

Friday 14 February 2025

Financial Markets Policy
Business, Resources and Markets
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Enabling KiwiSaver investment in private assets

This submission on enabling KiwiSaver investment in private assets (the Discussion Document) is from the Financial Services Council of New Zealand Incorporated (FSC).

As the voice of the sector, the FSC is a non-profit member organisation with a vision to grow the financial confidence and wellbeing of New Zealanders. FSC members commit to delivering strong consumer outcomes from a professional and sustainable financial services sector. Our 112 members manage funds of more than \$100 billion and pay out claims of \$2.8 billion per year (life and health insurance). Members include the major insurers in life, health, disability and income insurance, fund managers, KiwiSaver, and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

The FSC has been discussing the capital market initiative since August 2024 as an emerging issue in the FSC's Investment and KiwiSaver CEO Forum and with the Investment and KiwiSaver CEO Policy group. The FSC has also been actively engaging with MBIE and have attended the roundtable meetings as an observer.

Our KiwiSaver members support KiwiSaver investment in private assets and welcome the opportunity to provide feedback on the Discussion Document. However, we consider there are possible risks involved which may not have been considered fully.

We are supportive of changes to allow flexibility and for better liquidity risk management. However there remains several other hurdles that will not be solved by the proposed amendments and therefore we are not convinced these changes will create the impact needed in terms of enabling private asset investment across KiwiSaver funds. Each of the private asset hurdles as set out in this submission can be overcome but together are a larger obstacle to increased investment. We have residual concerns that investment may continue offshore due to these domestic hurdles.

We welcome continued discussions and engagement. Please contact Carissa Perano, Head of Regulatory Affairs, at carissa.perano@fsc.org.nz, to discuss any element of our submission.

Yours sincerely

Kirk Hope
Chief Executive Officer
Financial Services Council of New Zealand Incorporated

Enabling KiwiSaver investment in private assets

Name	Privacy of [REDACTED], Head of Regulatory Affairs
Date	Friday 14 February 2025
Organisation (if applicable)	Financial Services Council of New Zealand Incorporated
Contact details	Privacy of natural persons

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

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Liquidity management tools – questions for KiwiSaver providers or other industry

	For KiwiSaver managers: Please describe your current practice around investing in private assets, including levels of exposure you have to these types of assets, how you invest in these assets, and your management of liquidity risk.
1	FSC members who are KiwiSaver managers may each have differing practices around investing in private assets. Please refer to individual FSC members' submissions for details. However, we do note some general observations. Tracking exposure to private assets via a fund of funds model is complex given the private asset categorisation limitations as pointed out in the Discussion Document. Some of our KiwiSaver members have noted that they receive requests from investors to provide access to venture capital (VC) and private equity (PE) funds. Retail Investors have not traditionally been able to access PE and VC Funds as they have been limited to high net worth investors and institutional funds. This disadvantages most KiwiSaver members, as for example, research has shown that as at the end of 2023, 38% of KiwiSaver members had balances of less than \$10,000.¹ KiwiSaver providers are keen to give all KiwiSaver members the same opportunities regardless of the size of their balances. PE and VC Funds can provide strong returns and diversification and the ability for individuals to invest into these high growth or high risk sectors has been limited to whether you have significant investable funds rather than knowledge or portfolio based reasons. Our KiwiSaver managers have also noted that some investors have shown a strong interest to access investment opportunities in private companies that are driving the most promising technological and product advances. We consider that PE and VC Funds and infrastructure funds could provide important portfolio diversification for KiwiSaver members.
2	Do you think that the current legislative framework for KiwiSaver effectively allows for the use of liquidity risk management tools that may impact transfer or withdrawal times (e.g. suspending redemptions or side-pocketing)?

¹ [*KiwiSaver Demographic Study February 2024, Melville Jessup Weaver*](#)

Liquidity risk management tools are permitted under the current legislative framework for KiwiSaver providers to adopt. This includes buy/sell spreads, swing pricing and side pocketing or side gating. Side pocketing or side gating and suspending redemptions are typically only used in extreme market and liquidity conditions and are not utilised for managing day to day transfers or withdrawal requirements of long term savings products.

The current legislative framework may make it more difficult for providers to utilise certain liquidity management tools. For example, the KiwiSaver Act 2006 (the Act) withdrawal and transfer timelines, and the design of many KiwiSaver schemes, rule out the use of side pocketing and redemption gates. However, this does not prevent KiwiSaver providers from investing in private assets if the provider considers it is in the best interests of members, it has the capability to do so, and the investment opportunities are available.

