



Financial Markets Conduct (Disclosure Using Overseas GAAP) 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 (Disclosure Using Overseas GAAP) Exemption Notice 2016.
- 2 Commencement**

This notice comes into force on 4 November 2016.

3 Revocation

This notice is revoked on the close of 3 November 2021.

4 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 entity, means an accountant who is qualified or permitted under the law of a relevant 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

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

International Financial Reporting Standards means—

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

overseas GAAP, in relation to an exempt entity, means generally accepted accounting practice or principles specified in Schedule 1 that is or are required or permitted in a relevant jurisdiction

overseas market means a financial product market that is authorised to operate in a jurisdiction specified in Schedule 2

Regulations means the Financial Markets Conduct Regulations 2014

relevant jurisdiction, in relation to an exempt entity, means a jurisdiction specified in Schedule 2 in which the overseas market referred to in subclause (2) is authorised to operate.

- (2) In this notice, an entity is an **exempt entity** if—

- (a) financial products of the entity are approved for trading on an overseas market; and
- (b) the overseas market has primary jurisdiction for the listing requirements for the entity and the quotation of those financial products; and
- (c) the entity is an FMC reporting entity only because it is 1 or more of the following:
 - (i) an issuer of a regulated product;
 - (ii) a listed issuer;
 - (iii) a recipient of money from a conduit issuer.

- (3) The following apply to an example used in this notice:
 - (a) the example is only illustrative of the provisions to which it relates and the example does not limit those provisions:
 - (b) if an example and a provision to which it relates are inconsistent, the provision prevails.
- (4) 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) Regulation 9 of the Regulations applies, with all necessary modifications, to a statement required under clause 6(1)(a) or 8(1)(a).

Debt securities

5 Exemptions for offers of debt securities

Every exempt entity is, in respect of an offer of debt securities issued by the entity, exempted from—

- (a) clauses 37 to 39 of Schedule 2 of the Regulations; and
- (b) clause 64 of Schedule 2 of the Regulations.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the conditions that—
 - (a) the PDS must include a statement in the following form after the statement in clause 36(1) of Schedule 2 of the Regulations:

“The law normally requires the financial information to be determined or prepared in accordance with New Zealand generally accepted accounting practice. In this case, the financial information is determined or prepared in accordance with [*specify the type of overseas GAAP, for example, Australian equivalents to International Financial Reporting Standards*]. This is allowed under the Financial Markets Conduct (Disclosure Using Overseas GAAP) Exemption Notice 2016.”
 - (b) section 7 of the PDS (which relates to financial information) must contain all of the information specified in clauses 37 and 38 of Schedule 2 of the Regulations that is applicable (prepared in accordance with the rules in clause 39 of that Schedule) but applied with all necessary modifications as if the references in clauses 37 to 39 of that Schedule to—
 - (i) GAAP were references to overseas GAAP; and
 - (ii) non-GAAP were references to non-overseas GAAP; and
 - (iii) a qualified auditor were references to an approved auditor; and

Example

Clause 37(1) of Schedule 2 of the Regulations requires the PDS for an offer of debt securities to include information about, for example, revenues,

profits, assets, and liabilities as determined in accordance with generally accepted accounting practice in New Zealand.

Under this condition, the PDS must instead include that financial information as determined in accordance with overseas GAAP.

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- (c) the register entry must contain a statement to the effect that—
- (i) the law normally requires the financial information and financial statements on the register to be determined or prepared in accordance with New Zealand generally accepted accounting practice; and
 - (ii) in this case, the financial information and financial statements are determined or prepared in accordance with a specified type of overseas GAAP; and
 - (iii) this is allowed under the Financial Markets Conduct (Disclosure Using Overseas GAAP) Exemption Notice 2016; and
- (d) the register entry must contain all of the information specified in clause 64 of Schedule 2 of the Regulations that is applicable but applied with all necessary modifications as if—
- (i) the references in that clause to GAAP were references to overseas GAAP; and
 - (ii) the references to any of clauses 37 to 39 were references to those clauses as applied by the conditions of this notice; and
 - (iii) clause 64(2)(a) were to read “the group financial statements for the most recent period must be prepared in accordance with overseas GAAP”; and
 - (iv) the references in that clause to a qualified auditor were references to an approved auditor; and
 - (v) the reference in that clause to NZ IAS 34 were a reference to the standard or standards of overseas GAAP that relate to interim financial reporting.

