

MARCH 2025

Consultation: Proposed reporting, audit and assurance exemptions for schemes in wind-up

About this consultation

The Financial Markets Authority - Te Mana Tātai Hokohoko (FMA) is considering a class exemption to provide relief from certain reporting, audit and assurance obligations under the Financial Markets Conduct Act 2013 (FMC Act) and the Financial Markets Conduct Regulations 2014 (FMC Regs) for registered Managed Investment Schemes that are in wind-up.

Next steps

We welcome your feedback on the exemption proposals in response to the specific questions in this paper, as well as any other general comments. Please provide use the feedback form provided on the web page for this consultation at www.fma.govt.nz.

Note that all feedback received is subject to the Official Information Act 1982, and may be made available on our website or other external channels. See the feedback form for more information about your privacy and confidentiality options.

Submissions close at 5pm on Monday 12 May 2025. After this date, we will consider all submissions, finalise our policy proposals and, if any exemptions are granted, work to get them in place.

This consultation is for Managers and Supervisors of registered schemes, investors, and other stakeholders.

It seeks feedback on proposed reporting, audit and assurance exemptions for registered schemes in wind-up.

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Overview

When a Managed Investment Scheme (MIS or scheme) is in wind-up (the process of formally closing down the scheme, which is governed by sections 212 and 213 of the FMC Act), reporting, audit and assurance obligations under Parts 3, 4 and 7 of the FMC Act apply until the scheme ceases to be registered.

During wind-up, a scheme's objectives and priorities shift from actively investing and accepting contributions to selling off or realising assets so that distributions can be made to scheme participants. In this situation, the cost of complying with some reporting, audit and assurance obligations may outweigh the benefits of compliance where the original purpose of the obligation will not be met (or will only be partially met). These costs will ultimately reduce the return for scheme participants.

We are considering whether the class exemption should provide relief from some or all the obligations. In considering what relief is appropriate, we aim to strike the right balance between reducing unnecessary compliance costs and promoting flexibility, while still providing timely, accurate, and understandable information for decision making by investors and ensuring appropriate governance arrangements apply, to allow for effective monitoring and reduce risks.

The purpose of this paper is to seek feedback on options for relief from certain FMC Act obligations and the costs and/or benefits of granting or not granting the relief. This will help determine whether relief is appropriate in view of the statutory test for FMA exemptions and the purposes of the FMC Act.

Background

FMC Act sections 212 and 213 requirements

Winding up a scheme is governed by sections 212 and 213 of the FMC Act. These sections set out the steps and requirements that must be followed during wind-up.

Winding up can be commenced by a resolution of scheme participants, or a Court order under section 211 (on the application of the FMA or a Supervisor of the registered scheme). Schemes are required to set out their winding-up process in the governing document. If a scheme is to be wound up, section 212 requires the Supervisor (or if there is no Supervisor, the Manager) to give a copy of the order or resolution (if any) to the FMA within 10 working days. KiwiSaver schemes must also give a copy of the order or resolution and certain other information to Inland Revenue (IRD).

Section 213 requires the Supervisor (or, if there is no Supervisor, the Manager) to arrange for final financial statements of the scheme to be prepared and audited within four months after the date on which the winding up takes effect (the wind-up effective date), showing the financial position of the scheme as at the date on which the winding up takes effect¹. We refer to these final financial statements as “**s 213 financial statements**”.

A copy of the s 213 financial statements must be sent to the FMA and to scheme participants within one month after they have been audited, along with a written statement about how the remaining assets (if any) of the scheme are to be distributed. Partial distributions can be made prior to the financial statements being sent to the FMA, unless prohibited by the governing document. Failure to comply with certain elements of s 213 is an offence with a fine of up to \$50,000 if convicted. It is also an infringement offence.²

When the scheme has been wound up and all the assets have been distributed to scheme participants, the Supervisor (or Manager) must inform the FMA of the date on which the distribution of the assets was completed. The FMA will then direct that the scheme is cancelled on the Disclose Register under section 195.

¹ The wind-up effective date is the date when a scheme’s wind-up begins. It is set by the scheme Manager or Supervisor. It should be clearly defined, as there are reporting obligations that are triggered by the wind-up effective date. It can be the date that the resolution to wind up is dated, or it can be another date that is clearly specified in the wind-up resolution. However, it is not generally in the best interest of the scheme to set the wind-up effective date as the day immediately before the date of final distribution of assets.

² This can be contrasted with the position for financial statements required under Part 7 where knowingly failing to comply with financial reporting standards is an offence with a penalty for an individual of up to 5 years imprisonment or a fine of up to \$500,000, or both, and the penalty for an entity is a fine not exceeding \$2.5 million. Additionally, there are civil liability provisions under s 461M that apply for contravention of various Part 7 requirements and have a pecuniary penalty not exceeding the greatest of the consideration for the relevant transaction, 3 times the amount of the gain made or the loss avoided, and \$1 million in the case of an individual or \$5 million in any other case. Note the contravention might not relate to failing to apply GAAP. See <https://www.legislation.govt.nz/act/public/2013/0069/latest/whole.html#DLM6027088>

We have recently issued [guidance](#) for Supervisors and Managers of schemes on our interpretation of the requirements of ss 212 and 213. The guidance provides clarity around setting wind-up effective dates, describes best practices for schemes in wind-up, and includes example wind-up timelines.

Related class exemptions

We have been working on two related class exemptions from requirements in Part 7A and Part 7 of the FMC Act. These exemptions – along with the exemptions proposed in this paper – will form part of a package of relief for schemes and entities that are being wound up or are in receivership or voluntary administration.

