

**FINANCIAL MARKETS CONDUCT BILL
SUBMISSION ON EXPOSURE DRAFT**

The Perpetual Group

Clause Number	Clause heading	Submission
Part 1	Preliminary provisions	
Part 2	Misleading or deceptive conduct or false or misleading representations	
Part 3 and schedules 1 and 2	Disclosure offers of financial products	
Part 4 and schedule 3	Governance of financial products	
Clause 113(1)(c)	Additional initial and ongoing registration requirements for superannuation schemes	<ul style="list-style-type: none"> • We note the New Zealand residency requirement for Superannuation Schemes in section 113(1)(c) of the draft Bill. This will effectively end the ability of New Zealand QROPS accepted superannuation schemes to accept offshore members. Given the size of the New Zealand QROPS industry, this is a significant change. We have a number of comments and concerns. • We are concerned that this change was introduced without any prior policy discussion. This has the potential to undermine New Zealand's reputation for being a stable investment jurisdiction. While there are other major changes in the draft Bill, these were all heralded by sometimes extensive policy discussion. • Following from the above point, the New Zealand residency requirement appears contrary to this Government's stated policy initiative of working towards New Zealand becoming an Asia-Pacific Funds domicile. On the one hand, New Zealand has recently passed legislation carrying through the 0% PIR initiative to encourage overseas investment in PIEs. On the other hand, the draft Bill seems aimed at discouraging the use of New Zealand domiciled superannuation schemes. This sends confusing signals. • We see no reason why, in principle, offshore persons should not be able to join New Zealand superannuation schemes. In this regard, we note that there is no New Zealand tax benefit for an offshore investor in investing in a New Zealand superannuation scheme over, say, investment in a unit trust. • However, we understand the concern regarding the perceived abuse of QROPS due to permissive withdrawal rules. Cash-in, cash-out schemes seem to be the major concern. Rather than prohibiting offshore membership of superannuation schemes completely, we submit the better policy response is to target the thing that is causing the concern and tighten withdrawal rules for those schemes that choose to allow offshore membership. Responding in this manner, after consultation with industry and any relevant offshore regulator as to appropriate terms, would avoid the potentially destructive effect of this proposal on New Zealand's funds management industry. • Removing the New Zealand residency requirement may also encourage ex-patriot New Zealanders to repatriate their overseas investment into New Zealand, thereby improving the savings base of New Zealanders and the savings of New Zealand as a whole.

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Clause Number	Clause heading	Submission
Part 5	Dealing in financial products on markets	
Part 6	Licensing and other regulation of market services	
Part 7	Enforcement and liability	
Part 8	Regulations and exemptions	
Part 9 and schedule 4	Miscellaneous provisions	
Clause 570	Amendments to the Trustee Companies Act 1967 and Public Trust Act 2001	<ul style="list-style-type: none"> • Trustee Companies have a responsibility to manage their clients' wealth in the range of different capacities in which they act. These capacities include as trustee, co-trustee, administrator, executor, attorney etc. Group Investment Funds (GIFs) under the Trustee Companies Act 1967 provide an efficient method for the investment of client funds through a statutorily recognised pooled vehicle. Perpetual notes the following concerns with the treatment of GIFs and the transition to the new regime: <ul style="list-style-type: none"> • 'Internal' GIFs. The note to clause 570 sets out the intention that the changes to GIFs are intended to restrict the use of GIFs to the 'internal' management of estates and assets in the Trustee Company's possession. As noted above, Trustee Companies, in the discharge of their functions, may act in a range of different capacities. Some of these capacities currently require them to have an Investment Statement and Prospectus in compliance with the participatory securities requirements of the Securities Act 1978 eg, where the Trustee Company is acting as attorney under an enduring power of attorney. The drafting of any amendments to the Trustee Companies Act 1967 needs to recognise that the Trustee Company should be able to invest into GIFs when acting in these capacities. Alternatively, this could be dealt with by providing clear exemptions in Schedule 1 in these cases. • Retail GIFs aka Externally Offered GIFs. In these structures, the Trustee Company acts as Trustee and Manager, and there is an external statutory supervisor (because they are treated as participatory securities under the Securities Act 1978). As referred to above, the main purpose of these GIFs is to facilitate investment of money the Trustee Company has a duty or responsibility to invest. Trustee Companies should be allowed to continue to operate existing retail GIFs and establish new retail GIFs, subject to the new requirements of the MIS regime. • If the Ministry does not accept this submission, then in the alternative, Perpetual submits that the new MIS requirements should be overlaid on existing GIFs and any new structures in the nature of retail GIFs must be established as MIS. We note that this would require amendment to the Trustee Companies Act 1967 because that legislation does not currently allow Trustee Companies to act as manager of pooled funds other than those established as GIFs. • Externally managed GIFs. Externally managed GIFs are structures

