issuer trustee**) as the trustee, statutory supervisor, or unit trustee in place of the existing trustee or Commission trustee and the issuer trustee accepts the appointment, the affected issuer may remove the existing trustee or Commission trustee by written notice (the **issuer notice**) to the existing trustee or Commission trustee. 5
 - (2) But if the affected issuer proposes to reappoint the existing trustee in place of the Commission trustee before the end of the 6-month period of the Commission trustee's appointment, the removal of the Commission trustee takes effect only if the Commission consents in writing. 10
 - (3) The affected issuer must give a copy of the issuer notice to the Commission. 15
 - (4) The removal of the existing trustee or Commission trustee takes effect on the date stated in, or calculated in accordance with, the issuer notice.
 - (5) But if the issuer notice is given to the Commission trustee, the removal of the Commission trustee cannot take effect until at least 15 working days have passed since the date on which the notice was given to the Commission trustee. 20
 - (6) **Subsection (5)** does not apply if the Commission trustee agrees in writing that the subsection does not apply.
 - (7) The power in **subsection (1)** may be exercised to remove the existing trustee or Commission trustee despite anything to the contrary in the trust deed or deed of participation. 25
 - (8) Nothing in this section limits the affected issuer's power to remove the existing trustee apart from under this section.
- 40 Removal notice: trustee, etc, must provide documents** 30
- (1) The Commission trustee may, by giving notice in writing to the existing trustee, require the existing trustee to provide the Commission trustee, at the existing trustee's expense, with all documents held by, or in the control of, the existing trustee that relate to the functions of the position to which the Commission trustee has been appointed. 35

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- (2) The issuer trustee may, by giving notice in writing to the existing trustee or Commission trustee (**trustee A**), require trustee A to provide the issuer trustee, at trustee A's expense, with all documents held by, or in the control of, trustee A that relate to the functions of the position to which the issuer trustee has been appointed. 5
- (3) If the existing trustee is reinstated under **section 41(4)(c)**, the existing trustee may, by giving notice in writing to the Commission trustee or issuer trustee (**trustee B**), require trustee B to provide the existing trustee, at trustee B's expense, with all documents held by, or in the control of, trustee B that relate to the functions of the position. 10
- (4) A notice under this section—
- (a) must be given within 6 months after the date of the appointment of the person who gives the notice or, in the case of a notice under **subsection (3)**, within 6 months after the existing trustee's reinstatement: 15
 - (b) ceases to be effective if the person who gives the notice ceases to be the trustee, statutory supervisor, or unit trustee in respect of the affected security: 20
 - (c) must specify the time by which the documents must be provided.
- (5) A person who, without reasonable excuse, fails to comply with a notice under this section commits an offence and is liable on summary conviction to a fine not exceeding \$100,000. 25
- (6) A document provided pursuant to a notice under this section may be used only for the purpose of performing the functions of the trustee, statutory supervisor, or unit trustee in respect of the affected security.
- (7) A person who, without reasonable excuse, uses a document provided pursuant to a notice under this section other than for a purpose referred to in **subsection (6)** commits an offence and is liable on summary conviction to a fine not exceeding \$100,000. 30

41 Appeal to High Court against removal notice, etc

- (1) A licence holder may appeal to the High Court against a decision to give a removal notice, variation notice, or cancellation notice under **section 33(2)(b) to (d)**.
- (2) The licence holder must lodge an appeal within 20 working days after receiving the removal notice, variation notice, or cancellation notice. 5
- (3) A decision against which an appeal is lodged remains valid pending the determination of the appeal unless the court orders otherwise. 10
- (4) On appeal, the court may—
 - (a) confirm, cancel, or vary the decision; or
 - (b) refer the matter back to the Commission with a direction to reconsider the whole or a specified part of the decision; or 15
 - (c) if the licence holder has been removed from an appointment, order that the licence holder be reinstated on terms determined by the court.

