



Foreign Account Tax Compliance Act (FATCA)

Application of FATCA to collective
investment vehicles
guidance notes



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Purpose of these guidance notes

1. The New Zealand Government signed an Intergovernmental Agreement (“IGA”) with the United States (“U.S.”) on 12 June 2014 and the relevant enabling legislation was passed on 30 June 2014, effective from 1 July 2014. The IGA has been brought into effect by Order in Council and came into force on 3 July 2014. The IGA was entered into for the purpose of implementing FATCA in New Zealand.
2. A collective investment vehicle, such as a unit trust, that pools funds on behalf of investors can be a financial institution for FATCA purposes. If such a vehicle carries on business in New Zealand (or is managed in New Zealand) it will often be a Reporting New Zealand financial institution (“Reporting NZFI”)¹ and have FATCA obligations.
3. The purpose of these guidance notes is to provide some practical examples setting out how FATCA will apply to New Zealand collective investment vehicles and to explain what FATCA obligations such entities will have. This will provide some further context to Inland Revenue’s “registration”, “due diligence”, and “reportable accounts” guidance notes in terms of how the principles referred to in those notes will apply in practice to collective investment vehicles.

What is a collective investment vehicle?

4. A collective investment vehicle is an entity that pools funds on behalf of investors for investment purposes. This would include the following (non-exhaustive) types of entities:
 - Unit trusts;
 - Group investment funds;
 - Superannuation schemes; and
 - Entities providing participating securities.
5. A “managed investment scheme” subject to section 9 of the Financial Markets Conduct Act 2013 (which would cover, for example, entities such as unit trusts and superannuation schemes) would also be a “collective investment vehicle.” The references in these guidance notes to “collective investment vehicles” should be read as covering such entities.
6. A collective investment vehicle will come within the definition of “investment entity” in Article 1(1)(j) of the IGA, and, therefore, will be a financial institution under Article 1(1)(g) of the IGA because of:
 - The business activities that it carries out (the collective pooling of funds and investing, administering, or managing of funds or money on behalf of investors); or
 - The fact that it is managed by an investment entity (such as a trustee/investment manager) that carries on investment activities for the collective investment vehicle such that the vehicle would be a deemed investment entity.
7. Therefore, collective investment vehicles that carry on such activities in New Zealand (or are managed in this way) will be New Zealand financial institutions (“NZFIs”) for FATCA purposes. However, the key FATCA issue is whether such NZFIs will have FATCA due diligence obligations and, if so, what the nature of those obligations will be. As explained below, this will depend on the facts.

Will New Zealand collective investment vehicles have FATCA obligations?

8. A New Zealand collective investment vehicle will need to consider whether it is a:
 - Reporting NZFI; or
 - Non-Reporting NZFI.

¹ However, as explained below, a New Zealand collective investment vehicle (that would otherwise be a Reporting NZFI) may, for instance, be able to apply the trustee documented trust or sponsored investment entity provisions in the IGA so that the trustee or sponsor carries out FATCA due diligence and reporting on behalf of the trust/sponsored entity. If this occurs, the New Zealand collective investment vehicle would be a Non-Reporting NZFI. These matters are explained in detail below.

9. This “categorisation” issue will drive whether such collective investment vehicles have FATCA obligations and the nature of any such obligations. Reporting NZFIs have FATCA obligations. Non-Reporting NZFIs will generally have no or limited FATCA obligations. The meaning of Reporting NZFI and Non-Reporting NZFI² is set out in detail in Inland Revenue’s “registration” guidance notes.
10. New Zealand collective investment vehicles will often³ be Reporting NZFIs and, therefore, have FATCA due diligence and reporting obligations. However, these guidance notes will now briefly set out the circumstances when such vehicles will be Non-Reporting NZFIs.

When will a collective investment vehicle be a non-reporting New Zealand financial institution?

11. As explained in Inland Revenue’s “registration” guidance notes, a NZFI, such as a New Zealand collective investment vehicle, will be a Non-reporting NZFI if it is an exempt beneficial owner or deemed compliant financial institution pursuant to the U.S. Treasury Regulations, or is described in Annex II of the IGA as a Non-reporting NZFI (exempt beneficial owner or deemed compliant financial institution that is a Non-Reporting NZFI)⁴. The significance of this is that, as noted above, a collective investment vehicle that is a Non-Reporting NZFI will generally have no or limited FATCA obligations.
12. A NZFI is entitled to rely on either the U.S. Treasury Regulations or Annex II of the IGA to determine whether they are an exempt beneficial owner or deemed compliant. A NZFI is not required to obtain permission from the Inland Revenue to adopt the U.S. Treasury Regulation definitions in these circumstances.

