

Reprint
as at 1 December 2015



**Securities Act (Registered Banks Futures Contracts)
Exemption Notice 2007**

(SR 2007/151)

Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007: revoked, on 1 December 2015, by clause 3(b) of the Securities Act (Revocation of Certain Futures Contracts Exemptions) Notice 2015 (LI 2015/234).

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

1 Title

This notice is the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint. Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 31 May 2017.

Clause 3: amended, on 27 July 2012, by clause 4 of the Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2012 (SR 2012/195).

4 Interpretation

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

Act means the Securities Act 1978

disclosure document means a written document that describes and contains the offer of, and relates specifically to, a particular class or particular classes of specified futures contracts or specified securities

member of the public means a member of the public for the purposes of the Act

recognised exchange means an authorised futures exchange or any exchange in a country other than New Zealand that is authorised by the laws of that country to operate as a futures exchange

Regulations means the Securities Regulations 2009

specified futures contract means a futures contract other than one that is made on or effected through a recognised exchange

specified security means each agreement and contract of the type described in section 37(2) of the Securities Markets Act 1988.

- (2) Any term or expression that is defined in the Act, Part 3 of the Securities Markets Act 1988, or the Regulations and used, but not defined, in this notice has the same meaning as in the Act, Part 3 of the Securities Markets Act 1988, or the Regulations, as the case may be.

Clause 4(1) **Regulations**: substituted, on 1 July 2011, by clause 4 of the Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011 (SR 2011/239).

5 Exemptions

Every registered bank, and every person acting on behalf of a registered bank, is exempt, in respect of specified futures contracts or specified securities, from—

- (a) section 33(1) of the Act to the extent that every authorised advertisement relating to specified futures contracts or specified securities must refer to the registered bank's current disclosure statement published pursuant to section 81 of the Reserve Bank of New Zealand Act 1989; and
- (b) sections 33(3), 37, 37A, 38A, and 51 to 54B of the Act and from the Regulations (except regulation 23).

Clause 5(b): amended, on 1 July 2011, by clause 5 of the Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011 (SR 2011/239).

6 Condition of exemption in clause 5(a)

The exemption in clause 5(a) is subject to the condition that every authorised advertisement relating to specified futures contracts or specified securities must refer to the registered bank's current disclosure document required by clause 7.

7 Conditions of exemptions in clause 5(b)

- (1) The exemptions in clause 5(b) are subject to the conditions that—
- (a) before a registered bank allots a specified futures contract or specified security of a particular class to a member of the public, the registered bank must have provided that person with a disclosure document that includes information that would enable a prudent but non-expert investor to make a decision about whether to invest in a specified futures contract or a specified security of that class; and
 - (b) a registered bank must not allot any specified futures contract or specified security to a person if the disclosure document given to that person is, at the time of allotment, likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of the specified futures contract or specified security contained or referred to in that disclosure document; and
 - (c) the disclosure document must include at the front of the disclosure document a statement in the form set out in the Schedule; and
 - (d) the disclosure document must state, in a prominent place, the date as at which the disclosure document was prepared; and
 - (e) the disclosure document must contain all of the following information that is applicable to the class or classes of specified futures contracts or specified securities to which the disclosure document relates:
 - (i) a description of the key features of that class or those classes of specified futures contracts or specified securities;
 - (ii) the name and contact details of the registered bank;
 - (iii) a description of the amounts payable, or the method of calculating the amounts payable, by a person to the registered bank in respect of that class or those classes of specified futures contracts or specified securities, including the consequences of failing to make any payments;
 - (iv) a description of the types of fees or charges payable by a person, directly or indirectly, to the registered bank in respect of that class or those classes of specified futures contracts or specified securities;