Pecuniary penalty and compensation orders

42 Pecuniary penalty order 20

- (1) The Commission may apply to the High Court for an order that a trustee, statutory supervisor, or unit trustee pay a pecuniary penalty to the Crown (a **pecuniary penalty order**).
- (2) The court may make a pecuniary penalty order if the court is satisfied that the trustee, statutory supervisor, or unit trustee has breached a trustee obligation. 25
- (3) The maximum amount of a pecuniary penalty in respect of a breach or, where the conduct constitutes a breach of more than 1 trustee obligation, in respect of the same conduct is,—
 - (a) if the breach or conduct materially prejudiced security holders' interests, \$200,000; and
 - (b) in any other case, \$100,000. 30
- (4) The amount of the pecuniary penalty must be an amount that the court considers appropriate, taking into account the following: 35
 - (a) the nature, extent, and circumstances of the breach:

- (b) the nature and extent of any loss suffered by security holders because of the breach:
 - (c) the likelihood, nature, and extent of any damage to the integrity or reputation of New Zealand’s securities markets because of the breach: 5
 - (d) whether the trustee, statutory supervisor, or unit trustee has previously breached a trustee obligation:
 - (e) the public benefit in encouraging prompt and honest self-reporting of breaches or possible breaches of trustee obligations: 10
 - (f) any other circumstances that the court considers relevant.
- (5) A pecuniary penalty order may not be made if proceedings are commenced more than 2 years after the later of—
- (a) the date on which the breach occurred; and 15
 - (b) the date on which the Commission knew, or ought reasonably to have known, of the facts giving rise to the breach.
- (6) Proceedings for a pecuniary penalty order are civil proceedings to which the usual rules of court, rules of evidence, and procedure for civil proceedings apply (including the standard of proof). 20
- 43 Compensation order**
- (1) The Commission may apply to the High Court for an order that a trustee, statutory supervisor, or unit trustee pay compensation to a security holder. 25
- (2) The court may order the trustee, statutory supervisor, or unit trustee to pay compensation to a security holder in respect of any loss or damage suffered by the security holder if the court is satisfied that— 30
- (a) the trustee or supervisor breached a trustee obligation; and
 - (b) the breach caused the loss or damage.
- (3) But the court may not order compensation to be paid if proceedings are commenced after the later of— 35
- (a) the date that is 6 years after the date on which the breach occurred; and

- (b) the date that is 3 years after the date on which the Commission knew, or ought reasonably to have known, of the facts giving rise to the breach.
- (4) To avoid doubt, the court may order a trustee, statutory supervisor, or unit trustee to pay both a pecuniary penalty and compensation in respect of the same conduct. 5

Part 3
Commission's functions in relation to
issuers

Duties of trustees, etc, to Commission in relation to issuers 10

44 Commission may require trustee, etc, to attest as to issuer's compliance with issuer obligations

- (1) The Commission may require a trustee, statutory supervisor, or unit trustee to attest to the Commission, at a time and in a manner specified by the Commission, as to whether the trustee or supervisor is satisfied that a supervised issuer has not breached an issuer obligation in a material respect. 15
- (2) If the Commission requires a trustee, statutory supervisor, or unit trustee to attest to the Commission under this section, the trustee or supervisor must— 20
 - (a) provide that attestation; or
 - (b) if unable to attest to the Commission as required, report the reason, including the details of any breach or suspected breach. 25

Compare: 1989 No 157 s 157ZE

45 Trustee, etc, must report breach or possible breach of issuer obligation

If a trustee, statutory supervisor, or unit trustee has reasonable grounds to believe that a supervised issuer has breached, may have breached, or is likely to breach an issuer obligation in a material respect, the trustee or supervisor must, as soon as practicable,— 30

- (a) report the breach or possible breach to the Commission; and 35

- (b) advise the Commission of the steps (if any) that the trustee or supervisor intends to take in light of the breach or possible breach and the date by which the steps are to be taken.

Compare: 1989 No 157 s 157ZF

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46 Trustee, etc, must disclose information to Commission in certain circumstances

- (1) This section applies if a trustee, statutory supervisor, or unit trustee becomes aware, in the course of or in connection with the performance of functions as trustee, statutory supervisor, or unit trustee, of information on the basis of which the trustee or supervisor could reasonably form the opinion that—
- (a) a supervised issuer is unable to pay the issuer's debts as they become due in the normal course of business; or
- (b) the value of a supervised issuer's assets is less than the value of the issuer's liabilities, including contingent liabilities; or
- (c) it is likely that—
- (i) a supervised issuer will be unable to pay the issuer's debts as they become due in the normal course of business; or
- (ii) the value of a supervised issuer's assets will be less than the value of the issuer's liabilities, including contingent liabilities.
- (2) The trustee, statutory supervisor, or unit trustee must, as soon as practicable,—
- (a) disclose to the Commission all information relevant to the matter referred to in **subsection (1)** that is in the possession or control of the trustee or supervisor and was obtained in the course of, or in connection with, the performance of functions as trustee, statutory supervisor, or unit trustee; and
- (b) advise the Commission of the steps (if any) that the trustee or supervisor intends to take in light of the matter referred to in **subsection (1)** and the date by which the steps are to be taken.

