

Financial Reporting Act (OnePath Custodians Pty Limited) Exemption Notice 2013

Pursuant to section 35A of the Financial Reporting Act 1993, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Application	1
5 Interpretation	2
6 Exemptions for directors of issuer	2
7 Conditions of exemptions in clause 6	2
8 Extra conditions in respect of financial statements prepared in accordance with Australian law	4

Notice

- Title**

This notice is the Financial Reporting Act (OnePath Custodians Pty Limited) Exemption Notice 2013.
- Commencement**

This notice comes into force on 8 November 2013.
- Revocation**

This notice is revoked on the close of 31 October 2018.
- Application**

The exemptions granted by this notice apply to the following accounting periods of the issuer:

 - an accounting period of the issuer that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the specified financial statements for that period would, but for the exemptions contained in this notice, be required to be delivered for registration under section 18 of the Act; and
 - subsequent accounting periods.

5 Interpretation

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

Act means the Financial Reporting Act 1993

approved auditor means an accountant who is qualified under the laws of Australia to give an opinion as to whether the specified financial statements comply with Australian GAAP

Australian GAAP in respect of the issuer means Australian equivalents to International Financial Reporting Standards, and in respect of the OnePath Master Fund means Australian Accounting Standard AAS 25 *Financial Reporting by Superannuation Plans*, other applicable Accounting Standards, the provisions of the Trust Deed and the requirements of the Superannuation Industry (Supervision) Act 1993 and Regulations (Aust.)

issuer means OnePath Custodians Pty Limited, a company incorporated in Australia

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 (Aust.)

scheme financial statements means the financial statements prepared for the OnePath Master Fund

Smart Choice means ANZ Smart Choice Super and Pension, an investment product of One Path Master Fund

specified financial statements means the financial statements that are required to be prepared in respect of the issuer and Smart Choice in accordance with Australian law

Trust Deed means the trust deed for the OnePath Master Fund dated 15 November 2010, as amended.

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

6 Exemptions for directors of issuer

Every director of the issuer is exempted from sections 10(1), 11, 15, 16, and 18(1) of the Act in respect of the issuer.

7 Conditions of exemptions in clause 6

(1) The exemptions in clause 6 are subject to the conditions that –

- (a) the issuer has not offered and does not offer securities to the public in New Zealand otherwise than in reliance on –
 - (i) the Securities Act (OnePath Custodians Pty Limited) Exemption Notice 2013; or
 - (ii) the Securities Act (Australian Issuers) Exemption Notice 2002; or
 - (iii) the Securities Act (Australian Issuers – Transitional Provision) Exemption Notice 2013; or

- (iv) the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003; or
 - (v) the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2008; or
 - (vi) the Securities Act (Dividend Reinvestment) Exemption Notice 1998; or
 - (vii) the Securities Act (Overseas Companies) Exemption Notice 2002; or
 - (viii) the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002; or
 - (ix) the Securities Act (Renewals and Variations) Exemption Notice 2002 (so far as that notice relates to variations that do not extend the time frame for payment of money due, or to become due, under the existing securities by the issuer); or
 - (x) any notice that, with or without modification, replaces or corresponds to, or was replaced by or corresponded to, a notice listed in subparagraphs (i) to (ix); or
 - (xi) the Securities Act (Mutual Recognition of Securities Offerings – Australia) Regulations 2008; and
- (b) the issuer is not a licensed insurer;
 - (c) the issuer, in relation to its specified financial statements, complies with the laws of Australia that relate to the preparation, content, audit, and public filing of the specified financial statements;
 - (d) the specified financial statements comply with Australian GAAP;

Scheme financial statements in accordance with Australian law

- (e) the issuer prepares scheme financial statements that comply with the laws of Australia that relate to the preparation, content, audit, and public filing of financial statements of an Australian superannuation plan; and
 - (f) the scheme financial statements comply with Australian GAAP.
- (2) The exemption in clause 6 from section 18(1) of the Act is subject to the condition that the copy of all financial statements that are delivered to the Registrar by the issuer includes, or is accompanied by, a statement to the effect that the issuer has relied on this exemption notice in respect of its financial statements for the relevant accounting period.

8 Extra conditions in respect of financial statements prepared in accordance with Australian law

- (1) The exemptions in clause 6 are subject to the conditions that the specified financial statements, prepared in accordance with Australian law under clause 7, when delivered to the Registrar for registration, -
- (a) are accompanied by, if the specified financial statements do not give a true and fair view of the matters to which they relate, a statement containing information and explanations that will give a true and fair view of those matters; and
 - (b) are accompanied by, if the specified financial statements omit material information about the financial performance, financial position, and cash flows of the issuer in the accounting period to which the statements relate, a statement disclosing that information; and
 - (c) are accompanied by a report by an approved auditor, issued either in the approved auditor's own name or in the name of an audit firm of which the approved auditor is a partner, member, or employee, that complies with the requirements of the Corporations Act 2001 (Aust).
- (2) The exemptions in clause 6 are subject to the condition that the specified financial statements and the scheme financial statements prepared in accordance with Australian law under clause 7 are delivered to the Registrar for registration annually, and no later than the date on which financial statements would, but for the exemptions in clause 6, be required to be delivered for registration.
- (3) In subclause (1)(b), **material information** means information that a reasonable person would expect to have a material effect on the decision of a holder of the securities who commonly invests in securities as to whether to continue to hold the securities.

Dated at Wellington this 7th day of November 2013.



Simone Robbers
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 8 November 2013 and is revoked on the close of 31 October 2018, exempts the directors of OnePath

Custodians Pty Limited (the **issuer**), a company incorporated in Australia, from various provisions of the Financial Reporting Act 1993 (the **Act**) in relation to its offer of interests in the ANZ Smart Choice Super and Pension (**Smart Choice**), an Australian superannuation product, made in accordance with the Securities Act (OnePath Custodians Pty Limited) Exemption Notice 2013.

The notice provides exemptions from the requirements in the Act relating to the preparation, content, audit, and registration of financial statements subject to conditions requiring the issuer to prepare financial statements in accordance with Australian law and generally accepted accounting practice in Australia (**Australian GAAP**), have those statements audited by an Australian-registered auditor, and register those financial statements with the Registrar of Companies.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 35A(2) of the Act, considers it is appropriate to grant the exemptions because—

- the exemptions reduce regulatory compliance costs for the issuer by exempting it from the need to prepare and register with the Registrar of Companies, financial statements that comply with New Zealand generally accepted accounting practice, that they are not otherwise required to prepare in Australia:
- FMA has had regard to the financial reporting requirements with which Australian issuers must comply and considers that the financial reporting obligations under the laws of Australia, together with any additional information required under the conditions of the exemption, will provide New Zealand security holders with adequate financial information about their investment in Smart Choice. FMA also considers that Australia has adequate regulatory and enforcement mechanisms in this regard:
- additionally, the only New Zealand investors who are able to subscribe for interests in Smart Choice are those who have “lost super” money with the Australian Taxation Office or who are already members of other Australian superannuation scheme. Therefore, potential investors are those who chose to invest in an Australian superannuation scheme and in respect of which the content of the financial statements would have been prepared in accordance with Australian law and Australian financial reporting standards:
- in these circumstances, FMA considers there will be no significant detriment to investors. Further, the conditions of exemption require the issuer to prepare, have audited, and register financial statements in New Zealand but may do so on the basis of compliance with Australian laws. Accordingly, FMA is satisfied that the extent of the exemptions is not broader than reasonably

necessary to address the matters that gave rise to the exemptions.
