

15 December 2016

Financial Markets Authority

1 Grey St

Wellington

By Email: consultation@fma.govt.nz

Feedback: KiwiSaver advice

Thank you for the opportunity to submit on the proposed KiwiSaver advice guidance note (*Guidance Note*). This is a joint submission from the Financial Services Council of New Zealand Incorporated (*FSC*) and Workplace Savings NZ Incorporated (*WSNZ*).

FSC, WSNZ and their respective members share the views of the Financial Market Authority (*FMA*) that New Zealanders must prepare well for their retirement and that good advice gives consumers choices as to how to best position themselves for their future. Having clarity around both:

- the definitions of class and personalised advice; and
- the boundary between providing information (on the one hand) and giving an opinion or making a recommendation (on the other);

are key for the industry, consumers and the market place at large.

We also recognise that as the current Financial Advisers Act 2008 (*Act*) does not distinguish between advice given about KiwiSaver schemes and advice given about other category one financial products, or in some contexts financial products generally, the Guidance Note will have relevance concerning the interpretation of the Act more generally.

Finally we agree with the four key factors set out as those that advisers should strongly encourage New Zealanders to consider:

1. Being in KiwiSaver.
2. Contributing (continuously and in sufficient amounts to get all the member tax credit).

3. Choosing the right type of fund for them.
4. Giving the scheme provider the correct PIR so that they pay the right investment income tax rate.

We set out our responses to the specific questions asked in the draft Guidance Note in the appendix to this letter.

Summary FSC & WSNZ Comments

1. The FSC and WSNZ support the objectives of the Guidance Note.
2. The consumer-centric nature of the recommendations is welcomed – they should facilitate better quality outcomes for consumers and improved clarity for industry and the advice community in terms of delivery.
3. The recommendations should facilitate consumers being able to access better information under the Act about the KiwiSaver regime (and KiwiSaver schemes) to enable them to make good quality decisions – notably by facilitating the giving of class advice about KiwiSaver.
4. The Guidance Note will better equip the industry to deliver good information and advice without fear of overstepping the mark.
5. In the short term the Guidance Note will provide advisers with more clarity on FMA's interpretation of the boundaries between:
 - a. the different categories of advice in the Act; and
 - b. advice and information.
6. However, given the pending review of the Act, adviser businesses may be hesitant to review their processes at this stage.

Timing of the guidance commencement

We are conscious that the Ministry of Business, Innovation and Employment has been reviewing the Act and that, as part of this review, it appears highly likely that significant changes will be made to the Act.

With the imminent release of draft amended financial advice legislation which will materially impact the advice landscape and marketplace, our preference would be that the finalised

Guidance Note is released concurrently with that draft legislation, so that the industry can make better informed decisions about how it responds in the near term – it will be important to seek to minimise the extent to which the industry may need to change its documentation and processes twice, at significant cost and at the risk of causing potential confusion for consumers.

However, until the amended legislation is actually finalised and takes effect in due course (which will doubtless be some time away) we do acknowledge that the replacement Guidance Note has a role to play in terms of improving the prospects of consumers receiving the advice they need to make the best decisions they can for their future.

Yours faithfully

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Feedback: KiwiSaver advice

Please submit this feedback form electronically in **both PDF and MS Word formats** and email it to us at consultation@fma.govt.nz with 'Feedback: KiwiSaver advice' and your entity name in the subject line.

Submissions close on Friday 16 December 2016.

Date: 12/12/16

Number of pages:10 (with covering letter and addendum)

Name of submitter: Richard Klipin

Company or entity: The Financial Services Council of New Zealand Incorporated and Workplace Savings NZ Incorporated

Organisation type: Industry Representative Body

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Summary: KiwiSaver advice

This guidance note is for providers advising on KiwiSaver products and replaces our 2012 Guidance Note: Sale and Distribution of KiwiSaver. We are replacing this guidance to recognise feedback that our 2012 approach resulted in some people not getting the help they needed, as firms saw it as risky to provide advice. This revised guidance is intended to change that situation, by encouraging advisers and financial firms to help people make good decisions about KiwiSaver.

This guidance updates and clarifies our view of what the different types of financial advice are, so advisers can be more confident they are within the rules.

This guidance applies the current law, which distinguishes between class and personalised advice. Currently, financial advisers can give customers information only, or they can give 'class' or 'personalised' advice. Only some advisers can give personalised advice. This guidance discusses our view of what falls into each of these types of services.

Questions:	Comment	Recommendation
<p>1. Does the new guidance note meet its purpose of making it easier for advisers and financial firms to offer advice, and generally provide help, about KiwiSaver?</p>	<p>We consider that the replacement Guidance Note usefully elaborates on FMA's views as to when advice is or is not being provided. We applaud FMA for seeking to address the barriers to consumers getting the help they need to make informed decisions about KiwiSaver.</p> <p>The guidance (and the examples in particular) is helpful in informing market participants how to frame up the context of the discussion, set expectations and allow a usefully detailed exchange to take place whether it is advice (class or personalised) or information or both.</p> <p>The guidance recognises that customers often want simple</p>	<p>It would be useful if the Guidance Note clarified the status of the views expressed in the previous version of the Guidance Note.</p>

