

**Reprint
as at 1 December 2016**



**Securities Act (Banks' Regulatory Capital) Exemption
Notice 2014
(LI 2014/72)**

Securities Act (Banks' Regulatory Capital) Exemption Notice 2014: revoked, on the close of 30 November 2016, by clause 3.

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority, being satisfied of the matters set out in section 70B(2) of that Act, gives the following notice.

Contents

	Page
1 Title	1
2 Commencement	2
3 Revocation of this notice	2
4 Interpretation	2
5 Exemptions from sections 37 and 37A of the Securities Act 1978 for specified equity securities	4
6 Conditions of exemption in clause 5	4
7 Exemption from regulation 26 of the Securities Regulations 2009	8
8 Conditions of exemption in clause 7	8
Schedule	9
FMA warning statement	

Notice

1 Title

This notice is the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014.

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 Financial Markets Authority.

2 Commencement

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

3 Revocation of this notice

This notice is revoked on the close of 30 November 2016.

4 Interpretation

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

Act means the Securities Act 1978

approved or nominated rating agency means a rating agency approved or nominated by the Reserve Bank of New Zealand under section 80 of the Reserve Bank of New Zealand Act 1989

APRA means the Australian Prudential Regulation Authority

APRA Prudential Standard APS 110 means Prudential Standard APS 110 “Capital Adequacy” issued by APRA in January 2013, as amended or replaced from time to time

APRA Prudential Standard APS 111 means Prudential Standard APS 111 “Capital Adequacy: Measurement of Capital” issued by APRA in January 2013, as amended or replaced from time to time

APRA Prudential Standard APS 330 means Prudential Standard APS 330 “Public Disclosure” issued by APRA in June 2013, as amended or replaced from time to time

APS 330 disclosures means the capital disclosures in Attachments A and B of APRA Prudential Standard APS 330

bank means a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989

buffer ratio means the buffer ratio, excluding any counter-cyclical buffer, prescribed in document BS2A or BS2B (as applicable)

continuous disclosure information means information relating to a security and its issuer that is required to be disclosed under a specified securities market’s continuous disclosure rules

convertible security means any security issued by a bank the terms and conditions of which allow the security to be converted into, or exchanged for, an equity security

document BS1 means the document BS1 “Statement of Principles—Bank Registration and Supervision” of the RBNZ Banking Supervision Handbook (Revised edition), and includes any document that amends or replaces it

document BS2A means the document BS2A “Capital Adequacy Framework (Standardised Approach)” of the RBNZ Banking Supervision Handbook (Revised edition), and includes any document that amends or replaces it

document BS2B means the document BS2B “Capital Adequacy Framework (Internal Models Based Approach)” of the RBNZ Banking Supervision Handbook (Revised edition), and includes any document that amends or replaces it

minimum prescribed buffer ratio means the minimum buffer ratio prescribed in the bank’s conditions of registration

parent entity—

- (a) has the meaning given to it in document BS2A or BS2B (as applicable); or
- (b) means an entity that is a parent entity for the purposes of APRA Prudential Standard APS 111 (including a non-operating holding company as that term is defined in the Banking Act 1959 (Aust))

prudential standards means—

- (a) the rules set out in the RBNZ Banking Supervision Handbook; or
- (b) the APRA Prudential Standards made under section 11AF of the Banking Act 1959 (Aust), as amended or replaced from time to time

RBNZ Banking Supervision Handbook means the documents and Orders in Council that apply from time to time to the Reserve Bank of New Zealand’s registration of banks and prudential supervision of banks under Part 5 of the Reserve Bank of New Zealand Act 1989

Regulations means the Securities Regulations 2009

regulatory capital means capital that meets the regulatory capital requirements under—

- (a) document BS2A; or
- (b) document BS2B; or
- (c) both document BS2A and APRA Prudential Standard APS 111; or
- (d) both document BS2B and APRA Prudential Standard APS 111

regulatory capital instrument means a convertible security that on issuance is treated, by the Reserve Bank of New Zealand or APRA, as regulatory capital

relevant convertible security means the convertible security that was converted into, or exchanged for, the specified equity security

risk-weighted assets means—

- (a) risk-weighted assets as that term is defined in document BS2A; or
- (b) risk-weighted assets as that term is defined in document BS2B; or
- (c) total risk-weighted assets calculated in accordance with the applicable APRA prudential standards

specified equity security means an equity security—

- (a) into which a regulatory capital instrument is converted; or
- (b) for which a regulatory capital instrument is exchanged

specified securities market means any securities market operated by—

- (a) NZX Limited; or
 - (b) ASX Limited (being a company incorporated in Australia).
- (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 that Act.
- (3) Any term or expression that is defined in the Regulations and used in this notice, but not defined in this notice or in the Act, has the same meaning as in those regulations.

