

Commissioner Peter Hughes, CNZM
States Services Commission
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9 August 2022

Dear Commissioner Hughes

**Breach of the State Services Commissioner's Code for
Standards of Integrity and Conduct**

We wish to make two formal complaints about the breach of your code for Standards of Integrity and Conduct. The first deals with the Financial Markets Authority (FMA) unwillingness to amend their Disclosure framework for Integrated Financial Products. (In that Disclosure it states that values are subjective and constantly changing and hence it cannot define what an ethical investment is.) They are therefore ignoring misleading or deceptive conduct by Kiwisaver funds. The second concerns the unwillingness of the New Zealand Superannuation Fund (NZSF) to take our complaint about them seriously, even though we identified a number of irresponsible and unethical investments.

The four Kiwisaver funds we examined, and the NZSF have invested in at least one of the 60 banks that have supplied \$3.8 trillion into the fossil fuels industry between 2016 and 2020 (amongst other shortcomings)¹. In light of the commitment by the Government to address the threats of climate warming, in significant part caused by the fossil fuel industry, it is irresponsible and untrustworthy for the FMA and the NZSF to take these stances.

In your Code you define trustworthy as avoiding any activities, work or non-work, which may harm the reputation of your organisation or of the State Services. We submit that the stances taken by these agencies harm the reputation of the States Services and lead to loss of confidence by the public. They lack integrity (the quality of being honest and having strong moral principles) due to the NZSF's use of invalid standards (UN Principles of Responsible Investment) and the FMA's absurd definition of values. It is irresponsible for the FMA and the NZSF to continue to invest or permit these investments and claim to be responsible and act with integrity.

¹ The four investment funds are Pathfinder, Generate, AMP Wealth and AMP Capital. Assessments can be seen at <wiseresponse.org.nz>

Moreover, the FMA and the NZSF ignore the existence of laws such as the Human Rights Act, the Animal Welfare Act, the Wildlife Act, and the various international and multinational conventions and agreements that New Zealand has signed up to. These are based on recognition of a set of values and designed to protect and care for people and the planet.

Hence, if the stance taken by the FMA that values cannot be defined (i.e. values are subjective and constantly changing) is applied to your code, then your code is unenforceable. This leads to a loss in confidence in the State Services.

FMA Survey and Response

The FMA survey of investors noted widespread dissatisfaction with many Kiwisaver funds². FMA claimed they have established that Managers of IFP Funds have a lot of work to do to take the necessary care not to mislead or confuse investors with greenwashing. The survey also found that reference to an outside agency was often not helpful (e.g., Responsible Investment Association of Australasia (RIAA) or the United Nations Principles of Responsible Investment (UNPRI)).

A problem highlighted by the survey is that the FMA cannot insist that funds avoid greenwashing, if they consider it is not possible to define what greenwashing is. A further problem is that the survey did not assess where funds are investing. Hence, they were unable to identify the unethical investments that have been illustrated in the four case studies that were the basis of a complaint to the FMA by Wise Response.

Mr Alex Carr, Manager of Investment Management, FMA, states that they have no legal power to define the meaning of broad terms often used in an integrated financial product context, like 'ethical', 'responsible' or 'green', or set a particular framework that all ESG funds must follow. They will not change FMA's Disclosure framework for Integrated Financial Products. In that Disclosure it states that values are subjective and constantly changing and hence it cannot define what an ethical investment is, and according to Carr, do not intend to change this position.

Mr Paul Gregory, FMA Investment Management Director, stated yesterday on Radio New Zealand that the "...last thing that anyone wants, investors or the industry, is for the FMA to decide what's ethical, and what's responsible"³. This may not be what the industry wants, but it is negligent to fail to provide information to consumers about the extent to which specific investments are actually ethical or sustainable.

² FMA review of ethical investing claims in managed funds. <https://www.fma.govt.nz/news-and-resources/media-releases/fma-review-of-ethical-investing-claims-in-managed-funds/>

³ <https://www.rnz.co.nz/national/programmes/ninetoonoon/audio/2018852105/walking-the-talk-on-ethical-investment-and-avoiding-financial-greenwashing>

They are not intending to engage with the funds on the primary basis of the Wise Response Society's complaints – which was that the investments the funds have made are incompatible with the terminology they have used in describing their funds (like 'ethical' or 'responsible'), and that investing frameworks they've used are not suitable.

We do not know if the claim that the FMA has no legal power to define terms like *ethical* is valid. If that interpretation of the law is correct, we submit it is irresponsible to continue in that opinion. It would be responsible to reply to us that this is their understanding of the law, but because of the Government's commitment to address climate warming, investigations and recommendations to change the law to rectify this oversight will be made. Such a response would enable the public to have confidence in the state services. Their understanding of the concept of values leads to widespread incredulity.

NZSF

The second complaint deals with the New Zealand Superannuation fund misleading taxpayers about their claims to be ethical. Wise Response sent an analysis of their weaknesses to the FMA and to the NZSF. These include companies identified as causing serious breaches of damage to people and/or the planet ⁴.

Examples of Norwegian Fund Exclusions (NZSF Inclusions) 2018

- **Serious violations of Human Rights:** Walmart (human and labour rights)
- **Severe Environmental Damage:** Bharat Heavy Electricals (building coal plant near forests in Bangladesh); Duke Energy (discharges from coal-fired plants); IJM Corp (palm oil plantations)
- **Gross Corruption:** ZTE Corp (bribery and corruption in 18 countries)
- **Other Serious Violations of Fundamental Ethical Norms:** Potash Corp Saskatchewan (phosphate from Sahara)

While some of these companies are not in the NZSF December 2020 list, none of them were included in the NZSF exclusion list on ethical grounds.

Examples of Norwegian Fund Exclusions (NZSF Inclusions) 2020

- **Nuclear Weapons:** Aerojet Rocketdyne; Airbus SE
- **Coal/coal-based energy:** AGL Energy
- **Severe Environmental Damage:** EL Sewdy Electric - (hydropower project in Tanzania); Genting Bhd (Palm oil)
- **Serious Violation of Individual Rights in Situations of War or Conflict:** Shapir Engineering
- **Human rights Page** - (textile production in India)

⁴http://wiseresponse.org.nz/wp-content/uploads/2021/08/Wise_Response_complaint_about_Superfund-.pdf

In the five years since the Paris Agreement, banks in which the NZSF is invested, have significantly resourced fossil fuel companies. These include Citi (\$238 b); Wells Fargo (\$223 b); Morgan Stanley (\$111 b); Barclays (\$145 b); HSBC (\$110 b); Bank of China (\$101 b); Agricultural Bank of China (\$49 b).

Ignoring this evidence means that there is also a breach of your code regarding integrity, trustworthiness, and responsibility.

We would be happy to discuss these issues with you on Zoom, if that would help.

Yours sincerely,



Professor Emeritus Liz Slooten, Department of Zoology, Otago University

Chair of Wise Response, on behalf of Wise Response Society

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The Wise Response Society is a broad coalition of scientists, engineers, planners, artists, sportspeople etc. who are urging New Zealand to face up to the question "As demand for growth exceeds earth's physical limits, causing unprecedented risks, what knowledge and changes do we need to secure New Zealand's future wellbeing?" Our website - www.wiseresponse.org.nz - contains more information, including references to the case studies and Wise Response's other initiatives. Our Patrons are Sir Alan Mark and Sir Geoffrey Palmer.