

**Reprint
as at 1 April 2014**



**Financial Reporting Act (Australian Issuers) Exemption
Notice 2013
(SR 2013/63)**

Financial Reporting Act (Australian 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).

Contents

	Page
1 Title	2
2 Commencement	2
3 Revocation	2
4 Application	2
5 Interpretation	2

Part 1

Exemptions in respect of exempt issuers

6 Definition of exempt issuer	3
7 Exemptions for directors of exempt issuers	4
8 Conditions of exemptions in clause 7	4
9 Extra conditions in respect of financial statements prepared in accordance with Australian law	5

Part 2

Exemptions in respect of Australian parent companies

10 Definition of Australian parent company	6
11 Exemption for directors of Australian parent companies	6
12 Conditions of exemptions in clause 11	7

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.

13	Extra conditions in respect of financial statements prepared in accordance with Australian law	8
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Part 3
General provisions

14	Revocation	9
15	Transitional provision	9

Notice

1 Title

This notice is the Financial Reporting Act (Australian Issuers) Exemption Notice 2013.

2 Commencement

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

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 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 laws of Australia to give an opinion as to whether specified financial statements comply with Australian GAAP

Australian GAAP means Australian equivalents to International Financial Reporting Standards, but does not include any reduced disclosure regime or other similar regime which may be available to companies that are not public issuers

registered scheme has the meaning given to that term under the Corporations Act 2001 (Commonwealth of Australia)

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

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 or an Australian parent company (A), means the financial statements that are required to be prepared in respect of either or both of A and its group, as applicable, in accordance with the laws of Australia, including any financial information that is appended to those statements in accordance with the Corporations Regulations 2001 (Aust).

- (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.

Part 1

Exemptions in respect of exempt issuers

6 Definition of exempt issuer

In this notice, unless the context otherwise requires, **exempt issuer** means an issuer that—

- (a) is incorporated in Australia; and
- (b) has specified financial statements prepared in respect of it; and
- (c) has offered or offers securities to the public in New Zealand in reliance on—
 - (i) the Securities Act (Australian Issuers) Exemption Notice 2002; or
 - (ii) the Securities Act (Australian Issuers—Transitional Provision) Exemption Notice 2013; or
 - (iii) the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003; or
 - (iv) the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2008; or
 - (v) the Securities Act (Dividend Reinvestment) Exemption Notice 1998; or

- (vi) the Securities Act (Overseas Companies) Exemption Notice 2002; or
 - (vii) the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002; or
 - (viii) the Securities Act (Renewals and Variations) Exemption Notice 2002 (so far as that notice relates to variations that do not extend the time frame for payment of money due, or to become due, under the existing securities by the issuer); or
 - (ix) any notice that, with or without modification, replaces or corresponds to, or was replaced by or corresponded to, a notice listed in subparagraphs (i) to (vii); and
- (d) has not offered and does not offer securities to the public in New Zealand otherwise than in reliance on 1 or more of the notices referred to in paragraph (c) or the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008; and
- (e) is not a licensed insurer.

7 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.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the conditions that—

Consolidated financial statements in accordance with Australian law

- (a) the exempt issuer, in relation to its specified financial statements, complies with the laws of Australia that relate to the preparation, content, audit, and public filing of those statements; and
- (b) the specified financial statements of the exempt issuer comply with Australian GAAP; and

Branch financial statements

- (c) if the exempt issuer carries on business in New Zealand, the exempt issuer complies either with subparagraphs (i) and (ii) or with subparagraph (iii) as follows:

Option 1: branch financial statements in accordance with Australian law

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

- (ii) the branch financial statements comply with Australian GAAP; or
Option 2: branch financial statements in accordance with New Zealand law
 - (iii) the exempt issuer prepares financial statements and, if appropriate, 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
Scheme financial statements in accordance with Australian law
 - (d) if the exempt issuer is an issuer of securities in relation to a scheme, the exempt issuer prepares financial statements in relation to each scheme and, if the liabilities of the issuer or the scheme are limited to a separate fund, financial statements for that separate fund (**scheme financial statements**) that comply with the laws of Australia that relate to the preparation, content, audit, and public filing of financial statements of a registered scheme; and
 - (e) the scheme financial statements comply with Australian GAAP.
- (2) The exemption in clause 7 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.

