

## Financial Markets Conduct (Mercer Super Trust)

### Exemption Notice 2018

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 that Act, gives the following notice.

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#### Notice

##### 1 Title

This notice is the Financial Markets Conduct (Mercer Super Trust) Exemption Notice 2018.

##### 2 Commencement

This notice comes into force on 9 April 2018.

##### 3 Revocation

This notice is revoked on the close of 8 April 2023.

##### 4 Interpretation

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

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

**participating employer plan** means an employer plan established under a participation deed entered into by the specified employer with the manager of the specified scheme

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

**restricted workplace savings scheme** means a scheme that is designated as a restricted workplace savings scheme as identified in Column 7 of the Financial Markets Conduct (Designation of Restricted Schemes) Order 2016

**specified employer** means an entity that is a participating employer in the specified scheme

**specified individual** means a person who is:

- (a) a member of a restricted workplace savings scheme who was previously employed or otherwise engaged by a specified employer;
- (b) an immediate family member of, or wholly or partially financially dependent on, a person who either falls within paragraph (a) or who would have fallen within paragraph (a) had he or she not died, and as a result is or was entitled to become a member or beneficiary of the relevant restricted workplace savings scheme; or

- (c) a person who was otherwise eligible to become a member of or receive a benefit from a restricted workplace savings scheme as a result of any other relationship with a person who either falls within paragraph (a) or who would have fallen within paragraph (a) had he or she not died

**specified manager** means Mercer (N.Z.) Limited

**specified scheme** means Mercer Super Trust, a registered workplace savings scheme under the Act (scheme number SCH10697).

- (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 Exemption from workplace savings scheme registration requirement

The specified manager is exempted, in relation to the specified scheme, from section 130(1)(d) of the Act to the extent that it requires membership in a workplace savings scheme to be restricted to either or both of eligible individuals and persons who are the trustees or managers of a retirement scheme.

## 6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the conditions that –
- (a) the specified scheme must admit as members (both in its conditions of entry of scheme participants and in the way those conditions are applied on entry) only one or more of the following:
    - (i) persons who are eligible individuals in terms of section 130(2) of the Act;
    - (ii) persons who are the trustees or managers of a retirement scheme; and
    - (iii) specified individuals; and
  - (b) informed written consent in accordance with requirements of the Act for transfers of scheme participants (if applicable) is obtained from each specified individual who is a member of the restricted workplace savings scheme prior to their transfer to a participating employer plan; and
  - (c) the manager of the specified scheme must comply with the requirements of section 169 of the Act in respect of each participating employer plan to which defined benefit members of a restricted workplace savings scheme have transferred, for so long as any specified individual remains a member in the participating employer plan; and
  - (d) the governing document for the specified scheme reflects the condition set out in subclauses (1)(a) and (1)(c).

Dated at Auckland this

4<sup>th</sup> day of April 2018.



Nick Kynoch  
General Counsel  
Financial Markets Authority



## Statement of reasons

This notice comes into force on 9 April 2018 and is revoked on 8 April 2023.

The notice exempts Mercer (N.Z.) Limited (**specified manager**) as manager of the Mercer Super Trust (**specified scheme**), subject to certain conditions, from the requirement to restrict membership of the specified scheme to eligible individuals and persons who are the trustees or managers of a retirement scheme.

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

- the exemption will permit individuals who are members of restricted workplace savings schemes but who no longer qualify as eligible individuals (within the meaning of section 130(2) of the Act) as a result of ceasing to be employed or engaged by a relevant person or in a relevant industry (for example, due to retirement) to become members of the specified scheme;
- the exemption will also permit individuals who are or may become members of restricted workplace savings schemes as a result of receiving a benefit contingent on another member's participation as a member in that restricted workplace savings scheme, and who do not qualify for the specified scheme as eligible individuals (within the meaning of section 130(2) of the Act), to become members of the specified scheme;
- as a result, the exemption will provide greater flexibility and enable managers of restricted workplace savings schemes to offer members the ability to transfer to another workplace savings scheme;
- important protections for investors will continue to apply to the specified scheme under the Act. These include the disclosure requirements under Part 3 of the Act, and all manager, supervisor, and custodian functions and duties continuing to apply under Part 4 of the Act. The conditions ensure that applicable transfer rules and actuarial examination rules under the Act are complied with;
- the exemption will provide a cost effective pathway for managers of restricted workplace savings schemes considering winding up their scheme due to increasing per-member costs to offer members an option to preserve an equivalent superannuation benefit facility;
- for these reasons granting the exemption is necessary or desirable in order to promote the purposes of the Act, namely promote the development of fair, efficient and transparent financial markets, provide flexibility in financial markets, avoid unnecessary compliance costs and ensure that appropriate governance arrangements apply to workplace savings schemes that allow for effective monitoring and reduce governance risks;
- the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption because the exemption is subject to conditions that ensure that the only additional category of persons able to become members of the specified scheme are individuals who become or are to become members as a result of a transfer from a restricted workplace savings scheme.