Example

Clause 64(2) of Schedule 2 of the Regulations requires the register entry for an offer of debt securities to include group financial statements prepared in accordance with generally accepted accounting practice in New Zealand. Those statements must be audited by a New Zealand qualified auditor.

Under this condition, the register entry must instead include group financial statements prepared in accordance with overseas GAAP. Those statements must be audited by an auditor who is qualified or permitted under the law of a relevant jurisdiction to perform the audit.

- (2) Regulation 7(2) to (4) of the Regulations apply for the purposes of subclause (1) as if the references in those provisions to GAAP were references to overseas GAAP.

Equity securities

7 Exemptions for offers of equity securities

Every exempt entity is, in respect of an offer of equity securities issued by the entity, exempted from—

- (a) clauses 35 and 38 of Schedule 3 of the Regulations (and clause 39 of that Schedule to the extent that it relates to clauses 35 and 38); and
- (b) clause 53 of Schedule 3 of the Regulations.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the conditions that—
- (a) the PDS must include a statement in the following form after the statement in clause 34 of Schedule 3 of the Regulations:

“The law normally requires the financial information to be determined or prepared in accordance with New Zealand generally accepted accounting practice. In this case, the financial information is determined or prepared in accordance with [*specify the type of overseas GAAP, for example, Australian equivalents to International Financial Reporting Standards*]. This is allowed under the Financial Markets Conduct (Disclosure Using Overseas GAAP) Exemption Notice 2016.”
 - (b) section 7 of the PDS (which relates to financial information) must contain all of the information specified in clauses 35 and 38 of Schedule 3 of the Regulations that is applicable (prepared in accordance with the rules in clause 39 of that Schedule) but applied with all necessary modifications as if the references in clauses 35, 38, and 39 of that Schedule to—
 - (i) GAAP were references to overseas GAAP; and
 - (ii) non-GAAP were references to non-overseas GAAP; and

Example

Clause 35(1) of Schedule 3 of the Regulations requires the PDS for an offer of equity securities to include information about, for example, revenues, profits, assets, and liabilities as determined in accordance with generally accepted accounting practice in New Zealand.

Under this condition, the PDS must instead include that financial information as determined in accordance with overseas GAAP.

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- (c) the register entry must contain a statement to the effect that—

- (i) the law normally requires the financial information and financial statements on the register to be determined or prepared in accordance with New Zealand generally accepted accounting practice; and
 - (ii) in this case, the financial information and financial statements are determined or prepared in accordance with a specified type of overseas GAAP; and
 - (iii) this is allowed under the Financial Markets Conduct (Disclosure Using Overseas GAAP) Exemption Notice 2016; and
- (d) the register entry must contain all of the information specified in clause 53 of Schedule 3 of the Regulations that is applicable but applied with all necessary modifications as if—
- (i) the references in that clause to GAAP were references to overseas GAAP; and
 - (ii) the references to any of clauses 35, 38, and 39 were references to those clauses as applied by the conditions of this notice; and
 - (iii) clause 53(2)(a) were to read “the group financial statements for the most recent period must be prepared in accordance with overseas GAAP”; and
 - (iv) the references in that clause to a qualified auditor were references to an approved auditor; and
 - (v) the reference in that clause to FRS-42 were a reference to the standard or standards of overseas GAAP that relate to prospective financial information; and
 - (vi) the reference in that clause to NZ IAS 34 were a reference to the standard or standards of overseas GAAP that relate to interim financial reporting.

Example

Clause 53(2) of Schedule 3 of the Regulations requires the register entry for an offer of equity securities to include group financial statements prepared in accordance with generally accepted accounting practice in New Zealand. Those statements must be audited by a New Zealand qualified auditor.