- (v) a description of the rights of the registered bank or any other person to alter any of the fees or charges applicable to that class or those classes of specified futures contracts or specified securities:
- (vi) a description of the nature of any amounts or returns that may be payable, or the method of calculating any amounts or returns that may be payable, by the registered bank to a person in respect of that class or those classes of specified futures contracts or specified securities:
- (vii) a description of the key factors that determine the amounts or returns that may be payable by the registered bank to a person in respect of that class or those classes of specified futures contracts or specified securities:
- (viii) a description of the principal risks associated with entering into that class or those classes of specified futures contracts or specified securities, including any specific risk factors that apply to any 1 or more of the particular specified futures contracts or specified securities:
- (ix) if it is reasonably foreseeable that, at the end of the arrangement relating to that class or those classes of specified futures contracts or specified securities, a person will have received, in total, less than the amount paid to the registered bank for the specified futures contracts or specified securities, a statement to this effect and a brief description of the circumstances that may produce this result:
- (x) a description of the parties' rights to alter the terms of that class or those classes of specified futures contracts or specified securities:
- (xi) a description of the parties' rights to terminate, cancel, surrender, or otherwise make or obtain payment of any amounts or returns in respect of that class or those classes of specified futures contracts or specified securities, other than as described in paragraphs (vi) and (vii):
- (xii) a statement whether a person is entitled to sell his or her interest in a specified futures contract or specified security to another person and, if so, whether in the opinion of the registered bank there is an established market for such sales:
- (xiii) the names or descriptions, and the addresses and business telephone numbers, of officers, employees, or agents of the registered bank to whom enquiries about the specified futures contracts or specified securities can be made, and to whom complaints about the specified futures contracts or specified securities can be made:
- (xiv) a statement to the effect that other information about the registered bank is contained or referred to in financial statements of, or

- relating to, the registered bank and in the registered bank's current disclosure statement published pursuant to section 81 of the Reserve Bank of New Zealand Act 1989:
- (xv) a statement describing where a copy of the most recent financial statements of, or relating to, the registered bank, and the registered bank's current disclosure statement published pursuant to section 81 of the Reserve Bank of New Zealand Act 1989, can be obtained, free of charge:
 - (xvi) a statement of the type of information that is required to be, or otherwise will be, given annually to subscribers:
 - (xvii) a statement describing the type of information that is required to be, or otherwise will be, available on request from the registered bank:
 - (xviii) a statement explaining how a request made under paragraph (xvii) should be made:
 - (xix) a statement whether any charge may be made for the information referred to in paragraph (xvii) and the amount of any charge:
 - (xx) any other material matters applicable to that class or those classes of specified futures contracts or specified securities.
- (2) If a matter specified in subclause (1)(e) is not applicable to the class or classes of specified futures contracts or specified securities to which a disclosure document relates, the disclosure document is not required to refer to that matter, and is not required to state that the matter is not applicable.
- (3) Nothing in this clause limits the information, statements, or other matters that may be contained in a disclosure document.

Schedule

Form of disclosure information that must be included at front of disclosure document

cl 7(1)(c)

Schedule: substituted, on 1 July 2011, by clause 6 of the Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011 (SR 2011/239).

Important information: The information in this section is required under the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007.

Decisions to enter into derivative or futures contracts are very important. They often have significant consequences. Read all documents carefully. Ask questions. Seek independent advice before committing yourself.

Choosing a product

When deciding whether to enter into a derivative or futures contract, consider carefully the information under the following headings that can be found on the pages noted below:

[Table of contents to be included here, including headings to assist the reader to identify the information that is disclosed for the purpose of complying with clause 7(1)(e) of the exemption notice]

In addition to the information in this document, important information can be found in the current disclosure statement of *[registered bank's name to be included here]* that is published pursuant to the Reserve Bank of New Zealand Act 1989. You are entitled to a copy of that disclosure statement on request.

Financial advisers can help you make financial decisions

Using a financial adviser cannot prevent you from losing money, but it should help you make better decisions about entering into derivative or futures contracts.

Tell the financial adviser what your purpose in entering into derivative or futures contracts is. This is important because different derivative and futures contracts are suitable for different purposes.

A person advising you on derivative or futures contracts should be either—

- an entity that is authorised to carry on the business of dealing in futures contracts (**authorised futures dealer**), including an employee of the authorised futures dealer; or
- a financial adviser.

Financial advisers are regulated by the Financial Markets Authority to varying levels, depending on the type of adviser and the nature of the services they provide. Some financial advisers are only allowed to provide advice on a limited range of products.

When seeking or receiving advice on derivative or futures contracts, you should check—

- the type of adviser you are dealing with;
- the services the adviser can provide you with;
- the products the adviser can advise you on.

A financial adviser who provides you with personalised financial adviser services may be required to give you a disclosure statement covering these and other matters. When dealing with an authorised futures dealer, you should ask about these matters. You should also ask your adviser about how he or she is paid and any conflicts of interest he or she may have.

Financial advisers (or the financial service provider they work for) and authorised futures dealers should have a complaints process in place and must also belong to a dispute resolution scheme if they provide services to retail clients. So if there is a dispute

over a service that has been provided, you can ask someone who is independent to resolve it.