Whilst we note that the legislation does currently allow for providers to agree for the slow transfer of a member's balance, we do not consider that this could practically be implemented. KiwiSaver providers deal with thousands of transfers to and from various other KiwiSaver providers each month, making it impractical to agree member specific transfer terms. In addition, the delayed transfer needs to be agreed by both parties, risking the second party not agreeing to the transfer. It is unclear how the proposed additional liquidity management tools would work, but to the extent they require a member specific approach, this would also not be feasible.

For KiwiSaver managers: If you cannot use these tools, can you please explain the reasons for this and the impacts in terms of:

- a. your ability to increase investment in private assets
- b. risks associated with your current allocation of private assets.

In addition to our comments in response to Question 2, the requirement to transfer a member's balance within 10 days limits a KiwiSaver manager's ability to deploy certain liquidity management tools. Compliance with the Act withdrawal and transfer timelines and the obligations to treat all members equitably and act in their best interests makes it challenging for many diversified funds to invest in private assets.

3

We note some KiwiSaver managers may have developed systems and governing documents to support side-pocketing.

Many KiwiSaver schemes only allow their members to invest in a single fund and to implement side pocketing correctly, managers would need to be able to create a side pocket fund or unit price for each illiquid asset but would still need to report holdings, performance or fees etc at member level and to limit contributions to non-side-pocketed funds. Most systems would not cater for this type of structure.

4

Please provide any other comments on the availability of liquidity management tools.

It is unclear whether different liquidity settings mean KiwiSaver providers would need to operate separate funds for locked in members and non-locked in members. To avoid the structural difficulties above, this would need to be clear and any legislation allowing trust deed amendments would need to consider options to be universally applicable, with notice, to all members. If this were not the case, then the existing \$110 billion in KiwiSaver is unlikely to ever be substantially unlocked for this opportunity.

Do you support the proposed approach? Why/why not?

Yes, we support explicitly enabling all KiwiSaver managers use contingency liquidity management tools, provided clear parameters have been established about when such tools could be used (and what happens when they are used). We note that this would help align KiwiSaver with other forms of Managed Investment Schemes (MIS) which do have the ability to deploy such tools.

It is also considered a fundamental enabler for those that want to use liquidity management tools generally, enabling structuring and management of the risks of investing in private assets. As noted in response to Question 4, the uptake of these tools will be dependent on the legislative settings allowing their implementation and whether they create the structural difficulties mentioned. Poor settings will discourage their uptake and KiwiSaver providers' ability to consider private assets at material levels. It is critical that there are clear parameters around when these could be used and that they should not be for day to day liquidity management.

However, we would caution that whilst this proposed approach would provide much needed clarity and consistency between MIS, it may not by itself result in a significant increase in private market exposure by KiwiSaver providers until other impediments are removed, investor appetite is confirmed, KiwiSaver managers have more scale and capacity, and there is greater capacity in the private markets industry.

We consider that in any legislative proposal the relationship between the proposed statutory right (referred to above) and the duties to act in the best interests of members and treat them equitably in the Financial Markets Conduct Act 2013 (FMCA) needs to be clarified. This is to avoid uncertainty as to whether a manager is still required to satisfy itself that an act permitted through a statutory right of the kind referred to above is compliant with the FMCA duties.

If redemption gates were allowed, would you consider developing new products more focussed on private assets?

Yes, this may be considered by some of our members, but this is subject to a range of other factors including whether other impediments are removed. Redemption gated funds which invest in private assets will provide members with more choice relating to investment options for their KiwiSaver savings and encourage innovation from both the supply and demand side. However, not all FSC KiwiSaver providers will have appetite in this space unless the settings that are introduced allow providers to roll out changes across existing products without introducing product complexity.

This is particularly because most KiwiSaver Scheme assets are in diversified funds so the main potential development will likely be broadening of private assets into those funds. This potentially means that those existing products with long term investment horizon (higher growth percentage) are more likely to consider holding suitable private assets.

Single sector and specific targeted private asset funds may emerge but are not likely to be the mainstream in the short to medium term, based on high utilisation of multiple asset class diversified funds and the advice approach to the majority of KiwiSaver members.

We also note that different withdrawal settings could be confusing for frontline staff and customers. Their use could undermine confidence in KiwiSaver, if investors could not withdraw all their funds if they were in hardship or requesting a first home deposit or their over 65 withdrawal.

Will you face implementation costs if this change is made? If yes how much will they be and will they be one-off or ongoing?

This will be dependent on individual KiwiSaver Managers and whether they have any system developments or governing document changes to include side-pocketing. Please refer to individual FSC members' submissions.