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		<p>under which the Trustee Company acts as Trustee and an external financial services firm acts as manager. Under a Securities Act 1978 exemption, they are treated for regulatory purposes much like unit trusts. They are also structurally similar to unit trusts, with the assets vesting in the Trustee. However, it should be noted that these structures are different to a unit trust in ways that would make transition to a MIS a difficult exercise. These include particular rights and duties which do not map across well into the unit trust-like rights and duties contemplated by the MIS regime. For example, the Trustee Company will not only as trustee but also be appointed as attorney and agent for the investor. The Trustee Company will have limited powers as trustee but wide powers as agent. This is quite different to a unit trust. Due to the potential difficulties of transition, we submit that externally managed GIFs should be grandfathered into the new regime.</p>
Clause 585	Reregistration process for existing schemes	<ul style="list-style-type: none"> • Particular care and attention will need to be focussed on provisions relating to the transition of existing managed structures to the new regime. We are particularly concerned about GIFs in the case that our submission above is not accepted and existing GIFs need to be converted into the new managed investment scheme structure. There will need to be comprehensive and robust transitional provisions in place to deal with the issues that arise, including: <ul style="list-style-type: none"> • Governing documents. Changes will need to be made to the governing documents of those schemes and this may trigger investor consent requirements in certain cases The transitional provisions should endeavour to make this process as easy as possible given that the purpose would be to come into compliance with statutorily imposed requirements. • Tax. The reregistration and imposition of new governance and structural arrangements may result in a disposition or deemed disposition of assets, causing the crystallisation of tax obligations. Given that there is no real realisation of assets occurring, but merely the statutorily mandated transfer of investors from one structure to another, the crystallisation of any such tax obligations is unwarranted. • Disclosure. The reregistration may be considered to be a change in legal form for the entities and investors may be treated as swapping their former 'securities' under the Securities Act 1978 regime for 'financial products' under the new regime imposed by the draft Bill (ie, managed investment products). There is a risk that the draft Bill may inadvertently require fresh and full regulatory disclosure to existing investors as a result. There is no policy justification for requiring such full disclosure as the fundamental nature of the underlying investment will not have changed. • Consequently, we suggest that transitional provisions should provide for the following: <ul style="list-style-type: none"> • Governing documents. Provide for governing documents to be able to be amended to come into compliance with the new requirements. This would avoid the onerous, impracticable and inappropriate obligation to seek investor consent to these changes. • Tax. The draft Bill should provide that no changes resulting from reregistration of the scheme or the transition to compliance with the new requirements results in the imposition or crystallisation of any tax obligations. • Disclosure. Schedule 1 of the draft Bill should provide for a transitional exemption making it absolutely clear that the reregistration of a scheme under the managed investment scheme regime is excluded from the requirement to give disclosure under

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		<p data-bbox="646 188 1474 248">Part 3 of the Bill. It would be acceptable for this to be supplemented by a condition that investors are informed of the key changes.</p> <ul data-bbox="571 264 1474 553" style="list-style-type: none"><li data-bbox="571 264 1474 450">• It has been suggested to us that there is merit in considering a transitional model along the lines of that implemented by the Superannuation Schemes Act 1990. We also note the current KiwiSaver Amendment Act 2011 transitional provisions, under which schemes have a transitional period during which they can choose an 'effective date' to come into compliance with the new requirements.<li data-bbox="571 465 1474 553">• There should also be a sufficient long transitional period to effect these changes. We understand that 24 months is proposed and agree that that is an appropriate period.