

# Financial Markets Conduct (KiwiWRAP KiwiSaver Scheme) Exemption Notice 2020

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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## Notice

### 1 Title

This notice is the Financial Markets Conduct (KiwiWRAP KiwiSaver Scheme) Exemption Notice 2020.

### 2 Commencement

This notice comes into force on 14 September 2020.

### 3 Revocation

This notice is revoked on the close of 13 September 2025.

### 4 Interpretation

(1) In this notice, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**Consilium** means Consilium NZ Limited

**eligible financial adviser** means:

- (a) prior to 15 March 2021, an authorised financial adviser (as that term is defined in the Financial Advisers Act 2008); and
- (b) on and after 15 March 2021, an individual who:
  - (i) is registered under the Financial Service Providers (Registration and Dispute resolution) Act 2008;
  - (ii) is lawfully able to design an investment plan for a retail client in terms of section 431C(1)(c) of the Act; and is:

- (A) engaged to provide regulated financial advice on behalf of a financial advice provider licensed under the Act; or
- (B) is a financial advice provider licensed under the Act.

**eligible investor** has the meaning given in clause 41 of Schedule 1 to the Act

**investment options** means the equity securities, fixed interest securities, managed investment products, investment trusts, index funds, listed property trusts, cash and other investments made available by Consilium for inclusion in a Personal Plan

**investment options supplement** means a document that contains the information referred to in clauses 6(1)(f), (g) and (h)

**most recent scheme year** has the meaning given in clause 63(8) of Schedule 4 to the Regulations

**NZX** means the securities exchange operated by NZX Limited under that name

**Personal Plan** means, in respect of a scheme participant, all of the investment options selected by the scheme participant for investment by the scheme at any point in time

**personalised quarterly report** means the report relating to a Personal Plan that is prepared quarterly and which contains the information referred to in clause 6(1)(q)

**publicly available information** means, in respect of, and, if applicable to, an investment option, a link to a financial product's entry on the register entry, a link for financial products that are quoted to the relevant page for the financial product on NZX or another financial product market and, for an investment option that is a managed investment product in a managed investment scheme registered under the Act, a link to the most recent fund update for the fund to which that managed investment product relates

**Regulations** means the Financial Markets Conduct Regulations 2014

**retail client** has the meaning set out in clause 3 of Schedule 5 of the Act

**return** means, for the purposes of clauses 6(1)(q)(v) and 6(1)(q)(vii), the internal rate of return of a scheme participant's investment portfolio over the period, taking account of all cash flows, calculated using an industry-recognised money-weighted methodology

**scheme** means the KiwiWRAP KiwiSaver Scheme, comprised of the Personal Plans, the manager of which is Consilium NZ Limited

**tax paid** includes, for the purposes of clauses 6(1)(q)(v) and 6(1)(q)(vii), tax deducted at source and other tax refunds and payments charged or made to a scheme participant's account.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemptions

The manager in respect of the scheme is exempted from—

- (a) section 164 of the Act; and
- (b) regulation 56(1) of the Regulations; and

- (c) clauses 12, 18, 23, 26, 27, 28, 32, 33, 34, 36, 37, 38, 39(2)(b), 52(1)(b), 52(1)(d), 53, 54 and 80(4) of Schedule 4 to the Regulations; and
- (d) regulation 9 of the Financial Markets Conduct (Fees) Regulations 2014 to the extent that it requires a fee to be paid under Schedule 3 of those Regulations on the lodgement of a PDS or a confirmation notice for the scheme.

## 6 Conditions

- (1) The exemptions in clauses 5(a), (b) and (c) are subject to conditions that—
  - (a) the manager must not make any investments on behalf of an investor unless—
    - (i) the investor is an eligible investor in relation to the offer of managed investment products in the scheme; or
    - (ii) the investor has—
      - (A) obtained advice from an eligible financial adviser in relation to the composition of their Personal Plan; and
      - (B) determined the investment policy and objectives that are to apply to that investor's Personal Plan on the advice of the eligible financial adviser; and
      - (C) received from an eligible financial adviser in relation to the composition of their investment portfolio:
        - a. a risk indicator score that is calculated and filled in in accordance with clauses 6 to 8 of Schedule 4 of the Regulations and is accompanied by a statement in the following form:

"The risk indicator is rated from 1 (low) to 7 (high). The rating reflects how much the value of your investment portfolio's assets goes up and down. A higher risk generally means higher potential returns over time, but more ups and downs along the way.

