

Reprint
as at 1 December 2016



**Securities Act (KiwiSaver Employer Participants)
Exemption Notice 2012**
(SR 2012/172)

Securities Act (KiwiSaver Employer Participants) Exemption Notice 2012: expired, on the close of 30 November 2016, by clause 3.

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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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

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Notice

1 Title

This notice is the Securities Act (KiwiSaver Employer Participants) Exemption Notice 2012.

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 30 November 2016.

4 Interpretation

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

Act means the Securities Act 1978

employee means an employee (within the meaning of section 4(1) of the Kiwi-Saver Act 2006) of an employer participant

employer participant means an employer (within the meaning of section 4(1) of the KiwiSaver Act 2006) who has entered into a participation agreement in respect of its employees

participation agreement has the same meaning as in section 4(1) of the Kiwi-Saver Act 2006

Regulations means the Securities Regulations 2009

scheme investment statement—

- (a) means an investment statement that contains, or refers to, an offer of interests in a KiwiSaver scheme to an employee or a class of employees; and
- (b) includes, in relation to an investment statement distributed to an employee of a particular employer participant, a supplement that—
 - (i) contains information, statements, or other matters relating to the employer participant; and
 - (ii) forms part of the investment statement

scheme prospectus means the registered prospectus relating to a KiwiSaver 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.

Exemption from requirement that prospectus be signed by employer participant as promoter

5 Exemption from section 41(1)(b)(ii) of Act

Every manager of a KiwiSaver scheme, employer participant, director of an employer participant, and every person acting on behalf of all or any of them are exempted from section 41(1)(b)(ii) of the Act in respect of a scheme prospectus to the extent that an employer participant or a director of an employer participant (or its, his, or her agent) is required to sign the prospectus as a promoter.

Exemption from investment statement requirement that matters must be set out under question

6 Exemption from regulation 21 of Regulations

- (1) Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from regulation 21 of the Regulations in respect of any information, statements, and other matters relating only to a particular employer participant that are required to be contained in a scheme investment statement.
- (2) The exemption is subject to the condition that any information, statements, and other matters specified under an italicised question set out in Schedule 13 of the Regulations that relate only to a particular employer participant must be set out together in the relevant supplement under that question.
- (3) Despite subclause (2), a relevant supplement is not required to include the information specified in clause 3(6) of Schedule 13 of the Regulations.
- (4) In this clause, **relevant supplement**, in relation to information, statements, and other matters that relate to a particular employer participant, means a supplement that forms part of the scheme investment statement that is distributed to the employees of the employer participant.

Exemptions from various prospectus requirements

7 Exemption from clause 2(4) of Schedule 5A of Regulations

Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from clause 2(4) of Schedule 5A of the Regulations to the extent that the scheme prospectus is required to contain the name of every employer participant and the name of every director of an employer participant.

8 Exemption from clause 2(6) of Schedule 5A of Regulations

Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from clause 2(6) of Schedule 5A of the Regulations to the extent that the scheme prospectus is required to contain a statement or information about an employer participant or a director of an employer participant.

9 Exemption from clause 6(1) of Schedule 5A of Regulations

Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from clause 6(1) of Schedule 5A of the Regulations to the extent that the scheme prospectus is required to state the date of a participation agreement and the dates of all amendments to that agreement.

10 Exemption from clause 6(2) and (3) of Schedule 5A of Regulations

- (1) Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from clause 6(2) and (3) of Schedule 5A of the Regulations to the extent that the scheme prospectus is required to contain a summary or description of any terms, conditions, restrictions, rights, or obligations that are set out only in a participation agreement.
- (2) The exemption is subject to the condition that the scheme investment statement that is distributed to an employee contains a summary of the principal terms of the KiwiSaver scheme that are set out in the participation agreement that relates to the employee and that are not set out in the scheme prospectus.

