

**Reprint
as at 1 December 2014**



**Securities Amendment Regulations
2011**

(SR 2011/226)

Securities Amendment Regulations 2011: revoked, on 1 December 2014, pursuant to section 5(o) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 27th day of June 2011

Present:

His Excellency the Governor-General in Council

Pursuant to sections 70 and 70AA of the Securities Act 1978, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Commerce made after consulting with the Financial Markets Authority, makes the following regulations.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

- 1 Title**
These regulations are the Securities Amendment Regulations 2011.
- 2 Commencement**
These regulations come into force on 1 July 2011.
- 3 Principal regulations amended**
These regulations amend the Securities Regulations 2009.

4 Interpretation

- (1) The definition of **administration manager** in regulation 4(1) is revoked and the following definition substituted:

“**administration manager**,—

- “(a) in relation to a KiwiSaver scheme, has the same meaning as in section 4(1) of the KiwiSaver Act 2006; and
- “(b) in relation to any other superannuation scheme, has the same meaning as in section 2(1) of the Superannuation Schemes Act 1989; and
- “(c) in relation to a unit trust, means the person (if any) to whom the unit trustee or manager has contracted some or all of the administration of the trust”.

- (2) Regulation 4(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**date of the investment statement** means the date stated in an investment statement for the purposes of section 38E(1)(b) of the Act”.

- (3) The definition of **investment manager** in regulation 4(1) is revoked and the following definition substituted:

“**investment manager**,—

- “(a) in relation to a KiwiSaver scheme, has the same meaning as in section 4(1) of the KiwiSaver Act 2006; and
- “(b) in relation to any other superannuation scheme, has the same meaning as in section 2(1) of the Superannuation Schemes Act 1989; and
- “(c) in relation to a unit trust, means the person (if any) to whom the unit trustee or manager has contracted the investment of some or all of the funds of the trust”.

- (4) The definition of **listed** in regulation 4(1) is revoked and the following definition substituted:

“**listed** has the same meaning as in section 2(1) of the Securities Markets Act 1988”.

- (5) The definition of **public issuer** in regulation 4(1) is revoked and the following definition substituted:

“**public issuer** has the same meaning as in section 2(1) of the Securities Markets Act 1988”.

- (6) The definition of **registered exchange's securities market** in regulation 4(1) is revoked and the following definition substituted:

“**registered market** has the same meaning as in section 2(1) of the Securities Markets Act 1988”.

5 Matters to be contained in full registered prospectus

- (1) Regulation 5(1) is amended by inserting the following paragraph after paragraph (e):

“(ea) interests in a KiwiSaver scheme other than a restricted scheme must contain all of the information, statements, and other matters specified in Schedule 5A that are applicable.”.

- (2) Regulation 5(1)(f) is amended by omitting “interests in a” and substituting “interests in any other”.

6 Documents to be attached to prospectus delivered for registration

- (1) Regulation 18(1)(a) is amended by inserting “clause 11 of Schedule 5A,” after “Schedule 5,”.
- (2) Regulation 18(1)(c) is amended by inserting “clause 14 of Schedule 5A,” after “Schedule 5,”.
- (3) Regulation 18(1)(f) is amended by omitting “if Schedule 6” and substituting “if Schedule 5A or 6”.

7 Statements about trading securities on securities markets

- (1) Regulation 39(1)(c) is amended by omitting “is operated by a registered exchange” and substituting “is a registered market”.
- (2) Regulation 39(2) is amended by omitting “on a securities market operated by a registered exchange” and substituting “on a registered market”.
- (3) Regulation 39(4) is amended by omitting “the market operator is a registered exchange” and substituting “the securities market is a registered market”.

8 Prescribed rate of interest

Regulation 47 is amended by omitting “38F(13), and 44(7)” and substituting “and 43H(1)”.

9 Schedule 4 amended

The heading to clause 3 of Schedule 4 is amended by omitting “**advisors**” and substituting “**advisers**”.

10 New Schedule 5A inserted

The Schedule 5A set out in the Schedule of these regulations is inserted after Schedule 5.

