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KiwiSaver (Periodic Disclosure) Regulations  
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## **KiwiSaver (Periodic Disclosure) Regulations 2012 Exposure Draft**

The Financial Services Council (FSC) (formerly the Investment Savings and Insurance Association – ISI) appreciates the opportunity to make a submission on the exposure draft of the KiwiSaver (Periodic Disclosure) Regulations.

In 2011 the ISI made a submission on the Periodic Reporting Discussion Paper and, prior to the release of the discussion paper, developed a voluntary industry standard after consultation with ISI members.

The success of KiwiSaver in supporting New Zealand households' saving and asset diversification confirms the importance of accessible and regular fund performance information to KiwiSaver members. Good fund performance data will support savers' investment decisions, the effectiveness of the savings industry and is therefore of national significance.

Overall, the draft regulations strike a good balance between relevant information, amount and detail that is manageable for the typical KiwiSaver member and we appreciate the extensive consultation that has occurred during the development of the regulations.

A list of FSC members is included at the end of this submission.

We would be pleased to discuss this submission in more detail if any points need clarification.

Yours sincerely,



Deborah Keating  
**EXECUTIVE OFFICER**

## Submission points

Clause Number	Clause heading	Submission
	<b>Advertisement</b>	The ADS and QDS could be considered to be advertisements in terms of the Securities Act. Considering the certificate required under clause 44 there needs to be an exemption from the advertisement requirements of the Securities Act for the ADS and QDS (e.g. the asset disclosure requirements under Regulation 26 of the Securities Regulations couldn't be complied with within the 10 day deadline.)
<b>4</b>	<b>Interpretation Trading expense</b>	'Trading expenses' should include the direct costs of managing the underlying assets not just costs of buying and selling investments – e.g. maintenance and development costs for a property fund, direct costs of evaluation and management of a private equity fund. This approach maintains consistency between funds that invest in listed assets and those that invest in assets directly. For a listed entity, the internal costs of management are reflected in the share price and the fees and costs calculation would not include internal management costs. Having to exclude these fees from trading expenses for funds that invest directly and declare them separately would inflate the relative cost. However, any fee (net of direct management costs) that is payable to a fund manager should be included intrading expenses.
<b>5</b>	<b>Compliance with notices issued by FMA and GAAP</b>	Funds are not required to use GAAP except for financial reporting under the Financial Reporting Act. The FMA therefore needs to cover use of fund valuation policies that are consistent with fund unit pricing valuations, particularly for QDSs, when publishing methodologies under section 54D of the Securities Act.
<b>6</b>	<b>Meaning of publicly available</b>	Paragraph (b) should read 'a hard copy <i>is provided</i> , on request, ...'  Depending on actual requirements, the additional cost of providing the data in standard extractable format should not be great as it would be expected to involve simple transcription of data.
<b>7</b>	<b>Manager must complete disclosure statement for each fund of KiwiSaver scheme</b>	There needs to be guidance on the specification of the fund 'type' in paragraph (2)(b). The regulations should give guidance on how type is specified with the FMA providing guidance where it is considered necessary.  Although widely used in the industry, fund type descriptions should avoid value connotations such as 'balanced', 'growth' and 'conservative'. In a few words, fund type should cover: <ul style="list-style-type: none"> <li>• Diversification and/or broad asset mandate restrictions in terms of the asset categories in sub-clause 30(2);</li> <li>• Risk/return characteristics; and</li> <li>• Ethical asset selection (if any).</li> </ul>
<b>9</b>	<b>What annual disclosure statement must comprise</b>	Paragraph 9(c) should commence 'asset allocation and portfolio <i>turnover</i> '.
<b>12</b>	<b>When quarterly disclosure statements to be completed</b>	The 10 working day period to complete the QDS should be extended to 20 working days.

		It is very common for KiwiSaver funds to invest in other collective funds, particularly for overseas investments, with the result that 10 working days is very tight to get the required information and the certification under clause 44.
13	<b>What quarterly disclosure statement must comprise</b>	Paragraph 13(c) should commence 'asset allocation and portfolio turnover'.
18	<b>Performance and returns example</b>	'Prescribed investor rate' in paragraph 18(2)(a) should be defined by reference to the Income Tax Act 2007.
23	<b>Information about fund fees and costs</b>	<p>Given the potential number of 'layers' of funds investing into other funds, particularly for offshore investment, and the complexity of identifying the contribution of the sub-manager fees to the aggregate fee categories, it is preferable that underlying manager fees are all reported in aggregate under paragraph (2)(b).</p> <p>Underlying investment manager fees may be paid from the overall investment management fee of the lead investment manager. The disclosure in Schedules 1 and 2 should present the underlying manager fees to be a sub-category of the overall investment manager fee.</p> <p>To recognise that some fees are subject to a rebate (e.g. a sub-manager may give a rebate depending on the amount of funds managed), references to fees and costs deducted in clauses 23 to 25 need to be to fees after any rebate. Again, this could be covered by FMA guidance under clause 5.</p>
25	<b>Information about individual fees</b>	As compulsory financial adviser fees may not be proportionate to a member's interest in the fund under clause 23, paragraph 25(2)(a) should be clarified to read '(not including financial adviser fees included under clause 23)'.
27	<b>Total expense ratio</b>	The TER as defined is the same as the total fund fees and costs % that is required under sub-clause 23(3). For clarity, table 3 of Schedule 1 should be amended by deleting the percentage beside 'Fund fees and costs' at the top of the table and placing the explanatory '% of average net asset value' beside 'Fund Fees and costs'. (Note that the example in TER in Schedule 2 (1.2%) is different from the total fund fees and costs (1%) – as defined they should be the same.)
28	<b>Information about fees and costs included in a QDS</b>	Using the fees that correspond to the return period is desirable – e.g. the fee percentages may be changing rapidly in a growing fund. However, using the last annual fee figures from audited accounts gives the manager greater security in their certification under clause 44.
30	<b>Information about asset allocation and portfolio holdings</b>	<p>The term 'asset' needs to be more clearly defined. If a fund invests in other funds (as is often the case), a narrow interpretation would be that the fund's asset is the interest in that investment fund. This interpretation would give the member a limited picture of investment concentration. In this clause 'assets' should be defined to be, e.g., shares or debt in a specific company, a single property, a single country's debt.</p> <p>The top 10 investments should only be disclosed if they comprise more than 5% of the net assets of the fund. This will avoid the</p>

