

**Reprint
as at 2 July 2009**



**Securities Act (ING (NZ)
Administration Pty Limited)
Exemption Notice 2008**

(SR 2008/445)

Securities Act (ING (NZ) Administration Pty Limited) Exemption Notice 2008:
expired, on 2 July 2009, by clause 3.

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

Contents

	Page
1 Title	2
2 Commencement	2
3 Expiry	2
4 Interpretation	2
5 Exemption from clause 4(1)(a) of Schedule 7 of Regulations	2
6 Conditions of exemption in clause 5	2

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This notice is administered by the Securities Commission.

Notice

1 Title

This notice is the Securities Act (ING (NZ) Administration Pty Limited) Exemption Notice 2008.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 1 July 2009.

Clause 3: amended, on 18 March 2009, by clause 4 of the Securities Act (ING (NZ) Administration Pty Limited) Exemption Amendment Notice 2009 (SR 2009/43).

4 Interpretation

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

Act means the Securities Act 1978

ING means ING (NZ) Administration Pty Limited, a company incorporated in Australia

Regulations means the Securities Regulations 1983

scheme means the ING Diversified Yield Fund or the ING Regular Income Fund, being Australian unit trusts constituted under a master trust deed poll dated on or about 1 July 2003 and executed by ING

specified participatory securities means units in a scheme.

(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 clause 4(1)(a) of Schedule 7 of Regulations

ING and every person acting on its behalf are exempted, in respect of the specified participatory securities, from clause 4(1)(a) of Schedule 7 of the Regulations.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) ING, on or before 31 December 2008, sends to every holder of specified participatory securities a copy of the audited financial statements for the scheme to which the securities relate, together with the auditor's report relating to those financial statements, for the year ending 30 June 2008; and
- (b) those financial statements are accompanied by statements to the effect that,—
 - (i) under an exemption granted by the Commission, a meeting of the holders of the specified participatory securities for the purpose of considering the financial statements may be held on or before 31 March 2009 instead of on or before 31 December 2008; and
 - (ii) the delay in holding the meeting is to enable a proposal (if any) relating to the future of the scheme to be considered together with the financial statements; and
- (c) ING prepares and has audited, at no cost to the scheme (either directly or indirectly), interim financial statements for the period from 1 July 2008 to 28 February 2009, being statements prepared in accordance with the Regulations as if they were required to be contained in or referred to in the prospectus, except that instead of complying with the requirement relating to comparative financial information such comparative information may be prepared on the basis of a comparison with the most recent audited financial statements; and
- (d) ING, on or before 8 June 2009, sends to every holder of specified participatory securities, at no cost to the scheme (either directly or indirectly), a copy of the audited financial statements referred to in paragraph (c) for the scheme to which the securities relate, together with a copy of the auditor's report relating to those financial statements; and
- (e) ING summons a meeting of the holders of the specified participatory securities for the purpose of considering the financial statements for the scheme for the year ending 30 June 2008 and the financial statements referred

- to in paragraph (c), which meeting must be held on or before 30 June 2009; and
- (f) if ING does not, at the meeting required under paragraph (e), put a proposal regarding the future of the scheme to the specified participatory securities holders, ING—
 - (i) meets the costs of summoning and holding that meeting without passing those costs on to the scheme (either directly or indirectly); and
 - (ii) explains the reason for the delay in putting a proposal regarding the future of the scheme to the specified participatory securities holders; and
 - (g) ING, on or before 18 March 2009, sends to every holder of specified participatory securities a statement to the effect that,—
 - (i) under an exemption granted by the Commission in December 2008, ING was allowed to extend, until 31 March 2009, the time for holding a meeting of the holders of specified participatory securities for the purpose of considering the financial statements for the scheme for the year ending 30 June 2008. The reason for this extension was to allow ING to prepare and put a proposal concerning the future of the scheme to the holders of specified participatory securities; and
 - (ii) ING has not been able to settle a proposal to be put to the holders of specified participatory securities in time to meet this timetable and asked the Commission for a further extension of time for holding the meeting; and
 - (iii) the Commission was willing to agree to a further and final extension so that the holders of specified participatory securities could consider both the financial statements and a proposal regarding the future of the scheme at a single meeting. The Commission was only willing to agree to this on an additional condition that ING at its own cost (and not as a cost to the scheme, either directly or indirectly) prepares and has audited interim fi-

