

**Reprint
as at 28 September 2012**



**Securities Act (Group Investment
Index Funds) Exemption Notice
2002**

(SR 2002/316)

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This notice is administered by the Financial Markets Authority.

Notice

1 Title

This notice is the Securities Act (Group Investment Index Funds) Exemption Notice 2002.

2 Commencement

This notice comes into force on 1 October 2002.

3 Expiry

This notice expires on the close of 30 September 2017.

Clause 3: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

distribution means the direct or indirect transfer to a holder of specified participatory securities of money or property—

- (a) that is received by the fund in respect of investments held by the fund; and
- (b) that is held on trust for holders of specified participatory securities

fund means a Group Investment Fund established under section 29 of the Trustee Companies Act 1967, or under section 63 of the Public Trust Act 2001, that is—

- (a) a passive index fund, in that it is required, under the terms of its trust deed or the terms of the offer of specified participatory securities, to hold securities as near as practically possible to the securities' proportions in an index and includes a passive index fund that is permitted, under the terms of its trust deed or the terms of the offer of specified participatory securities, to lend securities; and
- (b) named in Schedule 2

lend means to lend securities in accordance with—

- (a) the rules of a settlement system; and
- (b) a process that—

- (i) is fully, or predominantly, automated; and
- (ii) involves no discretion on the part of the persons referred to in clause 5

NZX means NZX Limited

Regulations means the Securities Regulations 2009

settlement system means a settlement system that is declared to be a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989

specified participatory security means a participatory security—

- (a) that is an interest in a fund; or
- (b) that confers upon the holder of the participatory security the right to participate in any money or property that is the subject of a distribution

trust deed, in relation to a fund, means the trust deed entered into by a trustee and a manager relating to the establishment of the fund

trustee means—

- (a) a trustee company within the meaning of section 2 of the Trustee Companies Act 1967; or
- (b) the Public Trust within the meaning of section 4 of the Public Trust Act 2001.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

Clause 4(1) **fund**: substituted, on 3 September 2010, by clause 4(1) of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2010 (SR 2010/301).

Clause 4(1) **lend**: inserted, on 3 September 2010, by clause 4(2) of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2010 (SR 2010/301).

Clause 4(1) **NZX**: inserted, on 11 June 2004, by clause 3 of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2004 (SR 2004/172).

Clause 4(1) **NZX**: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 4(1) **Regulations**: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 4(1) **settlement system**: inserted, on 3 September 2010, by clause 4(2) of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2010 (SR 2010/301).

5 Exemptions

Every trustee and manager in relation to a fund and every person acting on behalf of the trustee or manager are exempted from the following provisions in respect of any specified participatory securities:

- (a) sections 33(3) and 37(3) of the Act; and
- (b) 37A(1A)(c)(i) of the Act; and
- (c) regulation 5(1)(c) of the Regulations; and
- (d) regulation 13 of the Regulations.

Clause 5(c): replaced, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 5(d): replaced, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

5A Exemption from regulation 39 of Regulations

- (1) The trustee and manager and every person acting on behalf of either or both of them in respect of any fund for which NZX or any wholly-owned subsidiary of NZX is the manager are exempted from regulation 39 of the Regulations in respect of any specified participatory securities that are interests in that fund.
- (2) The exemption in subclause (1) is subject to the condition that the registered prospectus or any advertisement relating to the specified participatory securities must either—
 - (a) contain a statement about listing the securities or an application that is approved by the Special Division; or
 - (b) contain no statement nor otherwise imply that—
 - (i) the securities are or will be listed on a securities market; or
 - (ii) an application has been or will be made.
- (3) In subclause (2),—

application means an application to list the specified participatory securities on a securities market

Special Division means the division of the NZ Markets Disciplinary Tribunal known by that name that is constituted under rule 3.2.1 of the NZ Markets Disciplinary Tribunal Rules.

Clause 5A: substituted, on 11 June 2004, by clause 4 of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2004 (SR 2004/172).

Clause 5A heading: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 5A(1): amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 5A(2): replaced, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 5A(3): inserted, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

6 Deed of participation and written authorisation

The exemption granted by clause 5(a) is subject to the following conditions:

- (a) that the trust deed contains provisions specifying the matters set out in Schedule 1; and
- (b) that the registered prospectus contains—
 - (i) a description of the principal terms and conditions of the trust deed; and
 - (ii) a statement that the trust deed may be inspected without fee at a place (that is also stated) by any person who so requests; and
 - (iii) a statement that a copy of the trust deed will be sent to prospective and current investors, free of charge, on request; and
- (c) that the registered prospectus contains a statement by the trustee—
 - (i) that the offer of the securities complies with the trust deed; and
 - (ii) as to whether or not the trustee guarantees the repayment of securities; and
 - (iii) as to whether or not the trustee is under any obligation to ascertain whether any breach of the

- terms of the trust deed or of the offer of the specified participatory securities has occurred; and
- (d) it is a term of the offer that the accounting records of the fund are audited at least once a year by a qualified auditor; and
 - (e) that any interim statement of financial position, statement of financial performance, and statement of cash flows of the fund contained in or accompanying the registered prospectus in respect of the specified participatory securities are audited.

