

Reprint
as at 1 December 2016



**Securities Act (Multiple Participants Superannuation
Schemes) Exemption Notice 2011**
(SR 2011/429)

Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011: expired, on the close of 30 November 2016, by clause 3.

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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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.

This notice is administered by the Financial Markets Authority.

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Notice

1 Title

This notice is the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011.

2 Commencement

This notice comes into force on 20 December 2011.

3 Expiry

This notice expires on the close of 30 November 2016.

4 Interpretation

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

Act means the Securities Act 1978

admission deed means a deed or written agreement entered into by a participant that admits the participant to a superannuation scheme on the terms contained in—

(a) the deed or agreement; and

(b) the principal trust deed relating to the superannuation scheme

participant means a person who has entered into an admission deed in respect of specified persons

Regulations means the Securities Regulations 2009

relevant participant, in relation to a specified person, means the participant who has entered into the admission deed in respect of the specified person

scheme investment statement—

- (a) means an investment statement that contains, or refers to, an offer of interests in a superannuation scheme to a specified person or a class of specified persons; and
- (b) includes, in relation to an investment statement distributed to a person who is a specified person in relation to a particular participant, a supplement that—
 - (i) contains information, statements, or other matters relating to the participant; and
 - (ii) forms part of the investment statement

scheme prospectus means the registered prospectus relating to a superannuation scheme

specified person means—

- (a) a director or an officer of a participant or of a subsidiary or an associated company of a participant; or
- (b) an individual who is an employee of a participant or of a subsidiary or an associated company of a participant; or
- (c) an individual who provides services principally to a participant or to a subsidiary or an associated company of a participant; or
- (d) an individual who is eligible to subscribe for interests in a superannuation scheme as a member of, or as a result of a relationship with,—
 - (i) a partnership, professional association, union, or credit union that is a participant; or
 - (ii) a person who has entered into an admission deed relating to that superannuation scheme before the commencement of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998

superannuation scheme means a superannuation scheme that has or is intended to have at least 2 participants.

- (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.

Exemption from requirement that prospectus be signed by every promoter

5 Exemption from section 41(1)(b)(ii) of Act

Every superannuation trustee, participant, director of a participant, and every person acting on behalf of all or any of them are exempted from section

41(1)(b)(ii) of the Act in respect of a scheme prospectus to the extent that a participant or a director of a participant (or its, his, or her agent) is required to sign the prospectus as a promoter.

Exemptions from investment statement requirement that matters must be set out under question

6 Exemption from regulation 21 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from regulation 21 of the Regulations in respect of any information, statements, and other matters relating only to a particular participant that are required to be contained in a scheme investment statement.
- (2) The exemption is subject to the condition that any information, statements, and other matters specified under an italicised question set out in Schedule 13 of the Regulations that relate only to a particular participant must be set out together in the relevant supplement under that question.
- (3) In subclause (2), **relevant supplement**, in relation to information, statements, and other matters that relate to a particular participant, means a supplement that forms part of the scheme investment statement that is distributed to the persons who are specified persons in relation to the participant.

Exemptions from various prospectus requirements

7 Exemption from clause 3(2) of Schedule 6 of Regulations

Every superannuation trustee and every person acting on its behalf are exempted from clause 3(2) of Schedule 6 of the Regulations to the extent that the scheme prospectus is required to contain the name of every participant and the name of every director of a participant.

8 Exemption from clause 3(3) of Schedule 6 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 3(3) of Schedule 6 of the Regulations to the extent that the scheme prospectus is required to contain a statement or information about a participant or a director of a participant.
- (2) The exemption is subject to the condition that the scheme investment statement that is distributed to a specified person contains, in respect of the relevant participant or a director of the relevant participant, the statement and information required by clause 3(3) of Schedule 6 of the Regulations (if any of the matters specified in that subclause apply in relation to the relevant participant or director).

