

Version  
as at 18 December 2022



# Financial Markets Conduct (Financial Statements for Schemes Consisting Only of Separate Funds) Exemption Notice 2017

(LI 2017/299)

Financial Markets Conduct (Financial Statements for Schemes Consisting Only of Separate Funds) Exemption Notice 2017: revoked, on the close of 17 December 2022, by clause 3.

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.

## Contents

		Page
1	Title	1
2	Commencement	1
3	Revocation	2
4	Interpretation	2
5	Exemption	2

## Notice

### 1 Title

This notice is the Financial Markets Conduct (Financial Statements for Schemes Consisting Only of Separate Funds) Exemption Notice 2017.

### 2 Commencement

This notice comes into force on 18 December 2017.

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### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This notice is administered by the Financial Markets Authority.**

### 3 Revocation

This notice is revoked on the close of 17 December 2022.

### 4 Interpretation

In this notice, unless the context otherwise requires,—

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

**PIE rules** has the same meaning as in section YA 1 of the Income Tax Act 2007

**portfolio investment entity** has the same meaning as in section YA 1 of the Income Tax Act 2007

**separate fund** has the same meaning as in section 461A(2) of the Act

**tax** has the same meaning as in section 3(1) of the Tax Administration Act 1994.

### 5 Exemption

The manager of a registered scheme to which section 461A(3) of the Act applies is exempt from section 461A(3)(a) in relation to a balance date if—

- (a) the scheme is not a KiwiSaver scheme; and
- (b) the scheme consists of 1 or more separate funds; and
- (c) all of the scheme assets are attributable to a separate fund; and
- (d) the governing document of the scheme provides that, for each separate fund, except in relation to the payment of tax,—
  - (i) the assets of the fund must be held solely for the benefit of investors in that fund; and
  - (ii) the liabilities of the manager or scheme in respect of that fund must be met from the assets of that fund only (and not from the assets of any other separate fund or other scheme assets); and
- (e) in relation to the payment of tax,—
  - (i) the scheme is a portfolio investment entity for which tax is calculated and paid in accordance with the PIE rules; or
  - (ii) the governing document of the scheme provides that—
    - (A) tax must be calculated and paid separately for each separate fund; or
    - (B) if that is not the case, adjustments must be made between the separate funds to put each of them into the position it would have been in if tax were calculated and paid separately for each separate fund; and
- (f) the balance date is on or after 31 July 2017 but before 1 August 2022; and

- (g) when the financial statements for all of the separate funds are delivered to the Registrar as required by section 461H of the Act, they are accompanied by a written notice from the manager stating that the manager is relying on this exemption in relation to that balance date.

Dated at Wellington this 14th day of December 2017.

Nick Kynoch,  
General Counsel.

### Statement of reasons

This notice comes into force on 18 December 2017 and is revoked on 17 December 2022.

Under section 461A of the Financial Markets Conduct Act 2013 (the **Act**), the manager of a registered scheme is required to ensure that annual financial statements are prepared for the scheme. If a scheme includes 1 or more separate funds, financial statements are also required for each of the separate funds.

A scheme may be structured so that it consists only of 1 or more separate funds, with investors investing in 1 or more of those funds, and the assets and liabilities of each fund are segregated from those of the other funds. In such a scheme, there are no investors who are not investors in 1 or more of the separate funds, and there are no assets or liabilities that are not assets or liabilities of 1 of the separate funds.

The exemption granted by this notice exempts the manager of such a scheme from the requirement to prepare financial statements for the scheme (as opposed to financial statements for each of the separate funds) provided the criteria in *clause 5* are met.

The Financial Markets Authority (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,—

- if a registered scheme's assets and liabilities are segregated in separate funds by the governing document of the registered scheme, there are no assets or liabilities that are not assets or liabilities of 1 of the separate funds:
- in such a scheme, financial statements in relation to the scheme as a whole are not meaningful for investors in 1 of the separate funds and may be confusing or misleading, as those investors will have no recourse to assets of other separate funds of the scheme:
- the costs associated with a manager having to prepare audited financial statements for the scheme as a whole, as well as for each separate fund, outweigh the benefits to investors:
- managers will remain subject to the requirement to prepare financial statements for each separate fund within the registered scheme, and the financial statements for these funds are those relevant to investors when assessing risk and performance:
- as such, the FMA is satisfied that the exemption is desirable in order to promote the purposes of the Act, specifically to avoid unnecessary compliance

costs and to provide for timely, accurate, and understandable information to assist decision making by investors:

- the FMA is further satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that give rise to it, given that—
  - the exemption does not apply to KiwiSaver schemes; and
  - the exemption will apply only in respect of schemes that consist only of 1 or more separate funds; and
  - the manager of such as a scheme will continue to be required to prepare financial statements for each separate fund of the scheme.

Issued under the authority of the Legislation Act 2019.  
Date of notification in *Gazette*: 18 December 2017.

## Notes

### **1** *General*

This is a consolidation of the Financial Markets Conduct (Financial Statements for Schemes Consisting Only of Separate Funds) Exemption Notice 2017 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Financial Markets Conduct (Financial Statements for Schemes Consisting Only of Separate Funds) Exemption Notice 2017 (LI 2017/299): clause 3