- 7 Some members have indicated that any costs would be mostly one off, such as product disclosure document changes, legal due diligence, member communications and system or information technology changes. There may be additional ongoing operational, system or information technology and governance costs involved with the added complexity in rules. However, any deployment of liquidity management tools in the future would also involve increased ongoing costs.

- 8 Do you have any comments on the detailed design considerations noted above?

	In response to paragraph 48c. of the Discussion Document, the use of liquidity management tools should definitely not be limited to private markets as this is considered to lead to complexity and distortions and a non-level playing field between assets and different forms of MIS. In response to paragraph 48e, we agree, and as noted above a level playing field would be preferable. It is also important to reiterate that certain liquidity management tools should only be used as a last resort in extreme market conditions. It needs to be clear whether they can be used for specific issuers and assets and what communication will be provided to affected investors when the tools are used both during the 'side pocket period' and once it has concluded. It also needs to be clear that when the affected assets are back to 'normal' liquidity management status. Lastly, whether any fees are permitted to be charged once a side pocket period has ended.
9	Please provide any further comments on this issue of liquidity management tools. We consider that there will need to be very clear principles or a framework as to when and if a manager can implement these types of liquidity management tools. There will be several operational issues that are traded off for the return or diversification benefits of private assets, such as the simple nature of single KiwiSaver member accounts, PIE attribution when there are multiple accounts, and complications with providing statements to members given some assets could be in two places. Permitting side-pocketing of assets will require all providers to have the capability to deal with receiving member accounts that may have part of their KiwiSaver account in a side pocket, even though the recipient scheme may not hold private assets.
Private asset categories – questions for KiwiSaver providers or other industry	
13	Do you consider that the current asset classes in the Financial Markets Conduct Regulations 2014 are problematic as they relate to private assets? If yes, please explain. Yes, currently there is no specific listing of private assets, and these are grouped under more general headings or general investments which fails to give transparency around where money is actually invested. Currently, there is only an option to define "unlisted property" while all other private assets would currently need to be defined under "other", followed by a description of what is included in "other". We consider the KiwiSaver industry should always aim for more visibility for members of where their money is invested by informing and educating.
14	How do think the categories should be described?

	Our feedback from members does not squarely fit in one of the proposed options. We suggest categorisation of PE and private debt with the additional requirement to state what is included in each of these categories. We also suggest considering VC. We encourage consideration of striking a balance of information given this will lead to increased disclosure. Too many categories will lead to messy pie graphs in fund updates and product disclosure statements, and it may put pressure on the word count restrictions many providers are hard up against.
	Please provide any other comments on the lack of private asset categories.
15	Private assets can include a wide range of investments across both equity and debt, including PE, private real estate, private debt and private infrastructure. This is also a broader question than the asset class categories. Providers should have latitude to choose an appropriate market index and an asset class classification, depending on the objective they have for the private asset investments they want, and the risk which comes with it. For example, PE maybe more meaningfully benchmarked against, and classified within, public market equities.
	Which option do you think is best and why?
16	Whilst not an option proposed in the Discussion Document, we recommend the creation of new categories for PE and private debt as noted in our response to Question 14. As noted, we also suggest consideration of VC.
	Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?
17	Please refer to individual FSC members' submissions for details. Generally, we note these will mostly be one-off costs to change product disclosure documentation including software development to support disclosure of information relating to new asset classes.
18	Please provide any further comments on this issue of including private assets in asset categories.

The typical global practise for benchmarking of private assets is to use absolute or total return, namely “Cash+” benchmarks. However, the current FMA guidance indicates absolute, or total return benchmarks are not permitted under the Financial Markets Conduct (Market Index) Exemption Notice 2024.

There is a significant risk spectrum when investing into private assets, for example, unlevered core real estate is low risk and VC is very high risk. Bucketing all assets together may not provide investors with an appreciation of the risks being taken. Diversification and transparency around ‘single asset’ risks is important, particularly if standalone investment options are made available within KiwiSaver.

Providers also need the latitude to select a market index, and classify, their private markets investments appropriate to the investment objective and associated risk of that investment. This does rather come with an assumption the manager can answer both questions satisfactorily, and they should not do it if they cannot.

Valuation requirements – questions for KiwiSaver providers or other industry

- 20 For KiwiSaver managers: Do your governing document(s) include a valuation methodology which is challenging to apply to valuing private asset? If you do, can you please explain the impact in terms of:
- the extent to which your governing documents require amendments to allow for the inclusion and pricings of private assets within your funds.
 - whether you have tried to amend the valuation provisions in the past or not, and why. Include examples of where the supervisor has or has not approved a valuation methodology.

