

**Reprint  
as at 1 May 2013**



**Securities Act (Externally Managed  
Group Investment Funds)  
Exemption Notice 2003**

(SR 2003/86)

Securities Act (Externally Managed Group Investment Funds) Exemption Notice 2003: revoked, on 1 May 2013, by clause 17 of the Securities Act (Externally Managed Group Investment Funds) Exemption Notice 2013 (SR 2013/130).

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.**



- (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 42A of the Public Trust Office Act 1957 or under section 63 of the Public Trust Act 2001 and in respect of which the trustee has appointed another party as manager of that fund

**manager** means the person acting in the promotion or management of a fund; but does not include a trustee

**Regulations** means the Securities Regulations 1983

**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** 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.

## 5 Exemption from section 33(3) of Act

Every manager and every person acting on behalf of a manager are exempted from section 33(3) of the Act in respect of specified participatory securities.

## 6 Exemption from section 37(3) of Act

Every trustee, every manager, and every person acting on behalf of either or both of them are exempted from section 37(3) of the Act in respect of specified participatory securities.

**7 Conditions to clauses 5 and 6**

- (1) The exemptions in clauses 5 and 6 are subject to the following conditions:
- (a) that the trust deed contains provisions specifying the matters set out in Schedule 1;
  - (b) that the trust deed contains provisions to the effect set out in Schedule 2;
  - (c) that the registered prospectus for the specified participatory securities 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 at a specified place by any person on request and free of charge; and
    - (iii) a statement that a copy of the trust deed will be sent to prospective and current investors on request and on payment of a reasonable fee prescribed by the manager;
  - (d) that the registered prospectus for the specified participatory securities 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 the securities; and
    - (iii) that the trustee is under an obligation to exercise reasonable diligence to ascertain whether or not the manager has breached the terms of the trust deed or of the offer of the securities;
  - (e) that the trust deed and any contract relating to the fund contain no provision that has the effect of exempting the trustee from, or indemnifying the trustee against, liability for breach of trust if the trustee fails to show the degree of care and diligence required of the trustee having regard to the provisions of the trust deed.
- (2) Subclause (1)(e) does not apply to—
- (a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or
  - (b) a provision enabling such a release to be given—

- (i) on the agreement of a majority comprising not less than three-fourths in value of the specified participatory securities held by holders voting (in person or, where proxies are permitted, by proxy) at a meeting summoned for the purpose; and
- (ii) either with respect to specific acts or omissions, or on the trustee being wound up or ceasing to act.

**8 Exemption from section 52(1) and (3) of Act**

Every manager and every person acting on behalf of a manager are exempted from section 52(1) and (3) of the Act in respect of the register of specified participatory securities kept under section 51(1)(c) of the Act.

**9 Conditions to clause 8**

- (1) The exemption from section 52(1) of the Act is subject to the condition that the part of the register that relates to the securities of a holder of specified participatory securities is, except when duly closed (but subject to any reasonable restrictions that the manager may impose, so that not less than 2 hours in each working day is allowed for inspection), open to the inspection of that holder, or a representative of that holder, free of charge.
- (2) The exemption from section 52(3) of the Act is subject to the condition that, on payment by a holder of specified participatory securities of a reasonable fee prescribed by the manager, the manager promptly provides, or causes to be provided, to that holder a copy of the part of the register that relates to the securities of that holder.

**10 Exemption from section 54 of Act**

Every manager and every person acting on behalf of a manager are exempted from section 54 of the Act in respect of specified participatory securities.

**11 Condition to clause 10**

The exemption in clause 10 is subject to the condition that the manager sends, or causes to be sent, to the holders of specified participatory securities a written statement that properly evidences the nature and ownership of those specified participatory securities—

- (a) at any time on request from the holder of specified participatory securities; and
- (b) at least once every 6 months.

**12 Exemption from regulation 3(3) of Regulations**

Every manager and every person acting on behalf of a manager are exempted from regulation 3(3) of the Regulations in respect of specified participatory securities.

**13 Condition to clause 12**

The exemption in clause 12 is subject to the condition that the registered prospectus for the specified participatory securities contains all of the information, statements, certificates, and other matters specified in Schedule 3A of the Regulations that are applicable as if—

- (a) a reference to a unit were a reference to an interest in a fund; and
- (b) a reference to a unit trust were a reference to a fund; and
- (c) a reference to a unit holder were a reference to a holder of an interest in a fund; and
- (d) a reference to a unit trustee were a reference to the trustee.

**14 Exemption from regulation 15 of Regulations**

Every manager and every person acting on behalf of a manager are exempted from regulation 15 of the Regulations in respect of specified participatory securities.

**15 Conditions to clause 14**

The exemption in clause 14 is subject to the following conditions:

- (a) that the principal assumptions and method of calculation in accordance with which the projected rate of re-

turn that may be earned by holding specified participatory securities is calculated are set out in the registered prospectus for the specified participatory securities:

- (b) that any advertisement that advertises a rate of return for the specified participatory securities contains a statement that the method of calculating the advertised rate of return is contained in the registered prospectus.

**16 Securities Act (TOWER Trust Limited) Exemption Notice 1999 amended**

*[Revoked]*

Clause 16: revoked, on 25 April 2008, by clause 5 of the Securities Act (Externally Managed Group Investment Funds) Exemption Amendment Notice 2008 (SR 2008/107).

