

**Reprint
as at 1 December 2014**



**Securities Amendment Regulations
(No 2) 2011**

(SR 2011/281)

Securities Amendment Regulations (No 2) 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 22nd day of August 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 70 of the Securities Act 1978, section 28 of the Unit Trusts Act 1960, and section 228 of the KiwiSaver Act 2006, 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 in accordance with section 70(3) of the Securities Act 1978, 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 (No 2) 2011.
- 2 Commencement**
These regulations come into force on 1 October 2011.
- 3 Principal regulations amended**
These regulations amend the Securities Regulations 2009.

4 Overview

Regulation 3(5) is amended by adding “; and” and also by adding the following paragraph:

“(c) trust deeds for unit trusts and KiwiSaver schemes.”

5 New regulation 39A inserted

The following regulation is inserted before regulation 40:

“39A Contents of trust deeds

“(1) Every trust deed required for the purposes of the Act and relating to debt securities must include provisions specifying the matters set out in Schedule 14A.

“(2) Subclause (1) does not limit the provisions that may be contained in a trust deed required for the purposes of the Act and relating to debt securities.”

6 Clauses deemed to be contained in trust deeds

(1) Regulation 40(1) is amended by omitting “Clauses 1 to 3” and substituting “Clauses 1 to 3E”.

(2) Regulation 40(2) is amended by omitting “clauses 4 to 11” and substituting “clauses 4 to 10”.

(3) Regulation 40(3)(a) is amended by omitting “clauses 4 to 11 of Schedule 15” and substituting “clauses 4 to 10 of Schedule 15”.

(4) Regulation 40 is amended by revoking subclause (4) and substituting the following subclause:

“(4) Clauses 4 to 10 of Schedule 15 are, and continue to be, deemed to be contained in the trust deed.”

(5) Regulation 40(5) is revoked.

7 New heading and regulation 42A substituted

The heading above regulation 43 is revoked and the following heading and regulation are substituted:

“Application of provisions

“42A Application of regulation 39A

“(1) Regulation 39A applies whether or not the trust deed was registered before 1 October 2011.

- “(2) However, if a trust deed is registered before 1 October 2011, regulation 39A only applies to the trust deed on and after 1 October 2012.
- “(3) Subclause (2) does not prevent a trust deed from specifying the matters set out in Schedule 14A before 1 October 2012.”

8 Provisions apply regardless of when deed is registered

The heading to regulation 43 is amended by omitting “Provisions” and substituting “Regulations 40 to 42”.

9 New heading and regulations 43A to 43C inserted

The following heading and regulations are inserted after regulation 43:

“Trust deeds for unit trusts and KiwiSaver schemes

“43A Clauses deemed to be contained in trust deeds for unit trusts

- “(1) This regulation applies to every unit trust in which units have been allotted, whether before or after the commencement of this regulation, pursuant to an offer of securities to the public.
- “(2) The following clauses are deemed to be contained in the trust deed for a unit trust to which this regulation applies:
- “ ‘1 The unit trustee must exercise reasonable diligence to ascertain whether or not any breach of the terms of the deed or of the terms of the offer of the units in the unit trust has occurred.
- “ ‘2 The unit trustee must do all the things that it is empowered to do to cause any breach of the terms referred to in clause 1 to be remedied (except if it is satisfied that the breach will not materially prejudice the interests of the holders of the units).’

“43B Clauses deemed to be contained in trust deeds for KiwiSaver schemes (other than restricted KiwiSaver schemes)

- “(1) This regulation applies to every KiwiSaver scheme other than a restricted KiwiSaver scheme.
- “(2) The following clauses are deemed to be contained in the trust deed for a KiwiSaver scheme to which this regulation applies:

“ ‘1 The KiwiSaver trustee must exercise reasonable diligence to ascertain whether or not any breach of the terms of the deed or of the terms of the offer of the interests in the KiwiSaver scheme has occurred.

“ ‘2 The KiwiSaver trustee must do all the things that it is empowered to do to cause any breach of the terms referred to in clause 1 to be remedied (except if it is satisfied that the breach will not materially prejudice the interests of the holders of the interests in the KiwiSaver scheme).’

“**43C Provisions apply regardless of when deed is entered into** Regulations 43A and 43B apply whether or not the trust deed for a unit trust or KiwiSaver scheme was entered into before the date on which this regulation comes into force.”

10 New Schedule 14A inserted

The Schedule 14A set out in the Schedule of these regulations is inserted after Schedule 14.

