

## **Treasury Report: Extended RDGS: Final Documents for Approval**

<b>Date:</b>	Wednesday 16 September 2009	<b>Report No:</b>	T2009/2133
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### **Action Sought**

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance (Hon Bill English)	<p><b>Sign</b> the attached eligibility criteria and delegation letter for the extended RDGS.</p> <p><b>Approve</b> the policy guidelines for the existing and extended RDGS.</p> <p><b>Agree</b> to the Treasury proactively releasing this report.</p>	As soon as possible once you have received the warrant from DPMC.

### **Contact for Telephone Discussion (if required)**

<b>Name</b>	<b>Position</b>	<b>Telephone</b>		<b>1st Contact</b>
[Withheld – free and frank]	Analyst	[Withheld – privacy]	[Withheld – privacy]	✓
Stephen Revill	Senior Solicitor	[Withheld – privacy]	[Withheld – privacy]	

### **Minister of Finance's Office Actions (if required)**

Note DPMC should provide your office with a warrant specifying the responsible Minister referred to in the *Crown Retail Deposit Guarantee Scheme Act* is the Minister of Finance. This should be received before the Minister signs/ approves the attached documentation.

Please return original signed copies of the eligibility criteria and delegation letter to the Treasury; and organise for a copy of the signed eligibility criteria to be tabled in Parliament. Treasury will organise the Gazettal of the original signed copy of the eligibility criteria.

**Enclosure: Yes**

## **Treasury Report: Extended RDGS: Final Documents for Approval**

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### **Executive Summary**

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#### **Eligibility criteria, delegation letter and policy guidelines**

You previously indicated that you were comfortable with the draft eligibility criteria for the extended Retail Deposit Guarantee Scheme (RDGS); the letter to the Secretary to the Treasury delegating authority to enter into guarantee deeds; and the general policy guidelines to inform the exercise of that delegation. You were also asked to note that final copies of these documents would be provided for your approval once the *Crown Retail Deposit Guarantee Scheme Act* comes into force (T2009/2071 refers).

The Act has come into force after receiving Royal assent on Saturday 12 September 2009. The Department of Prime Minister and Cabinet (DPMC) is organising for a warrant specifying the responsible Minister referred to in the *Crown Retail Deposit Guarantee Scheme Act* is the Minister of Finance.

This report seeks your final approval of these documents once you have received the warrant from DPMC. Only small changes have been made to the documents from the drafts you received previously. The following changes have been made to the eligibility criteria and policy guidelines:

- Clarification that merged entities need to meet the BB credit rating eligibility criteria for entry into the extended scheme.
- Clarification that new banks and merged entities must be in the business of borrowing and lending or providing financial services (or both), and not provide financial services primarily to related parties and/or group members.
- Introduction of “controlling institution” as a variation on “merged entity” to capture a different way in which a merger may occur.

The dates and webpage cross-references will be included in the documents when they go live.

The sub-delegation specified in the delegation letter has been adjusted to reflect the leadership changes at the Treasury (to include Deputy Chief Executives).

The following documents are attached in Annexes 1 to 4: eligibility criteria (Annex 1); delegation letter (Annex 2); new policy guidelines for the existing guarantee period (Annex 3); and policy guidelines for the guarantee extension period (Annex 4),

We have also revised the existing policy guidelines related to Collective Investment Schemes (CISs) to bring them in line with the general policy guidelines for the existing guarantee period. This document is attached as Annex 5.

This report seeks your approval of these documents.