To help clarify your own attitude to risk, you can seek financial advice or work out your risk profile at [*specify an appropriate page on an internet site maintained by, or on behalf of, or approved by Consilium, or the Retirement Commissioner, or www.cffc.org.nz*].

Note that even the lowest category does not mean a risk-free investment, and there are other risks that are not captured by this rating.

The risk indicator is not a guarantee of your investment portfolio's future performance. The risk indicator is based on the returns data for [*insert time period*]. While risk indicators are usually relatively stable, they do shift from time to time. The risk indicator will continue to be updated in future personalised quarterly reports.";
        - b. a description of the circumstances that the eligible financial adviser is aware of that exist or are likely to arise that significantly increase the risk to returns for the investor, other than circumstances that are reflected in the risk indicator; and
        - c. the annual fund charge; and
        - d. any applicable performance fees; and

- (b) the PDS for the scheme that is given to an investor under section 50 of the Act must be accompanied by an investment options supplement; and
- (c) the PDS for the scheme must incorporate the information in the investment options supplement required under clause 6(1)(f), (g) and (h) by reference to the investment options supplement; and
- (d) the register entry for the scheme must include the investment options supplement; and
- (e) if the investment options supplement is updated, the updated investment options supplement must be lodged on the register entry within 5 working days after the date the investment options supplement was updated, provided that the investment options supplement is only required to be updated:
  - (i) quarterly to reflect any changes in the investment options contained in the investment options supplement; and
  - (ii) annually to reflect any changes to the information required by clauses 6(1)(f)(iii), (iv) and (v); and
- (f) the investment options supplement must contain the following information in respect of each investment option, stated in a table:
  - (i) a description of each investment option currently available;
  - (ii) a link to any publicly available information on the investment options;
  - (iii) estimated total annual fund charge for each investment option calculated in accordance with clause 32 of Schedule 4 to the Regulations;
  - (iv) the information required by clause 34 of Schedule 4 to the Regulations, provided that references in that clause to the PDS must be read as references to the investment options supplement and provided that if the other charges are the same for each investment option, this information can be stated below the table;
  - (v) the information required by clause 37 of Schedule 4 to the Regulations, provided that references in that clause to the PDS must be read as references to the investment options supplement and provided that if the individual action fees are the same for each investment option, this information can be stated below the table;
  - (vi) a statement that—
    - (A) any changes to the investment options will only be updated quarterly; and
    - (B) any changes to the estimated total annual fund charge, other charges and various individual action fees will only be updated annually; and
- (g) the investment options supplement must contain the following information above the table referred to in paragraph (f):

an example of how the fees will apply to an investor investing in a mix of investment options under the subheading "**Example of how fees apply to an investor**", in the following form:

"[Name] invests \$10,000 in a number of investment options from the investment options supplement. He/She is charged brokerage when his/her funds are invested of  $\$[\textit{calculate}]$  ( $[\textit{specify}]$ % of **\$10,000**).

This brings the starting value of his/her investment to  $\$[\textit{specify}]$ .

He/She is also charged the management fee, which works out to  $\$[calculate]$  ( $[specify]\%$  of  $\$[specify]$ ). These fees might be more or less if his/her account balance has increased or decreased over the year and are dependent on the type of investments he/she has selected.

Over the next year,  $[name]$  pays other charges of  $\$[specify]$ .

**Estimated total fees for the first year**

Brokerage:  $\$[calculate]$

Management fee:  $\$[calculate]$

Other charges:  $\$[specify]$

If  $[name's]$  investment options include any funds, those funds may be subject to *(additional/further)* fees (including performance fees) and expenses.

This example may not be representative of the actual fees you may be charged and reflects a mix of investment options at the maximum management fee rate."; and

- (h) the investment options supplement must contain the following information included at the front of the investment options supplement under the subheading "Understanding the risk indicator", in the following form:

"A risk indicator in relation to an investor's Personal Plan will, except in the case of an eligible investor, be provided by an investor's appropriately qualified and registered adviser prior to any investments being made on behalf of the investor.

The risk indicator is rated from 1 (low) to 7 (high). The rating reflects how much the value of the fund's assets goes up and down (volatility). A higher risk generally means there is the potential for higher returns over time, but with the risk of higher losses, and there are likely to be more ups and downs along the way.

