



## **Financial Markets Conduct (Overseas Banks Offering Simple Debt Products) 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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### **Specified overseas jurisdictions**

### **Notice**

- 1 Title**  
This notice is the Financial Markets Conduct (Overseas Banks Offering Simple Debt Products) Exemption Notice 2016.
- 2 Commencement**  
This notice comes into force on 1 December 2016.
- 3 Revocation**  
This notice is revoked on the close of 30 November 2021.
- 4 Interpretation**
  - (1) In this notice, unless the context otherwise requires,—  
**Act** means the Financial Markets Conduct Act 2013

**banking group**, in relation to an overseas bank, means the group comprised of—

- (a) the overseas bank; and
- (b) any holding company and any subsidiary of the overseas bank; and
- (c) any other subsidiary of any holding company of the overseas bank

**existing customer**, in relation to an overseas bank and an offer or intended offer of a simple debt product,—

- (a) means a person who, at the time that the offer is made, is an existing holder of debt securities issued by the bank; and
- (b) includes a person who, before the offer was made, contacted the bank with respect to becoming a holder of debt securities issued by the bank

**holding company** has the same meaning as in section 5 of the Companies Act 1993

**New Zealand investor**, in relation to an offer or intended offer of a simple debt product,—

- (a) means a person in New Zealand who receives the offer; but
- (b) does not include a person to whom the offer would not require disclosure under Part 3 of the Act because of any 1 or more of clauses 3 to 5 of Schedule 1 of the Act

**overseas 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

**simple debt products** means—

- (a) call debt securities within the meaning of section 5 of the Financial Advisers Act 2008; and
- (b) debt securities under which—
  - (i) money is deposited with an overseas bank; and
  - (ii) a fixed rate of interest is payable if the money on deposit is held by the overseas bank for a fixed period of time; and
  - (iii) the rate of interest payable may alter or a fee or other amount may be payable as a result of the money being repaid at the request of the depositor before the end of the fixed period

**specified overseas jurisdiction** means a jurisdiction set out in the Schedule.

- (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.

## 5 Application

The exemptions in clause 6 apply to overseas banks that are licensed, registered, or otherwise authorised to carry on banking business in a specified overseas jurisdiction.

## 6 Exemptions

Every overseas bank to which this clause applies is exempted from Parts 3 and 4 of the Act in respect of simple debt products issued by the overseas bank under an offer in relation to which all New Zealand investors—

- (a) are existing customers of the overseas bank; or
- (b) receive the offer through a registered bank that is part of the same banking group as the overseas bank and acting on behalf of the overseas bank.

## 7 Conditions

- (1) The exemptions in clause 6 are subject to the conditions that—
  - (a) the overseas bank, or a holding company of the overseas bank, has an investment-grade credit rating for its long-term senior unsecured obligations; and
  - (b) the overseas bank is subject to the law and regulatory requirements of a specified overseas jurisdiction that relate to the preparation, content, audit, and public filing of financial statements; and
  - (c) 1 or more of the following applies:
    - (i) a copy of the most recent financial statements (or group financial statements) published for the overseas bank (or for the group of which it is a part) is made available at all reasonable times and free of charge on, or through a link on, the overseas bank's Internet site;
    - (ii) the overseas bank sends to each New Zealand investor who is a holder of a simple debt product issued in respect of the offer a notice containing a statement to the effect that investors have a right to receive from the overseas bank, on request and free of charge, a copy of those financial statements;
    - (iii) the overseas bank's Internet site contains a statement to the effect that those financial statements are available to investors on request and free of charge, and states the contact details of the overseas bank; and
  - (d) the overseas bank does not distribute, or authorise or instigate the distribution of, any advertisement for the simple debt products targeting any New Zealand investor or investors, other than an advertisement—

- (i) distributed only to New Zealand investors who are existing customers of the overseas bank; or
  - (ii) that—
    - (A) is distributed by a registered bank that is part of the same banking group as the overseas bank and acting on behalf of the overseas bank; and
    - (B) includes information that makes it clear that the simple debt products are offered by the overseas bank and identifies the specified overseas jurisdiction whose law and regulatory requirements principally govern the prudential supervision of the overseas bank.
- (2) In this clause, **investment-grade credit rating** means a current rating of creditworthiness that is—
- (a) BBB– or better by Standard & Poor’s or by Fitch Ratings; or
  - (b) Baa3 or better by Moody’s Investors Service.

