

OCTOBER 2024

Guidance on winding-up requirements for registered schemes

This document is for Supervisors and Managers of registered schemes. It provides guidance on the requirements in section 212 (Initial steps in winding up of registered scheme) and section 213 (Winding-up report) of the Financial Markets Conduct Act 2013.

Purpose of the guidance

The Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) has produced this guidance to explain our interpretation of the law, promote consistent market practices and ensure the requirements of sections 212 and 213 of the Financial Markets Conduct Act 2013 (FMC Act) are met.

We have observed different approaches to compliance with sections 212 and 213. This has led to increased engagement by the FMA with Supervisors and Managers, resulting in inefficiencies and increased costs.

Sections 212 and 213 of the FMC Act ensure investors and the FMA receive adequate information about a scheme's assets and how those assets will be distributed.

We encourage Supervisors and Managers to consider the matters set out in this guidance to ensure they comply with sections 212 and 213.

Background

A registered scheme¹ (**scheme**) entering a voluntary wind-up process or whose wind-up has been ordered by the Court must follow the requirements in sections 212 and 213 of the FMC Act (see **Appendix 1** for a copy of these sections).

The FMA considers the general requirements of sections 212 and 213 of the FMC Act are to:

- inform the FMA, and in the case of a KiwiSaver scheme or complying superannuation fund, Inland Revenue, about the wind-up;

¹ Defined in section 6 of the FMC Act as a managed investment scheme that is registered on the register of managed investment schemes.

- determine the value of the net assets available for distribution on the commencement of wind-up² by preparing final financial statements (financials) that are audited as at the date the wind-up ‘takes effect’ (wind-up effective date);
- provide the audited financials and details of the intended distribution in a timely manner to the FMA and scheme participants; and
- inform the FMA of the date the distribution is completed.

Provision of audited financials and distribution details enables the FMA and investors to consider and check the information to identify any mistakes or discrepancies. Section 213(1)(c) enables a partial distribution of assets at any time before a copy of the financials is sent to the FMA unless prohibited by the governing document.

Where a Supervisor or Manager has not met the requirements set out in sections 212 or 213, we will engage with them to understand the approach they have taken, and whether this has adversely affected outcomes for investors, as part of forming our view on what enforcement action or other regulatory response should be taken.

Section 212 Initial steps in winding up of registered scheme

For a scheme to begin the process of a voluntary wind-up, a resolution must be passed in accordance with the scheme’s governing document.³

Provide a copy of order or resolution to the FMA

Once the resolution is passed, the scheme’s Supervisor or Manager must send a copy of the wind-up resolution to the FMA within 10 working days⁴.

Similarly, if a Court has ordered the wind-up, a copy of the court order must be provided to the FMA by the Supervisor or Manager within 10 working days⁵.

Section 212(1)(b) of the FMC Act sets out additional requirements for KiwiSaver schemes or complying superannuation funds.

Wind-up effective date

To avoid uncertainty, the resolution should clearly specify the **wind-up effective date**. The wind-up effective date is the date when the scheme’s wind-up begins. The wind-up effective date selected will often depend on the nature of the assets held by the relevant scheme, and when and how they are to be realised.

The wind-up effective date may be the date of the resolution or court order, another specified date or the date of a future event (e.g. when a sale and purchase agreement for the scheme’s assets is made unconditional, or when the settlement of the scheme’s assets occurs), specified in the resolution or court order. If the resolution does not clearly state the wind-up effective date, then it will likely be the date on which the wind-up resolution was passed/signed.

² We note that the value of assets available for distribution may change during the wind-up process since wind-up costs, tax liability, and the value of investments are not always fixed.

³ Wind-ups can also be initiated by court order as per FMC Act 212(1).

⁴ Section 212(1)(a) of the FMC Act

⁵ Section 212(1)(a) of the FMC Act

Example

A limited partnership that is a registered scheme has passed a resolution to wind up the scheme. The resolution states that following the sale of the partnership's assets, the partnership will be dissolved.

This example resolution does not specify a wind-up effective date and so it will be taken as the date of the resolution.

Example

A registered scheme holds one real estate property. An agreement has been entered into for the sale of the property. The scheme has passed a resolution to wind up the scheme. The resolution states that the wind-up will take effect on the settlement date of the sale.

