

**REVIEW OF THE NATURE AND EXTENT OF THE INVOLVEMENT  
OF NOMINEES IN THE NEW ZEALAND MARKET - A REPORT  
PREPARED BY THE SECURITIES COMMISSION**

Securities Commission  
Reserve Bank Building  
2 The Terrace  
**WELLINGTON**

Telephone: (04) 472 9830  
Facsimile: (04) 472 8076

March 1996

**REVIEW OF THE NATURE AND EXTENT OF THE INVOLVEMENT  
OF NOMINEES IN THE NEW ZEALAND MARKET - A REPORT  
PREPARED BY THE SECURITIES COMMISSION**

1. The Securities Commission, acting pursuant to section 10 of the Securities Act 1978, has conducted a review of the role of nominee companies (and other entities which exercise a similar function) in the market for shares that are quoted on, and have a home listing on, the New Zealand Stock Exchange. The purpose of the review is to ascertain the nature and extent of the role of nominees in the New Zealand market and the implications of this role on the rights of the beneficial owners of the shares.
2. The Commission distributed a questionnaire to obtain information about the practices of nominees in New Zealand. Our report is based largely on the responses to the questionnaire. We invite recipients of the questionnaire and other interested persons to comment on our report, in particular, on the need for any follow-up action.

**Background**

3. Our questionnaire was distributed in October 1994. A copy is attached as Appendix A. The questionnaire was prepared in consultation with market participants. The Commission also retained ANZ Nominees Limited (a subsidiary of the Australia and New Zealand Banking Group Limited) who helped us finalise the questionnaire and reviewed the responses we received. We are grateful to ANZ Nominees Limited for their help.
4. We sent out a total of 68 questionnaires to entities which we thought might own or operate as nominees, for example, banks, custodian companies, financial institutions, mutual funds, sharebrokers and trustee companies.
5. We required the responses to the questionnaire to be given as at 31 October 1994.
6. Recipients of the questionnaire were assured that the information obtained in response to the questionnaire would only be used for market analysis and would not be used for any regulatory or enforcement purpose. We also assured recipients of the questionnaire that company-specific information would be kept confidential and that, in publishing our report, we would aggregate information and would not refer specifically to any individual nominee.
7. To ensure that the information was kept confidential, we required ANZ Nominees Limited (and any employees of ANZ Nominees Limited who were involved in reviewing the responses to the questionnaire) to enter into a Confidentiality Deed. In addition, we withheld from ANZ Nominees Limited:
  - a. responses to questions which specifically identified nominees or any other parties;<sup>1</sup>

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Questions 1, 3, 4(a), 7(a), 10(b) and 13(b).

- b. responses to certain questions which nominees asked us to withhold; and
  - c. copies of business agreements provided to us by nominees.
8. We received responses from 66 of the 68 recipients of the questionnaire. The responses related to a total of 54 nominees which held shares in New Zealand listed companies.
9. We have summarised the responses to the questionnaire. Our summary is attached as Appendix B. Our findings are set out below. Part I summarises the nature and extent of nominees' business in New Zealand; Part II sets out clients' rights in respect of the shares which are held by nominees and the manner in which those rights are exercised; and Part III sets out nominees' obligations under the Securities Amendment Act 1988.

## Our Findings

10. We have used certain terms which it may be helpful to define at the outset.
- a. The term "Nominee" refers to a company or other entity which holds Quoted Shares, which have been registered in the name of the Nominee, cash and other securities (collectively known as the Fund) on behalf of some other person (the Client).
  - b. The term "Quoted Shares" means shares:
    - i. of companies which have a home listing on the New Zealand Stock Exchange; and
    - ii. which are quoted on the New Zealand Stock Exchange.
- The term "Quoted Shares" does not include convertible notes, options, units or other securities.
- c. The term "Client" refers to a person which has arranged for the Nominee to hold the Fund on its behalf.
- The Client may be (but will not always be) the ultimate beneficial owner of the Quoted Shares. For example, the Client may be the manager of a unit trust or may itself be a nominee (ie, the Nominee will be a sub-nominee). The ultimate beneficial owners of the Quoted Shares will be the unit holders of the unit trust or the clients of the nominee.
- The Commission decided that it was not practicable to obtain information about the ultimate beneficial owners of the Quoted Shares in the questionnaire.
- d. The term "Investment Manager" means a person which has the power to make any decision relating to the Quoted Shares held by the Nominee (for example, a decision

to buy or sell shares, or exercise voting rights in respect of the shares).

- e. The term "Fund" refers to the total amount of Quoted Shares, cash and other securities held by the Nominee on behalf of the Client.

#### **Part I - Nature and Extent of Nominee's Business in New Zealand**

11. We believe that Nominees which responded to our questionnaire can be broken down into three categories:
  - a. Nominees which hold a Fund as a custodian as part of an investment management arrangement where, in each case, an Investment Manager has also been appointed ("Category A Nominees");
  - b. Nominees which hold a Fund as a custodian in the absence of an association with an Investment Manager ("Category B Nominees"); and
  - c. Nominees which are operated by sharebrokers ("Category C Nominees").<sup>2</sup>
12. The three categories of Nominees are discussed at paragraphs 18 to 20 below.
13. Approximately \$18.2 billion of Quoted Shares were held by Nominees on behalf of Clients as at 31 October 1994. This represented approximately 40% of the total market for equity securities, including convertible notes, listed on the New Zealand Stock Exchange.<sup>3</sup>
14. Most of the Quoted Shares (just over \$17 billion or 92.3% of the total of \$18.2 billion) were held by Category B Nominees. More particularly, \$15.5 billion of Quoted Shares (or 85% of the total of \$18.2 billion) were held by only four Category B Nominees.
15. Category A Nominees held approximately \$1.3 billion of Quoted Shares (or 7.2% of the total of \$18.2 billion) and Category C Nominees held just over \$85 million of Quoted Shares (or 0.5% of the total of \$18.2 billion).
16. As stated above at paragraph 8, responses to our questionnaire related to a total of 54 Nominees. Only eight of the 54 Nominees (or 15%) were Category B Nominees. In contrast, 31 of the 54 Nominees (or 57%) were Category C Nominees and 15 of the 54 Nominees (or 28%) were Category A Nominees.
17. It is clear that most of the Quoted Shares held by Nominees as at 31 October 1994 were held by a few Category B Nominees.

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<sup>2</sup> One Category C Nominee was linked to an Investment Manager. We apportioned the amount of Quoted Shares held by the Nominee between Category A and Category C Nominees.

<sup>3</sup> The total market capitalisation of the New Zealand Stock Exchange as at 31 October 1994 was approximately \$45.7 billion.

18 Category A Nominees

- 18.1 Category A Nominees are Nominees which hold a Fund as a custodian as part of an investment management arrangement where, in each case, an Investment Manager has also been appointed. Category A Nominees are employed to separate the custody and the management aspects of the Fund. Category A Nominees ensure that the assets of the Fund are kept in safe custody, collect dividends and other distributions, keep records relating to the Fund and report to Clients.
- 18.2 The Clients of Category A Nominees were managers and trustees of superannuation schemes and unit trusts, funds managers, companies, private trusts and "high net worth" individuals. Most of these Clients (ie, 96%) were New Zealand residents.
- 18.3 Most of Category A Nominees' Clients entered into a written agreement with the Nominee and/or the Investment Manager.<sup>4</sup> The contractual arrangements took one of the following forms:
- a. The Client entered into two separate agreements - one with the Nominee and one with the Investment Manager. These agreements often referred to each other and were intended to be entered into at the same time.
  - b. The Client entered into an agreement with the Investment Manager which provided that the Investment Manager would manage the Fund as well as hold the Fund as the custodian.
  - c. The Client entered into an agreement with the Investment Manager which provided that a separate (and usually related) Nominee would hold the Fund as the custodian. The Investment Manager entered into the custody agreement with the Nominee.
  - d. The Client entered into an agreement with the Nominee which provided that a separate (and usually related) Investment Manager would manage the Fund. The Nominee entered into the management agreement with the Investment Manager.
  - e. The Fund was a superannuation scheme registered under the Superannuation Schemes Act 1989.
  - f. The Fund was a unit trust governed by the Unit Trusts Act 1960.
- 18.4 We note that, despite the different contractual arrangements, all the agreements contained similar provisions in respect of the rights and obligations of the Client, the Investment

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<sup>4</sup>

There was not always a written agreement in the case of unit trusts - the rights and obligations of the parties were determined by the Unit Trusts Act 1960.