11 Schedule 10 amended

- (1) Clause 1(2) of Schedule 10 is amended by omitting “registered exchange’s securities market” and substituting “registered market operated by that exchange”.
- (2) Clause 5(3) of Schedule 10 is amended by inserting “registered” after “name of the”.
- (3) Clause 6(3) of Schedule 10 is amended by omitting “of the exchange” and substituting “for the registered market operated by that exchange”.
- (4) The definition of **disclosed information** in clause 6(4) of Schedule 10 is amended by omitting “of the exchange” and substituting “for the registered market operated by that exchange”.
- (5) Clause 7(2) of Schedule 10 is amended by omitting “of the exchange” and substituting “for the registered market operated by that exchange”.

12 Schedule 11 amended

- (1) Clause 1(2) of Schedule 11 is amended by omitting “registered exchange’s securities market” and substituting “registered market operated by that exchange”.
- (2) The definition of **disclosed information** in clause 14(3) of Schedule 11 is amended by omitting “of the exchange” and substituting “for the registered market operated by that exchange”.

13 Schedule 12 amended

- (1) Clause 1(2) of Schedule 12 is amended by omitting “registered exchange’s securities market” and substituting “registered market operated by that exchange”.

- (2) The definition of **disclosed information** in clause 15(3) of Schedule 12 is amended by omitting “of the exchange” and substituting “for the registered market operated by that exchange”.

14 Schedule 13 amended

- (1) Clause 1(1) of Schedule 13 is amended by omitting the heading “**Engaging an investment adviser**” and all of the text following that heading and substituting the following headings and text:

“The Financial Markets Authority regulates conduct in financial markets

“The Financial Markets Authority regulates conduct in New Zealand’s financial markets. The Financial Markets Authority’s main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.

“For more information about investing, go to <http://www.fma.govt.nz>

“Financial advisers can help you make investment decisions

“Using a financial adviser cannot prevent you from losing money, but it should be able to help you make better investment decisions.

“Financial advisers are regulated by the Financial Markets Authority to varying levels, depending on the type of adviser and the nature of the services they provide. Some financial advisers are only allowed to provide advice on a limited range of products.

“When seeking or receiving financial advice, you should check—

- “• the type of adviser you are dealing with:
- “• the services the adviser can provide you with:
- “• the products the adviser can advise you on.

“A financial adviser who provides you with personalised financial adviser services may be required to give you a disclosure statement covering these and other matters. You should ask your adviser about how he or she is paid and any conflicts of interest he or she may have.

“Financial advisers must have a complaints process in place and they, or the financial services provider they work for, must belong to a dispute resolution scheme if they provide services to retail clients. So if there is a dispute over an investment, you can ask someone independent to resolve it.

“Most financial advisers, or the financial services provider they work for, must also be registered on the financial service providers register. You can search for information about registered financial service providers at <http://www.fspr.govt.nz>

“You can also complain to the Financial Markets Authority if you have concerns about the behaviour of a financial adviser.”

(2) Clause 1(6) of Schedule 13 is amended by omitting “**Engaging an investment adviser**” and substituting “**Financial advisers can help you make investment decisions**”.

(3) Clause 1 of Schedule 13 is amended by inserting the following subclause after subclause (6):

“(6A) If the investment statement relates to a category 2 product (as defined in section 5 of the Financial Advisers Act 2008), the heading **Financial advisers can help you make investment decisions** and the information under that heading may be omitted.”

(4) Clause 3 of Schedule 13 is revoked and the following clause substituted:

“**3 Names and addresses**

“(1) If the securities being offered are equity securities or life insurance policies, the following information in respect of the securities:

“(a) the name, and address as at the date of the investment statement, of the issuer:

“(b) the names of the directors of the issuer as at the date of the investment statement.

