

**Reprint
as at 1 January 2012**



**Securities Act (Multiple
Participants Superannuation
Schemes) Exemption Notice 1998**

(SR 1998/423)

Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998: revoked, on 1 January 2012, by clause 17 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011 (SR 2011/429).

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

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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.

**Securities Act (Multiple Participants
Superannuation Schemes) Exemption
Notice 1998**

Reprinted as at
1 January 2012

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Notice

1 Title, commencement, and expiry

- (1) This notice may be cited as the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998.
- (2) This notice comes into force on the day after the date of its notification in the *Gazette*.
- (3) This notice expires on the close of 31 December 2011.

Clause 1(3): amended, on 20 November 2009, by clause 4 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2009 (SR 2009/346).

2 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978
admission deed means a deed or similar document entered into by a participant that—
 - (a) admits the participant to a superannuation scheme on the terms contained in the deed or document and the principal trust deed relating to the superannuation scheme; and

- (b) may contain the principal terms of entry to, and membership of, the superannuation scheme by specified persons

participant means a person who has entered into an admission deed in respect of specified persons

Regulations means the Securities Regulations 1983

specified person means—

- (a) a director or officer of a participant or of a subsidiary or associated company of a participant; or
- (b) an individual who is an employee of a participant or of a subsidiary or associated company of a participant; or
- (c) an individual who provides services principally to a participant or to a subsidiary or associated company of a participant; or
- (d) an individual who is eligible to subscribe for interests in a superannuation scheme as a member of, or as a result of a relationship with,—
- (i) a partnership, professional association, union, or credit union that is a participant; or
- (ii) a person who has entered into an admission deed relating to that superannuation scheme before the commencement of this notice

superannuation scheme means a superannuation scheme that has or is intended to have at least 2 participants

superannuation scheme investment statement—

- (a) means an investment statement that contains, or refers to, an offer of interests in a superannuation scheme to a specified person or a class of specified persons; and
- (b) includes a supplement that contains information, statements, or other matters relating to the participant and that forms part of the investment statement.
- (2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.

Clause 2(1) **specified person** paragraph (d)(ii): amended, on 17 December 1999, by clause 3 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 1999 (SR 1999/425).

*Exemption from section 41(b)(ii) of Securities
Act 1978*

3 Exemption from section 41(b)(ii)

Every superannuation trustee, participant, director of a participant, and every person acting on behalf of all or any of them are exempted from section 41(b)(ii) of the Act in respect of a prospectus relating to a superannuation scheme.

Clause 3: amended, on 17 December 1999, by clause 4 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 1999 (SR 1999/425).

*Exemptions from regulations 7A(4) and 17 of
Securities Regulations 1983*

4 Exemption from regulation 7A(4)

- (1) Every superannuation trustee and every person acting on its behalf are exempted from regulation 7A(4) of the Regulations in respect of any information, statements, and other matters relating only to a particular participant that are required to be contained in a superannuation 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 3D of the Regulations that relate only to a particular participant are set out together in the supplement that forms part of the superannuation scheme investment statement under that question.

5 Exemption from regulation 17

- (1) Every superannuation trustee, every participant, and every person acting on behalf of all or any of them are exempted from regulation 17 of the Regulations in respect of the distribution of a superannuation scheme investment statement.
- (2) The exemption is subject to the condition that a certificate that complies with subclause (3) has been completed in respect of the superannuation scheme investment statement at the time the statement is distributed to the public.
- (3) The certificate must be in the form set out in Schedule 4 of the Regulations and must be signed by a person who is authorised

by the directors of the superannuation trustee to sign such certificates.

- (4) The exemption is, in the case of the superannuation trustee, subject to the condition that the certificate is held by the superannuation trustee for at least 12 months from the date of the last distribution of the superannuation scheme investment statement to which it relates.
- (5) Nothing in subclauses (1) to (4) limits or affects regulation 17(3) of the Regulations except that, in the case of a superannuation scheme investment statement for which a certificate has been completed in accordance with this clause, the reference in regulation 17(3)(c) of the Regulations to subclause (2) of that regulation must be read as a reference to subclause (3) of this clause.