## Guarantee deeds

We previously provided you with a summary of the changes to be made to the guarantee deeds (Annex 5, T2009/2071 refers). In finalising the deeds for the extension period the following additional changes have been made to the guarantee deeds:

- Institutions which join the extended scheme will be able to offer both guaranteed and non-guaranteed deposit accounts during the extension period. This change has been made to assist firms to transition out of the scheme by giving firms the option of having both guaranteed and non-guaranteed retail funding sources. Firms will be required to make clear to the public which accounts have a Crown guarantee for the extension period and which accounts do not. Treasury will make this clear in the information provided to depositors about the guarantee scheme including on the Treasury website.
- Under the existing guarantee the Crown can only withdraw and replace the guarantee deed if the change is not materially adverse to creditors generally when compared to the terms of the existing deed. This provision was included in the deed to provide certainty about the terms of the guarantee deed. Under the deed for the extension period there will be a lower threshold for the Crown to be able to make changes to the guarantee deed in order to provide the Crown with greater flexibility in administering the deeds. Deeds will be able to be changed if the change does not withdraw the benefits of the guarantee from depositors that benefit from it.
- Variations to the guaranteed entity's trust deed, or the terms of its debt securities that may increase the Crown's liability under the guarantee, are to be notified to the Crown.
- The guarantee fee for an entity that is downgraded to a credit rating below BB will be the same as for BB rated entities (i.e. 150 basis points for finance companies and 60 basis points for banks and other NBDT's) (Aide Memoire, 8 September 2009).
- As noted in Cabinet paper CBC (09) 88, as an added incentive for firms to improve their credit ratings, if firms improve their credit ratings over the extension period they will receive a refund back to 12 October 2010 for fees previously paid at the higher rate.

This report asks you to note these changes.

## Proactive release of advice

This report also seeks your agreement for the Treasury to proactively release this report and attachments along with the other advice leading to the extension of the RDGS (T2009/2111 refers). The release version of this report is included as Annex 6. The details of officials have been removed from the release version, consistent with normal practice under the Official Information Act.

## Recommended Action

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We recommend that you:

- sign** the attached eligibility criteria and delegation letter for the extended Retail Deposit Guarantee Scheme once you have received the warrant from DPMC (Annex 1 and 2 refers);
- return** the signed eligibility criteria and delegation letter to the Treasury (originals);
- table** a copy of the signed eligibility criteria in Parliament;

- d **note** that the Treasury will organise the Gazettal of the eligibility criteria;
- e **agree** to the new policy guidelines for the existing scheme (general and for CISs) and the policy guidelines for the extended scheme once you have received the warrant from DPMC (Annex 3, 4 and 5 refers);

*Agree/disagree.*

- c. **note** the additional changes being made to the guarantee deeds for the extended scheme;
- d. **note** subject to your approval these documents will be published on the Treasury website, and other channels where appropriate, shortly; and
- e. **agree** to the Treasury proactively releasing this report on the Treasury website (Annex 6 refers).

*Agree/disagree.*

Dr Brian McCulloch  
**Director**  
**for Secretary to the Treasury**

Hon Bill English  
**Minister of Finance**

## **CROWN RETAIL DEPOSIT GUARANTEE SCHEME – ELIGIBILITY FOR EXTENDED SCHEME**

I, Simon William English, Minister of Finance **give notice** under section 5 of the Crown Retail Deposit Guarantee Scheme Act 2009 of:

- a the types of entity in respect of which guarantees may be given under section 6 of that Act; and
- b the criteria for entities to satisfy before such guarantees may be given;

to take effect as from the date of this notice.

### Types of Entity in respect of which Crown Guarantees may be given

The types of entity in respect of which Crown Guarantees may be given under section 6 of the Crown Retail Deposit Guarantee Scheme Act 2009 are:

- a Banks registered under the Reserve Bank of New Zealand Act 1989;
- b Building Societies as defined in the Building Societies Act 1965;
- c Credit Unions as defined in the Friendly Societies and Credit Unions Act 1982;
- d Other deposit taking institutions such as finance companies.

### Criteria for Entities to satisfy

Entities must satisfy the following criteria before they can be considered for entry into the extended scheme.