Manager and the Nominee.<sup>5</sup> For example, the Investment Manager was given the power to manage the Fund and could direct the Nominee to act in accordance with its instructions. Most of the agreements also required the Investment Manager to act in accordance with any directions given by the Client (except in the case of superannuation schemes where the Investment Manager was required to act in accordance with any directions given by the Nominee) and to invest the Fund in a certain manner (for example, within certain ratios or in certain types of investments).

19 Category B Nominees

- 19.1 Category B Nominees are Nominees which hold the Fund as a custodian in the absence of an association with an Investment Manager. Category B Nominees ensure that the assets of the Fund are kept in safe custody, settle securities transactions, provide cash services, collect dividends and other distributions, keep records relating to the Fund and report to Clients.
- 19.2 Category B Nominees' Clients were global custodians, foreign sharebrokers and financial institutions, foreign and domestic funds managers and "high net worth" individuals. Most of Category B Nominees' Clients (ie, 81%) were overseas residents.
- 19.3 All of Category B Nominees' Clients entered into a written agreement with the Nominee. These agreements generally provided that the Nominee would hold the Fund as a custodian and would only deal with the Fund in accordance with the Client's (or its representative's) instructions.

20 Category C Nominees

- 20.1 Category C Nominees are Nominees which are operated by sharebrokers.
- 20.2 Category C Nominees are generally used for convenience, for example:
  - a. by overseas, absent or frequent share traders to facilitate the transfer and registration of securities; and
  - b. by sharebrokers to "shunt" securities between countries, or hold "odd lots" and new issues of securities.
- 20.3 Some Category C Nominees also hold the Fund as a custodian in the absence of an association with an Investment Manager. These Nominees ensure that the assets of the Fund are kept in safe custody, collect dividends and other distributions, keep records and report to Clients.
- 20.4 Category C Nominees' Clients were varied, for example, overseas investors, frequent and

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In the case of unit trusts where there was not a written agreement, the rights and obligations of the parties under the Unit Trusts Act 1960 were similar to the rights and obligations of the parties under an agreement.

high volume share traders, "high net worth" and "middle of the road" individuals, and persons who wished to remain confidential. Just over half (ie, approximately 60%) of Category C Nominees' Clients were New Zealand residents.

20.5 Category C Nominees' Clients rarely entered into a written agreement with the Nominee.

**Part II - Clients' Rights in Respect of Quoted Shares and the Manner in Which They Are Exercised Where a Nominee Holds Legal Title to the Quoted Shares**

21. Companies and securities law confers certain rights on the shareholders of a company. For example, every shareholder has the right to:

- a. receive a copy of the company's annual report and other shareholder communications;
- b. exercise the voting rights attached to the shares;
- c. share equally in the dividends of the company;
- d. participate in rights issues made by the company;
- e. require the company to buy back the shareholder's shares if the shareholder votes against certain corporate actions (for example, an amalgamation affecting the company);
- f. inspect certain records of the company (for example, the register of members and the minute book);
- g. put certain matters before the Courts (for example, in respect of oppressive or prejudicial conduct); and
- h. request that certain action be taken in respect of alleged insider trading (for example, request that the company obtain a legal opinion as to whether or not the company has a course of action in respect of the alleged insider trading).

22. As the registered holder of the Quoted Shares, the Nominee has the right to exercise these rights. The manner in which these rights were exercised by the Nominee (if the rights were exercised at all) is set out below. In some cases, the manner in which the rights were exercised depended on the category of the Nominee.

23 The right to receive a copy of the company's annual report and other shareholder communications

23.1 The provision of annual reports and other shareholder communications to Clients in respect of the companies in which they had invested depended on the category of the Nominee.

- 23.2 Most of Category A Nominees' Clients did not receive copies of the annual reports or other shareholder communications of the companies in which they had invested. Most Clients were, however, provided with an overview of the Fund by the Investment Manager which set out the current investments of the Fund, the market valuation of the Fund and any movements in the Fund. This was usually provided monthly, quarterly or annually and contained information about the Quoted Shares.
- 23.3 Most of Category B Nominees' Clients were provided with copies of the annual reports and other shareholder communications of the companies in which they had invested. This information was often sent immediately to the Client by way of facsimile. One Category B Nominee stated that information is the "lifeblood" of the Nominee.
- 23.4 The responses from the Category C Nominees were mixed. Some Category C Nominees provided annual reports to Clients only at the request of the Client. Other Nominees only provided Clients with shareholder communications in respect of contentious matters such as takeovers and the election of directors. In other cases, Category C Nominees provided Clients with information prepared by their own analysts.

24. The right to exercise voting rights attached to the Quoted Shares

- 24.1 The manner in which the voting rights attached to the Quoted Shares were exercised by Nominees depended on the category of the Nominee.
- 24.2 In the case of Category A Nominees, the Investment Manager usually exercised the voting rights attached to the Quoted Shares in accordance with a discretion conferred on the Investment Manager by the Client pursuant to the agreement between the Client and the Nominee (and/or the Investment Manager). The Nominee rarely voted. If the Nominee did vote, it was usually on the advice of the Investment Manager.
- 24.3 Category B Nominees' Clients were always advised of the matters on which they were entitled to vote. However, most Clients (particularly overseas Clients) did not vote.
- 24.4 The responses from Category C Nominees were mixed. Some Clients were advised of the matters on which they were entitled to vote. Most Clients, however, did not vote. If Clients did vote, it was usually on contentious matters such as the election of directors or takeovers.

25 The right to share equally in the dividends of the company

- 25.1 As the registered holder of the Quoted Shares, dividends of the companies in which Clients had invested were always paid to the Nominee. The Nominee either paid the dividend directly to the Client or added the dividend to the Client's Fund.

26 The right to participate in rights issues made by the company

- 26.1 The manner in which rights issues were taken up by Nominees depended on the category of the Nominee.
- 26.2 In the case of Category A Nominees, the Investment Manager determined whether rights issues should be taken up in accordance with a discretion conferred on the Investment Manager by the Client pursuant to the agreement between the Client and the Nominee (and/or the Investment Manager). The Nominee usually completed the relevant forms and paid for the rights.
- 26.3 Category B Nominees' Clients were always advised of rights issues and instructed the Nominee how to act. The Client transmitted the funds to the Nominee or the Nominee debited the Client's Fund to pay for the rights. One Category B Nominee had a default set of instructions in place if the Client did not instruct the Nominee how to act.
- 26.4 Most of Category C Nominees' Clients were advised of rights issues and instructed the Nominee how to act. The Client transmitted the funds to the Nominee or the Nominee debited the Client's Fund to pay for the rights.

