



30 May 2011

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Dear William,

Securities Amendment Regulations 2011

The Investment Savings and Insurance Association (“ISI”) appreciates the opportunity to comment on the draft Securities Amendment Regulations 2011.

While the feedback from our members has been generally positive, there are several issues that we have been asked to raise with you. They are as follows:

The regulations propose that investment statements only need to specify the names of directors of the manager *as at the date of the investment statement*. Previously, there was some concern in the industry that a change in directors was material, and if so, would require the investment statements to be updated. While this clarification is welcomed, the regulations still require investment statements to specify other information (e.g. name and address of manager, names and addresses of promoters, name and addresses of trustees etc) without the added qualification that the other information needs only be correct at the date of the investment statement. This leads to impractical (and possibly unintentional) results for otherwise minor changes. For example, a mere change of address may require the investment statement to be updated and reprinted, even though addresses can be easily found on the Companies Office website and/or the provider’s website. Also, a change of company name would not ordinarily be seen as a material change requiring an investment statement to be updated. Note that we are only saying that a change of *name and address* is not a material change, but that a change of manager/trustee/promoter would be sufficiently material.

We note also that there is the possibility of confusion with the drafting of clause 13(1)(2) which refers to *Clause 3(1)(b) and (2)(b)*. It may be clearer to either refer to clauses 3 or to show it as *Clause 3(1)(b) and 3(2)(b)*.

Similar comments apply in respect of clause 13(1)(3).

In the proposed Schedule 5A, the regulations contemplate that prospectuses will state the name and address of the manager, the trustee and their respective directors. For consistency with the proposed changes to investment statements, these regulations should state that the prospectuses should state the name and address of the manager, the trustee and their respective directors as at the date of the prospectus. This would clarify that a change in these details would not require a memorandum of amendments to the prospectus to be registered in order to record these details.

Regulation 5(5) of Schedule 5A states that the prospectus should include “a statement as to whether or not the KiwiSaver trustee guarantees the repayment of any returns of the scheme.” This seems to be a drafting or unintentional error from comparing Schedule 5A with the relevant unit trust schedule. Returns are not ‘earned’ on a KiwiSaver membership in the same way that income is earned on debentures (or unit trusts before they became PIE entities). Rather, the returns reflect the difference between the amount originally invested and the amount received upon redemption. Sometimes this may be negative, or possibly even the whole interest may not be repaid to investors. Therefore, we believe the statement to go into the prospectus should relate to whether the KiwiSaver trustee guarantees the repayment of the members full interest upon entitlement.

Regulation 6(4) of Schedule 5A states that the prospectus should include “A brief description of the investment and other activities of [...] the scheme...” This should refer instead to material activities, for consistency with Schedule 4 (relating to unit trust prospectuses).

Also with regard Schedule 5A, there is one minor area of difference that may benefit from clarification and this is in the new clause 7 (1) & (2) of Schedule 5A as it relates to the inclusion of historical comparative financial information:

The schedule currently followed for KiwiSaver schemes, Schedule 6, clause 5 (3) (a), includes the words “(if any)” when referring to the inclusion of the previous 4 years’ information. Consequently, nothing is shown for years prior to the scheme’s existence. Clauses 7 (1) & (2) of Schedule 5A do not include the “if any”, which may suggest that a series of nil entries is expected in respect of these years.

We recognise that the wording of Schedule 5A is already in force in respect of unit trusts; however some clarification for KiwiSaver schemes would be helpful.

Please contact me directly if you would like to discuss any of these points.

Yours sincerely

Deborah Keating
EXECUTIVE OFFICER