9 Extra conditions in respect of financial statements prepared in accordance with Australian law

- (1) The exemptions in clause 7 are subject to the conditions that any specified financial statements, branch financial statements, and scheme financial statements prepared in accordance with Australian law under clause 8(1), when delivered to the Registrar for registration,—
- (a) are accompanied by, if the financial statements do not give a true and fair view of the matters to which they relate, a statement containing information and explanations that will give a true and fair view of those matters; and
 - (b) are accompanied by, if the financial statements omit material information about the financial performance, financial position, and cash flows of the exempt issuer or the New Zealand business in the accounting period to which the statements relate, a statement disclosing that information; and
 - (c) are 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 of the Corporations Act 2001 (Aust).

- (2) The exemptions in clause 7 are subject to the condition that any specified financial statements, branch financial statements, and scheme financial statements prepared in accordance with Australian law under clause 8(1) are delivered to the Registrar for registration annually, and no later than the date on which financial statements would, but for the exemptions in clause 7, be required to be delivered for registration.
- (3) In subclause (1)(b), **material information** means information that a reasonable person would expect to have a material effect on the decision of a holder of the securities who commonly invests in securities as to whether to continue to hold the securities.

Part 2

Exemptions in respect of Australian parent companies

10 Definition of Australian parent company

In this notice, unless the context otherwise requires, **Australian parent company** means an issuer that—

- (a) is a company incorporated in Australia; and
- (b) has 1 or more subsidiaries; and
- (c) is not an exempt issuer or a licensed insurer.

11 Exemption for directors of Australian parent companies

- (1) Every director of an Australian parent company is exempted from the following provisions of the Act in respect of the Australian parent company:
 - (a) sections 10(1), 11, 14, and 16 of the Act; and
 - (b) section 13 of the Act to the extent that it requires the group financial statements prepared in relation to the Australian parent company to comply with section 14 of the Act; and
 - (c) sections 15(1) and 16 of the Act to the extent that those sections require the financial statements of the Australian parent company to be audited; and
 - (d) section 18(1) of the Act to the extent that it requires copies of the financial statements of the Australian parent company, together with a copy of the auditor's report on those statements, to be delivered to the Registrar for registration.
- (2) However,—
 - (a) subclauses (1)(c) and (d) do not apply in relation to the group financial statements that are required to be prepared in relation to the Australian parent company under section 13 of the Act; and

- (b) the directors of the Australian parent company are not exempt from sections 10(1), 11, 15(1), 16, and 18(1) of the Act to the extent that those sections impose requirements relating to financial statements for a scheme or separate fund.

12 Conditions of exemptions in clause 11

- (1) The exemptions in clause 11 are subject to the conditions that—

Consolidated financial statements in accordance with Australian law

- (a) the Australian parent company, in relation to its specified financial statements, complies with the laws of Australia that relate to the preparation, content, and public filing of those statements; and
- (b) the specified financial statements of the Australian parent company comply with Australian GAAP; and

Branch financial statements

- (c) if the Australian parent company carries on business in New Zealand, the Australian parent company complies either with subparagraphs (i) and (ii) or with subparagraph (iii) as follows:

Option 1: branch financial statements in accordance with Australian law

- (i) the Australian parent company prepares financial statements or group financial statements, as applicable, that comply with the laws of Australia that relate to the preparation and content of 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 Australia (**branch financial statements**); and
- (ii) the branch financial statements comply with Australian GAAP; or

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

- (iii) the Australian parent company prepares financial statements and, if appropriate, 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 company complies with the provisions of the Act that relate to the preparation, content, audit, and registration of those statements.

- (2) The exemption in clause 11(1)(d) is subject to the condition that the copy of all financial statements delivered to the Registrar by the Australian parent company includes, or is accompanied by, a statement to the effect that the company has relied on this exemption notice in respect of its financial statements for the relevant accounting period.