*Exemptions from provisions of Schedule 3C of
Securities Regulations 1983*

6 Exemption from clause 3(2) of Schedule 3C

Every superannuation trustee and every person acting on its behalf are exempted from clause 3(2) of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to contain the name of every participant and the name of every director of a participant.

7 Exemption from clause 3(3) of Schedule 3C

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 3(3) of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to contain a statement to the effect, if it is the case, that a participant or a director of a participant has, during the 5 years preceding the specified date, been—
 - (a) adjudged bankrupt or insolvent;
 - (b) convicted of any crime involving dishonesty within the meaning of section 2(1) of the Crimes Act 1961;
 - (c) prohibited from acting as a director of a company;
 - (d) put into statutory management or receivership.

- (2) The exemption is subject to the condition that the superannuation scheme investment statement contains, in respect of the participant or any director of the participant, either—
- (a) the matters set out in subclause (1)(a) to (d); or
 - (b) if the participant has entered into an admission deed and has been engaged in preparing the superannuation scheme investment statement before the commencement of this notice, either the matters set out in subclause (1)(a) to (d) or the matters set out in section 3(1)(a) to (d) of the Investment Advisers (Disclosure) Act 1996.

8 Exemption from clause 4(1) of Schedule 3C

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(1) of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to state the date of an admission deed and the dates of all amendments to that deed.
- (2) The exemption is subject to the conditions—
- (a) that, in the case of an admission deed that has been signed or amended before the commencement of this notice, either—
 - (i) a copy of the admission deed and a copy of all amendments to that deed are delivered to the Registrar before a superannuation scheme investment statement is distributed to a specified person; or
 - (ii) it is a term of the offer of interests in the superannuation scheme that the superannuation scheme investment statement, or the supplement that forms part of the superannuation scheme investment statement, states that a copy of the admission deed and a copy of all amendments to that deed are available, free of charge, to specified persons and prospective members of the scheme on request to the participant; and
 - (b) that, in the case of an admission deed that has not been signed or amended before the commencement of this notice, either—

- (i) a copy of the admission deed and a copy of all amendments to that deed are delivered to the Registrar within 14 days of the admission deed being signed or amended; or
 - (ii) it is a term of the offer of interests in the superannuation scheme that the superannuation scheme investment statement, or the supplement that forms part of the superannuation scheme investment statement, states that a copy of the admission deed and a copy of all amendments to that deed are available, free of charge, to specified persons and prospective members of the scheme on request to the participant; and
 - (c) that, in every case, the superannuation scheme investment statement states the date of the admission deed and the dates of all amendments to that deed.
- (3) For the purposes of subclause (2)(a)(i) and (b)(i), an admission deed and a copy of amendments to an admission deed do not have to contain particulars concerning the rights and obligations of a participant that relate only to amounts payable from—
- (a) an individual participant to the superannuation scheme; or
 - (b) an individual participant to a specified person; or
 - (c) a specified person to the superannuation scheme.

Clause 8(2): substituted, on 30 November 2004, by clause 4(1) of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2004 (SR 2004/404).

Clause 8(3): amended, on 30 November 2004, by clause 4(2) of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2004 (SR 2004/404).

9 Exemption from clause 4(2) of Schedule 3C

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(2) of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to contain a summary of the principal terms of entry of specified persons to a superannuation scheme, the contributions payable by or on behalf

of specified persons, and the benefit entitlement of specified persons.

- (2) The exemption is subject to the conditions that—
 - (a) the admission deed sets out the matters referred to in subclause (1) that are not set out in the registered prospectus relating to the superannuation scheme; and
 - (b) the superannuation scheme investment statement contains a summary of the principal terms of the superannuation scheme that are set out in the admission deed.