This example uses clear language to determine the wind-up effective date of the scheme.

Example

A scheme holds equities in multiple jurisdictions. The scheme plans to convert equities to cash and distribute to scheme participants. The wind-up resolution sets the wind-up effective date as the balance date of the scheme.

This scheme holds multiple assets that are highly liquid. This means the scheme can determine when it wants to wind up (it is not dependent on a third party or external factors to realise value of assets and make distributions). The resolution sets the wind-up effective date to be the balance date of the scheme.

If a wind-up effective date was immediately before, on or after the date of final distribution, it may present practical difficulties. Where the financials and/or distribution plan have not yet been provided to the FMA or scheme participants, any mistake or dispute around the financials and/or distribution plan will be more difficult to resolve. And because the costs of wind-up are not typically known until after the wind-up effective date, final distribution prior to that is undesirable.

Best practice for a scheme wind-up is for a Manager or Supervisor to:

1. Resolve to wind up and set a wind-up effective date;
2. Prepare audited financials as at the wind-up effective date;
3. Provide audited financials and distribution plan to scheme participants and the FMA (the scheme may make partial distributions during this time);
4. Complete distributions and notify the FMA that distribution is complete.

Section 213 Winding up report

We have summarised the requirements of section 213 of the FMC Act below. The person who was the Supervisor or Manager must ensure that:

- a) The financials as at the wind-up effective date are prepared and audited within 4 months after the wind-up effective date⁶.
- b) The audited financials are prepared in accordance with generally accepted accounting practice⁷.
- c) Within 20 working days after the audit is completed, the audited financials are provided to the FMA and every person who was a scheme participant immediately before the scheme was wound up⁸.
- d) When the FMA and the scheme participants receive a copy of the audited financials, they are also advised in writing as to how remaining assets (if any) are to be distributed⁹.

Distributions

Distributions can be made at any time unless prohibited by the scheme's governing document. Section 213(c) states the Manager or Supervisor 'may make a partial distribution of assets at any time before a copy of the final financial statements is sent to the FMA'.

To ensure wind-up costs are covered, it is appropriate for the Manager or Supervisor to hold a portion of scheme assets undistributed until the financials have been sent to all scheme participants. In the event a Manager or Supervisor makes a full distribution before financials have been sent to all scheme participants, there is a risk further costs would have to be covered by the Manager or Supervisor.

Partial distributions will vary from scheme to scheme and may depend on factors such as the liquidity of the assets, the number of scheme participants, how quickly the scheme may be wound up, and other scheme duties or obligations such as additional reports or audits that need to be made.

Given the requirements set out in sections 212 and 213, the best practice is for Supervisors or Managers to provide scheme participants and the FMA with the plan for how assets will be distributed – along with a copy of the audited financials – before all the assets have been distributed. This ensures scheme participants receive information about the wind-up in sufficient time to understand and question the proposed distribution if necessary.

Giving scheme participants the opportunity (information and time) to understand and question the proposed distributions is a way to ensure the proposed distribution plan is equitable and complies with governing documents. This transparency promotes trust that the scheme is acting in their interest.

⁶ Section 213(1)(a) of the FMC Act

⁷ Section 213(1)(a) of the FMC Act

⁸ Section 213(1)(b)(i) of the FMC Act

⁹ Section 213(1)(b)(ii) of the FMC Act

Final distribution of assets

The Supervisor or Manager must advise the FMA of the date on which the distribution of assets is complete¹⁰.

The distribution of assets is not complete until scheme participants have been paid their final entitlements and remaining funds have been transferred to the Treasury (for schemes that were set up as trusts) or Inland Revenue (if set up otherwise). This ensures that funds continue to be protected where scheme participants cannot be reached (commonly known as 'Gone No Address' or 'GNA' funds). The publicly available information on unclaimed monies held by the Treasury and Inland Revenue helps scheme participants claim monies that may be owed to them.¹¹

We encourage Managers to be proactive and consider whether identifying and tracing GNA scheme investors prior to the wind-up effective date is feasible. Investigating, searching public records and making address requests before a scheme is wound up can help mitigate delays sometimes caused by GNA tracing.

