

## Financial Markets Conduct (Asteron Retirement Investment Limited and Asteron Life Limited) Exemption Notice 2016

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 (Asteron Retirement Investment Limited and Asteron Life Limited) Exemption Notice 2016.

#### 2 Commencement

This notice comes into force on 30 November 2016.

#### 3 Revocation

This notice is revoked on the close of 29 November 2021.

#### 4 Interpretation

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

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

**ARIL** means Asteron Retirement Investment Limited

**ARIL Scheme** means each of—

- (a) Asteron Superplan;
- (b) Asteron Retirement Plus Personal Superannuation Plan; and
- (c) The Asteron Superannuation Fund (to be renamed the Asteron Retirement Savings Plan on transition to the Act).

**Asteron Life** means Asteron Life Limited

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**Cash Custody Account** means the NAB bank account which is credited Scheme Money from a Transitional Account and from which Scheme Money is applied to a Scheme Purpose

**Contributions** means money contributed by members of the ARIL Schemes, which is applied to subscribe for investments acquired and held on behalf of the contributing member

**NAB** means National Australia Bank Limited, being the external custodian appointed by ARIL pursuant to section 156(2)(b) of the Act to hold Scheme Money in the Cash Custody Account, or, where applicable, its nominee, National Nominees Limited

**Regulations** means the Financial Markets Conduct Regulations 2014

**Scheme Money** means:

- (a) Contributions;
- (b) money received in respect of the payment of benefits to ARIL Scheme members in accordance with the applicable Trust Deed, less any applicable ARIL Scheme fees and expenses; and
- (c) money received from or in respect of a member that is applied to meet ARIL Scheme fees and expenses in accordance with the relevant Trust Deed.

**Scheme Purpose** means, in relation to any scheme property of an ARIL Scheme that is Scheme Money, the application of that Scheme Money—

- (a) to any authorised investment of the relevant ARIL Scheme as instructed by ARIL;
- (b) to the relevant ARIL Scheme members as payment of benefits in accordance with the applicable Trust Deed; or
- (c) to ARIL or any other person in respect of any fees, expenses or other amounts payable by, from or in respect of, the Scheme to ARIL or any other person in accordance with the applicable Trust Deed,

including by way of transfer to a Transitional Account and/or the Cash Custody Account for one or more of these purposes

**Transitional Accounts** means the Asteron Life bank accounts in which Scheme Money is held at any time

**Trust Deed** means the trust deed for the relevant ARIL Scheme

**Working Day** has the meaning set out in section 29 of the Interpretation Act 1999.

- (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 in relation to the appointment of Asteron Life to hold Scheme Money**

In respect of each ARIL Scheme, ARIL is exempt from sections 156(2)(b) and 127(f) of the Act to the extent those sections require an external custodian to not be associated with ARIL (other than by virtue of the custodianship).

## **6 Condition for exemptions in clause 5**

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

- (a) the external custodian is Asteron Life;
- (b) Asteron Life is a licensed insurer under the Insurance (Prudential Supervision) Act 2010;
- (c) the scheme property held by Asteron Life is limited to Scheme Money; and

- (d) Asteron Life transfers, or applies Scheme Money held in the Transitional Accounts for a Scheme Purpose as required or directed within one Working Day of the Scheme Money being identified as such by the registry system used by the ARIL Schemes (in the ordinary course of business).

## **7 Exemption in respect of custodial requirements**

ARIL and Asteron Life are exempt from section 157(2) of the Act in relation to the holding of Scheme Money in the Transitional Accounts to the extent it requires Scheme Money to be held separately from property held for Asteron Life, ARIL or any related party of the ARIL Schemes on their own account.

## **8 Conditions**

The exemptions in clause 7 are subject to the conditions that —

- (a) Asteron Life holds all Scheme Money in the Transitional Accounts on trust for ARIL, as trustee of, and custodian for, the relevant ARIL Scheme.
- (b) Asteron Life will—
  - (i) only transfer or apply Scheme Money for a Scheme Purpose as required or directed within one Working Day of the Scheme Money being identified as such by the registry system used by the ARIL Schemes (in the ordinary course of business); and
  - (ii) ensure that the actual cash balance of the Transitional Accounts is equal to or greater than the aggregate amount of all Scheme Money held on trust for ARIL, as trustee of, and custodian for, the relevant ARIL Schemes as at that time; and
  - (iii) ensure that it is able to immediately effect the transfer of any sum of money into the Cash Custody Account to ensure that the actual cash balance of the Cash Custody Account is equal to or greater than the balance of Scheme Money required to be held in that account at that time.

