

**Reprint
as at 1 December 2016**



**Securities Act (Deposit Takers) Exemption Notice 2013
(SR 2013/59)**

Securities Act (Deposit Takers) Exemption Notice 2013: 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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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.

Notice

1 Title

This notice is the Securities Act (Deposit Takers) Exemption Notice 2013.

2 Commencement

This notice comes into force on 1 April 2013.

3 Revocation

This notice is revoked on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

deposit taker has the meaning given in section 157C of the Reserve Bank of New Zealand Act 1989

deposit taker group, in relation to an offer of debt securities by a deposit taker, means—

- (a) the deposit taker; and
- (b) all former subsidiaries of the deposit taker, in respect of the periods during which they were those subsidiaries; and
- (c) all present subsidiaries of the deposit taker, in respect of the periods since they became those subsidiaries

non-guaranteeing subsidiary means, in relation to an offer of debt securities by a deposit taker,—

- (a) a subsidiary of a deposit taker that is not a guaranteeing subsidiary, in respect of the periods since it became that subsidiary; and
- (b) a former subsidiary of a deposit taker that was not a guaranteeing subsidiary, in respect of the periods during which it was that subsidiary

Regulations means the Securities Regulations 2009.

- (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 Application of this notice

- (1) This notice applies to a deposit taker if—

- (a) the deposit taker has non-guaranteeing subsidiaries; and
- (b) the aggregate profit or loss after taxation of the non-guaranteeing subsidiaries for the most recently completed accounting period (as incorporated in the consolidated financial statements of the deposit taker group),

and since, does not exceed 5% of the consolidated profit or loss after taxation, before the deduction of all non-controlling interests, of the deposit taker group; and

- (c) the aggregate carrying amount of the assets of the non-guaranteeing subsidiaries on the balance date of the most recently completed accounting period (as incorporated in the consolidated financial statements of the deposit taker group), and since, does not exceed 5% of the consolidated amount of the assets of the deposit taker group; and
 - (d) the aggregate amount of investment by members of the deposit taker group in the non-guaranteeing subsidiaries on the balance date of the most recently completed accounting period, and since, does not exceed 5% of the consolidated equity of the deposit taker group.
- (2) In subclause (1)(d), **amount of investment** includes the carrying amount of equity held in the non-guaranteeing subsidiaries and the amount of all loans and advances made to the non-guaranteeing subsidiaries.

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

Every deposit taker to which this notice applies and every person acting on its behalf are exempted from section 37A(1)(c) of the Act in respect of debt securities of that deposit taker.

7 Condition of exemption in clause 6

The exemption in clause 6 is subject to the condition that no allotment of a debt security offered to the public by the deposit taker is made if the date of allotment would be more than,—

- (a) in the case of a registered prospectus relating to the security that contains or refers to financial statements or interim financial statements under clause 11(1)(c) or (d) and for which no certificate has been registered under section 37A(1A) of the Act, 9 months after the later of—
 - (i) the date of the statement of financial position contained or referred to in the registered prospectus; and
 - (ii) the last day of the interim accounting period to which the interim financial statements relate; or
- (b) in the case of a registered prospectus relating to the security that contains or refers to financial statements under clause 11(1)(c) (but not interim financial statements) and for which a certificate has been registered under section 37A(1A) of the Act, 9 months after the date of that certificate; or
- (c) in any other case, 6 months after the date of the registered prospectus.

8 Exemption from section 37A(1A)(d) of Act

Every deposit taker to which this notice applies and every person acting on its behalf are exempted from section 37A(1A)(d) of the Act in respect of debt securities of that deposit taker.

9 Conditions of exemption in clause 8

The exemption in clause 8 is subject to the conditions that—

- (a) a certificate delivered to the Registrar for registration under section 37A(1A) of the Act is accompanied by interim financial statements of the deposit taker group for the 6-month period from the date of the statement of financial position contained or referred to in the registered prospectus; and
- (b) those interim financial statements are prepared in accordance with NZ IAS 34 (but need not be audited).