U.S. Treasury Regulations

13. In the U.S. Treasury Regulations the types of exempt beneficial owner categories that could potentially apply to a particular New Zealand collective investment vehicle are:⁵
 - **Treaty-qualified retirement fund:** A fund which is operated principally to administer or provide pension or retirement funds, where that fund is entitled to benefits (or would be entitled to such benefits if it derived such income) under the New Zealand/United States Double Tax Convention on income sourced from the U.S.
 - **Broad participation retirement fund:** A fund established to provide retirement, disability, or death benefits to current or former employees (or other designated person) for services rendered. Among the other criteria is that no single beneficiary has a more than 5% right to the fund’s assets.
 - **Narrow participation retirement fund:** A fund established to provide retirement, disability, or death benefits to current or former employees (or other designated person) for services rendered. Among the other criteria is that that fund has fewer than 50 participants and employee and employer contributions to the fund are limited by reference to earned income and compensation of the employee.
 - **A fund formed pursuant to a plan similar to a section 401(a) plan:**⁶ a type of retirement fund related to section 401(a) of the U.S. Internal Revenue Code.
 - **Investment vehicle established exclusively to earn income for certain retirement funds:** A fund established to earn income for a retirement fund or a retirement of pension account described in the U.S. Treasury Regulations.
 - **Pension fund of an exempt beneficial owner:** A fund established and sponsored by an exempt beneficial owner (foreign government, international organisation, central bank or government of a U.S. territory) to provide retirement, disability, or death benefits to current or former employees of the exempt beneficial owner (or persons designated by such employees), or that are not current or former employees, but the benefits are provided in regard to personal services performed for the exempt beneficial owner.

² Non-reporting NZFIs will need to monitor compliance with the criteria for non-reporting status on an on-going basis. Additionally, the non-reporting criteria could include reporting to Inland Revenue in certain situations. These criteria and the reporting requirements that such Non-reporting NZFIs could have (depending on the circumstances) are set out in detail in Inland Revenue’s “registration” guidance notes.

³ However, as explained below, a New Zealand collective investment vehicle may be able to apply the trustee documented trust or sponsored investment entity provisions in the IGA so that the trustee or sponsor carries out FATCA due diligence and reporting behalf of the trust/sponsored entity. If this occurs, the New Zealand collective investment vehicle would be a Non-Reporting NZFI.

⁴ Refer to the definition of “Non-Reporting New Zealand Financial Institution” in Article 1(1)(q) of the IGA.

⁵ The following is a broad summary. These definitions are set out in full in the U.S. Treasury Regulations and are elaborated on Inland Revenue’s “registration” guidance notes.

⁶ Internal Revenue Code.

14. In the U.S. Treasury Regulations the types of deemed compliant financial institution categories that could apply to a particular New Zealand collective investment vehicle are:

- **Local FFI:** This includes certain locally focused FFIs that are licensed and regulated as a financial institution under the laws of its country of incorporation or organization (which must be a FATF compliant jurisdiction at the time the FFI registers for deemed-compliant status), do not have a fixed place of business outside its country of incorporation or organization, do not solicit customers or account holders outside its country of incorporation or organization, and that comply with the various due diligence and procedural requirements set out in the U.S. Treasury Regulations. A local FFI can be any type of financial institution e.g. a depository institution, custodial institution, investment entity or insurance company. This local FFI “exception” is intended to have a narrow scope because of the requirement that there be a minimum of 98% New Zealand resident account holders by value. The local FFI exception is not intended to apply to FFIs that serve a significant number of non-resident account holders.
- **Qualified collective investment vehicle:** The primary purpose of this category is to provide relief for certain investment entities that are owned solely through participating FFIs or directly by large institutional investors, payments to which would not be subject to withholding or reporting under Chapter 4 of the U.S. Internal Revenue Code (as referred to in the U.S. Treasury Regulations). The entity also needs to comply with certain procedural requirements set out in the U.S. Treasury Regulations. The types of investors that are permitted in such an entity include certain retirement plans and certain non-profit organizations.
- **Restricted fund:** The primary purpose of this category is to cover certain funds that are “restricted” in the sense that they only target “foreign” (in relation to the United States) investors and comply with the procedural requirements set out in the U.S. Treasury Regulations. Various aspects of this category have now been amended as set out in the US Treasury document TD 9657.⁷ For example, the U.S. Treasury Regulations have now removed the requirement that the restricted fund certify to the IRS.
- **Sponsored investment entity:** This category covers certain sponsored investment entities that are FFIs for which the sponsoring entity agrees to perform all due diligence, withholding, reporting, and other requirements the sponsored FFI would have been required to perform if it were a participating FFI, and complies with certain other requirements. One of the reasons for this category was that in many cases it may be preferable for a trustee or fund manager to perform the due diligence and reporting for all of its investment entities which it manages on a consolidated basis. Various aspects of this category have now been amended as set out in the U.S. Treasury document TD 9657.⁸ For example, the U.S. Treasury Regulations now clarify that a sponsoring entity will not be jointly and severally liable for the sponsored FFI's obligations unless the sponsoring entity is also a withholding agent that is separately liable for such obligations.
- **Sponsored, closely held investment vehicle:** this category covers sponsored closely held investment vehicles, which are sponsored by a sponsoring FFI.
- **Limited life debt investment entity (“LLDIE”):** This category covers certain FFIs (that are the beneficial owner of the payments made in respect of an account) that are collective investment vehicles formed pursuant to a trust indenture or similar fiduciary arrangement and satisfy other criteria. Various aspects of this category have now been amended as set out in the U.S. Treasury document TD 9657.⁹ The changes in the U.S. Treasury Regulations include:
 - (i) removing the requirement that a LLDIE's organizational documents cannot be amended without the consent of all of its investors;
 - (ii) clarifying that a LLDIE issues debt or equity interests under a trust indenture or similar agreement;
 - (iii) extending the category so that it applies to a LLDIE that issued all of its interests on or before January 17, 2013 (for example, the date that the final regulations were filed);
 - (iv) allowing a LLDIE to be treated as a certified deemed-compliant FFI until the LLDIE liquidates or terminates;
 - (v) removing the requirement that investors be unrelated to each other; and
 - (vi) expanding the types of assets that the entity can hold and still qualify as a LLDIE.
- **Owner-documented FFI:** This category covers certain entities that are FFIs solely because they are investment entities. Among the other criteria are:
 - The FFI is not owned by or in an expanded affiliated group with any FFI that is a depository institution, custodial institution, or specified insurance company;
 - The FFI does not maintain a financial account for any non-participating FFI;
 - The FFI provides the designated withholding agent with all of the relevant information (set out in the U.S. Treasury Regulations) and agrees to notify the withholding agent if there is a change in circumstances; and
 - The designated withholding agent agrees to report to the IRS all of the relevant information (as set out in the U.S. Treasury Regulations).

