



Financial Markets Conduct (Shares in Investment Companies) Designation Amendment Notice 2018

Pursuant to section 562 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, having complied with the requirements set out in section 563 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Shares in Investment Companies) Designation Amendment Notice 2018.

2 Commencement

This notice comes into force on 12 February 2018.

3 Principal notice

This notice amends the Financial Markets Conduct (Shares in Investment Companies) Designation Notice 2017 (the **principal notice**).

4 Clause 5 amended (Shares to which notice applies)

(1) In clause 5(c), after “ASX shares”, insert “; and”.

(2) After clause 5(c), insert:

(d) the shares are not redeemable shares (within the meaning of section 8(1)(b)(iii) of the Act).

5 Clause 6 amended (Reduced powers of shareholders)

- (1) In clause 6(2)(b), after “after the appointment”, insert “; or”.
- (2) After clause 6(2)(b), insert:
 - (c) a director appointment that can be made by a director of the investment company pursuant to a power in the constitution of the company to appoint an alternate director.

Dated at Auckland this 1st day of February 2018.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 12 February 2018. It amends the Financial Markets Conduct (Shares in Investment Companies) Designation Notice 2017 (the **principal notice**), which came into force on 19 May 2017.

The principal notice declares that certain shares in investment companies are managed investment products rather than equity securities for the purposes of the Financial Markets Conduct Act 2013 (the **Act**).

This notice has 2 main effects, as follows:

- redeemable shares that are debt securities under the Act will no longer satisfy the criteria in the principal notice to be classed as managed investment products; and
- for the purposes of clause 6 of the principal notice (which relates to reduced powers of shareholders), the fact that a constitution permits the appointment by a director of an alternate director will be disregarded when considering whether directors can be appointed or removed otherwise than by shareholder resolution.

The Financial Markets Authority (the **FMA**), having complied with the requirements set out in section 563 of the Act, considers it appropriate to amend the principal notice to exclude redeemable shares, and shares brought within the scope of the principal notice by constitutions permitting alternate director appointments, from the scope of shares to which the principal notice applies because—

- redeemable shares are expressly classed as debt securities under the Act, reflecting that those shares are in economic substance debt securities and are most appropriately regulated under the disclosure and governance requirements of the debt securities regime. It is therefore appropriate for those shares to be treated as debt securities rather than as managed investment products:

- disregarding shares issued by companies that have constitutions permitting alternate director appointments promotes fair and efficient financial markets and ensures that appropriate governance arrangements apply by enabling investment companies, like other companies, to have a power in their constitution for directors to appoint alternate directors. This facilitates an ordinary corporate governance practice and is consistent with the existing exclusion in the principal notice permitting board appointments to fill casual vacancies.

The FMA is therefore satisfied that this notice is necessary or desirable in order to promote 1 or more of the main or additional purposes of the Act, in particular,—

- to promote and facilitate the development of fair and transparent financial markets; and
- to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products; and
- to ensure that appropriate governance arrangements apply to financial products that allow for effective monitoring and reduced governance risks.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 8 February 2018.

This notice is administered by the Financial Markets Authority.