- 27 The right to require the company to buy back a shareholder's shares
- 27.1 Section 110 of the Companies Act 1993 provides that a shareholder which has voted against certain corporate actions which have been approved by special resolution<sup>6</sup> may require the company to buy back the shareholder's shares.
- 27.2 The effect of this provision was not material at the date of our questionnaire.
- 28 The right to put certain matters before the Courts, inspect certain company records and request that certain action be taken in respect of alleged insider trading
- 28.1 None of the Nominees (or Investment Managers) had been requested by a Client in the past two years to put certain matters before the Courts (for example, in respect of oppressive or prejudicial conduct) or to inspect certain records (for example, the register of members and the minute book) in respect of a company in which the Client had invested. One Nominee had been requested by a Client in the past two years to take certain action in respect of alleged insider trading.
- 28.2 Most Nominees stated that they would consider such a request if one was made. Some Nominees stated that they would seek legal advice. Some Nominees stated that they would confirm that the Client was the ultimate beneficial owner of the Quoted Shares so that the Client could carry out the task.

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<sup>6</sup>

- a. An alteration to the company's constitution which imposes or removes a restriction on the activities of the company;
- b. A "major transaction" (as defined in section 129(2) of the Companies Act 1993); or
- c. An amalgamation.

29. Nominees reconciled their holdings of certificates of Quoted Shares with the holdings recorded for each Client weekly, monthly or quarterly. Some Nominees requested Clients to verify that the Nominees' records agreed with the Clients' records. Sometimes this was done by external auditors.

### **Part III - Nominees' Obligations under the Securities Amendment Act 1988**

#### **30      Requirement to file substantial security holder notices**

- 30.1 Persons who have a relevant interest in five percent or more of the voting securities (ie, Quoted Shares) of a public issuer are required to file substantial security holder notices in accordance with the Securities Amendment Act 1988 ("the Amendment Act").<sup>7</sup>
- 30.2 Section 6(1) of the Amendment Act states that:
- a. persons who lend money or provide financial services in the ordinary course of their business;<sup>8</sup>
  - b. sharebrokers;<sup>9</sup>
  - c. trustee corporations;<sup>10</sup> and
  - d. nominee companies<sup>11</sup>

which have been designated by the Commission are relieved of the obligation to file substantial security holder notices in accordance with the Amendment Act.

- 30.3 Bare trustees are also relieved of the obligation to file substantial security holder notices in accordance with the Amendment Act under section 6(1)(f). Bare trustees are not required to be designated by the Commission.
- 30.4 Only one Category A Nominee had been relieved of the obligation to file substantial security holder notices pursuant to a designation of the Commission under section 6(1) of the Amendment Act.
- 30.5 Most of the Category B Nominees (ie, 75%) had been relieved of the obligation to file substantial security holder notices pursuant to section 6(1) of the Amendment Act. Most Nominees had been designated by the Commission under section 6(1)(e) (ie, they were

<sup>7</sup> The terms "relevant interest", "voting securities" and "public issuer" are defined in the Securities Amendment Act 1988.

<sup>8</sup> Section 6(1)(a) of the Amendment Act.

<sup>9</sup> Section 6(1)(b) of the Amendment Act.

<sup>10</sup> Section 6(1)(c) of the Amendment Act.

<sup>11</sup> Section 6(1)(e) of the Amendment Act.

trustee corporations or nominee companies). One Nominee had been relieved of the obligation to file substantial security holder notices pursuant to section 6(1)(f) (ie, they were a bare trustee).

- 30.6 None of the Category C Nominees had been relieved of the obligation to file substantial security holder notices pursuant to section 6(1) of the Amendment Act.
  - 30.7 The Commission requires every Nominee designated under section 6(1)(e) of the Amendment Act to provide the Commission with the following undertakings:
    - a. that the Nominee will keep the transactions of all Clients under continuing review;
    - b. that the Nominee will inform the public issuer and the New Zealand Stock Exchange when the Client has, or ceases to have, a relevant interest in five percent or more of the Quoted Shares of the public issuer;
    - c. that the Nominee will inform the New Zealand Stock Exchange if it exercises, or proposes to exercise, voting rights in respect of 5% or more of the Quoted Shares of the public issuer; and
    - d. that the Nominee will produce documentation relating to the Quoted Shares at the request of the public issuer or the Commission.
  - 30.8 It was not the purpose of the questionnaire to ascertain whether there has been reasonable compliance with these undertakings. We believe that this area warrants further work by the Commission given that most Category B Nominees have been designated by the Commission under section 6(1)(e) of the Amendment Act and hold most of the Quoted Shares.
- 31 Public issuer may require disclosure of relevant interests
- 31.1 Section 28 of the Amendment Act provides that a public issuer may require a registered holder of its voting securities to disclose information about the persons who hold relevant interests in those securities.
  - 31.2 Most Nominees had received a request from a public issuer under section 28 of the Amendment Act. Some Category B Nominees had received up to 70 requests per year. Most Nominees satisfied these requests in a day (although some Nominees took up to two weeks). Most Nominees had a procedure in place for responding to these requests. Some Nominees responded in accordance with a computer generated list of Clients. It appears that most Nominees did not contact Clients to determine if they were the ultimate beneficial owner of the Quoted Shares.
  - 31.3 Section 28 of the Amendment Act also provides that a security holder of a public issuer who holds over 5% of the public issuer's voting securities may require the public issuer to request another security holder to disclose information about the persons who hold

relevant interests in the public issuer's voting securities.

- 31.4 One Category A Nominee had required a public issuer to request information about another security holder under section 28 of the Amendment Act. This Nominee had made six requests over the past two years.

### **Conclusion**

32. As at 31 October 1994, some 40% of the total market for equity securities, including convertible notes, listed on the New Zealand Stock Exchange was held by Nominees. Most of the Quoted Shares were held by Category B Nominees, that is, Nominees which hold the Fund as a custodian in the absence of an association with an Investment Manager. Most of the Quoted Shares were held by Category B Nominees on behalf of overseas residents.
33. In some cases, the manner in which Clients' rights in respect of the Quoted Shares were exercised (if the rights were exercised at all) depended on the category of the Nominee. In the case of Category A Nominees, the Investment Manager usually exercised the voting rights attached to the Quoted Shares and determined whether rights issues should be taken up in accordance with a discretion conferred on the Investment Manager by the Client. In the case of Category B and Category C Nominees, Clients were advised of rights issues and the matters on which they were entitled to vote and instructed the Nominee how to act.
34. Some of Clients' rights in respect of the Quoted Shares were actively exercised. For example:
- a. Clients usually received information about the Quoted Shares and the companies in which they had invested. Category A Nominees' Clients received an overview of the Fund; Category B Nominees' Clients (and sometimes Category C Nominees' Clients) received copies of the annual reports and other shareholder communications of the companies in which they had invested;
  - b. Clients shared in the dividends of the companies in which they had invested;
  - c. Clients had the opportunity to participate in rights issues of companies in which they had invested; and
  - d. Voting rights attached to the Quoted Shares were usually exercised in the case of Category A Nominees. Category B and Category C Nominees' Clients, however, seldom exercised the right to vote.
35. Some of Clients' rights in respect of the Quoted Shares were hardly exercised at all, for example, the right to inspect certain records, the right to put certain matters before the Courts and the right to request that certain action be taken in respect of alleged insider trading.

