



Financial Markets Conduct (Multiple-participant Schemes—Participation Agreements) Exemption Notice 2022

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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Notice

1 Title

This notice is the Financial Markets Conduct (Multiple-participant Schemes—Participation Agreements) Exemption Notice 2022.

2 Commencement

This notice comes into force on 23 October 2022.

3 Revocation

This notice is revoked on the close of 22 October 2027.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

participation agreement—

- (a) means a written agreement, deed, or other document entered into by a participant that admits the participant to a multiple-participant scheme on the terms and conditions contained in—
- (i) the agreement, deed, or document; and
 - (ii) the principal trust deed relating to the multiple-participant scheme; and
- (b) includes any amendments to an agreement, deed, or document referred to in paragraph (a)

Regulations means the Financial Markets Conduct Regulations 2014

relevant participation agreement, in relation to an investor, means a participation agreement, or a part of a participation agreement, to the extent that it is relevant to that investor.

Example

A participation agreement contains separate benefit schedules for 2 separate groups of investors. The relevant participation agreement in relation to an investor includes only the benefit schedule that is relevant to that investor, not the other benefit schedule that applies to other investors.

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- (2) In this notice, **multiple-participant scheme** and **participant** have the same meanings as in clause 8B of Schedule 4 of the Regulations.
- (3) 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 in relation to application for registration of new scheme

- (1) Every manager of a multiple-participant scheme is exempted from section 126(2)(c) of the Act to the extent that that provision requires an application for registration of a multiple-participant scheme to contain a copy of a participation agreement.
- (2) The exemption in this clause applies to a manager that has—
- (a) notified the FMA in writing that they intend to rely on the exemption in this clause; and
 - (b) provided to the FMA a list of the participants in the scheme as at the date of the notification in paragraph (a).

6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that the manager must ensure that copies of each relevant participation agreement that, but for the exemption, would have been included in the application for registration are made available, on request and free of charge, to each investor to whom the participation agreement relates as soon as practicable after a request is made.

7 Exemption in relation to lodging of changes to governing document for new or existing schemes

Every manager of a multiple-participant scheme is exempted from section 141(1) of the Act to the extent that that provision requires the manager to lodge with the Registrar documents relating to an amendment to, or a replacement of, a governing document of a registered multiple-participant scheme that is caused by entry into a participation agreement or an amendment to a participation agreement.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) the manager must ensure that copies of each of the following documents are made available, on request and free of charge, to each investor to whom the document relates as soon as practicable after a request is made:
 - (i) each new participation agreement that, but for the exemption, would have been lodged under section 141(1) of the Act; and
 - (ii) any other relevant participation agreement that relates to the investor; and
- (b) the manager must, within 4 months after the balance date of the scheme, provide the FMA with a list of—
 - (i) the participants that participated in the scheme during the accounting period ending on that date; and
 - (ii) the dates of the participation agreements for each participant that were entered into during the accounting period ending on that date.

9 Exemption in relation to transitional provision for schemes with securities allotted under Securities Act 1978

Every manager of a multiple-participant scheme is exempted from clause 25(2) of Schedule 4 of the Act to the extent that that provision prevents the manager from making a regulated offer of a managed investment product, or accepting further contributions, in respect of that scheme because a copy of a participation agreement was not lodged with the Registrar before the effective date in accordance with clause 22(1)(b) of Schedule 4 of the Act.

10 Condition of exemption in clause 9

- (1) The exemption in clause 9 is subject to the condition that the manager must ensure that a copy of each relevant participation agreement that should have been lodged with the Registrar before the effective date in accordance with clause 22(1)(b) of Schedule 4 of the Act is made available, on request and free of charge, to each investor to whom the participation agreement relates as soon as practicable after a request is made.
- (2) For the purposes of section 559 of the Act, the breach of the condition in this clause is not a breach of the provision to which the exemption in clause 9 relates (but *see* section 468(1)(j) of the Act, which allows the FMA to make a direction order in respect of a contravention, or likely contravention, of a condition).

Dated at Wellington this 30th day of September 2022.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 23 October 2022 and is revoked on the close of 22 October 2027. This notice replaces, on substantially the same terms, the Financial Markets Conduct (Multiple-participant Schemes—Participation Agreements) Exemption Notice 2017, which is revoked on the close of 22 October 2022.

This notice applies to managers of multiple-participant schemes and provides the following exemptions in respect of participation agreements that form part of the governing document for a scheme:

- an exemption from section 126(2)(c) of the Financial Markets Conduct Act 2013 (the **Act**) to the extent that this requires an application for registration of a new multiple-participant scheme to contain a copy of a participation agreement. The effect for multiple-participant schemes that are registered after the commencement of this notice is that those agreements will not appear on the scheme register:
- an exemption from section 141(1) of the Act to the extent that this requires the manager to lodge with the Registrar participation agreements (including amendments to those agreements) that constitute changes to the governing document. The effect for all multiple-participant schemes is that those documents will not appear on the scheme register:

- an exemption from clause 25(2) of Schedule 4 of the Act, which is the transitional provision that prevents managers of schemes with securities allotted under the Securities Act 1978 making a regulated offer of products in the scheme if the participation agreement was not lodged with the Registrar before the effective date.

The exemptions are subject to conditions focused on the provision of the agreements to investors on request and free of charge and requiring information about participants to be provided to the Financial Markets Authority (the **FMA**).

The FMA, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions in this notice because—

- compliance with the registration requirement imposes unnecessary compliance costs on managers in view of the limited benefits of registration to investors (being members of the superannuation plans provided under the multiple-participant scheme). Registration of large numbers of participation agreements would make it difficult for members to locate the documents relating to their participant's plan and may cause confusion:
- conditions of the exemptions require the participation agreements to be provided to members on request and free of charge. This enables each member to receive information to assist decisions on financial products without having to search through documents relating to unrelated superannuation plans provided under the scheme:
- conditions also require a list of participants in the scheme to be provided to the FMA. This facilitates effective monitoring of the schemes by the FMA:
- the exemptions also recognise that the information in the participation agreements is only relevant to members of the relevant participant's plan. The participation agreements are not useful to the wider public, who cannot participate in those plans, and may include commercially sensitive or confidential information. Granting the exemptions promotes fair and efficient financial markets by preventing commercial detriment that may arise from making commercially sensitive or confidential information available on a public register.

For these reasons, the FMA is satisfied that the exemptions are desirable in order to promote the purposes of the Act, specifically avoiding unnecessary compliance costs and promoting fair and efficient financial markets while continuing to ensure the provision of timely, accurate, and understandable information to assist decision making by investors.

Given the application of the exemptions is limited to multiple-participant schemes, and in view of the requirement to continue to make the participation agreements available as prescribed by the conditions of the notice, the FMA is also satisfied that the exemptions are not broader than is reasonably necessary to address the matters that give rise to the exemptions.

**Financial Markets Conduct (Multiple-participant
Schemes—Participation Agreements) Exemption
Notice 2022**

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Wellington, New Zealand:

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