

FINANCIAL MARKETS CONDUCT BILL
SUBMISSION ON EXPOSURE DRAFT
BANK OF NEW ZEALAND OFFICERS' PROVIDENT ASSOCIATION (BNZOPA)

Clause Number	Clause heading	Submission/Comment
Part 1	Preliminary provisions	No submissions or comments
Section 6	Interpretation - "Governing Document"	<p>Comment</p> <p>Paragraph (b) of this definition refers to "...deeds, agreements or instruments that constitute or govern the activities of the scheme..."</p> <p>There is a concern "instrument" may not be wide enough to cover the particular circumstances of the BNZOPA which is constituted under the Bank of New Zealand Officers' Provident Association Act 1971 and governed by rules for the time being in force under the Act.</p>
Section 6	Interpretation - New Definition	<p>Submission</p> <p>Add a new definition "trustees" that is similar to the definition in the Superannuation Schemes Act 1989, namely:</p> <p style="padding-left: 40px;">"Trustees"</p> <p style="padding-left: 40px;">(a) In relation to a superannuation scheme established under a trust deed, means the persons who are designated as such in the trust deed, or the successors of those trustees, who have the responsibility for administering the trusts governing the superannuation scheme</p> <p style="padding-left: 40px;">(b) In relation to a superannuation scheme constituted under an Act of the Parliament of New Zealand, means the person or persons appointed to administer the scheme.</p> <p>Comment</p> <p>The Bank of New Zealand Officers' Provident Association Act 1971 requires the BNZOPA to be controlled and managed by a Board of Management (<i>BOM</i>) rather than trustees. As currently drafted, references in the draft Bill to "trustees" would not apply to the members of the BNZOPA's Board of Management who carry out the same functions as trustees.</p>
Part 2	Misleading or deceptive conduct or false or misleading representations	No submissions or comments
Part 3 and schedules 1 and 2	Disclosure offers of financial products	No submissions or comments
Part 4 and schedule 3	Governance of financial products	

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Section 113(1)(a)	Additional initial and ongoing registration requirements for superannuation schemes	<p>Submission</p> <p>Add "...or an arrangement constituted under an Act of the Parliament of New Zealand."</p> <p>Comment</p> <p>The BNZOPA is not established and governed by a trust deed but is constituted under the Bank of New Zealand Officers' Provident Association Act 1971 and governed by rules for the time being in force under the Act.</p> <p>In its current form, this section would prevent the BNZOPA reregistering under the proposed new Act.</p>
Section 135(2)	Custodianship of scheme property	<p>Submission</p> <p>Restricted schemes should be exempt from the requirement for an independent custodian, or in the alternative, this requirement should be limited to circumstances where a custodial relationship is not otherwise provided as part of the arrangements with a fund manager for the investment of scheme assets.</p> <p>Comment</p> <p>This section requires the trustees of a restricted scheme to appoint an independent custodian to hold the scheme assets.</p> <p>The BNZOPA believes it is unnecessary for audited restricted schemes to be required to have an independent custodian trustee. In practice this will simply increase the scheme costs and have a negative impact on the income returns to scheme participants.</p> <p>Alternatively and as a minimum, there should be an exemption for scheme assets invested through a fund manager where the investment is held by a custodian appointed by that manager. There is no perceived value for an independent custodian where the investment is into a 'pooled' product which has a custodian for the assets separate from the fund manager.</p>
Section 142(1)(b)	Requirement for statement of investment policy and objectives	<p>Submission</p> <p>The required statement of investment policy and objectives (SIPO) should not include:</p> <p style="padding-left: 40px;">“(b) the limits on the proportion of each type of asset invested in” ...</p> <p>Comments</p> <p>1. A SIPO, as its name implies, establishes the policy and objectives for the investment of the scheme assets. The comments in this paragraph are based on the advice provided to the BNZOPA by its investment advisors of best industry practice in this area and reflect the investment methodology applied by the Association .</p> <ul style="list-style-type: none"> - The policies section of the BNZOPA's SIPO outlines the trustee's (BOM's) investment responsibilities and the specific policies BOM has identified for the investment of the scheme funds. - The objectives section of the SIPO sets target performance and risk probabilities for the various investment options offered to members.