⁷ <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA.pdf>

⁸ <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA.pdf>

⁹ <http://www.treasury.gov/resource-center/tax-policy/treaties/Documents/FATCA.pdf>

15. These definitions from the U.S. Treasury Regulations are explained in detail in Inland Revenue's "registration" guidance notes. We note that these definitions are very prescriptive and a New Zealand collective investment vehicle may not be able to satisfy *all* of the relevant criteria within the relevant type. Instead, it is *more likely* that a New Zealand collective investment vehicle may be able to come within a type set out in Annex II of the IGA (set out below). Therefore, the examples in these guidance notes will (to the extent that they raise questions of whether a particular New Zealand collective investment vehicle is a Non-Reporting NZFI) focus on parts of Annex II of the IGA that are most likely to be relevant to New Zealand collective investment vehicles.

Annex II of the IGA

16. In Annex II of the IGA the types of exempt beneficial owner categories that could potentially apply to a particular New Zealand collective investment vehicle are:

- **Treaty-qualified retirement fund (section II(A) of Annex II):** set out on broadly similar terms as the corresponding type of exempt beneficial owner in the U.S. Treasury Regulations.
- **Broad participation retirement fund (section II(B) of Annex II):** set out on broadly similar terms as the corresponding type of exempt beneficial owner in the U.S. Treasury Regulations.
- **Narrow participation retirement fund (section II(C) of Annex II):** set out on broadly similar terms as the corresponding type of exempt beneficial owner in the U.S. Treasury Regulations.
- **Pension fund of exempt beneficial owner (section II(D) of Annex II):** set out on broadly similar terms as the corresponding type of exempt beneficial owner in the U.S. Treasury Regulations.
- **Investment entity wholly owned by exempt beneficial owners (section II(E) of Annex II):** An entity that is a NZFI solely because it is an investment entity, provided that each direct holder of an equity interest in the entity is an exempt beneficial owner, and each direct holder of a debt interest in such entity is either a depository institution (with respect to a loan made to such Entity) or an exempt beneficial owner.

17. In Annex II of the IGA the types of deemed compliant financial institution categories that could potentially apply to a particular New Zealand collective investment vehicle are:

- **Financial institution with a local client base (section III(A) of Annex II):** Set out on broadly similar terms as the "local FFI" type of deemed compliant FFI in the U.S. Treasury Regulations. However, two key differences are that (a) the 98% test for the holding of financial accounts applies to residents of New Zealand or Australia; and (b) the financial institution needs to be licensed or regulated as a financial institution under the laws of New Zealand (i.e. the financial institution does not need to be licensed and regulated under the laws of New Zealand);
- **Trustee-documented trust (section IV(A) of Annex II):** A trust established under the laws of New Zealand to the extent that the trustee of the trust is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and reports all information required to be reported pursuant to the Agreement with respect to all U.S. Reportable Accounts of the trust;
- **Sponsored investment entity (section IV(B) of Annex II):** Set out on broadly similar terms to the corresponding category in the U.S. Treasury Regulations. The "sponsored" entity in this category needs to be a New Zealand investment entity that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust pursuant to relevant U.S. Treasury Regulations **and** that has a "sponsoring" entity that:
 - (i) is authorised to act on behalf of the sponsored entity to fulfil applicable FATCA registration requirements;
 - (ii) has registered as a sponsoring entity for FATCA purposes;
 - (iii) if they identify any U.S. Reportable Accounts with respect to the sponsored entity, registers the sponsored entity on or before the later of 31 December 2015 and the date that is 90 days after such a U.S. Reportable Account is first identified;
 - (iv) agrees to perform on behalf of the sponsored entity all due diligence, withholding, reporting, and other FATCA requirements;
 - (v) identifies the sponsored entity and includes the identification number¹⁰ of the sponsored entity in all reporting; and
 - (vi) has not had its status as a sponsor revoked.
- **Sponsored closely held investment vehicle (section IV(C) of Annex II):** Set out on broadly similar terms as the corresponding category in the U.S. Treasury Regulations; and
- **Collective investment vehicle (section IV(E) of Annex II):** Broadly covers investment entities established in New Zealand and regulated as a collective investment vehicle provided that all of the interests in the vehicle (including debt interests in excess of US \$50,000) are held by or through one or more exempt beneficial owners, active NFFEs, U.S. Persons that are not Specified U.S. Persons, or financial institutions that are not Non-Participating Financial Institutions.

18. We note that, as is the case with the definitions in the U.S. Treasury Regulations, these definitions in Annex II of the IGA are prescriptive and a New Zealand collective investment vehicle may not be able to satisfy all of the relevant criteria within the relevant type of exempt beneficial owner or deemed compliant financial institution. However, we have set out below practical examples (of how FATCA will apply to collective investment vehicles in New Zealand) which incorporate a number of these types of exempt beneficial owner or deemed compliant financial institution (Treaty-Qualified retirement funds, deemed compliant collective investment vehicles,¹¹ trustee documented trusts, and sponsored investment entities) that are likely to be most applicable in a New Zealand context.

¹⁰ The reference to "identification number" means the Global Intermediary Identification Number ("GIIN") of the financial institution.

¹¹ A collective investment scheme coming within section IV(E) of Annex II of the IGA.

19. We have focused the following examples on KiwiSaver funds, unit trusts, and circumstances where investments are held through custodians. This is because these are common structuring arrangements that will have wide application to the managed funds industry in New Zealand.

Practical examples of how fatca will apply to collective investment vehicles in New Zealand

Example 1: Treaty qualified retirement funds in section II(A) of Annex II of the IGA

KiwiSaver scheme fund is a KiwiSaver scheme registered under the KiwiSaver Act 2006. KiwiSaver scheme fund has mostly New Zealand resident members.

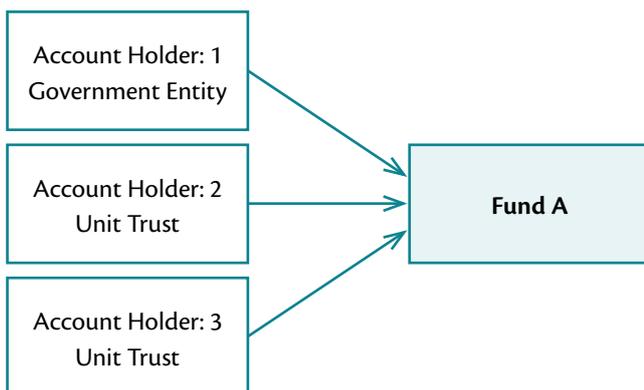
Does KiwiSaver scheme fund have any FATCA due diligence and reporting obligations?

20. No. Annex II of the IGA provides that a “Treaty Qualified Retirement Fund” is an exempt beneficial owner that is a Non-Reporting NZFI. Such funds will not have any FATCA due diligence and reporting obligations.
21. A “Treaty Qualified Retirement Fund” is defined as being any pension fund established in New Zealand and described in Article 3(1)(l) (General Definitions) of the U.S./New Zealand Convention, provided that the pension fund is entitled to benefits under the Convention on income that it derives from sources within the U.S. (or would be entitled to such benefits if it derived any such income) as a resident of New Zealand that satisfies any applicable limitation on benefits requirement.
22. Any KiwiSaver scheme registered under the KiwiSaver Act 2006 or superannuation scheme registered under the Superannuation Schemes Act 1989, that has mostly New Zealand resident members, would be fall within the scope of “Treaty–Qualified Retirement Funds” in section II(A) of Annex II of the IGA and therefore be treated as an exempt beneficial owner that is a Non-Reporting NZFI.
23. KiwiSaver scheme fund is registered under the KiwiSaver Act 2006. The fund also has mostly New Zealand resident members. Therefore, KiwiSaver scheme fund would be a Treaty Qualified Retirement Fund (exempt beneficial owner) that is a Non-Reporting NZFI. **The fund would not need to register with the IRS and would not have any FATCA due diligence or reporting obligations.**

Example 2: Collective Investment Vehicles in section IV(E) of Annex II of the IGA

Fund A is a New Zealand investment entity (financial institution) that is a pooled investment vehicle for large institutional investors. Fund A is regulated in relation to its activities. The investors in Fund A are a New Zealand Government entity (an exempt beneficial owner under the IGA) and various New Zealand unit trusts. All of the unit trust account holders in Fund A are financial institutions that are not Non-Participating financial institutions. No other entities hold an interest in Fund A.

