

Financial Markets Conduct (Australian Scholarships Group Friendly Society Limited) 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 section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Australian Scholarships Group Friendly Society Limited) Exemption Notice 2016.

2 Commencement

This notice comes into force on 5 December 2016.

3 Revocation

This notice is revoked on 30 November 2021.

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 ASG
- (b) which is established in the records of ASG
- (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

ASG means Australian Scholarships Group Friendly Society Limited, a registered unlisted public company limited by shares and guarantee under the Corporations Act 2001 of Australia

ASG's existing New Zealand registered managed investment schemes means the schemes offered by ASG in New Zealand and which became registered schemes under the Act in

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accordance with the transitional provisions of the Act

supervisor means the supervisor of ASG's New Zealand registered 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) ASG is exempted, in respect of ASG's existing New Zealand registered managed investment schemes, from section 127(1)(f) of the Act.
- (2) ASG is exempted, in respect of ASG's existing New Zealand registered 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) ASG's existing New Zealand registered managed investment schemes constitute one or more approved benefit funds which relate solely to those schemes; and
 - (b) as regards each of ASG's existing New Zealand registered 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 ASG—
- (a) holds an Australian Financial Services Licence issued by the Australian Securities and Investments Commission under the Corporations Act 2001 of Australia, which allows ASG 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 ASG's existing New Zealand registered 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) includes in the product disclosure statement for those of ASG's existing New Zealand registered managed investment schemes which are open to new investors, statements in relevant sections of the product disclosure statement to the effect that the assets of the scheme are not held on trust by the supervisor or an external custodian but are instead held by ASG as a benefit fund in accordance with and subject to the requirements of the Life Insurance Act 1995 of Australia and the relevant approved benefit fund rules; and
 - (f) provides reports and certificates to the supervisor in relation to the property of ASG's existing New Zealand registered managed investment schemes:—
 - (i) as required by the governing documents for ASG's existing New Zealand registered managed investment schemes; and

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

Dated at Auckland this 2nd day of December 2016.


Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 5 December 2016 and is revoked on 30 November 2021, exempts Australian Scholarships Group Friendly Society Limited (**ASG**) 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 ASG in Australia, the oversight of ASG in relation to ASG's New Zealand registered managed investment schemes by the New Zealand licensed supervisor of those schemes, and disclosure to investors.

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—

- ASG has offered and continues to offer to New Zealand investors, interests in respect of certain benefit funds operated by ASG as a friendly society under the Life Insurance Act 1995 of Australia. 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 ASG does not need an independent custodian in relation to its benefit funds. Prior to the application of the FMC Act, ASG also had not needed an independent custodian in relation to its benefit funds under New Zealand law.
- ASG would incur significant costs to appoint an independent custodian for its existing New Zealand managed investment schemes and to add an independent custodian into its business processes for those existing schemes.
- The governance risks relating to not having an independent custodian are reduced, and the benefits of having an independent custodian are limited because —
 - ASG is licensed to carry on its business by the Australian Securities and Investments Commission under the Corporations Act 2001 of Australia:
 - ASG 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 ASG's managed investment schemes offered in New Zealand:
 - Each of the managed investment schemes offered in New Zealand relate to a separate benefit fund of ASG 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:
 - ASG's New Zealand licensed supervisor is still required to oversee the holding and application of the assets of ASG's existing New Zealand registered 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 ASG 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 condition requiring disclosure in the product disclosure statements for schemes open to new investors also promotes the purpose of providing for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services.
- 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 only apply to existing schemes and not to any new schemes offered by ASG. Also, the remaining provisions of the FMC Act relating to the custody of scheme property continue to apply.