



Financial Markets Conduct (KiwiSaver) Amendment Regulations 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 18th day of April 2017

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 543(1)(e) and (g) and 548(1)(p) of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made after consultation with the Financial Markets Authority in accordance with section 549 of the Act.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 New regulation 64A and cross-heading inserted	2
<i>KiwiSaver fees information</i>	
64A Information relating to KiwiSaver fees to be published	2
5 Regulation 69 amended (Confirmation for KiwiSaver schemes, superannuation schemes, and workplace savings schemes)	3
6 Regulation 70 replaced (Confirmation information for KiwiSaver schemes, superannuation schemes, and workplace savings schemes)	3

70	Confirmation information for KiwiSaver schemes	3
70A	Requirements if fees required as confirmation information cannot be determined	4
70B	Confirmation information for superannuation schemes and workplace savings schemes	5
7	Schedule 1 amended	5
	Schedule	5
	New Part 3 of Schedule 1 inserted	

Regulations

1 Title

These regulations are the Financial Markets Conduct (KiwiSaver) Amendment Regulations 2017.

2 Commencement

These regulations come into force on 21 April 2017.

3 Principal regulations

These regulations amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

4 New regulation 64A and cross-heading inserted

After regulation 64, insert:

KiwiSaver fees information

64A Information relating to KiwiSaver fees to be published

For the purposes of section 97 of the Act, the manager of a KiwiSaver scheme must, on or before the date on which the confirmation information described in regulation 70(2) is provided to scheme participants, publish on an Internet site maintained by or on behalf of the manager—

- (a) the method used for calculating the approximate total sum of fees referred to in regulation 70(2)(c); and
- (b) a description of the information and assumptions used to estimate any fee or charge in accordance with regulation 70A(2); and
- (c) if any information relating to fund charges is omitted under regulation 70A(3)(b) from the confirmation information provided to 1 or more scheme participants, a statement—
 - (i) specifying the underlying funds for which information is omitted and, if available, the proportion of the specified fund's net asset value that those underlying funds represent; and

- (ii) if known, specifying which types of fund charges are omitted.

5 Regulation 69 amended (Confirmation for KiwiSaver schemes, superannuation schemes, and workplace savings schemes)

In regulation 69(3), replace “Regulations 70 and 71” with “Regulations 70 to 71”.

6 Regulation 70 replaced (Confirmation information for KiwiSaver schemes, superannuation schemes, and workplace savings schemes)

Replace regulation 70 with:

70 Confirmation information for KiwiSaver schemes

- (1) This regulation applies to KiwiSaver schemes.
- (2) The confirmation information that must be provided is, in relation to the accounting period that has expired and a particular scheme participant (A),—
 - (a) A’s balance in the scheme at the relevant date and at the end of the period; and
 - (b) the difference, expressed as a dollar amount, between A’s balance in the scheme at the relevant date and at the end of the period (but *see* subclause (3)); and
 - (c) the approximate total sum, expressed as a dollar amount, of the fees charged to A for the period; and
 - (d) the approximate total sum, expressed as a dollar amount (whether positive or negative), of each type of transaction that occurred during the period; and
 - (e) if, in accordance with regulation 70A(2), an estimate is used to calculate fees charged to A,—
 - (i) a statement of the fees or costs that are estimated; and
 - (ii) an explanatory note stating that an estimate has been used; and
 - (f) if, in accordance with regulation 70A(3)(b), fund charges charged in respect of underlying funds have been omitted, a statement recording that the manager is unable to determine those fund charges.
- (3) For the purposes of subclause (2)(b),—
 - (a) the confirmation information must identify the relevant date; and
 - (b) if there is no difference between A’s balance in the scheme at the relevant date and at the end of the accounting period, the confirmation information must include a statement to that effect.
- (4) For the purposes of subclause (2)(c), fees must be calculated—
 - (a) net of rebates that are paid or payable to the fund; and
 - (b) in accordance with an applicable framework or methodology (if any).

- (5) In this regulation,—
- fees** means—
- (a) fund charges; and
 - (b) individual action fees (as defined in clause 2(1) of Schedule 4); and
 - (c) other charges (as defined in clause 2(1) of Schedule 4)
- relevant date** means—
- (a) the date on which the accounting period started; or
 - (b) if A became a member of the scheme during the accounting period, the date on which A became a member
- type of transaction**
- (a) means—
 - (i) contributions to the scheme in respect of A; and
 - (ii) returns; and
 - (iii) tax withdrawals or credits; and
 - (iv) permitted withdrawals (as defined in section 4(1) of the Kiwi-Saver Act 2006); and
 - (v) transfers of money into the scheme from another retirement scheme; and
 - (vi) any other movement of money that results in an increase or decrease to A's balance in the scheme; but
 - (b) excludes fees charged to A.