10 Exemptions from various clauses of Schedule 2 of Regulations

Every deposit taker to which this notice applies and every person acting on its behalf are exempted from clauses 8, 9, 16 to 20, and 22 of Schedule 2 of the Regulations in respect of debt securities of that deposit taker.

11 Conditions of exemptions in clause 10

- (1) The exemptions in clause 10 are subject to the condition that the registered prospectus relating to the debt securities contains all of the information, statements, and other matters specified in the following that are applicable:
 - (a) clause 8 of Schedule 2 of the Regulations but applied as if the reference to—
 - (i) the group were a reference to the deposit taker group; and
 - (ii) the statement of financial position contained or referred to in the prospectus under clause 17 were a reference to the statement of financial position contained or referred to in the prospectus under paragraph (c) of this subclause; and
 - (iii) any interim financial statements set out in the prospectus under clause 18 were a reference to any interim financial statements set out in the prospectus under paragraph (d) of this subclause:
 - (b) clause 9 of Schedule 2 of the Regulations but applied as if the reference to a statement of financial position contained or referred to in the prospectus under clause 17 were a reference to a statement of financial position contained or referred to in the prospectus under paragraph (c) of this subclause:
 - (c) clause 17 of Schedule 2 of the Regulations but applied as if the references to the group were references to the deposit taker group:

- (d) clause 18 of Schedule 2 of the Regulations but applied as if the references to—
 - (i) the group were references to the deposit taker group; and
 - (ii) the financial statements contained or referred to in the prospectus under clause 17 were references to the financial statements contained or referred to in the prospectus under paragraph (c) of this subclause:
 - (e) clause 19 of Schedule 2 of the Regulations but applied as if the references to the financial statements for the group referred to in clause 17(1) were references to the financial statements for the deposit taker group that are referred to in the prospectus under paragraph (c) of this subclause:
 - (f) clause 20 of Schedule 2 of the Regulations but applied as if the reference to the financial statements referred to in the prospectus under clause 17(1) were references to the financial statements referred to in the prospectus under paragraph (c) of this subclause:
 - (g) clause 22 of Schedule 2 of the Regulations but applied as if the references to—
 - (i) any of the issuer’s guaranteeing subsidiaries (in clause 22(1)(c)) were a reference to any of the deposit taker’s subsidiaries; and
 - (ii) the group were references to the deposit taker group; and
 - (iii) the financial statements contained or referred to in the prospectus under clause 17 were references to the financial statements contained or referred to in the prospectus under paragraph (c) of this subclause; and
 - (iv) the amounts stated under clauses 8 and 9(2) and (3) were references to the amounts stated under paragraphs (a) and (b) of this subclause.
- (2) An interim statement of financial position is required under subclause (1)(d) only if the directors of the deposit taker consider it necessary or desirable (after having regard to clause 7).

12 Exemption from regulation 26 of Regulations

Every deposit taker to which this notice applies and every person acting on its behalf are exempted from regulation 26 of the Regulations with respect to any advertisement for debt securities of the deposit taker.

13 Conditions of exemption in clause 12

The exemption in clause 12 is subject to the conditions that—

- (a) every advertisement for debt securities of the deposit taker complies with regulation 26 of the Regulations applied as if references to the borrowing group or group were references to the deposit taker group; and
- (b) every advertisement for debt securities of the deposit taker that states the amount of total assets, or net assets, of the deposit taker group must contain statements to the effect that:
 - (i) the amount of the net assets or the amounts of the total assets and total liabilities (as applicable) stated in the advertisement refer to the amount of the net assets, or the amounts of the total assets and total liabilities, of the deposit taker group rather than the borrowing group; and
 - (ii) the assets of non-guaranteeing subsidiaries in the deposit taker group may comprise up to 5% of the consolidated amount of the assets of the deposit taker group.