#### **For existing entities**

- a An entity that as at the date of its application for a Crown Guarantee under the extended scheme, is an Approved Institution under the existing scheme:
  - o whose Crown Guarantee has not been withdrawn as at that date; and
  - o that has not been subject to a default event (as that term is defined in the Crown Guarantee under the existing scheme); and
  - o that holds a credit rating from Standard and Poor's or Fitch of BB or above or holds a credit rating from Moody's of Ba2 or above.

### **For new banks**

- b An entity that as at the date of its application for a Crown Guarantee under the extended scheme is an Approved Institution under the existing scheme, that has met the eligibility criteria set out in paragraph a. above and that has gained registration as a bank under the Reserve Bank Act 1989.
- c Any other entity that as at the date of its application for a Crown Guarantee under the extended scheme, has gained registration as a bank under the Reserve Bank Act 1989, and that:
  - o holds a credit rating from Standard and Poor's or Fitch of BB or above; or
  - o holds a credit rating from Moody's of Ba2 or above.

### **Merged Entities and Controlling Institutions**

- d An entity that is a Merged Entity that has been constituted as such, after the date of this notice; and
- e Other bank like entities (such as finance companies), established after 12 October 2008:
  - o that have assumed control over two or more Approved Institutions; and
  - o that have a BB rating or higher.

### **For existing entities, new banks, Controlling Institutions and Merged Entities**

In addition:

- f any existing entity, any new bank or any Controlling Institution that (in each case) already carries on business, when applying for the Crown Guarantee under the extended scheme must meet all of the following further eligibility criteria:
  - o have Debt Securities on issue;
  - o be in the business of borrowing and lending, or providing financial services, or both;
  - o carry out a substantial portion of their business in New Zealand; and
  - o do not primarily provide financial services, or lend to, related parties and/or group members.
- g any new bank or Controlling Institution that is not carrying on business at the time of its application and any Merged Entity, applying for the Crown Guarantee under the extended scheme, must meet all of the following further eligibility criteria:
  - o be in the business of borrowing and lending, or providing financial services, or both;
  - o do not primarily provide financial services, or lend to, related parties and/or group members; and

- h a Controlling Institution applying for the Crown Guarantee under the extended scheme must also meet the following further eligibility criteria:
- o the purpose and intent of that Controlling Institution's assumption of control over those Approved Institutions, is (among other things) to be contractually bound to absorb the businesses of those Approved Institutions; and
  - o the period in which that Controlling Institution is obliged to absorb the businesses of those Approved Institutions is within a time deemed reasonable by the Crown.

## Explanation of Terms

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**Approved Institution** means an entity that is identified as an "approved institution" for the existing scheme on the webpage

<http://www.treasury.govt.nz/economy/guarantee/retail/approved>

or any successor Treasury web page on which "approved institutions" for the existing scheme are listed.

**Controlling Institution** is described in paragraph e. above.

**Existing scheme** means the Crown retail deposit guarantee scheme that was announced by the Minister of Finance, on or about 12 October 2008, and which is due to expire on October 12, 2010.

**Extended scheme** means the scheme that was announced on or about 25 August 2009 by the Minister of Finance, which was established under the Crown Retail Deposit Guarantee Scheme Act 2009, and which must expire no later than 31 December 2011.

**A Merged Entity** means:

- a an entity that:
- o holds a credit rating from Standard and Poor's or Fitch of BB or above or holds a credit rating from Moody's of Ba2 or above; and
  - o is comprised by one or more (but not all) of the entities that are party to a merger, one or more of which is:
    - an Approved Institution under the existing scheme, that has met the eligibility criteria set out in paragraph a. of Eligibility Criteria; and
    - party to the Crown guarantee for the extension scheme;
- b an entity that:
- o holds a credit rating from Standard and Poor's or Fitch of BB or above or holds a credit rating from Moody's of Ba2 or above; and
  - o at law is a successor to all the property, rights, powers and privileges, liabilities and obligations of the entities that are party to a merger, one or more of which is:

- an Approved Institution under the existing scheme, that has met the eligibility criteria set out in paragraph a. of Eligibility Criteria; and
  - party to the Crown guarantee for the extension scheme;
- c any other entity or association of entities that the Crown deems to be a merged entity in its sole and unfettered discretion.

