

Submission template

Enabling KiwiSaver investment in private assets

This is the submission template for the discussion document, *Enabling KiwiSaver investment in private assets*. The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by **5pm on 14 February 2025**.

Please make your submission as follows:

1. Fill out your name, organisation and contact details in the table: “Your name and organisation”.
2. Fill out your responses to the consultation document questions in the table, “Responses to discussion document questions”. There are two sets of questions: teal-coloured for industry, and purple for the public, including KiwiSaver members. There is one final question (blue) for everyone. Your submission may respond to any or all of the questions in the discussion document, as appropriate.
3. When sending your submission:
 - a. Delete this page of instructions.
 - b. Please clearly indicate in template if you do not wish for your name, or any other personal information, to be disclosed in any summary of submissions or external disclosures.
 - c. Note that submissions are subject to the Official Information Act 1982 and may, therefore, be released in part or full. The Privacy Act 2020 also applies.
 - d. Note that, except for material that may be defamatory, MBIE intends to upload PDF copies of submissions received to MBIE’s website. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any confidential information:
 - i. Please state this in the template, and set out clearly which parts you consider should be withheld and the grounds under the Official Information Act 1982 that you believe apply. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
 - ii. Indicate this on the front of your submission (e.g. the first page header may state “In Confidence”). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
4. Please send your submission (or any further questions):
 - as a Microsoft Word document to financialmarkets@mbie.govt.nz (preferred), or
 - by mailing your submission to:

*Financial Markets Policy
Business, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand*

Submission on discussion document: Enabling KiwiSaver investment in private assets

Your name and organisation

Name	Privacy of natural persons General Counsel – NZX Funds Management
Date	14 February 2025
Organisation (if applicable)	Smartshares Limited
Contact details	Email: Privacy of natural persons M: Privacy of natural persons

Privacy and publication of responses

[To tick a box below, double click on check boxes, then select 'checked'.]

☒ The Privacy Act 2020 applies to submissions. Please check this box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at www.mbie.govt.nz. If you do not want your submission to be placed on our website, please check the box and provide an explanation in the box below.

I do not want my submission placed on MBIE's website because... *[Insert text]*

Please check if your submission contains confidential information

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because...
[Insert text]

Responses to discussion document questions

About Smartshares Limited

Smartshares Limited (**Smart**) is a manager of multiple registered managed investment schemes, including three KiwiSaver schemes: SuperLife KiwiSaver Scheme SCH10768 (Supervisor, Public Trust), QuayStreet KiwiSaver Scheme SCH10663 (Supervisor, The New Zealand Guardian Trust Company Limited) and JMI Wealth KiwiSaver Scheme SCH13004 (Supervisor, Public Trust). Smart is providing this submission in response to the consultation proposals.

Smart is a wholly owned subsidiary of NZX Limited (**NZX**). NZX is a licensed market operator under the Financial Markets Conduct Act 2013 (**FMC Act**) and is New Zealand's primary securities exchange. NZX endorses Smart's submission on enabling KiwiSaver investment in private assets.

Liquidity management tools – questions for KiwiSaver providers or other industry

1	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. Smart is the manager of the SuperLife KiwiSaver Scheme (SLKS), QuayStreet KiwiSaver (QSKS) and JMI Wealth KiwiSaver Scheme (JMIKS). Smart has appointed JMI Wealth Limited as investment manager of JMIKS. Under the SIPO for JMIKS, each fund is permitted to invest in listed financial products, tradeable debt securities, other managed investment schemes and cash. Smart does not consider investments in other managed investment schemes to be 'private assets' in terms of the discussion document. JMIKS does not directly hold any private assets and is not permitted to do so under its SIPO. Under the SIPO for QSKS, all scheme property is invested in units issued in funds in the underlying QuayStreet Funds scheme (QSF). Smart is also the manager and issuer of QSF. While the QSF units held by QSKS are not listed, Smart does not consider these units to be 'private' assets in terms of the discussion document. Under the SIPO for managed funds in QSF, all scheme property is invested in listed securities and QSF does not directly hold any private assets. Certain funds in QSF may invest in unlisted equity securities but only if they have the intention to list on a recognised exchange within 12 months. Other funds in QSF may invest in unlisted country and/or sector share funds. Under the SIPO for SLKS, all scheme property is invested in units issued in funds in the underlying SuperLife Invest scheme (SLI). Smart is also the managed and issuer of SLI. While SLI units held by SLKS are not listed, Smart does not consider these units to be 'private' assets in terms of the discussion document. Under the SIPO for managed funds in SLI, all scheme property is invested in listed securities and SLI does not directly hold any private assets. Under the SIPO for managed funds in SLI, all scheme property is invested in listed securities either by holding units in the underlying Smart Exchange Traded Funds scheme, units in third-party ETFs, units in unlisted funds, or directly held securities. For all of Smart's registered managed investment schemes and the managed funds in those schemes (including those in JMIKS, SLKS and QSKS), liquidity risk is managed in accordance with Smart's internal liquidity risk management framework and the FMA's public guidance on the management of liquidity risk. This occurs at both the design phase of the funds (taking account of the underlying asset exposures, the redemption rights in the funds and the anticipated redemption patterns) and during the life of the funds.
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)?