10 Exemption from clause 4(3) of Schedule 3C

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(3) of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to contain a description of—
 - (a) any conditions of entry of specified persons to, and termination of membership of specified persons in, the scheme;
 - (b) any restrictions on investment of the assets of the scheme;
 - (c) the rights and obligations of participants, if any, under the scheme.
- (2) The exemption is subject to the conditions that—
 - (a) the admission deed sets out the matters referred to in clause 9(1) that are not set out in the registered prospectus relating to the superannuation scheme; and
 - (b) the superannuation scheme investment statement contains a description of the matters referred to in subclause (1) that are not set out in the registered prospectus relating to the superannuation scheme.

11 Alternative exemption from clause 4(3)(c) of Schedule 3C

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 4(3)(c) of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to contain a description of the rights and obligations of participants that relate only to amounts payable from—

- (a) an individual participant to the superannuation scheme;
or
 - (b) an individual participant to a specified person; or
 - (c) a specified person to the superannuation scheme.
- (2) The exemption is subject to the condition that the superannuation scheme investment statement contains the information referred to in subclause (1).

12 Exemption from clause 8(2) of Schedule 3C

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 8(2) of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to contain a description of any direct or indirect material interest that a participant or any of its directors has or has had, during the 5 years preceding the specified date, in the scheme or in any contract or arrangement entered into on behalf or in respect of the scheme.
- (2) The exemption is subject to the condition that the superannuation scheme investment statement contains a description of the information referred to in subclause (1).

13 Exemption from clause 11 of Schedule 3C

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 11 of Schedule 3C of the Regulations to the extent that the registered prospectus relating to the superannuation scheme is required to set out all terms of the scheme being offered that are set out only in the admission deed.
- (2) The exemption is subject to the condition that the registered prospectus and the superannuation scheme investment statement contain either—
- (a) a statement that no offer of interests in the superannuation scheme made on the basis of an admission deed may be made unless the admission deed has been registered by, or filed with, the Registrar and is available for public inspection; or
 - (b) a statement that no offer of interests in the superannuation scheme made on the basis of an admission deed may be made unless the admission deed is available,

free of charge, to specified persons and prospective members of the superannuation scheme on request to the participant, as provided for in the superannuation scheme investment statement or the supplement that forms part of the superannuation scheme investment statement.

- (3) The exemption is subject to the further condition that the admission deed is referred to in the superannuation scheme investment statement in such a manner that it can be readily identified.

Clause 13(2): substituted, on 30 November 2004, by clause 5 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2004 (SR 2004/404).

*Exemption from clause 3(5)(d) of Schedule 3D
of Securities Regulations 1983*

14 Exemption from clause 3(5)(d) of Schedule 3D

- (1) Every superannuation trustee and every person acting on its behalf are exempted from clause 3(5)(d) of Schedule 3D of the Regulations to the extent that the names and addresses of any participant and any director of a participant, other than the participant in respect of the relevant specified person, are required to be contained in a superannuation scheme investment statement.
- (2) The exemption is subject to the condition that the superannuation scheme investment statement briefly describes the class of offerors and offerees in such a manner that the class can be readily identified.

15 Conditions relating to exemptions

- (1) Every exemption granted by clauses 3 to 10, 12, and 14 is subject to the condition that the registered prospectus relating to the superannuation scheme contains either—
- (a) a statement to the effect that no offer of interests in the superannuation scheme may be made to any person in his or her capacity as a specified person unless an admission deed has been signed by the participant and the admission deed has been registered by, or filed with, the Registrar and is available for public inspection; or

- (b) a statement to the effect that no offer of interests in the superannuation scheme may be made to any person in his or her capacity as a specified person unless an admission deed has been signed by the participant and the admission deed is available, free of charge, to specified persons and prospective members of the superannuation scheme on request to the participant, as provided for in the superannuation scheme investment statement or the supplement that forms part of the superannuation scheme investment statement.
- (1A) Every exemption granted by clauses 3 to 10, 12, and 14 is subject to the condition that the registered prospectus relating to the superannuation scheme states that the date of the admission deed and the dates of all amendments to that deed are contained in the superannuation scheme investment statement.
- (2) Each exemption granted by clauses 3, 6, 7, 12, and 14 is, in the case of each participant, subject to the condition that either—
- (a) no superannuation scheme investment statement may be distributed to specified persons unless the certificate completed by the superannuation trustee under regulation 17 of the Regulations or clause 5 relating to the superannuation scheme investment statement contains an acknowledgment in the following form:
- “We have received a certificate signed on behalf of [*name of participant*] and each director of [*name of participant*] in the form set out in the Schedule of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998:
- “• if the participant has only 1 director, by that director if he or she is resident in New Zealand or, if he or she is not resident in New Zealand, by a person authorised by the director to sign the certificate:
 - “• if the participant has more than 1 director and only 1 director is resident in New Zealand, by that director:
 - “• if the participant has more than 1 director and the above does not apply, by at least 2 persons, each

