

18 September 2009

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

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

Overarching Principles

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

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

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

- 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.