

**Reprint
as at 1 March 2016**



**Deposit Takers (Credit Ratings Minimum Threshold)
Exemption Notice 2009
(SR 2009/209)**

Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2009: revoked, on the close of 29 February 2016, by clause 10 of the Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2016 (LI 2016/3).

Pursuant to section 157G of the Reserve Bank of New Zealand Act 1989, the Reserve Bank of New Zealand gives the following notice (to which is appended a statement of reasons of the Bank).

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Notice

1 Title

This notice is the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2009.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint. Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Reserve Bank of New Zealand.

3 Expiry

This notice expires on the close of 1 March 2016.

Clause 3: amended, on 26 November 2012, by clause 3 of the Deposit Takers (Extension of Terms) Exemption Notice 2012 (SR 2012/344).

4 Application

This notice applies to—

- (a) the exemption year beginning on 1 March 2010; and
- (b) each subsequent exemption year up to and including the exemption year beginning on 1 March 2015.

Clause 4: replaced, on 26 November 2012, by clause 3 of the Deposit Takers (Extension of Terms) Exemption Notice 2012 (SR 2012/344).

Clause 4(a): amended, on 14 March 2014, by clause 4 of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

Clause 4(b): amended, on 14 March 2014, by clause 4 of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

5 Interpretation

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

Act means the Reserve Bank of New Zealand Act 1989

advertisement has the same meaning as in section 2A of the Securities Act 1978

exemption year means a period of 12 months beginning on 1 March and ending with the close of the last day of February

generally accepted accounting practice—

- (a) has the same meaning as in section 8 of the Financial Reporting Act 2013 (unless paragraph (b) applies); or
- (b) means generally accepted accounting practice within the meaning of section 3 of the Financial Reporting Act 1993 if the deposit taker is required to prepare financial statements in accordance with that practice

investment statement has the same meaning as in section 38C of the Securities Act 1978

liabilities does not include contingent liabilities

measurement date, in respect of an exemption year, means 1 October of the previous exemption year

notification date, in respect of an exemption year, means the last working day of the previous exemption year

registered prospectus has the same meaning as in section 2(1) of the Securities Act 1978.

- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

- (3) The example used in clause 6(3) is only illustrative of that provision and does not limit it. If the example and that provision are inconsistent, the provision prevails.

Clause 5(1) **exemption year**: inserted, on 14 March 2014, by clause 5(1) of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

Clause 5(1) **generally accepted accounting practice**: replaced, on 14 March 2014, by clause 5(2) of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

Clause 5(1) **measurement date**: replaced, on 26 November 2012, by clause 3 of the Deposit Takers (Extension of Terms) Exemption Notice 2012 (SR 2012/344).

Clause 5(1) **measurement date**: amended, on 14 March 2014, by clause 5(3) of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

Clause 5(1) **notification date**: replaced, on 26 November 2012, by clause 3 of the Deposit Takers (Extension of Terms) Exemption Notice 2012 (SR 2012/344).

Clause 5(1) **notification date**: amended, on 14 March 2014, by clause 5(4) of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

Clause 5(1) **year**: revoked, on 14 March 2014, by clause 5(5) of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

Clause 5(3): amended, on 14 March 2014, by clause 5(6) of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

6 Exemption from section 157I of Act

- (1) Every deposit taker that commences business on or after the measurement date for an exemption year is exempted from section 157I of the Act until the end of that exemption year if, as soon as practicable after it commences business, the deposit taker provides the Bank with a written statement, signed by all directors of the deposit taker, setting out the following:
- (a) the date on which the deposit taker commenced business;
 - (b) a statement that the deposit taker will be operating on the basis of the exemption until the end of that exemption year.
- (2) Every deposit taker other than a deposit taker described in subclause (1) is exempted from section 157I of the Act in respect of an exemption year if—
- (a) the average consolidated liabilities of the borrowing group as at the measurement date for that exemption year, calculated in accordance with subclause (3), are less than \$20 million; and
 - (b) on or before the notification date for that exemption year, the deposit taker provides the Bank with a written statement, signed by all directors of the deposit taker, setting out the following:
 - (i) a statement that, according to the deposit taker's assessment, it meets the requirements of the exemption (including the requirement in paragraph (a));
 - (ii) the figures that the deposit taker relies on in support of that assessment:

- (iii) a statement that the deposit taker will be operating on the basis of the exemption for that exemption year.
- (3) The average consolidated liabilities of the borrowing group as at the measurement date must be calculated, in accordance with all measurement and recognition requirements under generally accepted accounting practice, using the following formula:

$$\frac{\Sigma x}{n}$$

where—

Σx is the sum of the consolidated liabilities of the borrowing group (but excluding any liabilities owed by one member of the borrowing group to another) as at the end of every month for the 12 months preceding the measurement date

n is,—

- (a) if the deposit taker commenced business earlier than 12 months before the measurement date, 12; or
- (b) if the deposit taker commenced business during the period of 12 months ending immediately before the measurement date, the number of calendar months in that period, including the month in which the deposit taker commenced business.