36. Most Category B Nominees had been relieved of the obligation to file substantial security holder notices pursuant to a designation by the Commission under section 6(1)(e) of the Amendment Act.
37. The Commission has imposed certain undertakings on designations given under section 6(1)(e). It was not the purpose of the questionnaire to ascertain whether there has been reasonable compliance with these undertakings. We believe that this area warrants further work by the Commission given that most Category B Nominees have been designated by the Commission under section 6(1)(e) of the Amendment Act and hold most of the Quoted Shares.
38. We invite recipients of the questionnaire and other interested persons to comment on our report, in particular, on the need for any follow-up action.
39. We would prefer comments to be in writing and forwarded to the Commission at the following address by 31 May 1996:

Chief Executive  
Securities Commission  
P O Box 1179  
**WELLINGTON**

27 March 1996

# *curities Commission*

12TH FLOOR, RESERVE BANK BUILDING  
2 THE TERRACE, WELLINGTON  
NEW ZEALAND  
TELEPHONE 64-4-472 9830  
FACSIMILE 64-4-472 8076  
P.O. BOX 1179

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10 October 1994

FIELD(1)

Dear FIELD(2)

## QUESTIONNAIRE FOR COMPLETION BY NOMINEES

The Commission is conducting a review of the role of nominee companies in the market for shares that are quoted on, and have a home listing on, the New Zealand Stock Exchange. The purpose of the review is to ascertain the nature and extent of that role and whether that role raises any implications for the market generally.

As part of its review, the Commission wishes to obtain information from nominee companies (and other entities exercising a similar function) and to analyse the information. It is likely that, in due course, the Commission will wish to publish a report on the findings.

We seek your co-operation and assistance by asking that you complete the attached questionnaire in respect of any nominees owned or operated by you and return it to the Commission by 15 November 1994. An identical questionnaire has been sent to other companies which own or operate nominees. Please note that the Commission is empowered to require disclosure of the information pursuant to section 18 of the Securities Act 1978. We wish to ensure that all recipients of the questionnaire reply fully and promptly. If you consider that the questionnaire is not applicable to any entity owned or operated by you, please advise us of that fact.

The Commission requires the information solely for the purposes of market analysis. Information received by the Commission in response to the questionnaire will not be used for any regulatory/enforcement purpose. Moreover, the Commission intends to maintain the confidentiality of information received. Should a report be published, information relating specifically to individual nominees will not be included. Any published information will be aggregate in nature.

In formulating the questionnaire the Commission has consulted with market participants in an endeavour to ensure that the questions asked are appropriate and the necessary compliance time is kept to a reasonable minimum. Additionally, the Commission has retained ANZ Banking Group (New Zealand) Limited to assist in finalising the content and format of the questionnaire, and to prepare a brief analysis of the responses. Information received in response to the questionnaire

will be passed to ANZ for this purpose, but only on an anonymous basis. In particular, the answers to questions, 1, 3, 4(a), 7(a) and 10(b) and 13(b) will not be provided to ANZ. Additionally, ANZ, and the employees of ANZ that will be involved in preparing the analysis, have signed a Confidentiality Deed. A copy of the Deed is available on request from the Commission.

Yours faithfully,

J. Farrell  
Chief Executive

QUESTIONNAIRE FOR COMPLETION BY  
NOMINEES

- Note: (a) This questionnaire is intended for completion by every company (or other person) which, acting in the ordinary course of its business, agrees to become the registered holder of shares which are quoted on the New Zealand Stock Exchange on the basis that those quoted shares are to be held by the that company/person ("the Nominee") as registered holder on behalf of some other person.
- (b) Answers should be given as at 31 October 1994.
- (c) If there is insufficient room to complete an answer, please give the answer on a separate sheet of paper.
- (d) In this questionnaire, the term "quoted shares" refers to shares:
- (i) of companies which have a home listing on the New Zealand Stock Exchange; and
  - (ii) which are quoted on the New Zealand Stock Exchange.
- For present purposes the term "quoted shares" does not include convertible notes, options, units or other quoted securities.
- (e) In this questionnaire the word "Client(s)" in relation to the Nominee refers to a person(s) that has arranged with the Nominee for quoted shares to be registered in the name of the Nominee but held by the Nominee on that person's behalf. It is envisaged that a Client of the Nominee may be the ultimate beneficial owner of the relevant quoted shares (but will not necessarily be - for example, where the Client is a sub-nominee).
- (f) In this questionnaire the term "Investment Manager", in relation to the Nominee, refers to any person which has the power to make any decision on behalf of any Client of the Nominee in relation to any shares held by the Nominee on behalf of that Client, such as a decision to:
- buy or sell shares;
  - exercise voting rights.

PART I: DETAILS OF THE NOMINEE AND THE NATURE AND EXTENT OF ITS BUSINESS

1. Name of Nominee: .....

**Postal Address:** .....  
.....

**Contact Person:** .....  
.....

2. Please provide a brief outline of the nature of the business of the Nominee, addressing, in general terms:

- the particular functions it routinely discharges; and
  - the sort of persons who routinely employ its services as Clients and why they do so.

Please give details of the person(s)/institution(s) with ultimate/effective ownership and/or control of the Nominee:

Name: \_\_\_\_\_

**Postal Address:** .....

.....

Contact Person: \_\_\_\_\_

4. Is there any Investment Manager(s) in relation to the nominee?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes':

(a) Please give the name(s) of the Investment Manager(s) -

.....  
.....  
.....  
.....

(b) Please give brief details of the nature of the decision-making authority conferred on the Investment Manager(s) referred to in (a) and the manner and extent to which that authority is routinely exercised.

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.....  
.....

Please give the following information in relation to the Clients of the Nominee:

<u>Tax Category of Clients:</u>	<u>Approximate Number of Clients</u>	<u>Approximate market value of quoted shares registered in the name of the Nominee:</u>
1. NZ Resident		\$
2. Overseas Resident		\$
Total	_____	Total \$ _____

6. (a) Please comment briefly on whether you consider that there are any apparent trends in relation to the use of nominees compared to previous years (for example, volume of transactions, liquidity of holdings, type of clients using nominees' services).

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- (b) Do you expect these trends (if any) to continue during the next two years?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'No' please comment briefly on what you anticipate will happen:

.....  
.....  
.....  
.....  
.....  
.....  
.....

7. Do Clients of the Nominee enter into a written agreement(s) with the Nominee (and/or with any Investment Manager) in respect of services provided by the Nominee (and/or any Investment Manager)?

With Nominee:

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

With Investment Manager:

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes' (for either):

- (a) Please provide copies of the standard form(s) of agreement.
- (b) Please indicate approximately what percentage of Clients enter into such agreements:

	<u>Approximate % of Clients by number</u>	<u>Approximate % of Clients by value of securities held</u>
Agreement with Nominee		
Agreement with Investment Manager		

Is the Nominee (and/or any Investment Manager) entitled to charge for its services or receive any commission or other form of remuneration?

Nominee:

Investment Manager:

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes' (for either or both), please provide brief details.

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.....

Has the Nominee, at any time, held securities on behalf of the person(s) identified in question 3. above (i.e. the person with ultimate/effective ownership or control of the Nominee) or any person(s) associated with the person(s) identified in question No.3?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes', for what reasons is or was this done?

.....

.....

.....

.....

10. (a) Does the person(s)/institution(s) identified in question No.3. above also have ultimate/effective control of, or an interest in, any other Nominee which routinely holds quoted shares of companies with a home listing in New Zealand?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

- (b) If 'Yes', please give the names of the other Nominees:

.....

.....

.....

.....

ART II - CLIENT RIGHTS IN RESPECT OF QUOTED SHARES AND THE MANNER IN WHICH THEY ARE EXERCISED WHERE A NOMINEE HOLDS LEGAL TITLE

1. Do Clients of the Nominee routinely receive (via the Nominee or otherwise) copies of annual reports and other shareholder communications of the listed issuers in which they have invested through the Nominee?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes', how? What, if any, procedures are in place in this regard?