“(2) If the securities being offered are debt securities, the following information in respect of the securities:

“(a) the names, and addresses as at the date of the investment statement, of—

“(i) the issuer:

“(ii) any trustee:

- “(b) the names of the directors of the issuer as at the date of the investment statement.
- “(3) If the securities being offered are participatory securities, the following information in respect of the securities:
 - “(a) the name of the participatory scheme:
 - “(b) the names, and addresses as at the date of the investment statement, of—
 - “(i) the manager:
 - “(ii) the statutory supervisor (if any):
 - “(c) the names of the directors of the manager as at the date of the investment statement.
- “(4) If the securities being offered are units in a unit trust, or interests in a KiwiSaver scheme other than a restricted scheme, the following information in respect of the securities:
 - “(a) the name of the unit trust or the scheme (as the case may be):
 - “(b) the names, and addresses as at the date of the investment statement, of—
 - “(i) the manager and the administration manager (if any):
 - “(ii) the unit trustee or the KiwiSaver trustee (as the case may be):
 - “(c) the names of the directors of the manager as at the date of the investment statement.
- “(5) If the securities being offered are interests in a superannuation scheme other than a superannuation scheme to which subclause (4) applies, the following information in respect of the securities:
 - “(a) the name of the scheme:
 - “(b) the names, and addresses as at the date of the investment statement, of—
 - “(i) the superannuation trustees of the scheme:
 - “(ii) the administration manager (if any).
- “(6) In all cases, the following information in respect of the securities:
 - “(a) the name of any promoter who is, as at the date of the investment statement, a promoter under paragraph (b) but not paragraph (a) of the definition of promoter in section 2(1) of the Act:

- “(b) the name, and address as at the date of the investment statement, of any other promoter.
- “(7) If a name (in the case of a director) or an address is required to be stated as at the date of the investment statement, a statement sufficient to make security holders and prospective investors aware—
- “(a) that the name or address may change; and
- “(b) of where and how the current name or address may be obtained.”
- (5) Clause 17 of Schedule 13 is amended by revoking subclause (3) and substituting the following subclause:
- “(3) A statement as to whether complaints about the securities can be made to an approved dispute resolution scheme and, if so, the contact details of the scheme (which must include an address and a business telephone number).”

Transitional provisions

15 Interpretation

In regulations 16 to 18,—

amended principal regulations means the principal regulations as amended by these regulations

effective date and **existing KiwiSaver scheme** have the same meanings as in section 57 of the KiwiSaver Amendment Act 2011.

16 Investment statements dated before 1 August 2011

- (1) This regulation applies if the date of an investment statement is earlier than 1 August 2011.
- (2) The principal regulations as in force immediately before their amendment by these regulations apply to the investment statement.
- (3) However, if the investment statement contains a statement to the effect that the investment statement has been prepared in accordance with the amended principal regulations, then, subject to clause 17, the amended principal regulations apply to the investment statement.

17 Investment statements relating to interests in existing KiwiSaver schemes

- (1) This regulation applies to an investment statement if the investment statement relates to interests in an existing KiwiSaver scheme other than a restricted scheme (which makes it an investment statement to which clause 3(4) of Schedule 13 of the amended principal regulations applies).
- (2) Clause 3(5) of Schedule 13 of the amended principal regulations applies to the investment statement, as if the investment statement were not one to which clause 3(4) of that schedule applied, if—
 - (a) the investment statement relates to interests in the scheme to be allotted before the scheme's effective date (whether or not it also relates to interests to be allotted on or after the effective date); and
 - (b) the date of the investment statement is before the scheme's effective date.
- (3) Clause 3(4) of Schedule 13 of the amended principal regulations applies to the investment statement if—
 - (a) the investment statement relates only to interests in the scheme to be allotted on or after the scheme's effective date; or
 - (b) the date of the investment statement is on or after the scheme's effective date.

18 Prospectuses relating to interests in existing KiwiSaver schemes

- (1) This regulation applies to a prospectus that relates to interests in an existing KiwiSaver scheme other than a restricted scheme (which makes it a prospectus to which regulation 5(1)(ea) and Schedule 5A of the amended principal regulations apply).
- (2) Regulation 5(1)(f) and Schedule 6 of the amended principal regulations apply to the prospectus, as if the prospectus were not one to which regulation 5(1)(ea) and Schedule 5A of those regulations applied, if the prospectus—
 - (a) relates only to interests in the scheme to be allotted before the scheme's effective date; and
 - (b) is registered before the scheme's effective date.

