

Financial Markets Conduct (Corporate Trustees) 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 (Corporate Trustees) Exemption Notice 2016.

2 Commencement of this notice

This notice comes into force on 11 November 2016.

3 Revocation of this notice

This notice is revoked on the close of 30 October 2021.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

specified scheme means a restricted scheme specified in Schedule 1

specified trustee means a licensed independent corporate trustee specified in Schedule 2.

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

5 Exemptions

- (1) The manager of a specified scheme is exempted, in respect of the specified scheme, from section 131(1)(d) of the Act.
- (2) The manager of a specified scheme is exempted, in respect of the specified scheme, from section 133 of the Act to the extent it relates to a requirement referred to in subclause (1).

6 Conditions

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

- (a) a specified trustee is the sole trustee for the specified scheme; and
- (b) the specified trustee is a licensed independent trustee whose licence covers the specified scheme; and
- (c) neither the specified trustee nor any related body corporate of the specified trustee is an employer that provides access to the specified scheme for its employees; and
- (d) the specified trustee has contracted substantially all of the administration of the specified scheme to another person and the investment of substantially all of the property of the specified scheme to another person, in each case where that person is not a related body corporate of the specified trustee; and
- (e) no director of the specified trustee is:—
 - (i) a director of, a shareholder in, or an employee of an employer that provides access to the specified scheme for its employees, or an administration manager or investment manager of the specified scheme; or
 - (ii) a scheme participant of the specified scheme; or
 - (iii) a representative in any capacity of an organisation (such as a trade union) that represents the interests of 1 or more scheme participants of the specified scheme; or
 - (iv) a representative in any capacity of an organisation that represents the interests of 1 or more employer contributors to the specified scheme.

7 Revocation and replacement

The Financial Markets Conduct (Licensed Independent Corporate Trustees of Restricted Schemes) Exemption Notice 2016, dated 11 October 2016, is revoked on the close of 10 November 2016 and replaced by this notice.

Schedule 1

Specified restricted schemes

Craigs Investment Partners Superannuation Scheme
Employee Retirement Plan
Evergreen Retirement Trust
Investor Choice Superannuation Scheme
Marsh & McLennan New Zealand Superannuation Scheme
Mercer (NZ) Retirement Plan

Schedule 2

Specified trustees

Public Trust

The New Zealand Guardian Trust Company Limited

Trustee Executors Limited

Dated at Wellington this 8th day of November 2016.



Liam Mason

Director of Regulation

Financial Markets Authority

Statement of reasons

This notice comes into force on 11 November 2016 and is revoked on 30 October 2021.

This notice provides exemptions for a manager of a specified restricted scheme (**specified scheme**) from certain trustee requirements of the Financial Markets Conduct Act 2013 (**Act**). The exemption allows a specified licensed independent corporate trustee (**specified trustee**) to be sole trustee of a specified scheme. The exemption is subject to the conditions that the specified trustee of a specified scheme meets certain independence requirements and is a licensed independent trustee whose licence covers the specified scheme.

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—

- due to each specified trustee's capacity, expertise, and experience the specified trustee is able to properly perform the role as trustee (and manager) of a specified scheme without the need to have other scheme trustees or a separately licensed independent trustee as a director of the specified trustee:
- the substance of the independence requirements for a specified scheme's licensed independent trustee is preserved by the exemptions, and each specified trustee is able to effectively perform the role of a licensed independent trustee under the Act in respect of a specified scheme:
- the exemptions and conditions to the exemptions therefore promote the purpose of the Act to ensure that appropriate governance arrangements apply to financial products and certain financial services that allow for effective monitoring and reduce governance risks:
- without the exemptions, each specified scheme would be required to restructure its trustee arrangements or each specified trustee would be required to appoint a licensed independent trustee as a director even though such changes would be unlikely to result in more effective monitoring or any reduction in governance risks in respect of the specified scheme. The exemptions therefore promote the purposes of the Act of avoiding unnecessary compliance costs and promoting flexibility in financial markets:
- the exemptions are no broader than reasonably necessary to address the matters giving rise to the exemptions because the conditions to the exemptions still require each specified

scheme to have a licensed independent trustee and also require each specified trustee to meet independence requirements that are equivalent to those in section 131(3) of the Act.