		<p>compliance costs of collecting individual asset holdings in funds and sub-investment funds for widely diversified funds where individual holdings are very small and of little relevance to the member's investment decision. (It is also consistent with the threshold in clause 32.)</p> <p>There also needs to be a specific provision to allow the use of the latest available asset values (similar to the provision in clause 23(3)(a)) particularly to cater for the time to get offshore fund manager information. This will be a particular issue if there is not a 5% threshold for asset disclosure.</p> <p>In order to recognise currency risk New Zealand fixed interest and New Zealand equities should be separate categories. Accordingly the Australian categories should be included in 'international'.</p>
31	<b>Portfolio turnover</b>	<p>On the basis that the objective of a portfolio turnover statistic is to give an indication of the manager's discretionary asset trading (the term 'turnover' also suggests this), member contributions should be deducted from the total of assets purchased and member withdrawals deducted from assets sold. The use of 'new' in term 'b' of the formula is confusing and should be deleted.</p> <p>Guidance on the consolidation of underlying fund turnover into the overall turnover figure in term 'b' needs to be provided by the FMA under clause 5.</p> <p>Term 'c' – net asset value – should be the average net asset value over the last 12 months to be consistent with other formulae.</p>
34	<b>Liquidity ratio</b>	<p>While we note the policy decision to include a liquidity ratio, the FSC did not support the inclusion of a liquidity ratio in our submission on the discussion paper on the grounds that fund liquidity is covered in investment statements and liquidity is likely to change as a result of changed financial market conditions.</p> <p>Comments on the liquidity ratio defined in clause 34:</p> <ul style="list-style-type: none"> <li>• Term 'c' should be the fund's total <i>net</i> asset value.</li> <li>• The liquidity ratio as defined (subject to the change above) gives a good view of fund liquidity. In relation to underlying funds, the manager needs to assess their liquidity under the criteria before including them in the liquidity ratio calculation.</li> <li>• As the assessment of liquidity is a matter of judgement, the calculation of the liquidity ratio is a good example of where guidance from the FMA is needed under clause 5.</li> </ul>
37	<b>Information about key personnel</b>	<p>This clause should allow for 'up to 5 people' as there may not be 5 people who have a material impact on investment performance – e.g. a single sector fund.</p> <p>The examples in this clause suggest that the disclosure is at the fund level – i.e. those fund personnel who make the strategic investment</p>

		decisions. It is appropriate in an ADS for the strategic fund decision makers to be disclosed. However, the clause could be interpreted to require attribution of performance to actual decisions at sub-manager level. This is more appropriate in the QDS and this clause should be worded to clarify this – see the comments on clause 41 below.
38	<b>Information about material changes to fund’s trade allocation and execution policies</b>	<p>In sub-clause 38(a) ‘members’ should replace ‘clients’.</p> <p>While we note the policy decision to include disclosure of these policies, as the member is unlikely to have been informed of the present trade allocation and execution policies, informing the member of any change in the policies will confuse the typical KiwiSaver member who will not be familiar with what they are. Including the policies for underlying fund managers could lead to a significant volume of material.</p>
39	<b>Information about material changes to fund’s proxy voting policies</b>	<p>While we note the policy decision to include disclosure of these policies, the FSC did not support the proposal to include disclosure of proxy voting policies. Again, this could lead to significant additional disclosure if underlying funds need to be included. The member is also unlikely to have been informed of the present proxy voting policy and change disclosure is likely to be confusing particularly for those unfamiliar with the proxy voting.</p>
40	<b>Information about conflicts of interest</b>	<p>This clause (and the related sections of the ADS and QDS) should be reworded as ‘Information about related parties of the fund’. A ‘related party’ of the fund includes providers of standard fund services such as administration and investment management that do not intrinsically create conflicts of interest and there may be no association between the manager and these parties.</p> <p>The objective of this clause in disclosing potential conflicts of interest and simply providing information on fund service providers is not clear and, as a result, the requirements are difficult to interpret. As ‘related party’ includes all contracted fund service providers, including the manager, some fund services do not intrinsically ‘create an exposure to loss for fund property’ - particularly fund administration – and are not appropriately expressed as a percentage of total fund asset value.</p> <p>Sub-clause 40(2) should be restricted to those related parties that are responsible for managing fund assets. The ‘conflicts of interest’ section of Schedule 2 (also see the following comment) should simply list fund related persons who are directly responsible for managing fund assets and the percentage of assets they manage under the heading ‘Those responsible for managing fund assets’. The list of related parties should include an indication of whether they are associated with the manager.</p>
41	<b>Information about key persons to be included in quarterly disclosure statement</b>	<p>This clause inappropriately requires the quarterly investment performance to be attributed to one person. In the absence of a specific change in investment mandate or managers, quarterly fund performance will typically be the result of market movements. To attribute this to a named person is inappropriate. It will be much more useful to a fund member to have a brief description of the main factors contributing to the quarterly investment performance. This</p>