- **Part 7A Relief:** We granted a class exemption that provides relief for climate reporting entities (including Managers in respect of registered schemes) that are in wind-up, receivership or liquidation from climate-related disclosure obligations under Part 7A of the FMC Act. The exemption notice giving effect to this relief came into effect on 30 November 2024. More information about this exemption can be found here: [Financial Markets Conduct \(Climate Reporting Entities in Liquidation, Wind-up, or External Administration\) Exemption Notice 2024](#)
- **Part 7 Relief:** We are progressing a related class exemption for FMC reporting entities in liquidation, receivership or voluntary administration from the financial reporting and audit duties in Part 7 of the FMC Act.³ We are aiming to get this in place by end of March 2025. We have agreed in principle to provide full relief for insolvent FMC reporting entities in liquidation, meaning financial reporting duties are cancelled; and deferral of relief for up to two years for entities in receivership or voluntary administration (other than licensed insurers, registered banks and non-bank deposit takers), meaning financial reporting duties are deferred but must still be complied with at a later date. More information about this proposed exemption can be found here: [Consultation paper: Proposed financial reporting exemptions for FMC reporting entities in liquidation, receivership or voluntary administration](#).

³ This did not include relief for Managers of registered schemes in wind-up.

FMA's exemption powers

To grant an exemption under section 556 of the FMC Act, the FMA must be satisfied that the exemption is necessary or desirable to promote one or more of the purposes of the FMC Act. The extent of the exemption also cannot be broader than is reasonably necessary to address the matters that gave rise to it.

The purposes of the FMC Act are:⁴

- to promote the confident and informed participation of businesses, investors, and consumers in the financial markets
- to promote and facilitate the development of fair, efficient, and transparent financial markets
- to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services
- to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks
- to avoid unnecessary compliance costs
- to promote innovation and flexibility in the financial markets.

Our decision on the exemption proposals discussed in this paper will be based on whether we are satisfied the above statutory test is met.

⁴ See sections 3 and 4 of the FMC Act.

Proposed exemptions

We are considering a class exemption, for a five-year term, for schemes that are winding up, to provide relief from the following obligations:

1. **Financial reporting obligations:** the manager of a registered scheme must prepare financial statements in respect of the scheme that comply with generally accepted accounting practice (GAAP) within 4 months of the balance date (FMC Act s [461A](#))
2. **Audit of financial statements**⁵: the scheme's financial statements must be audited by a qualified auditor (FMC Act s [461D](#))
3. **Annual report:** the manager of a scheme must produce an annual report with prescribed information about the scheme and changes over the previous accounting period (FMC Act ss [96](#), [97](#) and FMC Regs [62](#), [63](#), Part 5 of [Schedule 4](#) and Part 4 of [Schedule 5](#))
4. **Fund updates and related register entry updates:** the manager of a managed fund must make a quarterly fund update publicly available with prescribed information about the performance and risks associated with the fund (FMC Act ss [96](#), [97](#) and [98](#) and FMC Regs [51](#) and [cl 54 Schedule 4](#))
5. **Limit break reporting:** certain reporting is required by the manager of a managed fund to the supervisor (or the FMA for a restricted scheme) where there has been a limit break (i.e. a material breach of the limits set out in the Statement of Investment Policy and Objectives (SIPO))(FMC Act ss [147](#), [167](#) and FMC Regs [94](#), [95](#), [96](#))
6. **Related party transaction reporting:** the manager of a scheme must report to the supervisor (or the FMA for a restricted scheme) each quarter on certificates given in relation to transactions that provide a related party benefit (FMC Act s [147](#), [173](#), [174](#) and FMC Regs [100](#))
7. **Audit of financial product register:** the manager of a scheme must ensure that the register of regulated products kept in relation to the scheme is audited or reviewed on an annual basis by a qualified auditor or registered audit firm (FMC Act ss [217](#), [218](#) and FMC Regs [108](#), [109](#))
8. **Annual custodian assurance engagement:** the scheme custodian must obtain an annual assurance engagement to determine whether their processes, procedures, and controls are suitably designed and effectively operating to meet specified objectives (FMC Act, s [158](#) and FMC Regs [87](#), [88](#))
9. **Full portfolio holdings reporting:** the manager must lodge on the register a complete list of individual assets held by the fund as at a specified date (FMC Act s [96](#) and FMC Regs [51](#), Schedule 4, clause [54\(1\)\(d\)](#))

⁵ There is existing relief for restricted schemes under the [Financial Markets Conduct \(Restricted Schemes—Disclosure and Reporting\) Exemption Notice 2022](#) that is relevant to some reporting obligations discussed in this paper.

FMC Act financial reporting obligations

1. Financial statement obligations

Part 4 Section 213

The FMC Act s 213 “Winding-up report” requires the Supervisor (or Manager) to arrange for ‘final financial statements’ showing the financial position of the scheme as at the wind-up effective date to be prepared and audited within 4 months of the wind-up effective date. This requirement determines the value of scheme assets available for distribution and provides scheme participants with certainty around the assets and liabilities of the scheme. We are not proposing relief from this requirement.

Part 7 Sections 461A, 461D, 461H

Every Manager of a registered scheme must prepare annual audited financial statements for the scheme within 4 months of its balance date and lodge them on the Register. We refer to these final financial statements as “Part 7 financial statements”. Audited financial statements provide investors, the Supervisor and the FMA with information on the financial position of the scheme. This obligation continues during wind-up for as long as the scheme remains registered.

Effect of wind-up on Part 7 financial statements

Depending on the scheme’s wind-up effective date and balance date, s 213 and Part 7 financial statements can have diminished value or even be somewhat duplicative of each other. Collecting and compiling data in the format required for a financial statement takes time and is costly.

In wind-up, parts of the statements may not provide useful information to scheme participants. If the wind-up effective date and the balance date are close together, the statements may be very similar. When the scheme’s assets are being realised and distributed to scheme participants, the information in the financial report may not be very helpful to scheme participants. For example, reporting on the ‘Statement of Changes in Equity’ will likely have diminished value during wind-up, as schemes will not be taking on contributions and will have shifted to making distributions.

While some open-ended schemes with relatively liquid assets can wind up quickly or are able to align wind-up effective dates and balance dates, others cannot. It is likely most managed funds (which generally have liquid assets) will be wound up in less than 12 months. These schemes are unlikely to produce more than one set of audited financial before completing wind-up. Other closed-ended managed investment schemes (Other MIS⁶) are more likely to have an extended wind-up due to the need to realise illiquid assets.