Compare: 1989 No 157 s 157ZG(1) and (3)

- 47 Commission may require trustee, etc, to disclose information about issuer**
- If the Commission, by notice in writing to a trustee, statutory supervisor, or unit trustee, requires the trustee or supervisor to provide the Commission with information relating to the business, operation, or management of a supervised issuer, the trustee or supervisor must, as soon as practicable, disclose to the Commission all information relevant to the matters referred to in the notice that was obtained in the course of, or in connection with, the performance of functions as trustee, statutory supervisor, or unit trustee.
- Compare: 1989 No 157 s 157ZG(2) and (3)
- 48 Protection for trustee, etc, in respect of disclosure**
- (1) No civil, criminal, or disciplinary proceedings may be brought against a trustee, statutory supervisor, or unit trustee in respect of a protected disclosure.
- (2) No person may terminate the appointment of a trustee, statutory supervisor, or unit trustee by reason of a protected disclosure.
- (3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a trustee, statutory supervisor, or unit trustee may make an order against, or do any act in relation to, the trustee or supervisor in respect of a protected disclosure.
- (4) In this section, **protected disclosure**, in relation to a trustee, statutory supervisor, or unit trustee, means a disclosure of information to the Commission in good faith by the trustee or supervisor under any of **sections 44 to 47**.
- Compare: 1989 No 157 s 157ZH
- Commission's powers in relation to issuers* 30
- 49 Commission may give direction to trustee, etc, to avoid material prejudice**
- (1) This section applies if the Commission is satisfied that—
- (a) there is a significant risk that the interests of holders of a supervised security will be materially prejudiced; and
- (b) either—

- (i) the trustee, statutory supervisor, or unit trustee is aware of the risk and has had a reasonable opportunity to take action to eliminate or reduce the risk but has failed to do so; or
 - (ii) action is urgently required to eliminate or reduce the risk and it is not reasonably practicable to wait for the trustee, statutory supervisor, or unit trustee to take such action. 5
- (2) The Commission may give a written direction to the trustee, statutory supervisor, or unit trustee. 10
- (3) The direction must specify—
 - (a) the step or steps that the trustee, statutory supervisor, or unit trustee must take in relation to the issue or the issuer (or both); and
 - (b) the date by which each step must be taken. 15
- (4) The trustee, statutory supervisor, or unit trustee must comply with the direction.
- (5) A person who fails, without reasonable excuse, to comply with a direction commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 20

50 Commission may apply to High Court for orders relating to securities

- (1) This section applies if the Commission is satisfied that—
 - (a) there is a significant risk that the interests of holders of a supervised security will be materially prejudiced; and 25
 - (b) either—
 - (i) the trustee, statutory supervisor, or unit trustee is aware of the risk and has had a reasonable opportunity to make an application under section 49 of the Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960 but has failed to do so; or 30
 - (ii) it is necessary as a matter of urgency for the Commission to make an application under this section and it is not reasonably practicable to wait for the trustee, statutory supervisor, or unit trustee to make an application under section 49 of the 35

- Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960.
- (2) This section also applies if the Commission is satisfied that—
- (a) the provisions of a trust deed or deed of participation are no longer adequate to give proper protection to security holders; and 5
 - (b) either—
 - (i) the trustee, statutory supervisor, or unit trustee has had a reasonable opportunity to make an application under section 49 of the Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960 but has failed to do so; or 10
 - (ii) it is necessary as a matter of urgency for the Commission to make an application under this section and it is not reasonably practicable to wait for the trustee, statutory supervisor, or unit trustee to make an application under section 49 of the Securities Act 1978 or **section 19A** of the Unit Trusts Act 1960. 15
- (3) The Commission may apply to the High Court for an order under this section. 20
- (4) The court may direct that an application be served on any person that the court thinks fit.
- (5) On an application, the court may, after giving the issuer, trustee, statutory supervisor, or unit trustee and any other persons that the court thinks fit the opportunity to be heard, by order— 25
- (a) amend the provisions of the trust deed or deed of participation:
 - (b) impose restrictions on the activities of the issuer, including restrictions on advertising, that the court thinks are necessary for the protection of the interests of security holders: 30
 - (c) direct the issuer, trustee, statutory supervisor, or unit trustee to convene a meeting of security holders for the purpose of— 35
 - (i) having placed before them by the trustee or supervisor any information relating to their interests, and any proposals for the protection of their