13 Extra conditions in respect of financial statements prepared in accordance with Australian law

- (1) The exemptions in clause 11 are subject to the conditions that any specified financial statements or branch financial statements prepared in accordance with Australian law under clause 12(1), when delivered to the Registrar for registration,—
 - (a) are accompanied by, if the financial statements do not give a true and fair view of the matters to which they relate, a statement containing information and explanations that will give a true and fair view of those matters; and
 - (b) are accompanied by, if the financial statements omit material information about the financial performance, financial position, and cash flows of the Australian parent company or the New Zealand business in the accounting period to which the financial statements relate, a statement disclosing that information; and
 - (c) are accompanied by a report by a licensed auditor that—
 - (i) contains the information that would, but for the exemptions contained in this Part, be required by section 16(1)(a) to (e) of the Act but in relation to the audit of the specified financial statements or branch financial statements (as the case may be); and
 - (ii) states whether, in the auditor's opinion, the financial statements comply with the laws of Australia and Australian GAAP and, if they do not, in what respects they fail to comply; and
 - (iii) states whether, in the auditor's opinion and having regard to any information or explanations that are required to accompany the financial statements by this clause or any similar requirement in Australian law, the financial statements give a true and fair view of the matters to which they relate and, if they do not, states the respects in which they fail to give such a view.
- (2) The exemptions in clause 11 are subject to the condition that any specified financial statements and branch financial statements prepared in accordance with Australian law under clause 12(1) are delivered to the Registrar for registration annually and no later than the date on which group financial statements that are required to be prepared in relation to the Australian parent company under section 13 of the Act are required to be delivered to the Registrar under section 18(1) of the Act.
- (3) In subclause (1)(b), **material information** means information that a reasonable person would expect to have a material effect on the decision of a holder of the securities who commonly invests in securities as to whether to continue to hold the securities.

Part 3

General provisions

14 Revocation

The Financial Reporting Act (Australian Parent Entity Financial Statements) Exemption Notice 2011 (SR 2011/318) is revoked.

15 Transitional provision

- (1) This clause applies if, before the revocation of the Financial Reporting Act (Australian Parent Entity Financial Statements) Exemption Notice 2011, an Australian parent entity has appointed an auditor in respect of an accounting period that has commenced before the commencement of this notice.
- (2) The Australian parent entity may either—
 - (a) rely on the exemptions contained in the Financial Reporting Act (Australian Parent Entity Financial Statements) Exemption Notice 2011 (as in force immediately before that notice was revoked, as if that notice were still in force) in respect of that accounting period; or
 - (b) rely on the exemptions contained in Part 1 of this notice as if it were an exempt issuer for the purposes of this notice.

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 the day after the date of its notification in the *Gazette* and is revoked on the close of 28 February 2018. This notice revokes and replaces the Financial Reporting Act (Australian Parent Entity Financial Statements) Exemption Notice 2011 (the **APE Notice**).

This notice exempts the directors of companies incorporated in Australia that are issuers for the purposes of the Financial Reporting Act 1993 (the **Act**) from various provisions of the Act. The notice relates to ongoing financial reporting requirements of those issuers. It does not affect the financial disclosure of the issuers in offer documents for offers of securities.

The notice is divided into 2 parts, which address different groups of Australian-incorporated issuers.

Part 1 of the notice provides exemptions for Australian-incorporated issuers that have relied on certain specified exemptions from the Securities Act 1978 and have not offered securities to the public in New Zealand other than in reliance on one of those specified exemptions or the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (**exempt issuers**). It applies both to companies that have subsidiaries (which would have been able to rely on the APE Notice) and to companies that do not have subsidiaries (which would not have been able to rely on the APE Notice).

Exempt issuers are exempted from the requirements in the Act relating to the preparation, content, audit, and registration of financial statements subject to conditions requiring the issuer to prepare group financial statements in accordance with Australian law and generally accepted accounting practice in Australia (**Australian GAAP**), have those group financial statements audited by an Australian-registered auditor, and register those financial statements with the Registrar of Companies. Exempt issuers that have subsidiaries are not required to prepare or register parent financial statements, but must include material information about the parent entity in the notes to the financial statements as required by Australian law.

Exempt issuers that have a New Zealand business are also required to prepare and register the following financial statements in respect of that New Zealand business:

- group financial statements that comply with Australian law and Australian GAAP, and have been audited by an Australian-registered auditor in accordance with Australian law, as if that New Zealand business was a separate Australian company; or
- parent and group financial statements that comply with, and have been audited by a New Zealand-licensed auditor in accordance with, the Act.

Part 2 of the notice provides exemptions for all other Australian-incorporated issuers that have subsidiaries (**Australian parent companies**). Australian parent companies would have been able to rely on the APE Notice. Part 2 does not apply to “exempt issuers” because the effect of the exemptions granted in Part 2 is addressed in the broader exemptions granted to exempt issuers in Part 1. It also does not apply to Australian-incorporated issuers that do not have subsidiaries, as for those companies there are no material differences between Australian GAAP and New Zealand GAAP and, therefore, these issuers can already comply with Australian, rather than New Zealand, law and GAAP in relation to the content of their financial statements (without exemptions).

