

8 May 2009

Ashley Tomlinson
Competition, Trade, and Investment Research
Ministry of Economic Development
PO Box 1473
Wellington

ASFONZ SUBMISSION ON THE PROPOSED CHANGES TO THE SECURITIES REGULATIONS 1983

We wish to submit the attached in respect of the changes to the Securities Regulations 1983, as proposed by the discussion document released in April 2009.

ASFONZ is a national, not-for-profit, apolitical membership organisation that represents the interests of employers who offer workplace superannuation, their trustees and members, as well as superannuation industry service providers and professional advisers.

Our membership embraces all types of workplace superannuation schemes (KiwiSaver, public and corporate, union-sponsored and industry-based), as well as employers and service providers to the workplace superannuation industry. Current membership comprises around 100 major workplace superannuation schemes and around 50 organisations and individuals representing the various product and service providers for workplace superannuation. Together, our members support the retirement savings of over one million New Zealanders, and look after more than 90% of total funds under management through workplace superannuation schemes and KiwiSaver.

The **mission** of ASFONZ is to be the Voice of Workplace Savings, advancing the sustainable, effective, and efficient delivery of workplace savings outcomes for all involved.

ASFONZ seeks to achieve that mission through:

- Promoting ASFONZ as the “Voice of Workplace Savings”
- Working with the Government to develop policies that achieve improved workplace savings and KiwiSaver outcomes
- Identifying and promoting initiatives and reforms that will provide efficiencies and enhancements to minimise the extent to which regulatory factors impede delivery of effective and efficient workplace savings outcomes, and those that will encourage sustainable participation in workplace savings
- Supporting employers, trustees and providers in their delivery of optimal workplace savings outcomes
- Improving public confidence in workplace savings by consistently reinforcing integrity, accountability, and professionalism within the workplace savings industry
- Serving ASFONZ members, and its supporters, by providing a range of services to meet their needs and deliver value for their participation

Contact:

Bruce Kerr
Executive Director, ASFONZ
PO Box 19-194, Wellington, NZ
Ph. (04) 381 3382
Fax (04) 381 3392
Mob. (027) 284 0481
Email Bruce.kerr@asfonz.org.nz
Web Site www.asfonz.org.nz

Thank you for the opportunity to make this submission.

Yours sincerely

David Ireland
Chairman

Bruce Kerr
Executive Director

ASFONZ

(The Association of Superannuation Funds of New Zealand)

Submission to the

Ministry of Economic Development

on the

**Proposed changes to the Securities Regulations
Discussion Document**

8 May 2009

Our submission

General comment

ASFONZ is pleased to have the opportunity to comment on the current review of the Securities Regulations 1983. The costs and resources required to comply with some of the technical requirements of the current Regulations has been a constant source of concern for our members. Any changes that will enhance the sustainable, efficient and effective delivery of workplace savings outcomes is welcomed.

ASFONZ is, however, concerned that the changes suggested in the discussion document fail to address key aspects of the Securities Regulations that have caused concerns for providers, and in particular the workplace savings investment industry and employers involved in workplace savings, for over a decade. By simply altering some of the peripheral provisions and technical matters, the changes fail to deal with a number of core requirements of the Regulations that place significant compliance costs and constraints on providers, and reduce the effectiveness of the disclosure regime.

ASFONZ is also concerned that making changes that require providers to revise disclosure document templates and procedures on an interim basis, when a significant review and replacement of the broader securities legislative framework is due to take place in the near future (as foreshadowed in your summary of findings under the so far partially implemented Review of Financial Products and Providers) . This may give rise to inefficiencies, with changes required to be made at this point in time having a limited shelf life. We therefore urge that any changes allow flexibility for providers in terms of whether or not to adopt the new rules, where possible.

Furthermore, in ASFONZ's view the current review places insufficient emphasis on the need to reduce unnecessary compliance costs for those involved in workplace savings products (primarily superannuation schemes and KiwiSaver schemes), which we believe is serving to limit the uptake and development of savings through the workplace in New Zealand. ASFONZ submits that there needs to be a fair balance struck between ensuring meaningful disclosure and reducing the compliance costs to ensure the sustainable, effective, and efficient delivery of workplace savings outcomes. Any reduction of costs and compliance complications benefits all involved, limiting the extent of costs being passed from providers to investors as well reducing the extent of confusion for investors caused by some of the current rules.

Specific issues

In regard to the specific queries raised by the discussion document, the maintenance of a prospectus and accompanying investment statement are of key concern in submitting on the proposed changes. Thus the submission of ASFONZ is generally limited to those queries regarding prospectus compliance and supporting documentation in relation to offers of interests in superannuation schemes (including KiwiSaver).

At present, considerable frustration is caused through seemingly excessive compliance requirements involved in trying to maintain a prospectus. In this regard, ASFONZ strongly opposes the proposal set out in question 12 of the discussion document. Question 12 proposes that interim financial statements in prospectuses should be prepared in accordance with the applicable financial reporting standard. Such compliance, under our understanding of current applicable reporting standards, would still require the inclusion of comparative financial information, significantly increasing costs for those providers who do not already have interim financial statements built into their usual annual processes.

In order to comply with applicable financial reporting standards, comparative financial information is required to accompany interim financial statements. 'Interim Financial Reporting (NZ IAS 34), the New Zealand Equivalent to International Accounting Standard 34', requires that interim reports shall also include a comparative statement of financial position at the end of the comparable interim period of the immediately preceding financial year. Thus an organisation is required to create a new set of accounts for the equivalent period from exactly one year ago.

