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Financial Markets Conduct Bill - Comments on the exposure draft.

Introduction and purpose.

The purpose of this submission is to make representations regarding a specific provision of the exposure draft of the Financial Markets Conduct Bill (the draft Bill) which if implemented as it currently stands risks significant damage to a particular part of New Zealand financial markets.

Our representations are concerned with clause 113 of the draft Bill where with effect from its implementation date membership of New Zealand Superannuation Schemes will become subject to the "New Zealand criteria". This sets out that in general terms membership of New Zealand pension schemes will become restricted to persons who are "normally..... living in New Zealand".

The existing legislation, the Superannuation Schemes Act 1989, incorporates no such restriction instead allowing membership of superannuation schemes to "natural persons".

New Zealand is currently the largest market for receiving transfers of United Kingdom pension rights in respect of Superannuation Schemes and Kiwi Savers which are registered with her Majesty's Revenue and Customs (HMRC) as Qualifying Recognised Overseas Pension Schemes (QROPS).

The introduction of the New Zealand criteria will deny New Zealand access to this source of business (excepting of course in respect of New Zealand residents) with a consequent effect on the New Zealand economy in terms of funds which become available for investment within New Zealand pension schemes, and the loss of employment associated with those in New Zealand engaged in the administration of transfers to those New Zealand pension schemes registered as QROPS and in respect of non-New Zealand residents.

The interaction of United Kingdom and current New Zealand legislation.

In relation to UK legislation and in particular under section 150(8) Finance Act 2004 a Recognised Overseas Pension Scheme is an overseas pension scheme that meets the following requirements prescribed under Statutory Instrument (SI) 2006 / 206.

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It must:

"(1) Be established in a Member State of the European Union, Norway, Liechtenstein or Iceland, **or**

(2) Be established in a country or territory with which the UK has a Double Taxation Agreement that contains exchange of information and non-discrimination provisions **or**

(3) Satisfy the requirement that, at the time of the recognised transfer, the rules of the scheme provide that:

(a) At least 70% of the funds transferred will be designated by the scheme manager for the purpose of providing the member with an income for life, (the 70% rule). The pension benefits (and any associated lump sum) payable to the member under the scheme, to the extent that they relate to the transfer, are payable no earlier than under UK law (so age 55) unless retirement is due to ill-health.

(b) Membership of the scheme is open to persons resident in the country or territory in which it is established. "

Under section 169(2) Finance Act 2004 a Qualifying Recognised Overseas Pension Scheme is a Recognised Overseas Pension Scheme that meets the relevant requirements.

Some of those requirements are prescribed under Regulation 3 of The Pension Schemes (Information Requirements - Qualifying Overseas Pension Schemes, Qualifying Recognised Overseas Pension Schemes and Corresponding Relief) Regulations 2006 (SI 2006 / 208).

The scheme manager must:

(1) Have notified HMRC that the scheme is a recognised overseas pension scheme, and have provided evidence of that if required,

(2) Have informed HMRC of the name of the country or territory in which the scheme is established. If this is not an EU Member State, Norway, Liechtenstein, Iceland or a country or territory with which the UK has a Double Taxation Agreement which contains exchange of information and non-discrimination provisions the scheme manager must also provide evidence that the scheme satisfies the 70% rule.

(3) Have provided any other evidence required by HMRC,

(4) Have undertaken to notify HMRC if the scheme ceases to be a recognised overseas pension scheme, and

(5) Have undertaken to provide HMRC with certain information on making payments in respect of certain scheme members.

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A QROPS in plain English.

In straightforward terms a QROPS is a pension scheme established overseas which :

(a) Is open to local residents to join **and**

(b) Is in a country where there is a system of tax relief associated with pensions for local residents where there is either tax relief on contributions and tax on benefits when taken, or no tax relief on contributions and no tax on benefits when taken **and**

either :

(c) Is in a country where pension schemes are subject to approval, registration, or recognition **or**

(d) At least 70% of the UK tax relieved fund transferred is designated to provide the member with an income for life from age 55 or later unless retirement is due to ill-health.

and

(e) Is in the EU (plus Norway, Liechtenstein, or Iceland) or is in a country where there is a suitable double taxation treaty, **or** at least 70% of the UK tax relieved fund transferred is designated to provide the member with an income for life from age fifty-five or later.

