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Submission by: Financial Services Council of NZ Inc.

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Consultation - Guidance Note: Sale and Distribution of KiwiSaver

The Financial Services Council of NZ (FSC) appreciates the opportunity to comment on the FMA's draft Guidance Note: *Sale and Distribution of KiwiSaver*.

We welcome the FMA's work in producing this draft guidance note and endorse the objective of helping market participants to understand the FMA's approach in interpreting and applying the law in this area.

As a general comment, we support the FMA view that there is considerable scope for a distributor to provide information and assistance to clients looking at KiwiSaver without crossing the boundary into giving personalised or even class advice.

We have a limited number of suggestions which may help to clarify some points in the draft. Please contact us if you would like to discuss any of these points in more detail.

We also recommend that the FMA consider including some guidance on the level of on-going service that should be provided by advisers after sale. For example, we understand that advisers would like clarity on whether, in the absence of provision in the client service agreement, they need to provide periodic reviews and if so, the expected frequency of those reviews.

Summary of FMA interpretations

Paragraphs 3-4

There has been some public commentary around the weight given by the FMA to the context of the interaction in determining whether or not the service provided by a distributor is advice and, if so, whether it is class or personalised advice.

We believe that this is a key area in which clarity is essential as there has obviously been confusion over the boundary between providing information and giving advice.

The heading of paragraph 4 could be re-phrased to make it clear that ‘the provision of factual information’, is not financial advice. However, we agree that where there is interaction between the distributor and the client there is the possibility that the intention to provide factual information may morph into financial advice and it is useful to have the FMA set out the factors that will be taken into account.

Background

Paragraph 17

While this paragraph is background rather than the actual guidance, we believe it should include provision of information as one of the services which is not a financial adviser service.

Paragraph 18

The first bullet point of this paragraph gives the impression that a paraplanner preparing material for an adviser could be considered to be providing advice. We do not believe that is the case. Rather, the material would only become advice when presented to the client by the adviser.

When is financial advice provided?

Paragraph 23

We note the point that the guidance note does not specifically address advice provided to members becoming entitled to receive payment from a KiwiSaver scheme in retirement. However, given the 5 year anniversary of KiwiSaver it seems an opportune time for FMA to provide guidance on this aspect.

Paragraph 24

We believe the point could be made more strongly that KiwiSaver may be sold without providing financial advice. To make that point we recommend that the first sentence of paragraph 24 is revised to read:

“Where there is no recommendation or opinion there is no provision of financial advice and we consider that there are situations where KiwiSaver can be sold without providing financial advice.”

Paragraph 25

The first bullet point states that the client may not have access to a dispute resolution scheme. As the KiwiSaver issuer must be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008, the client will always have access to dispute resolution.

The second bullet point should also refer to the issuer’s accountability under the Financial Service Providers (Registration and Dispute Resolution) Act.

Paragraph 29

This paragraph possibly overstates the likelihood of provision of factual information morphing into provision of advice. That is certainly a possibility but it may be going too far to say:

‘Recommendations or opinions to buy the product, which may be express or implied by the context, *will be given*’.

We believe this should be re worded.

Paragraph 31 (f)

While we recognise that the factors listed will not necessarily be taken in isolation, we believe that FMA should not assume that the possibility of receiving commission for sales will always mean a distributor is likely to provide an opinion or recommendation.

Paragraph 31 (g)

We believe the intention of this paragraph would be clearer if ‘initiates’ were to be used in place of ‘facilitates’.

We also consider the FMA should note that there may be situations where a transfer from one KiwiSaver scheme to another is prompted by the client being given factual information on the fees and performance of the new scheme. That should not be considered to be provision of advice, any more than supplying the client with an investment statement.

Paragraph 32

It would be helpful if this paragraph also stated that the requirements of the Financial Service Providers (Registration and Dispute Resolution) Act will also apply to the KiwiSaver issuer.

When is class advice provided?

Paragraph 33

This paragraph implies that consumers do not have access to a dispute resolution scheme unless advice is provided. As the KiwiSaver issuer must be registered under the Financial Service Providers (Registration and Dispute Resolution) Act a dispute resolution facility will be available.

Paragraph 34

In the example provided, it would be useful to know how much the FMA view was affected by the adviser providing the details and application form for only one KiwiSaver scheme and whether that might imply an assessment of that scheme’s suitability.

Paragraph 35

It is not just cost effectiveness which is in the public interest, it is important that KiwiSaver is widely available. Investors who do not wish to receive financial advice or personalised financial advice should still have access to KiwiSaver. In addition, KiwiSaver members should be able to receive timely information and class advice about their investment from their financial adviser.

Paragraph 36

Someone needing ‘more’ advice should not be the premise for establishing the difference between whether financial advice is class or personalised. This paragraph should refer to ‘more specific’ or ‘more targeted’ advice.

Paragraph 40 (b)

While the heading of this paragraph mentions changing schemes or investment portfolios the body of the paragraph deals only with changing schemes.

There is considerable public comment about whether members of default schemes should move out of the default investment option and it would be reasonable for an adviser to give general information about the advantages and disadvantages of changing investment portfolio without this being classed as personalised advice. This paragraph should be re-worded to make that clear.

This paragraph should also note that a client may be given factual information on the scale of fees or the investment performance of a KiwiSaver scheme that prompts a member to move from one scheme to another. That would not be either class or personalised advice.

What type of advice is needed?

Paragraph 43

As noted above, there is considerable public comment about whether members of default schemes should move out of the default investment option. This paragraph should make it clear that information may be provided on the type of investment option suitable for different types of person without it being classified as personalised advice.

In addition, as noted above, the decision to move from one KiwiSaver scheme to another may be made on the basis of general information on the scale of fees and the investment performance of a scheme. We do not consider that will always be 'more likely to depend on the client's personal circumstances'.

Compliance controls over the service

Paragraph 47

This paragraph refers to providing class advice which may be provided by a registered (but not authorised) person or entity. However, it appears to require some elements of a personalised service as the advising entity is required to be satisfied that any risk profile tool used results in *appropriate* advice. This paragraph needs to clarify what is meant by that requirement.

It would also be useful for FMA to clarify how that requirement ties in with the section 14(1)(o) exemption.

Paragraph 52

We recommend that the Guidance Note includes specific information on what the FMA expects the issuer to be able to provide as evidence that the client has made the investment decision on a properly informed basis.

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