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Workplace Savings NZ
Te māngai penapena ā-mahi

9 June 2017

Rose Wang
Senior Policy Advisor
Financial Markets Policy
Ministry of Business, Innovation & Employment

By email: rose.wang@mbie.govt.nz

Dear Rose,

Managed Investment Schemes - Making annual reports available to participants

Thank you for the opportunity to provide feedback on what we understand are proposed amendments to the Financial Markets Conduct Regulations 2014 (**FMCR**) whereby the manager of a registered scheme would be permitted to adopt (optionally, in lieu of the distribution requirements prescribed in regulation 62) the following requirements for making annual reports available to scheme participants:

- an annual report must be made publicly available (for at least 5 years) on either the scheme's website or another website maintained on behalf of the scheme;
- the manager must notify scheme participants at least once to ask whether, and if so how (i.e. in hard copy or electronically), they wish to receive the annual report going forward (advising how participants can access the annual report from the relevant website);
- scheme participants who do not respond will not receive a copy of the annual report, but will be able to access a copy electronically (in the manner specified in the notice); and
- a scheme participant's election (or lack thereof) will be treated as their election for all annual reports going forward, unless and until they change their election (which they can do at any time).

The Ministry of Business, Innovation & Employment has sought our feedback on:

- whether it is appropriate to allow this alternative process for registered schemes; and

- whether any changes to the details of the proposed alternative process are required (particularly to reflect differences between schemes' and companies' annual reports – as the current regulation 62 requirements are based on the process under section 209 of the Companies Act 1993 for companies making their annual reports available to shareholders).

To more fully represent the voice of the Managed Investment Scheme community, this submission is made jointly with Workplace Savings NZ Incorporated (WSNZ).

Please contact me on 021 0233 5414 to discuss our submission.

Yours sincerely

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Who we are – Financial Services Council

The Financial Services Council of New Zealand Incorporated (FSC) has 16 member companies and 14 associate members at 31 May 2017. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers. Law firms, audit firms, and other providers to the financial services sector are represented among the associate members.

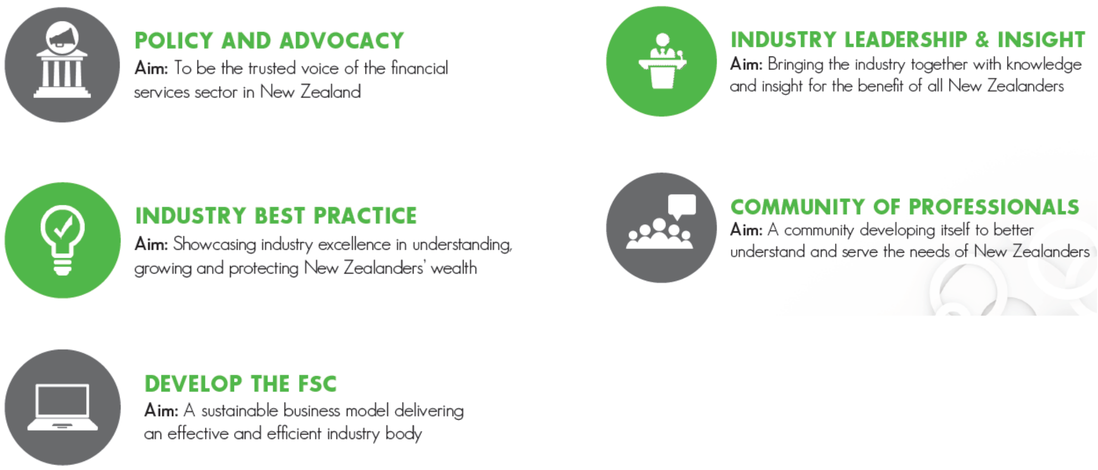
The FSC's vision is to be the voice of New Zealand's financial services industry, with three areas of strategic intent:

1. Strong and sustainable consumer outcomes
2. Sustainability of the financial services sector
3. Increasing professionalism and trust of the industry through the FSC Code of Conduct

Our purpose is to:

- be recognised as an organisation that represents the interests of the New Zealand financial services industry, including to regulators and Government
- promote best practice and integrity in the financial services industry, including through the institution of codes of conduct, standards and the publication of guidance for industry participants
- promote the financial services industry for the economic benefit of New Zealand and to enhance the sustainability of the industry, whilst recognising the primacy of the interests of consumers
- develop and promote evidence-based policies and practices designed to assist New Zealanders to build and protect their wealth
- promote the financial services industry as a medium for investment and protection for consumers
- promote, assist and generally advance the interests of members

To deliver on our vision and purpose FSC activity centres on five strategic pillars:



Who we are – Workplace Savings NZ

Workplace Savings NZ (**WSNZ**) is a not-for-profit apolitical membership organisation representing the interests of employers who offer workplace retirement savings schemes, their trustees and their members, other retirement scheme managers and supervisors, retirement savings industry service providers and professional advisers. WSNZ's membership embraces all types of retirement schemes (KiwiSaver, workplace savings and superannuation schemes) and participants who are public and corporate, union-sponsored and industry-based.

