

Securities Act (Smartshares Limited) Exemption Notice 2016

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority, being satisfied of the matters set out in section 70B(2) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Securities Act (Smartshares Limited) Exemption Notice 2016.

2 Commencement

This notice comes into force on 16 September 2016.

3 Revocation

This notice is revoked on the close of 30 November 2016.

4 Interpretation

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

Act means the Securities Act 1978

FMC Act means the Financial Markets Conduct Act 2013

FMC Regulations means the Financial Market Conduct Regulations 2014

legacy fund means each of the following group investment funds that are established under section 29 of the Trustee Companies Act 1967 and that are managed by Smartshares:

- (a) NZX 50 Portfolio Index Fund:
- (b) NZX Australian 20 Leaders Index Fund:
- (c) NZX Australian MidCap Index Fund:
- (d) NZX MidCap Index Fund:
- (e) NZX 10 Fund.

new unit trust in relation to a legacy fund, means a unit trust established under a Master Trust Deed dated 9 September 2016 that will replace that legacy fund if the resettlement is approved by unitholders, and which is an investment option in the Smartshares Exchange Traded Funds

qualifying participatory security means a security that is an interest in a legacy fund

Regulations means the Securities Regulations 2009

resettlement means the resettlement of a legacy fund as a new unit trust by redeeming existing unitholders interests in the legacy fund, applying those proceeds to units in the relevant new unit trust, transferring the assets of the legacy fund to the relevant new unit trust and winding up the legacy fund

Smartshares means Smartshares Limited

Smartshares Exchange Traded Funds means Smartshares Exchange Traded Funds a managed investment scheme that is registered on the register of managed investment schemes

specified register entry means the entry for the regulated offer of managed investment products in Smartshares Exchange Traded Funds on the register for offers of financial products.

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

5 Exemption in respect of investment statement

Smartshares, and every person acting on its behalf, is exempted from section 37A(1)(a) of the Act in respect of an offer of qualifying participatory securities.

6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that no allotment of a qualifying participatory security offered to the public for subscription after the commencement of this notice shall be made if the subscriber did not receive the registered prospectus for the qualifying participatory security before subscribing for the qualifying participatory security.

7 Exemption in respect of prospectus content requirements

Smartshares, and every person acting on its behalf, is exempted from regulation 5(1)(c) of the Regulations in respect of an offer of qualifying participatory securities.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject to the conditions that—
- (a) the registered prospectus for the offer of qualifying participatory securities contains all of the information specified in Part 1 of Schedule 4 (except clauses 23(3) and 48) of the FMC Regulations that is applicable, and applied (with all necessary modifications) as if references in Schedule 4 of the FMC Regulations (and in the definitions of terms used in that schedule) to—
- (i) the PDS were references to the registered prospectus; and
 - (ii) a fund or an investment option were references to a legacy fund; and

- (iii) a managed investment product were references to a qualifying participatory security; and
- (iv) the manager were references to Smartshares; and
- (b) the registered prospectus contains a prominent statement at the start of the document in the following form:

“Important Notice

The Securities Act 1978 applies to this offer of securities. This offer of securities is only open to the public for subscription until 21 September 2016. Prospective investors are advised that Smartshares, in making this offer of securities, is not subject to the normal requirement to have an investment statement nor to comply with the prospectus content requirements under the Securities Act 1978 and Securities Regulations 2009. Instead, this prospectus contains the information required for a product disclosure statement for an offer of managed investment products specified in Part 1 of Schedule 4 of the Financial Market Conduct Regulations 2014 in accordance with the exemption contained in the Securities Act (Smartshares Limited) Exemption Notice 2016.”; and

- (c) the registered prospectus contains in section 1 under the heading ‘What is this?’ a clear and concise description of the resettlement, including the name of each new unit trust alongside the corresponding legacy fund that it will replace in accordance with the resettlement; and
- (d) the registered prospectus contains references, in the relevant sections of the registered prospectus, to where particulars of any material matters relating to the offer of qualifying participatory securities (other than matters elsewhere set out in the registered prospectus or in the financial statements referred to in the registered prospectus under subclause (e)(i), and contracts entered into in the ordinary course of business) can be found on the specified register entry; and
- (e) the registered prospectus contains the following information and statements in section 9 under the heading ‘Where you can find more information’:
 - (i) a reference to the latest financial statements for the legacy fund that comply with, and have been registered under, the Financial Reporting Act 1993, the accounting period covered by those statements, and the date of registration:
 - (ii) a reference to the auditor’s report on the financial statements referred to in sub clause (e)(i) that is registered under the Financial Reporting Act 1993, the date of the report, and a statement as to whether or not the report referred to a fundamental uncertainty or was qualified in any respect and, if so, explaining what the fundamental uncertainty or qualification was:
 - (iii) a statement explaining the times and places where copies of the following documents may, on payment of any fee, be inspected by a person who so requests:
 - A the trust deed for the legacy fund and any amendments to the deed:
 - B the financial statements for the legacy fund referred to in subclause (e)(i):
 - C the latest annual report for the legacy fund:
 - (iv) a statement to the effect that—
 - A further information relating to a legacy fund is available by looking at the

