



## **Financial Markets Conduct (Securities Offered under Securities Act 1978 Exemptions Recognising Overseas Regimes) 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 (Securities Offered under Securities Act 1978 Exemptions Recognising Overseas Regimes) 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

**Regulations** means the Financial Markets Conduct Regulations 2014.

- (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 Exemptions

- (1) Every issuer (A) is exempted from the following provisions of the Act in respect of any security offered in reliance on an exemption notice specified in the Schedule:
- (a) subpart 4 of Part 3; and
  - (b) Part 4; and
  - (c) clauses 21(1), 22(1)(b) and (c), and 30(1) of Schedule 4.
- (2) The exemptions in subclause (1) also apply in respect of any security that—
- (a) varies the terms or conditions of, or renews, a security referred to in subclause (1); and
  - (b) was offered in reliance on the Securities Act (Renewals and Variations) Exemption Notice 2013 (or any earlier notice that, with or without modification, was replaced by or corresponded to that notice).
- (3) A is exempted from Part 7 of the Act if A would be treated as being an FMC reporting entity only by virtue of having issued the securities referred to in subclause (1) or (2).

## 6 Application

An exemption granted under clause 5(3) applies to the following accounting periods of the issuer (A):

- (a) an accounting period of A 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, but for the exemption in clause 5(3), be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

## Schedule

### Exemption notices

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#### Part 1

##### Class exemptions

Securities Act (Australian Issuers) Exemption Notice 2002

Securities Act (Australian Issuers—Transitional Provision) Exemption Notice 2013

Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice

Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2008

Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010

Securities Act (Great Britain Collective Investment Schemes) Exemption Notice 2004 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice

Securities Act (Overseas Companies) Exemption Notice 2013 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice

Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice

Securities Act (Overseas Listed Issuers) Exemption Notice 2002 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice

#### Part 2

##### Individual exemptions

Any individual exemption notice granting relief from section 37(1) of the Securities Act 1978 in recognition of requirements applying under an overseas regime.

In this schedule,—

**class exemption—**

- (a) means an exemption granted by the FMA or the Securities Commission under the Securities Act 1978 that was of general application and that applied to a class of persons or a class of transactions; but
- (b) does not include an exemption granted in relation to—
  - (i) a particular person or transaction; or
  - (ii) persons associated with, or transactions involving, a particular entity

**individual exemption** means an exemption granted by the FMA or the Securities Commission under the Securities Act 1978 that was not a class exemption.

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 exempts issuers from the ongoing disclosure requirements, governance requirements, financial reporting requirements, auditing requirements, and certain transitional requirements of the Financial Markets Conduct Act 2013 (the **Act**) in relation to securities previously offered in reliance on certain class exemptions or individual exemptions granted by notice under the Securities Act 1978 (the **relevant Securities Act 1978 exemptions**).

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 relevant Securities Act 1978 exemptions under which the securities were offered recognised the adequacy of the relevant overseas regimes that applied to those securities and, as such, the appropriateness of the relief from certain requirements under New Zealand’s securities laws. These considerations were assessed when each of the various notices was granted and the FMA (or the Securities Commission) was satisfied with the requirements applying under the overseas regimes, particularly given the circumstances under which those offers could be made; and
- investors in the securities invested on the basis of the regulatory regime in place at the time of the offer. It would now be a significant burden for issuers of these securities that have been previously offered under the Securities Act 1978 to New Zealand investors (in some cases many years ago) to comply with increased regulatory requirements under the Act; and
- given the comprehensive relief provided to these issuers under the relevant Securities Act 1978 exemptions and continued under this exemption, the requirement to notify New Zealand investors that the Act will apply after their securities transition to the new regime would be both misleading and confusing. Moreover, the burden on issuers to provide the notices would be both onerous and costly; and

- for these reasons, the FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically to avoid unnecessary compliance costs and to promote flexibility in the financial markets through the appropriate recognition of overseas regimes; and
- the exemptions are limited to securities offered under certain exemptions granted under the Securities Act 1978 that recognised the adequacy of overseas regimes. Further, the financial reporting and auditing relief is limited to entities that have financial reporting obligations under the Act only as a result of having issued securities to New Zealand investors that were offered under one of these exemptions. If the entity is required to do financial reporting for another reason, then those obligations will still apply. As such, the FMA is satisfied that 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*: 24 November 2016.

This notice is administered by the Financial Markets Authority.