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If 'No', is any summary information provided by the Nominee (or any person related to the Nominee) to its Clients?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If "Yes" please give brief details.

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Do Clients of the Nominee ever exercise voting rights attaching to the quoted shares held on their behalf by the Nominee?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes':

- (a) How? What, if any, procedures are in place to enable this?

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- (b) If possible please indicate briefly:

- (i) what sorts of issues Clients would commonly/generally vote on;
  - (ii) approximately what proportion of Clients (both by number and value of shares held) exercise their voting rights in this way and how often.

13. Does the Nominee (and/or any Investment Manager) ever exercise voting rights on behalf of a Client of the Nominee in accordance with a discretion conferred by the Client (i.e. without direct instructions from the Client in each case)?

Yes	
No	

(tick one)

If 'Yes':

- (a) Please elaborate briefly on the nature of the entity on whom such a discretion is normally conferred, and the extent of the discretion, including:

- (i) whether such a discretion is normally conferred for all situations or only for limited or specific transactions;
  - (ii) approximately what proportion of Clients (both by number and value of shares held) confer such a discretion and how often;
- .....  
.....  
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.....

) Is the discretion ever conferred by written agreement?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes' please supply copies of any standard form(s) of agreement in this regard.

) How, in practice, do Clients of the Nominee receive dividend payments? What procedures, if any, are in place in this regard?

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) Please indicate how Client entitlements to rights issues are typically taken up and paid for by Clients - i.e. what procedures are in place in this regard?

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16. What, if any, procedures does the Nominee have in place for dealing with a situation where a Client cannot be contacted. For example, how are entitlements to rights issues exercised in such circumstances? What happens to dividend payments?

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17. Does the Nominee ever reconcile its holdings of certificates of quoted shares with the holdings recorded for each client?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes', please state how often this occurs.

.....  
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18. Does the Nominee ever request Clients to verify that the Nominee's record of quoted shares owned by the Client agrees with the Client's record of quoted shares held by the Nominee?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes', please state how often this occurs.

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9. Companies and securities legislation confers certain rights on share/security holders to inspect various records held by the issuer. These rights include:

  - rights under the Companies Act 1955, to inspect:
    - the register of members and index of members (s 121(1)),
    - the minute books (s 150),
    - the register of officers' shareholdings (s 195A(2)),
  - the right, under the Securities Act 1978, to inspect the registers of securities (s 51);
  - the right under the Securities Amendment Act 1988 to inspect the issuer's file of substantial security holder notices (s 25).

In the past two years has the Nominee (and/or any Investment Manager) been requested to, or had occasion to:

- (i) assist a Client of the Nominee in exercising any of these rights; or
  - (ii) exercise any of these rights on behalf of a Client of the Nominee?

Yes	
No	

(tick one)

If 'Yes', please comment briefly, identifying, in respect of each such case, the particular right(s) involved and the steps (if any) that were taken.

If 'No' please comment briefly on the manner in which you anticipate the Nominee (and/or any Investment Manager) would be likely to respond to any such request and the extent to which it would be prepared/able to assist.



1. The Securities Amendment Act 1988 confers security holders (and former security holders) with certain rights in relation to alleged insider trading. These rights include the right to:

- request (with the approval of the Securities Commission) a public issuer to obtain an opinion on whether there is a course of action against an insider (s 17);
  - receive a copy of an opinion under section 17 (s 17(4));
  - exercise (with the leave of the Court) the issuer's right of action against an insider (s 18).

In the past two years has the Nominee (and/or any Investment Manager) been requested to, or had occasion to:

- (i) assist a Client of the Nominee in exercising any of these rights; or
  - (ii) exercise any of these rights on behalf of a Client of the Nominee?

Yes	
No	

(tick one)

If 'Yes', please comment briefly, in respect of each such case, the particular right(s) involved and the steps (if any) that were taken.

If 'No' please comment briefly on the manner in which you anticipate the Nominee (and/or any Investment Manager) would be likely to respond to any such request and the extent to which it would be prepared/able to assist.

**PART III: MISCELLANEOUS**

22. Section 6(1) of the Securities Amendment Act 1988 relieves certain persons (who have been designated by the Securities Commission) from the obligation to file substantial security holder notices in accordance with the Act. Has the Nominee received any designation by the Securities Commission under section 6(1)?

Yes	
No	

(tick one)

If 'Yes', which provision of section 6(1)? .....

23. Section 28 of the Securities Amendment Act 1988 entitles a public issuer to require a registered holder of its voting securities to provide information as to who holds a relevant interest in those securities.

- (a) In the past two years has the Nominee received a request from a public issuer under section 28?

Yes	
No	

(tick one)

If 'Yes':

(i) on how many occasions? .....  
(If numerous occasions, an approximate figure will suffice).

(ii) on average, how long does the Nominee take to comply with such a request?

.....

- (b) Does the Nominee have any procedure in place for complying with section 28?

Yes	
No	

(tick one)

If 'Yes' please provide brief details.

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.....  
.....



24. Section 28 of the Securities Amendment Act 1988 also enables a member(s) of a public issuer who holds 5% of the voting securities, to require that public issuer to issue a notice requiring another security holder (of that public issuer) to provide information as to who holds a relevant interest in that security holder's securities.

Has the Nominee ever exercised its right to require a public issuer to give such a notice?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

(tick one)

If 'Yes' on how many occasions? .....  
(If numerous occasions, an approximate figure will suffice).

Thank you for completing this questionnaire. It would be appreciated if you would return the completed questionnaire to the following address by 15 November 1994:

The Chief Executive  
Securities Commission  
P.O. Box 1179  
Wellington

## Appendix B

### SUMMARY OF RESPONSES TO THE QUESTIONNAIRE

Set out below is a summary of the responses to the questionnaire distributed by the Commission in October 1994 to obtain information about the practices of nominees in New Zealand.

We have used certain terms in this questionnaire which it may be helpful to define at the outset:

- a. The term "Nominee" refers to a company or other entity which holds Quoted Shares which have been registered in the name of the Nominee, cash and other securities (collectively known as the Fund) on behalf of some other person (the Client).
- b. The term "Quoted Shares" means shares:
  - i. of companies which have a home listing on the New Zealand Stock Exchange; and
  - ii. which are quoted on the New Zealand Stock Exchange.

The term "Quoted Shares" does not include convertible notes, options, units or other securities.

- c. The term "Client" refers to a person which has arranged for the Nominee to hold the Fund on their behalf.

The Client may be (but will not always be) the ultimate beneficial owner of the Quoted Shares. For example, the Client may be the manager of a unit trust or may itself be a nominee (the Nominee will be a sub-nominee). The ultimate beneficial owners of the Quoted Shares will be the unit holders of the unit trust or the clients of the nominee.

The Commission decided that it was not practicable to obtain information about the ultimate beneficial owners of the Quoted Shares in the questionnaire.

- d. The term "Investment Manager" means a person which has the power to make any decision relating to the Quoted Shares held by the Nominee (for example, a decision to buy or sell shares, or exercise voting rights in respect of the shares).
- e. The term "Fund" refers to the total amount of Quoted Shares, cash and other securities held by the Nominee on behalf of the Client.

