

## Financial Markets Conduct (Sharesies KiwiSaver Scheme) Exemption Notice (No 2) 2023

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Sharesies KiwiSaver Scheme) Exemption Notice (No 2) 2023.

#### 2 Commencement

This notice comes into force on 9 May 2023.

#### 3 Revocation

This notice is revoked on the close of 8 May 2025.

#### 4 Interpretation

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

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

**Base Funds** means the section of the Scheme that is designated for investment in separate externally managed underlying funds and/or such other fund(s) as may be established by SIML and designated as a Base Fund for the purposes of the Scheme

**Cash Fund** means the section of the Scheme that is designated for investment in specific currencies (each an investor class or a “fund” for the purpose of the Regulations)

**Investment Options** means interests in the Base Funds, investor classes within the Cash Fund and investor classes within the Self Select Fund



**Investment Options Supplement** means a document that contains the information referred to in clauses 6(1)(e), 6(1)(f), and 6(1)(g)

**Investment Plan** means the instructions given to SIML by a scheme participant to invest KiwiSaver contributions in the Scheme

**Investment Portfolio** means, at any time, all of the Investment Options selected by a scheme participant for investment within the Scheme at that time

**Manager** means SIML

**most recent scheme year** has the meaning given in clause 63(8) of Schedule 4 of the Regulations

**personalised quarterly report** means the report set out in clause 6(1)(q), that is prepared quarterly and which contains the information referred to in clause 6(1)(r)

**publicly available information** means, in respect of, and, if applicable to, an Investment Option, a link to the underlying financial product's entry on the register entry, a link for the underlying financial products that are quoted to the relevant page for the financial product on NZX or another financial product market and, for an Investment Option that is an interest in an underlying managed investment product in a managed investment scheme registered under the Act, a link to the most recent fund update for the fund to which that managed investment product relates

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

**return** means, for the purposes of clauses 6(1)(r)(iv) and 6(1)(r)(v), the internal rate of return of a scheme participant's Investment Portfolio over the period, taking account of all cash flows, calculated using an industry-recognised money-weighted methodology

**Scheme** means the Sharesies KiwiSaver Scheme, which is managed by SIML and comprised of the Base Funds, the Cash Fund and the Self Select Fund

**Self Select Fund** means the section of the Scheme that is designated for investment in certain investor classes relating to specific securities (each a "fund" for the purpose of the Regulations) that the Manager makes available on the Sharesies Platform, but excluding those funds that are within the Cash Fund, and the Base Funds

**Sharesies Platform** means the platform offered by SIML

**SIML** means Sharesies Investment Management Limited

**SIML Guardrail Policy** means the policy which sets out the approach adopted by SIML in setting, amending, monitoring and communicating the guardrails which apply to the Scheme, as amended by SIML from time to time

- (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

The Manager in respect of the Scheme is exempt from—

- (a) regulation 9 of the Financial Markets Conduct (Fees) Regulations 2014 to the extent that it requires a fee to be paid under Schedule 3 to those Regulations on the lodgement of a PDS or a confirmation notice for the Scheme;
- (b) clause 32 of Schedule 4 of the Regulations, in respect of the Self Select Fund only; and
- (c) regulation 56(1) of the Regulations and clauses 12(1) and (2), 18, 23, 34, 38, 39(2)(b), 53, and

54 of Schedule 4 of the Regulations, in respect of the Self Select Fund and the Cash Fund only.