Most financial advisers (or the financial service provider they work for) and authorised futures dealers must also be registered on the financial service providers register. You can search for information about registered financial service providers at <http://www.fspr.govt.nz>

You can also complain to the Financial Markets Authority if you have concerns about the behaviour of an authorised futures dealer or a financial adviser.

The Financial Markets Authority regulates conduct in financial markets

The Financial Markets Authority regulates conduct in New Zealand's financial markets. The Financial Markets Authority's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.

For more information about investing and financial advisers, go to <http://www.fma.govt.nz>

Dated at Wellington this 5th day of June 2007.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

C A N Beyer,
Member.

Statement of reasons

Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2012**
- **Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011**

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 July 2012, relates to non-exchange traded futures contracts and to contracts of the type described in section 37(2) of the Securities Markets Act 1988. The notice exempts registered banks, subject to conditions, from—

- section 33(1) of the Securities Act 1978 to the extent that every authorised advertisement must refer to the registered bank's current disclosure statement published pursuant to section 81 of the Reserve Bank of New Zealand Act 1989;
- sections 33(3), 37, 37A, 38A, and 51 to 54B of the Securities Act 1978 and from the Securities Regulations 1983 (other than regulation 8).

This notice prescribes, as conditions of the exemptions, the specific information requirements of the disclosure document that is to be given to investors.

Usually, the type of disclosure document for futures contracts is prescribed under the authorisation given under the Securities Markets Act 1988. However, in the case of registered banks, the type of disclosure document is prescribed under this exemption from the Securities Act 1978 because registered banks intend to deal in, and issue, both—

- futures contracts within the meaning of the Securities Markets Act 1988; and
- other instruments that are specifically not futures contracts under section 37(2) of that Act but which share some of their features, namely, currency swap agreements, interest rate swap agreements, forward exchange rate contracts, and forward interest rate contracts to which a registered bank is a party.

The exemptions put registered banks on the same footing as authorised futures dealers to whom the relevant class notice, the Securities Act (Authorised Futures Contracts) Exemption Notice 2002, applies. That notice exempts every person who deals in an authorised futures contract from the prospectus and investment statement requirements and certain other requirements of the Securities Act 1978 and the Securities Regulations 1983 in respect of that contract. Registered banks cannot use that exemption in respect of agreements or contracts described in section 37(2) of the Securities Markets Act 1998.

This notice also exempts registered banks from section 33(1) of the Securities Act 1978. The effect is that a registered bank can refer to the disclosure document required by this notice in its advertising, rather than to its current disclosure statement that is required under section 81 of the Reserve Bank of New Zealand Act 1989. This places registered banks in a similar position to other issuers, who are required to refer to a comparable short form disclosure document, namely an investment statement.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- the exemptions have been granted in conjunction with an authorisation under the Securities Markets Act 1988. The combined effect of the 2 notices is to provide clarity as to the regulatory treatment of certain derivative products, which will give registered banks greater certainty about their obligations when offering and dealing in these products:
- the exemptions will assist members of the public who may wish to subscribe for these derivative products by requiring registered banks to provide investors with a disclosure document that is aimed at the prudent but non-expert investor,

and that clearly explains the products being offered, and the risks and potential benefits of investing in these.

Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2012**
- **Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 7 June 2007.

Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011

(SR 2011/239)

Pursuant to sections 70B and 70D, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

Notice

1 Title

This notice is the Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011.

2 Commencement

This notice comes into force on 1 July 2011.

7 Transitional provision

- (1) A registered bank may, for the purposes of clause 7(1)(c) of the principal notice, include at the front of a disclosure document a statement in the form set out in either of the following if the disclosure statement is dated before 1 August 2011:
 - (a) the Schedule of the principal notice as in force before 1 July 2011; or
 - (b) the Schedule of the principal notice as substituted by this notice.
- (2) However, a disclosure document provided to a person for the purposes of the principal notice after 31 December 2011 must include at the front of the disclosure document a statement in the form set out in the Schedule of the principal notice as substituted by this notice.

Dated at Wellington this 28th day of June 2011.

Sean Hughes,
Chief Executive.

Date of notification in *Gazette*: 30 June 2011.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Securities Act (Revocation of Certain Futures Contracts Exemptions) Notice 2015 (LI 2015/234): clause 3(b)

Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2012 (SR 2012/195)

Securities Act (Registered Banks Futures Contracts) Exemption Amendment Notice 2011 (SR 2011/239)