

Workplace Savings NZ

Te māngai penapena ā-mahi

15 April 2010

Clerk of the Committee
Commerce Committee
Select Committee Office
Room 10.04, Bowen House
Parliament Buildings
WELLINGTON

To the Chair of the Select Committee,

WORKPLACE SAVINGS NZ Submission on Supplementary Order Paper (No 113) to the Financial Service Providers (Pre-Implementation Adjustments) Bill 2009

We wish to submit the attached in response to the Supplementary Order Paper (No 113) to the Financial Service Providers (Pre-Implementation Adjustments) Bill 2009 (the Bill).

This submission is in addition to the submission dated 25 March 2010 on the Bill itself.

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I would be pleased to discuss our comments or answer any queries in relation to the submission.

Thank you for the opportunity to make this submission.

Yours sincerely



Bruce Kerr
Executive Director

Workplace Savings NZ

Submission to the

Commerce Select Committee

on the

**Supplementary Order Paper
(No 113)**

to the

**Financial Services Providers (Pre-Implementation
Adjustments) Bill (“the Bill”)**

April 2010

The Workplace Savings NZ Submission

Summary

Workplace Savings NZ has made a submission on the Financial Service Providers (Pre-Implementation Adjustments) Bill 2009 (the Bill).

This submission follows the release of Supplementary Order Paper (No 113) to the Bill (the SOP) and is in addition to our earlier submission.

We are generally supportive of the changes introduced by the SOP. We believe, however, that the wording currently proposed will present some practical difficulties for the implementation of investment management decisions. In particular, the wording does not recognise the chain of appointments that are commonly a feature of financial products available in the NZ marketplace or that these appointments invariably involve entities rather than individuals. Our submission below suggests how these shortcomings may be addressed.

Following on from this, we have suggested a further minor change to the Bill that we believe will enhance the operational effectiveness of the Financial Advisers Act 2008 (the FAA) as far as wholesale investment funds are concerned.

The Submission

1. The SOP introduces the new term "investment management decision". Under new clause 7A of the Bill the term "investment transaction" is deleted and replaced with investment management decision. New clause 7B defines what is meant by "investment management decision".
 - 1.1. The definition of an investment management decision covers the activities normally carried out by an investment manager providing investment management services to a provider of financial services;
 - 1.2. The vast majority of investment manager appointments, particularly when those appointments are made in respect of KiwiSaver or other registered superannuation schemes, will appoint entities rather than individuals;
 - 1.3. There are commonly several layers of appointed investment managers. For example:
 - 1.3.1. a KiwiSaver or other registered superannuation scheme trustee may appoint Company A to provide a range of investment options for their members;
 - 1.3.2. Company A then, in turn, may appoint:
 - 1.3.2.1. Company C to provide a Conservative investment portfolio,
 - 1.3.2.2. Company B to provide a Balanced investment portfolio, and
 - 1.3.2.3. Company G to provide a Growth investment portfolio;
 - 1.3.3. Company G might then gain exposure to, say, European equities, by appointing Company E;
 - 1.3.4. Company E may wish to make investments in France and appoints Company F for this particular purpose;
 - 1.4. There are no limits to the number or layers of appointments that may be made. Each may recognise that different markets require specialist knowledge and expertise.
 - 1.5. The SOP recognises the position of an investment manager and attempts to exclude the appointed investment manager (also recognising that the appointment can be either as an individual or as an entity with employees) from the requirements of the FAA by revising section 12(i) of the FAA.

- 1.5.1. The revised section 12(i), however, covers only an appointment made by the product provider of a particular financial product;
 - 1.5.2. We believe that the intention of the revised wording is to acknowledge that product providers will frequently appoint investment managers and that these appointments may be of entities;
 - 1.5.3. It is submitted that section 12(i) must be extended to cover all investment managers who are appointed (whether as individuals or entities) to provide investment management services in respect of the relevant financial product, irrespective of who has made the investment management appointment.
2. The issue raised above highlights a further difficulty stemming from the Bill. This relates to the position of investment schemes that accept investments only from wholesale investors (i.e. a wholesale scheme).
 - 2.1. Sections 15 to 17 of the FAA describe the persons who may perform a financial adviser service;
 - 2.2. Clause 10 of the Bill includes, as a person who may perform a financial adviser service:
 - 2.2.1. "An individual (whether registered or not) who is an employee or nominated representative of a QFE may, give financial advice of make an investment transaction in relation to-
 - (b) a category 1 product of which the QFE is the issuer or promoter.";
 - 2.3. The definition of promoter is as in section 2(1) of the Securities Act 1978;
 - 2.4. Commonly a wholesale scheme will not meet the Securities Act definition of promoter as the securities are not offered to the public. However a QFE or related party might well meet the Securities Act definition of promoter in all other respects; for example, by being instrumental in the formulation of a plan or programme pursuant to which the securities are offered;
 - 2.5. The QFE may also not be the issuer of the security. In these circumstances the employees and nominated representatives of the QFE are not able to give financial advice in relation to that security. We do not believe that it was intended to impose such a restriction;
 - 2.6. We submit that section 17(b) of the FAA should be further amended to include, after "promoter"; "or any other person who is instrumental in the formulation of a plan or programme pursuant to which the securities are offered".

End