9 Exemption from clause 4(1) of Schedule 6 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(1) of Schedule 6 of the Regulations to the extent that the

scheme prospectus is required to state the date of an admission deed and the dates of all amendments to that deed.

- (2) The exemption is subject to the condition that the scheme investment statement that is distributed to a specified person—
 - (a) contains a statement to the effect that a copy of the admission deed that relates to the specified person and a copy of all amendments to that deed are available, free of charge, to the specified person and to prospective members of the scheme on request to the participant to which the deed relates; and
 - (b) states the date of the admission deed that relates to the specified person and the dates of all amendments to that deed.

10 Exemption from clause 4(2) of Schedule 6 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(2) of Schedule 6 of the Regulations to the extent that the scheme prospectus is required to contain a summary of the principal terms of entry of specified persons to a superannuation scheme, the contributions payable by or on behalf of specified persons, and the benefit entitlement of specified persons.
- (2) The exemption is subject to the conditions that—
 - (a) the admission deed sets out, in respect of the specified persons to which it relates, the matters referred to in subclause (1) that are not set out in the scheme prospectus; and
 - (b) the scheme investment statement that is distributed to a specified person contains a summary of the principal terms of the superannuation scheme that are set out in the admission deed that relates to the specified person.

11 Exemption from clause 4(3) of Schedule 6 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(3) of Schedule 6 of the Regulations to the extent that the scheme prospectus is required to contain a description of—
 - (a) any conditions of entry of specified persons to, and termination of membership of specified persons in, the superannuation scheme;
 - (b) any restrictions on investment of the assets of the superannuation scheme;
 - (c) the rights and obligations of participants (if any) in regard to the superannuation scheme.
- (2) The exemption is subject to the conditions that—
 - (a) the admission deed sets out, in respect of the specified persons and participants to which it relates, the matters referred to in subclause (1) that are not set out in the scheme prospectus; and

- (b) the scheme investment statement that is distributed to a specified person contains, in respect of the specified person and the relevant participant, a description of the matters referred to in subclause (1) that are not set out in the scheme prospectus.

12 Alternative exemption from clause 4(3)(c) of Schedule 6 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(3)(c) of Schedule 6 of the Regulations to the extent that the scheme prospectus is required to contain a description of the rights and obligations of participants that relate only to amounts payable from—
 - (a) a participant to the superannuation scheme; or
 - (b) a participant to a specified person; or
 - (c) a specified person to the superannuation scheme.
- (2) The exemption is subject to the condition that the scheme investment statement that is distributed to a specified person contains the information referred to in subclause (1) in respect of the specified person and relevant participant.

13 Exemption from clause 8(2) of Schedule 6 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 8(2) of Schedule 6 of the Regulations to the extent that the scheme prospectus is required to contain particulars of any material interest referred to in that subclause that a participant or a director of a participant has or has had during the 5 years preceding the specified date.
- (2) The exemption is subject to the condition that the scheme investment statement that is distributed to a specified person contains the particulars required by clause 8(2) of Schedule 6 of the Regulations in respect of the relevant participant and the directors of the relevant participant.

14 Exemption from clause 11 of Schedule 6 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 11 of Schedule 6 of the Regulations to the extent that the scheme prospectus is required to set out all terms of the scheme being offered that are set out only in the admission deed.
- (2) The exemption is subject to the condition that the scheme prospectus and the scheme investment statement contain either—
 - (a) a statement to the effect that the admission deed and a copy of all amendments to that deed have been registered by, or filed with, the Registrar and are available for public inspection; or
 - (b) a statement to the effect that a copy of the admission deed and a copy of all amendments to that deed are available, free of charge, to specified persons and to prospective members of the superannuation scheme on request to the participant to which the deed relates.

- (3) The exemption is subject to the further condition that the admission deed that relates to a specified person is referred to in the scheme investment statement that is distributed to the specified person in such a manner that it can be readily identified.

