

## **PRODUCT RULING - BR Prd 05/05**

This is a product ruling made under section 91F of the Tax Administration Act 1994.

### **Name of the Person who applied for the Ruling**

This Ruling has been applied for by The New Zealand Guardian Trust Company Limited as Trustee of the AMP Superannuation Tracker Fund.

### **Taxation Laws**

All legislative references are to the Income Tax Act 2004 unless otherwise stated.

This Ruling applies in respect of sections BD 4(2), DA 2(1), DB 17, FI 1, FI 2 and the definition of “superannuation fund” in section OB 1.

This Ruling does not consider how (if at all) sections CH 1, DB 40 and ED 1 apply to the Arrangement.

### **The Arrangement to which this Ruling applies**

The Arrangement is the redemption of Units in the AMP Superannuation Tracker Fund (“the Fund”) by members who receive securities for their redemption, and those shares are trading stock or revenue account property of that member. Further details of the Arrangement are set out in the paragraphs below:

1. The AMP Superannuation Tracker Fund (“the Fund”) is a registered superannuation scheme under the Superannuation Schemes Act 1989. The Fund is not listed on the New Zealand stock market (“NZX”).
2. The Fund has been designed to provide members with a simple and cost effective method of investing in a portfolio with a performance broadly representative of the New Zealand share market.
3. The Trustee of the Fund is the New Zealand Guardian Trust Company Limited (“the Trustee”) although the Trust Deed contains provisions for the retirement or removal and replacement of the Trustee.
4. The Manager of the Fund is AMP Investment Management (N.Z.) Ltd (“the Manager”). The Manager invests the investors’ contributions into the Fund. The Investment Manager/ Promoter of the Fund is AMP Capital Investors (New Zealand) Ltd (“the Investment Manager”). The Investment Manager purchases securities in the Index, described more particularly in paragraphs 6–

8 below. Both the Manager and the Investment Manager are owned by AMP Ltd, incorporated in New South Wales.

5. The Fund was established, as a wholesale registered superannuation scheme, principally for the purpose of paying benefits to persons who are trustees of superannuation schemes registered under the Superannuation Schemes Act 1989 and who elect to invest in the Fund.

*Investment policy*

6. According to the Members' Booklet of the Fund, dated 29 June 2001:

The objective of the Scheme is to track the Russell/Ord Minnett (JB Were) Tradeable Index (the Tradeable Index) as closely as practical. This will be achieved by holding constituent company securities which, as far as possible, match the composition of the Tradeable Index. ...

The Manager and the Trustee can adopt such other index of securities as they agree from time to time.

7. In accordance with the current Members' Booklet (not being materially different to the draft provided to the Commissioner on 17 January 2005), the Manager and the Trustee have agreed to adopt the NZSX 50 Index ("the Index") administered by New Zealand Exchange Limited. The transition to tracking the Index occurred on 31 January 2005 (refer to paragraph 24(h) below), and the Fund commenced tracking the Index on 1 February 2005. Apart from permitted investments of the cash pool, the Fund will, commencing on 1 February 2005, only invest in the securities that make up the Index and will continue to track the Index as near as practicable irrespective of whether the sale of the shares will give rise to a profit or loss.
8. Despite the Trust Deed providing that the Manager and Trustee can invest in other Indexes, and apart from permitted investments of the cash pool, the Fund will, having made the transition to the Index, only invest in the securities that make up the Index.
9. The Fund is required to buy and sell shares as required to ensure that it continues to correspond as near as practicable to the Index. Such buying and selling will not be motivated by any intention to derive a profit or gain from such sales. In this regard, Clause 5.3.1A of the Trust Deed states:

The Fund shall seek to track the Index by investing in Constituent Company Securities as near as practically possible to their weightings in the Index and the Trustee's primary investment duty shall be to seek to achieve this purpose. All other investment duties (express or implied) shall be construed subject to this duty. The Fund and the Trustee shall not have an intention to profit from holding, acquiring or selling Constituent Company Securities.
10. The Trustee and the Manager have confirmed that, to the best of their knowledge, the Fund has complied with the previous rulings (BR Prv 05/02, and BR Prd 05/01), relating to the Fund.

### *Adjustments to the Fund*

11. The Fund is rebalanced in the following circumstances:
  - (a) The Fund's portfolio is monitored regularly, being daily, to ensure that it is tracking the Index. The reference to "Fund's portfolio" means the Constituent Companies held by the Fund.
  - (b) The Manager will rebalance the Fund to the Index following any adjustments to the Index. Such rebalancing will occur as soon as possible but in any case within three business days of a change to the composition of the Index.