A **merger** means:

- a in relation to an entity that is a company incorporated under the Companies Act 1993:
  - o an amalgamation under part 13 of the Companies Act 1993;
  - o an amalgamation or an arrangement approved by the court approved under part 15 of the Companies Act 1993;
- b in relation to a building society registered under the Building Societies Act 1965:
  - o A transfer of engagements under section 33 of the Building Societies Act 1965;
  - o A union of building societies under section 32 of the Building Societies Act 1965;
- c in relation to a credit union registered as such under the Friendly Societies and Credit Unions Act 1982, an amalgamation or transfer of engagements under section 83 of that Act.

**SIGNED** by the **MINISTER OF FINANCE**,  
the Honourable Simon William English

\_\_\_\_\_  
Signature

In the presence of:

\_\_\_\_\_  
Signature of witness

Name of witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_



## **DELEGATION BY THE MINISTER OF FINANCE – EXTENSION OF CROWN GUARANTEE OF RETAIL DEPOSITS**

**Date:**

**From:** Minister of Finance

**To:** Secretary to the Treasury

### **1. CROWN GUARANTEES**

#### **1.1 Delegation**

Pursuant to section 28 of the State Sector Act 1988 and section 6 of the Crown Retail Deposit Guarantee Scheme Act 2009, I, the Honourable Simon William English, **MINISTER OF FINANCE**, delegate to the **SECRETARY TO THE TREASURY** (and any person acting in such role from time to time) the authority to give in writing guarantees as part of the management and administration of the Crown's Retail Deposit Guarantee Scheme, such guarantees to be in such form as the Secretary to the Treasury may from time to time determine.

Pursuant to section 28 of the State Sector Act 1988 and section 6(3) of the Crown Retail Deposit Guarantee Scheme Act 2009, I, the Honourable Simon William English, **MINISTER OF FINANCE**, also delegate to the **SECRETARY TO THE TREASURY** (and any person acting in such role from time to time) the authority to:

- (a) publish in the *Gazette* statements in a form determined by the Secretary to the Treasury for all guarantees given as part of the management and administration of the Crown's Retail Deposit Guarantee Scheme; and
- (b) forward to the Office of the Clerk (Bills Office) such statements for presentation to the House of Representatives on my behalf.

This delegation shall come into effect on the date of its execution and shall continue in force until revoked.

#### **1.2 Consent to sub-delegation**

Pursuant to section 41 of the State Sector Act 1988, I, the Honourable Simon William English, **MINISTER OF FINANCE**, consent to the sub-delegation of all or any of the authority and powers delegated by me in this instrument, jointly or severally to:

- (a) Treasury Deputy Chief Executives;
- (b) Treasury Deputy Secretaries;
- (c) Treasury Assistant Secretaries; and
- (d) other senior Treasury staff with appropriate expertise and acumen.

### 1.3 Secretary to Provide details of Guarantees

The Secretary to the Treasury shall provide me with details of all guarantees entered into in accordance with this delegation.

**SIGNED** by the **MINISTER OF FINANCE**,  
the Honourable Simon William English

\_\_\_\_\_  
Signature

In the presence of:

\_\_\_\_\_  
Signature of witness

Name of witness: \_\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_

**[DATE]**

## **CROWN RETAIL DEPOSIT GUARANTEE SCHEME - POLICY GUIDELINES FOR THE EXISTING SCHEME**

These are the guidelines that cover the exercise of discretion under the delegated authority granted to the Secretary to the Treasury by the Minister of Finance regarding the management and administration of the Crown's existing Retail Deposit Guarantee Scheme (the **existing scheme**).

The existing scheme is the scheme that was announced on or about 12 October 2008 and which is due to expire on 12 October 2010.