As set out at paragraph 11 of the Commission's report on the responses to the questionnaire, we believe that Nominees which responded to the questionnaire can be broken down into three categories:

- a. Nominees which hold a Fund as a custodian as part of an investment management arrangement where, in each case, an Investment Manager has also been appointed ("Category A Nominees");
- b. Nominees which hold a Fund as a custodian in the absence of an association with an Investment Manager ("Category B Nominees"); and
- c. Nominees which are operated by sharebrokers ("Category C Nominees").<sup>1</sup>

The responses to the questionnaire have been summarised according to this categorisation.

#### **1 - Name and address of Nominee**

This information is confidential.

#### **2(a) - The particular functions discharged by the Nominee**

**Category A** All Category A Nominees acted as a custodian. Category A Nominees ensured that the assets of the Fund were kept in safe custody, collected dividends and other distributions, kept records and reported to Clients. In one case, the Nominee also acted as the Investment Manager and was required to perform additional functions as the Investment Manager. In other cases, the Nominee held the Fund as a trustee of a superannuation scheme or unit trust (or held the Fund on behalf of the trustee of a superannuation scheme or unit trust) and was required to perform additional functions as the trustee.

**Category B** All Category B Nominees acted as a custodian. Category B Nominees ensured that the assets of the Fund were kept in safe custody, settled securities transactions, collected dividends and other distributions, provided cash services, collected and disseminated market information, and reported to Clients.

**Category C** The responses to this question were varied. Category C Nominees were generally used: to act as a custodian; to facilitate the transfer of scrip; to shunt stock between countries; to accommodate odd lots of securities; for confidentiality purposes; for convenience where Clients were overseas, unavailable, or active traders; to collect dividends and other distributions; to act as a clearing account for its parent; and to accommodate new equity issues/under subscriptions.

#### **2(b) - Sort of persons who employ services of Nominee and why they do so**

**Category A** Category A Nominees' Clients were managers and trustees of superannuation schemes and unit trusts, funds managers, companies, private trusts and "high net worth" individuals.

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<sup>1</sup>

One Category C Nominee was linked to an Investment Manager. We apportioned the amount of Quoted Shares held by the Nominee between Category A and Category C Nominees.

- Category B** Category B Nominees' Clients were global custodians, foreign sharebrokers and financial institutions, foreign and domestic funds managers, and "high net worth" individuals.
- Category C** Category C Nominees' Clients were a mixture of persons: clients who required confidentiality; overseas investors; "high net worth" and "middle of the road" individuals; and frequent/high volume traders.

**3 - Name and address of person/institution with ultimate/effective ownership and/or control of Nominee**

This information is confidential.

**4 - Is there an Investment Manager in relation to the Nominee? What is the nature of the decision making authority conferred on the Investment Manager?**

- Category A** An Investment Manager was also appointed in relation to every Category A Nominee. In most cases, decision making authority was conferred on the Investment Manager by the Client pursuant to an agreement between the Client and the Nominee and/or the Investment Manager (these agreements were either standard form agreements or individually tailored). In other cases, decision making authority was conferred on the Investment Manager by the Unit Trusts Act 1960.

- Category B** Category B Nominees had no association with an Investment Manager.

- Category C** One Category C Nominee was linked to an Investment Manager. We apportioned the amount of Quoted Shares held by the Nominee between Category A and Category C Nominees

**5 - Clients of the Nominee as at 31 October 1994**

- Category A** Category A Nominees' Clients were managers and trustees of superannuation schemes and unit trusts, funds managers, companies, private trusts and "high net worth" individuals.

Category A Nominees held approximately \$1.3 billion or 7.2% of a total of \$18.2 billion of Quoted Shares held by Nominees. Approximately 96% of Category A Nominees' Clients were New Zealand residents.

- Category B** Category B Nominees' Clients were global custodians, foreign sharebrokers and financial institutions, foreign and domestic funds managers, and "high net worth" individuals.

Category B Nominees held just over \$17 billion or 92.3% of the total of \$18.2 billion of Quoted Shares held by Nominees. Approximately 81% of Category B

Nominees' Clients were overseas residents.

**Category C** Category C Nominees' Clients were a mixture of persons: clients who required confidentiality; overseas investors; "high net worth" and "middle of the road" individuals; and frequent/high volume traders.

Category C Nominees held approximately \$85 million or just over 0.5% of the total of \$18.2 billion of Quoted Shares held by Nominees. Approximately 60% of Category C Nominees' Clients were New Zealand residents.

**6 - Are there any trends in relation to the use of Nominees? Do you expect these trends to continue during the next two years?**

**Category A** Most Category A Nominees stated that there were no obvious trends in relation to the use of Category A Nominees. Some Category A Nominees noted that use had increased due to an increase in the demand for managed funds and a greater awareness of the need to separate the custody and the investment management aspects of the Fund.

**Category B** Most Category B Nominees stated that the use of Category B Nominees had increased due to an increased level of foreign investment in New Zealand.

**Category C** The responses to this question were mixed. Some Category C Nominees stated that use had increased due to the New Zealand Stock Exchange reducing the settlement period for scrip to five days. However, other Category C Nominees stated that use had decreased since the New Zealand Stock Exchange became more automated. Some Category C Nominees predicted that the use would decrease even further due to the move towards a scripless society.

**7 - Do Clients of the Nominee enter into written agreements with the Nominee (and/or Investment Manager)?**

**Category A** Most of Category A Nominees' Clients entered into written agreements with the Nominee and/or the Investment Manager. We note that these contractual arrangements took the following forms:

- a. In some cases, the Client would enter into two separate agreements - one with the Nominee and one with the Investment Manager. The two contracts referred to each other and were intended to be entered into at the same time.
- b. In other cases, the Client would enter into an agreement with the Investment Manager which provided that the Investment Manager would hold the fund as the custodian (ie, the Investment Manager would act as the Nominee and the Investment Manager).

- c. In some cases, the Client would enter into an agreement with the Investment Manager which provided that a separate Nominee (which was usually related to the Investment Manager) would hold the Fund as the custodian. Alternatively, the Client would enter into an agreement with the Nominee which provided that the fund would be managed by a Investment Manager (which was usually related to the Nominee).
- d. Some arrangements involved superannuation schemes registered under the Superannuation Schemes Act 1989.
- e. In other cases, the arrangement was a unit trust established under the Unit Trusts Act 1960. Often there was no written agreement - the rights and obligations of the parties were determined solely by the Unit Trusts Act 1960.

We noted that, in each case, the rights and obligations of the three parties (the Client, the Nominee and the Investment Manager) were essentially similar. For example, all the agreements gave the Investment Manager the power to deal with the Fund and to direct the Nominee to act in accordance with the Investment Manager's instructions. The agreements also usually provided that the Investment Manager could act only in the interests of the Client and usually contained certain limitations on the Investment Manager's powers - for example, an agreed investment ratio or a restriction on the type of investments in which the Investment Manager could invest. In most cases, the Investment Manager's powers were subject to directions given by the Client (except in the case of superannuation schemes where the Investment Manager's powers were subject to directions given by the Nominee).

**Category B** All Category B Nominees' Clients entered into a written agreement with the Nominee. The agreements generally required the Nominee to hold the Fund in safe custody for the benefit of the Client and to deal with the Fund only in accordance with instructions given by the Client or its representative. In most cases, the agreements provided that the Client could give instructions by facsimile, via the Internet or some other electronic form of communication.

**Category C** One Client entered into a written agreement with a Category C Nominee. This was at the Client's request.

**8 - Is the Nominee (and/or any Investment Manager) entitled to charge for its services or receive a commission or other form of remuneration?**

**Category A** The responses to this question were mixed. Approximately 60% of Category A Nominees charged for their services. Approximately 85% of Investment Managers charged for their services. Investment Managers' fees were generally set as a percentage of the value of the Fund and varied between 0.5% and 2%. Nominees' fees were generally a fixed amount.