The pre-existing option of providing interim financial statements is generally only utilised for superannuation scheme offerings where there are difficulties in providing a Directors' Certificate to extend the life of a prospectus. The difficulty for many ASFONZ members' schemes is that they do not currently prepare interim financial statements, and providing such interim financial statements in any particular year would require the preparation of comparative financials in order to comply with the current regulatory regime. Our understanding is that comparative financial information will still be required under the proposed changes.

Section 37A(1)(c)(i) of the Securities Act 1978 allows interim statements of financial position 'in accordance with Regulations'. Theoretically, this could allow scope for short form interim statements of financial position to be utilised, saving schemes from the significant cost of preparing full interim financial statements whenever a prospectus needs to be updated and amended between the normal compliance cycle.

ASFONZ submits that the current proposal should expressly allow an exception from compliance with applicable standards to relieve interim financial statements from the requirement to include comparative financial information.

We note that section 70AA of the Securities Act 1978 provides that regulations can require compliance with generally accepted accounting practice and incorporate financial reporting standards by reference either in whole or in part, with modifications, additions, or variations to those requirements able to be specified in the regulations.

In any case, ASFONZ regards the current proposal as an interim solution until such time as the requirements of the current section 37A(1)(A)(c) are able to be addressed through legislative amendment. Such an amendment should repeal the requirement for issuers to certify that statements of financial position have not materially and adversely changed, which is an inappropriate requirement in many cases.

For many collective investment vehicles (such as most superannuation schemes and KiwiSaver schemes), members invest on the basis that their eventual benefit will be the market value of their savings at the time they come to withdraw. The fact that this is the basis on which they invest will have been clearly communicated to them at the outset. Often there are express acknowledgements that investments made are subject to market risk, and may go up or down. It is a relative rarity for benefits under superannuation schemes or KiwiSaver to be tied to the balance sheet fortunes of any third party – typically only where there is some form of guaranteed return, or there is a defined benefit scheme with benefit obligations underwritten by an employer.

The requirement to certify as to no material and adverse changes in financial position in order to extend the life of a prospectus, and the strict interpretation placed on it by some industry participants, forced a number of ASFONZ members to close their schemes to new members at the end of 2008, as they were not willing to expose existing scheme members to the cost of producing full interim financial statements in order to maintain registration of their prospectuses, and the relief provided by the Securities Act (Directors' Certificates – Collective Investment Schemes) Exemption Notice 2008 was either unable to be utilised due to the applicable conditions, or was regarded as unduly burdensome.

Whilst it may be beyond the scope of the current review, the view of ASFONZ is that the requirement for a Directors' certificate under section 37(A)(1)(c)(i) should not apply in relation to market-linked investments where the return to investors is not based on the financial position of the issuer. Relieving the burden involved in producing interim financial statements so that there is a practical alternative to extending the life of an existing prospectus would be a pragmatic interim solution to address this existing anomaly.

ASFONZ also notes that at present the relevant financial reporting standard for interim financial statements, NZ IAS 34, provides that "the standard does not apply to interim financial statements included in, or accompanying, a registered prospectus as these will need to comply with the Securities Act 1978 and Securities Regulations 1983". NZ IAS 34 further provides that "the Standard applies if an entity is required by legislation or other pronouncement or elects to publish an interim financial report in accordance with Generally Accepted Accounting Practice in New Zealand (NZ GAAP). ***The Standard does not apply where the interim financial statements are included in a registered prospectus.***" (emphasis added).

Thus the reality is that interim financial statements for prospectuses need to comply with the full requirements of NZ GAAP. Therefore the proposed change will not reduce compliance costs, **unless the limitation imposed on the application of NZ IAS 34 is expressly excluded for the purposes of the Regulations.** ASFONZ submits that such an exclusion should be included.

Where the discussion document purports to make life easier for issuers by requiring them to have fully compliant financial information (as opposed to the modified information currently required under the Regulations), ASFONZ submits that it would be far more helpful for providers, and of no detriment to potential investors, if the available options were expressed in flexible terms. Thus such financial information could be portrayed by using either the current regulatory requirements, or be prepared in accordance with the proposed changes.

The discussion document, as part of the suggested technical changes, also proposes that Regulation 7A(4) be amended to permit cross-referencing of addresses (but not the corresponding names of individuals or companies) within the prescribed information, or to a directory of addresses elsewhere in the investment statement.

ASFONZ submits that if Regulation 7A is being reviewed, then the frustrations caused by Regulation 7A(4) should be amended to allow for the broad cross-referencing of all information, so that statements do not need to be repeated in multiple places under different headings in an investment statement. Thus information required can appear under one heading and simply be cross-referenced back to that original heading from subsequent sections, provided such cross-referencing is clear and the nature of the information to be found in the cross-referenced section is identified. Such an amendment would not only reduce unnecessary duplication and compliance cost, but would make investment statements simpler to read and less confusing for the general public.

Finally, **ASFONZ submits that the current Regulation review be extended to permit the distribution of annual reports to be achieved by electronic means where individuals have confirmed that they are happy to access information in electronic form.** As such, annual reports could be made available to investors via a permanent record stored on a provider's website, with a link to the annual report emailed to relevant members. Section 30 of the Superannuation Schemes Act 1989 provides that regulations may be made from time to time, by Order in Council, in regards to matters including the giving of notices required under that Act and any matters necessary for giving full effect to the provisions of the Act. It would be timely for a regulation to now be made allowing for notices to be given, and Annual Reports to be made available, by electronic means as proposed.

Submission Ends