### **Discretion**

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The decision to enter into a Crown Guarantee with any specific entity is at the sole discretion of the Crown.

### **Overarching Principles**

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The grant of a Crown Guarantee to an entity must be "necessary or expedient in the public interest."

The key "public interest" factors when considering the provision of a Crown Guarantee are:

- a the maintenance of public confidence in New Zealand's financial system; and
- b maintaining the confidence of general public depositors in New Zealand financial institutions.

### **Entities Eligible to Apply for the Crown Guarantee**

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The entities eligible to apply for the Crown Guarantee are:

- a Banks registered under the Reserve Bank of New Zealand Act 1989;
- b Building Societies as defined in the Building Societies Act 1965;
- c Credit Unions as defined in the Friendly Societies and Credit Unions Act 1982;
- d Other bank like entities (such as finance companies), existing on 12 October 2008, which issue Debt Securities;
- e Other bank like entities (such as finance companies), which issue Debt Securities established after 12 October 2008:
  - o that have assumed control over two or more Approved Institutions; and
  - o that have a BB rating or higher;

- f Other bank like entities (such as finance companies), established after 12 October 2008 which issue Debt Securities and that are Merged Entities, holding a BB rating or higher;
- g Any other bank like entities (such as finance companies), established after 12 October 2008 to which paragraphs (e) and (f) do not apply, that issue Debt Securities and that have a BBB- rating or higher;
- h Qualifying Collective Investment Schemes.

## Explanation of Terms

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**Approved Institution** means an entity that is identified as an “approved institution” for the existing scheme on the webpage

<http://www.treasury.govt.nz/economy/guarantee/retail/approved>

or any successor Treasury web page on which “approved institutions” for the existing scheme are listed.

**control** means the exercise by one person (“B”) over another person (“A”) of direct and effective control in relation to A, as a result of ownership or control of securities or ownership or control of other interests in or issued by A.

**Controlling Institution** is described in paragraph e. above.

**Debt Securities** mean any interest in or right to be paid money that is, or is to be, deposited with or lent to any person (whether or not the interest or right is secured by a charge over any property); and includes—

- a Debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
- b An interest or right that is declared by regulations to be a debt security for the purposes of the Securities Act 1978; and
- c A renewal or variation of the terms or conditions of any such interest or right or of a security referred to in paragraph (a) or paragraph (b) of this definition;—

but does not include—

- d An interest in a contributory mortgage where the interest is offered by a contributory mortgage broker; or
- e Any such interest or right or a security referred to in paragraph (a) or paragraph (c) of this definition that is declared by regulations not to be a debt security for the purposes of the Securities Act 1978.

A **Merged Entity** means:

- a An entity that:
  - holds a credit rating from Standard and Poor's or Fitch of BB or above or holds a credit rating from Moody's of Ba2 or above; and
  - is comprised by one or more (but not all) of the entities that are party to a merger, one or more of which is:
    - an Approved Institution under the existing scheme, that meets the Relevant Criteria (set out below); and
    - party to the Crown guarantee for the existing scheme;
- b An entity that:
  - holds a credit rating from Standard and Poor's or Fitch of BB or above or holds a credit rating from Moody's of Ba2 or above; and
  - at law is a successor to all the property, rights, powers and privileges, liabilities and obligations of the entities that are party to a merger, one or more of which is:
    - an Approved Institution under the existing scheme, that meets the Relevant Criteria (set out below); and
    - party to the Crown guarantee for the existing scheme;
- c Any other entity or association of entities that the Crown deems to be a merged entity in its sole and unfettered discretion.