To help you clarify your own attitude to risk, you must (unless you are an eligible investor) seek financial advice from an appropriately qualified and registered adviser. In addition, you may work out your risk profile at *[specify an appropriate page on an internet site maintained by, or on behalf of, or approved by Consilium, or the Retirement Commissioner, or www.cffc.org.nz]*.

Note that even the lowest category does not mean a risk-free investment, and there are other risks that are not captured by this rating.

The risk indicator is not a guarantee of a Personal Plan's future performance. The risk indicator is based on the returns data for *[insert time period]*. While risk indicators are usually relatively stable, they do shift from time to time.":

- (i) a blank or an example risk indicator:  
(ii) a sentence in the following form:

"See the product disclosure statement (PDS) for more information about the risks associated with investing in a Personal Plan."; and

- (i) in the PDS, the KIS must contain under the subheading "**What is this?**" a statement in the following form:

**"WARNING"**

The law normally requires people who offer financial products to give certain specified information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual disclosure rules do not apply to this offer because there is an exemption for offers of investments in Personal Plans. When you invest in a Personal Plan you choose the investment options you want in your Personal Plan from a list of investment options provided by Consilium. As a result of the exemption, you may not have information that allows you to easily understand the overall risks and fees that apply to your Personal Plan. You will also not be able to easily compare an investment in a Personal Plan with other similar managed funds.

Investments in Personal Plans will not be suitable for all retail investors. Unless you are an eligible investor, you are required to receive advice from an appropriately qualified and registered adviser before committing yourself. An appropriately qualified and registered adviser can help you understand your risk profile, assist you to select investments that are suitable for you, and assist you with determining your investment policy and objectives.

We recommend you ask questions and read all documents carefully.; and

- (j) in the PDS, the KIS must contain under the subheading "What will your money be invested in?" the following information:
- (i) a description of how the scheme works, how investment options are selected and a brief description of the types of investment options offered:
  - (ii) a description of where to obtain the investment options supplement and a statement about the information contained in the investment options supplement:
  - (iii) a statement about where information on fees for the Personal Plans can be found; and
- (k) in the PDS, the KIS must contain under the subheading "**Where can you find more key information?**" a statement to the effect that no fund updates will be produced in relation to the Personal Plans due to the nature of the Personal Plans but that scheme participants will receive personalised quarterly reports which show the returns, (for quarters ending on or after the date that is the first anniversary of the date on which the scheme commences) the risk indicator, and the total fees actually charged in relation to the investment portfolio in their Personal Plan; and
- (l) the section of the PDS headed "**Description of your investment option(s)**" must include the following information:
- (i) a brief description of the types of investment options offered:
  - (ii) a brief description of where to obtain the investment options supplement:
  - (iii) a brief description of the information contained in the investment options supplement:

- (iv) a summary of how and when changes can be made to the list of investment options for the Personal Plans, including whether scheme participants will be notified of those changes and how scheme participants can otherwise obtain information about those changes:
- (v) a statement that contains the manager's investment guidelines for selecting financial products and other investments to be included in the investment options supplement; and
- (m) the section of the PDS headed "**What are the risks of investing?**" must include the following information:
  - (i) a statement in the following form:

"To help you clarify your own attitude to risk, unless you are an eligible investor you must seek financial advice from an appropriately qualified and registered adviser. In addition, you may work out your risk profile at [*specify an appropriate page on an internet site maintained by, or on behalf of, or approved by Consilium, or the Retirement Commissioner, or www.cffc.org.nz*].":
  - (ii) in relation to any investment option that is a fund that has its own fund updates produced by the manager of that fund, a statement that the latest risk indicator for that investment option is included in the fund update for that investment option and that the investment options supplement contains a link to that fund update:
  - (iii) under the subheading "**General investment risks**", a brief summary of the general investment risks that may cause the value of an investment portfolio to go up or down:
  - (iv) under the subheading "**Other specific risks**", a description of the circumstances that the manager is aware of that exist or are likely to arise that significantly increase the risk to returns for investors, other than the circumstances that are reflected in the risk indicator; and
- (n) the section of the PDS headed "**What are the fees?**" must include the following information:
  - (i) a statement in the following form:

"Information on the fees for the Personal Plans can be found in the investment options supplement.":
  - (ii) a statement that information on the fees actually charged during the most recent year will be provided in the personalised quarterly report given to each scheme participant; and
- (o) the investment options supplement must contain no information other than the information permitted by this notice; and
- (p) the manager must provide each scheme participant with an interest in a Personal Plan with a personalised quarterly report within 20 working days after the last day of each quarter of each disclosure year by—
  - (i) making it available to the scheme participant through an electronic facility (but only if the scheme participant has agreed to this method); or
  - (ii) giving it to the scheme participant or delivering or sending it to the scheme participant's last known address; and