	As set out in the FMA's Liquidity Risk Management Guide (April 2024) (Guidance), liquidity risk management involves consideration of a fund's investment strategy, target investor base and demographics, expected redemption patterns and asset selection. Smart agrees with the statement in the Guidance that managers should not rely solely on liquidity management tools (LMTs) to manage liquidity. In the KiwiSaver context, this involves consideration of members' rights to transfer between KiwiSaver providers and to make withdrawals both on reaching retirement age and prior to reaching retirement age (e.g. first home withdrawal, financial hardship, etc). Funds within a KiwiSaver scheme need to be designed to allow the manager to meet the expected transfer and redemption patterns in KiwiSaver within the required timeframes. Smart thinks that the current legislative framework does not prohibit the use of LMTs that may impact transfer or withdrawal times (e.g. suspending redemptions or side-pocketing) in KiwiSaver. Smart notes that use of these LMTs is rare and typical only in extreme market and liquidity conditions However, the ability to use those LMTs in practice is limited by the KiwiSaver structure. These limits largely relate to the obligation to facilitate the member withdrawal entitlements that are the key benefit of the KiwiSaver regime.
3	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. As noted in our response to Question 1 above, Smart's KiwiSaver schemes do not have investment objectives that are designed for investment in private assets and are not currently permitted to invest in private assets under their SIPOs. Smart does not currently have any intention to launch new funds that would invest in private assets. If Smart were to launch a fund that was permitted to invest in private assets, then consideration would need to be given to the asset allocation for that asset class in the context of the expected withdrawal patterns. This would include consideration of the use of LMTs but this would not be the sole liquidity consideration.
4	Please provide any other comments on the availability of liquidity management tools. As noted in our response to Question 2 above, Smart does not consider that the current legislative framework prohibits the use of LMTs in KiwiSaver. If a KiwiSaver manager decides to invest in illiquid private assets, then clear permission to use LMTs needs to be included in legislation. This could include the power for a manager, in consultation with its supervisor, to use an LMT and delay payment of a withdrawal benefit.
5	Do you support the proposed approach? Why/why not?

	Smart supports the proposals that would better facilitate the use of LMT such as side-pocketing and redemption gates, to enable increased scope for KiwiSaver investment in private and less-liquid assets. Smart supports KiwiSaver members having access, through their KiwiSaver memberships, to a wider range of KiwiSaver scheme investments, such that they can better tailor their KiwiSaver investment profiles to their risk profiles and time horizons. Enabling investment in private assets will provide broader economic and societal benefits by growing the range of companies and other enterprises that can access large scale funding, in this case KiwiSaver scheme money. Smart considers that the fiduciary obligations that apply to managers of KiwiSaver schemes and managers' duties under section 143 of the FMC Act will help ensure KiwiSaver managers utilise LMT in ways that are in the best interest of scheme members and treat members equitably. We agree that appropriate disclosure would need to be provided to KiwiSaver members as to the availability of these tools, so that members understand the consequences for their ability to access their KiwiSaver balances.
6	If redemption gates were allowed, would you consider developing new products more focussed on private assets? Smart does not currently intend to launch any funds with a focus on private assets. Any new development by Smart of products focussing on private assets would involve a through business case. The business case would need to take account of a broad range of factors of which the ability to use LMTs would be just one.
7	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? Smart will face implementation costs if the change is made. The costs will be one-off and ongoing. Smart is currently not able to quantify the costs, but they would include amendments to disclosure documents, due diligence, third-party service provider and system and information technology costs.
8	Do you have any comments on the detailed design considerations noted above? In relation to paragraph 48, any regulation on the use of LMTs in KiwiSaver should be general and permissive provided that the use of LMTs is in the best interests of all investors in a fund. This can be achieved by requiring a manager to, at least consult, with its supervisor before using an LMT. All licensed managers are required to maintain liquidity risk management policies and managers should retain flexibility to determine (in consultation with their supervisors) how and when to exercise LMTs and how to effectively disclose and communicate with investors.
9	Please provide any further comments on this issue of liquidity management tools.

We understand that some members of the managed funds industry have interpreted that FMA's Liquidity Risk Management Guide (April 2024) as having the effect of preventing investment in private or less liquid assets. Smart submits that refinements and other changes could usefully be made to the Guide to clarify that, where managers have appropriate systems and controls to manage liquidity, they are able to invest in these types of assets, consistent with the views expressed by the FMA to the Financial Services Council in September 2024. We also suggest that the Guide clarifies that public assets should be regarded as liquid, consistent with the approach taken in the Consultation Paper.