New Zealand as a QROPS jurisdiction.

Mapping the UK QROPS requirements to the Superannuation funds regime as it currently applies in New Zealand, such schemes are open to New Zealand residents and there is a system of pensions taxation in respect of New Zealand residents. Superannuation funds are authorised and regulated by the FMA. Although New Zealand is obviously not in the EU there is a suitable double taxation treaty in place.

As a consequence of an approval and regulatory regime associated with pensions, and a suitable double taxation treaty, New Zealand QROPS are not subject to the 70% rule as set out above.

New Zealand is of course not unique in this regard but the particular features of New Zealand Superannuation Schemes and the interaction of UK law with New Zealand law has led to New Zealand becoming the single largest market for transfers out of UK registered pension schemes into New Zealand Superannuation Schemes which are registered as QROPS.

The introduction of the “New Zealand criteria” in the draft Bill will if implemented in its current form deny New Zealand pension schemes access to this market in respect of non-New Zealand residents.

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Size of the QROPS market.

According to BBC's Brits Abroad Project conducted in 2006, there were 5.5 million British expats. The numbers will of course have increased substantially since then.

See http://news.bbc.co.uk/2/shared/spl/hi/in_depth/brits_abroad/html/

The information available regarding QROPS transfers arranged to date is as follows :

1. According to a Freedom of Information request by UK pension provider AJ Bell, 7,300 transfers to QROPS totalling around £432m were made in the two years to 5 April 2008. This implies an average transfer value of circa £60,000.
2. According to a second Freedom of Information request by AJ Bell the volume of QROPS transfers fell from a high of 6,263 in 2008/2009 to 5,659 in 2009/2010.
3. Assuming an average transfer value of £60,000 this suggests that the sums transferred to QROPS in the period from 6 April 2006 to 5 April 2010 were in the region of £1.15bn.
4. Research undertaken by Guernsey QROPS provider Close estimates the size of the total potential QROPS market at £575bn. Even if overstated by a factor of 10, market penetration is still only about 2%.
5. Our own experience and market knowledge is such that we have reasonable certainty that New Zealand as a QROPS jurisdiction receives more transfers from United Kingdom pension schemes to QROPS than all other jurisdictions put together.

The numbers revealed by the Freedom of Information enquiries are affected by the timescales involved with the reporting of transfers to QROPS by UK pension schemes. A transfer from a UK registered pension scheme to a QROPS is a reportable event on the part of the UK pension provider but the reporting need not take place until 31 January after the end of the UK income tax year in which the transfer took place. For example if a particular transfer to a QROPS occurred on 1 May 2011, it need not be reported to HRMC until 31 January 2013 at the latest.

In our experience the volume of transfers to QROPS generally is not (as the Freedom of Information requests suggest) diminishing - but increasing rapidly. This would be consistent with UK pension providers in the early days reporting such transfers in accordance with the requirements set out in the previous paragraph but much earlier than they are now.

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Our submission regarding the draft Bill.

We cannot see any logical or commercial reason for the New Zealand Government to wish to introduce the “New Zealand criteria” as set out in the draft Bill. To do so would immediately deny New Zealand pension schemes access to a large and lucrative market (as it relates to non-New Zealand residents) associated with transfers to QROPS.

The Bill as it currently stands is silent (so far as we can see) in relation to transitional provisions associated with non-New Zealand residents who are currently members of New Zealand pension schemes and will remain so on the implementation date of this new legislation.

We would suggest and respectfully submit that the “New Zealand criteria”, should be amended so as to introduce an exemption associated with those New Zealand pension schemes that are registered as QROPS on the implementation date of the Bill once it passes into law.

This would be a simple amendment to introduce and would enable New Zealand as a jurisdiction to continue to benefit from the economic outcomes that it receives as a consequence of being the leading QROPS jurisdiction.

We understand that the New Zealand Government wish to see New Zealand become an important financial hub in the Pacific region generally. The desire to achieve this particular objective would be entirely consistent with New Zealand wishing to encourage New Zealand pension schemes to continue to benefit from the incoming capital flows associated with transfers from United Kingdom registered pension schemes.

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