A **merger** means:

- a In relation to an entity that is a company incorporated under the Companies Act 1993:
  - an amalgamation under part 13 of the Companies Act 1993;
  - an amalgamation or an arrangement approved by the court approved under part 15 of the Companies Act 1993;
- b In relation to a building society registered under the Building Societies Act 1965:
  - A transfer of engagements under section 33 of the Building Societies Act 1965;
  - A union of building societies under section 32 of the Building Societies Act 1965;
  - In relation to a credit union registered as such under the Friendly Societies and Credit Unions Act 1982, an amalgamation or transfer of engagements under section 83 of that Act.

**A Qualifying Collective Investment Scheme** means:

- a an arrangement or scheme to which a participatory security (within the meaning of section 2(1) of the Securities Act 1978) relates;
- b a superannuation scheme (within the meaning of section 2A(1) of the Superannuation Schemes Act 1989); or
- c a unit trust (within the meaning of section 2(1) of the Unit Trusts Act 1960),

that invests exclusively in:

- d New Zealand government securities; or
- e Debt Securities issued by an entity that is covered by the Crown Deposit Guarantee Scheme.

## Relevant Criteria

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- a Any existing entity, that (in each case) already carries on business, when applying for the Crown Guarantee under the existing scheme should meet all of the following further eligibility criteria:
  - o have Debt Securities on issue;
  - o be in the business of borrowing and lending, or providing financial services, or both;
  - o carry out a substantial portion of their business in New Zealand; and
  - o do not primarily provide financial services, or lend to, related parties and/or group members.
- b Any Controlling Institution that is not carrying on business at the time of its application and any Merged Entity, applying for the Crown Guarantee under the existing scheme, should meet all of the following further eligibility criteria:
  - o be in the business of borrowing and lending, or providing financial services, or both;
  - o do not primarily provide financial services, or lend to, related parties and/or group members; and
- c A Controlling Institution applying for the Crown Guarantee under the existing scheme should also meet the following further eligibility criteria:
  - o the purpose and intent of that Controlling Institution's assumption of control over those Approved Institutions, is (among other things) to be contractually bound to absorb the businesses of those Approved Institutions; and
  - o the period in which that Controlling Institution is obliged to absorb the businesses of those Approved Institutions is within a time deemed reasonable by the Crown.

## Other factors that may be considered in exercising discretion to offer or refuse to offer, the Crown Guarantee

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- a The credit worthiness of the entity, including any rating agency reports on the Entity;
- b The related party exposure of the entity;
- c The quality of the information provided by the entity;
- d That the individuals with control of the entity are of good character;
- e That the individuals with control of the entity have the necessary business experience and acumen required for the prudent, proper, efficient and business-like operation of the entity;
- f That the business practices of the entity:
  - o reflect the standards expected of a prudent, proper and efficient business; and
  - o otherwise meet reasonable standards;
- g The track record of the entity with respect to such matters as whether it has:
  - o complied (or has not complied) with any requirement of the Reserve Bank of New Zealand Act 1989 including (without limitation) any prudential supervision, direction or notice of the Reserve Bank;
  - o complied (or has not complied) with:
    - the terms of Debt Securities issued by the entity;
    - the entity's trust deed (where relevant);
  - o met its payments as they fell due and maintained solvency; or
  - o ever been in moratorium or has been the subject of any insolvency administration;
- h That the affairs of the entity are otherwise are being conducted (and have been conducted) in a manner that is not prejudicial to the soundness of:
  - o its own operations; or
  - o New Zealand's financial system; and
- i Any other factors relevant to the:
  - o the maintenance of public confidence in New Zealand's financial system; and
  - o maintaining the confidence of general public depositors in New Zealand financial institutions.

[DATE]

## **CROWN RETAIL DEPOSIT GUARANTEE SCHEME - POLICY GUIDELINES FOR THE EXTENDED SCHEME**

These are the guidelines that cover the exercise of discretion under the delegated authority granted to the Secretary to the Treasury by the Minister of Finance regarding the management and administration of the Crown's Retail Deposit Guarantee Scheme, established under the Crown Retail Deposit Guarantee Act 2009 (the **extended scheme**).