2. Audit of financial statements obligations

Part 7 Section 461D and Part 4 Section 213

Both Part 7 and s 213 require financial statements to be audited by a qualified auditor. The auditor provides independent oversight of the financial position of the scheme and assurance of scheme property.

⁶ Closed-ended schemes like forestry partnerships and property syndicates that invest in a single asset class are generally known as ‘Other MIS’.

Effect of wind-up on the audit requirement

Wind-up has no impact on the requirement for Part 7 financial statements to be audited. Managers and Supervisors must continue to comply with their Part 7 obligations and must produce and lodge audited financial statements four months after every balance date.

Four options for relief in respect of financial reporting and audit of financial statements obligations

Given the timing of the Part 7 and s 213 financial statements, the impact of wind-up on what must be reported, the cost of preparing financial statements, and the value or benefit of what is being reported, we are considering four options for financial reporting relief to reduce unnecessary compliance costs while still providing scheme participants, the Supervisor and the FMA with appropriate information and oversight of the winding-up. The aim is to 'right-size' financial reporting obligations of schemes in wind-up.

The four options are:

- Option 1: Relief from Part 7 financial reporting requirements (if wind-up effective date is within four months of balance date)
- Option 2: Relief from audit requirement
- Option 3: Relief from financial reporting and audit requirements
- Option 4: Status quo - Individual relief granted on case-by-case basis

Each option presents a unique approach to providing relief regarding Part 7 financial reporting and obligations for schemes in wind-up.

We are exploring options to provide relief, but it is not our intent to exempt schemes from all reporting. We recognise the importance of scheme participants receiving timely and useful information while a scheme is in wind-up.

Option 1: Relief from Part 7 financial reporting requirements (if wind-up effective date is within four months of balance date)

We are considering an exemption from the obligation to prepare Part 7 financial statements for a scheme in the first year of wind-up if the wind-up effective date is within four months of the scheme's balance date. Under this option, should the balance date and the wind-up effective date be within four months of each other and the scheme has not yet made the final distribution and completed wind-up, the Manager or Supervisor would be exempted from preparing financial statements under Part 7. The order of the dates would not matter; the exemption would apply whether the balance date comes before or after the wind-up effective date.

Example 1: A scheme passes a resolution to wind up, with the wind-up effective date set for 15 January. The scheme's balance date is 31 March. The scheme is still winding up at the 31 March balance date. The wind-up effective date and the balance date are within four months of each other, so the exemption applies. The Manager will prepare the s 213 final financial statements as required by the FMC Act. If the wind-up continues to the balance date the following year (or beyond), the Manager will prepare, have audited, and lodge the Part 7 financial statements as per s 461A requirements.

Example 2: A scheme's balance date is 31 March. It passes a resolution to wind-up on 10 June. The dates are within four months of each other and the exemption would apply. The Manager will prepare the s 213 final financial statement. Should the scheme complete wind-up prior to the next balance date (31 March of the following year), it would have no further Part 7 reporting obligations. If the wind-up were to continue to the next balance date, the Manager would prepare, have audited, and lodge the Part 7 financial statements as per s 461A requirements.

In both examples, the s 213 final financial statements as at the wind-up effective date would still need to be prepared, audited and sent to all scheme participants and the FMA.

Proposed requirements

This option would be subject to the following:

- *If the balance date comes first*, the exemption would only apply if the previous year's Part 7 audited financial statements had been lodged on the Disclose Register in accordance with s 461H.
- *If the wind-up effective date comes first*, the s 213 financial statements are dated and signed on behalf of the Manager by two directors of the Manager or, if the Manager has only one director, by that director (as required for audited financial statements at the scheme balance date, under s 461A(2)(b)).

Initial assessment of Option 1

Relief of this type would provide some relief to all schemes. For schemes that can wind up more quickly – within four months of the balance date – they would have relief from completing the last Part 7 financial statements. For eligible schemes, this option will reduce compliance costs, as the Manager will not have to pay for one last set of financial statements to be prepared and audited.

This option recognises that requiring both s 213 and Part 7 financial statements for schemes with wind-up effective dates and balance dates within four months of each other results in duplicative reporting. Instead of requiring two very similar financial statements, this option permits the s 213 financial statements to stand as the final financial statement for schemes that can wind up quickly.

This option will not provide complete relief if wind-up extends to a second or third balance date. However, for schemes with longer wind-up periods, it would reduce compliance costs in the first year of wind-up.

Schemes with wind-ups that last for 2 or more balance dates will complete Part 7 financial statements in following years. They will only have relief in the first year of wind-up if the balance date and the scheme wind-up effective date are within 4 months of each other.

Option 1 questions

1. Do you think Option 1 supports the objectives set out in this paper, including to provide appropriate relief for schemes in wind-up while ensuring investors and other stakeholders have sufficient information?
2. Are there additional costs or benefits to Option 1 that are not outlined in this paper? Please explain.
3. If you are a Manager or a Supervisor, can you estimate the impact of implementing Option 1? Please explain in as much detail as possible.
4. Do you have any comments on the proposed requirements?

Option 2: Relief from audit requirement

Under Option 2, an exemption would be given from the s 461D Part 7 requirement for a Manager to have the scheme's financial statements audited, if the balance date occurs after the wind-up effective date and before the final distribution is made and the scheme is deregistered. This option would apply to schemes where there is more than one balance date between the wind-up effective date and the final distribution.

Example 1: A scheme passes a resolution to wind up, and the wind-up effective date is 15 January. The scheme's balance date is 31 March. The scheme's final distribution is 10 June. The Part 7 financial statements would be completed for the 31 March balance date but they would not have to be audited.

Example 2: A scheme passes a resolution to wind up and the wind-up effective date is 15 January 2026. The scheme's balance date is 31 March 2026. The scheme continues winding up through 31 March 2027 and makes its final distribution on 10 June 2027. Part 7 financial statements will be prepared and lodged at both the March 2026 and March 2027 balance dates, but they will not have to be audited as per the exemption.

In both examples, the s 213 financial statements would still need to be prepared, audited and sent to scheme participants and the FMA, and the Manager would still prepare the financial statements as required under Part 7 – but these would not have to be audited.

Option 2 would not apply to balance dates that occur before the wind-up effective date.

