



## Financial Markets Conduct (Shares in Investment Companies) Designation Amendment Notice 2017

Pursuant to section 562 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, having complied with the requirements set out in section 563 of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Shares in Investment Companies) Designation Amendment Notice 2017.

#### 2 Commencement

This notice comes into force on 9 June 2017.

#### 3 Principal notice

This notice amends the Financial Markets Conduct (Shares in Investment Companies) Designation Notice 2017 (the **principal notice**).

#### 4 Clause 3 amended (Interpretation)

In clause 3(1), insert in their appropriate alphabetical order:

**ASX** means the securities exchange operated by ASX Limited under that name

**ASX shares** means shares to which either of the following applies:

- (a) the shares are quoted on the ASX; or
- (b) it is a term of an offer of the shares that the shares will be approved for trading on the ASX immediately after the shares are issued

NOK

**5 Clause 5 amended (Shares to which notice applies)**

In clause 5(c), after “NZX Main Board shares”, insert “or ASX shares”.

Dated at Auckland this *2nd* day of *June* 2017.

General Counsel.

**Statement of reasons**

This notice comes into force on 9 June 2017. It amends the Financial Markets Conduct (Shares in Investment Companies) Designation Notice 2017 (the **principal notice**), which came into force on 19 May 2017.

The principal notice declares that certain shares in investment companies are managed investment products rather than equity securities for the purposes of the Financial Markets Conduct Act 2013 (the **Act**), but the principal notice does not apply to shares that are NZX Main Board shares.

This notice amends the principal notice so that it also does not apply to shares that are quoted on the ASX or that will be approved for trading on the ASX immediately after the shares are issued.

The Financial Markets Authority (the **FMA**), having complied with the requirements set out in section 563 of the Act, considers it appropriate to amend the principal notice to exclude ASX shares from the scope of shares to which the principal notice applies because—

- the principal notice designates the shares as managed investment products because the shares are in economic substance managed investment products (*see* the statement of reasons for the principal notice in LI 2017/104). The shareholder voting and other governance requirements that apply to ASX-listed companies mean that ASX shares retain equity-like characteristics and are not in economic substance managed investment products. It is therefore appropriate for these shares to be treated as equity securities rather than managed investment products;
- the exclusion for ASX shares is consistent with the existing exclusion for NZX Main Board shares. This promotes fair and efficient financial markets by ensuring that these shares are treated in the same way, creating a more level playing field between ASX and NZX-listed investment companies. It also facilitates Australian-listed investment companies offering shares to New Zealand investors in reliance on the mutual recognition of securities offerings regime, providing increased investment opportunities for New Zealand investors.

The FMA is therefore satisfied that this notice is necessary or desirable in order to promote 1 or more of the main or additional purposes of the Act, in particular,—

- to promote and facilitate the development of fair and transparent financial markets; and
- to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products; and
- to ensure that appropriate governance arrangements apply to financial products that allow for effective monitoring and reduced governance risks.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This notice is administered by the Financial Markets Authority.