- Category B** All Category B Nominees' charged for their services, generally for a safe keeping fee and transaction fees. Fees were either a fixed amount or set as a percentage of the value of the Fund. Most agreements provided that fees could be deducted from the Client's ledger account
- Category C** Most Category C Nominees did not charge for their services. One Category C Nominee stated that it would charge a fee if an investment management service was also offered. When a fee was charged, it was generally a fixed "annual service fee".

**9 - Has the Nominee ever held securities on behalf of a person who has ultimate ownership or control of the Nominee (or any person associated with that person)?**

- Category A** Approximately half of the Category A Nominees had held securities on behalf of a person who had ultimate ownership or control of the Category A Nominee (or a person who was associated with that person). Often the Category A Nominee held securities on behalf of a related Investment Manager. In other cases, Category A Nominees held securities on behalf of a trustee of a unit trust who had ultimate ownership or control of the Nominee.<sup>2</sup>
- Category B** Only two Category B Nominees had held securities on behalf of a person who had ultimate ownership or control of the Nominee (or a person who was associated with that person).
- Category C** The responses to this question were varied. Some Category C Nominees had held securities on behalf of a person who had ultimate ownership or control of the Nominee (or a person who was associated with that person) for convenience or for the purpose of shunting stock.

**10 - Does the person who has ultimate ownership of the Nominee also have control of or an interest in any other Nominee?**

- Category A** In most cases, the person who had ultimate ownership of the Category A Nominee also had an interest in or control of another nominee (the number of other nominees ranged from between one and three)
- Category B** The responses to this question were mixed. The person who had ultimate ownership of the Category B Nominee had an interest in or control of another Nominee in only two cases.
- Category C** The person who had ultimate ownership of the Category C Nominee had an interest in or control of another Nominee in only a few cases.

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<sup>2</sup>

Section 6 of the Unit Trusts Act 1960 provides that a trustee of a unit trust may nominate another company to hold the assets of the unit trust on its behalf but only if the trustee is the ultimate owner of the nominee company.

**11 - Do Clients receive copies of annual reports and other shareholder communications of the companies in which they have invested via the Nominee? If so, what procedures are in place? Is any summary information provided by the Nominee?**

**Category A** Most Category A Nominees do not supply Clients with copies of annual reports or other shareholder communications of the companies in which they have invested unless specifically requested by the Client. Most Clients do, however, receive some form of summary information about the companies in which they have invested. The Investment Manager generally provides the Client with quarterly and annual reports about the Fund and any movements in the Fund. Often the Investment Manager is also required to make a statement about the management and performance of the Fund. In the case of unit trusts and superannuation schemes, Clients receive annual reports of the unit trust or the superannuation scheme. These reports generally contained information about the current investments and market valuation of the Fund and any movements in the Fund.

**Category B** Most Category B Nominees provided annual reports or other shareholder communications to their Clients. As stated by one Nominee, "information is the lifeblood of the custodian". Most agreements between the Client and the Nominee provide that the Nominee must notify the Client of any takeover offer, rights issue or grant of options etc. Information is usually sent to Clients by way of facsimile. The Nominee is also generally required to prepare reports which contain information about the current investments and market valuation of the Fund and any movements in the Fund. Some agreements even state that the Client may view the Nominee's financial statements on request.

**Category C** The responses to this question were mixed. Some Category C Nominees forward annual reports to Clients. Other Nominees only supply annual reports to Clients at the Client's request. A couple of Nominees stated that Clients do not wish to be bothered by annual reports. Most Nominees forward summary information to Clients about, for example, takeovers or dividends. Some Nominees provide Clients with information prepared by their own analysts.

**12 - Do Clients vote the shares held on their behalf by the Nominee? If so, what procedures are in place? What sorts of issues do Clients vote on? Approximately what proportion of Clients vote?**

**Category A** Most of Category A Nominees' Clients do not vote. The Investment Manager has the power to vote on the Clients' behalf pursuant to the agreement between the Client and the Nominee and/or the Investment Manager.

**Category B** Category B Nominees' Clients rarely exercise their voting rights (particularly overseas Clients). Clients are always advised of the matters which they can vote on and instruct the Nominee how to vote. Clients appear to vote on all types of issues. One Nominee stated that Clients vote with management as a general rule.

**Category C** Category C Nominees' Clients rarely vote. If Clients do vote, it is usually on contentious issues such as takeovers or on the election of directors. Often the Nominee will appoint the Client as its proxy.

**13 - Does the Nominee (and/or the Investment Manager) ever vote on behalf of a Client in accordance with a discretion conferred by the Client?**

**Category A** In most cases, the Investment Manager will vote on behalf of Clients in accordance with a discretion conferred on the Investment Manager by the Client pursuant to the agreement between the Client and the Nominee and/or the Investment Manager.

**Category B** Only one Category B Nominee stated that they exercise voting rights in accordance with a discretion conferred by the Client.

**Category C** Category C Nominees rarely vote on behalf of a Client in accordance with a discretion conferred by the Client.

**14 - How do Clients of the Nominee receive dividend payments? What procedures are in place?**

**Category A** Dividends are generally paid to the Nominee and then paid directly to the Client or credited to the Client's ledger account. In most cases, the Investment Manager determines whether dividends should be received in cash or in shares. In the case of unit trusts, superannuation schemes and other managed funds, the beneficial owners will not receive dividends directly. Instead, the dividend will increase the value of the unit trust, superannuation scheme or managed fund.

**Category B** Dividends are generally paid to the Nominee and then paid directly to the Client or credited to the Client's ledger account. The Client determines whether dividends should be received in cash or in shares.

**Category C** Dividends are generally paid to the Nominee and then paid directly to the Client or credited to the Client's ledger account. Sometimes the Nominee may place dividends in an on-call or a money market account.

**15 - How are Client entitlements to rights issues typically taken up and paid for?**

**Category A** In most cases, the Investment Manager determines whether rights issues should be taken up. In a small number of cases, the Nominee will ask the Client if they wish the rights issues to be taken up. Generally, the Nominee will complete the relevant documentation and make the funds available.

**Category B** All Category B Nominees contact Clients to determine whether rights issues should be taken up and act on the Client's instructions. One Nominee had a default set of instructions in place if Clients cannot be contacted. Most Clients

operate a cash account from which rights issues can be paid.

- Category C** All Category C Nominees contact Clients to determine whether rights issues should be taken up and act on the Client's instructions. Sometimes Clients are provided with the company's prospectus and/or annual report. Clients either forward the application monies to the Nominee or the Client's ledger account is debited. Alternatively, the Nominee may pay for the rights on behalf of the Client and then seek reimbursement.

**16 - What, if any, procedures does the Nominee have in place where a Client cannot be contacted? For example, in respect of rights issues and dividend payments.**

- Category A** Most Category A Nominees stated that this question is not applicable as the Investment Manager determines whether rights issues should be taken up. Dividends would be paid to the Nominee and credited to the Client's ledger account.

- Category B** The responses to this question were mixed. Some Nominees stated that rights would lapse if the Client cannot be contacted. Other Nominees stated that the rights would be sold and the proceeds would be credited to the Client's ledger account. In all cases, dividends would be paid to the Nominee and credited to the Client's ledger account.

- Category C** The responses to this question were mixed. Some Nominees stated that the rights would lapse. Other Nominees stated that they would protect the Client's interests and take up the rights. Dividends would be paid to the Nominee and credited to the Client's ledger account or placed in an interest bearing on-call account.

