



9 December 2011

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Financial Markets Authority
Wellington

Dear Chantelle and Natalie

SECURITIES ACT (MULTIPLE PARTICIPANT SUPERANNUATION SCHEMES) EXEMPTION NOTICE 1998

Thank you for the opportunity to comment on your draft revised notice for the Securities Act (Multiple Participant Superannuation Schemes) Exemption Notice.

Our comments are as follows:

Transitional provision

We would appreciate clarification that clause 18 applies to any prospectus extended or amended prior to 31 December. There are issuers with prospectuses that were registered earlier in the year and that are due to be extended or amended prior to 31 December 2011. Those issuers will need time to ensure compliance with the new exemption notice. If the notice is not finalised until later in December there will not be sufficient time to review the offer documents for compliance with the new exemption notice before a 31 December 2011 extension or amendment.

While we believe that is the intention of the transitional provision, we suggest the following wording to provide further clarity:

(1) If, on or before 31 December 2011, an offer of interests in a superannuation scheme is made in reliance on the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2010 under a prospectus that is registered on or before that date (including any prospectus in respect of which an issuer's certificate pursuant to section 37A(1A) of the Act, or an amendment pursuant to section 43 of the Act, has been registered with the Registrar of Financial Service Providers on or before 31 December 2011), the superannuation trustee, every participant, and every director of a participant may continue to rely on those notices in respect of interests in a superannuation scheme offered under that prospectus (as if both of those notices continued in force after 31 December 2011).

(2) However, sub clause (1) ceases to apply to a prospectus on an amendment being made to the prospectus after 31 December 2011 for the purpose of preventing it from being false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.

Application to KiwiSaver Schemes

Schedule 5A of Regulations

The revised notice provides exemptions in respect of Schedule 6 of the 2009 Regulations for superannuation schemes but does not allow the same exemptions to apply to interests in KiwiSaver schemes other than restricted schemes.

Some KiwiSaver schemes rely on the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2010. At the moment, their prospectuses comply with Schedule 6 of the Securities Regulations 2009 and (pursuant to section 118 of the KiwiSaver Act 2006 and section 2A(2) of the Superannuation Schemes Act 1989) they continue to be “superannuation schemes” for Exemption Notice purposes. However, as KiwiSaver schemes transition to the new regime where the manager is the issuer, disclosure will be provided in accordance with Schedule 5A. Accordingly, it is critical that the exemption notice applies to KiwiSaver Schemes in the same way that it applies to other superannuation schemes.

If this does not occur, some KiwiSaver schemes will end up with non-compliant disclosure documents as it is not practical for the prospectus or investment statement to include details of each of the schemes’ participating employers. Also, we believe there is no value in all these details being included in the prospectus as the members receive details related to their employer plan in their relevant member booklet.

We suggest exemptions for KiwiSaver scheme prospectuses from sections 2(4), 2(6), 6(1), 6(2), 6(3), 10(2), and 13 of Schedule 5A on the same terms as apply for other superannuation schemes.

We also request that the same relief that applies for investment statements for superannuation schemes other than KiwiSaver schemes also applies to KiwiSaver investment statements. In order for this to be reliably the case though, the Exemption Notice will need expressly to refer to both KiwiSaver schemes and superannuation schemes because, when the KiwiSaver Amendment Act 2011 changes are adopted, the Securities Act and Regulations will also distinguish (with respect to Investment Statements) between KiwiSaver and superannuation schemes.

Clause 16 (3)

Clause 15 (2) of the current notice provides 2 alternative methods for schemes to comply with the conditions:

- A Regulation 30 certificate and a certificate signed on behalf of the employer; or
- An acknowledgement signed on behalf of the participant that the employee has received a copy of the investment statement before joining the scheme.

Of those two alternatives, the second is more likely to be relied on but that option is not provided under Clause 16 of the draft revised notice. We recommend that a similar alternative should continue to be available.

Thank you again for the opportunity to comment on your draft. We look forward to seeing the final version.

Yours sincerely

Deborah Keating
EXECUTIVE OFFICER