The eligibility criteria for entities wishing to apply for a Crown Guarantee under the extended scheme may be found at *[insert the relevant web page at which the eligibility criteria for the extended scheme may be found]*

### **Discretion**

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The decision to enter into a Crown Guarantee with any specific entity under the extended scheme is at the sole discretion of the Crown.

### **Overarching Principles**

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The grant of a Crown Guarantee to an entity under the extended scheme must be "necessary or expedient in the public interest."

The key "public interest" factors when considering the provision of a Crown Guarantee are:

- a the maintenance of public confidence in New Zealand's financial system; and
- b maintaining the confidence of general public depositors in New Zealand financial institutions.

### **Factors that may be considered in exercising discretion to offer or refuse to offer, the Crown Guarantee under the extended scheme**

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- a The credit worthiness of the entity, including any rating agency reports on the Entity;
- b The related party exposure of the entity;
- c The quality of the information provided by the entity;
- d That the individuals with control of the entity are of good character;
- e That the individuals with control of the entity have the necessary business experience and acumen required for the prudent, proper, efficient and business-like operation of the entity;



- f That the business practices of the entity:
  - o reflect the standards expected of a prudent, proper and efficient business; and
  - o otherwise meet reasonable standards;
- g The track record of the entity with respect to such matters as whether it has:
  - o complied (or has not complied) with any requirement of the Reserve Bank of New Zealand Act 1989 including (without limitation) any prudential supervision, direction or notice of the Reserve Bank;
  - o complied (or has not complied) with:
    - the terms of Debt Securities issued by the entity;
    - the entity's trust deed (where relevant);
  - o met its payments as they fell due and maintained solvency; and
  - o ever been in moratorium or have been the subject of any insolvency administration;
- h That the affairs of the entity are otherwise are being conducted (and have been conducted) in a manner that is not prejudicial to the soundness of:
  - o its own operations; or
  - o New Zealand's financial system; and
- i Any other factors relevant to the :
  - o the maintenance of public confidence in New Zealand's financial system; and
  - o maintaining the confidence of general public depositors in New Zealand financial institutions.

## Explanation of Terms

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**Debt Securities** mean any interest in or any right to be paid money that is , or is to be, deposited with or lent to any person (whether or not the interest or right is secured by a charge over any property); and includes –

- a Debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
- b Any interest or right that is declared by regulations to be a debt security for the purposes of the Securities Act 1978; and
- c A renewal or variation of the terms and conditions of any such interest or right or of a security referred to in paragraph (a) or paragraph (b) of this definition; -

but does not include –

- d An interest in a contributory mortgage where the interest is offered by a contributory mortgage broker; or
- e Any such interest or right or a security referred to in paragraph (a) or paragraph (b) of this definition that is declared by regulations not to be a debt security for the purposes of the Securities Act 1978.

**[DATE]**

## **CROWN RETAIL DEPOSIT GUARANTEE SCHEME COLLECTIVE INVESTMENT SCHEME - POLICY GUIDELINES**

On 13 October 2008, the Minister of Finance:

- (a) delegated to the Secretary to the Treasury authority, under section 65ZD of the Public Finance Act 1989, to give in writing guarantees as part of the management and administration of the Crown's Deposit Guarantee Scheme, such guarantees to be in such form as the Secretary to the Treasury may from time to time determine; and
- (b) confirmed that coverage under the Crown's Deposit Guarantee Scheme should be offered to collective investment schemes that invest solely in debt securities of:
  - (i) the New Zealand government; or
  - (ii) institutions covered by the Crown's Deposit Guarantee Scheme,subject to a limitation that no collective investment scheme could increase its economic exposure to any non-bank guaranteed institution above the level prevailing as at 12 October 2008.

Specimen forms of guarantee have been prepared. These forms anticipate the extension of the Crown Deposit Guarantee Scheme to cover certain "Nominated Beneficiaries", including qualifying Collective Investment Schemes that would not otherwise be covered.

