FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

WELLINGTON OFFICE
Level 2, 1 Grey Street
Wellington
PO Box 1179, Wellington 6140
PHONE +64 4 472 9830

Financial Markets Conduct (Futurity Investment Group Limited) Exemption Notice 2022

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out section 557 of that Act, gives the following notice.

Contents

Notice

1 Title

This notice is the Financial Markets Conduct (Futurity Investment Group Limited) Exemption Notice 2022.

2 Commencement

This notice comes into force on 1 July 2022.

3 Revocation

This notice is revoked on 30 June 2027.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approved benefit fund means a fund —

(a) which is established to provide benefits in accordance with the rules of Futurity

(b) which is established in the records of Futurity

(c) for which there are rules that have been approved and are in force under and in accordance with the Life Insurance Act 1995 of Australia

Futurity means Futurity Investment Group Limited, a registered unlisted public company limited by shares and guarantee under the Corporations Act 2001 of Australia

Futurity's New Zealand managed investment schemes means the schemes managed by Futurity in New Zealand and which are, as at the date of this notice, registered under the Act

Regulations means the Financial Markets Conduct Regulations 2014

supervisor means the supervisor of Futurity's New Zealand managed investment schemes under the Act.

(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 in respect of holding scheme property

(1) Futurity is exempted, in respect of Futurity's New Zealand managed investment schemes, from section 127(1)(f) of the Act.

(2) Futurity is exempted, in respect of Futurity's New Zealand managed investment schemes, from section 133 of the Act to the extent that it relates to a requirement referred to in subclause (1).

(3) The supervisor is exempted from section 156(1) of the Act.

6 Conditions of exemptions in clause 5

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

(a) Futurity's New Zealand managed investment schemes constitute one or more approved benefit funds which relate solely to those schemes; and

(b) as regards each of Futurity's New Zealand managed investment schemes separately, the governing document for the scheme provides adequately for the supervisor to oversee the holding and application of the assets of that scheme.

(2) The exemptions in clause 5 are subject to the further conditions that Futurity —

(a) holds an Australian Financial Services Licence issued by the Australian Securities and Investments Commission under the Corporations Act 2001 of Australia, which allows Futurity to issue and promote life insurance products;
(b) is regulated by the Australian Prudential Regulation Authority as a friendly society under the Life Insurance Act 1995 of Australia;
(c) complies with the capital adequacy and solvency requirements under its Australian Financial Services Licence and as prescribed by the Australian Prudential Regulation Authority;
(d) holds the property of Futurity's New Zealand managed investments schemes in accordance with and subject to the requirements of the Life Insurance Act 1995 of Australia and the relevant approved benefit fund rules;
(e) provides reports and certificates to the supervisor in relation to the property of Futurity's New Zealand managed investment schemes:—
(i) as required by the governing documents for Futurity's New Zealand managed investment schemes; and

(ii) otherwise as reasonably required by the supervisor from time to time.

Dated at Wellington this 28 day of June 2022.

Liam Mason
General Counsel
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 1 July 2022 and is revoked on 30 June 2027, exempts Futurity Investment Group Limited (**Futurity**) and the supervisor of its registered schemes in New Zealand, in respect of those schemes, from the requirement in the Financial Markets Conduct Act 2013 (the **FMC Act**) that scheme property must be held by the supervisor or a person who meets the external custodianship requirements. The exemptions are subject to conditions relating to the regulation of Futurity in Australia and the oversight of Futurity in relation to Futurity's New Zealand registered managed investment schemes by the New Zealand licensed supervisor of those schemes.

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 the exemptions because—

- Futurity has offered New Zealand investors interests in respect of certain benefit funds operated by Futurity as a friendly society under the Life Insurance Act 1995 of Australia. Those funds are now closed to new investors but continue to be managed by Futurity. While those interests are regulated as insurance contracts, and not as managed investment products in Australia, in New Zealand they are regulated as managed investment products and not as insurance contracts.
- Under Australian law Futurity does not need an independent custodian in relation to its benefit funds. Prior to the application of the FMC Act, Futurity also had not needed an independent custodian in relation to its benefit funds under New Zealand law.
- Futurity would incur significant costs to appoint an independent custodian for its New Zealand managed investment schemes and to add an independent custodian into its business processes for those schemes.
- The governance risks relating to not having an independent custodian are reduced, and the benefits of having an independent custodian are limited because —
    - Futurity is licensed to carry on its business by the Australian Securities and Investments Commission under the Corporations Act 2001 of Australia:
    - Futurity is prudentially regulated by the Australian Prudential Regulation Authority as a friendly society under the Life Insurance Act 1995 of Australia, including in relation to the benefit funds relating to Futurity's managed investment schemes offered in New Zealand:
    - Each of the managed investment schemes managed in New Zealand relate to a separate benefit fund of Futurity under the Life Insurance Act 1995 of Australia:
    - Under the Life Insurance Act 1995 of Australia the assets of a benefit fund must be kept separate from the assets of other benefit funds and from all other money, assets or investments of the company. On liquidation of the company the assets of a benefit fund are applied to discharge of policy liabilities of the company referable to that fund in priority to the policy liabilities referable to other benefit funds and in priority to the creditors of the company who are not preferred creditors under section 556(1) Corporations Act 2001 of Australia. The assets of a benefit fund can also only be mortgaged or charged in limited circumstances in accordance with the Life Insurance Act 1995 of Australia:
    - Futurity's New Zealand licensed supervisor is still required to oversee the holding and application of the assets of Futurity's New Zealand managed investment schemes.
- The FMA is therefore satisfied that granting the exemptions is necessary or desirable in order to promote one or more of the main or additional purposes of the FMC Act. In particular, the exemptions allow Futurity to avoid compliance costs that would otherwise be incurred to restructure its existing operations, and which are unnecessary in the context of the reduced governance risks relating to those existing arrangements and the limited benefits in the

circumstances of having an independent custodian. The exemptions also promote flexibility in circumstances where the products in question have been and continue to be subject to prudential regulation under Australian law, and which otherwise comply with New Zealand law.

- The FMA is further satisfied that the exemptions are not broader than is reasonably necessary to address the matters that give rise to the exemptions because the exemptions are only in relation to the specific requirements of the FMC Act relating to who is the custodian. The remaining provisions of the FMC Act relating to the custody of scheme property continue to apply, as do the other requirements of Part 4 more generally. In particular, Futurity still needs to be licensed as a manager of managed investment schemes and still needs a licensed supervisor for its New Zealand managed investment schemes.