



## **Financial Markets Conduct (Unit Trusts and Group Investment Funds Being Wound up—Securities Allotted under Securities Act 1978) Exemption Notice 2017**

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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## Notice

### 1 Title

This notice is the Financial Markets Conduct (Unit Trusts and Group Investment Funds Being Wound up—Securities Allotted under Securities Act 1978) Exemption Notice 2017.

### 2 Commencement

This notice comes into force on 14 July 2017.

### 3 Revocation

This notice is revoked on the close of 13 July 2022.

### 4 Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**externally managed fund** means a group investment fund in respect of which the trustee company that established the fund has appointed another party as manager of the fund

**group investment fund** has the meaning given in section 2 of the Trustee Companies Act 1967

**Regulations** means the Financial Markets Conduct Regulations 2014

**specified scheme** means a managed investment scheme that is—

- (a) a group investment fund; or
- (b) a unit trust

**unit trust** has the meaning given in section 2(1) of the Unit Trusts Act 1960 (as in force immediately before the repeal of that Act)

**winding-up plan** means the plan described in clause 6.

- (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.

### *Application of exemptions*

### 5 Application of exemptions

- (1) The exemptions in clauses 10 to 16 apply in relation to a specified scheme that is a unit trust—
- (a) to which Part 2 of Schedule 4 of the Act applies in respect of all of the units in the unit trust; and
  - (b) in respect of which, before the close of 30 November 2016,—

- (i) a resolution was passed to wind up the scheme and to realise all of the scheme's assets; and
  - (ii) the process of giving effect to the resolution was underway; and
  - (iii) notice of the resolution was provided to all persons who, on the date on which the resolution was passed, were known to be scheme participants.
- (2) The exemptions in clauses 10 to 17 apply in relation to a specified scheme that is a group investment fund—
  - (a) to which Part 2 of Schedule 4 of the Act applies in respect of all managed investment products issued by the fund; and
  - (b) in respect of which, before the close of 30 November 2016,—
    - (i) a resolution was passed to wind up the scheme and to realise all of the scheme's assets; and
    - (ii) the process of giving effect to the resolution was underway; and
    - (iii) notice of the resolution was provided to all persons who, on the date on which the resolution was passed, were known to be scheme participants.
- (3) Despite subclauses (1) and (2), the exemptions in clauses 10 to 17 do not apply in relation to a specified scheme in respect of which any managed investment products have been offered or issued on or after 1 December 2016.

## **6 Manager must prepare winding-up plan**

- (1) The exemptions in clauses 10 to 17 cease to apply on the date that is 3 months after the commencement date of this notice if the manager of the specified scheme has not, before that date, prepared and provided to the supervisor a written plan to wind up the scheme (a **winding-up plan**) that sets out—
  - (a) the actions required to wind up the scheme; and
  - (b) any matters that require the approval of scheme participants; and
  - (c) time frames for winding up the scheme; and
  - (d) any other material information relating to the winding up.
- (2) Subclause (1) applies unless the distribution of the assets of the scheme has been completed before the date that is 3 months after the commencement date of this notice.

## **7 Manager must produce progress reports**

- (1) The exemptions in clauses 10 to 17 cease to apply on the date that is 20 working days after the end of any period of 6 months after the resolution to wind up the scheme was passed, if the manager has not, before that date, provided a report to interested parties that sets out—

- (a) the progress of the winding up of the scheme over that period and how that compares to the winding-up plan (if any); and
- (b) any further proposals from the manager for completing the winding up.
- (2) However, subclause (1) does not apply in respect of any period of 6 months that ends before the commencement of this notice.
- (3) In subclause (1), **interested parties** means—
  - (a) every scheme participant known to the manager; and
  - (b) the supervisor of the scheme; and
  - (c) the FMA.
- (4) A report provided to a scheme participant under subclause (1) must be given to the participant or delivered or sent to the participant's address.
- (5) This clause applies until the distribution of the assets of the scheme has been completed.