- financial statements for the scheme for the period ending 28 February 2009. This will provide the holders of specified participatory securities with more up-to-date financial information regarding the scheme to enable them to consider the proposal; and
- (iv) under the revised conditions of the exemption, ING, at no direct or indirect cost to the scheme, must send to each holder of specified participatory securities a copy of the audited interim financial statements for the scheme for the period ending 28 February 2009 so that the holders of the specified participatory securities—
- (A) are provided with updated financial information in respect of the scheme; and
- (B) can discuss both the financial statements for the year ending 30 June 2008 and the audited interim financial statements for the period ending 28 February 2009 at the meeting of the holders of specified participatory securities to be held on or before 30 June 2009; and
- (v) under the revised conditions of the exemption, ING must hold a meeting of the holders of specified participatory securities on or before 30 June 2009 to allow a discussion of both the financial statements for the scheme for the period ending 30 June 2008 and the audited interim financial statements for the period ending 28 February 2009. If ING is not in a position to put a proposal regarding the future of the scheme to the holders of specified participatory securities at that meeting, ING must meet the costs of summoning and holding the meeting itself (rather than the costs being met directly or indirectly from the scheme) and must explain the reason for the delay in putting a proposal.

Clause 6(c): substituted, on 18 March 2009, by clause 5 of the Securities Act (ING (NZ) Administration Pty Limited) Exemption Amendment Notice 2009 (SR 2009/43).

Clause 6(d): added, on 18 March 2009, by clause 5 of the Securities Act (ING (NZ) Administration Pty Limited) Exemption Amendment Notice 2009 (SR 2009/43).

Clause 6(e): added, on 18 March 2009, by clause 5 of the Securities Act (ING (NZ) Administration Pty Limited) Exemption Amendment Notice 2009 (SR 2009/43).

Clause 6(f): added, on 18 March 2009, by clause 5 of the Securities Act (ING (NZ) Administration Pty Limited) Exemption Amendment Notice 2009 (SR 2009/43).

Clause 6(g): added, on 18 March 2009, by clause 5 of the Securities Act (ING (NZ) Administration Pty Limited) Exemption Amendment Notice 2009 (SR 2009/43).

Dated at Wellington this 10th day of December 2008.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 1 April 2009, exempts ING (NZ) Administration Pty Limited (**ING**), subject to conditions, from clause 4(1)(a) of Schedule 7 of the Securities Regulations 1983. This means ING does not have to hold an annual meeting on or before 31 December 2008 to consider the financial statements of the ING Diversified Yield Fund and the ING Regular Income Fund (the **schemes**) for the year ending 30 June 2008.

The Securities Commission considers that it is appropriate to grant the exemption because—

- the current suspended state of the schemes means that information in the most recent financial statements of the schemes is likely to have considerable bearing on any future proposals for the schemes; and
- extending the time frame for holding a meeting of the holders of the specified participatory securities to consider the financial statements so as to allow a proposal (if any) for the future of the schemes to be considered at the meeting will enable those security holders to meaningfully consider both the financial statements and any such proposal at the same time and to raise questions they may have on either of or both the financial statements and the proposal; and
- the conditions of the exemption ensure that the holders of specified participatory securities are, on or before 31 December 2008, sent a copy of the financial statements together with the auditor's report on the financial statements and are informed that a meeting of security holders will be held on or before 31 March 2009, instead of 31 December 2008, to consider the financial statements and a proposal (if any) for the future of the schemes together with the reasons for the delay in holding the meeting; and
- holding a single security holders meeting to consider both the financial statements and any proposal for the future of the schemes instead of 2 separate meetings is likely to be cost effective for both the holders of specified participatory securities and ING.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes**1 General**

This is a reprint of the Securities Act (ING (NZ) Administration Pty Limited) Exemption Notice 2008. The reprint incorporates all the amendments to the notice as at 2 July 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see*

<http://www.pco.parliament.govt.nz/legislation/reprints.shtml>
or Part 8 of the *Tables of Acts and Ordinances and Statutory
Regulations and Deemed Regulations in Force*.

**4 *Changes made under section 17C of the Acts and
Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)

- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Securities Act (ING (NZ) Administration Pty Limited) Exemption Amendment
Notice 2009 (SR 2009/43)

Securities Act (ING (NZ) Administration Pty Limited) Exemption Notice 2008
(SR 2008/445): clause 3
