



Financial Markets Conduct (Companies Being Wound Up—Debt Securities Allotted under Securities Act 1978) Exemption Notice 2017

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	1
4	Interpretation	1
5	Application of exemptions	2
6	Exemptions	2

Notice

1 Title

This notice is the Financial Markets Conduct (Companies Being Wound Up—Debt Securities Allotted under Securities Act 1978) Exemption Notice 2017.

2 Commencement

This notice comes into force on 26 May 2017.

3 Revocation

This notice is revoked on the close of 25 May 2022.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

company has the meaning given in section 2(1) of the Companies Act 1993

Regulations means the Financial Markets Conduct Regulations 2014

specified debt security means a debt security to which Part 2 of Schedule 4 of the Act applies

trust deed, in relation to a company, means a trust deed for 1 or more specified debt securities allotted by the company.

- (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 of exemptions

- (1) The exemptions in clause 6 apply to a company in respect of a specified debt security if the company has, before the close of 30 November 2016,—
- (a) had a liquidator appointed in respect of a liquidation under Part 16 of the Companies Act 1993; or
 - (b) had a receiver appointed in accordance with the company's trust deed in relation to the whole of the assets and undertaking of the company and the receiver has determined to realise all of those assets.
- (2) Despite subclause (1), the exemptions in clause 6 do not apply to a company on and from—
- (a) the date on which the liquidation of the company is completed; or
 - (b) the date on which the receivership of the company ends (unless the company has gone into liquidation, in which case the exemptions in clause 6 apply until the liquidation is completed).

6 Exemptions

A company to which this clause applies is exempted in respect of a specified debt security from—

- (a) subpart 4 of Part 3 of the Act; and
- (b) Part 4 of the Act.

Dated at Auckland this 19th day of May 2017.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 26 May 2017 and is revoked on 25 May 2022.

The notice applies to a company in respect of debt securities allotted by the company under the Securities Act 1978. It applies only to a company that, before the close of

30 November 2016, had started liquidation or receivership procedures (and, in the case of receivership, applies only if the receiver has determined to realise all of the company's assets). From 1 December 2016, certain requirements of the Financial Markets Conduct Act 2013 (the **Act**) have applied to companies in respect of debt securities, including ongoing disclosure, governance, and financial reporting requirements. This notice exempts the companies from the ongoing disclosure and governance obligations under the Act in respect of debt securities allotted by the companies under the Securities Act 1978.

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,—

- in general, the exemptions will reduce transitional and ongoing compliance costs by relieving companies of certain obligations that are unlikely to be of real benefit to affected investors where the company is in the process of being wound up; and
- appropriate reporting and governance arrangements are in place to allow for effective monitoring and to reduce governance risks because—
 - the financial reporting requirements of the Act continue to apply; and
 - for those companies in liquidation, the Companies Act 1993 applies in respect of the liquidation; and
 - for those companies in receivership, the Receiverships Act 1993 applies in respect of the receivership.

As such, the FMA is satisfied that—

- it is desirable to grant the exemption in order to promote the purposes of the Act, specifically to avoid unnecessary compliance costs and to promote flexibility in financial markets; and
- as the exemptions are available only to companies who started liquidation or receivership procedures before 1 December 2016, 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*: 25 May 2017.

This notice is administered by the Financial Markets Authority.