- interests, that the court or the trustee or supervisor considers necessary or appropriate; and
- (ii) obtaining their opinions or directions in relation to the information and proposals referred to in **subparagraph (i)**: 5
- (d) give directions in relation to the conduct of any meeting convened in accordance with **paragraph (c)**:
- (e) stay all civil proceedings before any court by or against the issuer or any guarantor of the security:
- (f) restrain the payment of money by the issuer or any guarantor of the security to security holders or a class of security holders: 10
- (g) appoint a receiver or manager of any of the property that constitutes the security (if any) for the security:
- (h) give any other directions that the court considers necessary to protect the interests of security holders, other holders of securities of the issuer, any guarantor of the security, or the public. 15
- (6) The court may vary or cancel an order made under this section.
- (7) In exercising its powers under this section, the court must have regard to the interests of all creditors of the issuer. 20
- Compare: 1978 No 103 s 49

Part 4

Miscellaneous and amendments to other Acts

25

Subpart 1—Miscellaneous

Commission's powers under Securities Act 1978

51 Commission may exercise powers under Securities Act 1978

- (1) The Commission may exercise any of its powers under the Securities Act 1978 in performing its functions under this Act, and Part 3 of that Act applies to the Commission's decisions and proceedings under this Act. 30
- (2) This section is for the avoidance of doubt. 35
- Compare: 1988 No 234 s 44

Information

52 Commission may use information provided by Reserve Bank

(1) The Commission may use any information communicated to it under section 157ZO(2)(e) of the Reserve Bank of New Zealand Act 1989 in the exercise of its functions under this Act. 5

(2) This section does not limit the Commission's power to use any other information in the exercise of its functions under this Act. 10

Compare: 1978 No 103 s 17A(2)

53 Commission may use information obtained under this Act in exercise of other functions

The Commission may use information obtained for the purposes of this Act in the exercise of its functions under any other enactment. 15

54 Confidentiality of information

(1) This section applies to the following information:

(a) information obtained by the Commission for the purposes of this Act: 20

(b) information derived from information referred to in **paragraph (a)**:

(c) information relating to the exercise, or possible exercise, of functions under this Act.

(2) The Commission must not publish or disclose information to which this section applies unless— 25

(a) the information is available to the public under any enactment or is otherwise publicly available; or

(b) the information is in a statistical or summary form; or

(c) the publication or disclosure of the information is for the purposes of, or in connection with, the exercise of functions under this Act or any other enactment; or 30

(d) the publication or disclosure of the information is to a person who the Commission is satisfied has a proper interest in receiving the information; or 35

- (e) the publication or disclosure of the information is with the consent of the person to whom the information relates or of the person to whom the information is confidential.
- (3) Information must not be published or disclosed under **subsection (2)(d)** unless the Commission is satisfied that appropriate provision exists to protect the confidentiality of the information. 5
- (4) A person who publishes or discloses information to which this section applies in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 10

55 Limits on further disclosure of information

- (1) A person to whom information is published or disclosed under **section 54(2)(c)** must not publish, disclose, or use the information unless the publication, disclosure, or use is— 15
- (a) for the purposes of, or in connection with, the exercise of functions conferred by this Act or any other enactment; and
- (b) in accordance with any conditions that may be imposed by the Commission. 20
- (2) A person to whom information is published or disclosed under **section 54(2)(d)** must not publish, disclose, or use the information unless the publication, disclosure, or use is—
- (a) authorised by the Commission and in accordance with any conditions that the Commission may have imposed; and 25
- (b) necessary or desirable for the exercise of any function conferred by an enactment.
- (3) A person to whom information is published or disclosed under **section 54(2)(e)** must not publish, disclose, or use the information unless the publication, disclosure, or use is in accordance with the terms of the consent referred to in that paragraph. 30
- (4) A person who publishes, discloses, or uses information in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding \$200,000. 35

Directions

56 Commission may vary or cancel direction

- (1) The Commission may vary or cancel a direction given under **section 29, 37, or 49** if the Commission is satisfied that—
- (a) circumstances have changed since the direction was given; and
 - (b) the change is such that the direction should be varied or cancelled.
- (2) The Commission may vary or cancel the direction by giving written notice to the person to whom the direction is addressed.

