

16 January 2008

Liam Mason
General Council
Securities Commission
P O Box 1179
WELLINGTON

Dear Liam,

**ASFONZ SUBMISSION ON THE CHANGES TO INVESTMENT STATEMENTS –
INFORMATION ABOUT ADVISER DISCLOSURE (“the Proposal”)**

We wish to submit the attached in respect of the Changes to Investment Statements – Information about Adviser Disclosure discussed in your letter dated 19 December 2007.

ASFONZ is an independent, national, not-for-profit membership organisation founded in 1969. Its 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.

The mission of ASFONZ is to promote workplace superannuation in New Zealand.

ASFONZ seeks to achieve that mission through:

- 1 **Advocacy** – being the recognised voice for all employers and trustees involved in workplace superannuation, through:
 - (i) advocating legislative and public policy initiatives beneficial to the industry;
 - (ii) making submissions and commentary on existing legislative and public policy initiatives;
 - (iii) issuing regular press releases and other public commentary on matters of wider concern or interest to members; and
 - (iv) staying in regular contact with responsible Ministers, regulatory and industry bodies, the Retirement Commissioner and Government Departments to project, promote and advance members’ interests.
- 2 **Education** – promoting trustee, employer and member education through dedicated training programmes, newsletters and special interest seminars.
- 3 **Networking** – providing trustees, employers and service providers involved in workplace superannuation with a regular forum for sharing ideas and information on industry matters.

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Thank you for the opportunity to make this submission.

Yours sincerely

A handwritten signature in cursive script, appearing to read "John Melville".

John Melville
Chairman

ASFONZ

(The Association of Superannuation Funds of New Zealand)

Submission to the

Securities Commission

on the

**Changes to Investment Statements – Information
about Investment Adviser Disclosure**

related to the

Securities Act 1978;

Securities Markets Amendment Act 2008

January 2008

Detailed comments of the ASFONZ submission

Thank you for the opportunity to comment on the proposals outlined in the Commission's Consultation Document of 19 December 2007 and sent to us by Liam Mason. ASFONZ offers the following comments on the proposals.

ASFONZ believes that changes in requirements need to be considered from two principal viewpoints:

1. The potential investor; and
2. The Issuer

We have commented on both:

1. The potential investor.

- 1.1. ASFONZ believes that it is important that a potential investor is aware of their rights;
- 1.2. While we would prefer to simplify the proposed statement, which is similar in style and content to that currently prescribed, we feel that it would be difficult to do so without significantly diluting any value that the statement may have;
 - 1.2.1. In particular, if the main topics to be disclosed are not listed, we doubt that many members of the public would know what should be disclosed, or where to find out;
 - 1.2.2. Simply providing a "brief statement to the effect that investors are entitled to receive a document from their investment adviser, and that they should consider the information contained in this document carefully before choosing their adviser" would, in our view, be inadequate as investors would have insufficient guidance as to what information should be included in such a document to be able to determine its adequacy.
- 1.3. It appears that the word "comes" in the second paragraph (Appendix A – Choosing an investment adviser) is not the right word?
 - 1.3.1. We suggest that it may have been intended to be "becomes"¹;
 - 1.3.2. The word "is" or words "might be" could be alternatives?
- 1.4. We feel that the third paragraph (commencing "In addition, if ..") could be clarified, even though this wording is the same as currently prescribed;
 - 1.4.1. the meaning of an adviser "receives" is not clear to many. The question that arises is whether this includes, for example, a cheque made payable to the Issuer that is received by the adviser from the investor along with the application for the securities and that is passed with the application to the Issuer? Or does it refer only to money or assets that are payable to the adviser in the first instance (and that the adviser could potentially use for their own benefit)?
 - 1.4.2. similarly, the meaning of the term "methods employed" is not clear, and might reasonably be interpreted as only relating to the physical mechanics of making payment to the adviser. Presumably it is the methods employed for ensuring the security of the investor's funds prior to them being received by the Issuer and the adviser's money handling procedures that this part of the disclosure is intended to cover? If so, this needs to be spelled out with greater clarity.

¹ We note that on your web site under the link "Consultation Document – investment adviser statement" dated 21 December 2007 the word "becomes" has been used.

- 1.5. Encouraging investors to consider the disclosure statement before choosing an adviser is inadequate, and may mislead investors into thinking that is the only reason for reviewing a disclosure statement. The words "...and considering their advice" or words to that effect should be added, so that investors who are already happy with their choice of adviser are still encouraged to read the statement, which may highlight remuneration or conflict issues that ought to be taken into account when determining the vested interest an adviser may have in the advice they give.

2. The Issuer.

- 2.1. We note that Issuers currently have a dilemma in that the Securities Regulations currently require them to use a wording in their Investment Statements that they know will shortly be incorrect. It is disappointing that the regulations now being considered were not introduced to coincide with the introduction of the Regulations under the Securities Markets Amendment Act;
- 2.2. With regard to timing of any changes to Investment Statements:
 - 2.2.1. it seems unlikely that the regulations now proposed could be introduced much before 29 February 2008;
 - 2.2.2. it would be desirable for the regulations to come into effect on 29 February 2008 when the disclosure requirement actually changes;
 - 2.2.3. we do not see that there would be any material costs associated with the change in wording, given the policy signalled by the Commission to the effect that old stocks of investment statements will not be regarded as materially in error for failing to update the important information. Costs are only likely to be significant if issuers considered themselves bound to replace old stock.
- 2.3. With regard to existing Investment Statements (those dated prior to 29 February);
 - 2.3.1. We note that the Commission is of the opinion that the wording change, in itself, is not a material change and that existing Investment Statements can still be used after the new law comes into force on 29 February. For the avoidance of doubt, the ability of Issuers to continue to use Investment Statements dated prior to 29 February that do not contain any revised prescribed wording must be included in the regulations;
 - 2.3.2. It has been suggested that Issuers take steps to ensure that potential investors are aware of the change by including a copy of the new adviser statement when distributing a copy of their Investment Statements.
 - 2.3.2.1. We support this suggestion and believe that most Issuers would do so where practicable.
 - 2.3.2.2. However, it needs to be recognised that supplies of Investment Statements will be held in many places, and by many people who may not be under the control of the Issuer. It would not be practicable for the Issuer to ensure that a copy of the new adviser statement was always provided, and may add an undesirable layer of cost and administrative inconvenience to the process;
 - 2.3.3. The inclusion of a copy of the new adviser statement should therefore be on a voluntary basis and it must be made clear in the body of the revised regulations that the failure of the Issuer to do so does not, in any way, invalidate the allotment of securities;
 - 2.3.4. ASFONZ suggests that a sunset date of, say, 1 April 2009, is included for the extended use of 'old' Investment Statements, and

this should be made explicit in the regulations. In our view it is almost certain that other reasons will have led to Investment Statements being revised well before then but, in theory, an Investment Statement is not time bound and could continue indefinitely. For schemes with relatively static dynamics there may not be any reason to update the investment statement for quite some time, meaning a period of a year is an appropriate extension to ensure issuers are not put to unnecessary cost in replacing investment statements to address a non-material technical inaccuracy,