5 Exemptions from sections 37 and 37A of the Securities Act 1978 for specified equity securities

A person is exempt from the requirements of sections 37 and 37A of the Act in respect of a specified equity security if the conditions in clause 6 are complied with.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the following conditions:
- (a) the issuer of the specified equity security must be—
 - (i) the same as the issuer of the relevant convertible security; or
 - (ii) the parent entity of the issuer of the relevant convertible security; and
 - (b) the issuer of the relevant convertible security or its parent entity must have had equity securities quoted on a specified securities market at the time of the offer and allotment of the relevant convertible security; and
 - (c) the relevant convertible security must have been quoted on a specified securities market—
 - (i) at the time of its allotment; or
 - (ii) if it was the subject of a complete application for quotation at the time of its offer, after its allotment; and
 - (d) the relevant convertible security must have been issued under an investment statement that includes the following:
 - (i) the following statement displayed prominently on its front cover:
“This investment is riskier than a bank deposit. The securities are not call deposits or term deposits with [the bank] and may not be suitable for many investors.”; and

- (ii) immediately after the information required under clause 1 of Schedule 13 of the Regulations, the warning statement set out in Part 1 of the Schedule of this notice; and
- (iii) a description of the issuer of the relevant convertible security and its parent entity at the time of the offer; and
- (iv) an explanation that any specified equity securities may be issued by the parent entity of the issuer of the relevant convertible security at the time of conversion or exchange (which may have changed from the parent entity at the time of the offer) and an explanation of the effects of such a change; and
- (v) a description of the specified equity securities at the time of the offer; and
- (vi) a statement that the equity securities of the issuer of the relevant convertible security or its parent entity will be quoted on a specified securities market at the time of offer and that it is intended that they will continue to be quoted (including when the specified equity securities are allotted); and
- (vii) a statement advising where further information relating to the issuer of the specified equity securities can be obtained, including—
 - (A) if the issuer is a New Zealand company, the issuer's latest disclosure statement and financial statements; and
 - (B) if the issuer is an Australian company, the issuer's latest annual report, APS 330 disclosures, and financial statements; and
- (viii) a statement to the effect that a change in circumstances occurring between the date of the allotment of the convertible security and the conversion or exchange date of that security could materially affect the specified equity securities (including their price); and
- (ix) a statement that continuous disclosure information for the relevant convertible security will be disclosed on the specified securities market on which that security is quoted; and
- (x) a statement that continuous disclosure information for equity securities of the same class as the specified equity security will be disclosed on the specified securities market on which those securities are quoted; and
- (xi) a statement describing the principal risks assumed by holders of the convertible security; and
- (xii) a statement to the effect that holders of the convertible security have no right to elect whether to convert or exchange; and
- (xiii) a statement that specified equity securities will or may be allotted even if, at the time of allotment, there are adverse circumstances

