



Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2016

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.

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Notice

- 1 Title**

This notice is the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2016.
- 2 Commencement**

This notice comes into force on 28 October 2016.
- 3 Revocation**

This notice is revoked on the close of 28 May 2020.
- 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 the financial statements or group financial statements for that period would be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approved auditor, in relation to an exempt issuer, means an accountant who is qualified under the law of the home jurisdiction to give an opinion as to whether financial statements or group financial statements comply with an overseas GAAP required or permitted in that jurisdiction

Australian auditor means an accountant who is qualified under the law of Australia to give an opinion as to whether financial statements or group financial statements comply with Australian equivalents to International Financial Reporting Standards

exempt issuer has the meaning set out in subclause (2)

home jurisdiction, in relation to—

- (a) a licensed insurer, has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010; and
- (b) a registered bank, has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

New Zealand business, in relation to an exempt issuer, means,—

- (a) if the exempt issuer has 1 or more subsidiaries, the New Zealand business of the exempt issuer's group (as defined in section 6(1) of the Act);
- (b) if the exempt issuer has no subsidiaries, the exempt issuer's New Zealand business

overseas GAAP, in relation to—

- (a) an exempt issuer that is a licensed insurer that is incorporated in the United States of America, means—
 - (i) generally accepted accounting principles that are required or permitted in the United States of America; or
 - (ii) statutory accounting principles issued by the National Association of Insurance Commissioners (US);
- (b) any other exempt issuer, means generally accepted accounting practice or principles that is or are required or permitted in the home jurisdiction

overseas person, in relation to—

- (a) a licensed insurer, has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010; and
- (b) a registered bank, has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

Regulations means the Financial Markets Conduct Regulations 2014.

- (2) In this notice, an entity is an **exempt issuer** if it is a licensed insurer or a registered bank that is an overseas person.
- (3) 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.

6 Exemptions

Every exempt issuer is exempted from—

- (a) sections 455(1)(c), 461B, 461D, and 461G of the Act; and
- (b) sections 460 and 461 of the Act to the extent that those sections require the exempt issuer to ensure that its financial statements, or group financial statements,—
 - (i) comply with generally accepted accounting practice; and
 - (ii) are dated and signed in accordance with section 460(1)(b) or 461(1)(b).

7 Conditions

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

- (a) the exempt issuer, in relation to the financial statements or group financial statements prepared under section 460 or 461 of the Act, must comply with the law and regulatory requirements of the home jurisdiction that relate to the preparation, content, audit, and public filing of those statements and, in particular, the exempt issuer must ensure that—
 - (i) those statements comply with overseas GAAP; and
 - (ii) those statements are audited by an approved auditor; and
 - (iii) an audit report is prepared by the approved auditor in respect of that audit; and
- (b) the exempt issuer must ensure that there are kept at all times accounting records that will enable the issuer to ensure that—
 - (i) the financial statements or group financial statements prepared under section 460 or 461 of the Act comply with paragraph (a)(i); and

- (ii) the New Zealand business financial statements prepared under paragraph (c) (if any) comply with generally accepted accounting practice; and
- (c) the financial statements or group financial statements delivered for lodgement under section 461H of the Act must be accompanied by financial statements for the New Zealand business (if any), and the exempt issuer must ensure that—
 - (i) those statements are prepared in accordance with generally accepted accounting practice; and
 - (ii) those statements are audited by an approved auditor, an Australian auditor, or a qualified auditor; and
 - (iii) an audit report is prepared by the approved auditor, Australian auditor, or qualified auditor in respect of that audit; and
- (d) if an auditor's report referred to in paragraph (a)(iii) or (c)(iii) was qualified or referred to a fundamental matter in any respect, the exempt issuer must, within 7 working days after the report is signed, provide a copy of the report, and a copy of the financial statements or group financial statements to which it relates, to—
 - (i) the FMA; and
 - (ii) the External Reporting Board; and
- (e) the financial statements or group financial statements that are delivered to the Registrar for lodgement under section 461H of the Act—
 - (i) are accompanied by written notification to the Registrar that the exempt issuer is relying on this notice in respect of the accounting period to which the statements relate; and
 - (ii) are in English or accompanied by an accurate English translation; and
- (f) a governmental body for securities regulation in the home jurisdiction is a full signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

8 Revocation of Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015

The Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015 (LI 2015/122) is revoked on the close of 31 January 2017.