		<p>clause and the appropriate section of the QDS should be reworded accordingly.</p> <p>Information about key personnel who set the fund’s investment strategy and performance is disclosed annually under clause 37.</p>
42	<b>Information about material changes to policies and new related party transactions</b>	<p>As with clause 40, the requirements of this clause would be clearer if related parties responsible for fund asset management were differentiated from other related parties. Sub-clause 42(3) should then simply require listing of related parties responsible for fund management and the proportions of fund assets they manage at the two quarter end dates. Also, sub-clause 42(3) appears to clarify the meaning of ‘transactions have been <i>entered into</i>’ in paragraph 42(1)(b). It would simplify the interpretation of this clause if sub-clause 42(1) simply referred to the information required under sub-clause 42(3) rather than introduce the concept of ‘entering into transactions’.</p>
<b>Schedules 1, 2 &amp; 3</b>	<b>Tables and disclosure statements</b>	<p><b>Table 1</b> Individual fees would be more clearly differentiated from membership fees if the definition read ‘are charged to an individual as a result of a member’s decision – e.g. joining the fund or switching funds’.</p> <p><b>Table 3</b> The underlying manager fees should be a sub-category of the overall investment manager fee.</p> <p><b>Tables 3 and 4</b> The Individual Fees section needs to allow for fees that are determined as other than a \$ amount per transaction – e.g. a percentage fee or a unit price spread fee for a withdrawal or transfer.</p> <p>If there is any change in the fee basis that took effect in the 12-month period or will apply in the future, Tables 3 and 4 should include a section that describes how the fees have or will change.</p> <p><b>Table 4</b> Table 3 does not have an average fund fee per member to include in the first section of Table 4.</p> <p><b>Table 7</b> <b>Information about conflicts of interest</b> As a ‘related party’ of the fund includes providers of standard fund services such as administration and investment management that do not intrinsically create conflicts of interest and there may be no ‘association’ relationship between the manager and these parties, this section should be reworded as ‘Information about related parties of the fund’.</p> <p>This section should simply list fund related persons who are directly responsible for managing fund assets and the percentage of assets they manage at the two quarter end dates under the heading ‘Those responsible for managing fund assets’. The list of related parties</p>

		<p>should include an indication of whether they are associated with the manager.</p> <p><b>Table 8</b>  <b>Information about key person, changes to fund’s policies and conflicts of interest</b></p> <p>The heading should be ‘Information about investment performance, changes ...’. The key person details should be replaced with a brief description of the main factors contributing to the quarterly investment performance. See also the comments to clause 41 above.</p>
<b>Schedule 4</b>	<b>Related party transactions</b>	<p>Paragraph 2(b) should read ‘... a financial product that is <i>convertible</i> into ...’.</p>

## **List of FSC Members**

### **FSC Members**

Accident Compensation Corporation  
AIA NZ  
AMP Financial Services  
ANZ Bank  
Asteron Life Ltd  
BNZ Investments and Insurance  
CIGNA Life Insurance NZ Ltd  
Fidelity Life Assurance Co Ltd  
FNZ  
Gen Re LifeHealth  
Hannover Life Re of Australasia Ltd  
Kiwibank Ltd  
Mercer  
Munich Reinsurance Co of Australasia Ltd  
Partners Life  
Pinnacle Life  
Public Trust  
RGA Reinsurance Co. of Australia Ltd  
Sovereign Ltd  
Swiss Re Life & Health Australia Ltd  
TOWER New Zealand  
Westpac Bank

### **Associate Members**

Bell Gully  
BNP Paribas  
Bravura Solutions  
Burrowes & Co  
Chapman Tripp  
Davies Financial & Actuarial Ltd  
Deloitte  
DLA Phillips Fox  
Ernst & Young  
KPMG  
Kensington Swan  
Melville Jessup Weaver  
Minter Ellison Rudd Watts  
Morningstar Research Ltd  
PricewaterhouseCoopers  
Russell McVeagh  
Trustees Executors