- that make the investment statement false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to those circumstances; and
- (xiv) an explanation of the steps (specified in the issuer's conditions of registration as a bank) that the Reserve Bank of New Zealand is likely to require the issuer of the relevant convertible security to take if the issuer's buffer ratio falls below the minimum prescribed buffer ratio; and
 - (xv) a statement that if the buffer ratio of the issuer of the convertible security falls below the minimum prescribed buffer ratio, the issuer will disclose that fact on the specified securities market on which the relevant convertible security is quoted; and
 - (xvi) if the issuer has obtained a rating for the relevant convertible security from an approved or nominated rating agency, details of the rating, including a statement that highlights and explains the difference between the rating of the issuer of the convertible security and the rating of the convertible security; and
 - (xvii) if the issuer has not obtained a rating for the relevant convertible security from an approved or nominated rating agency, a statement highlighting that no rating has been obtained and an explanation of the reasons why no rating has been obtained; and
 - (xviii) if the terms of the convertible security allow the issuer to vary the terms of conversion or exchange,—
 - (A) a clear statement that the issuer may vary the terms of conversion or exchange; and
 - (B) a clear statement of what steps the issuer will take to inform holders of convertible securities of any variation to the terms of conversion or exchange; and
 - (xix) a statement to the effect that the issuer of the relevant convertible security is relying on this notice together with a summary of the conditions set out in paragraphs (e) to (i) and a statement to the effect that those conditions apply for the benefit of subscribers for the relevant convertible security and any subsequent holder of the security; and
- (e) the relevant convertible security must remain quoted on the specified securities market for so long as it is outstanding, unless it is delisted by—
 - (i) a statutory manager, an administrator, or a liquidator; or
 - (ii) the operator of the specified securities market; and
 - (f) unless the equity securities of the issuer of the specified equity security are delisted by a statutory manager, an administrator, a liquidator, or the operator of the specified securities market, the specified equity security

- or equity securities of the same class must be quoted on a specified securities market at the time of the allotment of the specified equity security; and
- (g) the continuous disclosure information for the relevant convertible security and the specified equity security must be notified to the operator of the specified securities market on which the relevant security is quoted within the time required by that market's continuous disclosure rules (for the purpose of that information being made available to participants in that market), unless the relevant security has been delisted; and
 - (h) if either the relevant convertible security or the specified equity security has been delisted, for so long as the relevant convertible security is outstanding—
 - (i) the continuous disclosure information for the delisted security that would have been required to have been disclosed if the security had not been delisted must be notified to the operator of the specified securities market for the listed security within the time required by that market's continuous disclosure rules (for the purpose of that information being made available to participants in that market); and
 - (ii) a link to that information must be published on the Internet site of the issuer of the delisted security; and
 - (i) if both the relevant convertible security and the specified equity security have been delisted, a link to the continuous disclosure information for both securities (which would have been required to have been disclosed if the securities had not been delisted) must be published on the Internet sites of the issuers of both securities for so long as the relevant convertible security is outstanding.
- (2) The exemption in clause 5 is subject to the further condition that the terms of the relevant convertible security must include a requirement (being a term that continues to apply after this notice is revoked) that the issuer of the relevant convertible security—
- (a) will comply with the condition in subclause (1)(e); and
 - (b) if it is also the issuer of the specified equity security, will comply with the conditions in subclause (1)(f) to (i); and
 - (c) if it is not the issuer of the specified equity security,—
 - (i) will use reasonable endeavours to ensure that the issuer of the specified equity security complies with the condition in subclause (1)(f); and
 - (ii) will comply with the conditions in subclause (1)(g) to (i) to the extent that the conditions relate to matters within the control of the issuer of the relevant convertible security; and

- (iii) will use reasonable endeavours to ensure that the issuer of the specified equity security complies with the conditions in subclause (1)(g) to (i) to the extent that the conditions relate to matters within the control of the issuer of the specified equity security.
- (3) Subclauses (1)(d)(xix) and (2) do not apply if the date as at which the investment statement was prepared is on or before 18 December 2014.

Clause 6(1)(d)(xix): inserted, on 19 December 2014, by clause 4(1) of the Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014 (LI 2014/400).

Clause 6(1)(g): replaced, on 19 December 2014, by clause 4(2) of the Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014 (LI 2014/400).

Clause 6(1)(h)(i): replaced, on 19 December 2014, by clause 4(3) of the Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014 (LI 2014/400).

Clause 6(2): inserted, on 19 December 2014, by clause 4(4) of the Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014 (LI 2014/400).

Clause 6(3): inserted, on 19 December 2014, by clause 4(4) of the Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014 (LI 2014/400).

