

Financial Markets Conduct (Evergreen Retirement Trust) Exemption Notice 2021

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

1 Title

This notice is the Financial Markets Conduct (Evergreen Retirement Trust) Exemption Notice 2020.

2 Commencement

This notice comes into force on 1 May 2021.

3 Revocation

This notice is revoked on the close of 30 April 2026.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Annual report means a report on the affairs of the Scheme required to be prepared and sent to every scheme participant under regulation 62 of the Financial Markets Conduct Regulations 2014

Due diligence statement means a statement to the effect that the financial statements have been prepared with care, diligence and skill and in accordance with generally accepted accounting practice

Financial statements means the financial statements that the manager must ensure are completed in relation to the Scheme under section 461A of the Act



Manager means The New Zealand Guardian Trust Company Ltd (company number 115240) a New Zealand incorporated company

Registrar means the Registrar of Financial Service Providers appointed under section 35 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Regulations means the Financial Markets Conduct Regulations 2014

Scheme means The Evergreen Retirement Trust (as identified with the scheme number SCH11647), being a restricted scheme established by a Trust Deed dated 1 December 2011, between Evergreen Capital Partners Ltd as the sponsor and Perpetual Trust Ltd as the trustee, as amended and restated from time to time.

- (2) Any term or expression that is defined in the Act or Regulations and used, but not defined, in this notice has the same meaning as in the Act or Regulations.

5 Exemptions in relation to annual report, signing of financial statements by directors, and audit of financial statements

The Manager is exempted, in relation to the Scheme, from the following provisions:

- (a) Regulation 62 of the Regulations to the extent it requires the Manager to:
- (i) prepare an annual report on the affairs of the Scheme;
 - (ii) send a copy of the annual report (or a notice containing prescribed statements) to every scheme participant: and
 - (iii) lodge the annual report with the Registrar.
- (b) Paragraph 461A(3)(c) of the Act to the extent it would require the Manager to ensure that the financial statements are dated and signed on behalf of the Manager by two directors of the Manager or, if the Manager has only one director, by that director; and
- (c) Section 461D of the Act to the extent it would require the Manager to ensure that the financial statements are audited by a qualified auditor.

6 Conditions of exemptions

- (1) The exemptions in clause 5 are subject to the condition that, within four months after each balance date of the scheme, the Manager prepares a clear, concise and effective statement in respect of the accounting period ending on that date (**the Members Update**), that includes:
- (a) A summary of any material changes to the scheme property since the prior balance date, including:
- (i) Any changes to the value of scheme property;
 - (ii) Any changes to the ownership of scheme property.
- (b) A report on actions taken or that will be taken, to liquidate or dispose of scheme property, or otherwise realise value from that scheme property, including the status of any legal action:
- (c) Any information relating to distributions to scheme participants, including the amount of any distribution or intended distribution and the date that the distribution has or will be made:
- (d) A reference to the Scheme's latest financial statements that have been lodged with the Registrar, and an explanation of how information can be obtained from the scheme register or from the Manager:

- (e) The contact details, including an address and business telephone number, of the Manager and one or more employees or agents of the Manager to whom queries or complaints about the Scheme can be made:
 - (f) A statement noting where this Exemption Notice may be accessed and that the Manager is exempted from the requirement to ensure that:
 - (i) an annual report is prepared for the Scheme;
 - (ii) the financial statements for the Scheme are dated and signed on behalf of the manager by two directors of the manager or, if the manager has only one director, by that director;
 - (iii) the Scheme's financial statements are audited by a qualified auditor.
- (2) The exemptions in clause 5 are subject to the further condition that, within 28 days after the Members Update is prepared, the Manager must send a copy of the Members Update to:
- (a) Every scheme participant; and
 - (b) The Registrar.
- (3) The exemption in clause 5(b) is subject to the further condition that a Due diligence statement in respect of the financial statements is dated and signed on behalf of the Manager by the Chief Executive Officer or a Director of the Manager and sent to the Registrar for lodgement within four months after each balance date of the Scheme.

Dated at Wellington this 22nd day of April 2021.



Sarah Vrede
Director of Capital Markets
Financial Markets Authority

Statement of Reasons

This notice comes into force on 1 May 2021 and is revoked on 30 April 2026.

The notice exempts The New Zealand Guardian Trust Company Limited (**the Manager**), as manager of the Evergreen Retirement Trust (**the Scheme**), subject to conditions, from Regulation 62 of the Financial Markets Conduct Regulations 2014 (**the Regulations**), section 461A(3)(c) of the Financial Markets Conduct Act 2013 (**the Act**) and section 461D of the Act in respect of the Scheme.

Regulation 62 of the Regulations would require the Manager to prepare an annual report on the affairs of the Scheme for each accounting period, and to send a copy of that annual report (or a notice containing prescribed statements) to every scheme participant (**Members**) and to lodge it with the Registrar.