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		<ul style="list-style-type: none"> - The BOM only addresses strategic asset allocation once the SIPO is approved. Therefore, those allocations do not form part of the BNZOPA SIPO. Rather, the allocations and any relevant parameters are recorded in investment guidelines that operate at a level below the SIPO. These guidelines are part of the instructions given to the BNZOPA's investment managers and are changed more frequently than the SIPO. - In the case of the BNZOPA, the SIPO is published in full in the scheme's investment statement and annual report. The investment guidelines are not published in full to members although the current asset allocations are recorded in the investment statement and reported against in the annual report. <p>2. There is also the risk that this provision may not achieve the outcome it seeks because managers may establish very broad asset limits to avoid triggering the limit break reporting obligation in section 145(2).</p>
Section 145(1)	Action that must be taken on limit breaks	<p>Submission</p> <p>Replace "breach of" with "deviation from"</p> <p>Comment</p> <p>The use of "breach" in section 145(1) implies wrong doing on the part of trustees if a limit break occurs. In many circumstances this will not be the case. For example, changes in asset allocation could result from sudden market changes or a decision by trustees intended to protect scheme participants.</p>
Section 145(2)	Action that must be taken on limit breaks	<p>Comment</p> <p>It appears that the circumstances and manner in which the manager of a restricted scheme must report a limit break to the FMA will be set out by regulation.</p> <p>The BNZOPA believes it is important for those requirements to recognise potential timing issues (even with proper reporting processes in place trustees may not become aware until some time after the event that a limit break has occurred) and to only require the reporting of material deviations.</p> <p>This could be achieved through appropriate tolerance ranges and timing allowances which will allow trustees time to rebalance asset allocations without any requirement to report the "breach" (deviation), particularly where the cause is beyond the reasonable control of the trustees.</p>
Section 153	Additional restrictions on transactions of restricted scheme	<p>Submission</p> <p>Add an exclusion allowing a scheme to exceed the 5% related party investment restriction where that investment takes the form of deposits or securities with a related party that is a registered bank. In these circumstances it is suggested a higher threshold level of 25% should be permitted.</p> <p>Comment</p> <p>The sponsor of the BNZOPA is Bank of New Zealand (BNZ). BNZ is also a contributor to the Scheme and therefore a</p>

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		<p>"related party".</p> <p>For bank employer sponsored schemes, a 5% related party restriction will place an unreasonable constraint on the available investment options for fixed interest and cash and, in the case of the BNZOPA, would require the scheme to change its investment guidelines to increase exposure to other banks, thereby taking on risk it would otherwise seek to avoid.</p>
Part 5	Dealing in financial products on markets	No submissions or comments
Part 6	Licensing and other regulation of market services	No submissions or comments
Part 7	Enforcement and liability	No submissions or comments
Part 8	Regulations and exemptions	No submissions or comments
Part 9 and schedule 4	Miscellaneous provisions	
Section 585	Reregistration process for existing schemes	<p>Comment</p> <p>The draft Bill records "It is proposed that there will be a reregistration process for existing schemes".</p> <p>The BNZOPA believes <u>there must be consultation</u> with the relevant financial sectors (in its case, the workplace superannuation sector) on the reregistration process and its implications, and that in some instances there is a strong case for grandfathering existing arrangements for current and future members:</p> <p>Examples of issues that will impact on the BNZOPA and on which it is likely to want to make further submissions (depending on what is finally proposed) include:</p> <ol style="list-style-type: none"> 1. The trust deeds or rules for some current employer superannuation schemes will contain provisions (eg withdrawal rights) which do not reflect the proposed ongoing requirements for superannuation schemes that are set out in section 113 of the Bill. However, in many cases members will have joined or contributed to existing schemes on the basis of the conditions of membership currently in place, and it would be unjust if those conditions of membership were changed to their detriment as part of the proposed reregistration process. 2. The BNZOPA rules currently provide for an eight member Board of Management, four of whom are appointed by the employer and four of whom are elected by members. In the case of the BNZOPA it so happens that one of the employer appointees appears to meet the independent

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		<p>trustee requirements (apart from being licensed) in section 114(1). However, if the appointment of an independent trustee is mandatory then there is the issue of how that person should be appointed and how this will affect the overall composition and balance of the Board.</p> <p>3. The draft Bill grants certain rights and imposes conditions or obligations that do not currently exist under the OPA rules and which could create issues/problems for individual members, the sponsor, or the scheme itself. Examples are:</p> <ul style="list-style-type: none">- The restrictions on overseas membership – section 113;- Rights relating to rule amendments – section 121;- The apparent right under section 160 to remove a member of BOM, even if he or she is an employer appointee.