The objective of WSNZ (which works closely with the Financial Services Council) is to be the *Voice of Workplace Savings* - advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved, including the workplace savings scheme members who remain key to the organisation. WSNZ aims to do this through:

1. Advocacy – proposing and commenting on legislative and public policy initiatives beneficial to workplace savings and participation in the workplace savings industry, making submissions, engaging with policy-makers and officials and issuing media commentary to advance those causes.
2. Education – promoting trustee, employer and member financial and regulatory education through dedicated training programmes, newsletters and special interest seminars.
3. Networking – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.
4. Promotion – publicising the benefits of workplace savings and helping to improve public confidence and participation in workplace savings.

Our feedback

The FSC and WSNZ both firmly support there being an elective facility with respect to managed investment schemes' annual reports. We are of the view that this approach does not detract from the information available to investors, acknowledges the increasing use of technology in investor's lives and enables efficiencies to be achieved.

The proposal outlined above has the potential to reduce significantly the costs (and the environmental impacts) associated with annual reporting to members. We note, in this regard, that the 'sending' requirements in regulation 62 apply to each successive annual report, and necessitate the distribution of hard copies to the extent that members cannot rely on electronic distribution to scheme participants. We note that the requirements are currently inconsistent with the policy for companies (on which the proposed changes are based), and can see no policy basis to support a differentiated regime for receipt of annual reports. This is particularly so in light of the enhanced reporting requirements for managed investment schemes as further detailed below.

We also consider it important to note that:

- annual reports must be made publicly available on the Disclose Schemes Register;
- fund updates provide key additional information (quarterly or annually, as applicable) to complement annual reports;
- all scheme participants must now be given or sent detailed confirmation information (or have it made available to them via an electronic facility when they have so agreed); and
- for retirement schemes, annual reports in any case now require less extensive (and in practical terms more generic) information to be provided than was previously the case under the Superannuation Schemes Act 1989 and the KiwiSaver Regulations 2006.

There will be schemes whose managers prefer to continue distributing hard copies of annual reports in keeping with tradition or a particular preference, and we welcome the fact that nothing about the proposed changes will remove those managers' ability to voluntarily distribute annual reports in that way. However we note that the drafting currently prevents a manager from taking a more tailored approach based, for example, on the demographic of its membership. That is, the drafting forces a binary outcome of print or electronic availability, we have commented further on this below.

We have reviewed the Companies (Annual Report Notice Requirements) Amendment Bill, on which we understand that any corresponding amendments to the FMCR will be based. We have the following comments in that regard.

We note that the alternatives proposed there are entirely binary – the company must either:

- send to every shareholder a printed copy of its annual report; or
- make a copy of the annual report available to every shareholder by electronic means (for example, from a specified website address).

Schemes should not be required to adopt the proposed alternative approach of electronic availability for all scheme participants. Where, for example, a scheme has a complement of elderly pensioner members the manager should not be required to put those members in the position of having to notify the manager that they wish to continue to receive paper-based annual reports. Rather, schemes should be able to choose to rely on the proposal in respect of some members, while providing other members with paper-based reporting where the manager considers that to be more appropriate.

A number of smaller and/or legacy schemes do not have their own websites and for those schemes the proposal should clarify that if/to the extent that managers adopt the proposed alternative approach they should be permitted to refer members to their Schemes Register entry on Disclose instead of to a website maintained by or on behalf of the scheme. Given the more detailed information available on Disclose this also has the added benefit of directing investors to other information in addition to the annual report. In this regard it is important to note that all managed investment schemes' annual reports are required to be uploaded to the Disclose Register, whereas companies need not all make their annual reports publicly available.

We note that the Bill does not contemplate there being a minimum consideration period for a notice recipient to decide whether or not (and if so how) they wish to receive annual reports directly. We suggest that the regulations:

- require managers to allow a minimum response period (of, say, 20 working days); and
- enable a manager to rely upon a response (or a non-response) only after that minimum notice period, or any longer period permitted by the manager, has elapsed.

This would, as a corollary, enable managers to coordinate the distribution of annual reports reliably and in good time, by allowing them to disregard for the year in question (should they wish to) any late response.

We recommend that the regulations prescribe that if a scheme participant changes a prior election (actual or deemed) within (say) 10 working days before an annual reporting deadline, that response will apply only with respect to future annual reports (and not to the annual report for the immediately preceding year) unless the manager elects otherwise. This will mitigate the risk of managers being placed in the position of technically breaching the regulations by reason of having too little time to respond to revised elections within a pending deadline.

Finally, an on-market scheme must be given the facility to comply with the proposed notice requirement by incorporating the required notice into the body of the PDS provided to, or the application form requiring completion by, an incoming scheme participant (and, to pre-empt word-count issues, to incorporate supporting information by reference to an OMI or other Offer Register entry).