

Reprint
as at 29 April 2020



Financial Markets Conduct (Restricted Schemes— Custodian Assurance Engagement) Exemption Notice 2020

(LI 2020/45)

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 (Restricted Schemes—Custodian Assurance Engagement) Exemption Notice 2020.

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.

2 Commencement

This notice comes into force on 31 March 2020.

3 Revocation

This notice is revoked on the close of 30 March 2025.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

administration period, in relation to a restricted scheme, means a relevant period, or a part of a relevant period, for which—

- (a) all administration of the scheme with respect to holding scheme property is contracted to an administration manager under section 146 of the Act; and
- (b) all keeping of scheme property records under section 158(1) of the Act is also contracted to that administration manager

call debt security means a debt security under which—

- (a) the product holder has a right to demand repayment of the principal sum in full at any time; and
- (b) the issuer has an obligation to repay the principal sum in full not later than 1 working day after the demand is made; and
- (c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time

eligible scheme has the meaning set out in subclause (2)

Regulations means the Financial Markets Conduct Regulations 2014

relevant date has the same meaning as in regulation 87(4) of the Regulations

relevant period has the same meaning as in regulation 88(4) of the Regulations

scheme bank account, in relation to an eligible scheme, means a bank account of the scheme other than an investment account

standard asset means—

- (a) a call debt security issued by a registered bank; or
- (b) a term deposit held at a registered bank; or
- (c) an interest in a registered scheme; or
- (d) an interest in a registered scheme within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth of Australia; or

- (e) an interest in a wholesale managed investment scheme the custodian of which—
 - (i) is resident or incorporated in, or established under the laws of, New Zealand or Australia; and
 - (ii) has a place of business in New Zealand or Australia; or
- (f) a New Zealand Government bond; or
- (g) an interest in a UCITS fund

UCITS fund means an investment fund—

- (a) established in a member state of the European Union or another member state of the European Economic Area; and
- (b) authorised in that state under legislation implementing Directive 2009/65/EC of the European Parliament and of the Council of the European Union

wholesale managed investment scheme means a managed investment scheme in which interests are offered to wholesale investors only.

- (2) In this notice, a restricted scheme is an **eligible scheme** if—
 - (a) all of the scheme property is held directly by a single custodian that is a body corporate and that either—
 - (i) is a trustee of the scheme; or
 - (ii) has, as its directors, only persons who are trustees of the scheme; and
 - (b) all administration of the scheme with respect to holding scheme property is contracted to a single administration manager under section 146 of the Act; and
 - (c) all keeping of scheme property records under section 158(1) of the Act is also contracted to that administration manager; and
 - (d) the administration manager—
 - (i) is resident or incorporated in, or established under the laws of, New Zealand; and
 - (ii) has a place of business in New Zealand; and
 - (e) no more than 5% of the scheme property, as valued in accordance with generally accepted accounting practice, consists of investments other than direct investments in standard assets.
- (3) 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 from assurance engagement requirement

A custodian of a restricted scheme is exempted from regulation 87(1) and (2) of the Regulations in relation to the scheme for a relevant period if—

- (a) the period ended—
 - (i) on or after 31 March 2020; and
 - (ii) before 30 September 2024; and
- (b) the restricted scheme was an eligible scheme throughout the period.

6 Condition that administration manager provided reports, obtains assurance engagement, and prepares certificate

The exemption in clause 5 is subject to the condition that, for each administration period within the relevant period,—

- (a) the administration manager who administered the eligible scheme with respect to holding scheme property provided the custodian with quarterly or more frequent reports (together covering the whole of the administration period) on—
 - (i) scheme contributions, withdrawals, and other transactions during the administration period; and
 - (ii) changes made to scheme records during the administration period; and
- (b) that administration manager also—
 - (i) obtains an assurance engagement in accordance with clause 7; and
 - (ii) prepares a certificate in accordance with clause 8; and
- (c) copies of the assurance report and certificate are provided to the custodian within 4 months of the relevant date; and
- (d) within 20 working days after the custodian receives the copies—
 - (i) the custodian advises the FMA in writing that the custodian is relying on the report and certificate in connection with the exemption in clause 5; and
 - (ii) copies of the report and certificate are provided to the FMA, and to the manager of the scheme if different from the custodian.

7 Administration manager's assurance engagement

An assurance engagement referred to in clause 6(b)(i) must—

- (a) be with a qualified auditor; and
- (b) be done in accordance with applicable auditing and assurance standards; and
- (c) expressly cover the administration period and the scheme property; and

- (d) determine whether, in the auditor's opinion, there is reasonable assurance that throughout the administration period the administration manager's processes, procedures, and controls—
 - (i) were suitably designed to meet the objectives in regulation 88(3) of the Regulations; and
 - (ii) operated effectively.

8 Administration manager's certificate

- (1) A certificate referred to in clause 6(b)(ii) must specify the dates of the administration period and certify that throughout that period—
 - (a) all administration of the scheme with respect to holding scheme property, in addition to all keeping of scheme property records under section 158(1) of the Act, was contracted to the administration manager; and
 - (b) all contributions made to the scheme were paid into, and all benefits paid from the scheme were paid from, a scheme bank account; and
 - (c) no one other than the administration manager—
 - (i) was authorised by the custodian to operate a scheme bank account; or
 - (ii) operated a scheme bank account; and
 - (d) the scheme property was invested in compliance with clause 4(2)(e).
- (2) The certificate must also certify that the administration manager provided the custodian with the reports referred to in clause 6(a).
- (3) The certificate must be in writing and addressed to the FMA.