#### **8 Manager must provide information to Registrar and FMA**

- (1) The exemptions in clauses 10 to 17 cease to apply on the date that is 3 months after the commencement date of this notice if the manager of the specified scheme has not, before that date,—
  - (a) given a copy of the winding-up resolution in respect of the scheme to the FMA (whether before or after the commencement of this notice); and
  - (b) ensured that a copy of the governing document for the scheme is lodged with the Registrar; and
  - (c) confirmed by written notice to the Registrar and the FMA that the manager intends to rely on this notice and any other relevant exemption notice; and
  - (d) supplied the following information to the Registrar and the FMA:
    - (i) the name of the specified scheme:
    - (ii) an identification of the type of scheme:
    - (iii) the name of each of the following (as selected from a register kept by the Registrar) or, if the person does not have an entry on such a register, the unique identifying information of the person:
      - (A) the manager of the scheme:
      - (B) the supervisor of the scheme:
      - (C) a custodian (other than a sub-custodian) that is not the supervisor:
    - (iv) the financial service provider number (if any) for each person referred to in subparagraph (iii):
    - (v) the address of the manager of the scheme:

- (vi) the address for communications from the Registrar to the manager (if different from the address referred to in subparagraph (v)):
  - (vii) the address of the supervisor of the scheme:
  - (viii) the address for communications from the Registrar to the supervisor (if different from the address referred to in subparagraph (vii)):
  - (ix) the balance date of the scheme.
- (2) Subclause (1) applies unless the distribution of the assets of the scheme has been completed before the date that is 3 months after the commencement date of this notice.

## **9 Manager must give notice to scheme participants**

- (1) The exemptions in clauses 10 to 17 cease to apply on the date that is 3 months after the commencement date of this notice if the manager of the specified scheme has not, before that date, provided a written notice containing the following to every scheme participant known to the manager:
- (a) a statement to the effect that, due to this notice, some of the standard disclosure and governance requirements under the Act do not apply to the specified scheme while it is being wound up:
  - (b) a brief description of the effect of the exemptions relied on and the conditions that apply:
  - (c) unless already provided, the winding up plan for the specified scheme:
  - (d) the names and addresses of the manager, the supervisor, and a custodian:
  - (e) a statement—
    - (i) to the effect that the participant may obtain a copy of the governing document for the scheme by electronic means; and
    - (ii) to the effect that the participant has a right to receive from the issuer, free of charge, a copy of the governing document if the participant requests a copy within 15 working days of receiving the notice; and
    - (iii) as to how the participant may obtain a copy of the document by electronic means (for example, from a specified Internet site address).
- (2) Subclause (1) applies unless the distribution of the assets of the scheme has been completed before the date that is 3 months after the commencement date of this notice.
- (3) A notice provided to a scheme participant under subclause (1) must be given to the participant or delivered or sent to the participant's address.

*Exemptions applying to managers of specified schemes*

**10 Exemption from ongoing disclosure and updating of registers**

The manager of a specified scheme to which this clause applies is exempted in relation to the scheme from subpart 4 of Part 3 of the Act.

**11 Exemptions from governing document requirements**

The manager of a specified scheme to which this clause applies is exempted in relation to the scheme from—

- (a) section 135(1) and (3) of the Act; and
- (b) section 127(1)(b) of the Act to the extent that it requires the governing document to comply with sections 135(1) and (3) and 136 of the Act; and
- (c) section 133(a) of the Act to the extent that it relates to sections 135(1) and (3) and 136 of the Act.

**12 Exemptions from licensing requirements**

(1) The manager of a specified scheme to which this clause applies is exempted in relation to the scheme from—

- (a) section 127(1)(c) of the Act; and
- (b) section 133(a) of the Act to the extent that it relates to section 127(1)(c) of the Act; and
- (c) section 388(a) of the Act.

(2) However, this clause does not apply to a manager of a specified scheme who is also the manager of a registered scheme that is not a specified scheme.

**13 Exemptions from requirement to have statement of investment policy and objectives**

The manager of a specified scheme to which this clause applies is exempted in relation to the scheme from sections 164 and 166(1) of the Act.

**14 Exemption from requirement to audit or review registers**

The manager of a specified scheme to which this clause applies is exempted in relation to the scheme from section 218 of the Act.