- (3) Regulation 5(1)(ea) and Schedule 5A of the amended principal regulations apply to the prospectus if the prospectus—
- (a) relates only to interests in the scheme to be allotted on or after the scheme's effective date; or
 - (b) is registered on or after the scheme's effective date.

Schedule r 10
New Schedule 5A inserted
Schedule 5A r 5(1)(ea)
Full prospectus for KiwiSaver schemes
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1 Description of scheme

- (1) The name of the scheme.
- (2) A brief description of the scheme and the interests being offered.
- (3) The year and place of establishment of the scheme.

Schedule 5A—*continued***2 Managers and promoters**

- (1) The name and address of the manager of the scheme, and the name and address of every director of the manager.
- (2) If the manager is a subsidiary, the name of its ultimate holding company.
- (3) The names of all other KiwiSaver schemes managed by the manager.
- (4) The name of every promoter (if any) of the scheme.
- (5) The name of any administration manager or investment manager of the scheme.
- (6) If any person specified in subclause (7) has, during the 5 years preceding the specified date, been adjudged bankrupt or insolvent, convicted of any crime involving dishonesty, prohibited from acting as a director of a company, or placed in statutory management, voluntary administration, liquidation, or receivership, a statement to that effect including the name and any alternative or former name or names of the manager, promoter, or director concerned.
- (7) The persons are—
 - (a) the manager, administration manager, investment manager, or promoter of the scheme:
 - (b) if any manager, administration manager, investment manager, or promoter of the scheme is a body corporate or unincorporate, any director of that manager or promoter.

3 Registrar, custodian, auditors, advisers, and experts

- (1) The names of any registrar, custodian, and auditors of the scheme.
- (2) The names of any solicitors and other professional advisers (other than employees of the manager or of any associated person) that are involved in the preparation of the prospectus.
- (3) The names, addresses, and qualifications of any experts named in the prospectus.

Schedule 5A—*continued*

4 Independence of KiwiSaver trustee and any custodians

A statement as to whether or not the KiwiSaver trustee and any custodians are independent of the manager of the scheme and of any promoter, administration manager, and investment manager and, if not, a description of the relationship between the KiwiSaver trustee or custodian and the manager, promoter, administration manager, or investment manager.

5 KiwiSaver trustee

- (1) The name and address of the KiwiSaver trustee of the scheme and of every director of the trustee.
- (2) The statute or other authority under which the KiwiSaver trustee was incorporated or registered, and the date and country of incorporation or registration.
- (3) If the KiwiSaver trustee is a subsidiary, the name and country of incorporation of its ultimate holding company.
- (4) A description of the extent, if any, to which the KiwiSaver trustee is indemnified by the scheme.
- (5) A statement as to whether or not the KiwiSaver trustee guarantees the payment of any money to members of the scheme.

6 Description of scheme and its development

- (1) The date of the trust deed for the scheme, and the dates of all amendments to the deed (or, if the deed and some or all of the amendments to it have been consolidated, the date of the consolidation and the dates of all amendments since the consolidation).
- (2) A summary of the principal terms of the trust deed for the scheme (including any amendments).
- (3) A description of the following, to the extent that they are not included in the summary under subclause (2):
 - (a) any conditions of entry of members to the scheme, and termination of membership of the scheme:
 - (b) any restrictions on investment of the assets of the scheme:

Schedule 5A—*continued*

- (c) the rights and obligations of employers (if any) in regard to the scheme.
 - (4) A brief description of the investment and other material activities of, and any material developments relating to, the scheme during the 5 years preceding the specified date.
 - (5) A statement as to whether or not the scheme has separate funds for the purposes of section 9A of the Financial Reporting Act 1993 and, if so, a description of the funds.
 - (6) A statement as to whether any liabilities (including contingent liabilities) may be incurred by members in relation to the scheme (other than in respect of contributions payable under the scheme) and, if so, whether there are any limitations on those liabilities.
 - (7) A description of the investment objectives and policy for the scheme (or, if the scheme has more than 1 fund, for each fund of the scheme), and of the means by which changes can be made to those objectives and that policy.
 - (8) A description of the investment performance of the scheme (or, if the scheme has more than 1 fund, of each fund of the scheme) during each of the 5 years preceding the specified date, and the basis upon which the performance information has been calculated.
- 7 Summary financial statements**
- (1) Summary financial statements (if practicable, in tabular form) in respect of the scheme.
 - (2) The amounts in the summary financial statements required by subclause (1) must be taken from the financial statements for each relevant period that complied with and were registered under the Financial Reporting Act 1993. If financial statements have not been registered, the amounts must be those that would have appeared in financial statements if the financial statements had been registered.
 - (3) The amounts that appear in the summary financial statements required by subclause (1) must include,—

Schedule 5A—*continued*

- (a) in respect of both the accounting period referred to in clause 14(1) and each of the 4 consecutive accounting periods preceding that period (if any), the following amounts:
- (i) contributions (distinguishing between those made by or on behalf of members, those made by employers, and those made by the Crown):
 - (ii) transfers to the scheme:
 - (iii) total investment revenues:
 - (iv) net gains or losses on investments:
 - (v) other revenues:
 - (vi) permitted withdrawals (as defined in section 4(1) of the KiwiSaver Act 2006):
 - (vii) transfers to other schemes:
 - (viii) investment expenses:
 - (ix) management expenses, including those related to general administration and trustees' remuneration:
 - (x) total interest expense:
 - (xi) audit fees:
 - (xii) other expenses:
 - (xiii) operating result or change in net assets before taxation:
 - (xiv) the total provided for, or credited by way of, taxation:
 - (xv) if the equity method of accounting has been used, surpluses or deficits that have resulted from using that method:
 - (xvi) operating result or change in net assets:
 - (xvii) total members' accumulations at the beginning and at the end of the period:
 - (xviii) other distributions (specify); and
- (b) as at the end of each such period, the following amounts:
- (i) total assets:
 - (ii) total tangible assets:
 - (iii) total liabilities:
 - (iv) net assets available to pay benefits.

Schedule 5A—*continued*

- (4) In respect of the amounts stated in the summary financial statements required by subclause (1),—
 - (a) a description of the nature of any item that is of such incidence and size, or of such a nature, that its disclosure is necessary to explain the performance of the scheme:
 - (b) a description (and, if practicable, quantification) of the effect on the amounts of any material changes in the activities of the scheme that occurred, and of any material changes in the accounting policies used, during the periods to which the amounts relate.
- (5) A statement as to whether or not the amounts stated in the summary financial statements required by subclause (1) have been taken from audited financial statements.
- (6) If the amounts stated in the summary financial statements required by subclause (1) have been taken from audited financial statements but the auditor's report referred to a fundamental uncertainty or was qualified, a statement to this effect explaining what the fundamental uncertainty or qualification was.

8 Guarantors

- (1) If the prospectus or an advertisement relating to the scheme states or implies that any person guarantees the payment of any money payable from the scheme, the following matters in respect of each of those persons:
 - (a) the name of the person:
 - (b) a description, and (if practicable) quantification, of the liability of the person in respect of that money:
 - (c) a statement as to whether the liability of the person is secured by a mortgage or other charge and, if so, the nature and amount of the charge:
 - (d) the amount of the net tangible assets of the person as shown in the most recent audited statement of financial position of the person, together with a statement of any fundamental uncertainty or qualification in the auditor's report in respect of the statement of financial position (subject to subclause (2)):

Schedule 5A—*continued*

- (e) whether there are any contingent liabilities that could materially affect those net tangible assets:
 - (f) whether the financial statements of the person are available for inspection and, if so, where:
 - (g) if the person and the manager are associated persons, a statement to that effect and particulars of the nature of the relationship.
- (2) If there is no audited statement of financial position of the person dated within 18 months of the specified date,—
- (a) the figure given for the amount of that person's net tangible assets in the prospectus must be that as at a date stated in the prospectus (being a date not earlier than 6 months before the specified date); and
 - (b) the prospectus must include a statement to the effect that the figure for that person's net tangible assets has not been taken from an audited statement of financial position.