57 Protection for trustee, etc, who complies with Commission's direction

- (1) No civil, criminal, or disciplinary proceedings may be brought against a trustee, statutory supervisor, or unit trustee in respect of a protected act.
- (2) No person may terminate the appointment of a trustee, statutory supervisor, or unit trustee by reason of a protected act.
- (3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of a trustee, statutory supervisor, or unit trustee may make an order against, or do any act in relation to, the trustee or supervisor in respect of a protected act.
- (4) In this section, **protected act**, in relation to a trustee, statutory supervisor, or unit trustee, means an act of, or omission to act on the part of, the trustee, statutory supervisor, or unit trustee in compliance in good faith with a direction under **section 29, 37, or 49**.

Compare: 1989 No 157 s 157ZH

Levy

58 Licence holders must pay levy

- (1) A licence holder must pay the prescribed levy to the Commission.
- (2) The purpose of the levy is to meet, in whole or in part, the estimated costs of the performance of the Commission's functions under this Act (including the costs of collecting the levy).

- (3) Regulations under **section 59** may—
- (a) specify an amount payable as the levy:
 - (b) specify a method for calculating the levy:
 - (c) specify the period for which the levy is payable and the time by which the levy must be paid: 5
 - (d) exempt any class of licence holder from liability to pay the levy, in whole or in part:
 - (e) make different provision for different classes of licence or licence holder.
- (4) The levy is recoverable as a debt due to the Commission. 10

Regulations

59 Regulations

- (1) The Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations for the following purposes: 15
- (a) prescribing matters that the Commission must assess under **section 15(3)(h)**:
 - (b) prescribing the manner in which the Commission must make an assessment under **section 15(4)**:
 - (c) prescribing matters and information about matters to be contained in reports under **section 24**: 20
 - (d) prescribing forms for the purposes of this Act:
 - (e) prescribing fees payable in respect of any matter under this Act or the manner in which fees may be calculated:
 - (f) providing for the levy under **section 58**: 25
 - (g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Before making a recommendation under **subsection (1)**, the Minister must consult the Commission. 30
- (3) Regulations under this section may make different provision for different purposes.
- (4) Regulations under this section may authorise the Commission to refund or waive, in whole or in part and on any conditions as may be prescribed, payment of any fee payable in relation to any person or class of persons. 35

- (5) A fee payable to the Commission is recoverable as a debt due to the Commission.

Transitional provision

- 60 Temporary licence for trustee, etc, appointed before commencement** 5
- (1) This section applies to a person who, immediately before the commencement of this Act,—
- (a) is a trustee, statutory supervisor, or unit trustee in respect of a security; and
- (b) either— 10
- (i) is approved to be appointed to that position under section 48 of the Securities Act 1978 or section 5 of the Unit Trusts Act 1960, whether unconditionally or subject to conditions; or
- (ii) does not need to be approved. 15
- (2) A person to whom this section applies is deemed to hold a licence (a **temporary licence**) under this Act that covers the security referred to in **subsection (1)(a)** and is subject to any conditions referred to in **subsection (1)(b)(i)**.
- (3) Subject to **section 18(2)**, a temporary licence expires on the earliest of the following dates: 20
- (a) the date on which the temporary licence is cancelled under **section 16 or 33(2)(d)**;
- (b) the date on which a licence issued under **section 15** takes effect: 25
- (c) the date that is 9 months after the commencement of this Act.
- (4) This Act applies to a temporary licence in the same way as it applies to a licence issued under **section 15**.
- (5) But a person who holds a temporary licence does not, during the currency of the temporary licence, have to pay the levy under **section 58**. 30

