

Financial Markets Conduct (OnePath Custodians Pty Limited) Exemption Notice 2019

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 the Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (OnePath Custodians Pty Limited) Exemption Notice 2019.

2 Commencement

This notice comes into force on 13 April 2019.

3 Revocation

This notice is revoked on the close of 12 April 2024.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

issuer means OnePath Custodians Pty Limited, a company incorporated in Australia

MR Regime means the mutual recognition of financial product offerings: Australia provisions in Subpart 2 of Part 9 of the Regulations

MLK

OnePath MasterFund means OnePath MasterFund, an Australian regulated superannuation fund within the meaning of section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust)

product disclosure statement means a Product Disclosure Statement as defined in section 761A of the Corporations Act 2001 (Aust)

regulated superannuation fund has the meaning given in section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust)

Regulations means the Financial Markets Conduct Regulations 2014

Retirement Portfolio Service means Retirement Portfolio Service, an Australian regulated superannuation fund within the meaning of section 19 of the Superannuation Industry (Supervision) Act 1993 (Aust)

Smart Choice means ANZ Smart Choice Super and Pension, an investment product of the Retirement Portfolio Service

specified financial products means interests in Smart Choice, and any other financial products which are offered under a product disclosure statement or similar offer document for Smart Choice

successor fund in relation to a transfer of benefits of a member from a fund has the meaning given in regulation 1.03(1) of the Superannuation Industry (Supervision) Regulations 1994 (Aust) as modified by way of a modification declaration issued on or around 13 April 2019 by the Australian Prudential Regulation Authority

- (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 the Regulations.

5 Exemptions

The issuer, and every person acting on its behalf, is exempted from Parts 3 and 4 of the Act in respect of specified financial products.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the condition that retail investors in New Zealand may not be issued or transferred specified financial products otherwise than by—
- (a) a transfer from another Australian superannuation arrangement; or
 - (b) using funds which are held for the person subscribing by the Australian Taxation Office under the Superannuation (Unclaimed Money and Lost Members Act) Act 1999 (Aust).
- (2) The exemptions in clause 5 are subject to the further conditions that—
- (a) the requirements set out in regulations 263 to 268 of the Regulations are complied with (as if the Regulations applied) except to the extent provided in paragraphs (3) and (4); and
 - (b) it is a term of the offer of specified financial products that the requirements set out in regulations 270 to 275 of the Regulations are complied with (as if the Regulations applied) except to the extent provided in paragraphs (5) and (6).
- (3) Instead of the statement required by regulation 267(1)(a) of the Regulations, the notice must state that the issuer intends to make an offer in accordance with the Financial Markets Conduct (OnePath Custodians Pty Limited) Exemption Notice 2019 which provides exemptions from the

Financial Markets Conduct Act 2013 consistent with those available to Australian issuers under the MR Regime.

- (4) Instead of the documents required by sub paragraph (d)(i) and (ii) of regulation 268 of the Regulations, the constituent documents of the Retirement Portfolio Service and Smart Choice must accompany the notice to the Registrar.
- (5) Instead of the documents required by paragraph (a) of regulation 272 of the Regulations, a copy of the constituent documents of the Retirement Portfolio Service and Smart Choice must be provided to an offeree on request.
- (6) Instead of the statement required by paragraph (1) of the warning statement in Schedule 25 of the Regulations (that is required by paragraph (a) of regulation 271 of the Regulations), paragraph (1) of the warning statement must state “(1) This offer to New Zealand investors is a regulated offer made under Australian and New Zealand law. In Australia, this is Chapter 8 of the Corporations Act 2001 and Regulations. In New Zealand, this is the Financial Markets Conduct (OnePath Custodians Pty Limited) Exemption Notice 2019.”

7 Transfer from OnePath MasterFund (including Smart Choice) to Retirement Portfolio Service

The exemptions in clause 5 are subject to conditions that –

- (a) the beneficiaries and assets of the OnePath MasterFund (including Smart Choice) are transferred on or around 13 April 2019 to a successor fund, the Retirement Portfolio Service;
- (b) as at the date of transfer of the OnePath MasterFund (including Smart Choice) to Retirement Portfolio Service the trust deed of the Retirement Portfolio Service includes a provision to the effect that the Retirement Portfolio Service will confer on the member equivalent rights to that the member had under the OnePath MasterFund (including Smart Choice) in respect of benefits as at the transfer date; and
- (c) prior to the date of transfer of the OnePath MasterFund (including Smart Choice) to Retirement Portfolio Service the issuer must notify existing members of MasterFund (including Smart Choice) of the proposed transfer of members’ interests to the Retirement Portfolio Service and provide existing members information to the effect that:
 - (i) the proposed transfer is subject to the approval of the issuer and that the issuer will only approve the transfer if it is in members’ best interests and members are conferred equivalent rights in respect of benefits in the Retirement Portfolio Service to that the member had under the OnePath MasterFund (including Smart Choice) as at the transfer date; and
 - (ii) the key features of the Smart Choice will remain the same upon transfer to Retirement Portfolio Service and that member’s will be conferred equivalent rights in the Retirement Portfolio Service to that which the member had under the OnePath MasterFund (including Smart Choice) in respect of benefits as at the transfer date on or around 13 April 2019.

8 Minor or technical failure to comply with regulations 263 to 268

If the FMA is satisfied, in relation to an offer of interests in Smart Choice, that a failure to meet a precondition set out in regulations 263 to 268 of the Regulations (as if the Regulations applied, as modified by this notice) is minor or technical only, the FMA may declare in writing that the

failure is non-material and, if the FMA makes such declaration, the precondition must be treated as having been met at the time it was required to be met (as if the Regulations applied).

