

FINANCIAL MARKETS CONDUCT BILL
SUBMISSION ON EXPOSURE DRAFT
Britannia Financial Services Limited

Clause Number	Clause heading	Submission
Part 4 and schedule 3	Governance of financial products	
Clause 113	Additional initial and ongoing registration requirements for superannuation schemes	<ul style="list-style-type: none"> • We submit that clauses 113(1)(c) and 113(2) should either: <ul style="list-style-type: none"> ○ allow for alternatives to the “New Zealand criteria”, so that New Zealand fund managers can offer superannuation products internationally. This could be achieved by allowing for other “prescribed alternatives” and leaving drafting the alternatives to regulations, (but it will be necessary for New Zealanders to be able to participate in the alternatives). Preferably there are some prescribed alternatives included in the Act; or ○ if the purpose of the inclusion of the “New Zealand criteria” is to satisfy Her Majesty’s Revenue and Customs (“HMRC”) in the United Kingdom that superannuation schemes in New Zealand are not misusing the Qualifying Recognised Overseas Pension Scheme (“QROPS”) regime, the purpose could be better achieved through more targeted restrictions controlling the benefit payments and governance of all New Zealand schemes that have QROPS status. It seems to be an overreaction to completely prohibit New Zealand superannuation schemes from accepting non-resident members if this is the problem that the inclusion of the “New Zealand criteria” is trying to address. • The inclusion of clause s 113(1)(c) and 113(2) in the Bill is inconsistent with developing a financial services hub in New Zealand in respect of superannuation schemes. Given that the financial hub concept has the support of Prime Minister John Key, it seems inappropriate for this legislation to stifle innovation by removing the application of the financial hub concept from superannuation schemes. • Further, the inclusion of the “New Zealand criteria” is also inconsistent with the application of the new tax rules that were recently introduced via the Taxation (Tax Administration and Remedial Matters) Act 2011, which established a tax-free regime for offshore investors investing in Foreign Investment Zero Rated PIEs or Foreign Investment Variable-Rate PIEs (including superannuation schemes that are PIEs). Many superannuation schemes had anticipated this change and have embarked on making the necessary system changes (which are not insignificant) to implement this regime. Other funds management companies made plans to register superannuation schemes to attract long-term offshore members via the

Clause Number	Clause heading	Submission
		<p>QROPS regime. The inclusion of the “New Zealand criteria” now introduces uncertainty and will cause plans to be put on hold, which is undesirable.</p> <ul style="list-style-type: none"> • Incorporating the “New Zealand criteria” places New Zealand at a disadvantage in the global QROPS market, which is very big in terms of number of schemes. HMRC has a website listing in excess of 3,500 individual entities in over 50 different tax jurisdictions, all of which have been granted QROPS status (many more schemes will have that status but have chosen not to appear on the public list). Some of the schemes listed are occupational schemes that cater for internationally mobile staff that are employed by global corporate entities and others listed are single person self-managed schemes (as contemplated in Schedule 3 of the Bill). Other schemes are actively promoted by their home jurisdictions (who have enacted legislation to assist with promoting such schemes) on the basis of being safe-haven destinations, offering tax-efficiency, more competitive fees and charges and superior (more flexible) retirement benefits to persons other than those living in the country in which the scheme is established. Incorporating the “New Zealand criteria” in the Bill will prohibit New Zealand competing in the same global market as those schemes discussed above. This limits the opportunity for pension management businesses and associated career possibilities for qualified personnel. • Incorporating the “New Zealand criteria” also prohibits New Zealand superannuation schemes competing for a slice of the QROPS transfer monies that are available, at a time when New Zealand needs more (certainly not less) foreign investment. Some estimates value the QROPS market at £575 billion (given the 5.5 million former United Kingdom residents living abroad in 2006). The QROPS market is expected to continue to grow as the trend is more and more United Kingdom residents shifting aboard. • In addition to the QROPS market, there is a growing market of international schemes offering shelter for high net worth United Kingdom residents from Inheritance Tax (these schemes are known as Qualifying Non-United Kingdom Pension Schemes, or QNUPS). The QNUPS regime has grown because of the sharp reduction in tax relief for United Kingdom pension contributions and the regime has grown with at least the implicit (if not express) approval of HMRC. Individuals who have used up their lifetime allowances of tax relief for pension contributions are looking to invest offshore in tax efficient QROPS jurisdictions. Imposing the “New Zealand criteria” on superannuation schemes will result in New Zealand not being able to attract this money. • Schedule 3 of the draft Bill introduces the concept of

Clause Number	Clause heading	Submission
		<p>single person self-managed funds, a concept which is well-established in the Australian market. The global management of self-managed pension schemes is a huge commercial opportunity and New Zealand could gain substantial business from this niche market. New Zealand is generally known for its innovative financial products and the inclusion of the “New Zealand criteria” in the Bill will stifle innovation in the area of self-managed funds, which Schedule 3 in the Bill seems to be encouraging. More generally, the “additional purposes” preamble to the Bill states that the Bill is intended to “promote innovation and flexibility in the financial markets” (clause 4(d)), which (for the above reasons) is inconsistent with the inclusion of the “New Zealand criteria” in the Bill.</p>