

Financial Markets Conduct (Mercer Super Trust) Exemption Notice 2024

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 (Mercer Super Trust) Exemption Notice 2024.

2 Commencement

This notice comes into force on 5 August 2024.

3 Revocation

This notice is revoked on the close of 4 August 2029.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

eligible individual, in relation to a person or industry specified in the trust deed for the specified scheme dated 5 September 2016, has the same meaning as in section 130(2) of the Act

participating employer plan means an employer plan established under a participation deed entered into by a 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 Schedule to 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, or by an entity that was previously a participating employer in the relevant restricted workplace savings scheme but whose business or undertaking has subsequently been succeeded to 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

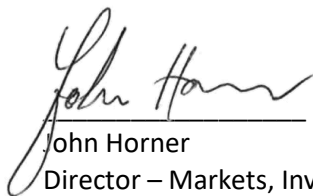
The specified manager is exempted, in relation to the specified scheme, from section 130(1)(d) of the Act to the extent that it requires membership in the specified scheme to be restricted to either or both of eligible individuals and persons who are the trustees or managers of a retirement scheme.

6 Conditions of exemption in clause 5

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) eligible individuals;
 - (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 paragraphs (a) and, in the event that any participating employer plan provides for defined benefit members, (c).

Dated at Wellington this 1st day of August 2024



John Horner
Director – Markets, Investors and Reporting
Financial Markets Authority

Statement of reasons

This notice comes into force on 5 August 2024 and is revoked on 4 August 2029.

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 in section 130(1)(d) of the Financial Markets Conduct Act 2013 (**Act**) 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 the specified 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 will continue to apply:
- 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.

Therefore, the FMA is satisfied that-

- granting the exemption is 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; and

- 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.