Please refer to individual FSC members’ submissions for specific governing document details.

- 21 Please provide any other comments on the valuation methodologies in governing documents.
- We have no further comments.

- 22 Do you agree that this is an issue that needs addressing?
- Yes, as for some KiwiSaver managers this may be an issue.

- 23 Do you have views on how it should be addressed?
- Conflicts of interest require consideration and management in relation to valuation as well as private assets generally.

- 24 Will you face implementation costs if this change is made, if yes how much will they be and will they be one-off or ongoing?

	Please refer to individual FSC members' submissions for details on possible implementation costs.
	Please provide any further comments on this issue of valuation requirements.
25	A key challenge will be the potential consequences of different methodologies being applied by different managers, sometimes for the same underlying asset. As was seen in Australia during the Covid pandemic, pricing overrides are sometimes required to reflect rapid and volatile changes in public market pricing, and different schemes may take different approaches to this leading to challenges for investors to make comparisons between offers.
Total Expense Ratio—questions for KiwiSaver providers or other industry	
	Do you currently outsource fund management for private assets?
26	Please refer to individual FSC members' submissions for details on outsourcing arrangements.
	Do you see any issues with the current TER calculation and if so, what are they?
27	We consider full fee transparency of all underlying costs and charges is essential. The risk of not having this would be a step backwards for the industry and could lead to differences in approaches, hiding of fees, and confusion for investors. To extend the current TER calculation to incorporate private markets, we suggest that it needs to be very clear exactly what expenses and charges of private assets need to be incorporated in this so that all providers adopt the same approach.
	Does the current TER calculation impact your decision to invest in private assets, or to utilise third-party fund management?
28	Yes, investment in private assets will mean higher fees to investors and industry pressure is currently focussed on fees. If private asset investment increases, the industry will be under pressure to demonstrate the value of the allocation decision. The provider should be able to do that, or they should not invest in private assets. The fee cap on default funds means the value proposition needs to be even clearer, which is appropriate for those products (where the transfer timeline is even shorter).
29	Are there any other issues you would like to draw attention to on the TER?

All management and administration costs charged to investors should be reportable in the TER, to ensure an even playing field. Providers, FMA, government (via default settings) and the media will all need to educate the public that some asset classes are more costly than others to manage, and that a focus on fees is not always the right approach, but a focus on net returns to members can be more helpful.

Default funds and some providers utilise an “all-in” fee, whereby all costs are included in the fee, which is a simple and easy to understand approach for members. The TER calculation methodology may change but that would not make it any easier to include higher cost private markets under an all-in fee approach. This would only be feasible if there was flexibility to increase the all-in fee, but even then, performance fees would be difficult to accommodate. In addition, private market fund fees are typically very high to begin with due to the fee often being payable on committed capital as distinct from drawn down capital. However, given the additional risk, it may be appropriate that the case for private asset investments is even harder to make for default funds given the purpose of default funds.

Final comments—question for KiwiSaver providers or other industry

Please provide any further comment on barriers to KiwiSaver investment in private assets that you see (including any comments in relation to issues identified in paragraph 18b-f).

The first obligation of all KiwiSaver managers is to their KiwiSaver members. We are supportive of changes to allow flexibility and for better liquidity risk management. However there remains several hurdles, therefore we are not convinced these changes will move the dial significantly in terms of private asset investment across KiwiSaver funds. Each of the private asset hurdles (valuation, transparency, liquidity, fees, capacity and capability) are not insurmountable on their own, however together create a larger hurdle.

Removing some of the hurdles may increase investments into private markets by KiwiSaver managers, however there is no guarantee that this investment will be within New Zealand. Given the lack of private market capacity and development in New Zealand it is likely that firms will need to invest overseas where the market is more developed and there are greater opportunities. It may take some time for investment to build within New Zealand.

Paragraph 18(e) of the Discussion Document generally refers to private asset opportunities, without making a distinction whether this is within New Zealand or overseas. However, we understand one policy motivation is to make capital available for New Zealand businesses, as noted in paragraph 6 of the Discussion Document. It is important that fund managers are able to pursue the best opportunities available for investors, regardless of the domicile of the investment.

The PIE tax regime is not ideally designed to accommodate investments in private assets, namely PIE tax status is lost if you invest more than 10% of your fund in companies that you own greater than 20% of the shares. Providers do not want to put their PIE status at risk, so can only invest well below these settings.