**17 Securities Act (Tower Trust) Exemption Notice 2001 amended**

*[Revoked]*

Clause 17: revoked, on 25 April 2008, by clause 5 of the Securities Act (Externally Managed Group Investment Funds) Exemption Amendment Notice 2008 (SR 2008/107).

**18 Securities Act (Public Trust) Exemption Notice 2001 amended**

*[Revoked]*

Clause 18: revoked, on 25 April 2008, by clause 5 of the Securities Act (Externally Managed Group Investment Funds) Exemption Amendment Notice 2008 (SR 2008/107).

**19 Securities Act (New Zealand Permanent Trustees Limited) Exemption Notice 2002 amended**

*[Revoked]*

Clause 19: revoked, on 25 April 2008, by clause 5 of the Securities Act (Externally Managed Group Investment Funds) Exemption Amendment Notice 2008 (SR 2008/107).

**Schedule 1**

cl 7(1)(a)

**Matters to be specified in trust deed****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 for 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, the winding up of the fund.

**5 Meetings**

The procedure for convening and holding, 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 the 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 connection with 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.

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**Schedule 2**

cl 7(1)(b)

**Provisions to be contained in trust deed**

**1 Duties of trustee**

The trustee must exercise reasonable diligence to ascertain whether or not any breach of the terms of the trust deed or of the offer of the specified participatory securities has occurred and, except if the trustee is satisfied that the breach will not materially prejudice the interests of the holders of the specified participatory securities, must do all the things that the trustee is empowered to do to cause any breach of those terms to be remedied.

**2 Right of trustee to obtain information**

- (1) The trustee is entitled to receive all notices and other communications relating to the fund that any holder of the specified participatory securities is entitled to receive.
- (2) The trustee, or any representative of the trustee (being a person authorised to act for the purposes of this clause by the trustee), is entitled to attend any meeting of the holders of the specified participatory securities, and to be heard at that meeting on any part of the business of the meeting that concerns the trustee,

as the trustee, or the holders of the specified participatory securities.

- (3) The manager of the fund must, from time to time,—
  - (a) at the request in writing of the trustee, make available for the trustee’s inspection the whole of the accounting and other records relating to the fund; and
  - (b) give to the trustee any information that the trustee requires with respect to all matters relating to those records.

### **3 Duties and liabilities of manager**

- (1) The manager of the fund has the following duties:
  - (a) to use best endeavours and skill to ensure that the affairs of the fund are conducted in a proper and efficient manner:
  - (b) to use due diligence and vigilance in the exercise and performance of its functions, powers, and duties as a manager:
  - (c) to account to the holders of specified participatory securities for all money that the manager receives on behalf of the fund:
  - (d) not to pay out, invest, or apply any money belonging to the fund for any purpose that is not directed by, or authorised in, the trust deed:
  - (e) to supply to the holders of specified participatory securities, in general meeting, any oral or written information relating to the affairs of the fund that any holder has given the manager reasonable notice to supply.
- (2) The manager of the fund must ensure that all money received on behalf of the fund is paid into a trust account operated by the trustee or its nominee as soon as practicable.
- (3) The manager of the fund must have the same liability for any acts and omissions by it in the exercise and performance of its functions, powers, and duties as manager as it would have if it exercised and performed those functions, powers, and duties as a trustee of the fund, and is entitled to the same relief from liability as it would be if it were a trustee.

#### **4 Meetings**

- (1) The manager of the fund must, from time to time, at the request in writing of the trustee or of persons holding not less than one-tenth in value of the specified participatory securities, summon a meeting of the holders of those securities for the purpose of giving to the trustee their opinions or directions in relation to the exercise of the trustee's powers.
- (2) The trustee may, on the trustee's own volition or at the request of the manager, summon a meeting of the holders of the specified participatory securities for the purpose of giving to the trustee their opinions or directions in relation to the exercise of the trustee's powers.
- (3) The trustee must, at the request in writing of persons holding not less than one-tenth in value of the specified participatory securities, summon a meeting of the holders of the specified participatory securities for the purpose of giving to the trustee their opinions or directions in relation to the exercise of the trustee's powers.
- (4) Every meeting summoned under this clause must be summoned by sending by post a notice, specifying the time and place of the meeting, to every holder of specified participatory securities at his or her last known address not later than 14 days before the date of the proposed meeting.
- (5) Every meeting summoned under this clause must be chaired by a person nominated by the trustee or any other person appointed in that behalf by the holders of the specified participatory securities present at the meeting.
- (6) The manager must provide the trustee with a copy of the register of specified participatory securities kept under section 51 of the Securities Act 1978, and of all changes to the register.

Dated at Wellington this 28th day of April 2003.

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

**Securities Act (Externally Managed Group  
Investment Funds) Exemption Notice 2003**

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Reprinted as at  
1 May 2013

[Seal]

J Diplock,  
Chairperson.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 1 May 2003.

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## Notes

### 1 *General*

This is a reprint of the Securities Act (Externally Managed Group Investment Funds) Exemption Notice 2003. The reprint incorporates all the amendments to the notice as at 1 May 2013, 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 (Externally Managed Group Investment Funds) Exemption Notice 2013 (SR 2013/130): clause 17

Securities Act (Externally Managed Group Investment Funds) Exemption Amendment Notice 2008 (SR 2008/107)

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