Submission on discussion document: *A new regime for unravelling Ponzi schemes*

Your name and organisation

Name	Barrington John Prince
Organisation	Member of the Ross Asset Management Liquidation Committee

Please select if your submission contains confidential information:

Tick yes☐I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

I understand that references made in the answer to question 20 [redacted] *is considered by PWC to be confidential.*

Responses to discussion document questions

1	Are there currently any other methods for resolving a Ponzi scheme which officials should keep in mind? If so, what are they?
	None in New Zealand that enables losses to be shared equitably amongst **ALL i**nvestors. However in the Madoff case in America payments made to investors have been clawed back. As far as I am aware the amount recovered has been distributed back to **ALL** investors equitably and a recovery in excess of 70% has been achieved. I understand that the sources of funds equating to this level of recovery was not all due to monies clawed back from investors.
2	Do you agree with Glazebrook J's statement that "an accident of timing as to when funds are withdrawn should not favour one defrauded investor over another"?
	Yes
3	Do governing documents ordinarily cover the scenario where an investor is overpaid? If so how is this provided for?
	Don't know
4	Do you consider that, where investors are all the subjects of fundamentally the same fraud, the strict legal form of a Ponzi scheme should not impact the outcomes of investors?
	I don't know what the strict legal form of a Ponzi scheme is, however I do believe that all investors in a Ponzi scheme should be made to bear their fair share of any losses incurred in an equitable manner.
5	Do you agree with the objectives we have identified for the regime for unwinding Ponzi

	schemes?
	Yes
6	Do you agree with problems identified with the status quo? Are there any additional issues which we should seek to address?
	Yes. 1. I think that businesses and people engaged in providing the public with investment opportunities should pay a levy similar to that paid by those in the legal profession. The levy to be used to cover any liquidation and legal costs that are incurred when winding up a company that has been used to defraud its clients. The levied funds should not used to compensate investors for any losses they may have incurred as the result of the fraud. 2. Banks should flag accounts of people or companies offering financial services . The flagging refers to software created to highlight money laundering should be modified to throw out warnings when transactions to and from clients are out of balance with transactions to and from the share market, other brokers or other forms of investment organisations. If the above had been in operation within the ANZ bank, then the transactions going through the RAM bank accounts would have set off warning lights all over the place.
7	Do you agree with the preferred option we have chosen?
	Mostly. However, I feel that the time limitation of four years is too short and that those appointed to deal with the financial damage caused by a Ponzi whether they be liquidators or some other new government organisation, should have the freedom to go as far back in time as is practical and feasible.
8	Do you agree with our design goals? Are there any other goals which the system should be designed to achieve?
	Mostly Yes. I think that your design model should be strongly linked to two principles namely; no one however innocent should benefit financially from crime; all people or organisations involved in a fraudulent scheme, however innocent, should bear their fair share of any losses equitably. If these two principles had been acted upon when the RAM fraud was discovered, then PWC or whoever could have wound up the whole mess within a couple of years as opposed to 5.5 years to date and still going.
9	Are there any other factors which you think should be treated as indicating that an investment scheme is a Ponzi scheme?
	Yes. 1. I feel that the Financial Markets Authority (FMA) should have greater powers to vet those operating in the financial markets industry and those applying to enter the industry. They should also have the power to carry spot checks as a normal part of business and when they suspect someone maybe operating illegally. In addition the FMA forms applicants need to fill in when applying to be an Authorised Financial Advisor should be redesigned and contain red light questions designed to highlight would be fraudsters. For example, many fraudsters don't advertise their business they work from word of mouth referrals. Average returns on