information in respect of the corresponding new unit trust contained in the specified register entry on the offer register at www.business.govt.nz/disclose and the entry for Smartshares Exchange Traded Funds on the register of managed investment schemes; and

- B a copy of the information on the offer register and scheme register is available on request to the Registrar.
- (2) The exemption in clause 7 is subject to the further condition that no offer of qualifying participatory securities to the public for subscription will be made in the registered prospectus referred to in subclause (1) after the close of 21 September 2016.

Dated at Wellington this 14th day of Aug September 2016.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 16 September 2016 and is revoked on 30 November 2016. This notice exempts Smartshares Limited (**Smartshares**), subject to conditions, from the following in relation to the offer of securities in certain exchange traded group investment funds (**legacy funds**) managed by Smartshares:

- the requirement in section 37A(1)(a) of the Securities Act 1978 (**Act**) that, before the allotment of a security in a legacy fund offered to the public for subscription, the subscriber has received an investment statement:
- the requirement in regulation 5(1)(c) of the Securities Regulations 2009 (**Regulations**) that the registered prospectus contain all of the information, statements and other matters specified in Schedule 3 of the Securities Regulations that are applicable.

The Financial Markets Authority (**FMA**), after satisfying itself of the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions set out in this notice for the following reasons:

- the legacy funds are to be resettled as unit trusts (**new unit trusts**) that are to be part of a managed investment scheme under the Financial Markets Conduct Act 2013 (**FMC Act**). A product disclosure statement and register entry has been prepared for the offer of units in the new unit trusts under the FMC Act. However, due to the timeline involved in the process of resettling the legacy funds as new unit trusts, Smartshares will not be in a position to offer the units in the new unit trusts under the FMC Act before the current prospectuses for the legacy funds under the Act expire on 18 September 2016:
- the conditions of the exemptions effectively require the offer of securities in a legacy fund under the Act to be made by Smartshares in a registered prospectus that is based on the product disclosure statement for the new unit trusts (with any necessary modifications) and that no allotment of securities in a legacy fund can be made unless the subscriber received the registered prospectus before subscribing for the securities. Further, an offer of securities in a

legacy fund can only be made under the registered prospectus for the limited period from commencement of this notice until 21 September 2016:

- the registered prospectus for the legacy funds will therefore contain all the information required to be in a product disclosure statement for the offer of securities in a legacy fund under the FMC Act that is applicable, so that investors will still receive the information they need to make an informed investment decision. The conditions of the exemption require the registered prospectus to include a statement informing investors that the offer of securities is being made under the Act, but the registered prospectus instead contains all the information required for a product disclosure statement. The registered prospectus must also include references as to where other material matters on the legacy funds can be found on the register entry for the offer of units in the new unit trusts, as well as where copies of financial statements, auditors report, the trust deed and the latest annual report can be viewed. As such, the FMA considers that the exemptions will not cause significant detriment to subscribers:
- the effect of the exemptions will be to reduce the compliance costs associated with the process of updating the prospectus and investment statement for the offer of securities in the legacy funds in accordance with the requirements under the Act and Regulations for a limited period of time, in circumstances where Smartshares has already incurred significant compliance costs relating to the transition of the legacy funds to the FMC Act, including the preparation of a product disclosure statement and register entry for the offer of units in the new unit trusts:
- the exemptions only provide relief from the requirement to prepare an investment statement and prospectus for the offer of securities in the legacy funds that comply with the Act and Regulations, and imposes conditions which require Smartshares to instead register a prospectus that contains all the information required for an equivalent offer of securities in the legacy funds under the FMC Act that is applicable, and to also provide that prospectus to subscribers before they subscribe for the securities. In these circumstances, the FMA is satisfied that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.