

Residential Mortgage Obligations

Corporate
Trustee Services.



New Zealand
Permanent
Trustees Ltd.
A Subsidiary of Public Trust

RESIDENTIAL MORTGAGE OBLIGATIONS (*RMO*) FRAMEWORK

PUBLIC TRUST SUBMISSION ON EXPOSURE DRAFT AND KEY TERMS AND CONDITIONS

8 March 2019



Public Trust's submission

Introduction

- 1 This Submission is from Public Trust in respect of the Reserve Bank's Exposure Draft paper on the RMO Framework, including the Key Terms and Conditions document, published in November 2018 (together, the *Consultation Material*).
- 2 As a corporate trustee company involved in securitisation and covered bond structures, Public Trust has an interest in the Reserve Bank's proposal for a new mortgage bond standard, and the implications for both the RMO SPV issuer and the security trustee. Public Trust has considered the proposal both at a legal structuring level and from an operational perspective.
- 3 We would be happy to discuss our submission in further detail with the Reserve Bank team. Please contact Ashley Kingham, Manager- Client Services, ashley.kingham@publictrust.co.nz, 09 985 5345.

Key points of the submission

- 4 The key points of Public Trust's submission are as follows:
 - 4.1 Public Trust supports the introduction of the new RMO standard;
 - 4.2 There should be a legislative bankruptcy remoteness "safe harbour" regime for RMO SPV issuer;
 - 4.3 There should be a longer transition period for the new regime. There are risks with implementing it too quickly;
 - 4.4 Public Trust welcomes the clarification of the trustee role in the revised Key Terms and Conditions; and
 - 4.5 The Reserve Bank should engage with the Ministry of Justice to ensure that the Trusts Bill's provisions are consistent with the Reserve Bank's expectations of RMO SPV issuer trustees.

Public Trust supports the introduction of the RMO Framework

- 5 Public Trust supports the introduction of the RMO Framework and agrees with the proposition that providing a platform for standardised RMOs could help with improving the depth of, and liquidity in, the debt capital markets generally, especially in relation to instruments with longer-dated maturities.
- 6 Public Trust notes the progress that the Reserve Bank has made on the development of the RMO Framework since the original consultation, and believes that the proposed framework is tracking in the right direction. From its perspective as a corporate trustee, Public Trust does not have any fundamental issues with the approach that the Reserve Bank is taking in the Consultation Material (from both a structuring and operational perspective).

Public Trust supports the major banks' submission

- 7 Public Trust is aware that a group of major banks have made a joint submission on the Consultation Material. Public Trust supports the key points of that submission.

Legislative certainty

- 8 Public Trust agrees with the bank group's submission that there should be a legislative "safe harbour" in relation to the bankruptcy remoteness of RMO SPV issuers, as there is for covered bond SPVs.

- 9 Public Trust considers that this legislative certainty would be helpful for the following reasons:
- 9.1 it would provide additional certainty and clarity for all stakeholders (including trustees) with regard to the bankruptcy remoteness of the RMO SPV issuer; and
 - 9.2 it would avoid any debate as to whether there is a difference in the level of bankruptcy remoteness “robustness” between RMO SPV issuers and covered bond SPVs. In concept, as well as practically, there should not be any difference between the two structures on the issue of bankruptcy remoteness.

Extended transition period

- 10 Public Trust agrees with the bank group’s submission that a longer transition period would be appropriate. Public Trust considers that it is important that all stakeholders have sufficient time to implement the proposals. This will ensure that:

- 10.1 good outcomes are achieved; and
- 10.2 the proposed structures (at both a high level and a detailed level) are well understood by, and acceptable to, all parties involved.

- 11 Public Trust believes that unduly tight timeframes create risks by driving rushed outcomes which result in unwanted additional costs. These should be avoided if possible.

Public Trust welcomes the clarification of the trustee role

- 12 Public Trust supports the change that has been made in the revised Key Terms and Conditions (item 65(c)) to clarify the role that the trustee has in the context of the oversight and operational management of the manager. Public Trust considers it important that it is made clear that the trustee is required to approve actions only if it is required to do so, rather than having a day-to-day role as suggested at paragraph 7.3(c) of the Exposure Draft.
- 13 The change reflects the role that Public Trust envisages that it has in the context of its relationship with the manager. Public Trust expects that day-to-day decision making would be devolved to the manager, with Public Trust (as the SPV issuer trustee) having only a residual power to approve, or provide a direction on, decisions.
- 14 Public Trust would only use this residual power as a “backstop” to take account of the rare occasions where it is concerned that specific actions being taken by the manager adversely affect the RMO SPV issuer. This reflects Public Trust’s understanding of the position in respect of existing RMBS and covered bond structures.
- 15 Public Trust understands that the RMO SPV issuer trustee will not be expected to manage or monitor the paying agent (as suggested in 7.3(g) of the Exposure Draft) as this has been updated in item 65(g) of the revised Key Terms and Conditions. Public Trust considers this to be a sensible revision, as it does not believe that it would be appropriate for it to supervise the paying agent’s role. There would be a set of contractual obligations between the paying agent and the RMO SPV issuer governing this arrangement.
- 16 Public Trust uses its subsidiary, New Zealand Permanent Trustees Limited (*NZPT*), to carry out security trustee functions in relation to existing RMBS and covered bond

structures. It expects that the structure of the RMO security trustee role would be similar to those appointments already undertaken by NZPT. In that regard, NZPT is able to work with the conflict of interest requirement to give priority to interests of the most senior outstanding note class (see item 6 of the revised Key Terms and Conditions).

Public Trust recommends the Reserve Bank discuss the Trusts Bill with the Ministry of Justice

- 17 Public Trust notes that the Trusts Bill is currently making its way through the legislative process (having been reported back from the Justice Committee in late 2018).
- 18 Public Trust submits that the Reserve Bank should engage with the Ministry of Justice to ensure that the Trusts Bill's provisions are consistent with the Reserve Bank's expectations of RMO SPV issuer trustees.
- 19 This is particularly relevant in the context of:
- 19.1 the trustee's duties, the circumstances in which those duties can be varied or waived and the extent to which they can be varied or waived; and
 - 19.2 the identity of residual beneficiaries, and any criteria that such beneficiaries need to satisfy under the Trusts Act.
- 20 As a corporate trustee, it is very important to Public Trust that it has a clear understanding of the extent to which it can define its relationship with other RMO parties through contract (which has largely been the position until now) – in contrast to there being significant legislative limitations on that freedom of contract.
- Next steps**
- 21 As mentioned above, we would be happy to discuss our submission with your team. Please contact us if that would be useful.

Yours sincerely,



John Ross
General Manager, Corporate Trustee Services
Public Trust