Example

The consolidated liabilities of deposit taker A's borrowing group (excluding liabilities between members of the borrowing group), as at the end of each of the 12 months preceding 1 October 2013, are—

30 September 2013	\$24 million
31 August 2013	\$23.5 million
31 July 2013	\$22 million
30 June 2013	\$20 million
31 May 2013	\$21 million
30 April 2013	\$19 million
31 March 2013	\$20 million
28 February 2013	\$18 million
31 January 2013	\$17 million
31 December 2012	\$18 million
30 November 2012	\$19 million
31 October 2012	\$18 million
<u>24+23.5+22+20+21+19+20+18+17+18+19+18</u>	
12	= 19.9583

The average consolidated liabilities of deposit taker A's borrowing group as at the measurement date for the exemption year 1 March 2014 to 28 February 2015 are therefore less than \$20 million for the purposes of subclause (2)(a).

- (4) If a deposit taker does not have any guaranteeing subsidiaries, the reference in this clause to the average consolidated liabilities of the borrowing group must be treated as a reference to the average liabilities of the deposit taker.
- (5) In this clause, **commenced business** means commenced business as a deposit taker.

Clause 6: replaced, on 14 March 2014, by clause 6 of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

7 Conditions of exemption in clause 6

The exemption in clause 6 is subject to the conditions that—

- (a) the deposit taker must prominently state in every registered prospectus, investment statement, and advertisement relating to an offer of its debt securities that the creditworthiness of the deposit taker is not rated by a rating agency approved by the Bank under section 157J of the Act; and
- (b) the deposit taker must, in every registered prospectus, and every investment statement under the section headed “What are my risks?”, relating to an offer of its debt securities, prominently—
- (i) disclose that it is not rated because it is operating under an exemption from the requirement under the Act to have a credit rating; and
 - (ii) describe the general nature and effect of the exemption; and
 - (iii) disclose that the exemption applies because the deposit taker and its borrowing group has liabilities of less than \$20 million or because the deposit taker has only recently commenced business as a deposit taker (as applicable), making it unduly onerous and burdensome to comply with the requirement under the Act to have a credit rating; and
- (c) the deposit taker must not disclose, in any registered prospectus, investment statement, or advertisement relating to an offer of its debt securities, an assessment of its creditworthiness that is in substance a credit rating (whether called a rating, grading, scoring, ranking, or by any other name) issued by an agency that is not approved by the Bank under section 157J of the Act.

Clause 7(b)(iii): amended, on 14 March 2014, by clause 7 of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71).

Dated at Wellington this 29th day of July 2009.

Grant Spencer,
Deputy Governor.

Statement of reasons

Note: the following statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

- Deposit Takers (Extension of Terms) Exemption Notice 2012
- Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 1 March 2013. It exempts entities that are deposit takers for the purposes of Part 5D of the Reserve Bank of New Zealand Act 1989 (the **Act**) from the requirement to have a credit rating under section 157I of the Act if—

- the consolidated liabilities of the borrowing group, or in the case of a deposit taker that is not part of a borrowing group, the liabilities of the deposit taker, are less than \$20 million (measured as an average over a specified 12-month period); and
- the deposit taker meets certain requirements concerning notification to the Reserve Bank of New Zealand of its intention to operate on the basis of the exemption.

The exemption is subject to conditions.

The Reserve Bank of New Zealand, after taking into account the principles set out in section 157F of the Act, considers it is appropriate to grant the exemption because—

- the Bank is satisfied that the exemption is consistent with the maintenance of a sound and efficient financial system in that the liabilities of the exempted entities represent a very small percentage of the total liabilities of the deposit taking sector:
- the additional direct and indirect costs of obtaining a credit rating are unduly onerous and burdensome when compared with the balance sheet size and average profitability of the exempted deposit takers:
- the benefits of the exemption are that unnecessary compliance costs are avoided and potential barriers to entry are removed, therefore maintaining competition in the deposit taking sector. These benefits outweigh the costs of inconsistent treatment between small and larger deposit takers and the loss of information to investors:
- the conditions of the exemption imposing disclosure requirements on exempted deposit takers manage the risk posed by the absence of a credit rating, including any risk of the public being misled by the disclosure of ratings from a non-approved agency, and therefore the extent of the exemption is not broader than what is reasonably necessary to address the matters that gave rise to the exemption.

Note: the preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

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1 March 2016

**Deposit Takers (Credit Ratings Minimum Threshold)
Exemption Notice 2009**

Statement of reasons

- Deposit Takers (Extension of Terms) Exemption Notice 2012
- Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 6 August 2009.

Reprints notes

1 *General*

This is a reprint of the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2009 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2016 (LI 2016/3): clause 10

Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2014 (LI 2014/71)

Deposit Takers (Extension of Terms) Exemption Notice 2012 (SR 2012/344): clause 3