

**Reprint
as at 1 April 2014**



**Financial Reporting Act (Dual-listed Issuers) Exemption
Notice 2013
(SR 2013/61)**

Financial Reporting Act (Dual-listed Issuers) Exemption Notice 2013: revoked, on 1 April 2014, pursuant to section 54(1) of the Financial Reporting Act 2013 (2013 No 101).

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).

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Notice

1 Title

This notice is the Financial Reporting Act (Dual-listed Issuers) Exemption Notice 2013.

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 27 March 2013.

3 Revocation

This notice is revoked on the close of 28 February 2018.

4 Application

An exemption granted by this notice applies to the following accounting periods of an exempt issuer:

- (a) 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 copies of financial statements or group 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
- (b) 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 law of the home jurisdiction to give an opinion as to whether specified financial statements comply with the overseas GAAP of that jurisdiction

exempt issuer means an issuer that—

- (a) is incorporated in a specified jurisdiction (its **home jurisdiction**); and
- (b) has specified financial statements prepared in respect of it; and
- (c) is listed on a securities exchange in its home jurisdiction and that listing is not a secondary listing; and
- (d) is listed on a registered market operated by NZX Limited; and
- (e) is not a licensed insurer

home jurisdiction, in relation to an issuer, means a specified jurisdiction in which the issuer is incorporated

International Financial Reporting Standards means—

- (a) International Financial Reporting Standards and International Accounting Standards that have been issued or adopted by the International Accounting Standards Board in accordance with the constitution of the International Accounting Standards Committee Foundation; and
- (b) final interpretations by the International Financial Reporting Interpretations Committee approved by the International Accounting Standards Board in accordance with that constitution

listed, in relation to an entity, means the entity is the issuer of 1 or more classes of securities that are approved for trading on a registered market (within the meaning of the Securities Markets Act 1988) or a securities exchange that is regulated under the laws of a specified jurisdiction; and **listing** has a corresponding meaning

overseas GAAP, in relation to an exempt issuer, means generally accepted accounting practice or principles in its home jurisdiction, as specified in the third column of the Schedule

overseas legislation, in relation to an exempt issuer, means the legislation of its home jurisdiction, as specified in the second column of the Schedule (or legislation that, with or without modification, replaces or corresponds to that legislation)

scheme means a scheme (within the meaning of section 2 of the Securities Act 1978) in respect of which interests have been offered for subscription to the public in New Zealand

secondary listing, in relation to a listing on a securities exchange, means a listing where the exempt issuer has the benefit of reduced requirements, dispensations, or waivers on the basis that similar requirements are imposed by another securities exchange as a result of that exempt issuer also being listed on that securities exchange

separate fund has the meaning given to that term under section 9A(1) of the Act

specified financial statements, in relation to an exempt issuer,—

- (a) means the financial statements that are required to be prepared in respect of either or both of the exempt issuer and its group, as applicable, in accordance with the laws of its home jurisdiction (including the overseas legislation); and
- (b) includes, in respect of an exempt issuer that is an issuer of securities in relation to a scheme, financial statements in respect of each scheme and, if the liabilities of the issuer or the scheme are limited to a separate fund, financial statements for that separate fund that are prepared in accordance with the laws of its home jurisdiction

specified jurisdiction means a jurisdiction specified in the first column of the Schedule.

- (2) For the purposes of this notice, **carries on business in New Zealand** has the same meaning as in section 332 of the Companies Act 1993, except that an exempt issuer is not taken to carry on business in New Zealand merely because it has established or used a share transfer office or a share registration office in New Zealand.
- (3) 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 exempt issuers

Every director of an exempt issuer is exempted from sections 10(1), 11, 13 to 16, and 18(1) of the Act in respect of the exempt issuer.

7 Conditions

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

Parent and/or group financial statements

- (a) the exempt issuer, in relation to its specified financial statements, complies with the laws of its home jurisdiction that relate to the preparation, content, audit, and public filing of those financial statements (including the overseas legislation); and
- (b) the specified financial statements of the exempt issuer comply with the overseas GAAP; and
- (c) if, in complying with the overseas GAAP, the specified financial statements do not give a true and fair view of the matters to which they relate, they are accompanied, when delivered to the Registrar for registration, by a statement in English containing information and explanations that will give a true and fair view of those matters; and
- (d) the specified financial statements of the exempt issuer are delivered to the Registrar for registration annually, and no later than the date on which the financial statements of the exempt issuer would, but for the exemptions in clause 6, be required to be delivered for registration; and
- (e) the specified financial statements of the exempt issuer are, when delivered to the Registrar for registration, 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 specified in the fourth column of the Schedule; and

Branch financial statements

- (f) if the exempt issuer carries on business in New Zealand, the exempt issuer complies either with subparagraphs (i) to (v) or with subparagraph (vi) as follows:

Option 1: branch financial statements in accordance with overseas law

- (i) the exempt issuer prepares financial statements that comply with the laws of its home jurisdiction that relate to the preparation, content, and audit of financial statements in respect of either or both of its New Zealand business and its group's New Zealand business, as applicable, as if that New Zealand business were conducted by a separate company or group incorporated in its home jurisdiction (**branch financial statements**); and