Initial assessment of Option 2

Relief from obtaining an audit or audits would reduce costs for schemes in wind-up. The requirement to continue to prepare and lodge an annual financial statement that complies with GAAP would provide ongoing transparency and allow for effective supervision of the scheme wind-up, which in some cases could take years.

However, without an audit, there would be no independent check that the financial statements are presented accurately and in conformity with GAAP, and no verification in relation to the scheme property. There is an increased risk of reporting inaccuracies or financial mismanagement.

Option 2 questions

5. Do you think Option 2 supports the objectives set out in this paper, including to provide appropriate relief for schemes in wind-up while ensuring investors and other stakeholders have sufficient information?
6. Are there additional costs or benefits to Option 2 that are not outlined in this paper? Please explain.
7. Do you think that an audit should be required in cases of prolonged wind-ups such as wind-ups that take two or more years to complete?

Option 3: Full relief from Part 7 financial reporting and audit requirements

Under this option, an exemption would be available from all Part 7 financial reporting and audit requirements for a scheme during wind-up. This relief would be triggered by the wind-up effective date. Under s 213, the Supervisor of the scheme (or if there was no Supervisor, the Manager) would ensure s 213 financial statements are prepared and audited as at the wind-up effective date. After the wind-up effective date, the scheme would be exempt from Part 7 financial reporting and audit obligations. The s 213 financial statements would be the final audited financial statements for the scheme.

Proposed "Wind-up Report"

Financial statements provide a comprehensive overview of a scheme's financial health and performance. If the scheme was exempt from producing audited Part 7 financial statements during wind-up, scheme participants and the FMA would not have continued access to this information.

To meet the ongoing need for relevant information during wind-up, this option would require the Manager (or if there is no Manager, the Supervisor) to prepare a clear, concise and effective **Wind-up Report**.

Using previous individual exemptions and no-actions the FMA has granted to schemes in wind-up as a guide,⁷ we have prepared a list of proposed Wind-up Report requirements below.

⁷ See [Financial Markets Conduct \(Evergreen Retirement Trust\) Exemption Notice 2021 | Financial Markets Authority](#) for an example of an individual exemption.

Proposed Wind-up Report requirements

The person who was the Manager (or if there is no Manager, the Supervisor) of the relevant registered scheme immediately before the scheme was wound up must ensure the six-monthly Wind-up Report is completed.

1. The wind-up effective date will be the triggering event for the Wind-up Report. Day 1 for the first Wind-up Report reporting period would be the first day of the month following the wind-up effective date.
2. Wind-up Report to be completed in respect of the reporting period beginning on that date (i.e. the first Wind-up Report reporting period would be the first six months of the scheme's wind-up, from Day 1 for the first Wind-up Report)
3. Wind-up Report to be completed every six months while the scheme is in wind-up.
4. Wind-up Report to be prepared within 30 days from the end of the six-month reporting period.
5. Wind-up Report to be provided to scheme participants, the Supervisor (unless the Supervisor prepares the Wind-up Report) and the FMA, and lodged on Disclose no later than 10 days after it is prepared.
6. Wind-up Report to include:⁸
 - (a) Financial statements - consisting of profit and loss statement, balance sheet, and cash flow statement. The financial statements shall:
 - i. Be prepared in the same manner for each Wind-up Report (either GAAP or 'statement of accounting policies') so Wind-up Reports are consistent and allow for comparability over time.
 - ii. Be prepared in accordance with GAAP; or
 - iii. Contain a statement of accounting policies setting out, in sufficient detail so that a user can understand the material policies that have been applied or changed, --
 1. The policies and assumptions that have been used in the preparation of the financial statements; and
 2. A description of the effect of any material changes in the accounting policies used since the financial statements prepared for the previous reporting period;
 - (b) A statement of changes in scheme property during the reporting period, including:
 - i. Any material changes to the value of net assets;
 - ii. Any other material changes to the net assets.
 - (c) A description of the actions taken or expected to be taken to realise scheme assets and settle or resolve scheme liabilities.
 - (d) Any information relating to distributions to scheme participants, including the amount and date of any distribution made during the reporting period, and information about any intended distribution and the date that the distribution will be made.
 - (e) The status of any legal action which involves the scheme.
 - (f) A reference to the scheme's last financial statements that have been lodged on the Disclose Register, and an explanation of how information can be obtained from the Register or from the Manager.

⁸ There will likely be further items included in the Wind-up Report as set out in this consultation paper in the sections that identify reporting items that should be continued through wind-up.

- (g) The contact details, including an address and business telephone number, of the Manager, the Supervisor and one or more employees or agents of the Manager to whom queries or complaints about the scheme can be made.
- (h) A statement noting where the Exemption Notice may be accessed and that the Manager is exempted from Part 7 financial reporting and audit requirements.
- (i) A statement in respect of the Wind-up Report is dated and signed by two directors on behalf of the Manager (if the Manager prepares the report) or the Supervisor (if the Supervisor prepares the report) and delivered to the Registrar for lodgement together with a copy of Wind-up Report. A statement means a statement to the effect that the Wind-up Report has been prepared with care, diligence and skill and in accordance with the relevant exemption notice.

Initial assessment of Option 3

Scheme participants would receive the audited financial statements as at the wind-up effective date pursuant to s 213, but should the wind-up continue beyond the next balance date, audited Part 7 financial statements would not be provided. The costs associated with preparing these financial statements and having them audited would be reduced. Instead, schemes would bear the cost of preparing a Wind-up Report on a six-monthly basis.

The Wind-up Report will be designed to provide information that is helpful and relevant to scheme participants and the FMA during wind-up. The Wind-up Report aims to recognise that schemes operate differently during wind-up and the information needs of scheme participants may change as well.

The Wind-up Report would not have the same content as annual financial statements and would not be audited, so it may not be comparable with previous GAAP-compliant financial statements, but would still allow for some comparability with s 213 financial statements. Because it will be provided every six months, it will allow scheme participants to follow along with what is happening during wind-up, and how assets are being realised, liabilities settled and distributions made.

