

Reprint  
as at 9 May 2013



**Securities Act (Externally  
Managed KiwiSaver Schemes  
and Superannuation Schemes)  
Exemption Notice 2008**

(SR 2008/116)

Securities Act (Externally Managed KiwiSaver Schemes and Superannuation Schemes) Exemption Notice 2008: expired, on 9 May 2013, 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	2
6	Conditions	3

---

**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 Financial Markets Authority.**

## Notice

### 1 Title

This notice is the Securities Act (Externally Managed Kiwi-Saver Schemes and Superannuation Schemes) 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 8 May 2013.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**KiwiSaver scheme** has the same meaning as in section 4(1) of the KiwiSaver Act 2006

**Regulations** means the Securities Regulations 1983

**scheme** means a KiwiSaver scheme or superannuation scheme of which a trustee corporation is the trustee and in respect of which the trustee has appointed another party as the manager of that scheme

**superannuation scheme** means a superannuation scheme registered under the Superannuation Schemes Act 1989

**trustee corporation** has the same meaning as in section 4(1) of the KiwiSaver Act 2006.

(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

Every trustee corporation that, and every person acting on its behalf who, distributes an advertisement to the public relating to a scheme is exempted from regulation 17 of the Regulations in respect of the distribution of that advertisement.

## **6 Conditions**

- (1) The exemption in clause 5 is subject to the conditions that—
  - (a) a certificate that complies with subclause (2) has been completed in respect of the advertisement at the time that the advertisement is distributed to the public; and
  - (b) the trustee corporation holds that certificate for at least 12 months from the date of the last distribution of the advertisement.
- (2) A certificate for the purposes of subclause (1)(a) must be in the form set out in Schedule 4 of the Regulations and must be signed by 2 persons who are—
  - (a) directors of the trustee corporation; or
  - (b) executive officers of the trustee corporation authorised by the directors of the trustee corporation to sign those certificates; or
  - (c) a director and an executive officer of the trustee corporation, being an executive officer who is authorised by the directors of the trustee corporation to sign those certificates.
- (3) Subclause (1) does not apply in respect of an advertisement if—
  - (a) it is an authorised advertisement that contains no information or matter other than the information or matters specified in regulation 17(3)(a) of the Regulations; or
  - (b) the only difference between the advertisement and another advertisement in respect of which a certificate that complies with subclause (2) has been completed is that a rate or rates of interest shown in 1 of the advertisements differ from a rate or rates of interest shown in the other advertisement; or
  - (c) the only difference between the advertisement and another advertisement in respect of which a certificate that complies with subclause (2) has been completed is that the advertisement contains prospective financial information personal to a person to whom the advertisement is distributed calculated in accordance with assumptions and a method of calculation stated in both advertisements.

Dated at Wellington this 6th day of May 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 8 May 2013, exempts trustee corporations that distribute advertisements relating to externally managed KiwiSaver schemes or superannuation schemes for which the trustee corporations are trustees from regulation 17 of the Securities Regulations 1983 in respect of the distribution of those advertisements.

The Securities Commission considers that this exemption is appropriate because,—

- under the KiwiSaver Act 2006, most KiwiSaver schemes must have an independent trustee and the default schemes must have a trustee corporation as a trustee. A significant number of KiwiSaver schemes other than the default schemes have appointed a trustee corporation as trustee;
- under the Securities Act 1978, the trustee of a superannuation scheme (including a KiwiSaver scheme) is the issuer of the scheme. Pursuant to regulation 17 of the Securities Regulations 1983, its directors are thereby required to sign regulation 17 certificates in relation to advertisements for those schemes. This is even where, as is the case for many of these schemes,

the scheme is sponsored and externally managed by a third party:

- the introduction of KiwiSaver schemes has caused, and is likely to continue to cause, a significant volume of advertising relating to externally managed superannuation schemes:
- trustee corporations are appointed to monitor the performance of business entities offering debt securities, unit trusts, participatory securities, or superannuation funds to members of the public. It is appropriate that the directors of trustee corporations should be able to authorise appropriate executive officers to take on the role of reviewing advertisements for externally managed superannuation schemes:
- a trustee corporation would typically seek a high level of comfort from the manager of any scheme as to the accuracy of advertisements for the scheme and the manager has liability for those advertisements as promoter of the scheme. The trustee corporation, as issuer, does additionally have responsibility for the advertisements and this exemption does not limit this responsibility or potential liability.

---

Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 8 May 2008.

---

## 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 (Externally Managed KiwiSaver Schemes and Superannuation Schemes) Exemption Notice 2008. The reprint incorporates all the amendments to the notice as at 9 May 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### 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/editorial-conventions/> or Part 8 of the *Tables of New Zealand 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 (Externally Managed KiwiSaver Schemes and Superannuation Schemes) Exemption Notice 2008 (SR 2008/116): clause 3

---