

31 August 2018

Financial Markets Authority  
Email: [consultation@fma.govt.nz](mailto:consultation@fma.govt.nz)

## **Exemptions, other legislative notices, and unnecessary compliance costs**

This submission is from the Financial Services Council of New Zealand Incorporated (FSC) on the consultation paper: Exemptions, other legislative notices, and unnecessary compliance costs. We recognise that the Financial Markets Authority has been proactive in consulting on this issue, and we welcome the opportunity to provide formal feedback.

The Financial Services Council is a non-profit member organisation and the voice of the financial services sector in New Zealand. Our 35 members comprise 95% of the life insurance market in New Zealand, and manage funds of more than \$47.5bn. Members include the major insurers in life, disability and income insurance, fund managers, KiwiSaver, professional services and technology providers to the financial services sector.

We strongly support initiatives that are designed to deliver:

1. Strong and sustainable consumer outcomes;
2. Sustainability of the financial services sector; and
3. Increasing professionalism and trust of the industry.

We therefore support regulatory changes that promote these goals.

Our members highlight three current areas (discussed overleaf) where the costs of compliance appear to either outweigh the intended benefits, or are causing unintended adverse consequences for the industry or consumers.

For us, this is not the end of the conversation about ensuring a good balance of cost and outcomes, and we appreciate the ongoing dialogue that currently exists with the Financial Markets Authority. We would be concerned if market participants not raising issues during this submission process was inferred as there being no other concerns. To ensure such (currently unidentified) issues are addressed when raised, we recommend the FMA make regular requests for industry to advance issues of unnecessary compliance costs/outcomes. This action would support the stated intent of both the FMA and industry in delivering good customer outcomes.

I can be contacted on 021 0233 5414 or [richard.klipin@fsc.org.nz](mailto:richard.klipin@fsc.org.nz) to discuss any element of our submission. We look forward to continued conversations on the best ways to balance good consumer outcomes and a sustainable financial services sector.

Yours sincerely

Richard Klipin  
Chief Executive Officer

### **1. FMA's 'Guidance note on risk indicators and description of managed funds'**

FSC members have provided feedback that managing the update of Product Disclosure Statements (PDSs) in line with the FMA's expectations around 'sustained' changes to risk indicators set out in the guidance, often results in unnecessary compliance costs or burden.

Our members acknowledge that the guidance was provided as a result of industry requests to help clarify when risk indicators in a PDS should be updated. However, this Consultation provides a good opportunity to provide feedback on the practical operation of the guidance.

In practice, a period of two consecutive quarters is not a sufficient timeframe to determine whether the risk indicator in the PDS is 'consistently inconsistent' with the fund updates (for schemes that produce quarterly fund updates). For example, in line with the guidance, there have been instances where members have started the process to update the PDS only for the risk indicator to move back to the original category set out in the PDS by the end of the next quarter. This has the potential to occur more frequently where the annualised standard deviation for a fund within a category sits very close to the next category. The process to update a PDS can be a costly and time-consuming exercise, involving many internal and external stakeholders.

We recommend that the timeframe for assessing a sustained change be amended to a rolling annual basis. An annual period is also consistent with the approach alluded to in the guidance for funds that have annual fund updates. As noted in the guidance, the applicable regulations anticipate that the risk indicator may change and through fund updates information is available to mitigate any risk around the information in the PDS potentially misleading investors.

A better approach would be to remove time bound, data based, information from the PDS and cross-reference the latest fund update.

### **2. Quarterly reporting to the FMA under the Financial Markets Conduct Regulations**

The Financial Markets Conduct Regulations (FMC Regulations) provide certain quarterly reporting requirements. For instance, trustees of restricted schemes and discretionary investment management service providers are required to provide reports to the FMA regarding limit breaks and related party transactions. The FMA also requires this reporting to be provided where there have been no limit breaks or related party transactions i.e. nil reports.

We have received feedback from FSC members that the time and effort taken to prepare nil reports results in unnecessary compliance cost or burden and we recommend that the FMA dispense with this requirement or provide a class exemption to enable this if the FMA considers that to be more appropriate.

### **3. Confirmation information for managed investment schemes - FMC Regulations**

Providers are required to give six-monthly statements to product holders not later than 10 working days after the last day of each six-monthly reporting period.

We have received feedback from members that in practice it can be challenging to get settled data, create and test statements and then send to the product holder's address within 10 working days of each reporting period. Additionally, some providers use this client contact opportunity to provide additional client information over and above the confirmation requirements, for example including fee transparency to a dollar amount akin to that now required for KiwiSaver statements. Therefore, a significant compliance burden is created in trying to accurately meet this requirement.

For comparison, under the FMC Regulations, KiwiSaver schemes and superannuation schemes have three months to provide statements. We also note that under the old Securities Act regime most providers of retail unit trusts relied on an exemption that enabled a six-monthly statement to be provided and that exemption did not specify the timeframe for delivery.

From a customer-perspective, a timeframe of 10 working days does not appear to be critical for good outcomes. The compliance costs and risk of errors for industry due to the current short timeframe can, in reality, mean the customer experience is potentially sub-optimal.

We propose that a time period of at least two months would be more suitable and the FMA should consider providing a class exemption to enable this.

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