Section 461A(3)(c) of the Act would require the Manager to ensure that the financial statements required under section 461A(3) of the Act are dated and signed on behalf of the Manager by two directors of the Manager or, if the Manager has only one director, by that director.

Section 461D of the Act would require the Manager to ensure that the financial statements required under section 461A(3) are audited by a qualified auditor.

This notice exempts the Manager, in respect of the Scheme, from the requirements of regulation 62 of the Regulations, section 461A(3)(c) of the Act and section 461D of the Act. These exemptions are subject to the condition that the Manager prepares a clear, concise and effective statement in respect of the accounting period ending on that date (**the Members Update**), which includes:

- A summary of any material changes to the scheme property, including:
 - Any changes to the value of scheme property:
 - Any changes to the ownership of scheme property:
- A report on actions being taken to liquidate or dispose of scheme property, or otherwise realise value from that property, including the progress of any legal action:
- Any information relevant to distributions to the Members, including the amount of any distribution and the date that the distribution will be made:
- A reference to the Scheme's latest financial statements that has been lodged with the Registrar, and an explanation of how information can be obtained from the scheme register or from the Manager:
- The contact details, including an address and business telephone number, of the Manager and 1 or more employees or agents of the Manager to whom queries or complaints about the Scheme can be made.
- A statement as to where this Notice may be accessed and that the Manager is exempted from the requirements to ensure that:
 - an annual report is prepared for the Scheme;
 - the financial statements for the Scheme are dated and signed on behalf of the manager by two directors of the manager or, if the manager has only one director, by that director;
 - the Scheme's financial statements are audited by a qualified auditor.

The Manager must send a copy of the Members Update to every Member and to the Registrar (the Companies Office).

The exemption from Paragraph 461A(3)(c), which would require the Manager to ensure that the financial statements are dated and signed on behalf of the Manager by two directors of the Manager (or if the Manager has only one director, by that director), is subject to an additional condition that a due diligence statement in respect of the financial statements is dated and signed on behalf of the Manager by the Chief Executive Officer of the Manager and sent to the Registrar for lodgement within 4 months after the balance date of the Scheme.

The Scheme is a restricted legacy scheme that wound-up on 6 April 2018. At the time this exemption was granted the majority of the fund assets had been disposed of and the proceeds of those disposals have been distributed back to the Members. However the Scheme has two remaining assets, being investments in two funds which made up approximately 6% of the total net assets of the Scheme at the wind-up date. The remaining assets are illiquid and it is unclear when the Scheme will receive the proceeds of disposing of them. The final distribution to Members will not occur until the two remaining assets have been liquidated.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant these exemptions because:

- The FMA considers that, due to the particular circumstances surrounding the illiquidity of the remaining assets of the Scheme, the compliance costs of preparing an annual report and having the Scheme's financial statements signed by directors and audited exceed the benefits that Members might obtain from them. Approximately 94% of the Scheme assets

at the time of wind-up been liquidated and the proceeds distributed to the Members. Final distribution will occur only once the two remaining assets have been liquidated. The remaining two assets are illiquid and the Manager does not control the liquidation of these remaining assets. The value of the remaining assets is subject to change and it is expected that, even if an audit were undertaken, an auditor's opinion would be qualified due to the uncertainty of the value of the remaining assets. In the circumstances, it is considered that the compliance cost of preparing an annual report and having the financial statements audited is high relative the benefit for members.

- The FMA considers that the specific nature of the Scheme, and the nature of the Manager of the Scheme, reduces the risks to investors from not having an annual report prepared for the Scheme and from not having the Scheme's financial statements signed by directors and audited. The Scheme is a restricted legacy scheme that is in wind-up, and consequently is not open to new members. The Manager of the Scheme is also the Trustee of the Scheme and, as Trustee, has fiduciary duties to the members of the scheme. Additionally, the Manager of the Scheme is a licenced supervisor and is itself supervised by the FMA.
- The FMA considers that the Members Update will provide investors with information on the Scheme that will be accessible and useful while having a lower cost than the annual report. The Members Update will be targeted to the likely interests of the Members, being the progress of liquidating the Scheme's remaining assets and any final distribution from the Scheme to Members. The Manager will still be required to ensure that financial statements are prepared for the Scheme that meet the requirements of New Zealand's generally accepted accounting practices.
- The period of the exemption is five years because it is uncertain when the Scheme's remaining assets will be liquidated and the proceeds distributed.

As such, the FMA is satisfied that—

- The granting of the exemptions are desirable in order to promote the purposes of the Act, specifically to promote the confident and informed participation of investors and consumers in the financial markets, to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to the financial products, and to avoid unnecessary compliance costs.
- The exemptions are not broader than is reasonably necessary to address the matters that gave rise to them because the exemptions will apply only to the Manager in respect of the Scheme, and the Manager will still need to provide investors with comprehensive information on the status of the Scheme and its financial position.