## 6 Conditions

- (1) The exemptions in clause 5 are subject to the conditions that—
- (a) the PDS for the Scheme that is given to an investor under section 50 of the Act must be accompanied by an Investment Options Supplement; and
  - (b) the PDS for the Scheme incorporates the information in the Investment Options Supplement required under clause 6(1)(e) by reference to the Investment Options Supplement; and
  - (c) the Investment Options Supplement must be included in the offer register for the Scheme; and
  - (d) if the Investment Options Supplement is updated, the updated Investment Options Supplement must be lodged on the offer register for the Scheme within five working days after the date the Investment Options Supplement was updated; and
  - (e) the Investment Options Supplement must contain the following information in respect of each Investment Option, stated in a table:
    - (i) a description of each Investment Option:
    - (ii) a link to any publicly available information on each Investment Option:
    - (iii) if the Investment Option is offered by a related party, a statement to that effect:
    - (iv) a risk indicator for each Investment Option calculated and filled in in accordance with clauses 5 to 8 (as applicable) of Schedule 4 of the Regulations:
    - (v) estimated total fund charges for each Investment Option calculated in accordance with clause 32 of Schedule 4 of the Regulations:
    - (vi) if a performance-based fee is applicable, an affirmative indication that there is a performance-based fee and a reference to the part of the PDS or Investment Options Supplement that contains information about the fee (if there is one):
    - (vii) if an individual action fee is applicable, an affirmative indication that there is an individual action fee and a reference to the part of the PDS or Investment Options Supplement that contains information about the fee (if there is one):
    - (viii) to the extent there are other charges, the information required by clause 34 of Schedule 4 of the Regulations, provided that references in that clause to the PDS must be read as references to the Investment Options Supplement and provided that if the other charges are the same for each Investment Option, this information can be stated below the table; and
  - (f) the Investment Options Supplement must contain the example of how fees apply to an investor in clause 6(1)(p); and
  - (g) the Investment Options Supplement must contain the statements required under clause 26 of Schedule 4 of the Regulations, under the subheading “Understanding the risk indicator”, in the form set out in clause 26 of Schedule 4 of the Regulations; and
  - (h) the Investment Options Supplement must contain no information other than the information permitted by this notice; and
  - (i) the manager must not make any investments on behalf of an investor unless the investor has received via the Sharesies Platform, in relation to the composition of their Investment Portfolio (as instructed under their Investment Plan):



- (i) a risk indicator score in respect of their Investment Plan that is calculated and filled in in accordance with clauses 5 to 8 of Schedule 4 of the Regulations and is accompanied by a statement in the following form:

"The risk indicator is rated from 1 (low) to 7 (high). The rating reflects how much the value of your investment portfolio's assets goes up and down. A higher risk generally means higher potential returns over time, but more ups and downs along the way.

To help clarify your own attitude to risk, you can seek financial advice or work out your risk profile at [*specify an appropriate page on an internet site maintained by, or on behalf of, or approved by Sharesies, or the Retirement Commissioner, or www.cffc.org.nz*].

Note that even the lowest category does not mean a risk-free investment, and there are other risks that are not captured by this rating.

The risk indicator is not a guarantee of your investment portfolio's future performance. The risk indicator is based on the returns data for [*insert time period*]. While risk indicators are usually relatively stable, they do shift from time to time. The risk indicator will continue to be updated via the Sharesies Platform."; and

- (ii) the annual fund charge; and  
(iii) any applicable performance fees; and

- (j) in the PDS, the KIS must contain under the subheading "What is this?" a statement in the following form:

**"WARNING**

The law normally requires people who offer financial products to give certain specified information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual disclosure rules do not apply to parts of this offer because Sharesies Investments has an exemption for offers of investments in self select schemes. With a self select scheme, you choose the investments you want in your investment portfolio from a list of investment options provided by Sharesies Investments.

As a result of the exemption, you may not have information that allows you to easily understand the overall risks and fees that apply to your investment portfolio. You will also not be able to easily compare an investment in the self select scheme with other similar managed funds.

Investments in self select schemes will not be suitable for all retail investors. We recommend that you seek independent financial advice before committing yourself. A financial adviser can help you understand your risk profile and assist you to select investments that are suitable for you.

We suggest you ask questions, read all documents carefully, and seek independent financial advice before committing yourself."; and

- (k) in the PDS, the KIS must contain under the subheading "**What will your money be invested in?**":

- (i) a statement that the Scheme offers interests in the Base Funds, Cash Fund and Self Select Fund:  
(ii) a table for each of the Cash Fund and the Self Select Fund, and the funds within the Base Funds, which includes:  
(A) a brief description of each Investment Option and their investment objective:



- (B) the risk indicator for the Base Funds (calculated and filled in in accordance with clauses 5 to 8 of Schedule 4 of the Regulations):
  - (C) a statement that the risk indicators for each investment option within the Self Select Fund and Cash Fund can be found in the Investment Options Supplement and a cross-reference to the Investment Options Supplement:
  - (D) the relevant fund charges for the Base Funds, Cash Fund and Self Select Fund (and a reference to where the estimated fund charges for each Investment Option can be found in the Investment Options Supplement):
  - (E) if a performance-based fee is applicable, an affirmative indication that there is a performance-based fee and a reference to the part of the PDS or Investment Options Supplement that contains information about the fee (if there is one):
  - (F) if there are other charges, the information required by clauses 12(2)(d)(v), 12(6) and 12(7) of Schedule 4 of the Regulations (to the extent applicable); and
- (iii) a statement that more information on the Investment Options can be found in the Investment Options Supplement; and
- (l) in the PDS, the KIS must contain under the subheading "**Where can you find more key information?**" a statement to the effect that:
- "Sharesies Investments Management Limited is required to publish quarterly updates for each fund. The updates show the returns, and the total fees actually charged to investors, during the previous year. The latest quarterly updates are available at [*specify Internet site address*]. The manager will also give you copies of those documents on request.
- The quarterly updates will be provided in fund updates for the Base Funds and in personalised quarterly reports for the Self Select Fund and the Cash Fund."; and
- (m) in the section of the PDS headed "**Description of your investment option(s)**", the description of the Cash Fund and the Self Select Fund must include:
- (i) a summary of the investment objectives and strategy for the Cash Fund and the Self Select Fund generally:
  - (ii) a statement that the risk indicators for each investment option within the Cash Fund and Self Select Fund can be found in the Investment Options Supplement:
  - (iii) a brief description of the Cash Fund and Self Select Fund and a statement that more information can be found in the Investment Options Supplement:
  - (iv) a cross-reference to the Investment Options Supplement:
  - (v) a brief overview of the guardrails that apply in respect of the Scheme:
  - (vi) a statement explaining where a copy of the SIML Guardrail Policy can be obtained; and
- (n) in addition to the information required by clause 26 of Schedule 4 of the Regulations, the section of the PDS "**What are the risks of investing?**" must also include a cross-reference to the Investment Options Supplement which will contain the risk indicators for each Investment Option; and
- (o) the section of the PDS headed "**What are the fees?**" must include:
- (i) a cross-reference to the Investment Options Supplement and a statement that information on the fees for the investment options within the Self Select Fund and Cash Fund can be found in the Investment Options Supplement:



- (ii) a statement that information on fees actually charged during the most recent year will be available in the personalised quarterly report; and
- (p) in the section of the PDS headed “**What are the fees?**” and under the subheading “**Example of how fees apply to an investor**”, the PDS contains an example in the following form:

*[name] invests \$10,000 in a mix of one Base Fund (\$7,000), Cash Fund (\$1,000) and investment options within the Self Select Fund (\$2,000).*

*They are charged a Transaction fee when the funds are invested in the Self Select Fund of [calculate] ([specify]% of \$2,000).*

*This brings the starting value of their investment to [specify].*

*They are charged an Administration fee on the Self Select Fund, which works out to [calculate] ([specify]% of \$2,000).*

*They are charged an Administration fee on the Cash Fund, which works out to [calculate] ([specify]% of \$1,000).*

*They are charged an Annual fund charge on the Base Fund, which works out to [calculate] ([specify]% of \$7,000).*

*These fees might be more or less if their account balance has increased or decreased over the year and are dependent on the type of investment they have selected.*

**Estimated total fees for the first year**

*Transaction fees (Self Select Fund)\*: \$[calculate]*

*Administration fee (Self Select Fund): \$[calculate]*

*Administration fee (Cash Fund): \$[calculate]*

*Annual fund charge (Base Funds): \$[calculate]*

*\*These fees will change depending on how often [name] buys or sells units in the Self Select Fund. When you buy or sell units in the Self Select Fund, any transaction fees applicable at that time will be a cost to you. [name] may also be charged currency conversion fees if they buy or sell units in other currencies.*

*If [name] investment options include funds/ETFs, [name] may be subject to underlying fund fees and expenses. Information on the underlying fund fees and expenses can be found in the IOS. This is available on our website at [sharesies.co.nz/kiwisaver](https://sharesies.co.nz/kiwisaver) and on the Disclose Register at [disclose-register.companiesoffice.govt.nz](https://disclose-register.companiesoffice.govt.nz). This example may not be representative of the actual fees you may be charged.*

- (q) the Manager must provide each scheme participant with a personalised quarterly report which includes the information in clause 6(1)(r) below, by making it available to the scheme participant within 20 working days after the last day of each quarter of each disclosure year by:
  - (i) making it directly available to the scheme participant through the Sharesies Platform or an electronic facility (including via email) (if the scheme participant has agreed to this method), in each case in a downloadable form that may be stored by the scheme participant; or
  - (ii) giving it to the scheme participant or delivering or sending it to the scheme participant's last known address; and
- (r) the following information must be provided in relation to the scheme participant for the

purposes of clause 6(1)(q):