	investments achieved over the past two years etc. 2. All organisations and owner operatives, providing services in the financial markets industry should have their books audited annually by a government approved **external** auditor.
10	What are your views on our proposed definition of a Ponzi scheme: • Do you consider that our definition of a Ponzi scheme might capture any investment structures or products which it should not? • Do you consider that the definition of a Ponzi scheme should seek to capture any other investment structures or products?
	Yes pyramid schemes
11	Do you consider that the third limb of the proposed definition of a Ponzi scheme should be expanded to capture investments more generally?
	Yes , pyramid and similar schemes
12	Are you aware of any cases in which our proposed definition would have failed to capture a Ponzi scheme?
	No
13	Do you agree with the criteria for identifying when an investment scheme should be able to be declared a Ponzi scheme?
	Yes
14	Do you consider that there are any additional or alternative criteria which should need to be met in order for a scheme to be declared to be a Ponzi scheme?
	Would bank money laundering detection processes be applicable to this question?
15	Do you consider that proving fraudulent intent on the part of the operator of an investment scheme should be a necessary requirement to establish that that scheme is a Ponzi scheme?
	No. I think that a scenario could occur where a legitimate operator sometimes could slip into a bad habit of using investor's capital to cover expenses during a down time in the investment markets. I am not aware that the above scenario could be construed as fraudulent intent even the operator has in the legal interpretation of the situation, started to operate in a fraudulent manner. As a deterrent to this possibility, I think that the FMA should have the power to carry out spot check on companies and people providing services in financial markets and their staff should be equipped with auditing processes designed to check financial records for such frauds as Ponzi and Pyramid schemes in an efficient manner. If operators keep their books up to date and in a structured format, then spot checks could be carried out with minimal disruption to an operator's day to day activities.
16	Do you consider that the test for whether an investment scheme is a Ponzi scheme should be: • based on a set of fixed criteria?

	• At the absolute discretion of the courts? • a combination of limited discretion by the courts based on a set of criteria?
	Combination
17	Is it appropriate for the liquidator of a Ponzi scheme to have the same duties and powers of the liquidator of a company under the Companies Act?
	No. A Ponzi scheme is a crime where a criminal has used a company as a tool with which to commit the crime. It isn't the company that committed the crime. Consequently, I feel that a liquidator should have the authority to use laws associated with crime, the recovery of stolen property and Equity. From impressions gained as a layman, it would seem that the Companies Act provides an adequate set of laws for a liquidator to be guided by when liquidating a company that has suffered mortal financial setbacks due to adverse commercial events and not when a crime has been committed.
18	Do you agree that a liquidator should be able to exercise all powers, rights, and privileges that the operator of the Ponzi scheme had prior to that liquidation – notwithstanding that any arrangements contemplate that those powers, rights, and privileges would end on the appointment of a liquidator?
	I feel that a liquidator should be able to get access to any data and communications that the criminal made, received and had access to. This information would allow a liquidator to work in conjunction the Serious Fraud Office to find out if the criminal had squirreled away any funds. Such as instructing a broker to pay funds from the sale of investments into an account other than the company's or AFA's trading accounts associated with running the business and declared in tax returns.
19	Do you think that liquidation is an appropriate model for resolving a Ponzi scheme? If you think a different model is more appropriate please explain why you consider this to be the case.
	Possibly not. Money has effectively been stolen so there may be more effective ways of endeavouring to recover the stolen funds through the use of new processes designed to help the victims of financial crime. Towards this end, organisations using such processes would need the authority to use existing laws associated with Equity and the recovery of stolen property plus any new laws enacted to enable such an organisation to help victims of crime to recover losses in an equitable fashion. Liquidators using The Companies and Property Law Acts are probably a suitable to liquidate a company, but the last five years has shown me that they are completely inadequate when used to help the victims of financial crime to recover the stolen funds and ensure that they are distributed equitably. With reference to your para 152, this highlights the need for people providing services in the financial markets to pay a levy (as do those providing legal services). The proceeds of such a levy to be used to cover liquidator costs or the costs incurred by a new body appointed to resolve Ponzis and help victims to recover losses.
20	Do you agree that the process for appointing a liquidator is an appropriate model on which to base the process for declaring an investment scheme is a Ponzi scheme?
	No. In the case of the RAM Ponzi it seemed that the FMA and the High Court took on the attitude of. "Just liquidation, so we'll just appoint a liquidator to carry out the liquidation

process in the usual manner using the Companies Act". They seemed not to appreciate that a crime had taken place and that a liquidator should be empowered to use laws associated with Equity and the recovery of stolen goods.

I feel that as a crime had taken place then the FMA should have considered what the most fair and just outcome would be for the victims. Subsequently, then considered what if any existing laws could be used to make sure that such an outcome could be reached.

When a crime has been committed liquidators sometimes seem to find themselves in a dilemma as to how liquidated funds should be used to fund the recovery of stolen goods and/or money. Liquidators are commercial organisations and are responsible to their share holders as well as doing the best job possible for the victims of a crime. Sometimes the fair and just course of action could conflict with what would the best way to deal with the situation commercially.