14 Exemption from certain requirements relating to requests under section 54B(1) of Act

Every deposit taker to which this notice applies and every person acting on its behalf are exempted from section 54B(1) of the Act to the extent that that provision requires the deposit taker to provide, at the request of a holder of debt securities of the deposit taker, the most recent annual or half-yearly financial statements and other documents referred to in regulation 44(d)(ii) of the Regulations.

15 Conditions of exemption in clause 14

- (1) The exemption in clause 14 is subject to the condition that the deposit taker, after receiving a request from a holder of debt securities for a copy of any documents referred to in regulation 44(d)(ii) of the Regulations, sends to the security holder—
 - (a) a copy of the most recent annual or half-yearly financial statements of the deposit taker group together with all documents that are required by any enactment or rule of law to be incorporated in, be attached to, or accompany those financial statements;
 - (b) a statement to the effect that the financial statements of the deposit taker group referred to in paragraph (a) are financial statements of the deposit taker group and that the assets of non-guaranteeing subsidiaries in the deposit taker group may comprise up to 5% of the consolidated amount of the assets of the deposit taker group.
- (2) The exemption in clause 14 is subject to the further condition that the information referred to in subclause (1) is sent to the security holder—
 - (a) without requiring the payment of a fee; and

- (b) as soon as practicable but, in any event, within 5 working days after the deposit taker receives the request.

16 Revocation

The Securities Act (Financial Institutions) Exemption Notice 2011 (SR 2011/62) is revoked.

17 Transitional provision

If, on or before 31 March 2013, an issuer offered debt securities in reliance on the Securities Act (Financial Institutions) Exemption Notice 2011 under a registered prospectus, the issuer may continue to rely on that notice in respect of securities offered under that prospectus as if that notice continued in force after 31 March 2013.

Dated at Wellington this 25th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 April 2013 and is revoked on 30 September 2017, replaces the Securities Act (Financial Institutions) Exemption Notice 2011 (the **2011 notice**). The 2011 notice provided financial institutions with exemptions, subject to conditions, from—

- section 37A(1)(c) and (1A)(d) of the Securities Act 1978 (the **Act**); and
- various prospectus content requirements in Schedule 2 of the Securities Regulations 2009 (the **Regulations**) that relate to financial statements.

The provisions of the 2011 notice are carried forward with the following amendments:

- the term deposit taker is used instead of financial institution, to align with a recent amendment to NZ IFRS 7;
- deposit takers are granted additional exemptions, subject to conditions, from section 54B(1) of the Act and regulation 26 of the Regulations.

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

- allowing these deposit takers to use the financial statements for the whole of the deposit taker group, rather than the borrowing group, reduces the regulatory

compliance costs of preparing a prospectus. The 5% threshold ensures the financial statements presented provide a reasonable representation of the financial backing to the debt securities on offer:

- in light of the change to financial reporting standards, it is appropriate to update the definition of the entities able to rely on the notice to recognise “deposit takers” rather than “financial institutions”. The transitional provisions reduce the impact of any compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2011 notice and may no longer be able to do so. These issuers may continue to rely on the 2011 notice in respect of securities offered under an existing registered prospectus:
- the exemptions in this notice have been in place for a number of years and the policy reasons remain valid and relevant. Consultation with market participants demonstrates a continued intention of reliance on these exemptions:
- consequential exemptions are appropriate in relation to provisions of the Act that define the life of the prospectus (by reference to the date of the financial statements), and that specify the financial statements that must accompany a directors’ certificate extending the life of a prospectus. These consequential exemptions tie these requirements to the financial statements for the whole of the deposit taker group. Additionally, for the same reason, new exemptions included in this notice recognise that references in advertisements to financial statements, or requests for financial statements, should be interpreted in relation to these relevant whole group financial statements:
- in the circumstances that the 5% threshold ensures the financial statements presented provide a reasonable representation of the financial backing to the debt securities on offer, FMA 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.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 March 2013.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Deposit Takers) Exemption Notice 2013 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