9 Condition regarding previous assurance reports

- (1) The exemption in clause 5 is subject to the condition that—
 - (a) no previous assurance report in relation to the restricted scheme was qualified; or
 - (b) if a previous assurance report obtained by an administration manager in relation to the scheme was qualified—
 - (i) the FMA was notified in writing of the steps taken by the administration manager to resolve the reasons for the qualification, and the auditor who prepared the report confirmed in writing to the FMA that those steps were satisfactory; or
 - (ii) the custodian complied with regulation 87(1) and (2) of the Regulations in relation to the scheme for a subsequent relevant period.
- (2) In this clause,—
 - (a) **previous assurance report** means an assurance report referred to in clause 6(c) that—
 - (i) relates to a previous administration period; and

- (ii) was relied on by the custodian in connection with the exemption in clause 5:
- (b) an assurance report is **qualified** if it does not state that, in the opinion of the auditor who prepared it, there is reasonable assurance as mentioned in clause 7(d).

10 Time frame extended because of outbreak of COVID-19

- (1) This clause applies if a custodian that is exempted under clause 5 believes, on reasonable grounds, that it is not reasonably practicable for clause 6(c) to be complied with within 4 months of the relevant date because of the outbreak of COVID-19.
- (2) The period for compliance in clause 6(c) is extended to 6 months after the relevant date if the custodian gives to the FMA, within 4 months after the relevant date, a written notice that states that the custodian is relying on this clause.
- (3) This clause—
- (a) applies in relation to relevant periods that end on or after 31 March 2020 but before 1 August 2020; and
- (b) is revoked on the close of 29 April 2022.

Clause 10: inserted, on 29 April 2020, by clause 27 of the Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020 (LI 2020/71).

Dated at Auckland this 18th day of March 2020.

Nick Kynoch,
General Counsel at the Financial Markets Authority.

Statement of reasons

Note: the following statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

- **Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020**

This notice comes into force on 31 March 2020 and is revoked on 30 March 2025.

The notice exempts certain custodians of eligible restricted schemes from the requirement in regulation 87 of the Financial Markets Conduct Regulations 2014 (the **Regulations**) to obtain an assurance engagement from an auditor that covers the assurance engagement matters specified in regulation 88 of the Regulations.

A scheme is an eligible scheme for the exemption if, during the relevant period,—

- its custodian is a body corporate that directly holds all of the scheme property; and
- the custodian or all of the custodian’s directors are trustees of the scheme; and
- all administration of the scheme with respect to the holding of scheme property, in addition to all keeping of scheme property records under section 158(1) of the Financial Markets Conduct Act 2013 (the **Act**), is contracted to a single, New Zealand-based administration manager at any given time; and
- no more than 5% of the scheme property consists of investments falling outside particular New Zealand, Australian and European asset classes.

In order for the custodian to benefit from the exemption, each administration manager with respect to the holding of scheme property during the relevant period must—

- provide the custodian with regular reports; and
- obtain an assurance engagement from an auditor that covers certain matters similar to those specified in regulation 88 of the Regulations; and
- prepare a certificate confirming various details regarding the administration manager’s role, the scheme’s bank accounts, and the investment of scheme property.

The assurance report and certificate must be provided to the custodian and copies must be forwarded to the Financial Markets Authority (the **FMA**), and to the scheme manager if different from the custodian.

If the assurance report is qualified, the custodian will not be able to rely on the exemption for the scheme again until certain steps have been taken to resolve the reasons for the qualification or the custodian has complied with regulation 87 of the Regulations for a subsequent period.

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

- all restricted scheme custodians are required under the Act and the Regulations to obtain custodian assurance engagements; and
- where the performance of all administration functions and relevant record-keeping functions with respect to the holding of scheme property is contracted to an administration manager, the custodian assurance engagement is in practice supplemented by an assurance engagement obtained by the administration manager that assesses functions performed by the administration manager; and
- in that case, the information contained in the administration manager’s assurance engagement report about the controls in place to protect scheme property, accompanied by the certificate required by the exemption, is sufficient to provide reasonable assurance regarding custody of the scheme’s property, and so the benefits of requiring the custodian to obtain a custodian assurance engagement are outweighed by the costs; and

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Statement of reasons

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- the exemption is conditional on a copy of the administration manager’s assurance engagement report and certificate being given to the FMA; and
- as such, the FMA is satisfied that the granting of the exemption is desirable in order to promote the purposes of the Act. Specifically, it will ensure that appropriate governance arrangements apply to financial products that allow for effective monitoring and reduce governance risks, while avoiding unnecessary compliance costs; and
- given that the exemption is only available in relation to a class of restricted schemes for which the benefits of obtaining a custodian assurance engagement are outweighed by its costs, the FMA is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to it.

Note: the preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

- **Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 24 March 2020.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Restricted Schemes—Custodian Assurance Engagement) Exemption Notice 2020 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*

Financial Markets Conduct (Financial Reporting and Other Relief—COVID-19) Exemption Notice 2020 (LI 2020/71): clause 27