The right action is to work out what needs to be done to reach a fair and just outcome for those involved in the crime, however innocent they may be. Most of those involved would be tax payers relying on the government to ensure such issues are dealt with fairly.

The experience with the RAM Ponzi clearly showed me that there was a need for new legislation that contained processes outlining the way in which the parties involved should wrap up the damage caused by Ponzis and similar fraudulent schemes. In addition the parties responsible should be funded by the government in that there should be no commercial conflict in the way of reaching a fair and just outcome.

If it is agreed that the FMA should have the power to carry out spot checks, this would put them in a position to be able to uncover most instances of this type of crime. Then as they would be familiar with all aspects of the case then they would be in the best position to co-ordinate what action should be taken to recover and distribute the stolen property.

If it is agreed that people and organisations providing services in the financial markets should pay a levy. Then once it has been established that a crime has taken place, costs incurred from that time on should be funded from the levy trust account. To ensure the fund is used wisely then a representative from the financial industry should be involved with each case.

21	Do you agree that that in order to declare an investment scheme to be a Ponzi scheme the High Court must be satisfied on the balance of probabilities that it is in fact a Ponzi scheme?
	Yes
22	What are your views on the list of parties that would be able to seek a declaration that an investment scheme is a Ponzi scheme?
	I think that any party should be able to blow the whistle on a Ponzi without fear of any adverse repercussions. I think that all whistle blowing should be made to an upgraded FMA equipped with the power to carry out spot checks on any person or organisations operating and providing services in the NZ financial market. Part of the FMA upgrade would be to ensure that they have staff with good auditing qualifications and experience in cases where fraud has occurred.

23	Do you agree that where the courts consider that a scheme may be a Ponzi scheme, but lack sufficient evidence to make an order to that effect, that the court be able to appoint an insolvency professional to examine the affairs of the scheme?
	Yes. However, I feel that such a professional should be working from within the FMA. On that basis, where suspicion of fraud exists, such a professional would be in a position to establish whether a person or company is operating in a fraudulent way while carrying out a routine spot check. It goes without saying that such professionals would need to have good auditing qualifications and knowledge of the ways in which fraud has been committed in the past.
24	What level of certainty that a scheme may be a Ponzi scheme should be required to make such an appointment?
	Using the methodology as described in question 23 any level of suspicion should enable the FMA to perform a spot check on the targeted organisation.
25	How long would it take, and what do you think the cost would be, for an insolvency professional to examine the affairs of a scheme and advise the court whether, in their professional opinion, there is sufficient evidence to conclude that that scheme is in fact a Ponzi scheme?
	Not sure as the cost would be directly linked to how cunning the criminal was. However in the case of the RAM Ponzi I think it would have taken an experienced auditor familiar with fraud, about an afternoon to have uncovered David Ross's fraudulent activities. One look at his bank statements would have revealed that very little money was going to and from investment markets and the rest going to and from investors. In any event, if an insolvency professional working for the FMA or some other government funded body were to be equipped with a structured, pre-defined Ponzi or pyramid scheme detection process, then in most cases, it would not take them very long for them to ascertain whether there were sufficient grounds to assume a that a pre-meditated crime had taken place.
26	Where an investor seeks a declaration that an investment scheme is a Ponzi scheme should the Crown be required to fund the appointment of the relevant insolvency professional if it is found that the scheme is not a Ponzi scheme? If not who should bear that cost and why?
	Yes to a point. Any member of the public, police or serious fraud office should be able to contact the FMA pass on why they suspect that all is not right with an organisation or person operating in the financial investment industry. The FMA should then use one of its budgeted for spot checks on the person/organisation concerned at the government's expense. However, if subsequently, it is established that there is sufficient evidence that a fraud has taken place then the cost of liquidation and sorting out the financial issues (with particular emphasis on the recovery of stolen money), should then be taken out of a levy fund account that all people and organisations providing services to the financial investment industry should have to subscribe to.
27	Should there be a set period for which an insolvency professional should be able to be appointed?
	No, not if the Financial Markets Authority was given the authority to carry out spot checks, then there should be no reason to set up a separate insolvency division. However, in order to carry out spot checks the FMA should be funded and be required to employ a team of