Liquidity management tools—questions for the public

10 Do you support more investment by KiwiSaver funds into private assets? Why / why not?

N/A

11 Do you support the use of liquidity management tools like 'side pockets', if they may have an impact on the availability of your KiwiSaver funds? Please explain.

N/A

12 Please provide any further comments on the proposed approach.

N/A

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.

Smart considers that it would be beneficial to further differentiate the asset class categories to specifically accommodate private assets, which would enhance disclosure for investors and other stakeholders.

14 How do think the categories should be described?

Smart supports categories that would enable easy identification of the listed or unlisted status of the assets, along with the jurisdiction of those assets.

15 Please provide any other comments on the lack of private asset categories.

None

16 Which option do you think is best and why?

On balance, Smart favours a variation of Option 1, with open text description of each type of private assets, and the jurisdiction applicable to each asset type.

17 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?

	Smart will face implementation costs if the change is made. Smart is currently not able to quantify the costs but these will largely be one-off and associated with updating disclosure processes.
18	Please provide any further comments on this issue of including private assets in asset categories. None
Private asset categories—question for the public	
19	Do you think it would be useful to have better visibility over how much KiwiSaver funds are investing into private assets? N/A
Valuation requirements – questions for KiwiSaver providers or other industry	
	For KiwiSaver managers: Do your governing document(s) include a valuation methodology which is challenging to apply to valuing private assets? 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.
20	The trust deeds for SLKS, QSKS and JMIKS each include valuation methodologies that allow Smart to value private assets. However, if Smart were to invest in private assets, then it would look to clarify and enhance the applicable valuation methodology, in consultation with its supervisors. Smart has not previously tried to, nor seen any need to, amend its valuation process in the past. The SLKS trust deed provides that, for investments not listed on a securities exchange or traded on an active market (which would include private assets), Smart must determine the appropriate valuation techniques that may, as Smart decides, include reference to recent comparable arms-length market transactions, reference to the current market value of another similar investment or discounted cash flow analysis or another appropriate valuation model. The QSKS trust deed provides that the valuation methodology is that the assets are valued at net market value in accordance with the latest accounting standard for the valuation of investments, provided that any managed fund investments must be valued at the latest available redemption price for the relevant managed fund. As noted above, the investment methodology for QSKS is that it invests exclusively into underlying funds in the QuayStreet Funds scheme. The JMIKS trust deed does not prescribe any valuation methodologies that particularly apply to valuing private assets. That trust deed does provide Smart with

	discretion to determine that the standard prescribed valuation methodologies should not, or do not, apply to particular scheme property (which could include private assets), and that an alternative valuation method can be applied on a consistent basis over time.
21	Please provide any other comments on the valuation methodologies in governing documents. None
22	Do you agree that this is an issue that needs addressing? Yes, this may be the case for some managers and their trust deeds.
23	Do you have views on how it should be addressed? Smart agrees with the proposed approach of amending the FMC Act to more easily enable trust deeds to be amended to specifically provide for valuation of private assets, and otherwise cater for KiwiSaver investment in private assets, by deeming such changes to not be materially adverse to members.
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? Smart would face some implementation costs for deed alterations (or other changes to valuation methodologies) to better provide for investment in private assets. These would be one-off costs associated with amending trust deeds and valuation methodologies and are not currently quantifiable.
25	Please provide any further comments on this issue of valuation requirements. None
Total Expense Ratio—questions for KiwiSaver providers or other industry	
26	Do you currently outsource fund management for private assets? As noted above, none of Smart's KiwiSaver schemes currently invest in private assets. As such, Smart does not outsource any fund management specifically for private assets.
27	Do you see any issues with the current TER calculation and if so, what are they? Smart sees no particular issues with the current TER calculation. On balance, Smart favours retaining the current TER calculation and not making any particular TER allowances or alterations for investments in private assets. Smart sees that any issues relating to private assets/TER/fund returns should most appropriately be addressed by way of investor communication and education.
28	Does the current TER calculation impact your decision to invest in private assets, or to utilise third-party fund management?

	No.
29	Are there any other issues you would like to draw attention to on the TER?
30	None
Total Expense Ratio—questions for the public	
31	Do you look at KiwiSaver scheme fees when deciding which KiwiSaver scheme to put your money with?
	N/A
32	What do you think should be included in any figure that is called “KiwiSaver scheme fees”?
	N/A
33	Please share any thoughts you have around the TER (total expense ratio) and its function to inform the public of the expenses involved in KiwiSaver management.
	N/A
Final comments—question for KiwiSaver providers or other industry	
33.	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).
	Smart acknowledges that some KiwiSaver managers may lack capability to invest, or invest significantly, in private assets. In addition, investment in private assets may not fit the current or future business model and strategy of all KiwiSaver managers.
Final comments—question for all respondents	
34.	Please use this question to provide any further information you would like that has not been covered in the other questions.
	None