70A Requirements if fees required as confirmation information cannot be determined

- (1) For the purposes of calculating the fund charges, individual action fees, and other charges referred to in regulation 70, the actual figures for fees and costs in the accounting period must be used or, if actual figures are not available (for example, if underlying fund charges are not available), the best estimate of those figures must be used.
- (2) If estimates are used, the estimates must be made by the manager on the basis of the information available after the manager has made reasonable endeavours to obtain all relevant information.
- (3) If, after the manager has made reasonable endeavours to obtain all relevant information, the manager cannot make a reasonable estimate of the fund charges charged in respect of 1 or more underlying funds because of a lack of information,—
 - (a) all known fund charges must be included in the confirmation information; and

- (b) other fund charges charged in respect of the underlying funds may be omitted from the confirmation information.

70B Confirmation information for superannuation schemes and workplace savings schemes

- (1) This regulation applies to superannuation schemes and workplace savings schemes.
- (2) The confirmation information that must be provided is, in relation to the accounting period that has expired and a particular scheme participant (A),—
 - (a) A's balance in the scheme at the start and at the end of the period; and
 - (b) the amount of each type of contribution received by the manager in respect of A during the period.

7 Schedule 1 amended

In Schedule 1, after Part 2, insert the Part 3 set out in the Schedule of these regulations.

Schedule
New Part 3 of Schedule 1 inserted

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Part 3
Provisions relating to Financial Markets Conduct (KiwiSaver)
Amendment Regulations 2017

32 Interpretation

In this Part, **regulations 64A, 70, and 70A** means regulations 64A, 70, and 70A of these regulations, as inserted by regulations 4 and 6 of the Financial Markets Conduct (KiwiSaver) Amendment Regulations 2017.

33 Application of regulations 64A, 70, and 70A

- (1) Regulations 64A, 70, and 70A apply to a KiwiSaver scheme in relation to the following accounting periods of the scheme:
 - (a) an accounting period that commenced before, but ends on or after 31 March 2017 (in respect of which confirmation information must be provided not later than 3 months after the expiry of the accounting period);
 - (b) accounting periods that commence on or after 31 March 2017.
- (2) Despite subclause (1), regulations 64A, 70, and 70A do not apply in relation to an accounting period for which confirmation information was provided in ac-

cordance with regulation 70 before the commencement of regulations 64A, 70, and 70A.

34 KiwiSaver schemes may provide alternative information for accounting periods ending before 31 March 2018

- (1) This clause applies to a manager of a KiwiSaver scheme in relation to an accounting period that ends before 31 March 2018.
- (2) The manager—
 - (a) is not required to comply with the requirements in regulations 64A and 70(2); but
 - (b) if the manager chooses not to comply, the manager must instead, for the purposes of section 100(1) of the Act, provide the following confirmation information to each scheme participant:
 - (i) the confirmation information required by regulation 70, as in force before the commencement of regulations 64A, 70, and 70A; and
 - (ii) the membership fee; and
 - (iii) the further information described in subclause (3).
- (3) The further information is the actual total fund charges for the disclosure year that ended—
 - (a) on the date on which the relevant accounting period ended; or
 - (b) most recently before the date on which the relevant accounting period ended.
- (4) In this clause,—

actual total fund charges means the fund charges, expressed as a percentage of average net asset value, for the funds in which the scheme participant was invested at the end of the disclosure year

membership fee means the amount of any fee charged to the scheme participant during the accounting period in respect of the scheme participant's membership of, or participation in, the scheme.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 21 April 2017, amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**) to prescribe new information disclosure requirements for KiwiSaver schemes.

New information disclosure requirements

The principal regulations require the manager of a KiwiSaver scheme to disclose certain prescribed information (called “confirmation information”) to each scheme participant. The information must be disclosed in respect of each accounting period. These regulations replace the disclosure requirements in the principal regulations with more extensive requirements (set out in *regulation 6, new regulations 70 and 70A*). *New regulation 70* requires the manager of a KiwiSaver scheme to provide the following to scheme participants:

- the participant’s balance in the scheme at the start of the accounting period (or, if they joined later, their balance at the time of joining):
- the participant’s balance at the end of the accounting period:
- the difference, in dollars, between the participant’s balance at the start of the accounting period (or, if applicable, the time of joining) and the end of the accounting period:
- the total fees (defined in *new regulation 70(5)*), in dollars, paid by the participant during the accounting period:
- the total sum of each type of transaction that occurred during the period (for example, the total of all contributions to the scheme in respect of the participant).

If fees cannot be determined, fees information may be estimated or, in certain circumstances, omitted. If an estimate is used, or a fee is omitted, the information provided to participants must include statements to that effect.

These regulations also require the manager of a KiwiSaver scheme to publish online certain information relating to the calculation, estimation, or omission of fee amounts included in the information provided to scheme participants.

When do the new information disclosure requirements apply from?

The new information disclosure requirements apply in relation to accounting periods that start on or after 31 March 2017. The requirements also apply to accounting periods that start before, but end on or after, 31 March 2017, but with the following exceptions:

- the requirements do not apply to an accounting period in respect of which confirmation information was provided under regulation 70 of the principal regulations before the commencement of these regulations:
- a manager of a KiwiSaver scheme may choose, for any accounting period ending before 31 March 2018, not to comply with the new requirements relating to confirmation information. A manager who chooses not to comply must instead provide certain alternative information.

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 1 December 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/business-law/ris-kiwisaver.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 20 April 2017.

These regulations are administered by the Ministry of Business, Innovation, and Employment.