Example 2: Diagram



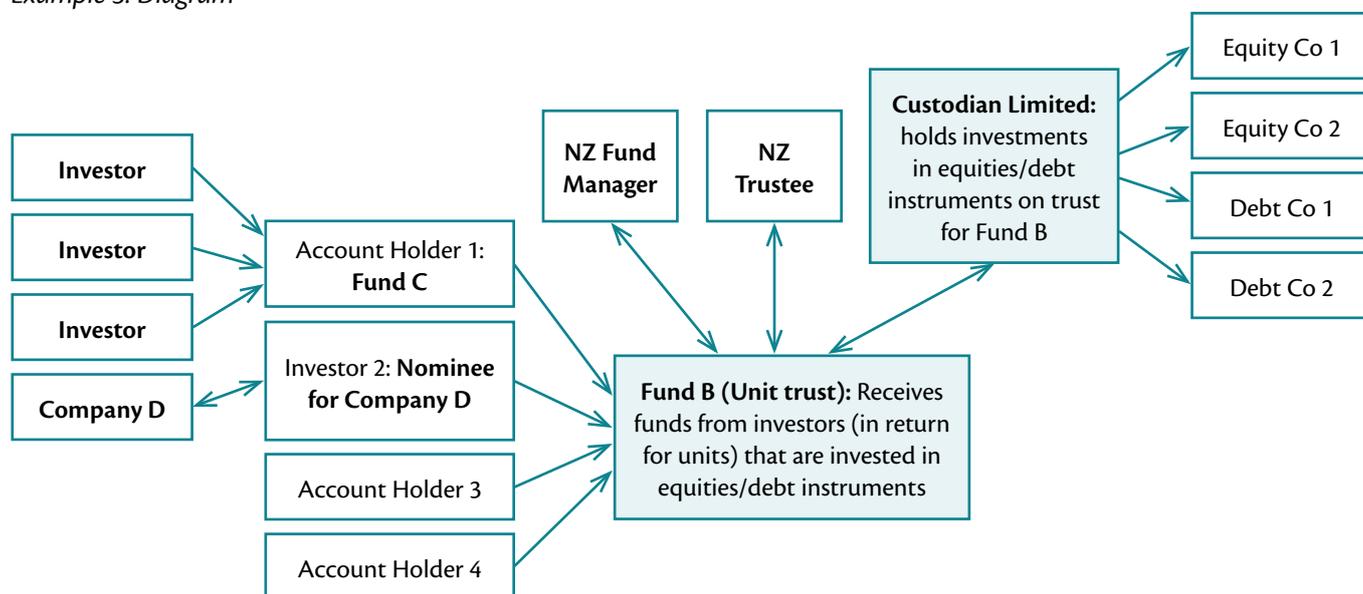
Does Fund A have any FATCA due diligence and reporting obligations?

24. Fund A would fall within the scope of the “Collective Investment Vehicle” category in section IV(E) of Annex II of the IGA. This is because all of the interest holders in Fund A are either exempt beneficial owners or financial institutions that are not Non-Participating financial institutions. **Therefore, Fund A would be a deemed compliant financial institution that is a Non-Reporting NZFI with no FATCA due diligence or reporting obligations.**
25. However, it is important to note that Fund A is only a deemed compliant financial institution because of the precise nature of its investors. This is subject to change. For instance, one of the unit trusts (that invest in Fund A) may become a Non- participating financial institution. If this was the case, Fund A would no longer be able to come within this particular category of deemed compliant financial institution.

Example 3: Unit Trust with a Custodian

26. Fund B is a New Zealand unit trust that is a pooled investment vehicle for investors. Fund B is a financial institution solely because it is an investment entity and will be a Reporting NZFI (unless, for example, it applies the trustee documented trust or the sponsored investment entity provisions in Annex II of the IGA - explained below). Fund B has a New Zealand trustee and a New Zealand fund manager (both are investment entities that are Reporting NZFIs). Custodian Limited holds the fund's property on trust (and as custodian) for Fund B. Custodian Limited is a custodial institution that is a Reporting NZFI. Investors receive units in Fund B in return for their investments and Fund B uses the pooled funds to invest in various debt and equity interests. Custodian Limited holds this property on trust (and as custodian) for Fund B. The interests in Fund B are not regularly traded on an established securities market and these interests are not excluded accounts.

Example 3: Diagram



Does Fund B have any FATCA obligations?

27. Fund B is a Reporting NZFI (unless it applies the trustee documented trust or the sponsored investment entity provisions in Annex II of the IGA – explained below)¹² and the interests of the unit holder account holders are financial accounts in Fund B. This means that Fund B¹³ will need to carry out FATCA due diligence on these accounts to determine whether there are any U.S. Reportable Accounts and whether any of the accounts are held by non-participating financial institutions. If Fund B identifies any such accounts, it will need to report them to Inland Revenue.