However, without an audit, there would be no independent check that the information in the Wind-up Report is presented accurately and in conformity with any particular accounting policies, and no verification in relation to the scheme property. There is a risk of reporting inaccuracies or financial mismanagement.

Option 3 questions

8. Do you think Option 3 supports the objectives set out in this paper, including to provide appropriate relief for schemes in wind-up while ensuring investors and other stakeholders have sufficient information?
9. Are there additional costs or benefits to Option 3 that are not outlined in this paper? Please explain.
10. Do you agree with the proposed components that would need to be included in a Wind-up Report?
11. Do you think we would need to provide definitions for any of the components of the Wind-up Report?
12. If you are a Manager or Supervisor, please compare the costs (actual or estimated in dollars) of completing this type of financial statement with the annual costs of the Part 7 audited financial statements (including costs associated with the audit). Provide as much detail as possible.
13. Do you agree with the proposal for the Wind-up Report to be prepared every 6 months? Explain the reason for your view.
14. Do you agree that 30 days is sufficient to prepare the Wind-up Report? Explain the reason for your view.

Option 4: Status quo – individual relief granted on case-by-case basis

Under this option, no class relief would be provided from Part 7 financial reporting or audit requirements.

This recognises that audited financial statements provide important protections and that some managed funds will wind up before their next balance date and therefore not need relief. Schemes could still approach the FMA for individual tailored relief when appropriate.

Initial assessment of Option 4

Under Option 4, there would be no class relief available to schemes in wind-up from Part 7 reporting or audit requirements.

If a wind-up continues beyond a scheme's balance date, the financial statements would be prepared, audited and lodged as required under Part 7. If a wind-up continues into a second year or beyond, subsequent audited financial statements would be required as well. Scheme participants would have access to a comprehensive overview of a scheme's financial health and performance.

Should a scheme wish to seek relief through an individual exemption or no-action from the FMA, it would bear the cost of pursuing the relief. As each scheme wind-up is unique, there could be uncertainty as to what relief might be needed and whether it will be granted in every instance.

Option 4 questions

15. Do you think Option 4 supports the objectives set out in this paper, including to provide appropriate relief for schemes in wind-up while ensuring investors and other stakeholders have sufficient information?
16. Are there additional costs or benefits to Option 4 that are not outlined in this paper? Please explain.

Financial reporting and audit options question

17. Which of the four options presents the best approach to providing relief regarding Part 7 financial reporting and audit obligations for schemes in wind-up? Please explain.

FMC Act Parts 3 and 4 obligations and proposed exemptions

FMC Act Parts 3 and 4 obligations continue during wind-up for as long as the scheme is registered.

Our aim with the proposed exemptions from FMC Act Parts 3 and 4 obligations for schemes in wind-up is to reduce unnecessary compliance costs and maximise benefits for schemes and scheme participants. We also want to craft the exemption requirements in such a way that scheme participants (and the FMA) continue to receive helpful and relevant information about the scheme during wind-up.

We are considering each reporting obligation and whether, while relief may be justified, there is some specific information that would be relevant and helpful during wind-up. If information is relevant and helpful, it could be included in the Wind-up Report (under Option 3 above), or in alternative reporting, which would be required under an exemption requirement.

We are considering the following exemptions.

3. Annual report

The manager of a scheme must prepare an annual report within four months of the balance date and make this available in the prescribed manner.⁹ This must contain certain prescribed information (depending on the type of scheme) under the following section headings:

- Details of the scheme
- Information on contributions and scheme participants
- Description of the scheme
- Information on composition of the scheme
- Changes relating to the scheme
- Other information for particular types of schemes
- Financial condition and performance of the scheme
- Fees
- Scheme property
- Changes to persons involved in the scheme
- How to find further information
- Contact details and complaints

The annual report provides details about the scheme and its operations over the past year, with links to relevant additional information. Annual reports are sometimes also used as a marketing document by managers.

⁹ FMC Reg 62 and Part 5 of Schedule 4 and [Part 4](#) of Schedule 5

Effect of wind-up on the annual report

During wind-up, some information will not be as helpful to scheme participants as it would be while the scheme is actively investing. It could be confusing, misleading or result in a report that does not accurately reflect that the scheme is being actively managed through a wind-up. Therefore, preparing and making available an annual report during wind-up will likely have reduced value or benefit for scheme participants.

Below is our initial assessment of how we believe the information reported in each section may be impacted by wind-up¹⁰:

Section	Likely no effect	Likely diminished value	Rationale
Details of the scheme	✓		
Information on contributions and scheme participants ¹¹		✓	After the wind-up effective date, the scheme will no longer be taking contributions and units will be sold.
Description of the scheme	✓		
Information on composition of the scheme		✓	The number of units on issue will change as units are sold.
Changes relating to the scheme		✓	There will be many changes to the scheme during wind-up that could make it difficult to complete reporting in this format.
Other information for particular types of schemes		✓	Unit prices will fluctuate during wind-up and the current unit price can be found by searching online.
Financial condition and performance of scheme		✓	The focus will shift from active investing to realising assets and making distributions. The performance of the scheme is challenging to measure and reporting on performance likely has diminished value during wind-up.
Fees	✓		Scheme wind-up will likely incur fees and this information is helpful and relevant during wind-up.
Scheme property	✓		Wind-up will affect decisions around scheme property and this information is helpful and relevant during wind-up.
Changes to persons involved in the scheme	✓		Wind-up does not typically directly affect the persons involved in the scheme, but we will consider including in alternative reporting as the information is helpful and relevant during wind-up.
How to find further information	✓		Likely available in other easy-to-access sources.
Contact details and complaints	✓		Likely available in other easy-to-access sources.

¹⁰ Note this is an assessment of all the reporting requirements for both MIS and “Other MIS”.

Proposed exemption

We are considering an exemption for schemes in wind-up from the requirement to prepare and make available an annual report after the wind-up effective date. The wind-up will impact the benefit or relevance of many of the sections of the annual report.

As for the portions of the report that are still helpful or relevant, some of them would be included in the Wind-up Report or in alternative reporting, while others can be found in other sources. Copies of the last product disclosure statements, fund updates, financial statements and auditor's report will be available on the offer register and the scheme register (i.e. Disclose). The last reporting of the 'Other information for particular types of managed funds' can be found in the previous annual report or financial statements.

