



Securities Act (Externally Managed KiwiSaver Schemes and Superannuation Schemes) Exemption Notice 2008

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

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Notice

- 1 Title**
This notice is the Securities Act (Externally Managed Kiwi-Saver Schemes and Superannuation Schemes) Exemption Notice 2008.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 8 May 2013.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
- Act** means the Securities Act 1978
- KiwiSaver scheme** has the same meaning as in section 4(1) of the KiwiSaver Act 2006
- Regulations** means the Securities Regulations 1983
- scheme** means a KiwiSaver scheme or superannuation scheme of which a trustee corporation is the trustee and in respect of which the trustee has appointed another party as the manager of that scheme
- superannuation scheme** means a superannuation scheme registered under the Superannuation Schemes Act 1989
- trustee corporation** has the same meaning as in section 4(1) of the KiwiSaver Act 2006.
- (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.

5 Exemption

Every trustee corporation that, and every person acting on its behalf who, distributes an advertisement to the public relating to a scheme is exempted from regulation 17 of the Regulations in respect of the distribution of that advertisement.

6 Conditions

- (1) The exemption in clause 5 is subject to the conditions that—
- (a) a certificate that complies with subclause (2) has been completed in respect of the advertisement at the time that the advertisement is distributed to the public; and
 - (b) the trustee corporation holds that certificate for at least 12 months from the date of the last distribution of the advertisement.
- (2) A certificate for the purposes of subclause (1)(a) must be in the form set out in Schedule 4 of the Regulations and must be signed by 2 persons who are—
- (a) directors of the trustee corporation; or

- (b) executive officers of the trustee corporation authorised by the directors of the trustee corporation to sign those certificates; or
 - (c) a director and an executive officer of the trustee corporation, being an executive officer who is authorised by the directors of the trustee corporation to sign those certificates.
- (3) Subclause (1) does not apply in respect of an advertisement if—
- (a) it is an authorised advertisement that contains no information or matter other than the information or matters specified in regulation 17(3)(a) of the Regulations; or
 - (b) the only difference between the advertisement and another advertisement in respect of which a certificate that complies with subclause (2) has been completed is that a rate or rates of interest shown in 1 of the advertisements differ from a rate or rates of interest shown in the other advertisement; or
 - (c) the only difference between the advertisement and another advertisement in respect of which a certificate that complies with subclause (2) has been completed is that the advertisement contains prospective financial information personal to a person to whom the advertisement is distributed calculated in accordance with assumptions and a method of calculation stated in both advertisements.

Dated at Wellington this 6th day of May 2008.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 8 May 2013, exempts trustee corporations that distribute advertisements relating to externally managed KiwiSaver schemes or superannuation schemes for which the trustee corporations are trustees from regulation 17 of the Securities Regulations 1983 in respect of the distribution of those advertisements.

The Securities Commission considers that this exemption is appropriate because,—

- under the KiwiSaver Act 2006, most KiwiSaver schemes must have an independent trustee and the default schemes must have a trustee corporation as a trustee. A significant number of KiwiSaver schemes other than the default schemes have appointed a trustee corporation as trustee:
- under the Securities Act 1978, the trustee of a superannuation scheme (including a KiwiSaver scheme) is the issuer of the scheme. Pursuant to regulation 17 of the Securities Regulations 1983, its directors are thereby required to sign regulation 17 certificates in relation to advertisements for those schemes. This is even where, as is the case for many of these schemes, the scheme is sponsored and externally managed by a third party:
- the introduction of KiwiSaver schemes has caused, and is likely to continue to cause, a significant volume of advertising relating to externally managed superannuation schemes:

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- trustee corporations are appointed to monitor the performance of business entities offering debt securities, unit trusts, participatory securities, or superannuation funds to members of the public. It is appropriate that the directors of trustee corporations should be able to authorise appropriate executive officers to take on the role of reviewing advertisements for externally managed superannuation schemes:
- a trustee corporation would typically seek a high level of comfort from the manager of any scheme as to the accuracy of advertisements for the scheme and the manager has liability for those advertisements as promoter of the scheme. The trustee corporation, as issuer, does additionally have responsibility for the advertisements and this exemption does not limit this responsibility or potential liability.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 8 May 2008.

This notice is administered by the Securities Commission.