Managers should take all reasonable steps to locate scheme participants within a reasonable timeframe. Where scheme participants cannot be located within a reasonable timeframe, remaining funds must be transferred to Treasury or Inland Revenue. Only when that has happened will the distribution of assets be complete.

If a Manager considers that any funds payable to a scheme participant do not need to be paid to the Treasury or Inland Revenue to complete scheme wind-up, we expect the Supervisor or Manager to explain why.

The Supervisor or Manager can request that the FMA extend the time within which the scheme is required to comply with any of the requirements under section 213¹². Any such request should explain the reasons why the extension is appropriate.

¹⁰ Section 213(1)(d) of the FMC Act

¹¹ See [Unclaimed money \(ird.govt.nz\)](https://ird.govt.nz) and [Unclaimed money | The Treasury New Zealand](#) for information about how to claim unclaimed money held by IRD and the Treasury.

¹² Section 213(2) of the FMC Act

Standard FMC Act and FMC Regulations obligations

Schemes in wind-up must continue to comply with standard reporting, audit and assurance obligations under Part 3 (Disclosure of offers of financial products), Part 4 (Governance of financial products) and Part 7 (Financial reporting) of the FMC Act along with corresponding FMC Regulations.

The FMA understands that as funds are distributed in wind-up, these standard reports, audits, or assurances may not be as meaningful to investors. In some situations, the cost of complying with these standard obligations may outweigh the benefits of compliance where the original purpose of the obligation will no longer be met.

The FMA intends to consult on a class exemption aimed at providing relief from standard FMC Act and FMC Regulation reporting obligations for schemes in wind-up. Once the exemption (if any) is in place, we will consider if any update to this guidance is necessary.

Where possible, Supervisors or Managers may want to align the wind-up process with the annual balance date to avoid preparing multiple sets of financial statements.

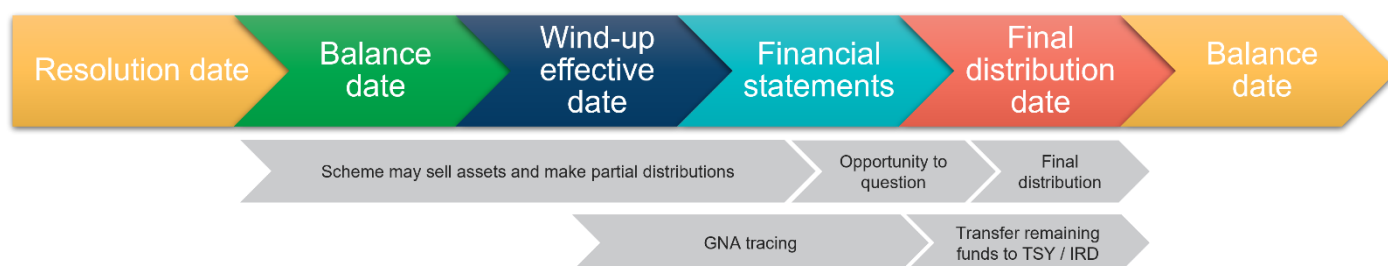
We encourage Supervisors and Managers to promptly engage with us if:

- they have questions about this guidance;
- the burden of meeting standard FMC reporting obligations outweighs the benefit to investors; or
- there is a risk of contravening financial reporting requirements.

The diagram below illustrates how a scheme wind-up might take place alongside Part 7 annual financial reporting in relation to the balance date.

Appendix 2 has other example timelines that illustrate how schemes with liquid or illiquid assets might wind up and could align dates.