### *Management and operation of the Fund*

#### *Borrowing*

12. Clause 10.3.2 of the Trust Deed provides that:

The Trustee may not borrow any money for the purposes of the Plan otherwise than for the purpose of satisfying payment of any Administration Expenses in which case the Trustee may borrow money on terms considered appropriate by the Trustee and may charge any or all of the Plan to secure the repayment of any moneys borrowed.

#### *Hedging*

13. This Fund only tracks shares quoted on the NZX and hence the Fund will purchase shares in New Zealand dollars. Accordingly, the Fund will not be exposed to foreign exchange risks. The Fund does not enter into any hedging transactions.

#### *Contributions to the Fund*

14. Contributions to the Fund will be by way of parcels of securities or cash. Cash may be accepted in the following circumstances:
  - (a) where there is a contemporaneous redemption against which the contribution can be netted off by receiving cash into the Fund and then paying it out on the redemption, or
  - (b) to the extent the application cannot be made in securities due to uneven parcel sizes provided the cash pool remains below 0.5% of the total assets of the Fund and, except where the situations listed in paragraph 16 below arise or where the cash is committed to fund an obligation that was known at the time of receipt of the subscription, the cash is converted to Constituent Company Securities as soon as practicably possible.
15. Members wishing to contribute cash may be required to purchase a parcel of securities through a separate arrangement with the Manager, or through other intermediaries (such as brokers and financial advisors).

*Cash investments held by the Fund (“cash pool”)*

16. The proportion of the Fund’s assets to be held as the cash pool will not exceed what is strictly necessary in order to fulfil the purposes of the cash pool (as stated in paragraph 17 of this Ruling), and will not in any event exceed 0.5% of the total assets of the Fund, except if:
- (i) the Fund receives a large cash contribution (provided the cash is invested as soon as possible and in any event within three business days), or
  - (ii) a member requests a large cash redemption (provided the cash is distributed within three business days of the sale of securities), or
  - (iii) the Fund receives a large cash inflow from or in respect of a Constituent Company, such as a distribution due to a pro-rata buy-back or takeover or a change in the Constituent Companies of the Index (provided the cash is invested as soon as possible and in any event within three business days), or
  - (iv) the Fund holds cash as a result of disposing of securities in the course of and for the purposes of winding up the Fund.
17. The purpose of the cash pool as set out in Clause 5.2.5 of the Trust Deed is:
- The Trustee may maintain or invest in Cash in any amount representing up to five percent (5%) of the Current Fund Value at any time, PROVIDED THAT the investment in Cash shall only be used to facilitate the easier administration of the Fund and to reduce the number of transactions required to be made or to facilitate redemptions from time to time, but may not be used by the Manager or the Trustee to increase the performance of the Fund by maximising the holding of securities considered to be likely to give a high return or minimising the holding of securities considered likely to give a low return.
18. “Cash”, as defined in Clause 3 of the Trust Deed includes:
- deposits, or negotiable instruments, in each case having maturities which are not later than the times at which the proceeds of realisation thereof are expected to be required, and on which there is full indefeasible liability of:
- (a) a New Zealand registered bank (having the meaning given to that term by the Reserve Bank of New Zealand Act 1989) approved by the Manager for the purpose; or
  - (b) the New Zealand government.
19. The size and operation of the cash pool will be strictly managed so as to reflect its threefold purpose of:
- (a) allowing funds to accumulate to an appropriate amount for investment, and

- (b) minimising the number of equity security sale and purchase transactions, and
  - (c) managing the liquidity of the Fund in respect of meeting its anticipated liabilities and withdrawals.
20. When the cash held by the Investment Manager reaches the minimum investment level, it will be applied to acquire securities to track the Index as soon as possible and in any event within three business days. The Manager has advised that the minimum amount required to enable the purchase of every security in the Index in a marketable and economically sensible sized parcel is approximately \$150,000, but may reduce where a lower amount can permit transaction costs to be maintained at the current level (or a level not materially different).
21. It is not envisaged that the amount of cash required to enable the purchase of securities in a marketable and economically sensible sized parcel will change from \$150,000 unless there are improvements in share trading systems that make it economic to trade in smaller parcels of shares. This would be beneficial for the Fund as it would be able to invest surplus cash sooner and keep the cash levels in the Fund at a lower level than might otherwise be the case if the Fund is confined to a predetermined minimum parcel size.
22. The Fund does not normally hold cash equivalents. Rather, the cash amounts are normally held in bank deposits and interest is paid on these deposits.

*Dividend reinvestment*

23. In the event of a dividend reinvestment option being available to the Trustee, the Manager will only accept such an option if it is consistent with tracking the Index. In all other cases, the Manager will decline the option and will always accept the cash dividend that will be immediately allocated to members.