Does Custodian Limited have any FATCA obligations?

28. Custodian Limited is a Reporting NZFI. Custodian Limited maintains a custodial account (holding the underlying debt/equity interests) for Fund B. Fund B (a financial institution) is the relevant account holder (see the definition of “account holder” in Article 1(1)(dd) of the IGA, which does not require “tracing through” a financial institution) of that custodial account. Therefore, as the account is held by a financial institution (Fund B), the account is not a U.S. Reportable Account. This means that, provided that Fund B has not been treated by the IRS as a non-participating financial institution, Custodian Limited will not have any further FATCA due diligence obligations (beyond determining that the account holder – Fund B – is a financial institution) and will not need to report the account. Custodian Limited would be able to check the IRS list of non-participating financial institutions to determine whether Fund B is a non-participating financial institution in this respect.

Example 4: Unit Trust that uses the “trustee documented trust” category in section IV(A) of Annex II of the IGA

29. The facts are the same as example 3. However, Fund B wants to use the trustee documented trust category in section IV(A) of Annex II of the IGA, so that the trustee can carry out FATCA due diligence and reporting on its behalf. Can Fund B do this?

30. Yes. The trustee documented trust category can be used by New Zealand investment entities that have a trustee that is a Reporting U.S. Financial Institution, Reporting Model 1 FFI, or Participating FFI and reports all information required to be reported pursuant to the IGA with respect to all U.S. Reportable Accounts of the trust.

31. The trustee of Fund B is a Reporting NZFI (a Reporting Model 1 FFI). Fund B is also an investment entity. Fund B will be using the trustee to carry out FATCA due diligence and reporting on its behalf. Fund B will be able to be a trustee documented trust deemed compliant FFI that is a Non-Reporting NZFI provided that the trustee reports all information required to be reported pursuant to the IGA with respect to all U.S. Reportable Accounts of Fund B. **If Fund B is a trustee documented trust it will not need to register with the IRS.**

¹² It is assumed for the purposes of this example that none of the other types of Non-Reporting NZFI apply to Fund B.

¹³ Fund B will need to be registered with the IRS if it is a Reporting NZFI. As explained below, Fund B would also need to be registered if it is a sponsored investment entity and the “sponsor” identifies that Fund B maintains any U.S. Reportable Accounts.

Example 5: Unit trust with an investor that is a Financial Institution

32. The facts are the same as example 4. However, the trustee of Fund B has now carried out FATCA due diligence on financial accounts maintained by Fund B and has determined that one of the account holders (Fund C) is a collective investment scheme (with a trustee that is a Reporting NZFI) that is a NZFI. The balance of Fund C's account is above the threshold exemptions for entity accounts.

Does the Trustee of Fund B need to report on the account held by Fund C?

33. Fund C is a NZFI. This means that the account that Fund B maintains that is held by Fund C is not a U.S. Reportable Account. Therefore, the trustee of Fund B will only need to report payments to the account held by Fund C if Fund C has been treated by the IRS as a non-participating financial institution. Fund B will be able to look at the IRS list of non-participating financial institutions to determine whether Fund C is a non-participating financial institution in this regard.

Does the Trustee of Fund B need to carry out any FATCA due diligence on Fund C's underlying investors?

34. No. Fund C is the relevant account holder (of the account that Fund B maintains). As noted above, the definition of "account holder" in Article 1(1)(dd) of the IGA is clear that there is no need for the trustee of Fund B to trace through Fund C (which is an NZFI), to the underlying investors in Fund C.

35. Instead, it is Fund C that would (unless it is a Non-Reporting NZFI with no FATCA due diligence and reporting obligations) need to carry out FATCA due diligence on its own account holders (i.e. the investors that invest in Fund C).

Example 6: Unit trust with an individual investor that is identified as being a nominee

36. The facts are the same as example 4. However, the trustee of Fund B has now carried out FATCA due diligence on financial accounts maintained by Fund B and has determined that one of the investors in the fund is an individual nominee that holds their interest on behalf of an underlying company (Company D). The balance of this account is above the threshold exemptions for entity accounts.

"Who" is the relevant account holder of this interest?