#### **8 Offers made in reliance on this notice not regulated offers**

An offer of simple debt products made in reliance on this notice is not a regulated offer.

### **Schedule Specified overseas jurisdictions**

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Australia  
The Bailiwick of Jersey  
United Kingdom  
United States of America

Dated at Auckland this 21st day of November 2016.

Nick Kynoch,  
General Counsel.

#### **Statement of reasons**

This notice comes into force on 1 December 2016 and is revoked on the close of 30 November 2021.

This notice applies to banks that are licensed, registered, or otherwise authorised to carry on banking business (**registered**) in overseas jurisdictions that have been determined by the Financial Markets Authority (the **FMA**) to have regulatory oversight standards that are broadly equivalent to those that apply in New Zealand and to have signed the International Organization of Securities Commissions Multilateral Memorandum of Understanding (**specified overseas jurisdictions**).

Overseas banks to which this notice applies may, under certain circumstances, offer call debt securities and fixed term deposit products (**simple debt products**) to New Zealand investors through a lighter compliance path that is similar to that available to New Zealand registered banks.

If the exemptions in this notice apply, overseas banks will not need to comply with the disclosure requirements (including preparation of a PDS) under Part 3 of the Financial Markets Conduct Act 2013 (the **Act**) when offering simple debt products, or with the governance requirements under Part 4 of the Act (including the need for a trust deed and licensed supervisor) in respect of those products.

This notice also provides that offers of simple debt products made in reliance on this notice are not regulated offers under the Act. This means that legislative requirements that apply to regulated offers, such as financial reporting obligations under Part 7 of the Act, will not apply (unless there is some other reason why they apply).

Any other financial market obligations that an overseas bank may have, including under Part 2 of the Act (which relates to fair dealing), are not affected.

Any overseas bank seeking to rely on the exemptions should consult the Reserve Bank of New Zealand regarding compliance with the Reserve Bank of New Zealand Act 1989.

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—

- New Zealand registered banks have statutory exclusions from large parts of the Act for offers of simple debt products on the basis that those products are well understood by investors and New Zealand registered banks are subject to prudential regulation and supervision:
- the simple debt products that will be able to be offered by overseas banks in reliance on these exemptions are similar to those offered by New Zealand registered banks and the prudential regulation and supervision that applies to an overseas bank in its specified overseas jurisdiction is broadly equivalent to that applicable to New Zealand registered banks:
- depositors with overseas banks will have access to financial and other information about the simple debt products and the overseas bank that will allow them to assess the risks of entering into the simple debt products and the financial strength of the overseas bank:
- in order to rely on this notice, overseas banks will need to be registered in jurisdictions that have signed the International Organization of Securities Commissions Multilateral Memorandum of Understanding. This will allow the FMA to

seek the assistance of the relevant securities regulator should enforcement issues arise:

- without the exemptions, overseas banks may not offer or continue to make available simple debt products to New Zealand retail investors. Overseas banks would face compliance costs associated with monitoring the ongoing residence of their customers and either terminating the banking relationship when a customer moves to New Zealand or alternatively registering in New Zealand;
- the FMA is therefore satisfied that the granting of the exemptions is desirable to promote the purposes of the Act, specifically by promoting the confident and informed participation of businesses, investors, and consumers in the financial markets and avoiding unnecessary compliance costs;
- given the limited application of the exemptions to simple debt products and to banks registered in specified overseas jurisdictions, and the further qualifications and requirements placed on those banks by the conditions, the exemptions are no 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*: 24 November 2016.  
This notice is administered by the Financial Markets Authority.