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Dear Richard,

## Statutory Fund Regulations – Request for Comment

The Financial Services Council (“FSC”) appreciates the opportunity to comment on issues raised in your email of 10 April 2012 on ‘Statutory Fund Regulations’.

### Participating Business

We expect individual companies will come back individually on specifics around their profit gate.

### The Definition of Non-Participating Benefits

We now submit on the question of which of the non-participating Australian definitions (LPS 600) should apply in New Zealand.

The FSC’s previous submission on statutory funds noted that Australia did have specific definitions that covered particular areas of non-participating business including investment account. However, despite this, we do believe that caution should be exercised in applying Australian definitions to a New Zealand context. It may also be of value to ascertain how useful these particular regulations have been in Australia and whether there have been any issues in their application over there.

Given that many companies within the NZ life industry would have products such as multiple life profit sharing, investment linked and investment account that are run as ‘non-participating’ policies, we do see it as important that these are covered in the NZ definitions as being specifically non-participating.

However, the definitions given in the Australian rules do appear quite narrow and there may be some concern that they do not cover the full spectrum of non-participating products within New Zealand. In the case of Investment Account, for example, the assets supporting the accounts must lie within a specific range of the account values.

Further, the amount of benefit has to be calculated in accordance with a formula set out in the policy document. Within a New Zealand context, the formula may appear in legislation instead, e.g. the consumer credit insurance rebate formula appears in Regulations.

Also, the definitions require the insurer to know what the original charge was at outset when the product was first launched although such information may not always be readily available.

We note that current products in the NZ market may not necessarily be set up according to such requirements and the definitions may not be broad enough for existing products within the NZ industry.

We submit that if these definitions (or similar) were to be adopted, it would make more sense for them to apply to new products only and not necessarily historical or legacy products that might not follow such rules. We do note, however, that there is a transitional section that does presumably apply in such cases.

### **Transitional**

We consider that it is important that the definitions allow for transitional arrangements, so that existing and legacy books of products that are no longer on sale can be recognised appropriately as non-participating if that is the way they are currently treated.

The situation may be different here than it is for Australia in that we don't have existing legislation that defines 'Participating' in the way it would appear the Australian Life Insurance Act 1945 does. We submit that all existing products that are currently classified as non-participating for financial reporting purposes should be able to be classified as non-participating under these proposed regulations.

Another alternative definition in terms of a transitional arrangement is to use Schedule 6 of the Life Insurance Act 1908, prior to the appeal on 7 March 2012. The schedule has historically required companies to report on participating policies (also known as assurances with profits) and everything else could be defined as non-participating for transitional purposes. Although the balance date for the last Life Act return could be a while ago, it will at least provide the RBNZ with a reference point for reasonableness checking.

Yours sincerely,

Deborah Keating  
**EXECUTIVE OFFICER**