- (q) the personalised quarterly report in respect of a Personal Plan must contain the following information in relation to the scheme participant with an interest in the Personal Plan:
- (i) the scheme participant's account balance as at the first and last day of the quarter as at which the personalised quarterly report is prepared:
  - (ii) the contributions and withdrawals made by the scheme participant over the 12-month period ending on the last day of the quarter as at which the personalised quarterly report is prepared:
  - (iii) an income schedule showing the interest and dividend receipts received over the 12-month period ending on the last day of the quarter as at which the personalised quarterly report is prepared:
  - (iv) for quarters ending on or after the date that is the first anniversary of the date on which the scheme commences, a risk indicator that is presented, calculated and filled in in accordance with clauses 5 to 8 of Schedule 4 to the Regulations in relation to the Personal Plan:
  - (v) the annual return (net of fund charges, trading expenses and tax paid) of the Personal Plan over the 12-month period ending on the last day of the quarter as at which the personalised quarterly report is prepared:
  - (vi) a footnote explaining how other taxes, not deducted at source, are calculated and when they will be reflected in the scheme participant's Personal Plan:
  - (vii) if the scheme participant has held an interest in the Personal Plan for more than one complete disclosure year, a bar graph (an **annual return graph**) showing—
    - (A) the return (net of fund charges, trading expenses and tax paid) for the Personal Plan, indicated by a bar on the graph and as a figure near the corresponding bar for each complete disclosure year since the date on which the scheme participant became a holder of an interest in the Personal Plan; and
    - (B) as the last bar on the graph, the return for the period beginning on the date on which the scheme participant became a holder of an interest in the Personal Plan and ending on the last day of the quarter as at which the personalised quarterly report is prepared; and
  - (viii) a statement in the following form:

"The calculation of your Personal Plan's performance shown is on a 'money-weighted' basis. This means that it may not be directly comparable with the 'time-weighted' returns calculated by other funds.":
  - (ix) the actual total fund charges for the Personal Plan, as a percentage of average net asset value for the most recent scheme year, and how the actual total fund charges for that period are made up by showing in a fees table consistent with the format set out in clause 65 of Schedule 4 to the Regulations—
    - (A) the total management and administration charges; and
    - (B) the amount of the total management and administration charges that is the manager's basic fee; and
    - (C) the balance of the total management and administration charges after deducting the amount under paragraph (B); and
    - (D) the total performance-based fees,



and otherwise calculated on a basis consistent with clause 63(3) to clause 63(6) of Schedule 4 to the Regulations:

- (x) the actual total other charges for the most recent scheme year calculated in accordance with clause 64 of Schedule 4 to the Regulations:
- (xi) the actual individual action charges for the most recent scheme year:
- (xii) details of the investment options that make up the Personal Plan:
- (xiii) a pie graph showing, as at the last day of the quarter as at which the personalised quarterly report is prepared, the composition of the scheme participant's investment portfolio assets according to the asset categories specified in clause 1(4) of Schedule 4 to the Regulations:
- (xiv) alongside each category in the pie graph, the percentage of the pie graph that the category represents:
- (xv) the information in clause 72 of Schedule 4 to the Regulations, provided that references to—
  - (A) the fund update must be read as references to the personalised quarterly report; and
  - (B) the specified fund must be read as references to the Personal Plan; and
  - (C) the relevant date must be read as references to the last day of the quarter as at which the personalised quarterly report is prepared; and
- (r) the personalised quarterly report must contain no information other than the information permitted by this notice; and
- (s) the register entry must contain a copy of each trade allocation policy, trade execution policy, proxy voting policy, or valuation and pricing methodology that is applied to the Personal Plans as at the last day of the most recent quarter before the date of the PDS (if any); and
- (t) if trade allocation policies, trade execution policies, or proxy voting policies, are applied to the Personal Plans, or a valuation and pricing methodology is applied to the Personal Plans, the manager must lodge with the Registrar within 20 working days after the last day of each quarter of each disclosure year in which a material change to any of those policies or that methodology have occurred, a statement that—
  - (i) specifies any material changes that have been made to those policies or that methodology during the relevant quarter; and
  - (ii) describes, in the case of a material change to a valuation and pricing methodology, the effect of the changes on the Personal Plans' net asset value; and
- (u) the manager must lodge with the Registrar, within 20 working days after the last day of each quarter of each disclosure year, a statement that specifies any material changes to the conflicts of interest described in the register entry during that previous quarter provided that no statement is required in respect of a quarter if no such changes have occurred in the quarter; and
- (v) the manager must provide each scheme participant with an interest in a Personal Plan, within 5 months after the scheme's balance date, with a notification of the final annual return (net of fund charges, trading expenses and accrued tax) of that scheme participant's Personal Plan over the 12-month period ending on that balance date.