- (i) the scheme participant's account balance as at the start and end of the preceding quarter:
- (ii) the contributions and withdrawals made by the scheme participant over the 12-month period ending on the last day of the quarter as at which the personalised quarterly report is prepared:
- (iii) a risk indicator in relation to the scheme participant's Investment Plan, that is presented, calculated and filled in in accordance with clauses 5 to 8 (as applicable) of Schedule 4 of the Regulations:
- (iv) if the scheme participant has been a member of the Scheme for more than one complete disclosure year, the annual return (net of fund charges, trading expenses and accrued tax) of the scheme participant's Investment Portfolio over the 12-month period ending on the last day of the quarter as at which the personalised quarterly report is prepared:
- (v) if the scheme participant has been a member of the Scheme for more than one complete disclosure year, a bar graph (an **annual return graph**) showing—
  - (A) the return (net of fund charges, trading expenses and accrued tax) for the scheme participant's Investment Portfolio, indicated by a bar on the graph and as a figure near the corresponding bar—
    - a. for each complete disclosure year since the date on which the scheme participant became a member of the Scheme, if the scheme participant has been a member of the Scheme for less than 10 complete disclosure years; or
    - b. for each of the last 10 complete disclosure years, if the scheme participant has been a member of the Scheme for 10 or more complete disclosure years; and
  - (B) as the last bar on the graph, the return for the period beginning on the date on which the scheme participant became a member of the Scheme and ending on the date that is the last day of the previous completed quarter (or, if the scheme participant has been a member of the Scheme for 10 or more complete disclosure years, the return for the preceding 10-year period):
- (vi) a statement in the following form:

“The calculation of your Investment Plan's performance shown is on a 'money-weighted' basis. This means that it may not be directly comparable with the 'time-weighted' returns calculated by other funds.”
- (vii) the actual total fund charges for the scheme participant's Investment Portfolio, as a percentage of average net asset value for the most recent scheme year, and how the actual total fund charges for that period are made up by showing in a fees table consistent with the format set out in clause 65 of Schedule 4 of the Regulations—
  - (A) the total management and administration charges; and
  - (B) the amount of the total management and administration charges that is the Manager's basic fee; and
  - (C) the balance of the total management and administration charges after deducting the amount under paragraph B; and
  - (D) the total performance-based fees (if any),

and otherwise calculated on a basis consistent with clause 63(3) to clause 63(6) of Schedule 4 of the Regulations:

- (viii) the actual total other charges (if any) for the most recent scheme year calculated in accordance with clause 64 of Schedule 4 of the Regulations:
- (ix) the actual individual action charges for the most recent scheme year:
- (x) details of the Investment Options that make up the scheme participant's Investment Portfolio:
- (xi) pie graph showing the composition of the scheme participant's Investment Portfolio assets according to the asset categories specified in clause 1(4) of Schedule 4 of the Regulations:
- (xii) alongside each category in the pie graph, the percentage of the pie graph that the category represents:
- (xiii) the personalised quarterly report must contain the information in clause 72 of Schedule 4 of the Regulations, provided that references to—
  - (A) the fund update must be read as references to the personalised quarterly report; and
  - (B) the specified fund must be read as references to the Scheme; and
  - (C) the relevant date must be read as references to the date of the personalised quarterly report; and
- (s) the personalised quarterly report must contain no other information other than the information permitted by this notice; and
- (t) the register entry must contain a copy of each trade allocation policy, trade execution policy, proxy voting policy, SIML Guardrail Policy, or valuation and pricing methodology that is applied to the Scheme as at the last day of the most recent quarter before the date of the PDS (if any); and
- (u) if the Manager makes a material change to any trade allocation policies, trade execution policies, proxy voting policies, SIML Guardrail Policy, or a valuation and pricing methodology that is applied to the Scheme, the Manager must lodge with the Registrar within 20 working days after the last day of each quarter of each disclosure year, a statement that—
  - (i) specifies the material changes that have been made to those policies or that methodology during the relevant quarter; and
  - (ii) describes, in the case of a material change to a valuation and pricing methodology, the effect of the changes on the Scheme's net asset value and the value of investors' accounts; and
- (v) the Manager must lodge with the Registrar, within 20 working days after the last day of each quarter of each disclosure year, a statement that specifies any material changes to the conflicts of interest described in the register entry during that previous quarter; and
- (w) the Manager must provide each scheme participant with an interest in an Investment Portfolio, within 5 months after the Scheme's balance date, with a notification of the final annual return (net of fund charges, trading expenses and accrued tax) of that scheme participant's Investment Portfolio over the 12-month period ending on that balance date; and
- (x) the guardrail controls (i.e. the 5% maximum contribution to a single equity or exchange-traded