Example wind-up timeline



1. **Resolution date** – copy of resolution sent to the FMA within 10 working days
2. **Balance date** – FMC Act Part 7 financial statements to be prepared within 4 months of this date (may fall anywhere on the timeline – this is just an example)
3. **Wind-up effective date** – date when wind-up commences (should be clearly stated – may be resolution date or some other date)
4. **Financial statements – as per FMC Act s213 and Part 7**
 Under FMC Act s213, the scheme has 4 months to lodge audited financial statements (as at wind-up effective date) and must provide these to the FMA and investors within 20 working days of audit
 Under FMC Act Part 7, the scheme has 4 months to lodge audited financial statements (as at balance date)
5. **Final distribution date** – Manager or Supervisor will notify the FMA of final distribution date

Appendix 1 – Sections 212 and 213 of the FMC Act

212 Initial steps in winding up of registered scheme

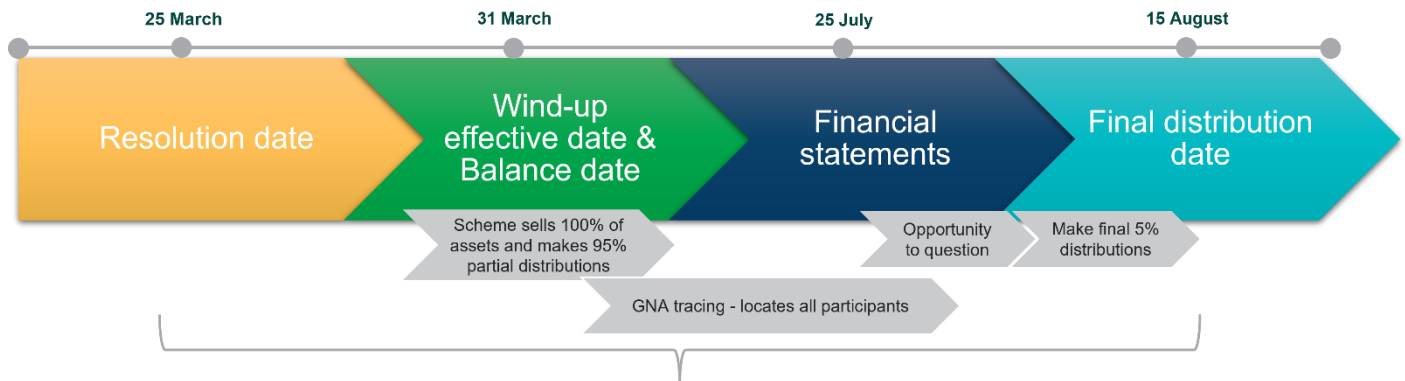
- (1) If a registered scheme is to be wound up, the supervisor or (if there is no supervisor) the manager must, within 10 working days after a winding-up resolution or an order by the court that the scheme be wound up is made,—
 - a) give a copy of any order or resolution to the FMA; and
 - b) in the case of a KiwiSaver scheme or a complying superannuation fund,—
 - i. give a copy of any order or resolution to the Commissioner of Inland Revenue; and
 - ii. give notice to the Commissioner of Inland Revenue of the name, tax file number, and address of each member of the registered scheme.
- (2) See [sections 50 to 52](#) of the KiwiSaver Act 2006 (which set out the effect of notice to the Commissioner of Inland Revenue in relation to members of a KiwiSaver scheme) and [subpart 3](#) of Part 2 of that Act (which relates to the transfer of members' interests to another KiwiSaver scheme).
- (3) A supervisor or manager that contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$50,000.
- (4) The offence in this section is an infringement offence (see [subpart 5](#) of Part 8).

213 Winding-up report

- (1) The person who was the supervisor of the relevant registered scheme or, if there was no supervisor, the person who was the manager of the relevant registered scheme immediately before the scheme was wound up—
 - a) must, within 4 months after the date on which the winding up takes effect, ensure that final financial statements of the scheme, showing the financial position of the scheme as at the date on which the winding up takes effect, are prepared in accordance with generally accepted accounting practice and audited; and
 - b) must, within 20 working days after the final financial statements have been audited, ensure that—
 - i. a copy of those financial statements is sent to the FMA and to every person who was a scheme participant immediately before it was wound up; and
 - ii. the FMA and the scheme participants are advised in writing as to the manner in which the remaining assets (if any) of the scheme are to be distributed; and
 - c) may make a partial distribution of assets of the scheme at any time before a copy of the final financial statements is sent to the FMA under paragraph (b) (unless prohibited by the governing document); and
 - d) must inform the FMA of the date on which the distribution of the assets is completed.
- (2) The FMA may, by giving notice to the relevant person, extend the time period within which a person must comply with any of the requirements set out in this section.
- (3) A person that contravenes—
 - a) subsection (1)(a) commits an offence:
 - b) subsection (1)(b) commits an offence:
 - c) subsection (1)(d) commits an offence.
- (4) A person that commits an offence under subsection (3) is liable on conviction to a fine not exceeding \$50,000.
- (5) Each offence in subsection (3) is an infringement offence (see subpart 5 of Part 8).