- (2) The exemption in clause 5(d) in respect of the scheme is subject to the condition that the manager must pay fees to the Registrar on lodgement of a product disclosure statement or confirmation notice for the scheme that are equivalent to the fees that would be payable on lodgement of a product disclosure statement or confirmation notice for a financial product (other than a managed investment product in a managed fund) under Regulation 9 and Schedule 3 of the Financial Markets Conduct (Fees) Regulations 2014.
- (3) An investment options supplement does not fail to comply with clause 6(1)(o) merely because the investment options supplement contains additional information that is necessary—
  - (a) to clarify the information required under clause 6(1)(f), (g) and (h); or
  - (b) to put the information required under clause 6(1)(f), (g) and (h) in context to ensure that the information that is disclosed is not false or misleading.
- (4) A personalised quarterly report does not fail to comply with clause 6(1)(r) of this notice merely because the personalised quarterly report contains additional information that is necessary—
  - (a) to clarify the information required under clause 6(1)(q); or
  - (b) to put the information required under clause 6(1)(q) in context to ensure that the information that is disclosed is not false or misleading.

Dated at Auckland this 11th day of September 2020.



Nick Kynoch  
General Counsel  
Financial Markets Authority

### Statement of reasons

This notice comes into force on 14 September 2020. The notice is revoked on 13 September 2025.

The notice exempts Consilium NZ Limited (**Consilium**) as manager of the KiwiWRAP KiwiSaver Scheme (the **self-select scheme**) from the following provisions of the Financial Markets Conduct Act 2013 (the **FMC Act**) and the Financial Markets Conduct Regulations 2014 (the **FMC Regulations**):

- section 164 of the FMC Act; and
- regulation 56(1) of the FMC Regulations; and
- clauses 12, 18, 23, 26, 27, 28, 32, 33, 34, 36, 37, 38, 39(2)(b), 52(1)(b), 52(1)(d), 53, 54 and 80(4) of Schedule 4 to the FMC Regulations.

The notice also exempts Consilium as manager of the self-select scheme, in respect of that scheme, from regulation 9 of the Financial Markets Conduct (Fees) Regulations 2014 to the extent that it requires a fee to be paid under Schedule 3 of those Regulations on the lodgement of a PDS or a confirmation notice for that scheme.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the FMC Act, considers it appropriate to grant these exemptions because—

- the exemptions recognise the difficulties faced by Consilium as fund manager of the self-select scheme in complying with the disclosure requirements of the FMC Act and the FMC Regulations. The exemptions also recognise the uniquely high fee burden Consilium would face in relation to the self-select scheme given the requirement for lodgement fees to be

paid on a 'per fund' basis, which would result in an unintended and disproportionate compliance cost. In the absence of the exemptions, Consilium would be required to comply with disclosure requirements that are likely to result in a high compliance burden (and compliance costs) without providing useful information for investors that will help them to make decisions relating to financial products:

- the exemptions are subject to conditions that require retail investors in Consilium's self-select scheme to be advised by an appropriately qualified and registered adviser, and that provide for investors to have access to more meaningful information relating to the scheme in the PDS and a supplement to the PDS and also for investors to receive quarterly reports containing personalised investor information relating to their own self-selected portfolio:
- in these circumstances the granting of the exemptions is desirable in order to promote the purposes of the FMC Act, specifically by avoiding unnecessary compliance costs and providing for timely, accurate and understandable information to be provided to investors to assist them with making investment decisions:
- the exemption is not broader than is reasonably necessary to address the particular difficulties experienced by Consilium as manager of the self-select scheme, and is subject to conditions that require relevant information to be provided at the time of offer and on an ongoing basis to assist with investor decision making. The exemption only applies to a single managed fund where the special structure of its scheme distinguishes it from standard managed funds. The exemption from lodgement fees is on the condition that fees are paid on a basis consistent with lodgement fees for other non-managed fund issuers.