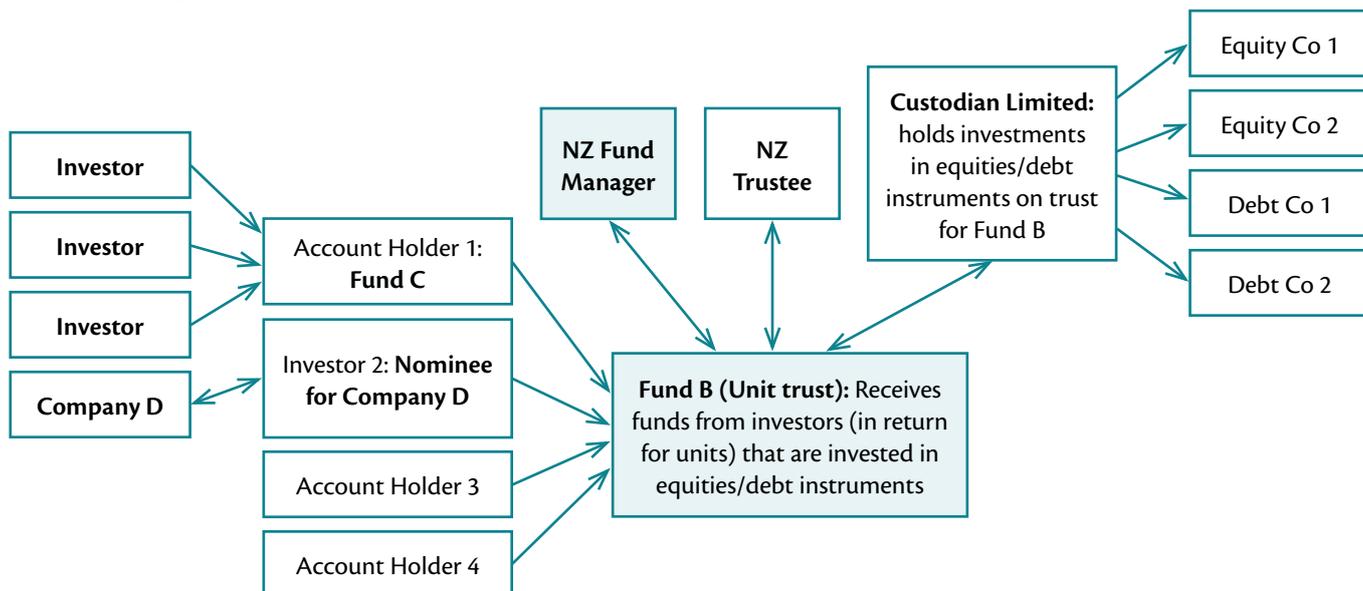
37. The trustee of Fund B has identified that the individual nominee merely holds the interest as nominee for Company D. The definition of "account holder" in Article 1(1)(dd) of the IGA requires a tracing through of nominees that are not financial institutions. The individual nominee is not an entity and is not a financial institution. Therefore, Company D is the relevant account holder. The trustee of Fund B will need to apply the entity due diligence procedures to determine if the account is a U.S. Reportable Account (i.e. if Company D is a Specified US Person or a passive NFFE with US Controlling persons) or held by a non-participating financial institution. If the trustee of Fund B identifies that the account is a U.S. Reportable Account or that the account is held by a non-participating financial institution it will need to report the account.

Example 7: Unit trust with a sponsoring entity

38. The facts are the same as example 3. However, Fund B wants to use the fund manager (an investment entity that is a Reporting NZFI and that is not a qualified intermediary, withholding foreign partnership, or withholding foreign trust) to conduct its FATCA due diligence/reporting on its behalf - as a "sponsoring" entity. The fund manager:

- Is authorised to act on behalf of Fund B (as sponsoring entity) to fulfil applicable FATCA registration requirements and agrees to perform on behalf of Fund B, all due diligence, withholding, reporting, and other FATCA requirements and carries on such activities;
- Has registered as a sponsoring entity with the IRS;
- Will register Fund B for FATCA purposes **if** they identify any U.S. Reportable accounts with respect to Fund B (on or before the later of December 31, 2015 and the date that is 90 days after such a U.S. Reportable Account is first identified);
- Identifies Fund B and includes the identification number [The reference to "identification number" means the Global Intermediary Identification Number ("GIIN") of the financial institution] of Fund B in all FATCA reporting on behalf of Fund B; and
- Has not had its status as a sponsor revoked.

Example 7: Diagram



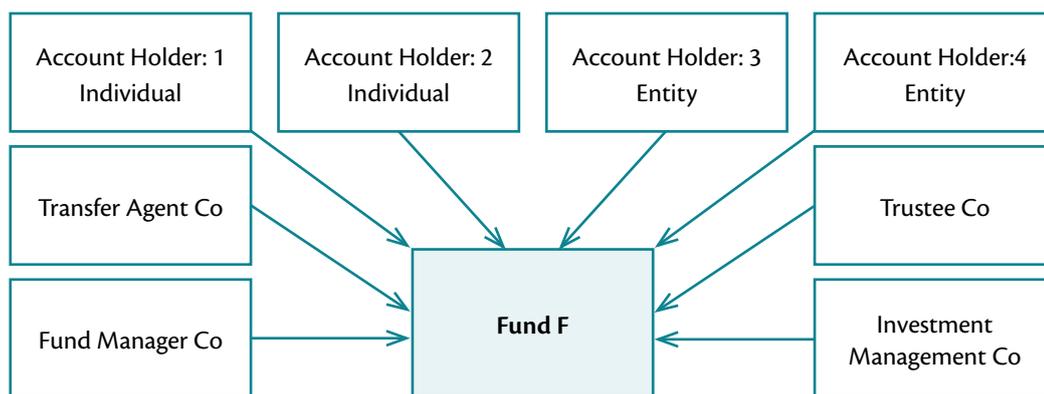
Is the fund manager able to be a “sponsoring” entity for Fund B and, if so, how would this work in practice?