Exemption from investment statement requirement that relates to disclosure of names and addresses of promoters

15 Exemption from clause 3(6) of Schedule 13 of Regulations

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 3(6) of Schedule 13 of the Regulations to the extent that the names and addresses of any participant and any director of a participant, other than the relevant participant in respect of the specified person to whom the scheme investment statement is distributed, are required to be contained in the scheme investment statement.
- (2) The exemption is subject to the condition that the scheme investment statement briefly describes the class of participants and the class of specified persons to which it relates in such a manner that the class can be readily identified.

General conditions

16 General conditions relating to exemptions

- (1) Every exemption in clauses 5 to 11, 13, and 15 is subject to the condition that the scheme prospectus contains either—
 - (a) a statement to the effect that no offer of interests in the superannuation scheme may be made to any person in his or her capacity as a specified person unless an admission deed relating to the specified person has been signed by the relevant participant and the admission deed has been registered by, or filed with, the Registrar and is available for public inspection; or
 - (b) a statement to the effect that no offer of interests in the superannuation scheme may be made to any person in his or her capacity as a specified person unless an admission deed relating to the specified person has been signed by the relevant participant and the admission deed is available, free of charge, to specified persons to whom it relates and to prospective members of the superannuation scheme on request to the relevant participant, as provided for in the scheme investment statement.
- (2) Every exemption in clauses 5 to 11, 13, and 15 is subject to the condition that the scheme prospectus states that the date of the admission deed and the dates of all amendments to that deed are contained in the scheme investment statement.

- (3) Every exemption in clauses 5, 7, 8, 13, and 15 is, in respect of interests in the superannuation scheme offered to a specified person, subject to the condition that either—
- (a) no scheme investment statement may be distributed to the specified person unless the certificate completed by the superannuation trustee under regulation 30 of the Regulations is accompanied by an acknowledgment in the following form:
- “We have received a certificate signed on behalf of [*name of relevant participant*] and each director of [*name of relevant participant*] in the form set out in the Schedule of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011 (being a certificate signed in the manner specified in clause 16(4) of that notice).”; or
- (b) before allotment, a director of the participant or a person authorised by the directors of the participant, has signed an acknowledgment that the specified person has received a copy of the scheme investment statement before subscribing for interests in the superannuation scheme.
- (4) The certificate to be signed on behalf of a relevant participant and each director of a relevant participant must be signed,—
- (a) if the relevant participant has only 1 director, by that director or by his or her agent authorised in writing;
- (b) if the relevant participant has 2 or more directors, by at least 2 persons, each of whom must be a director or an agent of a director authorised in writing.

Revocation and transitional provision

17 Revocation of Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998

The Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998 (SR 1998/423) is revoked on the close of 31 December 2011.

18 Transitional provision

- (1) If, on or before 31 December 2011, an offer of interests in a superannuation scheme is made in reliance on the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2009 under a prospectus that is registered on or before that date, the superannuation trustee, every participant, and every director of a participant may continue to rely on those notices in respect of interests in a superannuation scheme offered under that prospectus (as if both of those notices continued in force after 31 December 2011).
- (2) However, subclause (1) ceases to apply to a prospectus on an amendment being made to the prospectus after 31 December 2011 for the purpose of preventing it

from being false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.

- (3) In this clause, **superannuation scheme** and **participant** have the same meanings as in the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998.

Schedule

Certificate on behalf of participant and its directors

cl 16(3)

I/We* certify on behalf of [*name of relevant participant*] and its directors, namely, [*names of directors*], that—

*Select one.

- 1 *Each person who is signing the certificate must complete one of the following statements.*

I, [*name*], am a director of the participant and I am authorised to give this certificate on behalf of the participant and its directors.

or

I, [*name*], am an agent of a director of the participant and I am authorised to give this certificate on behalf of the participant and its directors.

- 2 I/We* have read the attached investment statement (and any supplement forming part of the investment statement).

*Select one.