Clause 6(a): amended, on 28 September 2007, by clause 6 of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2007 (SR 2007/301).

7 Director's certificate

The exemption granted by clause 5(b) is subject to the condition that the certificate that relates to the registered prospectus states that, in the opinion of the directors of the issuer after enquiry by them, the financial position shown in the statement of financial position contained or referred to in the registered prospectus has not materially and adversely changed during the period from the date of the statement of financial position to the date of the certificate, other than as a result of fluctuation in the market price of the assets of the fund or the redemption of specified participatory securities.

8 Matters specified in Schedule 4 of Regulations

- (1) The exemption granted by clause 5(c) is subject to the condition that the registered prospectus contains all of the information, statements, certificates, and other matters specified in Schedule 4 of the Regulations that are applicable as though—
 - (a) a reference to a unit is a reference to an interest in a fund; and
 - (b) a reference to a unit trust is a reference to a fund; and
 - (c) a reference to a unit trust holder is a reference to a holder of an interest in a fund; and
 - (d) a reference to a unit trustee is a reference to the trustee.

(2) *[Revoked]*

Clause 8 heading: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 8(1): amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Clause 8(2): revoked, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

9 Valuation

The exemption granted by clause 5(d) is subject to the following conditions:

- (a) that the valuation included or referred to in the registered prospectus relates only to the historical values of a specified participatory security; and
- (b) that the registered prospectus contains—
 - (i) a statement of the method by which the historical values of the specified participatory security were calculated; and
 - (ii) the date of the valuation; and
 - (iii) a description of the relationship of the historical values of the specified participatory security to the index to which the fund relates.

10 Transitional provision

[Revoked]

Clause 10: revoked, on 28 September 2007, by clause 7 of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2007 (SR 2007/301).

Schedule 1

cl 6(a)

Matters to be specified in deed of trust**1 Investment of fund**

The investment or classes of investment in which the assets of the fund may be invested.

2 Capital of fund

- (1) Whether any limits as to number or amount apply to all specified participatory securities or to any class of specified participatory securities that have been or may be issued in respect of the fund and, if so, the nature of those limits.
- (2) The liability, if any, of the holders of the specified participatory securities to contribute to the fund before its winding up.
- (3) If there is, or is to be, a minimum amount of specified participatory securities that must be allotted before the commencement of the fund, a statement of that minimum amount.

3 Redemption and transfer of specified participatory securities

The terms relating to the redemption, transfer, and transmission of the specified participatory securities.

4 Winding up of fund

- (1) The circumstances in which the fund must or may be wound up, and the procedure for winding up.
- (2) The rights and liabilities of holders of specified participatory securities on, and in the course of, winding up the fund.

5 Meetings

The frequency of, procedure for convening and holding, business to be conducted at, and voting rights at meetings of holders of specified participatory securities.

6 Trustee

- (1) The terms relating to the appointment, remuneration, and, if any, removal from office of the trustee.

- (2) The powers of the trustee, including any borrowing powers and any powers to delegate the management of the fund.
- (3) The duties and liabilities of the trustee, including the duty to hold the assets of the fund according to the terms of issue of the specified participatory securities.

7 Manager

- (1) The terms relating to the appointment, remuneration, and, if any, removal from office of the manager.
- (2) The powers of the manager, including any borrowing powers and any other powers in respect of the fund.
- (3) The duties and liabilities of the manager.

8 Profits involved

The terms relating to the use or distribution of any profits of the fund.

Schedule 2

cl 4(1)

Group investment funds

Schedule 2: added, on 28 September 2007, by clause 8 of the Securities Act (Group Investment Index Funds) Exemption Amendment Notice 2007 (SR 2007/301).

- NZX 10 Fund, Group Investment Fund number 2291 established by New Zealand Guardian Trust Company Limited
- NZX 50 Portfolio Index Fund, Group Investment Fund number 2293 established by New Zealand Guardian Trust Company Limited
- NZX Australian 20 Leaders Index Fund, Group Investment Fund number 41 established by Trustees Executors Limited
- NZX Australian MidCap Index Fund, Group Investment Fund number 2292 established by New Zealand Guardian Trust Company Limited
- NZX MidCap Index Fund, Group Investment Fund number 80 established by Trustees Executors Limited

Schedule 2: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

Dated at Wellington this 27th day of September 2002.

The Common Seal of the Securities Commission was affixed in
the presence of:

[Seal]

L A J Kavanagh,
Member.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 September 2002.

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Notes

1 *General*

This is a reprint of the Securities Act (Group Investment Index Funds) Exemption Notice 2002. The reprint incorporates all the amendments to the notice as at 28 September 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Securities Act (Extension of Term, Amendment, and Transitional Provision)
Exemption Notice 2012 (SR 2012/294): clause 3

Securities Act (Group Investment Index Funds) Exemption Amendment Notice
2010 (SR 2010/301)

Securities Act (Group Investment Index Funds) Exemption Amendment Notice
2007 (SR 2007/301)

Securities Act (Group Investment Index Funds) Exemption Amendment Notice
2004 (SR 2004/172)