Subpart 2—Amendments to other Acts

*Amendments to Corporations (Investigation and
Management) Act 1989*

- 61 Amendments to Corporations (Investigation and Management) Act 1989** 5
Sections 62 and 63 amend the Corporations (Investigation and Management) Act 1989.
- 62 New section 11 substituted**
Section 11 is repealed and the following section substituted:
- “11 Disclosure of information to Registrar by trustees or statutory supervisors** 10
- “(1)** This section applies if a trustee or statutory supervisor (under the Securities Act 1978) in respect of securities issued by a corporation or a statutory supervisor (under the Retirement Villages Act 2003) of a retirement village operated by a corporation becomes aware, in the course of or in connection with the performance of the trustee’s or supervisor’s functions, of information on the basis of which the trustee or supervisor could reasonably form the opinion that— 15
- “(a)** the corporation is unable to pay the corporation’s debts as they become due in the normal course of business; or 20
- “(b)** the value of the corporation’s assets is less than the value of the corporation’s liabilities, including contingent liabilities; or
- “(c)** it is likely that— 25
- “(i)** the corporation will be unable to pay the corporation’s debts as they become due in the normal course of business; or
- “(ii)** the value of the corporation’s assets will be less than the value of the corporation’s liabilities, including contingent liabilities; or 30
- “(d)** the corporation has breached, or is likely to breach, in a material respect—
- “(i)** the terms of the trust deed or deed of participation relating to the securities; or 35
- “(ii)** the terms of any offer of the securities; or

- “(iii) the terms of the deed of supervision relating to the retirement village.
- “(2) The trustee or statutory supervisor must, as soon as practicable, disclose to the Registrar all information relevant to the matter referred to in **subsection (1)** that is in the possession or control of the trustee or supervisor and was obtained in the course of, or in connection with, the performance of functions as trustee or statutory supervisor. 5
“Compare: 1989 No 157 s 157ZG(1) and (3)”.
- 63 Section 12 repealed** 10
Section 12 is repealed.
- Amendment to Financial Service Providers
(Registration and Dispute Resolution) Act 2008*
- 64 Amendment to Financial Service Providers (Registration and Dispute Resolution) Act 2008** 15
- (1) This section amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- (2) Schedule 2 is amended by adding the following item:
- | | | |
|-----------------------|---|---|
| Securities Commission | Licensed trustees in respect of debt securities, licensed statutory supervisors in respect of participatory securities, licensed unit trustees, and licensed statutory supervisors of retirement villages | Securities Trustees and Statutory Supervisors Act 2009 (as applied, in the case of statutory supervisors of retirement villages, by section 37 of the Retirement Villages Act 2003) |
|-----------------------|---|---|
- Amendments to Retirement Villages Act 2003*
- 65 Amendments to Retirement Villages Act 2003** 20
Sections 66 to 68 amend the Retirement Villages Act 2003.
- 66 New section 37 substituted**
Section 37 is repealed and the following section substituted:

“37 Application of Securities Trustees and Statutory Supervisors Act 2009 to statutory supervisors

- “(1) **Parts 1 and 2, sections 47 and 48, and Part 4** of the Securities Trustees and Statutory Supervisors Act **2009** apply, with all necessary modifications, in relation to statutory supervisors 5 as if—
- “(a) references to a statutory supervisor (as defined in that Act) were references to a statutory supervisor (as defined in this Act); and
- “(b) references to a deed of participation were references to 10 a deed of supervision; and
- “(c) references to an issuer were references to an operator; and
- “(d) references to an issuer obligation included references to an obligation imposed on an operator by or under this 15 Act; and
- “(e) references to a security and a participatory security were references to a retirement village; and
- “(f) references to a security holder were references to a resi- 20 dent; and
- “(g) references to a trustee obligation included references to an obligation imposed on a statutory supervisor by or under this Act.
- “(2) The effect of **subsection (1)** is that statutory supervisors must be licensed under the Securities Trustees and Statutory Super- 25 visors Act **2009** and are subject to the obligations (including the obligation to pay the levy under **section 58** of that Act), and have the rights and powers, set out in **Parts 1 and 2, sections 47 and 48, and Part 4** of that Act.
- “(3) A licence under the Securities Trustees and Statutory Super- 30 visors Act **2009** may cover both retirement villages and securities (as defined in that Act).”

67 Operator must appoint statutory supervisor

- (1) Section 38(1) is amended by omitting “for the village” and substituting “who holds a licence under the Securities Trustees 35 and Statutory Supervisors Act **2009** (as applied by **section 37(1)** of this Act) that covers the village”.
- (2) Section 38(4) is repealed.