Appendix 2 – Wind-up timelines

Liquid asset wind-up example timeline



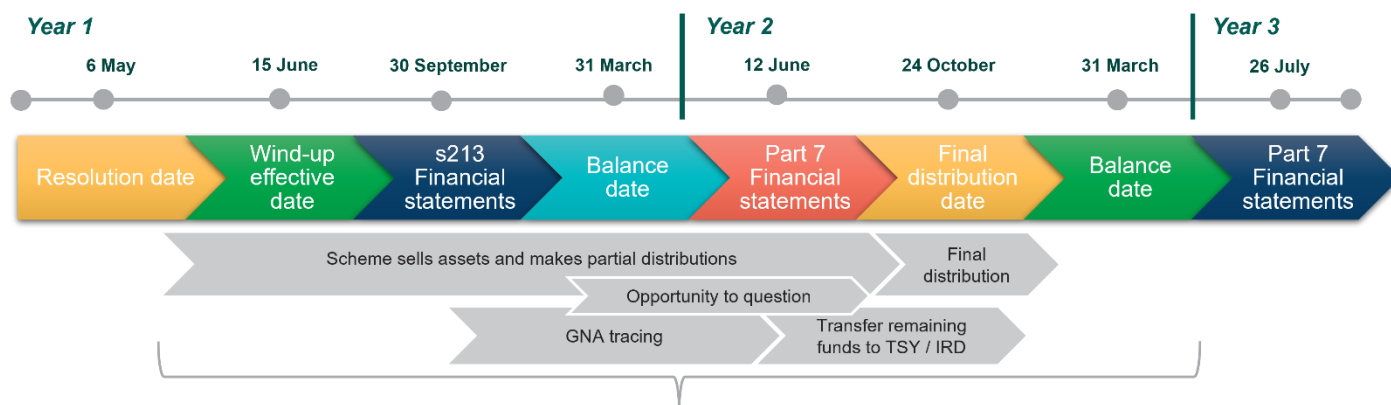
- Investors receive 95% of moneys owed in 7 days after wind-up effective date and the entire wind-up takes less than 5 months
- Alignment of wind-up effective date and balance date means only 1 audited financial report is required.

The timeline above is an illustration of how a scheme comprised of primarily liquid assets might wind up.

It shows a scheme wind-up where the assets are sold within a week of resolution and wind-up date.

1. The resolution date is 25 March
2. The wind-up effective date and balance date are both 31 March
3. The financial statements lodged on 25 July can be used to meet reporting requirements set out in the FMC Act Part 7 (within 4 months of balance date) and section 213 (within 4 months of wind-up effective date – and provided to the FMA and investors within 20 working days)
4. The period between when the scheme wind-up financial statements are lodged and the final distribution date provides an opportunity for scheme participants to question the proposed distributions and allows Supervisors and Managers to make final distributions
5. The final distribution date is set as 15 August

Illiquid asset (property/trust) wind-up example timeline



- Due to the nature of the assets being illiquid, it takes almost 12 months to sell off assets and pay investors moneys owed.
- The entire wind-up takes just over 1 year.
- Timing of wind-up requires 2 audited financial reports – the s213 report and Part 7 report (unless No Action or class exemption)

The timeline above is an illustration of how a scheme comprised of mostly illiquid assets (such as a commercial property or forestry scheme) might wind up.

1. The resolution date is 6 May
2. The wind-up effective date is 15 June
3. As per section 213, the entity is required to prepare financial statements within 4 months from the wind-up effective date and provide these to the FMA and investors within 20 working days
4. Investors have an opportunity to question the allocation and distribution of funds
5. The scheme's balance date is 31 March and financial statements are lodged as required under Part 7 of the FMC Act
6. The settlement date for the sale of the assets may occur later in the wind-up, leading to a final distribution date of 24 October