9 Acquisition of business or equity securities

- (1) This clause does not apply in respect of—
- (a) any business or equity securities if the consideration paid or payable, or proposed to be paid, for the acquisition of the business or equity securities is not more than one-fifth of the amount of the total tangible assets shown in the financial statements referred to in clause 14(1); or
 - (b) any equity securities that are quoted on a securities market.
- (2) If a business or equity securities have been acquired for the purposes of the scheme at any time in the 2 years preceding the specified date, the following information and statements:
- (a) a description of the activities of the business, or the business carried on by the issuer of those equity securities, in the course of the period that began 5 years before the specified date and ended on the date on which the business or equity securities were acquired:

Schedule 5A—*continued*

- (b) summary financial statements (if practicable, in tabular form) for the business or the issuer of those equity securities in respect of the 5 accounting periods preceding the specified date that comply with clause 9(2) to (4) of Schedule 1 (which apply with any necessary modifications).
- (3) If a business or equity securities were acquired for the purposes of the scheme at any time in the specified period, or if the prospectus contains a statement to the effect that it is intended that a business or equity securities will be acquired for the purposes of the scheme, the following information and statements:
 - (a) the amount of the consideration paid or payable, or proposed to be paid, for the business or equity securities:
 - (b) a description of the business, or of the business carried on by the issuer of those equity securities, in the course of the 5 years before the specified date:
 - (c) summary financial statements (if practicable, in tabular form) for the business or the issuer of those equity securities in respect of the 5 accounting periods preceding the specified date that comply with clause 9(2) to (4) of Schedule 1 (which apply with any necessary modifications):
 - (d) either—
 - (i) a reference to the latest financial statements for the business or the issuer of those equity securities that comply with, and have been registered under, the Financial Reporting Act 1993, the accounting period covered by those statements, and the date of registration (and, if the issuer so wishes, those financial statements); or
 - (ii) audited financial statements for the business or the issuer of those equity securities prepared in accordance with generally accepted accounting practice for the relevant accounting period.
- (4) In subclause (3),—

Schedule 5A—*continued*

relevant accounting period means—

- (a) the most recently completed accounting period in respect of which the financial statements have been prepared; or
- (b) if the business or the issuer of the equity securities has not completed its first accounting period, the period from the date of commencement of business and ending on a stated date that is not more than 4 months before the specified date

specified period means the period between the date of the latest statement of financial position contained or referred to in the prospectus and the specified date.

10 Interested persons

- (1) If any specified person is entitled to remuneration for services, or to recover expenses, in respect of the scheme, particulars of—
 - (a) the nature of the services or expenses; and
 - (b) if remuneration or expense recovery is from the scheme, whether or not the amount of remuneration or expenses is limited and, if so, the limits.
- (2) Particulars of any direct or indirect material interest in the scheme, or in any contract or arrangement entered into on behalf of or in respect of the scheme, that—
 - (a) any specified person has, or has had at any time during the 5 years preceding the specified date; and
 - (b) is material to the person who has the interest, or to the scheme, or to both.
- (3) If more than 10% of the value of the assets of the scheme (calculated in accordance with generally accepted accounting practice) was, at any time during the 2 years preceding the specified date, represented directly or indirectly by any securities of which any specified person was the issuer, a description of those securities.
- (4) In this clause, **specified person** means the KiwiSaver trustee, the manager, or any administration manager, investment man-

Schedule 5A—*continued*

ager, custodian, or promoter of the scheme (or any associated person of any of them).

11 Material contracts

In relation to every material contract entered into in respect of the scheme at any time in the 2 years preceding the specified date (not being a contract entered into in the ordinary course of business of the scheme),—

- (a) its date; and
- (b) the names of the parties to it; and
- (c) its general nature.