68 Registrar’s consent required for termination or non-renewal of appointment

Section 39 is amended by adding the following subsection:

- “(3) This section does not apply to the termination of the appointment of a statutory supervisor by the operator under **Part 2** of the Securities Trustees and Statutory Supervisors Act **2009** (as applied by **section 37(1)** of this Act).” 5

Amendments to Securities Act 1978

69 Amendments to Securities Act 1978

Sections 70 to 79 amend the Securities Act 1978. 10

70 Restrictions on offer of securities to the public

- (1) Section 33(2)(a) is amended by inserting “who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the security” after “a person”.
 (2) Section 33(3)(a) is amended by inserting “who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the security” after “a person”. 15

71 Contents of deeds

Section 45 is amended by adding the following subsection:

- “(4) A clause prescribed for the purposes of subsection (2) or (3) may, without limitation, do any of the following: 20
 “(a) specify the duties and powers of the trustee or statutory supervisor:
 “(b) specify the duties of the issuer:
 “(c) provide for the trustee or statutory supervisor to have the power, exercisable with the consent of the issuer (but without the consent of security holders having to be obtained), to make amendments to the trust deed or deed of participation that do not adversely affect the interests of security holders.” 25 30

72 New section 48 substituted

Section 48 is repealed and the following section substituted:

“48 Removal of trustees and statutory supervisors

“(1) A trustee or statutory supervisor (**T**) in respect of a security may not resign, be discharged, or be removed as trustee or statutory supervisor unless—

“(a) all functions and duties of the position have been performed; or 5

“(b) the issuer has appointed another person who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the security to the position in place of **T** and the other person has accepted the appointment; or 10

“(c) the court consents.

“(2) This section does not apply to the removal of a trustee or statutory supervisor by the Commission under **Part 2** of the Securities Trustees and Statutory Supervisors Act **2009**.” 15

73 Trustees and statutory supervisors may apply to court for orders relating to securities

Section 49(1) is amended by repealing paragraph (a) and substituting:

“(a) there is a significant risk that the interests of the security holders will be materially prejudiced; or” 20

74 New section 50B inserted

The following section is inserted after section 50A:

“50B Protection for auditors

“(1) No civil, criminal, or disciplinary proceedings may be brought against an auditor in respect of a protected disclosure. 25

“(2) No person may terminate the appointment of an auditor by reason of a protected disclosure.

“(3) No tribunal, body, or authority that has jurisdiction in respect of the professional conduct of an auditor may make an order against, or do any act in relation to, an auditor in respect of a protected disclosure. 30

“(4) In this section, **protected disclosure**, in relation to an auditor, means a disclosure of information in good faith by the auditor under any of the following provisions: 35

“(a) section 50(2):

“(b) section 50(3):

“(c) section 50A(2):
“(d) section 50A(3).
“Compare: 1989 No 157 s 157ZH”.

- 75 When court may make management banning orders**
Section 60A(1)(b)(i) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Markets Act 1988,”. 5
- 76 Appeals to High Court on questions of law only**
Section 69P(3) is amended by adding “or the Securities Trustees and Statutory Supervisors Act **2009**”. 10
- 77 Restrictions on use of self-incriminating statements obtained by summons**
Section 69U(1)(a)(ii) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Markets Act 1988,”. 15
- 78 Regulations and Orders in Council**
Section 70(1)(g) is amended by omitting “; and, without limiting the generality of the foregoing, clauses specifying the duties and powers of trustees or statutory supervisors, as the case may be, and the obligations of issuers may be prescribed as clauses that are deemed to be contained in such deeds”. 20
- 79 Schedule 1 amended**
Schedule 1 is amended by inserting the following item in its appropriate alphabetical order: “Securities Trustees and Statutory Supervisors Act **2009**”. 25
- Amendment to Securities Markets Act 1988*
- 80 Amendment to Securities Markets Act 1988**
(1) This section amends the Securities Markets Act 1988.
(2) Section 43F(1)(b)(i) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Act 1978,”. 30

*Amendment to Takeovers Act 1993***81 Amendment to Takeovers Act 1993**

- (1) This section amends the Takeovers Act 1993.
- (2) Section 44F(b)(i) is amended by inserting “the Securities Trustees and Statutory Supervisors Act **2009**,” after “the Securities Act 1978,”. 5

*Amendments to Trustee Companies Act 1967***82 Amendments to Trustee Companies Act 1967**

- (1) This section amends the Trustee Companies Act 1967.
- (2) Section 7(2) is amended by repealing paragraph (m) and substituting the following paragraph: 10
 “(m) statutory supervisor (as defined in the Retirement Villages Act 2003) in respect of a retirement village covered by the trustee company’s licence under the Securities Trustees and Statutory Supervisors Act **2009**.” 15
- (3) Section 7(2) is amended by repealing paragraph (p) and substituting the following paragraph:
 “(p) trustee, statutory supervisor, or unit trustee (as defined in the Securities Trustees and Statutory Supervisors Act **2009**) in respect of a security covered by the trustee company’s licence under that Act.”. 20