	auditors who have experience in detecting fraud.
28	Do you consider that investment schemes which are invested in only by investment businesses, large persons and government agencies should not be able to be declared to be Ponzi schemes?
	Not sure, however, I think that any investor or investment organisation using public or share holder's money to invest in any scheme, should have their books audited regularly by government approved auditors. The if illegal activity is detected then such organisations should be treated in the same way as another person or organisation is dealt with when a crime has taken place. I have no idea how NZ investments in dubious overseas investment schemes should be handled especially in countries known to be run by dubious corrupt governments.
29	Do you consider that it may be in investors' interests for investment schemes, which have invested substantially in a Ponzi scheme, to be able to be wound up as if they were a Ponzi scheme themselves?
	Yes, as I can't think of any way that such a scheme could be traded out of an insolvent situation, without inflicting further financial risk on investors.
30	Do you think that measures are needed to minimise or mitigate the consequences for an investment scheme or its operator of a failed attempt to have it declared to be a Ponzi scheme?
	There needs to be a balance between protecting the investor and not overburdening financial investment operators with too much red tape or suffer loss of business as the result of an official investigation. If it was accepted by the industry that the FMA would be carrying out routine spot check from time to time as part of the normal course of their business, then such spot checks would not automatically inflict a slur on any financial organisation or advisor. This would be similar to when the IRD make spot checks. People and other organisations don't automatically think that an IRD spot check would mean that the targeted organisation is fiddling the books.
31	Should there be a limit placed on the ability of investors to bring proceedings to have a scheme declared to be a Ponzi Scheme?
	Yes. I think if the FMA were empowered to do its job properly, once an investor has contacted the FMA, police or serious fraud office with suspicion of foul play then FMA should take over and carry out a routine spot check. However, to ensure the investor's fears don't get 'buried' as has happened in the past, within the bounds of privacy, the FMA would be obliged to keep concerned investors informed of any action they are taking and the results of such action. In this way the investors can monitor whether they feel this FMA is taking sufficient and/or appropriate action.
32	Should a defence be available to investors who in good faith bring a proceeding that a scheme is a Ponzi scheme from claims for damages brought by the operator of the investment scheme?
	If the process is established that investor's and other investment operators submit their concerns to the FMA backed up with the reason for their concern, then it would be the FMA taking the action, not the investor. Again if the government decrees that people and

	organisations providing services in the financial investment industry will have to accept that the FMA will be carrying out spot checks from time to time. Then the risk will be minimised that a loss in business would occur as potential clients and other investment organisations will think that a spot check carried out by the FMA on the targeted organisation is just business as usual.
33	Do you consider that there should be a presumption that a Ponzi scheme was a Ponzi scheme for all time (so there is no need to identify when the scheme became a Ponzi scheme unless there is evidence to the contrary)?
	No. As a member of the PWC RAM liquidation committee I thought it was necessary for PWC to engage a forensic accountant to find out what happened to all the money. To whom it was paid and when. PWC did not see the necessity of carrying out such and exercise as it would be very costly and they considered such action would not be not good use of liquidated assets. In any event the ANZ bank had refused to supply all the information required as they claimed it would have been a breach of privacy. I was not convinced and went to visit a couple of forensic accountants with another committee member. We were informed that with current analysis tools and access to bank data that included information to be found on bank statements plus account numbers and details of other banks associated with each transaction, it would be possible to find out when the RAM Ponzi started and how long before it became a fully fledged Ponzi. When asked about the privacy issues associated with bank account numbers, we were informed that when a crime was involved in their experience they have never been refused an application for a court order instructing the bank or banks to release the required information (within NZ). One of the forensic accountants I met knew of David Ross and knew that his financial records had a lot to be desired. So, on that basis he thought that such an exercise would have cost on the region of $250 to $300k. PWC's costs will probably exceed $6M by the time the liquidation is completed. Admittedly PWC as liquidators had other duties, but a lot of cost would have saved not only by PWC but also by the IRD when dealing with investor's claims for overpaid tax, if detailed information from a forensic analysis had been made available. It should be noted that the use of forensic analysis would not have uncovered the exact date David Ross commenced using his company in a fraudulent manner, but it would have indicated when it started within a few months. In which case a reasonable start date could have been agreed upon and it would then be up to investors who made a profit out of the Ponzi or other interested parties to cover the cost of proving that such a start date was unreasonable.
34	Do you think that there should be a statutory default (say 5 years) for how far back a scheme is a Ponzi scheme in cases where a liquidator is not able to identify a point (or period) at which the scheme became a Ponzi scheme?
	No. See comments under question 33. In addition, most payments and receipts now-a-days are made electronically. This has not been a cash based industry for a long time. Consequently, regardless of the length of time a Ponzi scheme has been operating and how badly the operator's books had been kept, there will be bank data in existence that could be accessed by forensic accountants with which to ascertain how long a Ponzi scheme had been operating. This assumption is based on advice received that banks do archive data at the end of statutory periods when they have to keep data live as it were. However, archived data can be activated if required by a court approved investigation.
35	Do you agree that, in the case of Ponzi schemes, tracing is an inappropriate remedy to resolve investors' claims?

