

**Reprint  
as at 1 December 2016**

**Securities Act (Employer Superannuation Schemes)  
Exemption Amendment Notice 2004**

(SR 2004/402)

Securities Act (Employer Superannuation Schemes) Exemption Amendment Notice 2004: revoked, on the close of 30 November 2016, pursuant to clause 3 of the Securities Act (Employer Superannuation Schemes) Exemption Notice 2004 (SR 2004/215).

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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**Notice**

**1 Title**

- (1) This notice is the Securities Act (Employer Superannuation Schemes) Exemption Amendment Notice 2004.
- (2) In this notice, the Securities Act (Employer Superannuation Schemes) Exemption Notice 2004 (SR 2004/215) is called “the principal notice”.

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**Note**

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this eprint. See the notes at the end of this eprint for further details.

**This notice is administered by the Financial Markets Authority.**

## 2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

## 3 Interpretation

- (1) Clause 4(1) of the principal notice is amended by revoking the definition of **employer superannuation scheme**, and substituting the following definition:

**employer superannuation scheme** means a registered superannuation scheme (within the meaning of section 2(1) of the Superannuation Schemes Act 1989) that is promoted by either—

- (a) 1 employer only; or
- (b) 1 employer and 1 or more of the following:
  - (i) an associated person of that employer;
  - (ii) a successor in business of that employer or of any associated person of that employer

- (2) Clause 4(1) of the principal notice is amended by adding, after the definition of **spouse**, the following definition:

**successor in business** means,—

- (a) if an employer or an associated person of an employer disposes of all or part of a business by disposing of all or any of the securities that it holds in a body corporate that operates the business, the body corporate in which the securities are held; and
- (b) in all other cases, the person to whom an employer or an associated person of an employer disposes of all or part of its business.

## 4 Exemption from section 37(1) of Act for employer superannuation schemes

Clause 5 of the principal notice is amended by inserting, after paragraph (b), the following paragraph:

- (ba) employees of any successor in business who either—
  - (i) were employed by a promoting person or an associated person immediately before the disposal of the business; or
  - (ii) are employed in the business that was disposed of; or

## 5 New clause 10A inserted

The principal notice is amended by inserting, after clause 10, the following clause:

### 10A Condition relating to successors in business

- (1) This clause applies to—

- (a) the exemption in clause 5(ba); and
  - (b) the exemption in clause 5(c) to the extent that it applies to any relative, spouse, de facto partner, or dependant of an employee of a successor in business who is referred to in clause 5(ba).
- (2) Those exemptions are subject to the condition that the offer must be made within 12 months after the promoter of an employer superannuation scheme, or an associated person of that promoter, disposes of all or part of the business in question.

Dated at Wellington this 16th day of November 2004.

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

[Seal]

J Diplock,  
Chairperson.

### **Statement of reasons**

This notice, which comes into force on the day after the date of its notification in the *Gazette*, extends the Securities Act (Employer Superannuation Schemes) Exemption Notice 2004 (the “principal notice”) so that the principal notice can continue to apply in a business for 12 months after the business is disposed of by an employer who is a promoter of an employer superannuation scheme or an associated person of that promoter. Examples of how the principal notice can continue to apply are, in general terms, that—

- if a parent company disposes of a business operated by its subsidiary by way of share sale, for 12 months afterwards the former subsidiary can continue to offer, to employees in the business, interests in a superannuation scheme that was promoted by its former parent company:
- if a company disposes of a business by way of an asset sale, for 12 months afterwards the new owner of the business can continue to offer, to employees in the business, interests in a superannuation scheme that was promoted by its predecessor.

The extension of the principal exemption is subject to the same conditions as the conditions that currently apply.

This notice does not extend the class exemption in respect of small employer superannuation schemes.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- a policy intention of the statutory exemption in section 5A of the Securities Act 1978 is to encourage employer-sponsored superannuation schemes. It is consistent with this policy also to encourage continuity of superannuation arrangements for employees. This amendment notice achieves those objectives by allowing a business that is disposed of by an employer who is a participant in an employer superannuation scheme to continue to use the exemption in the principal notice for a transitional period while the business sets up its own superannuation scheme:
- by limiting the extension to employers that operate businesses that were formerly operated by the employer disposing of the business or an associated person of the disposing employer, the exemptions in the principal notice will not apply to superannuation schemes offered by financial institutions under which any number of unrelated employers may provide superannuation benefits for their employees:
- limiting the application of the extension to a transitional period of 12 months will allow for continuity of membership in employer superannuation schemes while encouraging new employers to develop and offer their own schemes rather than seeking to rely on continued provision of a scheme promoted by a previous employer.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 18 November 2004.

## **Eprint notes**

### **1    *General***

This is an eprint of the Securities Act (Employer Superannuation Schemes) Exemption Amendment Notice 2004 that incorporates all the amendments to that notice as at the date of the last amendment to it.

### **2    *About this eprint***

This eprint is not an official version of the legislation under section 18 of the Legislation Act 2012.

### **3    *Amendments incorporated in this eprint***

Securities Act (Employer Superannuation Schemes) Exemption Notice 2004 (SR 2004/2015): clause  
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