

**Reprint
as at 1 December 2015**



Financial Markets Conduct (Derivatives Issuers—Link to Financial Statements) Exemption Notice 2015

(LI 2015/119)

Financial Markets Conduct (Derivatives Issuers—Link to Financial Statements) Exemption Notice 2015: revoked, on 1 December 2015, by clause 3.

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	2
4 Interpretation	2
5 Application	2
6 Exemption	2
7 Conditions	2

Notice

1 Title

This notice is the Financial Markets Conduct (Derivatives Issuers—Link to Financial Statements) Exemption Notice 2015.

2 Commencement

This notice comes into force on 1 June 2015.

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.

3 Revocation

This notice is revoked on the close of 30 November 2015.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Regulations means the Financial Markets Conduct Regulations 2014

relevant balance date, in relation to a specified issuer, means the issuer's balance date referred to in clause 5(b)

specified issuer means a licensed derivatives issuer to which this notice applies under clause 5

offer, in relation to a specified issuer, means a regulated offer of derivatives made by the specified issuer.

- (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.
- (3) Regulation 9 of the Regulations applies, with all necessary modifications, to the statement required by clause 7(c).

5 Application

This notice applies to a licensed derivatives issuer if—

- (a) the licensed derivatives issuer has not prepared financial statements or group financial statements under subpart 3 of Part 7 of the Act; and
- (b) the licensed derivatives issuer has a balance date during the period starting on 1 February 2015 and ending on the close of 31 May 2015.

6 Exemption

Every specified issuer is exempt from clause 29(a) of Schedule 6 of the Regulations.

7 Conditions

The exemption in clause 6 is subject to the following conditions:

- (a) the register entry for an offer must, as at the date on which the PDS is lodged, contain a link to a copy of—
- (i) the specified issuer's most recently prepared financial statements or group financial statements; and
- (ii) the auditor's report on those statements (if any); and
- (b) those financial statements or group financial statements must comply with the requirements of an enactment (or the laws of an overseas juris-

diction) to which the specified issuer was subject in relation to the accounting period to which those statements relate; and

- (c) the PDS for the offer must, in section 8 of the PDS, include a statement in the following form for any period for which the specified issuer makes the offer in reliance on this notice:

“The offer register contains a link to *[name of issuer]’s [specify either financial statements or group financial statements]*. Those financial statements are not prepared in accordance with the Financial Markets Conduct Act 2013 for the most recently completed accounting period. Instead, those financial statements have been prepared in accordance with *[briefly describe the basis on which the statements have been prepared and the period to which they relate]*.

However, on or before *[insert date that is 4 months after the relevant balance date]*, there will be available, from the offer register, a copy of *[name of issuer]’s [specify either financial statements or group financial statements]* that comply with the Financial Markets Conduct Act 2013 for the period ending on *[specify the relevant balance date]* (and a copy of an auditor’s report on those statements).”;

- (d) within 4 months after the relevant balance date, the link referred to in paragraph (a) must be replaced with information that complies with clause 29(a) of Schedule 6 of the Regulations.

Dated at Wellington this 21st day of May 2015.

Liam Mason,
General Counsel.

Statement of reasons

This notice, which comes into force on 1 June 2015 and is revoked on 30 November 2015, exempts licensed derivatives issuers from the requirement under clause 29(a) of Schedule 6 of the Financial Markets Conduct Regulations 2014 (the **Regulations**). This requires a register entry for a regulated offer of derivatives to contain a link to audited financial statements for the most recently completed accounting period that are prepared in accordance with generally accepted accounting practice (**GAAP**). The exemption only applies to issuers with a balance date within the period 1 February 2015 to the close of 31 May 2015.

Some derivatives issuers will be required to register a PDS by 1 June 2015 if they wish to make regulated offers after that date. The exemption is required for a short transitional period because, depending on when an issuer’s balance date falls, the ob-

ligation to provide GAAP-compliant audited financial statements for the most recently completed accounting period can be unduly onerous or impracticable. This is because these derivatives issuers would otherwise have only a short period of time to prepare financial statements under the new requirements under the Financial Markets Conduct Act 2013 (the **Act**). For example, a derivatives issuer with a 31 March 2015 balance date would be required on 1 June 2015 to provide GAAP-compliant financial statements for the period ending 31 March 2015. This derivatives issuer would have only 2 months to prepare financial statements for the previous accounting period (while normally the issuer would have 4 months to prepare those financial statements).

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemption because—

- the exemption allows a licensed derivatives issuer that makes an offer of derivatives on or after 1 June 2015 to make GAAP-compliant audited financial statements for its most recently completed accounting period available on the offer register at the time that those financial statements would normally be required to be prepared and lodged under Part 7 of the Act (rather than on the lodgement of a product disclosure statement (**PDS**)). As such, the FMA is satisfied that the granting of the exemption is desirable in order to promote one of the purposes of the Act, by enabling derivatives issuers to avoid the unnecessary compliance costs of preparing financial statements within a short time frame in order to comply with clause 29(a) of Schedule 6 of the Regulations; and
- the exemption addresses a one-off short-term transitional issue for derivatives issuers that must comply with the disclosure regime under Part 3 of the Act on and after 1 June 2015. The conditions of the exemption require a derivatives issuer to provide alternative information for investors (described in the PDS) and to ensure that financial information that complies with Part 7 of the Act is made available on the offer register within the usual reporting time frame that applies under Part 7. In these circumstances, the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to it.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Derivatives Issuers—Link to Financial Statements) Exemption Notice 2015 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 (Derivatives Issuers—Link to Financial Statements) Exemption Notice 2015 (LI 2015/119): clause 3