*Exemptions applying to custodians of specified schemes*

**15 Exemption from daily cash reconciliation requirement**

A custodian of a specified scheme to which this clause applies is exempted in relation to the scheme from regulation 86(3) of the Regulations.

**16 Exemption from annual assurance engagement requirement**

A custodian of a specified scheme to which this clause applies is exempted in relation to the scheme from regulation 87(1) of the Regulations—

- (a) in respect of any relevant date occurring less than 4 months before the commencement of this notice; and
- (b) in respect of any relevant date occurring on or after the commencement of this notice.

*Exemptions applying to group investment funds*

**17 Exemptions from independent custody requirements**

- (1) This clause applies in relation to a specified scheme that is a group investment fund other than an externally managed fund.
- (2) The manager of a group investment fund to which this clause applies is exempt in relation to the fund from—
  - (a) section 127(1)(f) of the Act; and
  - (b) section 133(a) of the Act to the extent that it relates to section 127(1)(f) of the Act.
- (3) The supervisor of a group investment fund to which this clause applies is exempt in relation to the fund from section 156(1) of the Act.

*Condition of exemptions*

**18 Condition relating to winding up specified scheme**

The exemptions in this notice are subject to the condition that the manager of a specified scheme must carry out the winding up of the scheme in accordance with any relevant provisions of the governing document for the scheme.

Dated at Auckland this 7th day of July 2017.

Nick Kynoch,  
General Counsel.

## Statement of reasons

This notice comes into force on 14 July 2017 and is revoked on the close of 13 July 2022.

This notice applies to unit trusts and group investment funds in respect of which, before the close of 30 November 2016, a resolution was passed to wind up the trust or fund and the process of giving effect to the resolution was underway.

Since 1 December 2016, certain requirements under the Financial Markets Conduct Act 2013 (the **Act**) have applied to these schemes, including ongoing disclosure, governance, and financial reporting requirements. This notice provides exemptions, subject to certain conditions, from the ongoing disclosure requirements and the following licensing and governance requirements of the Act and the Financial Markets Conduct Regulations 2014:

- the requirement to update the scheme’s governing document to comply with the content requirements of the Act:
- the requirement to have a licensed manager designated or appointed under the Act or the scheme’s governing document whose licence covers management of the scheme:
- in respect of group investment funds that are not externally managed, the requirement to have an independent custodian:
- the requirement to have a statement of investment policy and objectives:
- the requirement to have the register of regulated products audited or reviewed by a qualified auditor:
- the requirement that a custodian of scheme property performs daily cash reconciliations and obtains an annual assurance engagement.

The exemptions in this notice cease to apply if the requirements for a specified scheme to prepare a winding-up plan, produce progress reports, provide information to the Financial Markets Authority (the **FMA**) and the Registrar, and give notice to participants are not met (*see clauses 6 to 9*). The exemptions are also subject to the condition that the manager of a scheme to which the exemptions apply must carry out the winding up of the scheme in accordance with the scheme’s governing document.

The FMA, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because,—

- in general, the exemptions will reduce transitional and ongoing compliance costs for unit trusts and group investment funds that are in the process of winding up by relieving them of certain obligations that are unlikely to be of real benefit to affected investors in the circumstances:
- as the process of winding up must be conducted in accordance with section 213 of the Act, the governing document of the trust or fund, and the requirements of this notice, appropriate governance arrangements are in place for these schemes to allow for effective monitoring and to reduce governance risks:

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Statement of reasons

- the manager of a trust or fund to which this notice applies remains subject to general duties in the Act that apply in the exercise of their functions, including the obligation to act honestly and in the best interests of scheme participants and to exercise the care, diligence, and skill of a prudent person:
- each scheme must have a licensed supervisor designated or appointed under the governing document (or the Financial Markets Supervisors Act 2011) whose licence covers supervision of the scheme.

As such, the FMA is satisfied that—

- the granting of the exemption is desirable in order to promote the purposes of the Act, specifically to avoid unnecessary compliance costs and to promote flexibility in financial markets; and
- as the exemptions are available only to schemes that commenced the process of being wound up before 1 December 2016, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 13 July 2017.

This notice is administered by the Financial Markets Authority.