Dated at Auckland this 21st day of October 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 28 October 2016 and is revoked on the close of 28 May 2020. The notice replaces the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015 (the **2015 notice**).

This notice applies to overseas banks that are registered and overseas insurers that are licensed by the Reserve Bank of New Zealand (the **Reserve Bank**).

This notice exempts overseas registered banks and overseas licensed insurers from the following provisions of the Financial Markets Conduct Act 2013 (the **Act**):

- section 455(1)(c) (which requires an FMC reporting entity to keep accounting records that will enable it to ensure that its financial statements comply with generally accepted accounting practice);
- sections 460 and 461 of the Act to the extent that those sections require the financial statements that are prepared to comply with New Zealand generally accepted accounting practice (**NZ GAAP**) and to be dated and signed by 2 directors (or, if the entity has only 1 director, by that director). The exemption relating to dating and signing is a new exemption;
- section 461B of the Act (which relates to financial statements for the New Zealand business);
- sections 461D and 461G (which relate to auditing).

The exemptions are subject to a number of conditions. These include requirements that—

- the entities prepare financial statements that comply with the laws and regulatory requirements of their home jurisdiction;
- the home jurisdiction, through a securities regulator in that jurisdiction, be a full signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This would allow the Financial Markets Authority to seek the assistance of the equivalent authority in the home jurisdiction should enforcement issues arise.

The main effects of the exemptions for entities relying on them are as follows:

- rather than complying with NZ GAAP, the financial statements that are prepared will comply with the overseas generally accepted accounting practice or principles that is or are required or permitted in the home jurisdiction or, in the

case of US insurers, with US statutory accounting principles (**overseas GAAP**):

- those financial statements will be audited by an auditor who is qualified under the laws of the home jurisdiction (an **overseas approved auditor**):
- if the entity has a New Zealand business, those financial statements will be accompanied by separate financial statements for the New Zealand business that comply with NZ GAAP:
- those New Zealand business financial statements will be audited by a qualified auditor (as that term is defined in the Act), an overseas approved auditor, or an auditor who is qualified under the laws of Australia (an **Australian auditor**). The 2015 notice did not previously allow these statements to be audited by an Australian auditor in certain cases.

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 exemptions because—

- the Reserve Bank of New Zealand is required to assess the financial reporting and audit requirements of the home jurisdiction of any overseas bank or insurer seeking registration or licensing in New Zealand. In these circumstances, the FMA is satisfied that the financial reporting and audit requirements of the home jurisdiction will provide sufficient and appropriate information to the Reserve Bank for it to undertake its prudential regulation of these entities and to investors for them to make investment decisions. Investors in these entities will have access to broadly similar, and equivalent, information to the information that they would otherwise have access to:
- the overseas entities that will rely on the notice are regulated in jurisdictions that, through their securities regulators, are signatories to an international memorandum of understanding for co-operation and information sharing. This means that the FMA will be able to obtain co-operation from the securities regulator in an entity's home jurisdiction if any compliance concerns arise in relation to the entity:
- the costs associated with an entity having to prepare and audit financial statements in accordance with the requirements of a home jurisdiction, in addition to the costs associated with preparing NZ GAAP-compliant financial statements audited by a New Zealand qualified auditor, would outweigh the benefits to investors in having access to financial statements prepared according to NZ GAAP rather than overseas GAAP:
- the notice enhances the exemptions provided under the 2015 notice:
- as such, the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and by promoting flexibility in financial markets:
- the exemptions only address the particular difficulties experienced by entities that are overseas registered banks or licensed insurers. Given the limited appli-

cation of the exemptions and that investors will still have access to financial statements, lodged in New Zealand, that meet financial reporting and audit requirements in reputable jurisdictions, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 27 October 2016.

This notice is administered by the Financial Markets Authority.