11 Schedule 15 amended

(1) Schedule 15 is amended by inserting the following clauses after clause 3:

“**3A Issuer must provide reports to trustee**

“(1) The issuer must provide any reports that the trustee, by written notice, requires the issuer to provide.

“(2) Reports required under subclause (1) may—

“(a) be about any matter relevant to the performance of the trustee’s duties:

“(b) include forward-looking reports.

“(3) Reports required under subclause (1) must be—

“(a) provided within the time (which must be reasonable in the circumstances) specified by the trustee; and

“(b) signed by at least 2 directors on behalf of the board of the issuer or, if the issuer has only 1 director, by that director.

“3B Issuer must report breach or possible breach of terms of deed or of offer

If an issuer has reasonable grounds to believe that it has breached, or may have breached, any of the terms of the deed or of the terms of the offer of the debt securities, the issuer must, as soon as practicable, notify the trustee in writing of—

- “(a) the breach or possible breach; and
- “(b) the steps (if any) that the issuer has taken or intends to take in light of the breach or possible breach and the date by which the steps were taken or are to be taken.

“3C Right of trustee to engage expert

“(1) The trustee is entitled to engage an expert (for example, an auditor, investigating accountant, valuer, or actuary) if the trustee considers, on reasonable grounds, that it requires the assistance of the expert to assist the trustee to—

- “(a) determine the financial position of the issuer; or
- “(b) review the business, operation, or management systems, or the governance, of the issuer.

“(2) If the trustee engages an expert under this clause,—

- “(a) the issuer must provide reasonable assistance to the expert to allow the expert to provide the assistance; and
- “(b) the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the issuer.

“3D Power of trustee to amend trust deed in certain circumstances

“(1) The trustee may, with the written consent of the issuer, execute a deed to make amendments to the trust deed that do not adversely affect the interests of the holders of the debt securities.

“(2) The trustee may act under subclause (1) without obtaining the consent of the holders of the debt securities.

“(3) The issuer must, within 10 working days after a deed is executed under subclause (1), send a notice that contains a description of the amendment to every holder of the debt securities at the holder’s last known address.

“(4) However, subclause (3) does not apply if the trustee notifies the issuer that subclause (3) does not need to be complied with

(if, for example, the trustee considers that notification is not required or that it would be appropriate to give notice of the amendment in some other manner).

“3E Matters held on trust

The following are held in trust by the trustee for the benefit of the holders of the debt securities:

- “(a) the right to enforce the issuer’s duty to repay; and
- “(b) any charge or security for repayment; and
- “(c) the right to enforce any other duties that the issuer and any guarantor have under—
 - “(i) the terms of the debt securities; or
 - “(ii) the provisions of the deed.”

- (2) Clause 5(3) and (4) of Schedule 15 are revoked.
- (3) Clause 11 of Schedule 15 is revoked.

12 Transitional provision

The amendments made by regulations 6 and 11 apply to a trust deed whether or not the trust deed was registered before 1 October 2011.

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New Schedule 14A inserted	
Schedule 14A	r 39A
Matters to be specified in trust deeds	
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Schedule 14A—*continued*

1 Corporate or other form

- (1) If the issuer is a body corporate, the statute or other authority by or under which the issuer is incorporated or registered.
- (2) If the issuer is not a body corporate, the form of the issuer (for example, friendly society or credit union).

2 Governance

The governance requirements that the issuer must comply with (if any).

3 Periodic reporting

The frequency with which the issuer must provide periodic reports to the trustee and the contents of those reports.

4 Meetings

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

5 Trustee

- (1) The terms relating to the appointment and removal from office of the trustee.
- (2) The powers and duties of the trustee.

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 October 2011, amend the Securities Regulations 2009 to—

- require trust deeds for debt securities to include provisions specifying certain matters (for example, matters relating to governance, reporting, meetings, and the trustee's powers and duties). *New regulation 42A* provides a 1-year period within which trust deeds registered before 1 October 2011 must be amended to specify these matters:
- prescribe further clauses that are deemed to be contained in trust deeds for debt securities. The clauses provide for reports, the trustee's right to engage experts, and the trustee's powers to amend the trust deed and to enforce the issuer's duties:
- prescribe clauses that are deemed to be contained in trust deeds for unit trusts and KiwiSaver schemes (other than restricted schemes). The clauses require the relevant trustee to exercise reasonable diligence to ascertain whether or not any breach of the terms of the deed or of the offer of securities has occurred, and to do all of the things that it is empowered to do to cause any breach of those terms to be remedied (except if the breach will not materially prejudice the interests of the securities holders).

Reprints notes

1 *General*

This is a reprint of the Securities Amendment Regulations (No 2) 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)
