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HD **Giving trustees new lease on life**

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It is a role which rarely attracts attention but which is crucial for financial services companies and their investors: the trustee. They act as the independent party which underpins investor confidence, providing supervisory and custodial services to retail and corporate clients through myriad structures.

Much like a referee at a football match, if they draw your attention, it's probably because they're not doing their job. There are just eight public trust offices and less than a dozen private trustee corporations in Australia, which hold over $500 **billion** in assets under management.

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It is a concentrated business and a healthy one with robust operating profit margins serving the private wealth and debt and **equity** capital markets, which have disparate needs.

"The margins are wonderful however the responsibility is high," says David Storm, OneVue head of platform strategy, sales and service. "So while it's a high-margin sector, there are massive barriers to entry – in the old days, you needed an act of parliament to get the necessary licensing to be a trustee **company** and that's why you find trustee companies that are 120, 130 years old."

Trustee corporations' assets under management surged in the **lead**-up to the global financial crisis thanks to the growing popularity of the securitised residential-mortgage market, managed investment schemes and superannuation funds.Bolstering the market

Total securitisation assets rose by more than 30 per cent a year to reach $274 **billion** over the decade ended 2007 before the GFC dragged down assets under management by 3 per cent.

Nonetheless, the asset-backed market has rebounded and last year, was the biggest since the GFC although Perpetual general manager, sales, relationship management and product, Richard McCarthy says the market will not get back to 2007 levels, when there was significant excess leverage in the financial system.

The government has implemented several initiatives to bolster the market in the wake of the GFC – the latest will improve the industry's reporting standards as the RBA prepares to accept a wider range of asset-backed securities through its repo agreements.

"There is probably not as much confidence in global markets as it is in Australia," McCarthy says, "but it's such a great strong performing asset class with these changes and this amount of transparency coming through the market its hopefully going to instill greater confidence to liquidity and greater demand for a great Aussie product." Perpetual is bolstering its ABSPerpetual.com site with new information ahead of the RBA's commitment to allow more securities to be repo-eligible by January 1, 2015.

Securitisation is a specialised service directed at sophisticated wholesale investors in the debt and **equity** capital markets and is performed by a limited number of trust companies. They are relatively new structures which intersect with trust law which is more than a century old, requiring complex trust documentation to deal with the interaction of property, insolvency and trust law and the commercial demands of the securitisation program.Modernising trusts law

It is one reason behind the Financial Services Council proposal that a new trust law regime be implemented: an Alternative Australian Trusts Act (AATA). "It will be important that any new legislation satisfies the needs of private and commercial trust arrangements," the FSC said in a submission to the government's Financial System Inquiry which proposed the AATA, noting that it was also an issue in English and Hong Kong revisions of trust law. "It is also important that the law provides sufficient protection to all stakeholders, without unnecessarily interfering with effective and efficient trust arrangements."

The FSC (which represents trust companies, fund managers and life insurers), argues that modernising trust law would make Australia's financial services sector more competitive globally. It is also likely to attract a growing number of high-net worth investors across the Asia Pacific region, who are particularly interested in the role trusts can play in family wealth management and intergenerational wealth transmission, in regions with a strong rule of law and political stability.

OneVue's David Storm says many high-net worth investors are more interested in protecting their capital, and often use structured products offered by investment banks. "They've made their money – they're not looking to chase growth in speculative assets – they're looking for quality assets to deliver more stability of return. So you find that they're looking for more blue-chip style stocks, particularly the older ones – they're looking for some quality yield." OneVue is not a trustee but administers assets across a range of structures such as family trusts and self-managed super funds and is a fast-growing player in that sector along with managedaccounts.com.au.

Safety remains paramount where trusts are concerned. Traditional trust services, such as estate planning, were only bought under the purview of Australia's corporate regulator in 2010. Trust companies offering such traditional services are required to hold $5 million in net tangible assets – less than the $10 million required of those companies acting as a responsible entity of a managed investment scheme or holding assets in custody. While there has been talk of raising the $5 million requirement to $10 million, no firm proposals have been put forward.

Where schemes and structures collapse, a trust company can find itself held liable by aggrieved investors. In January 2013, a claim was lodged against The Trust Company (which has since been acquired by Perpetual), which was the trustee for debentures issued by Banksia Securities. It alleged breaches of the Corporations Act and general law trustee duties.Diversifying operations

The Trust Company suffered a similar claim in May 2013 over its role as trustee for debentures issued by Australian Capital Reserve.

Those issues prompted the Australian Securities and Investments Commission to issue a discussion paper which proposed raising the legislative standards required of trustees to explicitly assess a debenture issuer's financial position, performance and viability, and ensure that information in the issuer's prospectus is correct, as well as monitor whether the issuer can make their payments to debenture holders.

"Some trustees already monitor the issuer's property that is relevant to the prospects of investors being repaid when due," ASIC said in the paper, which has yet to be acted upon by the government. "We consider that an express legal obligation to monitor the financial viability of the issuer will help ensure that all trustees take into account a broader range of factors under the law in assessing the investors' prospects of being repaid." Many trustee companies have diversified their operations beyond their traditional functions (such as wills and estate planning), offering services across the entire wealth management chain, including employing financial planners and offering fund management activities.

IOOF's Australian Executor Trustees division includes corporate trust services, superannuation and estate and trustee services. Unlike other trustee companies, its estate and trustee services offerings were unbundled about two years ago and can be offered individually in conjunction with a client's current lawyer or accountant.

Equity Trustees chief investment officer George Boubouras says the company, established in the 1880s, has recently opened its Australian Equity Income Fund to retail investors. It invests in stocks such as the major banks, Wesfarmers, Duet Group and AMP. "A trustee company's philosophy is also consistent for an ageing demographic philosophy because that 55-year-old and 60-year-old… is living longer and healthier and needs more income in their retirement," Boubouras says. "And those basics in investment philosophy resonate there."

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