

## Financial Markets Conduct (AMP New Zealand Personal Superannuation Fund) Exemption Notice 2018

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.

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### Notice

#### 1. Title

This notice is the Financial Markets Conduct (AMP New Zealand Personal Superannuation Fund) Exemption Notice 2018.

#### 2. Commencement

This notice comes into force on 30 November 2018.

#### 3. Revocation

This notice is revoked on the close of 30 June 2019.

#### 4. Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**AMP Life** means AMP Life Limited

**custodian** means FS Nominees Limited

**general account** means the AMP Life bank account into which all Relevant Money is paid as at the date of this exemption notice

**manager** means AMP Wealth Management New Zealand Limited, and includes any delegate appointed by AMP Wealth Management New Zealand Limited and acting in its capacity as delegate

**relevant money** means, until it is applied by the Sub-custodian for the Relevant Purpose, all money received by the Sub-custodian that is scheme property

**relevant purpose** means, in relation to any scheme property that is money, the application of that money by the Sub-custodian to Scheme members as payment of benefits in accordance with the Trust Deed

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**scheme** means the AMP New Zealand Personal Superannuation Fund

**sub-custodian** means AMP Life, insofar as it has been appointed by the Custodian to hold the Relevant Money

**supervisor** means The New Zealand Guardian Trust Company Limited, in its capacity as supervisor of the Scheme

**trust deed** means the trust deed for the Scheme entered into between the Supervisor and the Manager

**working day** means a day (other than a Saturday or Sunday) on which banks are open for general business in Auckland

- (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. Exemptions

The custodian is exempted from sections 156(3) and 157(2) of the Act in respect of its appointment of the sub-custodian to hold relevant money.

## 6. Conditions of exemption

The exemptions in clause 5 are subject to the conditions that —

- (a) the custodian continues the appointment of AMP Life to hold relevant money as sub-custodian; and
- (b) the custodian continues to believe, on reasonable grounds, that AMP Life is a body corporate that is appropriate to hold, and safeguard, the relevant money; and
- (c) there must continue to be a deed, executed by the supervisor, custodian and sub-custodian which—
  - (i) requires the sub-custodian to hold all relevant money on bare trust for the custodian; and
  - (ii) requires the sub-custodian to apply the relevant money to the relevant purpose within 7 working days of the relevant money being received by the sub-custodian in the general account; and
- (d) the sub-custodian must use relevant money only for the relevant purpose; and
- (e) the sub-custodian must notify the supervisor if the sub-custodian fails to apply the relevant money to the relevant purpose within 7 working days of the relevant money being received by the sub-custodian in the general account; and
- (f) the general account must, at all times, have a balance equal to or greater than the aggregate amount of all relevant money at any time; and
- (g) there continues to be a reporting structure in place between the supervisor, custodian and sub-custodian in respect of the relevant money that is acceptable to the supervisor.

Dated at Wellington this 27<sup>th</sup> day of November 2018



Liam Mason  
Director of Regulation  
Financial Markets Authority

### Statement of reasons

This notice comes into force on 29 November 2018 and is revoked on the close of 30 June 2019.

The effect of this notice is to provide exemptions for FS Nominees Limited (**FS Nominees**) from: (a) the requirement that any sub-custodian it appoints as sub-custodian of the AMP New Zealand Personal Superannuation Fund (**scheme**) pursuant to section 156(3) of the Financial Markets Conduct Act 2013 (**Act**) must not be the manager or associated with the manager of the scheme; and (b) the requirement to ensure that the scheme property is held separately from property held by the custodian, or any related party of the scheme, on their own account.

The Financial Markets Authority, being satisfied of the matters set out in section 557 of the Act, considers that it is appropriate to grant the exemptions in this notice because—

- the exemption effectively extends the exemptions which were previously granted under the Financial Markets Conduct (AMP New Zealand Personal Superannuation Fund) Exemption Notice 2016 (**previous exemption**), to allow for the completion of the winding up of the scheme:
- the policy reasons for granting the previous exemption remain valid and appropriate:
- the scheme is a legacy scheme which relies on specific IT systems. The conditions of the exemption require the existing processes as they relate to the contributions received from scheme members to remain unchanged. FS Nominees must continue the appointment of AMP Life Limited (**AMP Life**) as sub-custodian and AMP Life must hold the scheme member contributions on bare trust for FS Nominees, in accordance with a deed between AMP Life, FS Nominees and The New Zealand Guardian Trust Company Limited (**NZGT**) (as the supervisor of the scheme) (**deed**). FS Nominees may continue to appoint AMP Life as sub-custodian in relation to the member contributions of the scheme only if it is satisfied that AMP Life is a body corporate that is suitable to hold the scheme member contributions. AMP Life must use scheme member contributions only for the intended purposes and within the timeframe as set out in the deed. Any breach of the timeframe set out in the deed must be reported to NZGT and there must be a reporting structure in place in respect of any scheme member contributions so that NZGT can monitor use of the scheme member contributions. The AMP Life account which receives any scheme member contributions must, at all times, have a balance equal to or greater than the aggregate amount of scheme member contributions which are to be held in that account at that point in time:
- all scheme member contributions received by AMP Life except those which are designated as insurance premiums due to AMP Life must be accounted for separately from property held by FS Nominees or AMP Life or any related party on their own account:
- in the context of this particular legacy scheme and its specific IT system reliance, the cost of updating the IT system to comply with the Act would be out of proportion with, and outweigh, the benefits for scheme members in having scheme member contributions

previously received by AMP Life held by an independent custodian when the exemption, through the conditions, provides additional protections for scheme members:

- the FMA is satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to the exemptions because it exempts FS Nominees only in respect of those aspects necessary to allow FS Nominees to continue the appointment of AMP Life as sub-custodian (and not FS Nominees generally) for the scheme until 30 June 2019:
- in summary, the FMA is satisfied that granting the exemptions is desirable in order to promote the purposes of the Act, namely to ensure appropriate governance arrangements apply to financial products and to in avoid unnecessary compliance costs.