These guidelines relate to the exercise of the Secretary to the Treasury's discretion regarding the form of guarantees and the extension of those guarantees under Nomination Deeds to cover certain Collective Investment Schemes.

### **Discretion**

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The decision to enter into a Nomination Deed regarding a Collective Investment Scheme is at the sole discretion of the Crown.

### **Overarching Principles**

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The entry into a Nomination Deed regarding a Collective Investment Scheme must be "necessary or expedient in the public interest."

The key "public interest" factors, when considering the entry into a Nomination Deed, include:

- a the maintenance of public confidence in New Zealand's financial system; and
- b maintaining the confidence of general public depositors in New Zealand financial institutions.

## Entities Eligible to Apply for a Nomination Deed for a Collective Investment Scheme

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An Entity is eligible to apply for a Nomination Deed for a Collective Investment Scheme involving:

- a an arrangement or scheme to which a participatory security (within the meaning of section 2(1) of the Securities Act 1978) relates;
- b a superannuation scheme (within the meaning of section 2A(1) of the Superannuation Schemes Act 1989); or
- c a unit trust (within the meaning of section 2(1) of the Unit Trusts Act 1960),

that invest exclusively in:

- d New Zealand government securities; and/or
- e Debt Securities issued by entities covered by the Crown Deposit Guarantee Scheme.

**Debt Securities** mean any interest in or right to be paid money that is, or is to be, deposited with or lent to any person (whether or not the interest or right is secured by a charge over any property); and includes—

- a Debenture, debenture stock, bond, note, certificate of deposit, and convertible note; and
- b An interest or right that is declared by regulations to be a debt security for the purposes of the Securities Act 1978; and
- c A renewal or variation of the terms or conditions of any such interest or right or of a security referred to in paragraph (a) or paragraph (b) of this definition;—

but does not include—

- d An interest in a contributory mortgage where the interest is offered by a contributory mortgage broker; or
- e Any such interest or right or a security referred to in paragraph (a) or paragraph (c) of this definition that is declared by regulations not to be a debt security for the purposes of the Securities Act 1978.

## Relevant Criteria

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The following considerations are relevant in the exercise of the Secretary's discretion, namely entities applying for a Nomination Deed for a Collective Investment Scheme should:

- a Be in the business of borrowing and lending, or providing financial services, or both;
- b Carry out a substantial portion of their business in New Zealand;
- c Have at least 20 investors; and
- d Not have any investors that, together with associated persons, hold more than 20% of the units of the scheme.

## Other factors that may be considered in exercising discretion to offer, or refuse to offer, a Nomination Deed

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- a The credit worthiness of the entity, including any rating agency reports on the entity;
- b The related party exposure of the entity;
- c The quality of the information provided by the entity;
- d That the individuals with control of the entity are of good character;
- e That the individuals with control of the entity have the necessary business experience and acumen required for the prudent, proper, efficient and business-like operation of the entity;
- f That the business practices of the entity:
  - o reflect the standards expected of a prudent, proper and efficient business; and
  - o otherwise meet reasonable standards;
- g The track record of the entity with respect to such matters as whether it has:
  - o complied (or has not complied) with any requirement of the Reserve Bank of New Zealand Act 1989 including (without limitation) any prudential supervision, direction or notice of the Reserve Bank;
  - o complied (or has not complied) with:
    - the terms of Debt Securities issued by the entity;
    - the entity's trust deed (where relevant);
  - o met its payments as they fell due and maintained solvency; or
  - o ever been in moratorium or has been the subject of any insolvency administration;

- h That the affairs of the entity are otherwise are being conducted (and have been conducted) in a manner that is not prejudicial to the soundness of:
  - o its own operations; or
  - o New Zealand's financial system; and
- i Any other factors relevant to the :
  - o the maintenance of public confidence in New Zealand's financial system; and
  - o maintaining the confidence of general public depositors in New Zealand financial institutions.