Under this condition, the register entry must instead include group financial statements prepared in accordance with overseas GAAP. Those statements must be audited by an auditor who is qualified or permitted under the law of a relevant jurisdiction to perform the audit.

- (2) Regulation 7(2) to (4) and clause 2 of Schedule 3 of the Regulations apply for the purposes of subclause (1) as if the references in those provisions to—
 - (a) GAAP were references to overseas GAAP; and
 - (b) non-GAAP were references to non-overseas GAAP; and

- (c) a qualified auditor were references to an approved auditor.

Schedule 1 Overseas GAAPs

cl 4(1)

Australian equivalents to International Financial Reporting Standards
Canadian equivalents to International Financial Reporting Standards
European Union International Financial Reporting Standards
Hong Kong Financial Reporting Standards
International Financial Reporting Standards
Singapore Financial Reporting Standards
Generally accepted accounting principles in the United States of America

Schedule 2 Relevant jurisdictions

cl 4(1)

Canada
Commonwealth of Australia
Federal Republic of Germany
France
The Netherlands
Republic of Ireland
Republic of South Africa
Singapore
Switzerland
United Kingdom
United States of America

Dated at Auckland this 1st day of November 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 4 November 2016 and is revoked on 3 November 2021.

The notice relates to offers of debt or equity securities. It exempts certain overseas issuers from certain provisions of the Financial Markets Conduct Regulations 2014 (the **Regulations**) that relate to financial information.

The Regulations currently require a product disclosure statement (**PDS**) and register entry to contain financial information determined or prepared in accordance with New Zealand generally accepted accounting practice (**NZ GAAP**). In some cases, the information must be audited by an auditor who is qualified under New Zealand law. The main effects of the notice are to allow the financial information that is included in PDSs and register entries to be—

- determined or prepared in accordance with overseas generally accepted accounting practice or principles (**overseas GAAP**); and
- audited by an auditor who is qualified or permitted under the law of a relevant jurisdiction to perform the audit.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (the **Act**), considers it appropriate to grant the exemptions because—

- the PDS and register entry for the offer will contain all the financial information for the exempt entity that would ordinarily be required by the Regulations, except that the financial information will have been determined or prepared in accordance with overseas GAAP instead of NZ GAAP and audited by an auditor who is qualified or permitted under the law of a relevant jurisdiction to perform the audit instead of qualified under New Zealand law; and
- additionally, the conditions require that the PDS and register entry inform prospective investors that the financial information for the exempt entity has been determined or prepared in accordance with overseas GAAP instead of the usually required NZ GAAP; and
- the exemptions are only available to FMC reporting entities with a primary listing on a financial product market regulated by the laws of jurisdictions where the FMA is satisfied that the financial reporting required or permitted in that jurisdiction, and the nature and extent of regulatory oversight, for those entities and their auditors are of high quality and at least equivalent to those that apply in New Zealand. As such, prospective investors in those entities will have access to broadly similar and equivalent information in the PDS and register entry for an offer to the information that they would otherwise receive; and
- the exemptions are also limited to jurisdictions where the regulatory body is an ordinary member of the International Organization of Securities Commissions (**IOSCO**) and a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Infor-

mation. This means that the FMA will be able to obtain co-operation from the securities regulator in the relevant jurisdiction if any compliance concerns arise in relation to the entity or its auditor; and

- the costs associated with a requirement for an exempt entity to prepare NZ GAAP-compliant financial statements and have those statements audited by a New Zealand-qualified auditor would outweigh the benefits to investors in receiving NZ GAAP-compliant financial information and statements in the PDS and register entry, rather than financial information and statements determined or prepared in accordance with overseas GAAP; and
- as such, the FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and promoting flexibility in financial markets; and
- given that the exemptions will be limited to jurisdictions where the financial reporting required or permitted in that jurisdiction, and the nature and extent of regulatory oversight, are broadly equivalent to New Zealand, and that the exemptions only allow the use of overseas GAAP in place of NZ GAAP with respect to the determination or preparation of financial information in a PDS and register entry, the FMA is satisfied that 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*: 3 November 2016.

This notice is administered by the Financial Markets Authority.