9 Offers of specified financial products made in reliance on this notice not regulated offers

An offer of specified financial product made in reliance on this notice is not a regulated offer.

10 Existing notice revoked

The Financial Markets Conduct (OnePath Custodians Pty Limited) Exemption Notice 2016 is revoked on the close of 12 April 2019.

Dated at Wellington this 27th day of March 2019.


Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 13 April 2019 and is revoked on the close of 12 April 2024, provides exemptions to OnePath Custodians Pty Limited (the **issuer**) from the New Zealand governance requirements and the disclosure requirements of the Financial Markets Conduct Act 2013 (the **Act**), in relation to the offer of interests in the ANZ Smart Choice Super and Pension (**Smart Choice**), a section of the Retirement Portfolio Service (**RPS**), an Australian regulated superannuation fund.

This notice is granted on the same basis as the Financial Markets Conduct (OnePath Custodians Pty Limited) Exemption Notice 2016 (2016 Exemption Notice) and reflects the transfer, on or around 13 April 2019 by the issuer of all of the assets and members of Onepath MasterFund (which includes Smart Choice) to RPS, another Australian superannuation fund for which the issuer is also the issuer (transfer).

The exemptions in this notice are subject to the same terms and conditions as that in the 2016 Exemption Notice with the only changes being the expiry date being extended for a further 5 years from the date of this notice, additional conditions relating to the transfer to Retirement Portfolio Service and revocation of the 2016 Exemption Notice. The additional conditions require that the transfer is effected via a successor fund transfer in accordance with Australian law, that the trust deed of the RPS includes provision that the RPS will confer equivalent rights and benefits to that the members had under the OnePath MasterFund (including Smart Choice) and that existing members are provided certain information about the transfer.

The conditions of exemption require the offer of interests in Smart Choice to be a regulated offer in Australia and require the issuer to provide the Australian disclosure documents to prospective New Zealand investors that contain warnings, including that the offer and offer documents are regulated in Australia.

These exemptions and conditions are substantially similar to the exemptions available to Australian issuers under mutual recognition of financial product offerings: Australia regime (**MR Regime**) under Subpart 2 of Part 9 of the Financial Markets Conduct Regulations 2014 (the **Regulations**).

This notice also provides that the offers exempted under this notice are not regulated offers under the Act. This means that other requirements of the Act, or other statutes, that apply in connection with regulated offers (such as financial reporting requirements) do not apply. Any other financial market conduct obligations the issuer may have, including obligations under Part 2 of the Act, are not affected.

This notice does not relate to interests in Smart Choice allotted previously in reliance on the Securities Act (OnePath Custodians Pty Limited) Exemption Notice 2013 prior to 1 December 2016. For such previously allotted interests in Smart Choice the issuer is relying on the exemptions granted by the FMA under the Financial Markets Conduct (Securities Allotted under the Securities Act 1978 Exemptions Recognising Overseas Regimes) Exemption Notice 2016.

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

- the objective of the MR Regime is to reduce regulatory barriers for trans-Tasman offers of financial products. To achieve this, the MR Regime enables an Australian issuer lawfully offering financial products in Australia to offer those financial products in New Zealand on the basis of the same offer documents and other key offer compliance requirements. The exemptions from the requirements in the Act provided by the MR Regime are consistent with the policy of the Act because they allow New Zealand investors to be offered financial products where the securities law disclosure and compliance requirements are comparable to those prescribed by New Zealand law:
- the MR Regime applies to offers of “financial products” which are “Australian regulated offers”. Offers of interests in Australian superannuation schemes do not come within the definition of “financial products” under the MR Regime. Therefore the issuer is unable to rely on the MR Regime:
- however, the exemptions recognise that the issuer is subject to equivalent regulatory supervision to that which applies to managers of Australian registered schemes who are able to rely on the MR Regime. The offer of interests in Smart Choice is a regulated offer in Australia and is subject to the full requirements of Australian securities legislation. Granting an exemption for Smart Choice is therefore also consistent with the general policy of the MR Regime and equivalent exemptions are appropriate.
- the conditions of exemption ensure that investors receive a copy of the Australian disclosure documents, which include additional warning statements to the effect that the offer is regulated in Australia, that there are differences in how financial products are regulated in Australia, and that the rights, remedies and compensation arrangements available under Australian law may differ to those available under New Zealand law. This will provide investors with sufficient information to make an informed investment decision. Given the sufficiency of disclosure and the equivalent level of regulatory supervision, there will therefore be no significant detriment to investors:
- the offer of interests in Smart Choice will only be made to persons in respect of whom the Australian Taxation office holds “lost super” money, or who are already members of other Australian superannuation schemes.
- the transfer of beneficiaries and assets of OnePath MasterFund (including Smart Choice) to RPS is subject to the condition that it be effected in accordance with successor fund transfer requirements under Australian superannuation industry regulations as modified by a

modification declaration issued on or around 13 April 2019 by the Australian Prudential Regulation Authority. The requirements ensure that the trust deed of the RPS includes provision that the RPS will confer equivalent rights and benefits to that existing members had under the OnePath MasterFund (including Smart Choice) and that existing members are provided certain information about the transfer.

- In these circumstances the FMA is satisfied that the exemptions are desirable in order to avoid unnecessary compliance costs in accordance with the additional purpose set out in section 4(c) of the Act and that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to the exemptions.