NEW ZEALAND BANKERS ASSOCIATION

Submission

to the

Financial Markets Authority

on the

Statement of Investment Policy and Objectives and Limit Breaks Consultation Paper

26 September 2014

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Submission by the New Zealand Bankers' Association to the Financial Markets Authority on the Statement of Investment Policy and Objectives and Limit Breaks Consultation Paper.

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes which contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

2. The following fourteen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of New Zealand
   - Bank of Tokyo-Mitsubishi, UFJ
   - Citibank, N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - JPMorgan Chase Bank, N.A.
   - Kiwibank Limited
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited.

Background

3. NZBA is grateful for the opportunity to submit on the proposed statement of investment policy and objectives (SIPO) and reporting of material breach of any specified SIPO limits (Limit Breaks) under the Financial Markets Conduct Act 2013 (FMCA).

4. NZBA commends the ongoing commitment to meaningful consultation and engagement by the FMA and appreciates the invitation to participate in this consultation.

5. The following submission makes some brief comments on the consultation paper and answers specific questions posed.

6. If you would like to discuss any aspect of the submission further, please contact:

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SIPOs

General

7. NZBA acknowledges that transparency for investors is a key concern, and understands the important role that SIPOs play in that disclosure. However, we submit that the proposed level of detail in the SIPO, much of which will also be contained in the PDS, the governing document, or on the register, is likely to be of little additional value and may confuse investors. NZBA submits that a primary consideration in outlining the requirements of a SIPO should be to have reference to section 164 of the FMCA and the overarching purpose of the SIPO. The SIPO is for use by the manager and the trustee (rather than investors), as a governance document, and in our view this is not adequately reflected in the consultation paper.

8. NZBA fully supports the purpose of the investment strategy review. However, we submit that as currently drafted it is too detailed. For example, the requirement to outline the process for the review of the SIPO provides an unnecessary level of detail for the purpose of the SIPO. Further, we submit that this information would be more appropriately dealt with in a licensing application.

9. The consultation document is unclear as to whether the SIPO can be at fund or scheme level in the context of a managed investment scheme. NZBA submits that clarification on this point is necessary. In our view there should be flexibility to allow for a SIPO at either fund or scheme level.

Question 1

10. As drafted, SIPOs will be detailed to the point of becoming a quasi-offer document. As noted above, much of the information proposed to be included in the SIPO can be, and should be, found elsewhere (such as the PDS). The duplication of information within the SIPO will lead to a document of significant length, needing frequent review to ensure it aligns with the register or disclosure documents. For example, including information such as a risk indicator in the SIPO is an unnecessary compliance burden and is more appropriately left to the PDS. Accordingly we submit that the guidance on the SIPO should be limited to matters that provide for the investment policy and objectives of the regime and the specific matters set out in section 164.

Question 2

11. Yes, stating investment beliefs will adequately accommodate managers' differing investment approaches. However, we query the value of these statements in the SIPO, as they are more appropriate to a PDS (being more closely aligned to marketing sentiments) and given the SIPO must already expressly state the investment strategy and objectives. In particular, the SIPO should focus on documenting the investment policies and objectives that are used to manage the relevant scheme, rather than the "philosophy" of the manager.

Question 3

12. No, stating investment beliefs will not help scheme participants to understand the risk profile of the investment. This section should be deleted.

Question 4

13. NZBA considers that the concept of "prohibited investments" does not align to normal market practice, and suggests that it would be more useful to outline what a "permitted investment" is instead, as this will be a more workable concept in practice.

14. In addition, we note that the terminology used in the consultation paper is not used consistently within that paper. An example of such inconsistency is the requirement in the PDS to use the term "target asset allocation" to describe the same concept that is then referred to as "benchmark asset allocation" in the SIPO. This is likely to be confusing for industry participants and investors alike, and does not promote consistency between the SIPO and the PDS. We submit that it would be more useful if the terminology was aligned throughout the documents.

Question 5

15. We submit that no other policies should be included in the SIPO on the basis that SIPOs should be exclusively about investment policy. All other aspects of the investment are appropriately covered elsewhere, such as the PDS as noted in paragraph 11 above.

Question 6

16. NZBA submits that the list at paragraph 28 should be deleted in its entirety because any information that is material to the offer will be available on the register. Including a list, even where it is subject to issuer discretion as to which policies are "relevant", is problematic as it relays an expectation and will create interpretation issues in determining what is relevant.

Limit Breaks

General

17. We consider that the guidance should include more recognition of limit breaks that are caused by factors that are outside the control of managers. We submit that these breaks should be treated *prima facie* as non-material breaks unless there is some other factor at play that makes the break material. An example of a non-material limit break is movements in illiquid assets that are a result of market conditions, rather than caused by the manager.

18. In our view, paragraph 13(b)(i) in relation to unrated or below investment grade bonds does not reflect a reality in the NZ market, as there are a lot of bonds in the market where issuers have not had the product rated due to commercial drivers relating to costs. We submit that paragraph 13(b)(i) be amended to reflect this fact.

19. We consider that it would be beneficial if the guidance covered the treatment of a fund that is made up of a number of underlying funds. In particular, we submit that the guidance needs to address the status of events in relation to these funds (that is, funds that are comprised of several underlying funds) that are outside the control of the manager.

Frameworks and Methodologies

Question 1

20. NZBA is not in a position to comment on all types of MIS, but we reiterate our concerns outlined above in paragraph 19 regarding the treatment of funds made up of underlying funds. A registered scheme that invests in underlying funds is an investor in that underlying fund, and does not have the same degree of control, or access to information, as it would in respect of schemes it is managing directly.

Question 2

21. NZBA considers that it would be beneficial if the guidance addressed how the SIPO relates to other documents, in particular the PDS.

General

22. NZBA would like to stress that we consider this framework and methodology are not the appropriate starting point for an equivalent discussion in relation to discretionary investment management services.

23. We further submit that separate guidance would be useful in relation to pricing errors. We suggest that a further consultation could start by looking at overseas jurisdictions for comparable guidance, such as the Australian Securities and Investments Commission Regulatory Guide 94 *Unit Pricing: Guide to good practice* and IFSA Standard 17 *Incorrect Pricing of Scheme Units – Correction and Compensation*. We would welcome the opportunity to participate in this further consultation.