Proposed requirements

Scheme participants, the FMA and Supervisors still need to receive timely and useful information while schemes are in wind-up. The information should help readers understand the decisions being made around the wind-up, how the wind-up is progressing, and the actions a scheme is taking or planning to take to realise assets and make distributions. Some FMC Act Part 3 and 4 reporting provides information that is valuable during wind-up while other information has diminished value during wind-up.

We are considering whether there is information in the annual report that is still useful for scheme participants during wind-up and if the Wind-up Report or alternative reporting should require that this is provided to scheme participants.

The following information could help explain how the assets are being realised and how much money is available for distribution.

- Financial condition and performance of the scheme – The financial condition should be monitored during wind-up. Scheme participants would like to see the current assets and liabilities.
- Fees – Fees may be used to meet obligations and run the scheme but they also reduce the amount available for distribution.
- Scheme property – Accurate reporting on the status of the property will be useful for scheme participants to monitor wind-up.

Annual report questions

18. Do you agree with the proposal to exempt schemes in wind-up from preparing and making available an annual report? Please explain your view.
19. If you are a Manager or Supervisor, please tell us the costs (actual or estimated in dollars) of preparing and making available an annual report for a scheme in wind-up if no exemption is granted.
20. Is there any information provided in an annual report that you consider would still be useful for investors to receive during wind-up? Please explain why that information is useful.
21. Do you have a view on whether certain useful information ought to be included in some alternative form of reporting like the proposed Wind-up Report or other standalone report.

4. Fund updates

Managed funds (including KiwiSaver funds) are required to prepare and lodge a fund update and register entry.¹²

The Manager must make a fund update publicly available on its website within 20 working days after the last day of each quarter of each disclosure year. It must lodge the fund update with the Registrar within 5 working days after it is made publicly available.¹³ If the managed fund is a restricted scheme or closed scheme, or the managed fund has a closed section, fund updates must be publicly available within three months after the last day of each disclosure year, or the balance date of the scheme in each year.

Fund updates provide important information to investors about how a fund is performing, the fees paid by investors and the assets the fund is invested in. The standard format also allows fund updates to be used by investors to compare managed funds.

A fund update must contain the following sections:¹⁴

- What is the purpose of this update?
- Description of this fund
- What are the risks of investing?
- How has the fund performed?
- What fees are investors charged?
- Example of how this applies to an investor
- What does the fund invest in?
- Key personnel
- Further information
- Notes

Effect of wind-up on fund updates

During wind-up, investment decisions will be made to facilitate realising assets and making distributions. Therefore, most of the information in the fund update is not highly relevant to scheme participants or the FMA.

Proposed exemption

Because information found in the fund update (the performance of the fund, its assets and the risk of investing in the fund) is less relevant than other information during wind-up, we are considering an

¹² [FMC Regs reg 56](#) (duty to make fund update publicly available), [reg 51](#) (Information to be lodged with Registrar for updating register), [FMC Act s 97](#) (Information to be made publicly available), and [cl 54 Schedule 4](#) (Information to be lodged with Registrar for updating register)

¹³ [FMC Act s 98](#)

¹⁴ FMC Regs [Part 4 of Schedule 4](#)

exemption for schemes in wind-up from the requirement to prepare, make publicly available and lodge a fund update.

Proposed requirements

We are considering whether some of the fund update information (e.g. fees) is still useful for scheme participants to receive during wind-up. Fee information could be included in the Wind-up Report or in alternative reporting.

Fund update questions

22. Do you agree with the proposal to exempt schemes in wind-up from preparing and lodging fund updates? Please explain your view.
23. Do you think any of the information that is usually in the fund update is useful for scheme participants to receive in wind-up? If yes, please list and provide an explanation for each.
24. If you are a manager, please tell us what the costs (actual or estimated in dollars) of preparing and lodging fund updates would be for a scheme in wind-up if no exemption is granted.

5. Limit break reporting

Every registered scheme must have a statement of investment policy and objectives (SIPO). The SIPO states the investment policy and objectives of a scheme. It includes:

- the nature or type of investments that can be made and any limits on those
- any limits on the proportions of each type of asset invested in
- the methodology used for developing and amending the investment strategy, and for measuring performance against the objectives of the scheme.

If under a registered scheme's SIPO there is a limit break,¹⁵ the FMC Act requires the Manager to report the limit break to the Supervisor (or to the FMA if there is no Supervisor) as soon as practicable,¹⁶ as set out below.

Immediate limit break reporting

Where there has been a limit break, the Manager of the scheme must provide a report to the Supervisor (or the FMA if there is no Supervisor) if that limit break is not corrected within five working days after the date on which the Manager becomes aware of the limit break (regulation 94 of the FMC Regulations). The report must be provided as soon as practicable after the expiry of the five-working-day period. The report must contain the information specified in regulation 96 of the FMC Regulations.

Quarterly limit break reporting

The Manager of a MIS is required to provide a quarterly report to the Supervisor (or the FMA if there is no Supervisor) about limit breaks. This report may be combined with any other reports the Manager is

¹⁵ A material breach of any limits on either of a) the nature or type of investments to be made, or b) the proportion of each type of assets that may be invested in.

¹⁶ FMC Act section 167 Action that must be taken on limit breaks

providing to the Supervisor. The quarterly report must be provided within 10 working days after the expiry of each quarter of each year (regulation 95 of the FMC Regulations). The report must state whether there have been any limit breaks in the previous quarter to which FMC Act s 167 applies and if so, provide the information in regulation 96. FMC Regulations regulation 96 sets out what is required to be reported under regulations 94 and 95.

Effect of wind-up on limit break reporting

During wind-up, the investment strategy is no longer being followed, so SIPO limits will likely be breached and not be 'corrected'. The type and frequency of breach will vary depending on each scheme and its wind up.