The exemptions in Part 2 allow the directors of Australian parent companies to register consolidated financial statements for the group and summary information on the parent entity that comply with the preparation and content requirements of Australian law and Australian GAAP, instead of the financial statements usually required by the Act (which include full separate parent entity financial statements). These group financial statements must be audited by a New Zealand-licensed auditor. Australian parent companies will not need to prepare, have audited, and register full separate

parent entity financial statements, because this is no longer required under Australian law.

As for exempt issuers, Australian parent companies will be required to prepare financial statements for their New Zealand business (if any) either in accordance with Australian law and Australian GAAP or in accordance with the Act. Financial statements relating to an Australian parent company's New Zealand business must be audited by a New Zealand-licensed auditor and registered with the Registrar of Companies.

In the event that an Australian parent entity is not regulated as an issuer under Australian law and is, therefore, entitled under Australian law to use a reduced disclosure regime in preparing its financial statements, it will not be permitted to use those financial statements to comply with this notice. However, it may elect to prepare financial statements in accordance with full Australian financial reporting standards in order to rely on this notice.

The primary difference between Part 2 of the notice and the exemptions previously granted in the APE Notice is that Part 2 does not allow Australian parent companies to use an Australian registered auditor who is not licensed in New Zealand (except during the transitional period). Exemptions from using a New Zealand auditor were available to these companies under the APE Notice.

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 (which will enable most Australian issuers to prepare financial statements in accordance with Australian GAAP) because—

- changes made to financial reporting laws in Australia in June 2010 removed the requirement for consolidated financial statements to be accompanied by separate parent entity financial statements. Associated changes, however, require specified summary financial information about the parent entity to be provided in the note disclosures of the consolidated financial statements:
- the exemptions reduce regulatory compliance costs of Australian issuers that are reporting entities under the Financial Reporting Act 1993 by exempting them from the need to prepare and register with the Registrar of Companies financial statements that comply with New Zealand generally accepted accounting practice, including parent entity financial statements, that they are otherwise not required to prepare in Australia:
- FMA has had regard to the financial reporting requirements with which Australian issuers must comply and considers that the financial reporting obligations under the laws of Australia, together with any additional information required under the conditions of the exemption, will provide New Zealand security holders with adequate financial information about companies in which they invest. FMA also considers that Australia has adequate regulatory and enforcement mechanisms in this regard:
- FMA considers that full consolidated financial statements of a company supplemented with summary financial information on the parent entity will, in

most cases, provide sufficient information to satisfy the information needs of an entity's investors. However, there may be some circumstances where additional material information on the parent entity needs to be disclosed for investors to understand the financial position, performance, and cash flows of the parent entity as those matters affect their investment. The conditions of this notice require directors of the exempt issuers to consider and disclose any such information:

- in the light of the Australian requirements, and the additional information that must be disclosed under the conditions of the notice if necessary to provide investors with all material information about the financial position, financial performance, and cash flows of the parent entity, FMA does not consider the exemption will cause significant detriment to New Zealand security holders of the exempt issuers. Further, the exemptions only apply to Australian issuers, and those issuers are still required to prepare, have audited, and register financial statements in New Zealand but may do so on the basis of compliance with Australian laws and the additional information required by this notice. Accordingly, FMA is satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

FMA, after satisfying itself as to the matters set out in section 35A(2) of the Act, considers that it is appropriate to grant the exemptions that will enable certain Australian issuers to use an Australian auditor because—

- the effect of the exemption is to allow Australian issuers that are regulated by Australian Securities and Investments Commission (**ASIC**) to use an Australian auditor who is registered with, and regulated by, ASIC, rather than a New Zealand licensed auditor:
- FMA has had regard to the auditing requirements that Australian issuers must comply with, as well as the regulatory regime to which Australian registered auditors are subject, and considers that the audit provisions of Australia's financial reporting requirements will provide New Zealand security holders with adequate assurance as to the quality of the financial information being provided by those issuers. FMA also considers that Australia has adequate regulatory and enforcement mechanisms in this regard:
- there will not be any significant detriment to subscribers, as the exemptions are only available to issuers that are regulated as issuers in Australia. FMA is satisfied that the financial reporting and audit requirements, and the nature and extent of regulatory oversight, for Australian issuers and their auditors is equivalent to that which exists for issuers in New Zealand. As such, investors in the issuers to whom this notice applies will have access to broadly similar, and equivalent, information that has been subject to an audit of a comparable standard:
- as the exemptions are only available to issuers that are regulated as issuers in Australia and require the exempt issuer's financial statements to be audited by

an Australian auditor, the exemptions 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 Financial Reporting Act (Australian 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)