- fund, and the limit on self select securities to 50% of total contributions) must be implemented and fully operational before the Manager offers the self select capability in the Scheme and any subsequent changes to guardrail settings must comply with the SIML Guardrail Policy; and
- (y) The Manager must not make any investments on behalf of a scheme participant within the Self Select Fund unless the Manager has captured the following in respect of the scheme participant:
    - (i) the purpose of the investment; and
    - (ii) the profile/risk tolerance of the scheme participant; and
    - (iii) the age and time until retirement age; and
  - (z) The Manager must not make any investments on behalf of a scheme participant within the Self Select Fund unless the scheme participant has received via the Sharesies Platform:
    - (i) risk education that provides each scheme participant with an understanding of how risk impacts performance; and
    - (ii) warnings advising against transacting based on emotion; and
    - (iii) warnings highlighting the potential for volatility in single holdings; and
    - (iv) encouragement for scheme participants to seek financial advice.
- (2) The exemption in clause 5(a) is subject to the condition that the Manager must pay fees to the Registrar on lodgement of a PDS or confirmation notice for the Scheme that are equivalent to the fees that would be payable on lodgement of a PDS or confirmation notice for a financial product (other than a managed investment product in a managed fund) under regulation 9 of the Financial Markets Conduct (Fees) Regulations 2014.
- (3) The Investment Options Supplement does not fail to comply with clause 6(1)(h) merely because it contains additional information that is necessary—
- (a) to clarify the information required under clauses 6(1)(e), 6(1)(f), and 6(1)(g); or
  - (b) to put the information required under clauses 6(1)(e), 6(1)(f), and 6(1)(g) in context to ensure that the information that is disclosed is not false or misleading.
- (4) A personalised quarterly report does not fail to comply with clause 6(1)(s) merely because it contains additional information that is necessary—
- (a) to clarify the information required under clause 6(1)(r); or
  - (b) to put the information required under clause 6(1)(r) in context to ensure that the information that is disclosed is not false or misleading.

## **7 Existing Notice revoked**

The Financial Markets Conduct (Sharesies KiwiSaver Scheme) Exemption Notice 2023 is revoked on the close of 9 May 2023.

Dated at Auckland this 9<sup>th</sup> day of May 2023

  
Paul Gregory  
Executive Director – Response & Enforcement  
Financial Markets Authority



## Statement of Reasons

This notice comes into force on 9 May 2023. The notice is revoked on 8 May 2025.

The notice exempts Sharesies Investments Management Limited (**SIML**) as manager of the Sharesies KiwiSaver Scheme (**Scheme**) from the following provisions of the Financial Markets Conducts Regulations 2014 (**Regulations**):

- (1) in respect of the Self Select Fund:
  - clause 32 of Schedule 4 of the Regulations; and
- (2) in respect of the Self Select Fund and the Cash Fund:
  - regulation 56(1) of the Regulations and clauses 12(1) and (2), 18, 23, 34, 38 and 39(2)(b), 53 and 54 of Schedule 4 of the Regulations.

The notice also exempts SIML as manager of the Scheme, in respect of the Scheme, from regulation 9 of the Financial Markets Conduct (Fees) Regulations 2014 to the extent that it requires a fee to be paid under Schedule 3 of those Regulations on the lodgement of a PDS or a confirmation notice for that scheme.

The FMA, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant these exemptions because—

- the exemptions recognise the difficulties faced by SIML as manager of the Scheme in complying with the disclosure requirements of the Regulations. The exemptions also recognise the uniquely high fee burden SIML would face in relation to the Scheme given the requirement for lodgement fees to be paid on a 'per fund' basis. In the absence of the exemptions, SIML would be required to comply with disclosure requirements that are likely to result in a high compliance burden (and compliance costs) without providing useful information for investors that will help them to make decisions relating to financial products:
- the exemptions are subject to conditions that provide for investors in the Scheme to have access to more meaningful information relating to that fund in the PDS and a supplement to the PDS and also for investors to receive continuous disclosure through the Sharesies online platform relating to their own self selected portfolio:
- in these circumstances the granting of the exemptions is desirable in order to promote the purposes of the Financial Markets Conduct Act 2013, specifically by avoiding unnecessary compliance costs, providing for timely, accurate and understandable information to be provided to investors to assist them with making investment decisions and by promoting innovation and flexibility in the financial markets:
- the exemptions are not broader than is reasonably necessary to address the particular difficulties experienced by SIML as manager of the Scheme, and are subject to conditions that continue to require relevant information to be provided at the time of offer and on an ongoing basis to assist with investor decision making. The exemptions only apply to the Scheme in relation to where the special structure of the Scheme distinguishes it from standard managed funds. The exemption from lodgement fees is on the condition that fees are paid on a basis consistent with lodgement fees for other fund issuers that do not offer self select options.

