

SUBMISSION

on the

Review of the Securities Regulations 1983

by

**The Association of Superannuation Funds of New Zealand
Inc. (ASFONZ)**

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**SUBMISSION ON REVIEW OF THE SECURITIES REGULATIONS 1983 BY THE
ASSOCIATION OF SUPERANNUATION FUNDS OF NEW ZEALAND INC
(ASFONZ)**

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1. INTRODUCTION

We would like to thank the Ministry of Commerce and the Securities Commission for the invitation to make a submission on the review of the Securities Regulations 1983.

This submission is made by the Association of Superannuation Funds of New Zealand (ASFONZ) on behalf of employer sponsored superannuation schemes. ASFONZ is a national non profit organisation whose membership of approximately 200 comprises the major employer/employee superannuation schemes as well as representatives of the superannuation schemes' actuarial, legal, insurance, investment and administration organisations in New Zealand.

ASFONZ's mission statement states that one of the organisation's main aims is to "promote and advance the interests of professional commercial and industrial superannuation effectively and responsibly. It will act on behalf of employer/employee groups in areas of economic, political and public education. "

1.1 Importance of Employer Sponsored Superannuation Scheme

- 1.1.1** Employer sponsored superannuation schemes are critically important to both enabling and assisting members to save due to their efficiency as savings vehicles. For this reason it is important that their future is not jeopardised through unnecessary or inappropriate regulation.
- 1.1.2** At present, more than 280,000 New Zealanders are members of employer sponsored superannuation schemes and over \$10.5 billion of assets have been accumulated on their behalf
- 1.1.3** Employer sponsors are increasingly playing an active role educating employees of the need to save for their retirement. We believe that the continuation of this role should be fostered.

1.2 Summary of our Submission

- 1.2.1** At the time the prospectus regime was introduced we strongly submitted that it was an unnecessary costly burden to the employer sponsored superannuation industry. This has proven to be the case. We continue to believe that it is inappropriate to impose the prospectus regime on employer sponsored superannuation schemes. The cost does not justify any real or perceived benefit.
- 1.2.2** Retail superannuation schemes should be differentiated from employer sponsored schemes. In summary a prospectus should not be required for employer sponsored superannuation schemes.

1.2.3 In our view members received all the relevant information they required from the old members booklet and this is now set out in the investment statement although many of our members believe it is in a less user friendly format. Employer sponsored superannuation schemes should only be required to comply with the investment statement requirements. If necessary the investment statement requirements could be strengthened to include any additional information that would have been found in a prospectus.

1.2.4 Most of the employer sponsored superannuation schemes in New Zealand are relatively small. Over 85% have assets of less than \$20 million. The prospectus requirements result in compliance costs that they cannot afford with little or no tangible benefit for the members or prospective members. This means they are likely to close, removing an extremely accessible and beneficial option for saving for retirement for employees.

If it is considered that an exception should not be made for employer sponsored schemes then we ask that the definition of "small employer superannuation scheme" is widened and apply to a wider number of schemes. The \$5 million limit should be raised to \$20 million and the definition of "public" should be changed so that employer sponsored superannuation schemes are not included under the legislation.

The requirement for the scheme to have been in existence on the day before commencement of the Regulations, (the Regulations came into effect on 1 October 1997), should also be removed. The exemption should also apply to new schemes.

2. NO PROSPECTUS

2.1 Compliance costs

2.1.1 Compliance costs are significant. A prospectus is only relevant to new members of any scheme who request a copy of a prospectus when they join. The market evidence from our members is that there are almost no requests for a copy of the prospectus. The number of new members of most schemes each year is relatively small. It is only a proportion of the new staff who are employed by the companies associated with the scheme. The costs of providing the prospectus and keeping it updated often falls onto the existing members of the scheme by effectively reducing the investment returns the scheme earns. In some circumstances the employer pays this cost.

2.1.2 The prospectus regime is a strong disincentive to employer sponsored superannuation schemes. ASFONZ believes employer sponsored superannuation should be encouraged not discouraged in the interest of society as a whole and this disincentive should be removed.

2.2 Differentiate employer sponsored superannuation schemes:

2.2.1 Employer sponsored superannuation schemes should be distinguished from retail superannuation schemes. The prospectus regime needs to recognise these differences and treat retail superannuation schemes and employer sponsored superannuation schemes as different products.

2.2.2 Employer sponsored superannuation schemes are quite different in nature from retail superannuation schemes as:

- the promoter does not intend to make a profit;
- the benefits consist of more than just a return of members' contributions less expenses and plus investment earnings; and
- employer sponsored superannuation schemes are not offered to the "public" in the usual sense of the word.

2.2.3 In employer sponsored superannuation schemes there is little or no "marketing". Entry into the scheme is only available to employees. The decision to join benefits only the employee. The employer in strict money terms is often worse off financially if an employee joins the scheme.

2.2.4 Retail superannuation schemes on the other hand are motivated by profit and are offered to the public in the true wider sense of the word.

2.3 Definition of Employer Sponsored Superannuation Schemes

2.3.1 Employer sponsored schemes come in all shapes and sizes but ASFONZ believes a workable definition can be made to ensure only legitimate schemes are exempted. ASFONZ would be happy to prepare a definition of "employer sponsored superannuation schemes" for consideration.

2.4 Recommendations

2.4.1 ASFONZ recommends that:

- the prospectus requirements for all employer sponsored superannuation schemes be removed as the cost is not justified and it

adds no or little benefit for prospective members when determining whether or not to join his or her employer's scheme;

- if necessary the investment statement requirements for employer sponsored superannuation schemes could be strengthened to include any information that would otherwise be found in the prospectus;
- the definition of "public" be changed so that employer sponsored superannuation schemes are not included under the legislation; and
- employer sponsored superannuation schemes should be differentiated from retail superannuation schemes and be treated as a group on their own. Retail superannuation schemes continue to be treated in the same way as other savings products.

3. DEFINITION OF SMALL EMPLOYER SUPERANNUATION SCHEME (REGULATION 2C)

3.1 General

3.1.1 If the prospectus regime is still to be imposed on employer sponsored superannuation schemes the definition of "small employer superannuation schemes should be widened.

3.1.2 Certain small employer sponsored superannuation schemes are already exempted from the requirement to provide a prospectus.

3.1.3 This exemption goes some way towards slowing the demise of small employer superannuation schemes. However, we believe that it does not go far enough.

3.1.4 Our recommendations below would lead to less employer superannuation schemes having to provide a prospectus.

3.1.5 The definition as it currently stands, discourages employers from creating new employer sponsored superannuation schemes.

3.2 \$5 Million Limit

3.2.1 The costs of preparing a prospectus are high. This is an unreasonable cost to impose on any employer sponsored scheme, particularly small schemes, for a document which is not required to be given to members and which experience shows no or only a few members will ask for when they apply to join a scheme.

Recommendation

3.2.2 ASFONZ believes that:

- to ensure members receive a reasonable benefit for the cost they are being required to bear, the \$5 million limit should be raised to \$20 million.

3.3 Must be in Existence on Day Before Commencement of the Regulations

3.3.1 This is a major discouragement to the establishment of new employer sponsored superannuation schemes. There are already few new employer sponsored superannuation schemes being established and we believe that further barriers to entry are undesirable.

Recommendation

3.3.2 ASFONZ believes that:

- the requirement for the scheme to have been in existence on the day before commencement of the Regulations, (the Regulations came into effect on 1 October 1997), should be removed. The exemption should also apply to new schemes.