- (ii) the branch financial statements comply with the overseas GAAP; and
- (iii) if, in complying with the overseas GAAP, the branch financial statements do not give a true and fair view of the matters to which they relate, they are accompanied, when delivered to the Registrar for registration, by a statement in English containing information and explanations that will give a true and fair view of those matters; and
- (iv) the branch financial statements are delivered to the Registrar for registration annually, and no later than the date on which financial statements would, but for the exemptions in this notice, be required to be delivered for registration; and
- (v) the branch financial statements are accompanied, when delivered to the Registrar for registration, 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 specified in the fourth column of the Schedule; or

Option 2: branch financial statements in accordance with New Zealand law

- (vi) the exempt issuer prepares financial statements and, if applicable, group financial statements in respect of its, or its group's, New Zealand business as if that business were conducted by a separate company or group incorporated in New Zealand, and the exempt issuer complies with the provisions of the Act that relate to the preparation, content, audit, and registration of those statements; and

All financial statements

- (g) all financial statements and auditor's reports that are delivered to the Registrar by the exempt issuer are in English or accompanied by an English translation .
- (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 exempt issuer includes, or is accompanied by, a statement to the effect that the exempt issuer has relied on this exemption notice in respect of its financial statements for the relevant accounting period.

Schedule

Specified jurisdictions, overseas legislation, GAAP, and auditor requirements

cls 5, 7

Specified jurisdiction	Overseas legislation	Overseas GAAP	Auditor report requirements
Australia	Corporations Act 2001 (Aust)	Australian equivalents to International Financial Reporting Standards	Section 302 of the Corporations Act 2001 (Aust)
Canada	Securities Act R.S.O. 1990, Chapter S.5 (Ontario)	Canadian equivalents to International Financial Reporting Standards	Section 78 of the Securities Act R.S.O. 1990, Chapter S.5 (Ontario)
Hong Kong	Companies Ordinance (Hong Kong)	Hong Kong International Financial Reporting Standards	Cap 32 Companies Ordinance (Hong Kong)
Singapore	Companies Act (Singapore)	Singapore Financial Reporting Standards	Section 201 of the Companies Act (Singapore)
United Kingdom	Companies Act 2006 (UK)	Generally accepted accounting principles in the United Kingdom or international accounting standards (within the meaning of Regulation (EC) No 1606/2002)	Section 495 of the Companies Act 2006 (UK)
United States of America	The Securities Exchange Act of 1934 (US) and the Code of Federal Regulations (US)	Generally accepted accounting principles in the United States of America	Title 17, Part 210 of the Code of Federal Regulations (US)

Dated at Wellington this 25th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice comes into force on 27 March 2013 and is revoked on 28 February 2018.

This notice applies to certain issuers incorporated in Australia, Canada, Hong Kong, Singapore, the United Kingdom, and the United States of America that have their securities listed on both a market operated by NZX Limited and a regulated securities exchange in their home jurisdiction.

This notice exempts directors of those issuers from the following provisions of the Financial Reporting Act 1993:

- section 10(1) (obligation to prepare financial statements):
- section 11 (content of financial statements):
- sections 13 to 16 (obligations in respect of group financial statements and audit):
- section 18(1) (registration of financial statements).

The exemptions are subject to conditions that require those issuers to provide financial statements that they are required to prepare under financial reporting requirements of their home jurisdictions. The principal differences in financial statements provided by issuers relying on the exemptions are that—

- if the issuer is required to prepare consolidated group financial statements, the directors of the issuer will prepare and register consolidated financial statements only and not stand-alone parent company financial statements:
- the consolidated financial statements will comply with generally accepted accounting practice or principles in the relevant overseas jurisdiction rather than generally accepted accounting practice in New Zealand:
- the consolidated financial statements will be audited in accordance with the requirements set out in the laws of the home jurisdiction and the auditor's report will provide the information required by the laws of the home jurisdiction instead of that required by the Financial Reporting Act 1993.

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

- there will not be any significant detriment to subscribers, because the exemptions are available only to issuers that are regulated as listed issuers in their home jurisdiction. FMA is satisfied that the financial reporting requirements, and the nature and extent of regulatory oversight, for listed issuers and their

auditors in the specified jurisdictions are equivalent to those that exist for issuers in New Zealand. As such, investors in the issuers to which this notice applies will have access to broadly similar, and equivalent, information to that they would otherwise receive:

- in circumstances where the issuer has already prepared and had audited similar financial statements in its home jurisdiction, the costs associated with a requirement for overseas issuers to prepare NZ GAAP-compliant financial statements, and to have those audited by a New Zealand licensed auditor, would outweigh the benefits to investors in receiving New Zealand GAAP financial statements rather than the financial statements prepared in accordance with the laws of the issuer's home jurisdiction:
- the exemptions only address the particular difficulties experienced by issuers that are listed both in New Zealand and in their home jurisdiction. Given the limited application of the exemptions and that group financial statements are still required to be registered in New Zealand, the exemptions are not broader than is reasonably necessary to address the matters to which they relate.

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 Financial Reporting Act (Dual-listed Issuers) 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 Reporting Act 2013 (2013 No 101): section 54(1)