Example: A scheme prescribes range limits of a maximum 55% cash and cash equivalents and a minimum 45% for fixed interest. As the scheme redeems units or realises assets during wind up, it causes a limit break. The scheme does not intend to repair the limit break as it is winding up, converting assets to cash and making distributions to scheme participants. It is possible that there will be similar limit breaks throughout wind-up.

Proposed exemption

Because the wind-up will likely impact the benefit or relevance of reporting limit breaks, we are considering an exemption from limit break reporting requirements from the wind-up effective date. We do not believe any alternative requirements are needed.

Limit break reporting questions

25. Do you agree with the proposed exemption for schemes in wind-up from all limit break reporting? Or do you think the exemption should be limited to where a limit break results from total liquidation of assets? Please explain your view.
26. If you are a Manager, please tell us what the costs (actual or estimated in dollars) of limit break reporting would be during wind-up of a scheme if no exemption is granted.

6. Related party transaction reporting

There is a general prohibition under section 173 on the Manager of a scheme entering into a transaction that provides for a related party benefit to be given. A related party transaction is a deal or arrangement made between two parties that are joined by a preexisting business relationship or common interest. For example:

- Related parties often engage in buying or leasing property from one another, such as a parent company leasing office space to a subsidiary.
- A business may lend money to a related party at non-market interest rates or with favourable repayment terms. This could include loans from shareholders to the company or vice versa.

- Related parties may transfer assets such as equipment or intellectual property at prices that do not reflect fair market value, resulting in impacts on financial reporting and tax implications.

Section 174 provides that certain types of related-party benefits are permitted including: an arm's length transaction, investments in another registered schemes, certain registered bank investments, investments made in the ordinary course of business in certain types of registered bank investments, and certain other permitted related-party benefits or transactions set out in regulations.

There are several exceptions to the general prohibition on entering into related party transactions. Under section 173, a related-party benefit may be given where the Manager notifies the Supervisor of the transaction (or transactions), including the related-party benefits being given and the key terms of the transaction. If this is done, the Manager may either obtain the Supervisor's consent to the transaction, or if s 174 applies to the transaction the Manager may certify that is the case.

Note, the Supervisor must not consent to a transaction unless one of the following applies and the Supervisor certifies that:

- it considers the transaction is in the best interests of scheme participants; or
- the transaction is approved by or contingent on approval by a special resolution of the class of scheme participants affected, or potentially affected, by the transaction.

For a restricted scheme, a related party benefit transaction may be entered into if the Manager (being the trustees of the restricted scheme acting together) certifies that:

- the transaction is in the best interests of scheme participants; or
- s 174 applies to the transaction or all related-party benefits to be given; or
- the transaction is approved by or contingent on approval by a special resolution of the class of scheme participants affected, or potentially affected, by the transaction.

The Manager of a restricted scheme cannot make any of these certifications unless the licensed independent trustee has consented to that certification.

Reporting

Under regulation 100, a Manager must provide a quarterly report to the Supervisor (or in the case of a restricted scheme, to the FMA) disclosing any certificates given in the previous quarter under s 173(2)(b) of the FMC Act (in the case of a non-restricted scheme) or s 173(4) (in the case of a restricted scheme), and, if so, include a copy of those certificates. Note that a quarterly report must be provided even when it is a 'nil report' because there were no related party certificates given in the past quarter.

Effect of wind-up on related party transaction reporting

During wind-up, managers are actively realising assets and making distributions. Related party transactions create risks for scheme participants because transactions may be improperly influenced by interest of the related party. These risks could continue to arise during wind-up when investments are sold.

Wind-up activity should be monitored for related party transactions.

Proposed exemption

We are considering requiring reporting where related party certificates have been given in the last quarter but providing relief for schemes in wind-up from the requirement for the Manager of a scheme to provide quarterly reporting of related party transaction certificates where that report would be a nil report (i.e. because no related party certificates have been given in the past quarter).

Related party transaction reporting questions

27. Do you agree with the proposal to exempt schemes in wind-up from quarterly reporting of related party transaction certificates where the report would be a nil report? Please explain your view.

28. If you are a Manager, please tell us what the costs (actual or estimated in dollars) of nil quarterly related party certificate reporting would be for a scheme in wind-up if no exemption is granted.

7. Audit of financial product register

The Manager of a scheme must ensure that a register of who holds interests in the scheme is kept.¹⁷ This must include:

- (a) the name and address of the holder; and
- (b) the date on which the product was issued or transferred to the holder, as the case may be; and
- (c) the nature of the product; and
- (d) the amount of the product (if any); and
- (e) the due date of the product (if any); and
- (f) all other prescribed particulars (if any), which must be audited annually.¹⁸

The Manager of a scheme must ensure that an annual audit or review of the register is carried out by a qualified auditor within four months after the balance date of the registered scheme. The audit must determine whether, in the auditor's opinion, there is reasonable assurance that the register, in all material respects, correctly contains the information referred to above.¹⁹

During wind-up, it is important that the scheme participant details in the register are correct so that communications and distributions reach the correct person. The register is prima facie evidence of the matters it is required to contain.²⁰ The audit requirement helps ensure the quality of the register information is maintained.

Effect of wind-up on audit of financial product register

Winding up a scheme does not generally have any effect on the audit of the financial product register.

After the wind-up effective date, schemes do not onboard new scheme participants or take contributions. Therefore, the register of who holds interests in the scheme should not change after the wind-up effective

¹⁷ FMC Act s215

¹⁸ FMC Act s 217

¹⁹ FMC Act s218and FMC Regs reg 109

²⁰ FMC Act s217(3)

date. Because the list of who holds interests will not change, there is little benefit to performing an audit on the register during wind-up. If a wind-up is extended, there will be ongoing compliance costs of completing an annual audit.

Proposed exemption

It is our initial view that schemes in wind-up should be exempt from the obligation to have their financial product register audited annually and this relief should apply from the wind-up effective date.

Audit of financial product register questions

29. Do you agree with the proposal to exempt schemes in wind-up from having their financial product register audited?
30. If you are a manager, please tell us what the costs (actual or estimated in dollars) of obtaining an audit of the scheme's financial product register would be for a scheme in wind-up if no exemption is granted.
31. Do you think we need any requirements to this relief?

