

Reprint
as at 1 December 2016



**Securities Act (Commercial Bill Dealers) Exemption
Notice 2012**
(SR 2012/290)

Securities Act (Commercial Bill Dealers) Exemption Notice 2012: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

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 (Commercial Bill Dealers) Exemption Notice 2012.

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 1 October 2012.

3 Expiry

This notice expires on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

bank means a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989

bill of exchange means a bill of exchange within the meaning of section 3 of the Bills of Exchange Act 1908

electronic address includes a fax number or an email address

postal address includes a post office box address or a document exchange box number

Regulations means the Securities Regulations 2009

specified debt security means a debt security that is—

- (a) a promissory note that is endorsed (without negating or limiting liability), but not made, by a bank; or
 - (b) a bill of exchange that is drawn, accepted, or endorsed (without negating or limiting liability) by a bank; or
 - (c) any negotiable or transferable debt security, not being a promissory note or a bill of exchange, in respect of which a bank is directly or indirectly liable otherwise than as the original allotter.
- (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 Exemptions from sections 33(2), 37, 51, 52, and 54 of Act and regulations 19(1) and 27(1) of Regulations

- (1) Every bank and every person acting on its behalf are exempted, in respect of any specified debt securities offered by the bank to the public for subscription, from—
- (a) sections 33(2), 37, 51, 52, and 54 of the Act; and
 - (b) regulation 27(1) of the Regulations.
- (2) Every bank and every person acting on its behalf are exempted from regulation 19(1) of the Regulations to the extent that that provision requires an investment statement relating to specified debt securities that have not been originally al-

lotted by the bank to contain information about the original allotter of those securities.

6 Exemption from section 37A(1)(a) of Act

- (1) Every bank and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of any specified debt securities offered by the bank to the public for subscription.
- (2) The exemption is subject to the condition that the bank must not allot a specified debt security unless the bank or any person acting on its behalf has sent an investment statement relating to the debt security,—
 - (a) at least 3 working days before the subscriber subscribes for the debt security, to—
 - (i) a postal address specified by the subscriber for that purpose; or
 - (ii) the last postal address of the subscriber that is known to the bank; or
 - (b) at least 2 days before the subscriber subscribes for the debt security, to an electronic address specified by the subscriber for that purpose.
- (3) The exemption is subject to the further condition that, if an investment statement relating to the specified debt security is—
 - (a) sent by fax, the sender's fax machine has generated a record of the transmission of the investment statement to the fax machine of the recipient; or
 - (b) sent by other electronic means, the machine used to transmit that message has not generated a record that the investment statement has failed to be transmitted.

7 Exemption for persons other than banks

Every person (not being a bank) that allots or is an issuer of specified debt securities, and every person acting on its behalf, is exempted from sections 33(2), 37, and 37A of the Act in respect of those securities.

8 Exemption relating to acceptance and endorsement of specified debt securities

- (1) Every bank or other person that is the issuer of specified debt securities, and every person acting on its behalf, is exempted from regulations 25 and 44(d) of the Regulations to the extent that those regulations apply to any acceptance or endorsement of those securities.
- (2) Every bank and every person acting on its behalf are exempted from clause 10 of Schedule 13 of the Regulations to the extent that clause 10 requires an investment statement relating to specified debt securities to contain information about any acceptance or endorsement of those securities.

9 Transitional provision

- (1) This clause applies to an investment statement or other advertisement relating to specified debt securities offered by a bank.
- (2) An investment statement or other advertisement to which this clause applies may be distributed on or before 31 December 2012 in reliance upon—
 - (a) this notice; or
 - (b) the Securities Act (Commercial Bill Dealers) Exemption Notice 2002 (as in force immediately before that notice expired) and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2009 (as if the Securities Act (Commercial Bill Dealers) Exemption Notice 2002 continued in force).

Dated at Wellington this 24th day of September 2012.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 October 2012 and expires on 30 September 2017, replaces the Securities Act (Commercial Bill Dealers) Exemption Notice 2002 (the **2002 notice**).

The notice exempts, subject to conditions, registered banks from—

- the trust deed and prospectus requirements of the Securities Act 1978 (the **Act**); and
- the requirement in section 37A(1)(a) of the Act that, before the allotment of a security offered to the public for subscription, the subscriber has received an investment statement; and
- certain other requirements of the Act and the Securities Regulations 2009.

The exemption is granted in respect of any debt security that is—

- a promissory note that is endorsed (without negating or limiting liability) but not made by that registered bank; or
- a bill of exchange that is drawn, accepted, or endorsed (without negating or limiting liability) by that registered bank; or
- a negotiable or transferable debt security, not being a promissory note or a bill of exchange, in respect of which that registered bank is directly or indirectly liable otherwise than as the original allotter.

The notice also exempts persons, other than registered banks, who issue or allot securities of the kind referred to above from the trust deed, prospectus, and investment statement requirements of the Act.

The provisions of the 2002 notice have been carried forward with little change of substance. However, changes have been made to—

- reduce the period during which a bank may not allot a specified debt security to 2 days (rather than the current 3 working days) if the investment statement is sent to an electronic address specified by the subscriber for this purpose; and
- refer to the Securities Regulations 2009 (rather than the Securities Regulations 1983) and to remove a redundant exemption from those regulations.

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

- the 2002 notice provides relief for banks from a number of compliance requirements in relation to the securities referred to above. The 2002 notice recognises that a bank is not the primary issuer, that these compliance requirements would impose a disproportionate burden compared with the benefits for investors, and the additional prudential requirements imposed on banks. Additionally, the 2002 notice provides exemptions for persons other than banks in relation to certain obligations in relation to these securities on the basis that the exempt issuer is not the primary issuer:
- changes introduced by the Securities Regulations 2009 have reduced costs for issuers, and improved information for investors, but did not attempt to tailor disclosure and conduct requirements to the extensive range of circumstances to which securities law requirements apply. Accordingly, generally the exemptions continue to be required and remain appropriate in light of the policy of each of the exemptions. One exception is the exemption relating to persons authorised to complete the advertising certificate. The Securities Regulations 2009 provide for completion of these certificates by authorised agents of the issuers' directors and so a particular exemption for banks is no longer required:
- the reduced period of delay that this notice permits between sending the investment statement and allotment of securities recognises the increased use by issuers and investors of Internet-based communications that enable information to be delivered at greater speed:
- given the limited application of the notice to the class of defined investment products, and the alternative controls and conditions in place, the Financial Markets Authority considers that the exemptions will not cause significant detriment to subscribers and that they are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Commercial Bill Dealers) Exemption Notice 2012 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*

Financial Markets Conduct Regulations 2014 (LI 2014/326): Schedule 1 clause 26