11 Exemption from clause 10(2) of Schedule 5A of Regulations

Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from clause 10(2) of Schedule 5A of the Regulations to the extent that the scheme prospectus is required to contain particulars of any material interest referred to in that subclause that an employer participant or a director of an employer participant has or has had during the 5 years preceding the specified date.

12 Exemption from clause 13 of Schedule 5A of Regulations

Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from clause 13 of Schedule 5A of the Regulations to the extent that the scheme prospectus is required to set out all terms of the offer, and all terms of the scheme being offered, that are set out only in the participation agreement.

Exemption from investment statement requirement that relates to disclosure of names and addresses of promoters

13 Exemption from clause 3(6) of Schedule 13 of Regulations

- (1) Every manager of a KiwiSaver scheme and every person acting on its behalf are exempted from clause 3(6) of Schedule 13 of the Regulations to the extent

that the names and addresses of any employer participant and any director of an employer participant, other than the relevant participant, are required to be contained in the scheme investment statement.

- (2) In this clause, **relevant participant** means the employer participant who has entered into the participation agreement in respect of the employee to whom the scheme investment statement is distributed.

14 Transitional provision

- (1) This clause applies if,—
- (a) on or before 31 December 2011, an offer of interests in a KiwiSaver scheme is made in reliance on the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2009 under a prospectus that is registered on or before that date; and
 - (b) between 1 January 2012 and the commencement of this notice, any 1 or more of the superannuation trustee, any participant, and any director of a participant has continued to rely on those notices in respect of interests in the KiwiSaver scheme offered under that prospectus in reliance on clause 18 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011.
- (2) The superannuation trustee, every participant, and every director of a participant may continue to rely on the notices referred to in subclause (1)(a) in respect of interests in the KiwiSaver scheme offered under the prospectus referred to in that paragraph as if both of those notices continued in force.
- (3) In this clause, **participant** has the same meaning as in the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998.

Dated at Wellington this 9th day of July 2012.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 November 2016, exempts managers of KiwiSaver schemes and employers that enter into participation agreements in respect of those schemes from various provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **2009 regulations**).

The exemptions are similar to exemptions in the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011.

The notice includes exemptions from—

- section 41(1)(b)(ii) of the Act. This provision requires the prospectus to be signed by the promoters (which may include employer participants and directors of employer participants):
- regulation 21 of the 2009 regulations (which requires matters in the investment statement to be set out under particular questions):
- various requirements in Schedule 5A of the 2009 regulations (which relate to the content of a prospectus for a KiwiSaver scheme). The exemptions mainly relate to information that would otherwise be required to be disclosed about employer participants and directors of employer participants (as promoters) and participation agreements entered into by those participants:
- clause 3(6) of Schedule 13 of the 2009 regulations (which requires the investment statement to specify the names and addresses of employer participants and directors of employer participants as promoters).

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:

- employers who provide branded KiwiSaver schemes may be promoters as defined in the Act. If so, those participants and their directors would need to sign and include their details in the prospectus. This is likely to be impractical for schemes with numerous participants and involve significant compliance costs:
- the exemptions recognise that KiwiSaver schemes are subject to a high degree of legislative prescription. There is limited scope for employers to modify the benefits or requirements of a particular scheme. There is, accordingly, limited information about the employer, or the agreement under which the employer has signed up for the scheme, that is relevant to subscribers. The notice provides for the limited information that remains relevant specifically about a particular participating employer to instead be included in a supplement to the investment statement. This provides for each investor to receive information that is relevant to their investment decision without having to review information relating to other participants in the scheme, which might be confusing:
- in light of the prescriptive nature of disclosure for KiwiSaver schemes, and the conditions of the notice requiring alternative disclosures in a supplementary investment statement, the Financial Markets Authority considers that the exemptions will not cause significant detriment to subscribers, and that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.

Reprints notes

1 *General*

This is a reprint of the Securities Act (KiwiSaver Employer Participants) Exemption Notice 2012 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Securities Act (KiwiSaver Employer Participants) Exemption Notice 2012 (SR 2012/172): clause 3