*Amendments to Unit Trusts Act 1960***83 Amendments to Unit Trusts Act 1960**
Sections 84 to 90 amend the Unit Trusts Act 1960.**84 Section 5 repealed** 25
Section 5 is repealed.**85 Appointment of trustee**
Section 8(b) is amended by omitting “eligible in accordance with section 5 of this Act” and substituting “who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the unit trust”. 30

86 New section 10 substituted

Section 10 is repealed and the following section substituted:

“10 Removal of trustees

“(1) A trustee may not resign as trustee of a unit trust unless—

“(a) all functions and duties of the position have been performed; or 5

“(b) the manager has appointed another person who holds a licence under the Securities Trustees and Statutory Supervisors Act **2009** that covers the unit trust to the position, and the new trustee has accepted the appointment; or 10

“(c) the High Court consents.

“(2) Despite anything to the contrary in the trust deed, a manager may not discharge or remove a trustee except with the approval of the High Court. 15

“(3) **Subsection (2)** does not apply to the removal of a trustee by the manager under **Part 2** of the Securities Trustees and Statutory Supervisors Act **2009**.”

87 Implied provisions in trust deed

Section 12 is amended by inserting the following subsection after subsection (1): 20

“(1A) If regulations made under section 28 prescribe provisions that are deemed to be contained in trust deeds relating to unit trusts, those provisions are implied into those trust deeds in accordance with the regulations.” 25

88 Meeting of unit holders

(1) Section 18(2) is amended by adding “and any directions given by the Securities Commission under the Securities Trustees and Statutory Supervisors Act **2009**”.

(2) Section 18(4) is amended by omitting “the trusts or any rule of law” and inserting “the trusts, a direction of the Securities Commission, any rule of law,”. 30

89 New section 19A inserted

The following section is inserted after section 19:

- “19A Trustee may apply to High Court for orders relating to unit trust**
- “(1) This section applies if a trustee is satisfied that—
- “(a) there is a significant risk that the interests of unit holders will be materially prejudiced; or 5
 - “(b) the provisions of the trust deed are no longer adequate to give proper protection to unit holders.
- “(2) The trustee may apply to the High Court for an order under this section.
- “(3) The court may direct that an application be served on any person that the court thinks fit. 10
- “(4) On an application, the court may, after giving the manager and any other persons that the court thinks fit the opportunity to be heard, by order—
- “(a) amend the provisions of the trust deed: 15
 - “(b) impose restrictions on the activities of the manager, including restrictions on advertising, that the court thinks are necessary for the protection of the interests of unit holders:
 - “(c) direct the manager or trustee to convene a meeting of unit holders for the purpose of— 20
 - “(i) having placed before them by the trustee any information relating to their interests, and any proposals for the protection of their interests, that the court or the trustee considers necessary or appropriate; and 25
 - “(ii) obtaining their opinions or directions in relation to the information and proposals referred to in **subparagraph (i)**:
 - “(d) give directions in relation to the conduct of any meeting convened in accordance with **paragraph (c)**: 30
 - “(e) stay all civil proceedings before any court by or against the manager:
 - “(f) restrain the payment of money by the manager to unit holders or a class of unit holders: 35
 - “(g) give any other directions that the court considers necessary to protect the interests of unit holders, or the public.
- “(5) The court may vary or cancel an order made under this section.

- “(6) In exercising its powers under this section, the court must have regard to the interests of all creditors of the manager.
“Compare: 1978 No 103 s 49”

90 Regulations

- (1) Section 28(2) is amended by adding the following paragraphs: 5
“(d) prescribing information and other matters that must be included in a trust deed:
“(e) prescribing provisions that are deemed to be contained in a trust deed.”
- (2) Section 28 is amended by adding the following subsections: 10
- “(3) A provision prescribed for the purposes of **subsection (2)(e)** may, without limitation, do any of the following:
“(a) specify the duties and powers of the trustee:
“(b) specify the duties of the manager:
“(c) provide for the trustee to have the power, exercisable 15
with the consent of the manager (but without requiring the consent of unit holders), to make amendments to the trust deed that do not adversely affect the interests of unit holders.
- “(4) Regulations under this section may make different provision 20
for different purposes.”
-