**17 - Does the Nominee ever reconcile its holdings of certificates with the holdings recorded for each Client?**

- Category A** All Category A Nominees (except one) reconcile their holdings of certificates with the holdings recorded for each Client. This is done weekly, monthly, quarterly or after corporate actions.

- Category B** All Category B Nominees reconcile their holdings of certificates with the holdings recorded for each Client. This is done monthly, quarterly or after corporate actions.

- Category C** All Category C Nominees reconcile their holdings of certificates with the holdings recorded for each Client. This is done weekly, monthly, quarterly or after corporate actions. In some cases, it depends on the frequency of Client transactions.

**18 - Does the Nominee ever request Clients to verify that the Nominee's records agree with the Clients' records? If so, how often?**

**Category A** The responses to this question were mixed. Approximately half of Category A Nominees request Clients to verify the Nominee's records. This is usually done quarterly.

**Category B** In some cases, Category B Nominees request Clients to verify the Nominee's records. Often this is done by external auditors.

**Category C** The responses to this question were mixed. Some Category C Nominees request Clients to verify the Nominee's records every six weeks or quarterly. Other Nominees request Clients to verify the Nominee's records when dividends are paid out.

**19 - Companies and securities legislation confers certain rights of inspection of the records of the issuer on the security holder (ie, in respect of the inspection of minute books and the register of members). In the past two years, has the Nominee been requested to assist or exercise these rights on behalf of a Client? If not, how would the Nominee respond to such a request?**

**Category A** None of the Category A Nominees had been requested to assist or exercise any rights of inspection. Most Nominees stated that they would be likely to attend to such a request. In some cases, the Nominee stated that its response would depend on the Client and/or the reasons for a request.

**Category B** None of the Category B Nominees had been requested to assist or exercise any rights of inspection. Most Nominees stated that they would be likely to attend to such a request. Some Nominees stated that they would charge for this service and/or seek legal advice.

**Category C** None of the Category C Nominees had been requested to assist or exercise any rights of inspection. Most Nominees stated that they would be likely to attend to such a request. One Nominee stated that it would charge for its assistance.

**20 - Companies and securities legislation allows security holders to put certain matters before the Courts (ie, in respect of oppressive or prejudicial conduct, or mis-statements in an advertisement or prospectus). In the past two years, has the Nominee been requested to assist or exercise these rights on behalf of a Client? If not, how would the Nominee respond to such a request?**

**Category A** None of the Category A Nominees had been requested to put certain matters before the Courts on behalf of a Client. Most Nominees stated that they would be likely to attend to such a request. Some Nominees stated that they would seek legal advice and/or the Investment Manager's advice before acting. One Nominee stated that they would confirm that the Client was the beneficial owner of the Quoted Shares so that the Client could take action. In some cases, the Nominee stated that its response would depend on the Client and/or the reasons for a request.

**Category B** None of the Category B Nominees had been requested to put certain matters before the Courts on behalf of a Client. Most Nominees stated that they would be likely to attend to such a request. Some Nominees stated that they would seek legal advice. Some Nominees stated that they would charge for this service.

**Category C** None of the Category C Nominees had been requested to put certain matters before the Courts on behalf of a Client. Most Nominees stated that they would be likely to attend to such a request. Some Nominees stated that they would seek legal advice first. Some Nominees stated that they would confirm that the Client was the beneficial owner of the Quoted Shares so that the Client could take action.

**21 - The Securities Amendment Act 1988 confers certain rights relating to alleged insider trading on security holders (and former security holders). In the past two years, has the Nominee been requested to assist or exercise these rights on behalf of a Client? If not, how would the Nominee respond to such a request?**

**Category A** Only one Category A Nominee had been requested to assist or exercise rights relating to alleged insider trading. Most Nominees stated that they would obtain legal advice. One Nominee stated that they would confirm that the Client was the beneficial owner of the Quoted Shares so that the Client could take action.

**Category B** None of the Category B Nominees had been requested to assist or exercise rights relating to alleged insider trading. Some Nominees stated that they would seek legal advice. Some Nominees stated that they would charge for this service.

**Category C** None of the Category C Nominees had been requested to assist or exercise rights relating to alleged insider trading. Most Nominees stated that they would obtain legal advice or suggest that the Client seek legal advice. Some Nominees stated that they would confirm that the Client was the beneficial owner of the Quoted Shares so that the Client could take action. Most Nominees stated that it would depend on the circumstances.

**22 - Section 6(1) of the Securities Amendment Act 1988 relieves certain persons who have been designated by the Commission from the requirement to file substantial security holder notices. Has the Nominee been designated by the Commission pursuant to section 6(1)?**

**Category A** Only one Category A Nominee stated that it had been designated by the Commission under section 6(1) of the Securities Amendment Act 1988. Some Nominees stated that their holdings were too small to require the substantial security holder notices to be filed.

**Category B** Most Category B Nominees stated that they had been designated by the Commission under section 6(1) of the Securities Amendment Act 1988. Most Nominees stated that they had been designated under section 6(1)(e). One Nominee stated that it was not required to file substantial security holder notices

by virtue of section 6(1)(f).

**Category C** None of the Category C Nominees had been designated by the Commission under section 6(1) of the Securities Amendment Act 1988.

**23 - Section 28 of the Securities Amendment Act 1988 allows a public issuer to require a registered holder of its voting securities to provide information as to the persons who hold relevant interests in those securities. In the past two years, has the Nominee received a request pursuant to section 28 from a public issuer? Does the Nominee have a procedure for complying with section 28?**

**Category A** Most Category A Nominees had received a request under section 28 of the Securities Amendment Act 1988. The number of requests ranged from one to seventy. The time taken to satisfy a request varied from between one day to two weeks. Most Nominees had a procedure for complying with section 28 but did not give further information. Some Nominees replied to requests in accordance with a computer generated list. Most Nominees did not state whether the Client was contacted.

**Category B** All Category B Nominees had received a request under section 28 of the Securities Amendment Act 1988. The number of requests ranged from one to 140. The time taken to satisfy a request was 24 hours on average. Most Nominees had a procedure for complying with section 28 but did not give further information. Some Nominees replied to requests in accordance with a computer generated list. One Nominee stated that it advised all Clients of their obligations under section 28.

**Category C** Approximately half of the Category C Nominees had received a request under section 28 of the Securities Amendment Act 1988. The number of requests ranged from one to twenty. The time taken to satisfy a request varied from "immediately" to two weeks. In most cases, Nominees did not have a procedure for complying with section 28. Some Nominees did have a procedure for complying with section 28 but did not give further information. Some Nominees replied to requests in accordance with a computer generated list. One Nominee advised Clients if they accumulated a relevant interest. Another Nominee stated that the scrip manager notified the Nominee of its obligations under the Securities Amendment Act once a certain threshold was reached.

**24 - Section 28 of the Securities Amendment Act 1988 also allows a security holder of a public issuer (who holds over 5% of the public issuer's voting securities) to require the public issuer to request that another security holder provides information as to the persons who hold relevant interests in the public issuer's voting securities. In the past two years, has the Nominee exercised the right to require a public issuer to give a notice pursuant to section 28? If so, on how many occasions?**

**Category A** Only one Category A Nominee had exercised the right to require a public issuer

to give notice pursuant to section 28 of the Securities Amendment Act 1988. The Nominee had exercised this right six times over the past two years.

**Category B** None of the Category B Nominees had exercised the right to require a public issuer to give notice pursuant to section 28 of the Securities Amendment Act 1988.

**Category C** None of the Category C Nominees had exercised the right to require a public issuer to give notice pursuant to section 28 of the Securities Amendment Act 1988.