

**Reprint
as at 1 December 2016**



**Securities Act (Eligible Service Superannuation Schemes)
Exemption Notice 2004
(SR 2004/473)**

Securities Act (Eligible Service Superannuation Schemes) Exemption Notice 2004: revoked, on the close of 30 November 2016, by clause 3.

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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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.

Notice

1 Title

This notice is the Securities Act (Eligible Service Superannuation Schemes) Exemption Notice 2004.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Revocation

This notice is revoked on the close of 30 November 2016.

Clause 3: replaced, on 25 July 2014, by clause 3 of the Securities Act (Extension of Term) Exemption Notice 2014 (LI 2014/241).

4 Interpretation

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

Act means the Securities Act 1978

custodian does not include a bare trustee

de facto partner has the same meaning as in the Property (Relationships) Act 1976

eligible service superannuation scheme means a registered superannuation scheme (within the meaning of section 2(1) of the Superannuation Schemes Act 1989) that is listed in column A of the Schedule

manager means an administration manager or an investment manager (as those terms are defined in section 2(1) of the Superannuation Schemes Act 1989)

Regulations means the Securities Regulations 1983

specified date means, in relation to an annual report for a financial year, the date on which the financial year ends

spouse has the same meaning as in the Property (Relationships) Act 1976.

- (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 from section 37(1) of Act for eligible service superannuation schemes

Every superannuation trustee of an eligible service superannuation scheme, and every person acting on the trustee's behalf, is exempted from section 37(1) of the Act in respect of any interests in that scheme that are offered only to—

- (a) persons of the class specified in column B of the Schedule in respect of that scheme; and

- (b) relatives, spouses, de facto partners, or dependants of those persons.

6 Condition relating to funding of shortfall

- (1) The exemption in clause 5 is subject to the condition that it is a term of the offer that, if there is a shortfall for a financial year, 1 or more specified persons will incur, or will procure the payment of, costs (by way of contributions, expense payments, or both), in respect of that year, at least equal to the amount of the shortfall.
- (2) To determine whether there is a **shortfall** for a financial year,—
- (a) determine the costs of administering the scheme for the year (these are the **administrative costs**); and
- (b) then determine how much (if any) of the surplus has been applied to meet contribution liabilities, expense payments (which may include administrative costs), or both, for that year (this is the **applied surplus**); and
- (c) then deduct the applied surplus from the administrative costs (and the remaining amount of administrative costs, if any, is the **shortfall**).

- (3) In this clause—

administrative costs do not include costs that are directly attributable to the management of the investments of the scheme

specified person means the person promoting the scheme or any associated person of that person

surplus means the excess in the value of the scheme's assets over the value of the members' accrued benefits.

7 Condition relating to annual report

The exemption in clause 5 is subject to the condition that it is a term of the offer that each annual report prepared under section 14 of the Superannuation Schemes Act 1989 for a financial year during which the superannuation trustees of the scheme relied on that exemption must include the following statements and information:

- (a) if any superannuation trustee, promoter, or manager of the scheme, or any director of that superannuation trustee, promoter, or manager, has, during the 5 years preceding the specified date, been adjudged bankrupt or insolvent, convicted of any crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961), prohibited from acting as a director of a company, or placed in statutory management or receivership, a statement to that effect including the name and any alternative or former name or names of the superannuation trustee, promoter, manager, or director concerned:
- (b) if more than 10% of the value of the scheme's assets (calculated in accordance with generally accepted accounting practice) was, at any time

during the year preceding the specified date, represented directly or indirectly by any securities that were issued by a superannuation trustee, manager, or custodian of the scheme (or any associated person of any of them), a description of those securities:

- (c) a brief description of any legal proceedings or arbitrations that are pending at the specified date and that may have a material adverse effect on the scheme:
- (d) a statement by the superannuation trustees of the scheme (or, if a superannuation trustee is a body corporate or unincorporate, by the directors of that body) as to whether, in their opinion, after due enquiry by them, either or both of the following have materially and adversely changed since the specified date:
 - (i) the value of the scheme's assets relative to its liabilities (including contingent liabilities):
 - (ii) the ability of the scheme to pay its debts as they become due in the normal course of business:
- (e) a statement as to whether a person was required (under the terms of the offer required by clause 6) to incur, or procure the payment of, costs for that financial year and, if so, a statement that those costs have been incurred or that those costs have been paid.

8 Condition relating to requests for investment objectives and policy of scheme

The exemption in clause 5 is subject to the condition that it is a term of the offer that—

- (a) the superannuation trustees of the scheme must send, or cause to be sent, to any member who requests it, a description of the investment objectives and policy for the scheme or of the means by which changes can be made to those objectives and that policy (except to the extent that those matters have been disclosed in the investment statement); and
- (b) they must do so within 5 working days of receiving the member's request and without fee.