39. Yes.¹⁴ The requirements set out in the sponsored investment entity category in section IV(B) of Annex II of the IGA are all satisfied. Therefore, Fund B will be a sponsored investment entity and will be a deemed compliant FFI that is a Non-reporting financial institution.¹⁵ However, as noted above, if fund manager identifies any U.S. Reportable Accounts with respect to Fund B they will need to register Fund B (on or before the later of 31 December 2015 and the date that is 90 days after such a U.S. Reportable Account is first identified) and report such accounts. From a reporting perspective it will be essential that the fund manager identifies Fund B and includes the identification number (GIIN) of Fund B in all reporting to Inland Revenue.

Example 8: Managed fund with multiple investment entities that assist in running the fund

40. A New Zealand managed fund (Fund F)¹⁶ is a trust that receives investments from a number of individual and entity investors. The investors obtain interests in Fund F. The fund then uses this money to invest in various investments in securities. Fund F is a financial institution solely because it is an investment entity. Fund F will be a Reporting NZFI (unless it applies the trustee documented trust or the sponsored investment entity provision in Annex II of the IGA – explained below).¹⁷ The interests in Fund F are not regularly traded on an established securities market and these interests are not excluded accounts. Fund F utilises the following New Zealand Reporting investment entities to assist it in running the fund: Trustee Co, Investment Management Co, Transfer Agent Co, and Fund Manager Co.

Example 8: Diagram



Which entity has the obligation to carry out FATCA due diligence and reporting on the individual and entity investors?

41. The interests of the account holders are in Fund F. Therefore, it is Fund F that will (unless, for instance, it is a trustee documented trust or sponsored investment entity – discussed below) have obligations to carry out FATCA due diligence and reporting on these account holders. None of the other entities will have obligations to carry out FATCA due diligence and reporting in relation to these interests (if Fund F carries on such FATCA due diligence and reporting).

¹⁴ A “sponsor” of a sponsored investment entity could be, for instance, a fund manager, trustee, corporate director, or managing partner.
¹⁵ Therefore, Fund B would be in a similar situation as if it had of utilised the trustee documented trust provision in section IV(A) of Annex II of the IGA. However, there are some differences. As noted above, there can be a requirement for sponsored investment entities to be registered with the IRS. In contrast, trustee documented trusts will not need to register with the IRS.
¹⁶ It is assumed for the purposes of this example that Fund F is not an entity described in section IV(E) or (F)(2) of Annex II of the IGA.
¹⁷ It is assumed for the purposes of this example that none of the other types of Non-Reporting NZFI apply to Fund F.

42. Transfer Agent Co, Fund Manager Co, Trustee Co and Investment Management Co are all investment entities. They all potentially could have reporting obligations with respect of Fund F's account holders, through their business relationship with Fund F. Because of that relationship Fund F's account holders could also be account holders in these other investment entities. The Special Rule in section IV(F)(3) of Annex II of the IGA is intended to avoid the potential for duplicative reporting in these circumstances. Where Fund F reports on its account holders, the reporting obligations of all other investment entities (Transfer Agent Co, Fund Manager Co, Trustee Co and Investment Management Co) with respect to such interests are treated as "deemed fulfilled".
43. Fund F could take advantage of the trustee documented trust provision in section IV(A) of Annex II of the IGA. This would involve Trustee Co (instead of Fund F), which is a Reporting NZFI,¹⁸ carrying on such due diligence/reporting with respect to the financial accounts maintained by Fund F. If this occurs, Fund F will be a deemed complaint FFI that is a Non-Reporting NZFI and will not have any FATCA obligations. The reporting obligations of all the other investment entities (Transfer Agent Co, Fund Manager Co, Trustee Co and Investment Management Co) with respect to such interest would be treated as "deemed fulfilled".
44. Fund F could also, in the alternative, arrange to be a sponsored investment entity (along the lines of the sponsoring arrangement in example 7), with potentially any of Transfer Agent Co, Fund Manager Co, Trustee Co, and Investment Management Co being the "sponsoring" entity and reporting on Fund F's account holders. If this is the case, the reporting obligations of all other investment entities (including Fund F) with respect to such interest would be treated as "deemed fulfilled."

¹⁴ The "trustee documented trust" provision in section IV (A) of Annex II of the IGA will only apply if the trustee is a Reporting NZFI, other Reporting Model 1 FFI, or a participating FFI and reports all information required to be reported pursuant to the IGA with respect to all U.S. Reportable Accounts of the trust.