*Events that trigger acquisitions or realisations*

24. There are certain reasons or events when investments held by the Fund will have to be bought or sold. The Trustee will only dispose of securities (other than cash pool investments):
- (a) If the Fund is voluntarily or involuntarily wound up or if the Trustee is replaced (and this of itself means that there is a technical disposal of securities to the new Trustee and the new Trustee assumes ownership of the same securities held by the previous Trustee immediately before the Trustee is replaced).
  - (b) If there is a change in the Index composition and the composition of the Fund no longer tracks the Index or when the Fund is otherwise required to buy and sell securities to maintain tracking.

- (c) When transferring securities to a member if the member redeems Units for securities.
- (d) Where there is no option available to receive dividends in the form of cash, and dividends are received in the form of bonus securities and are converted to cash.
- (e) To satisfy a legal claim against the Fund or Trustee or to meet expenses of the Fund, but only to the extent to which such a claim or expense cannot be met from existing resources.
- (f) If a member or members require cash on redemption of Units and such redemption cannot be met from the cash pool.
- (g) Where securities are purchased in error.
- (h) As a consequence of the Fund ceasing tracking the Russell/JB Were Tradeable Index and commencing tracking the NZSX 50 Index.

*Redemption of Units*

- 25. A member is only able to dispose of their Units by redeeming them. A member may redeem Units subject to the conditions in Clause 8 of the Trust Deed. Clause 8 requires redemptions to be for amounts of at least \$10,000 or all of a member's Units and no member is to be left with less than \$100,000 worth of Units. The redemption can be in the form of cash and/or cash equivalents and/or securities.
- 26. The Units in the Fund are valued on the basis of the market value of the securities and other assets that the Fund holds.
- 27. Redemptions are usually made through the transfer of Constituent Company Securities (equal to the value of the Units being redeemed and may also contain a small cash balancing item) but may, in the circumstances described below, be made in cash.
- 28. In the following circumstances a redemption will be made in cash (where that cash is not committed for other purposes):
  - (a) where there is a contemporaneous contribution against which the redemption can be matched, or
  - (b) where the cash is sufficient to fund the redemption in full, that redemption will be made from the cash pool, and
  - (c) where the cash is not sufficient to fund the redemption in full, the balance of the redemption will be made from securities in the proportions that will ensure that the Fund will continue to match the composition and weighting of the Index as near as practicably possible.

29. Clause 8.3.2 of the Trust Deed provides:

Every Benefit payable under this clause 8.3 shall be determined by multiplying the Redemption Price calculated on the date of acceptance by the Manager by the number of Units redeemed and become payable to the Member net later than ten (10) Business Days following the date on which the Manager receives the Benefit request or on any later redemption date requested by the Member.

30. Redemption Price is defined in clause 3 of the Trust Deed to mean the “Current Unit Value” less the “Exit Fee”.

31. Current Unit Value is defined in clause 3 of the Trust Deed as:

... on any date an amount that is arrived at by dividing the Current Fund Value by the number of Units on issue on such date ...

32. The Current Fund Value is defined in clause 3 of the Trust Deed as:

The amount calculated by adding as at any time when a valuation is required in relation to the Fund:

- (a) the total of the market value of all Cash, units in the AMP Investments’ Tracker Fund and investments of the Fund determined pursuant to clause 6; and
- (b) the income of the Fund due but not yet received; and
- (c) any other amounts which, in the opinion of the Manager, should be included for the purposes of making a fair and reasonable determination of the value of the Fund having due regard to duly accepted accounting practice and accounting principles from time to time;

and deducting therefrom such amounts:

- (d) as are required to meet liabilities properly attributable to the Fund (actual or contingent and not otherwise allowed for in determining the value of any asset) to the extent that the Manager has decided that provision should be made in the accounts of the Plan;
- (e) as represent Administration Expenses payable by the Trustee or the Manager; and
- (f) which, in the opinion of the Manager, should be included for the purpose of making a fair and reasonable determination of the current value of the Fund having due regard to generally accepted accounting practice and accounting principles current from time to time.

33. Clause 3 of the Trust Deed provides that Market Value in relation to a Constituent Company Security in the Index means:

... its value as in the Index at any relevant time.

34. Exit Fee is defined in clause 3 of the Trust Deed to mean:

...such sum, if any, as the Manager in its absolute discretion may determine (either generally or in relation to a particular Benefit) to be a fair fee payable in relation to the relevant Benefit to provide for the likely per Unit cost of realising Assets to meet that Benefit, having regard to the Manager’s estimate of the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees which would be likely to be incurred in respect of the sale or disposal of Assets on the date of calculation of the Redemption Price of Assets to fund a unit’s Redemption Price were sold or disposed of on such date.