8. Annual custodian assurance engagement

A scheme custodian must obtain an annual assurance engagement (and report) from a qualified auditor within four months of their relevant date in respect of the relevant period ending on the relevant date. The assurance must be done in accordance with applicable auditing and assurance standards. The custodian must provide a copy of the assurance report to certain prescribed persons within 20 working days.²¹

An assurance engagement determines whether, in the auditor's opinion, there is reasonable assurance that the custodian's processes, procedures and controls were suitably designed and operated effectively throughout that period to meet the objectives prescribed in the FMC Regulations. The assurance engagement provides an important independent check on the custodian who holds the scheme property. Although the assurance engagement relates to the custodian's processes, procedures and controls over the previous year, this is relevant to determining risk in relation to future custody of scheme property.

Effect of wind-up on annual custodian assurance engagement

A custodian's role will remain the same during wind-up. Wind-up does not typically cause challenges or changes in circumstance for custodians that would require assurance engagements. The custodian will either continue to hold the same scheme property or will hold cash prior to distributions being made.

Example 1: For a managed fund with liquid assets, winding up may be completed rather quickly. Interim distributions may mean the custodian only holds a fraction of the original scheme property and holdings may be in cash.

²¹ FMC Regulations, regs 87 and 88

Example 2: For schemes invested in illiquid assets, wind-up can take years. The custodian may continue to hold a high percentage of the original scheme property and holdings may not be in cash.

Proposed exemption

We believe the costs of obtaining a custodian assurance report when a scheme is in wind-up may outweigh the benefit for investors. We are considering an exemption from obtaining a custodian assurance report from the wind-up effective date.

Proposed requirements

To be able to rely on the exemption from obtaining a custodian assurance report, the following criteria must be met:

- the last two assurance engagements for the custodian were not qualified or adverse in a material particular
- the custodian certifies on or before the relevant date that:
 - they are not aware (after due enquiry) of any matter relating to custody of the scheme property or the design or operation of their systems, processes and controls for custody that would be likely to result in an assurance engagement being qualified or adverse in a material particular if carried out in respect of the relevant period ending on the relevant date; or
 - there has been no material adverse change to the custody of the scheme property or the design or operation of their systems, processes and controls for custody since the last assurance engagement.

Annual custodian assurance engagement questions

32. Do you agree with the proposal to exempt schemes in wind-up from obtaining an assurance engagement and report?

33. If you are a Manager, please tell us what the costs (actual or estimated in dollars) of obtaining an assurance engagement would be if no exemption is granted.

34. Do you have any comments on the requirements proposed for this relief?

9. Full portfolio holdings report

The register entry for a managed fund (excluding restricted schemes and closed funds) must include a complete list of individual assets, including the name of the asset, its value as a percentage of the fund's net asset value and, if applicable, a security identification number, ticker symbol, or exchange code used to identify the asset.

Full portfolio holdings must be filed on a biannual basis, within 40 days after 31 March and 30 September in each year.²²

Effect of wind-up on full portfolio holdings report

During a scheme wind-up, the individual assets held will change rapidly as assets are realised for distribution to scheme participants. The portfolio holdings report will therefore quickly be outdated.

Proposed exemption

The benefit of requiring this information to be registered is likely to be outweighed by the compliance costs for the scheme.

We are considering an exemption for schemes in wind-up from the requirement to lodge biannual portfolio holdings reports on the Disclose register from the wind-up effective date.

Portfolio holdings report questions

35. Do you agree with the proposal to exempt schemes in wind-up from the requirement to lodge biannual portfolio holdings reports on the Disclose register? Please explain your view.
36. If you are a Manager, please tell us what the costs (actual or estimated in dollars) would be to lodge biannual portfolio holdings reports on the Disclose register for a scheme in wind-up if no exemption is granted.
37. Is there any information provided in a portfolio holdings report that you consider would still be useful for investors to receive in wind-up? Please provide details and explain why that information is useful.

Proposed other requirements

It is likely that the relief proposal would include requirements to ensure stakeholders are appropriately notified of the scheme's intention to rely on the exemption and to make the exemption workable, such as the following:

- Scheme has a clearly defined wind-up effective date (as some of the requirements rely on the wind-up effective date to come into effect).
- Compliance with scheme wind-up requirements in FMC Act ss 212 and 213 and those set out in the scheme's governing document.
- The Manager or Supervisor provides written notice to the Registrar, the FMA, and scheme participants that they intend to rely on the exemption, along with the name of the specified scheme.
- Scheme managed investment products are no longer offered or issued.
- If for some reason the scheme is no longer in wind-up, the exemption no longer applies and the relief is terminated.

²² FMC Regulations reg 51, Schedule 4 clause 54(1)(d)

Proposed other requirements questions

38. Do you agree with the proposed other requirements? Please explain your view.
39. If you are a Manager or Supervisor, please tell us if you believe these requirements would have any impact (cost or otherwise) on winding up a scheme.

Exemption scope and information requirements

The purpose of this paper is to seek feedback on options for relief from certain FMC Act and FMC Regs obligations and the costs and/or benefits of granting or not granting the relief.

While the FMC Act does not routinely differentiate between MIS and 'Other MIS' in Parts 3, 4, and 7 obligations, there are inherent differences between types of schemes and the assets they hold. These differences impact the way a scheme winds up. While some schemes can wind up quickly and/or may be able to align wind-up effective dates and balance dates, others cannot. It is likely most managed funds (which generally have liquid assets) will be wound up in less than 12 months. 'Other MIS' are more likely to have an extended wind-up due to the need to realise illiquid assets.

Considering that the proposed relief from certain reporting, audit and assurance obligations under Parts 3, 4 and 7 of the FMC Act set out in this paper applies to all registered managed investments schemes in wind-up, we would like to also get feedback on the scope of the proposed relief.

Proposed other requirements questions

40. Do you think it is appropriate to include both MIS and Other MIS in the same class exemption?
41. Regarding reporting, audit and disclosure requirements during wind-up, what is the most important information for a) scheme participants and b) the FMA to have?
42. Are there any other reporting, audit or disclosure requirements that should be considered for exemption during the wind-up period?