9 Condition relating to investment statements

- (1) The exemption in clause 5 is subject to the condition that a statement in the following form is included at the end of the statement required by clause 1(1) of Schedule 3D of the Regulations in the investment statement for the scheme:

“WARNING—RESTRICTED DISCLOSURE

The law requires that persons considering whether to join a superannuation scheme must be supplied on request with a prospectus about that scheme.

However, this superannuation scheme has been exempted from this requirement under the Securities Act (Eligible Service Superannuation Schemes) Exemption Notice 2004.

You should be aware that in choosing to become a member of this superannuation scheme you may be doing so on the basis of more limited information than is generally available to investors making important decisions about investments. However, every prospective member of this scheme has a right, under the Superannuation Schemes Act 1989, to request to receive certain information about the scheme (including a copy of the trust deed).”

- (2) The exemption in clause 5 is subject to the further condition that the terms of the offer referred to in clauses 6(1), 7, and 8 are stated in the investment statement for the scheme.

Schedule

Eligible service superannuation schemes

cl 4(1)

Column A: Eligible service superannuation schemes

The Beneficiary Fund of the Presbyterian Church of Aotearoa New Zealand.

The New Zealand Anglican Church Pension Fund.

The Supernumerary Fund of the Methodist Church of New Zealand.

Column B: Eligible persons to whom scheme can be offered

Ordained ministers of the Presbyterian Church of Aotearoa New Zealand.

Clergy of the Anglican Church in Aotearoa New Zealand and Polynesia.

Ministers of the Methodist Church of New Zealand (which also includes presbyters, deacons, home missionaries, and other persons engaged in ministry as from time to time determined by the governing body of the Methodist Church of New Zealand); and

Candidates accepted for the ministry of the Methodist Church of New Zealand who have been appointed (or offered appointments) at parishes or other designated stations and/or places of appointment, or divisions, of the Methodist Church of New Zealand; and

Persons accepted for training for the ministry of the Methodist Church of New Zealand.

Dated at Wellington this 21st day of December 2004.

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

[Seal]

C A N Beyer,
Member.

Statement of reasons

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

- **Securities Act (Extension of Term) Exemption Notice 2014**

This notice (which comes into force on the day after the date of its notification in the *Gazette* and expires on 28 February 2010) exempts certain superannuation schemes, subject to conditions, from section 37(1) of the Securities Act 1978 (the **Act**) in respect of offers of new membership. The schemes are listed in column A of the Schedule, with the persons to whom the superannuation benefits are offered under each scheme listed opposite in column B. Broadly, the purpose of the exemption is to extend to these schemes the benefit of the exemption contained in the Securities Act (Employer Superannuation Schemes) Exemption Notice 2004 (the **2004 notice**). They do not fall within that notice because the individuals to whom membership of the respective schemes will be offered are not strictly employees.

The Securities Commission (the **Commission**) considers that it is appropriate to grant the exemption because—

- the Commission has considered an application from the Anglican Church in Aotearoa New Zealand and Polynesia, the Methodist Church of New Zealand, and the Presbyterian Church of Aotearoa New Zealand seeking an exemption from the requirement for a registered prospectus when offering membership in particular superannuation schemes (the **schemes**) to individuals who include some or all of the following: ministers in their church, candidates accepted for the ministry in their church, and persons accepted for training as ministers. At law these individuals are not employees of the churches, and accordingly the schemes are not employer superannuation schemes within the meaning either of the Act or the 2004 notice:
- the exemptions in sections 5A to 5C of the Act and in the 2004 notice apply to schemes offered within an employer/employee relationship. The Commission considers that the position of an individual who qualifies for membership of a scheme to which this notice applies is sufficiently similar to that of an employee for an exemption to be consistent with the policy of sections 5A to 5C of the Act.

The Commission may add further registered superannuation schemes to the Schedule and will assess schemes for possible inclusion on a case by case basis. The Commission intends that a scheme may be eligible if—

- it is promoted by 1 person only or by 1 person and 1 or more associated persons; and
- it is offered to persons who, in the Commission's assessment, are in a situation similar to that of the classes of persons identified in column B of the Schedule.

However, it is not the Commission's intention that this notice be made available to schemes offered to contractors generally.

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

- **Securities Act (Extension of Term) Exemption Notice 2014**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 23 December 2004.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Eligible Service Superannuation Schemes) Exemption Notice 2004 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 (Extension of Term) Exemption Notice 2014 (LI 2014/241): clause 3

Securities Act (Eligible Service Superannuation Schemes) Exemption Notice 2004 (SR 2004/473): clause 3