12 Pending proceedings

A brief description of any legal proceedings or arbitrations that—

- (a) are pending at the specified date; and
- (b) may have a material adverse effect on the scheme.

13 Other terms of offer and scheme

All terms of the offer, and all terms of the scheme being offered, not elsewhere set out in the prospectus, other than—

- (a) any term that relates to any amounts payable by or to an identifiable person; or
- (b) any terms implied by law; or
- (c) any terms set out in a document that—
 - (i) is registered with a public official; and
 - (ii) is available for public inspection; and
 - (iii) is referred to in the prospectus.

14 Financial statements and auditor's report

- (1) A reference to the latest financial statements for the scheme that comply with, and have been registered under, the Financial Reporting Act 1993, the accounting period covered by those statements, and the date of registration.
- (2) The date of the auditor's report on those financial statements, and a statement as to whether or not the report referred to a fundamental uncertainty or was qualified in any respect and,

Schedule 5A—*continued*

if so, explaining what the fundamental uncertainty or qualification was.

- (3) If the issuer so wishes,—
 - (a) the latest financial statements referred to in subclause (1) and the auditor’s report on those statements; and
 - (b) interim financial statements for the scheme prepared as at a later date (not being more than 9 months after the balance date of the financial statements referred to in subclause (1)) in accordance with NZ IAS 34 (that need not be audited) and statements as to—
 - (i) all material changes (if any) in matters contained in the interim financial statements from the matters contained in the financial statements contained or referred to in the prospectus under subclause (1) or paragraph (a); and
 - (ii) all transactions (if any) that are material related party transactions under generally accepted accounting practice and were entered into or were being performed in the period of the interim financial statements.
- (4) A copy of a report by a qualified auditor, signed by him or her (either in his or her own name or that of his or her firm), stating whether the amounts stated under clauses 7 and 9(2) and (3) have been taken from audited financial statements and whether or not the amounts have been correctly taken.
- (5) If the prospectus contains prospective financial information, the auditor’s report must contain a statement in the following form:

“In our (*or my*) opinion, the prospective financial information, so far as the accounting policies and calculations are concerned, has been properly compiled on the footing of the assumptions made or adopted by the manager set out on [*specify pages*] of this prospectus and is presented on a basis consistent with the accounting policies normally adopted in respect of the scheme.”

Schedule 5A—*continued***15 Places of inspection of documents**

The times and places where copies of the following documents may, on payment of any fee, be inspected by a person who so requests:

- (a) the trust deed for the scheme and any amendments to the deed;
- (b) the financial statements for the scheme referred to in clause 14(1);
- (c) any material contract disclosed under clause 11;
- (d) the latest annual report for the scheme.

16 Other material matters

Particulars of any material matters relating to the scheme, other than—

- (a) matters elsewhere set out in the prospectus or in the financial statements referred to in clause 14(1); and
- (b) contracts entered into in the ordinary course of business of the scheme.

17 Manager's statement

A statement by the directors of the manager as to whether, in their opinion, after due enquiry by them, any of the following has materially and adversely changed during the period between the date of the latest financial statements contained or referred to in the prospectus and the specified date:

- (a) the value of the scheme's assets relative to its liabilities (including contingent liabilities);
- (b) the ability of the scheme to pay its debts as they become due in the normal course of business.

18 KiwiSaver trustee's statement

A statement by the KiwiSaver trustee stating, in respect of the accounting period referred to in clause 14(1), whether or not, in the KiwiSaver trustee's opinion, the manager has managed the scheme during that period in accordance with the provisions of the trust deed and of the offer of interests in the scheme.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 July 2011, amend the Securities Regulations 2009 (the **2009 regulations**). Most of the amendments are to align the 2009 regulations with changes made to the securities and KiwiSaver regimes by the KiwiSaver Amendment Act 2011, the Securities Amendment Act 2011, and the Securities Markets Amendment Act 2011 (the **amending Acts**). The regulations also make minor and technical consequential amendments arising from the amending Acts and the Financial Advisers Act 2008.

