

## Securities Act (OnePath Custodians Pty Limited) Exemption Notice 2013

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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### Notice

- 1 Title**  
This notice is the Securities Act (OnePath Custodians Pty Limited) Exemption Notice 2013.
- 2 Commencement**  
This notice comes into force on 8 November 2013.
- 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  
**issuer** means OnePath Custodians Pty Limited, a company incorporated in Australia  
**MRSO** means the Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2008

**OnePath Master Fund** means OnePath Master Fund, an Australian regulated superannuation fund within the meaning of section 19 of the Superannuation Industry (Supervision) Act 1993 (Australia)

**product disclosure statement** means a Product Disclosure Statement as defined in section 761A of the Corporations Act 2001 (Australia)

**Regulations** means the Securities Regulations 2009

**specified securities** means interests in Smart Choice, and any other securities which are offered under a product disclosure statement or similar offer document for Smart Choice

**Smart Choice** means ANZ Smart Choice Super and Pension, an investment product of OnePath Master Fund.

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

## 5 Exemptions

The issuer, and every person acting on its behalf, is exempted from sections 33(2), 33(3), 37, 37A, and 51 to 54B of the Act and the Regulations (except regulation 23) in respect of the specified securities.

## 6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the condition that members of the public in New Zealand may not subscribe for specified securities otherwise than by:
- (a) a transfer from another Australian superannuation arrangement; or
  - (b) using funds which are held for the person subscribing by the Australian Taxation Office under the Superannuation (Unclaimed Money and Lost Members Act) Act 1999 (Australia).
- (2) The exemptions in clause 5 are subject to the further conditions that:
- (a) the requirements set out in regulations 9 to 12 of the MRSO are complied with (as if the MRSO applied) except to the extent provided in paragraphs (3) and (4); and
  - (b) it is a term of the offer of specified securities that the requirements set out in regulations 13(1) to (3) of the MRSO are complied with (as if the MRSO applied) except to the extent provided in paragraph (5).
- (3) Instead of the statement required by regulation 11(3)(a) of the MRSO, the notice must state that the issuer intends to make an offer in accordance with the Securities Act (OnePath Custodians Pty Limited)

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Exemption Notice 2013 which provides exemptions from the Securities Act 1978 and the Securities Regulations 2009 consistent with those available to Australian issuers under the MRSO.

- (4) Instead of the documents required by paragraph (d) of regulation 12(1) of the MRSO, the constituent documents of the OnePath Master Fund and Smart Choice must accompany the notice to the Registrar.
- (5) Instead of the warning statement required by paragraph (a) of regulation 13(1)(d) of the MRSO, paragraph (a) of the warning statement must state "(a) This offer to New Zealand investors is a regulated offer made under Australian and New Zealand law. In Australia, this is Chapter 8 of the Corporations Act 2001 and Regulations. In New Zealand, this is the Securities Act (OnePath Custodians Pty Limited) Exemption Notice 2013."

**7 Minor or technical failure to comply with regulation 11 or 12**

If a failure to meet a requirement contained in regulation 11 or 12 of the MRSO (as if the MRSO applied, as modified by this notice) is minor or technical only, the requirement in question, and the applicable condition of clause 6(2), is deemed to have been complied with.

Dated at Wellington this 7<sup>th</sup> day of November 2013.



Simone Robbers  
Head of Primary Regulatory Operations  
Financial Markets Authority

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**Statement of reasons**

This notice, which comes into force on 8 November 2013 and is revoked on the close of 30 November 2016, provides exemptions to OnePath Custodians Pty Limited (the **Trustee**) from the New Zealand supervision requirements, most of the disclosure requirements, and from the register, record keeping and certificate requirements of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **Regulations**), in relation to the offer of interests in the ANZ Smart Choice Super and Pension (**Smart Choice**), a section of the OnePath Master Fund, an Australian regulated superannuation fund.

The conditions of exemptions require the offer of interests in Smart Choice to be a regulated offer in Australia and require the Trustee to provide the

Australian disclosure documents to prospective New Zealand investors that contain warnings, including that the offer and offer documents are regulated in Australia.

These exemptions and conditions are substantially similar to the exemptions available to Australian issuers under the Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2008 (**MRSO**).

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers that it is appropriate to grant the exemptions because—

- the objective of the MRSO is to reduce regulatory barriers for trans-Tasman offers of securities. To achieve this, MRSO enables an Australian issuer lawfully offering securities in Australia to offer those securities in New Zealand on the basis of the same offer documents and other key offer and allotment compliance requirements. The exemptions from the requirements in the Act and the Regulations provided by MRSO are consistent with the policy of the Act because they allow New Zealand investors to be offered securities where the securities law disclosure and compliance requirements are comparable to those prescribed by New Zealand law:
- the MRSO applies to offers of “securities” which are “regulated offers”. Offers of interests in Australian superannuation schemes do not come within the definition of “securities” under MRSO. Therefore the Trustee is unable to rely on MRSO:
- the exemptions recognise that the Trustee is subject to equivalent regulatory supervision as is the case of collective investment schemes that are able to rely on the MRSO. The offer of interests in Smart Choice is a regulated offer in Australia and is subject to the full requirements of Australian securities legislation. Granting an exemption for Smart Choice is therefore also consistent with the general policy of the MRSO and equivalent exemptions are appropriate. The conditions of exemption ensure that investors receive a copy of the Australian disclosure documents, which include additional warning statements to the effect that the offer is regulated in Australia, that there are differences in how securities are regulated in Australia, and that the rights, remedies and compensation arrangements available under Australian law may differ to those available under New Zealand law. This will provide investors with sufficient information to make an informed investment decision. Given the sufficiency of disclosure and the equivalent level of regulatory supervision, there will therefore be no significant detriment to investors:
- the offer of interests in Smart Choice will only be made to persons in respect of whom the ATO holds “lost super” money, or who are

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already members of other Australian superannuation schemes.  
Therefore the exemptions are not broader than reasonably necessary  
to address the matters that gave rise to the exemptions.

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