



Financial Markets Conduct (Financial Statements for Schemes Consisting Only of Separate Funds) 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 (Financial Statements for Schemes Consisting Only of Separate Funds) Exemption Notice 2022.

2 Commencement

This notice comes into force on 30 September 2022.

3 Revocation

This notice is revoked on the close of 29 September 2027.

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 Application

An exemption granted by this notice applies to the following accounting periods of a registered scheme to which clause 6 applies:

- (a) an accounting period of the scheme that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements for that period would be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

6 Exemption

The manager of a registered scheme to which section 461A(3) of the Act applies is exempt from section 461A(3)(a) 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.

7 Condition

- (1) The exemption in clause 6 is subject to the condition that the financial statements for the separate funds that are delivered to the Registrar for lodgement under section 461H of the Act are accompanied by a written notice from the manager stating that the manager is relying on this exemption in relation to the accounting periods to which the financial statements relate.
- (2) For the purposes of section 559 of the Act, the breach of a condition in this clause is not a breach of the provision to which the exemption in clause 6 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 21st day of September 2022.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 30 September 2022 and is revoked on 29 September 2027.

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 one 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 6* are met.

This notice replaces, on substantially the same terms, the Financial Markets Conduct (Financial Statements for Schemes Consisting Only of Separate Funds) Exemption Notice 2017, which is revoked on the close of 17 December 2022. However, the requirement to give written notice to the Registrar that the exemption is being relied on is no longer part of the exemption criteria, but is instead a condition. A breach of this condition will not breach the provision to which the exemption relates.

**Financial Markets Conduct (Financial Statements for
Schemes Consisting Only of Separate Funds) Exemption
Notice 2022**

Statement of reasons

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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 one of the separate funds:
- in such a scheme, financial statements in relation to the scheme as a whole are not meaningful for investors in one 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 those 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 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*: 27 September 2022.

This notice is administered by the Financial Markets Authority.

Wellington, New Zealand:

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