



## Financial Markets Conduct (Forward Foreign Exchange Contracts) Designation Notice 2017

Pursuant to section 562 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, having complied with the requirements set out in section 563 of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Forward Foreign Exchange Contracts) Designation Notice 2017.

#### 2 Commencement

This notice comes into force on 1 December 2017.

#### 3 Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**forward foreign exchange contract** means an agreement to—

- (a) buy or sell currency (whether New Zealand currency or not) at a rate of exchange determined on the date of the agreement; or
- (b) exchange one currency (whether New Zealand currency or not) for another (whether New Zealand currency or not) at a rate of exchange determined on the date of the agreement

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

**working day**, in relation to a forward foreign exchange contract,—

- (a) has the same meaning as in section 29 of the Interpretation Act 1999; but
  - (b) if a payment or delivery under the forward foreign exchange contract is made or received in an overseas jurisdiction, does not include a day that, under the law of that jurisdiction, is a public holiday or a bank holiday in that jurisdiction.
- (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.

#### 4 **Designation**

A forward foreign exchange contract to which this notice applies is declared not to be a financial product for the purposes of the Act.

#### 5 **Application**

This notice applies to a forward foreign exchange contract if,—

- (a) but for this notice, it would be a derivative under section 8(4)(b) of the Act solely because it is a forward; and
- (b) the forward delivery or payment of the relevant amount of currency is to be made no later than 3 working days after the time at which the agreement is entered into.

Dated at Auckland this 25th day of September 2017.

Nick Kynoch,  
General Counsel.

#### **Statement of reasons**

This notice comes into force on 1 December 2017. The notice declares that certain derivatives are not financial products for the purposes of the Financial Markets Conduct Act 2013 (the **Act**).

The notice applies to agreements to buy or sell currency (whether New Zealand or foreign currency) or to exchange one currency for another (whether New Zealand or foreign currency) that involve the delivery or payment of the relevant amount of currency within 3 working days (a **short duration forward foreign exchange contract**). The effect of short duration forward foreign exchange contracts not being financial products for the purposes of the Act is that—

- initial and ongoing disclosure and governance requirements under the Act do not apply; and
- an issuer is not, by reason only of the issue of those contracts, required to comply with financial reporting obligations under Part 7 of the Act as an FMC reporting entity (although financial reporting obligations may apply under other laws); and
- issuers who offer those contracts will not need to obtain a derivatives issuer licence as a result of those offers; and
- the requirements relating to the handling of derivatives investor money and derivatives investor property by derivatives issuers will not apply.

The Financial Markets Authority (the **FMA**), having complied with the requirements set out in section 563 of the Act, considers that it is appropriate to grant the designation because—

- the notice is necessary or desirable to promote one of the main purposes of the Act, namely to promote the confident and informed participation of businesses, investors, and consumers in the financial markets. It will clarify for businesses that short duration forward foreign exchange contracts are not regulated as financial products:
- the notice is necessary or desirable to promote one of the main purposes of the Act, namely to promote and facilitate the development of fair, efficient, and transparent financial markets as follows:
  - regulation of short duration forward foreign exchange contracts as derivatives is unlikely to contribute to transparency. Customers are likely to understand simple exchanges of currency and be able to assess the costs of using that service and dealing with the relevant issuer. Requiring disclosure as a derivative would be likely to confuse people as to the substance of the product:
  - issuers who provide short duration forward foreign exchange contracts will still be subject to the fair dealing provisions in Part 2 of the Act because providing forward foreign exchange contracts is still a financial service (*see* section 5(1)(l) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008):
- the notice is necessary or desirable to promote one of the additional purposes of the Act, namely to avoid unnecessary compliance costs. The effect of the designation will be that financial market obligations (and resulting compliance costs) such as licensing requirements will not apply to issuers in respect of short duration forward foreign exchange contracts because those contracts will no longer be regulated products offered under a regulated offer. This will relieve issuers from incurring costs that would outweigh any benefits to customers given the simple nature of the products, as compared to other derivatives:
- having had regard to the economic substance of short duration forward foreign exchange contracts, the FMA does not consider that short duration forward for-

eign exchange contracts are financial products in economic substance because—

- short duration forward foreign exchange contracts do not satisfy the conditions that an agreement must satisfy in order to be a derivative under section 8(4)(a) of the Act, as they settle within the prescribed time for the purposes of that paragraph; and
- short duration forward foreign exchange contracts are included as derivatives on the basis that they are forwards for the purposes of section 8(4)(b) of the Act. Although the value of the currencies involved may change over that period, the purpose of the settlement delay is not intended to give the parties an exposure or create an offset against the currency, rather it is to give the parties enough time to process the transaction.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 28 September 2017.

This notice is administered by the Financial Markets Authority.