	<p>advice on a single aspect of their investment.</p> <p>We think it is particularly valuable to advisers that FMA has formally acknowledged that where an adviser appropriately explains the advice they are providing is class advice, that advice will not become personalised advice merely as a result of an investor volunteering limited personal information which does not include their <i>financial</i> situation and goals.</p>	
<p>2. Does it enable you to begin making changes – for example, to call centre scripts – to improve access to advice in advance of the Financial Adviser Act changes?</p>	<p>As the FSC and WSNZ do not directly provide advice to investors we cannot answer this question ourselves. However, we understand that the process for amending sales practices, particularly within large QFEs, involves significant time and cost in areas such as:</p> <ul style="list-style-type: none"> - setting new internal policies about what staff are permitted to say; - training staff about what advice/information they are able to provide consumers; and - developing appropriate monitoring frameworks to ensure compliance. <p>For those reasons we expect that depending on the timing for amending the Act, these organisations may well wish to wait until there is some clarity around the intended on-going legislative settings in this context before they begin the process of changing their internal policies.</p>	<p>We think it would be useful for the Guidance Note to clarify that adviser businesses and QFEs which have structured their businesses on the basis of the previous iteration of the Guidance Note are not required to restructure their businesses to reflect the new boundaries in the Guidance Note.</p> <p>We are influenced here by the prospect that the pending reforms to the Act may well themselves address a number of the concerns addressed in the proposed Guidance Note.</p>
<p>3. Does any of the content need clarification – or is there anything missing?</p>	<p>We note that the Guidance Note applies the same standard to advice relating to switching</p>	<p>We encourage FMA to work with MBIE to resolve this issue as part of the review of the Act.</p>

	<p>between funds in the same scheme as it does to switching schemes, seemingly on the basis that the new fund is a new financial product which a member is being advised to acquire.</p> <p>We query this interpretation as the law stands - though as a policy matter we do agree it is the appropriate outcome for consumers.</p> <p>For the purposes of the Act a KiwiSaver scheme is an FMCA financial product, as a managed investment product for the purposes of the Financial Markets Conduct Act 2013 (<i>FMCA</i>). In terms of section 11(2)(a) of the FMCA, a managed investment product that is an interest in a KiwiSaver scheme is issued to a person when the person becomes a member, which indicates that a transfer to a different fund within the same KiwiSaver scheme is not the acquisition or disposal of a new financial product in terms of the Act - all that has happened is the member has directed that the funds they have invested in the relevant scheme (in respect of which they have the same rights pre-and-post switch) be invested in a different category of assets.</p> <p>We do agree, however, that switching funds within a scheme can be as important a decision as switching between schemes, and thus for many investors (notably those defaulted into conservative funds) this would be a time when they should seek advice. Where advice is given, or a need for advice is identified, we agree that as a matter of policy this should be caught within the ambit of the Act.</p> <p>The Guidance Note points to the</p>	
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	<p>importance of class advice on transferring between KiwiSaver schemes, and suggests investors be helped to find a tool which assists them to compare schemes before deciding to transfer.</p> <p>It perhaps just needs noting that such tools may have some limitations (e.g. for schemes or funds without a 5 year history) and that this may inadvertently increase the length of class conversations – conversation length being a factor in determining whether advice is class or personalised.</p> <p>The first of the four factors set out on page 5 ('Be in') is not relevant to existing KiwiSaver members who are considering a transfer – so perhaps there should be an alternative message for those members.</p>	
<p><i>4. What concerns do you think others in the industry might have about the revised guidance note?</i></p>	<p>We welcome the Guidance Note and its potential to encourage adviser businesses to provide advice and information about KiwiSaver to investors. The guidance takes a welcome approach which is both more enabling and more intuitive than the previous guidance.</p> <p>The most significant concern relates to the timing of the proposed replacement Guidance Note relative to the now-pending review of the Act.</p> <p>Advisers and QFE entities will have structured their advisory models informed by the stated boundaries in the previous guidance note, and accordingly their internal processes will not necessarily be calibrated to the new boundaries contained in the Guidance Note. Our experience is that the process of shifting these</p>	<p>We recommend that consideration be given to connecting the KiwiSaver guidance with the release of the draft new legislation in timing terms. In this way, possible changes can be looked at more holistically and in a way that reduces the risk of double-up and possible confusion.</p>

	boundaries will be both time consuming and expensive as it will require both altering internal policies and processes and a substantial investment in training.	
Feedback summary – <i>if you wish to highlight anything in particular</i>		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

About FSC

The FSC had 14 member companies and 14 associate members at 31 October 2016. 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 purposes are to:

1. be recognised as an organisation that represents the interests of the New Zealand financial services industry, including to regulators and Government;
2. 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;
3. 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;
4. develop and promote evidence-based policies and practices designed to assist New Zealanders to build and protect their wealth;
5. promote the financial services industry as a medium for investment and protection for consumers;
6. promote, assist and generally advance the interests of members.

About Workplace Savings NZ

WSNZ is a not-for-profit apolitical membership organisation that represents the interests of employers who offer workplace retirement savings schemes, their trustees and their members, other retirement scheme managers (including KiwiSaver scheme providers) and supervisors, retirement savings industry service providers and professional advisers.

WSNZ's objective 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.

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.