

# Financial Markets Conduct Bill

## Submission on Exposure Draft

Prepared and presented by:

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### Background

Debex ® ([www.debex.co.nz](http://www.debex.co.nz)), a minor securities market established in 2002, owned and operated by Canopus Investments Limited and one that could reasonably expect to be an exempt market under the proposed Financial Markets Conduct Bill, offers holders of illiquid securities, unlisted on a licensed market, an avenue to sell their investments in small value parcels at low cost on a secondary market. Such securities include shares (ordinary and preferential), debenture stock, capital notes, bonds and transferable units in closed managed funds. Debex also offers this type of security via a consolidated primary market.

Debex has some experience in operating a small securities market.

Minor securities issuers are more likely, initially at least, to see their listing on an exempt market as providing a liquidity and price establishment mechanism for existing shareholders to sell and for new investors to buy - rather than as a capital raising platform. Capital raising is more likely to be sought from the platform of a licensed stock exchange. Hence an exempt market can act as an initial “stepping stone” in the company growth process.

Contents of this submission are not authorised for publication on any publicly accessible website.

I am available for consultation on any matters relating to this submission.

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Clause Number	Clause heading	Submission
6	Interpretation	<p>Add definitions of “primary market” and “secondary market”</p> <p>Reasoning:</p> <p>1) Definitions required to clarify the limits imposed by 293 (a) (i), (ii) and (iii) (if added).</p>
292	Prohibitions on holding out	<p>A person is not exempt from legislation governing the conduct of Brokers or Authorised Financial Advisers by virtue of transacting business on an exempt market.</p> <p>Reasoning:</p> <p>1) Transacting business on an exempt market is restricted to only those persons meeting the requirements of Broker as defined in Part 3A of the Financial Advisers Act 2008 or an Authorised Financial Adviser registered to provide the following financial services:</p> <p>a) Broking services or</p> <p>b) Entering or trading on an exchange, in an over-the-counter market or otherwise service.</p>

Clause Number	Clause heading	Submission
293	Exemptions	<p>(a) (i) the number of transactions allowed in the most recently completed financial year for an exempt market operator should be 500 rather than the 100 provisionally proposed in the Bill.</p> <p><b>Suggested amendment:</b> replace [100 transactions] with “500 transactions” in 293 (a) (i).</p> <p>Reasoning:</p> <ol style="list-style-type: none"> <li data-bbox="552 674 1382 965">1) The experience of Debex secondary market transactions to date indicates an average transaction value of under \$10,000 per transaction as the norm in such a market, and this is likely to hold even in a slightly more active market. To enable the exempt market to service expected demand for transfer of otherwise illiquid securities in small parcels, the number of allowed transactions per year needs to reflect the expected average value of those transactions</li> <li data-bbox="552 1005 1382 1256">2) The current proposed exemption limits of 100 transactions per year and aggregate value of \$2 million imply an average transaction of \$20,000, more than double the expected average transaction value. To reflect the number of transactions necessary to service this market, a minimum allowable limit of 500 transactions per year is required.</li> </ol>

Clause Number	Clause heading	Submission
293	Exemptions	<p>(a) (ii) The aggregate value of financial products acquired under the transactions of (a) (i) should have an allowable maximum of at least \$5 million rather than the \$2 million limit provisionally proposed.</p> <p><b>Suggested amendment:</b> replace [\$2 million] with “\$5 million” in 293 (a) (ii).</p> <p>Reasoning:</p> <ol style="list-style-type: none"> <li>1) To play its role even an exempt market needs to be able to cover costs and return a (very) modest profit to be viable.</li> <li>2) The existing proposed figure of \$2 million limits the potential revenue pool for an exempt market so severely as to make its operation untenable. Even with a potential revenue pool of \$5 million, operation of an exempt market would be uneconomic as a single entity and its existence would of necessity rely on being operated as an adjunct to some other profitable enterprise.</li> <li>3) An exempt market may, in future, wish to apply to become a licensed market. The regime must allow for markets and exchanges to progress through “stepping stone” stages as well as securities issuers. The experience of a growing market or exchange being granted a licence would enhance the depth of New Zealand’s capital markets.</li> <li>4) A limit of say, \$5 million, would represent only a very small fraction of annual transactions for any of those existing securities markets expected to be licensed under the proposed legislation and therefore affords no threat to either those markets or stability of the New Zealand financial markets in general.</li> </ol>

Clause Number	Clause heading	Submission
293	Exemptions	<p>(a) Clarification is required that the limits referred to in sub-clauses (a) (i) and (a) (ii) refer to securities trades of a secondary market nature only.</p> <p><b>Suggested amendment:</b> Insert 293 (a) (iii) “the limits prescribed in 293 (a) (i) and 293 (a) (ii) apply to securities transactions of a secondary market nature only.”</p> <p><b>Alternatively,</b> 293 (a) (i) may be modified to achieve the same purpose by rewriting as “the securities transactions on the market, of a secondary market nature, in the most recently completed financial year for the market operator did not exceed 500 transactions: and”</p> <p>Reasoning:</p> <ol style="list-style-type: none"> <li>1) Primary market issuance of securities is comprehensively regulated through other sections of this Bill and/or other legislation and requires no further regulation under this section.</li> <li>2) In addition to secondary market facilities, Debex provides a consolidated primary market for finance company debenture stock issues, capital notes and a number of managed funds – all subject to relevant issuer legislation and regulations.</li> <li>3) Numerous websites and alternative sources facilitate acquisition of investment statements, prospectuses and product disclosure statements for debenture stock, managed funds and other primary issue securities, each thereby constituting a minor primary market in its own right. Transactions for primary issues are cleared through the issuer and registrar, not the website operator or other source from where the documentation may have been obtained. Hence regulation of primary issues is not required under this section.</li> <li>4) Inclusion of primary market issuance of securities within the prescribed limits for an exempt market does not appear to be intended in the Bill and should be specifically excluded for the sake of clarity.</li> </ol>

**End of submission**