	Yes but only when deemed necessary depending on the way in which the crime had been carried out. As previously stated I have been advised that this it is now practical and economically viable to obtain the required information to be used in conjunction with modern forensic processes and data mining software with which to carry out whatever auditory process is suited to the way in which the Ponzi had been carried out. In addition as mentioned previously, the duties of a government approved auditor would be to ensure that the client records and financial data of people and organisations providing services in the NZ financial investment market place are set up and maintained in a structured manner. In this way any type of audit would be able to be carried out with the least amount of time, cost and inconvenience.
36	If you favour keeping tracing as a potential remedy in the case of Ponzi schemes how would you address the issues identified with its application?
	It would appear that most Ponzi schemes evolve from a legitimate investment business to a full Ponzi over a period of time. With forensic accounting and tracing it is now possible to identify within a reasonable margin, over which time scale and to what degree the Ponzi evolved. An over simplistic example would be to ascertain what percentage of investors money was actually invested as opposed to that paid out to other investors. In a normal profitable investment business over a period covering the average time of a property development, business set up period or the buying and selling a package of shares, the amount invested would roughly equate to that required to cover operating costs and outgoings incurred when investors withdrew their support, i.e. the re-imbursement of investor's capital. Money required to cover dividends, the withdrawal of profits both investor's and owners would be funded from profits brought back in from surpluses gained in the investment market place. If through the initial level of a spot check, it was ascertained that over a relatively short period of time the amount invested in the market place was insufficient to support the above scenario, then this would give cause to trigger and drill down into more detailed investigation and so on.
37	Do you agree that investors should not be able to retain any fictitious profits paid to them?
	Yes. I also feel that any withdrawals made by investors should be treated as fictitious profits, unless the amount withdrawn exceeded the level of profits the **investor** thought they had in their account at the time of withdrawal. In which case any surplus would be deemed to be a re-imbursement of capital.
38	Do you agree that there should be a limit on the period of a clawback?
	No. Most if not all transactions are now made electronically with little or no cash involved. Therefore it is possible to ascertain to whom money was paid and when. The question then is how much would be practical to try and claw back. The law associated with change of circumstance should protect investors from being overly clawed. As an example, one might use $150,000 worth of fictitious profits to buy a new Porsche, then when clawed back three years later the current market value for a used Porsche might only be $50,000. In which case so some level of compromise should be negotiated. If on the other hand the investor claimed that the money had been spent on say a picture that has doubled in value, then the investor would be required to pay the full amount withdrawn. However, it is probable that most investors will claim that they spent their withdrawals on consumer items and as there was none of the withdrawn amount left then the payment of a claw back claim would render them as financially impoverished as those who made no withdrawals.