### *Suspension of redemptions*

35. Clause 8.5 of the Trust Deed provides that the Manager can suspend redemptions in certain circumstances up to a period not exceeding 20 business days. The Fund will not utilise the power to suspend the redemption of Units except in exceptional circumstances (where and to the extent that it is necessary to do so) being:
- (i) if the Fund is unable to convert sufficient assets into cash, to meet a redemption request, or
  - (ii) if the market value of the Units at the time is not a true reflection of the actual value of the Units, due to a suspension in trading of any Constituent Company Securities on any exchange, or
  - (iii) if, for reasons beyond its control, the Manager is unable to calculate the redemption price.

Any such suspension will be for a maximum period of three business days, unless an exceptional circumstance occurs that is beyond the control of the Trustee and the Manager of the Fund, in which case the suspension shall be only for such period as is strictly necessary for the Fund and/or the Manager to recover from that event.

### *Utilisation of member expenses for tax purposes*

36. The Trust Deed has been amended to allow the Trustee to credit a Member's Account with Units in recognition of any tax deduction that the Plan has received as a result of an election by that member under section DI 3(2) of the Income Tax Act 1994. The Trust Deed was amended, by the Second Deed of Amendment dated 1 February 2002, by inserting Clause 12A. Sub-clause 12A.1, which is relevant for the purposes of the Ruling, provides that:

Where a Member has made an election under section DI 3(2) of the Income Tax Act 1994 ("section DI 3(2) ") that any expenditure, which is incurred by the superannuation scheme for which the Member is a trustee (or, in respect of a superannuation scheme constituted under an Act of Parliament, the person appointed to administer the superannuation scheme), be treated as if it were expenditure incurred by the Plan and the Plan has received a tax deduction as a result of that election, the Trustee shall credit to the Member Account of the relevant Member such number of Units as the Trustee considers equitable to recognise such tax deduction. For the avoidance of doubt, the number of units to be issued in normal circumstances would be calculated by reference to the amount determined by dividing the amount of any tax benefit which the Manager considers arises from the tax deduction by the Issue Price applying on the Business Day on which the tax benefit is considered by the Manager to arise.

37. The Fund will always issue Units according to the above Clause and there will be no discretion as to whether the Fund will in fact issue Units in accordance with the above Clause.



## **Conditions stipulated by the Commissioner**

This Ruling is made subject to the following Conditions:

- a) The Fund is an investment vehicle primarily for investment into by superannuation funds, being superannuation schemes registered under the Superannuation Schemes Act 1989, which are themselves either:
  - (i) widely-held investment vehicles for direct investment by natural persons, or
  - (ii) vehicles for investment (directly or indirectly) by other superannuation funds that are widely-held vehicles for direct investment by natural persons.
- b) The Fund operates in accordance with its Trust Deed dated 10 February 1999, a Members' Booklet not materially different to the draft provided to the Commissioner on 17 January 2005, the Deed of Arrangements dated 10 February 1999 (as amended on 27 August 2001), the Deed of Amendment dated 30 January 2002, and the Second Deed of Amendment dated 1 February 2002.
- c) The Fund is a registered superannuation scheme under the Superannuation Schemes Act 1989.
- d) The Fund only tracks the Index.
- e) In determining the market value of a security at any time the last sale price for that security, as quoted on the New Zealand stock market at that time, shall be used.
- f) The Manager, in determining the Members' entitlement to securities on redemption of Units in the Fund under clause 8.3 of the Trust Deed, shall use the market value of those securities at the valuation time (as defined in the Trust Deed).
- g) The amounts derived by the Member from the subsequent sale or disposal of securities received on redeeming Units in the Fund will be assessable income of the Member.
- h) Members do not acquire Units in the Fund for the purpose of acquiring securities.
- i) Units in the Fund are not tradeable on a secondary market.
- j) The trust is established by its Trust Deed mainly for the purpose of paying benefits to superannuation funds.

## **How the Taxation Laws apply to the Arrangement**

Subject in all respects to any assumption or condition stated above, and the qualification in respect of sections CH 1, DB 40 and ED 1 under the heading “Taxation Laws” above, the Taxation Laws apply to the Arrangement as follows:

- Pursuant to sections FI 1 and FI 2, the cost of any securities acquired by a member on redemption of Units in the Fund is the market value of those securities on the date the member acquires the securities.
- Section DA 2(1) does not apply to the cost of any securities acquired by a member on redemption of units.
- The cost of a security acquired by a member on the redemption of Units (being the market value of the security on acquisition) is an allowable deduction under section DB 17. It is deductible in the income year in which the Units are redeemed under section BD 4(2).

**The period or income year for which this Ruling applies**

This Ruling will apply for the period beginning on 1 October 2005 and ending on 30 September 2008.

This Ruling is signed by me on the 2nd day of December 2005.

**Howard Davis**  
Senior Tax Counsel