- 3 The investment statement (and any supplement forming part of the investment statement) does not contain any information, statements, or other matters that are likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of interests in the superannuation scheme to which it refers.

- 4 I /We* consent to the distribution of the investment statement (and any supplement forming part of the investment statement).

*Select one.

Date:

Signature of director/authorised person*:

Date:

Signature of director/authorised person*:

*Select one.

Note

Attach a copy of the investment statement and any supplement forming part of the investment statement relating to the participant's section of the scheme.

Dated at Wellington this 16th day of December 2011.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 20 December 2011 and expires on 30 November 2016, replaces the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998 (the **1998 notice**).

This notice is on substantially the same terms as the 1998 notice. However, the notice relates to the Securities Regulations 2009 (rather than the Securities Regulations 1983). In addition, certain changes have been made to clarify the terms and conditions of the notice.

The notice exempts superannuation trustees, employers, and certain other participants in multiple participant superannuation schemes from the following provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **2009 regulations**):

- section 41(1)(b)(ii) of the Act. This provision requires the prospectus to be signed by the promoters (which may include participants and directors of participants):
- regulation 21 of the 2009 regulations (which requires matters in the investment statement to be set out under particular questions):
- various requirements in Schedule 6 of the 2009 regulations (which relate to the content of a prospectus for a superannuation scheme). The exemptions mainly relate to information that would otherwise be required to be disclosed about participants and directors of participants (as promoters) and admission deeds entered into by those participants. In the case of clause 4(1) of that Schedule (which relates to the date of the admission deed if it is a trust deed for the scheme), the conditions have been modified. The conditions now require the investment statement to refer to the availability of the admission deed (rather than merely providing for the registration of the deed):

- clause 3(6) of Schedule 13 of the 2009 regulations (which requires the investment statement to specify the names and addresses of participants and directors of participants as promoters).

The Financial Markets Authority, after satisfying itself of the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions set out in this notice for the following reasons:

- employers and other sponsors who join multiple participant superannuation schemes may be promoters (as defined in the Act). If so, those participants would need to sign and include their details in the prospectus. This is likely to be impractical for schemes with numerous participants and involve significant compliance costs:
- the exemptions recognise that the most relevant information for investors will be the details relating to their particular employer's (or sponsor's) participation in the scheme rather than the details of other participants in the scheme. The notice provides for information specifically about a particular participant to be included in an investment statement instead of the prospectus. This provides for each investor to receive information that is relevant to their investment decision without having to review information relating to other participants in the scheme, which might be confusing:
- the 2009 regulations have amended the regulatory requirements to allow an agent of a director to sign the certificates relating to the distribution of the investment statement. The exemption in the 1998 notice allowing an agent to sign these certificates is therefore no longer required:
- this notice continues an exemption from a provision of the Act previously provided in the 1998 notice, and provides for existing exemptions from provisions of the Securities Regulations 1983 to be extended to equivalent provisions of the 2009 regulations (with the effect that the participants in multiple participant superannuation schemes will be able to continue to rely on those exemptions in respect of offers of securities under the 2009 regulations). While the changes introduced by the 2009 regulations will reduce costs for issuers and improve information for investors, they do not attempt to tailor disclosure requirements for the vast range of persons to which securities law requirements apply. Accordingly the amendments to the regulations have not addressed all of the difficulties faced by participants in multiple participant superannuation schemes in complying with these particular regulations. Exemptions from the equivalent provisions continue to be required, and remain appropriate in light of the policy of the 1998 notice:
- in light of the alternative disclosure obligations prescribed by the conditions of the notice, the Financial Markets Authority considers that the exemptions will not cause significant detriment to subscribers, and that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions:

- the transitional provisions reduce the short-term compliance costs resulting from the regulatory changes for issuers that have previously relied on the 1998 notice.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 19 December 2011.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011 that incorporates all the amendments to that notice as at the date of the last amendment to it.

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*

Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011 (SR 2011/429): clause 3