	In the case of a private investor who has no legal obligation to record what they spent and when, then it would be difficult for any authority to prove that an asset was purchased using funds withdrawn from the Ponzi scheme.
39	Do you agree that four years is a reasonable period for a clawback to operate? If not what alternative would you propose?
	No. Please see comments under question 33.
40	Do you think that the liquidator of a Ponzi scheme should be able to apply to the courts to extend the period of vulnerability, in respect of specific investors, where it can be shown that the investor received distributions in bad faith?
	Yes
41	Do you agree that in order to have the benefit of a defence against the clawback powers of the liquidator investors should be required to demonstrate that *a reasonable person in their position would not have suspected, and they did not have reasonable grounds for suspecting, that a Ponzi scheme existed*? If not, what alternative test would you propose?
	No. I believe that when a crime has taken place, all parties involved in that crime should bear their fair share of financial losses. In other words all payments made by the fraudster to all investors, whether capital or fictitious profits, should be clawed back then subsequently distributed back to all investors in an equitable manner. I do not believe there to be any other way of preventing a situation where a minority of victims are left to bear the majority of financial losses incurred as a result of such a crime. Whether investors knew, suspected or did not suspect that the scheme they had invested their savings in was a fraud, should have no impact on the way in which a Ponzi is processed.
42	Do you agree that significant financial hardship is an appropriate criterion for determining whether an investor merits retaining funds received from a Ponzi scheme?
	Yes. If laws associated with change of circumstance do not currently allow this then the law should be amended. An investor who made withdrawals should not be made more impoverished than those who made no withdrawals. With tongue in cheek, this could be a pretty low impoverished level as I have been informed that there are some victims of the RAM Ponzi fraud who are widows of deceased investors and are now trying to survive in bed-sits on the old age pension.
43	Do you consider that alternative criteria should be used for determining whether an investor merits retaining funds received from a Ponzi scheme?
	Probably as there is no point in making any investor who may have recovered some money from a Ponzi scheme more impoverished than those who made no withdrawals.
44	Do you consider that a whistle blower safe harbour should be provided to investors in a Ponzi scheme? If there is to be a safe harbour, do you consider that this should be available to all investors or just the first investor to 'blow the whistle'?
	Yes, otherwise this would partially remove the incentive for investors to report their suspicions. However, this would have to be made on the proviso that they become some sort of preferential creditor. In addition, any payments made from liquidated assets would need be limited to a recovery of the amount invested and not include any fictitious profits.

	Other points that come to mind are those that are more of a deterrent as follows. 1. If operators supplying financial advisory and investment services had to pay a levy to cover legal and liquidation costs incurred as the result of incompetence, fraud etc, (but **not** losses incurred by Ponzi victims), then it would be better for one operator to shop a suspected fraudster as soon as something has occurred that triggered their suspicion and not wait for something else to happen that they felt would confirm their suspicion. If a Ponzi scheme was going on an early warning would prevent new investors from losing their savings and could minimise the cost of any investigation thus minimising the use of levied funds as fewer transactions would need to be audited. 2. Another incentive that is geared to human nature would happen automatically. Ponzi operators sometimes offer much higher returns that those operating within the law. Consequently if a legal operator suspected another of Ponzi type activities their incentive would be get the fraudster removed before they pinched all their business. In addition, the legal operator might be declined to blow the whistle on the basis that if their fears turned out to be unfounded and they were worried that their target might sue them for any lost business etc. On the other hand, if the FMA were allowed to carry out spot checks then legal operatives could submit their suspicions to the FMA without fear of any adverse repercussions. 3. It is most likely that legal operatives working daily in the field would be aware something fishy was going on before investors who are only likely to find out that something is wrong when they try to withdraw money and can't. 4. Potential fraudsters knowing that others in the business have them under scrutiny plus the threat of FMA spot checks, would be a deterrent to a would be fraudster. 5. Another factor to consider is the incentive banks should have to look after their clients. For example in the case of the RAM Ponzi from 2010 onwards bank statements showed that investors started to close their accounts at an alarming rate. It seemed as if some investors had withdrawn all their capital and fictitious profits from RAM and did not keep it a secret. This must have posed the question as to why the investor did this at that time. The investor most likely aired their suspicions thus causing a domino effect that over two years rendered the Ponzi operator to be insolvent. In the meantime between 2010 and 2012 David Ross was enticing new clients to invest in RAM. The point being that if the ANZ bank had software in place to detect money laundering, why was this software incapable of picking up a transaction scenario that emulate those that occur in a case of money laundering. .
45	Do you think that a defence should be provided for investors who substantially alter their position in the reasonably held belief that a distribution or withdrawal was valid and would not be set aside?
	Not sure of the question
46	Do you agree that recovery against trade creditors of a Ponzi scheme should continue to be dealt with under the ordinary principles of insolvency law?
	Trade creditors do not place investments with a financial operator as such. However, they do have to fork out money to pay for product delivered to the operator and pay their staff wages for the time spent supplying the operator with their services. As investor in a Ponzi cannot claim for the loss of opportunity to make profits if their money had been invested with a legitimate investment organisation, therefore I feel that trade claims should be limited to the