## **8 Exemption in relation to Contributions**

ARIL is exempt from regulation 49 of the Regulations in relation to Contributions held in the Transitional Accounts and the Cash Custody Account.

## **9 Conditions to exemption in clause 8**

The exemptions in clause 8 are subject to the conditions that ARIL must—

- (a) ensure that any Contributions held in the Transitional Accounts and the Cash Custody Account are held on trust; and
- (b) keep, or ensure that there are kept, records that disclose clearly the position of Contributions held in the Transitional Accounts and the Cash Custody Account; and
- (c) ensure that those records are kept in a manner that enables those records to be conveniently and properly audited, reviewed, or inspected.

Dated at Wellington this

29<sup>th</sup>

day of November 2016.



Liam Mason  
Director of Regulation  
Financial Markets Authority

### Statement of reasons

This notice comes into force on 30 November 2016 and is revoked on 29 November 2021.

Asteron Retirement Investment Limited (**ARIL**) is the trustee for the following restricted legacy superannuation schemes: the Asteron Superplan, Asteron Retirement Plus Personal Superannuation Plan and the Asteron Superannuation Fund (together the **ARIL Schemes**). This notice provides an exemption from certain custodianship requirements of the Financial Markets Conduct Act 2013 (**Act**) in relation to the holding of certain money on behalf of the ARIL Schemes (**Scheme Money**). Specifically:

- (a) the requirement that any person appointed to hold Scheme Money must not be associated with ARIL;
- (b) the requirement that Scheme Money must be held separate from any other property held for any related party of the ARIL Schemes on their own account; and
- (c) some of the requirements which apply to the holding of subscription money under regulation 49 of the Financial Markets Conduct Regulations 2014 (**Regulations**).

The above exemptions are required because under the long-standing cash management structures operated by the Suncorp group (of which ARIL is a part), contributions received in respect of the ARIL Schemes are transitioned through the accounts held by Asteron Life before being credited to a bank account held by National Australia Bank Limited on behalf of the ARIL Schemes under a formal custody arrangement. Asteron Life does not meet the custodianship requirements of the Act because it is associated with ARIL. Further, the cash balances held within the Asteron Life accounts also include cash which is the property of Asteron Life on its own account.

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

- without the exemption, the ARIL Schemes will be required to restructure their cash management and accounts systems, as well as update their ledger and IT system arrangements, which are part of the arrangements for the larger Suncorp NZ Group. That restructuring would involve considerable compliance costs and create potential risks in relation to the management of the ARIL Schemes. Given the legacy nature of the ARIL Schemes and the alternative protections for members imposed by the conditions to the exemption, the costs of that restructuring is out of proportion with the benefits for scheme members and is therefore not justified. The exemption therefore promotes a purpose of the Act by avoiding unnecessary compliance costs;
- the conditions to the exemption preserve the substance of the custodianship requirements in the Act. The conditions require Asteron Life to hold Scheme Money on trust for ARIL. In addition the conditions require that Asteron Life will only use Scheme Money for a Scheme Purpose. The effect is that the substantive protections of the Act in the context of the holding of scheme property are effectively achieved in an alternative form. The exemptions therefore promote another purpose of the Act by ensuring that appropriate governance arrangements apply to financial products that allow for effective monitoring and reduce governance risks:

- the exemption only limits part of the custodianship requirements under the Act, being sections 156(2)(b) (in respect of Asteron Life being appointed to hold Scheme Money) and 157(2) (in respect of Scheme Money held in the Asteron Life accounts). The exemption also only applies to Scheme Money (which comprises subscription money and money to be paid to members as benefits in accordance with the relevant ARIL Scheme Trust Deed). Other property of the ARIL Schemes must be held in full compliance with the custodianship requirements of the Act. In addition, the exemption in relation to regulation 49 of the Regulations is limited to ARIL ensuring that subscription money is paid promptly into a specified bank trust account and that it is held separate from money held by or for ARIL on its own account. The conditions ensure that the reporting requirements of regulation 49 will still be complied with by ARIL:
- the FMA is satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to it because the exemption only limits part of the custodianship requirements of the Act in relation to money held on behalf of legacy superannuation schemes in circumstances where the conditions to the exemption enable the substantive protections of the Act to be provided in an alternative form.