of whom is either a director of the participant or, if none of the directors of the participant resides in New Zealand, a person authorised by the directors to sign the certificate”; or

- (b) before allotment, a director of the participant or a person authorised by the directors of the participant, has signed an acknowledgment that the specified person has received a copy of the superannuation scheme investment statement before subscribing for interests in the superannuation scheme.

Clause 15(1): substituted, on 30 November 2004, by clause 6 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2004 (SR 2004/404).

Clause 15(1A): inserted, on 30 November 2004, by clause 6 of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2004 (SR 2004/404).

16 Revocations

The Securities Act (Multiple Employer Superannuation Schemes) Exemption Notice 1998 (SR 1998/127) and the Securities Act (Multiple Employer Superannuation Schemes) Exemption Amendment Notice 1998 (SR 1998/183) are consequentially revoked.

Schedule
**Certificate on behalf of participant and
its directors**

cl 15(2)

I (*or We*) certify on behalf of [*name of participant*] and its directors, namely [*names of directors*] that—

- (a) I am a director (*or we are directors*) of the participant (*or I am a person or we are persons authorised by any directors of the participant who are not resident in New Zealand*) and I am (*or we are*) authorised to give this certificate on behalf of the participant and its directors:
- (b) I (*or we*) have read the attached* investment statement (and any supplement forming part of the investment statement):
- (c) the investment statement (and any supplement forming part of the investment statement) does not contain any information, statements, or other matters that are likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of interests in the superannuation scheme to which it refers:
- (d) I (*or we*) consent to the distribution of the investment statement (and any supplement forming part of the investment statement).

Signature of director (*or authorised signatory*):

Date of signing:

Signature of director (*or authorised signatory*):

Date of signing:

*Attach copy of investment statement and any supplement forming part of the investment statement relating to the participant's section of the scheme.

Dated at Wellington this 25th day of November 1998.

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

**Securities Act (Multiple Participants
Superannuation Schemes) Exemption
Notice 1998**

Reprinted as at
1 January 2012

[Seal]

E H Abernethy,
Chairman.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 26 November 1998.

Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011

(SR 2011/429)

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).

Notice

1 Title

This notice is the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 2011.

2 Commencement

This notice comes into force on 20 December 2011.

Revocation and transitional provision

18 Transitional provision

- (1) If, on or before 31 December 2011, an offer of interests in a superannuation 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, the superannuation trustee, every participant, and every director of a participant may continue to rely on those notices in respect of interests in a superannuation scheme offered under that prospectus (as if both of those notices continued in force after 31 December 2011).
- (2) However, subclause (1) ceases to apply to a prospectus on an amendment being made to the prospectus after 31 December 2011 for the purpose of preventing it from being false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.

- (3) In this clause, **superannuation scheme** and **participant** have the same meanings as in the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998.

Dated at Wellington this 16th day of December 2011.

Sue Brown,
Head of Primary Regulatory Operations.

Date of notification in *Gazette*: 19 December 2011.

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

1 *General*

This is a reprint of the Securities Act (Multiple Participants Superannuation Schemes) Exemption Notice 1998. The reprint incorporates all the amendments to the notice as at 1 January 2012, 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 (Multiple Participants Superannuation Schemes) Exemption Notice 2011 (SR 2011/429): clause 17

Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2009 (SR 2009/346)

Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 2004 (SR 2004/404)

Securities Act (Multiple Participants Superannuation Schemes) Exemption Amendment Notice 1999 (SR 1999/425)