	amount the trader could prove they spent on servicing the criminal and **not** be able to claim the full amount charged for their services. In this way they could be treated as any other investor who made no withdrawals and be eligible for a share of any liquidated/recovered assets. In any event this is a difficult question to answer as on one side a trade creditor might go out of business and jobs could be lost if they were last on the list to be eligible for a distribution of any money recovered. On the other hand we have investors rendered paupers as they have lost all their life savings. Not sure if a sort of 'Change of Circumstance' law could be applied to a situation where a trade creditor could prove that the fraudster owed them so much money that they would be forced into bankruptcy if they were not eligible for a share of any liquidated assets.
47	Do you agree that a proportional distribution of assets is preferable in the case of all Ponzi schemes regardless of the legal structure of the Ponzi scheme?
	I believe in a simple system where all payments made by the fraudster should be attempted to be clawed back and then subsequently paid back equitably to all investors at a rate of cents in the dollar that represents the amount recovered to that lost.
48	Do you have any information about the cost to find out whether the losses specifically attributable to individual investors are able to be identified?
	Not sure if this question has anything to do with Equity Tracing, if so in order to obtain an idea on how costly such an exercise would be, I would recommend you contact a few professional forensic analysts who do this for a living. One I spoke to outlined a scenario where they had identified a time when an organisation's bank statement showed a balance of near zero. They were then able to account for the money going in and out of the account up until the time their client invested with the company and then subsequently they were able to analyse to whom money was paid from that date. They were then in a position to prove to the court that over a period of months following the date their client made their investment, no money had been used to pay for any service for which the money was originally invested. In fact money had been paid out to other investors in the form of either fictitious profits or re-imbursement of capital that added up to an amount similar to that their client had invested. The forensic analyst was then in a position to make a claim to recover some money for their client under laws associated with Equity tracing.
49	Do you agree that investors in a Ponzi scheme should not be entitled to the benefit of any fictitious profits allocated to them when deciding their proportional entitlements to the assets of a Ponzi scheme?
	Yes. Please see my answer to question 50.
50	What is the most appropriate model for distributing assets?
	I believe in a simple system where **ALL** payments made by the fraudster should be attempted to be clawed back whether they were fictitious profits or re-imbursement of capital. Then the money recovered subsequently paid back equitably to **ALL** investors at a rate of cents in the dollar that represents the amount recovered to that lost. Only in this way do all investors bear their fair share of the losses incurred as a result of such a crime.
51	Are there any additional models which we should consider?

	No to my knowledge
52	Should investors' losses be able to be adjusted to take account of inflation or any other factors?
	Yes. The purchasing power of $10 ten years ago was much greater than the purchasing power of $10 now.
53	Are there any additional or alternative criteria which we should use to assess the various models for distributing assets to investors?
	Keep it simple, in that all parties in a crime however innocent, should bear their fair share of any losses incurred as the result of the crime in question. This is the only way to prevent a minority having the bear the majority of the losses which is neither fair nor just.

Other comments

1. Financial advisors, brokers and organisation providing services in the NZ financial market manipulate millions of dollars of people's savings. The FMA that was established to protect investors from criminal activity within the NZ financial investment market place. As such they should have the authority to carry out measures designed to prevent fraud. When the RAM Ponzi was uncovered in 2012, I was advised in writing by the FMA that they would be exceeding their legal authority if they carried out spot checks on applicants and operators currently working in the financial arena. This situation was ridiculous. If it hasn't been rectified by since then it should be. The IRD are empowered to carry out spot checks for mistakes and fraud in the tax arena and so should the FMA in the financial arena. No person or organisations should be allowed to operate in the NZ financial market unless they have applied for and received certification to operate from the FMA. In addition those applying for certification should understand and accept that in doing so they would be subject to spot checks from the FMA in the normal course of events.
2. Part of the criteria for a person or organisation to operate in the NZ financial market should include an undertaking for the applicant to ensure that their financial records are structured in an easily auditable way. As a simple example, every financial transaction should be flagged as to whether it was being paid to or received from a broker, an investment opportunity, an investor or a trade creditor. All client records should contain a running balance of their account showing where their money had been invested, amounts withdrawn, why and to whom the withdrawals had been paid.
3. Once a Ponzi has been uncovered all payments made by the Ponzi operator should be clawed back as soon as possible before investors have time to spend withdrawals on consumer items. This would minimise the opportunity for reluctant investors to be able defend a claw back claim due to change of circumstance.
4. Claw backs from all investors would mean that only one distribution method would be required.
5. Quick decisive action in clawing back all payments would save enormously on court time and liquidation costs.
6. Investors who made withdrawals usually have more money than those who made no withdrawals. The point being that they have money with which to pay legal costs associated with challenging claw back claims. Those who made no withdrawals will on average have less money with which to protect themselves against injustice.