The amendments are not intended to require immediate revision of investment statements or prospectuses. Accordingly,—

- *regulation 16* provides that the 2009 regulations, as in force immediately before their amendment by these regulations, continue to apply to an investment statement if the date of the investment statement is earlier than 1 August 2011. This does not prevent an investment statement from complying with the amended regulations before 1 August 2011;
- *regulations 17 and 18* provide that Schedule 6 of the 2009 regulations continues to apply to a prospectus, and clause 3(5) of Schedule 13 of the 2009 regulations applies to an investment statement, of an existing KiwiSaver scheme (other than a restricted scheme) before its effective date (*see* section 57 of the KiwiSaver Amendment Act 2011), unless the prospectus or investment statement relates only to interests in the scheme to be allotted on or after the scheme's effective date.

Regulations 16 to 18 do not purport to limit section 34(1)(b) or 37A(1)(b) of the Securities Act 1978.

In summary, the amendments to the 2009 regulations are as follows. *Regulation 4* amends regulation 4(1) of the 2009 regulations, which is an interpretation provision, to incorporate new definitions that were introduced by the amending Acts. The new definition of date of the investment statement is relevant to the new investment state-

ments requirements introduced by these regulations (*see* the changes to Schedule 13 made by *regulation 14*).

Regulation 5 amends regulation 5 of the 2009 regulations, which specifies the matters that must be contained in a full registered prospectus. The effect of the amendment is that a registered prospectus relating to an offer of interests in a KiwiSaver scheme (other than a restricted scheme, as defined in section 4(1) of the KiwiSaver Act 2006) must contain the information, statements, and other matters set out in *new Schedule 5A*.

Regulation 6 consequentially amends regulation 18 of the 2009 regulations, which specifies the documents to be attached to a prospectus delivered for registration, to add references to *new Schedule 5A*.

Regulation 7 amends *regulation 39* of the 2009 regulations to replace references to a registered exchange with references to a registered market. This reflects the change in terminology effected by the Securities Markets Amendment Act 2011.

Regulation 8 amends regulation 47 of the 2009 regulations to update cross-references to the Securities Act 1978 (resulting from changes made by the Securities Amendment Act 2011).

Regulation 10 inserts *new Schedule 5A* into the 2009 regulations. The new schedule sets out the matters to be contained in a full registered prospectus for a KiwiSaver scheme other than a restricted scheme. The requirements under *new Schedule 5A* are similar to those under Schedule 4 of the 2009 regulations.

Regulations 11, 12, and 13 amend Schedules 10, 11, and 12 of the 2009 regulations to replace references to a registered exchange with references to a registered market. This reflects the change in terminology effected by the Securities Markets Amendment Act 2011.

Regulation 14 amends Schedule 13 of the 2009 regulations, which sets out the matters to be contained in investment statements. As a result of the amendments,—

- the information at the front of investment statements will include references to the new financial advisers regime and the Financial Markets Authority;
- the names of directors and all addresses must be stated as at the date of the investment statement. This means that (provided all other requirements set out in the Securities Act 1978, including section 37A(1)(b), are met) there will be no need to produce a

new investment statement each time the name of a director or a stated address changes:

- investment statements will include a statement to make security holders and prospective investors aware that some names and addresses may change after the date of the investment statement and of where and how up-to-date names and addresses may be obtained:
- an investment statement for a KiwiSaver scheme (other than a restricted scheme) will include the details of its manager, administration manager (if any), directors of the manager, and the KiwiSaver trustee. This aligns the requirements for KiwiSaver schemes with the requirements for unit trusts rather than superannuation schemes, which reflects the structural changes to KiwiSaver schemes effected by the KiwiSaver Amendment Act 2011:
- investment statements will refer to complaints to an approved dispute resolution scheme rather than complaints to an ombudsman.

Issued under the authority of the Legislation Act 2012.
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Reprints notes

1 *General*

This is a reprint of the Securities Amendment Regulations 2011 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 5(o)
