



## Securities Act (Group Investment Funds) Exemption Notice 2011

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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### Notice

- 1 Title**  
This notice is the Securities Act (Group Investment Funds) Exemption Notice 2011.
- 2 Commencement**  
This notice comes into force on 1 December 2011.
- 3 Expiry**  
This notice expires on the close of 30 November 2016.

#### **4 Interpretation**

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

**Act** means the Securities Act 1978

**fund** means a group investment fund established under—

- (a) section 29 of the Trustee Companies Act 1967; or
- (b) section 63 of the Public Trust Act 2001 or section 42A of the Public Trust Office Act 1957

**qualifying participatory security** means a security that is an interest in a fund

**Regulations** means the Securities Regulations 2009

**trustee** means any of the following:

- (a) the following trustee companies:
    - (i) Perpetual Trust Limited;
    - (ii) The New Zealand Guardian Trust Company Limited;
    - (iii) New Zealand Permanent Trustees Limited;
    - (iv) Trustees Executors Limited;
  - (b) Public Trust.
- (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(3) of Act**

Every trustee, and every person acting on a trustee's behalf, is exempted from section 37(3) of the Act in respect of any qualifying participatory securities of which the trustee is the issuer.

#### **6 Exemption from section 37A(1A)(d) of Act**

Every trustee, and every person acting on a trustee's behalf, is exempted from section 37A(1A)(d) of the Act in respect of any qualifying participatory securities of which the trustee is the issuer.

#### **7 Exemption from section 52(1) and (3) of Act**

- (1) Every trustee is exempted from section 52(1) and (3) of the Act in respect of the register of qualifying participatory securities kept by that trustee under section 51(1)(c) of the Act.

- (2) The exemption from section 52(1) of the Act is subject to the condition that the register is, except when duly closed (but subject to any reasonable restrictions that the trustee imposes, so that not less than 2 hours in each day is allowed for inspection), open to the inspection of a holder of the qualifying participatory securities, or a representative of the holder, in respect of the securities of that holder, without fee.
- (3) The exemption from section 52(3) of the Act is subject to the condition that, on payment by a holder of qualifying participatory securities of the fee prescribed for the purposes of section 52(4) of the Act, the trustee provides to that holder a copy of the part of the register that relates to the securities of that holder.

#### **8 Exemption from section 54 of Act**

- (1) Every trustee is exempted from section 54 of the Act in respect of qualifying participatory securities allotted by that trustee.
- (2) The exemption is subject to the condition that the trustee sends, or causes to be sent, to the holder of the qualifying participatory securities, at any time on request and in any case at least once every 6 months, a written statement that properly evidences the nature and ownership of those securities.

#### **9 Exemption from regulation 5(1)(c) of Regulations**

- (1) Every trustee, and every person acting on a trustee's behalf, is exempted from regulation 5(1)(c) of the Regulations in respect of qualifying participatory securities of which the trustee is the issuer.
- (2) The exemption is subject to the condition that the registered prospectus contains the information, statements, certificates, and other matters specified in—
  - (a) clause 3 of Schedule 3 of the Regulations; and
  - (b) Schedule 4 of the Regulations (except clauses 5 and 22), applied as if references in Schedule 4 (and in the definitions of terms used in that schedule) to—
    - (i) a unit were references to a qualifying participatory security; and
    - (ii) a unit trust were references to a fund; and

- (iii) a unit holder were references to a holder of a qualifying participatory security; and
- (iv) a unit trustee were references to a statutory supervisor of a fund; and
- (v) a manager were references to a trustee; and
- (vi) a trust deed were references to a deed of participation.

**10 Exemption from clauses 3(2) and 4(1)(a) of Schedule 17 of Regulations**

- (1) Every trustee, and every person acting on a trustee's behalf, is exempted from clauses 3(2) and 4(1)(a) of Schedule 17 of the Regulations in respect of the deed of participation required for the purposes of the Act and relating to qualifying participatory securities of which the trustee is the issuer.
- (2) The exemption from clause 3(2) of Schedule 17 of the Regulations is subject to the condition that all money received on behalf of a fund to which the qualifying participatory securities relate is paid into the trustee's trust account as soon as possible.

Dated at Wellington this 29th day of November 2011.

Sue Brown,  
Head of Primary Regulatory Operations.

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**Statement of reasons**

This notice, which comes into force on 1 December 2011, replaces the Securities Act (Group Investment Funds) Exemption Notice 2001, which expires on the close of 30 November 2011. It is considered desirable to replace the 2001 notice, rather than postpone its expiry, in order to update a range of existing references, and to add a new exemption from section 37A(1A)(d) of the Securities Act 1978 (the Act). This notice expires on the close of 30 November 2016.

The Financial Markets Authority, after satisfying itself of the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions set out in this notice for the following reasons:

- the effect of the exemptions is to permit group investment funds offered by identified trustee companies and Public Trust to provide information in prospectuses under the same disclosure requirements as those used for unit trusts, rather than those designed for participatory schemes more generally. It also aligns certain other obligations of these group investment fund issuers with those of unit trust issuers. Group investment funds are similar in nature to unit trusts as investment vehicles. Allowing group investment funds to provide disclosure similar to that of unit trusts accordingly provides investors with better information concerning these investments. It also assists investors to make comparisons between the 2 types of investments. It is also appropriate to align some of the conduct obligations with those of unit trust issuers:
- the exemption from the requirement to make securities registers publicly available for inspection and copying, on the condition that each security holder may inspect and copy the part of the register that relates to their own holdings, protects the privacy of security holders in circumstances where there is no particular reason for public access to a group investment fund register:
- in circumstances such as those of group investment funds, where investors' holdings change regularly, the standard security certificate requirements to send a certificate each time security holdings change are impractical, unduly onerous, and potentially confusing for investors. The notice instead requires that investors receive this information at least once every 6 months, and at any time on request.

In light of the limited application of the exemptions to group investment funds offered by identified trustee companies and Public Trust, and because the alternative disclosure and conduct obligations prescribed by this notice are suited to the nature of the securities, the Financial Markets Authority considers that the exemptions will not cause significant detriment to subscribers, and that the exemptions

are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 1 December 2011.  
This notice is administered by the Financial Markets Authority.

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