7 Exemption from regulation 26 of the Securities Regulations 2009

A person who complies with the conditions set out in clause 8 is exempted from regulation 26 of the Regulations with respect to any advertisement for convertible securities or specified equity securities.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject to the conditions that every advertisement for convertible securities or specified equity securities must—
 - (a) comply with regulation 26 of the Regulations as if—
 - (i) that regulation applied to the issuer of the security, the subsidiaries of the issuer, the issuer's parent entity, and the subsidiaries of the parent entity; and
 - (ii) references in that regulation to “registered prospectus” include the issuer's most recent disclosure statement or, if the issuer is an Australian registered company, the most recent of the following documents published on the specified securities market:
 - (A) APS 330 disclosures:
 - (B) financial statements:
 - (C) profit or results announcements; and
 - (iii) references in that regulation to “generally accepted accounting practice” include, in the case of an issuer that is an Australian registered company, Australian equivalents to International Financial Reporting Standards; and
 - (b) if the advertisement states the amount of risk-weighted assets, cash, or other liquid assets of any person, state the amount of those assets as they appeared in the most recent disclosure statement for the issuer or, if the

issuer is an Australian registered company, the most recent of the following documents published on the specified securities market:

- (i) APS 330 disclosures;
 - (ii) financial statements;
 - (iii) profit or results announcements; and
- (c) if the advertisement states the amount of total assets, or net assets, of the issuer of the specified equity securities, contain a statement to the effect that the amount of total assets, or net assets, of the issuer of the specified equity securities is likely to be different at the time the specified equity securities are allotted.
- (2) To avoid doubt, subclause (1)(a) is subject to subclause (1)(b).

Schedule FMA warning statement

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Part 1 FMA warning statement

This investment is riskier than a bank deposit. These [*convertible securities*] are complex instruments and might not be suitable for many investors.

These [*convertible securities*] carry similar risks to shares in [*the bank*] but do not have the same opportunity for growth as shares. The risks associated with these [*securities*] could result in the loss of your investment and any associated income.

The [*securities*] are not guaranteed by [*the bank*] or any other person.

If [*the bank*] or [*its parent entity*] experiences severe financial difficulty, the [*convertible securities*] may be [*converted to/exchanged for*] ordinary shares of [*the bank/parent entity*] or written off.

You will not have any choice as to whether a [*conversion/exchange*] or write-off occurs, and you may not have a chance to sell your [*convertible securities*] before the [*conversion/exchange*] or write-off.

The value of the [*specified equity securities*] that you receive if this occurs is likely to be less than the amount you invest in these [*convertible securities*].

If [*conversion/exchange*] is required but is not possible, the [*convertible securities*] will be immediately written off in part or in whole and you will lose your investment.

The table shows how these [*securities*] would rank upon a winding-up of [*the bank*] if [*conversion/exchange*] does not occur and the [*security*] is not written off.

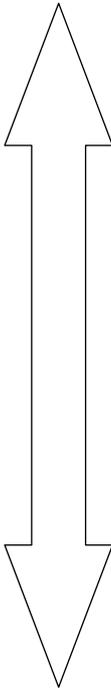
[*Insert table setting out the higher ranking, equal ranking, and lower ranking obligations of the bank, an example of which is set out in Part 2 of this schedule*]

We recommend that you consult an independent financial adviser before deciding whether or not to invest and that you make certain that you are comfortable that this investment is suitable for your needs.

Further information about key risks of this investment can be found on page(s) [*specify page or pages*] of this investment statement.

Part 2

Example of table setting out the higher ranking, equal ranking, and lower ranking obligations of banks

Higher ranking/ earlier priority/ first to be repaid	Examples	Examples of existing [<i>ABC Bank</i>] securities	
	Higher-ranking obligations	<p>Secured debt and creditors preferred by law</p> <p>Unsubordinated unsecured debt</p> <p>Term subordinated debt</p> <p>Perpetual subordinated unsecured debt</p>	<p>Secured creditors such as money held with clearing systems and covered bond programmes. Liabilities given preference by law including employee entitlements and taxes.</p> <p>Deposit accounts, senior bonds, and trade and general creditors.</p> <p>[<i>ABC Bank</i>] subordinated notes issued in 2005.</p> <p>Bank perpetual capital floating rate notes issued in 2003.</p>
	Equal ranking obligations	Preference shares and other equally ranked instruments	Convertible securities and preference shares issued in 2007.
	Lower-ranking obligations	Ordinary shares	Ordinary shares in [<i>ABC Bank</i>].
Lower ranking/ later priority/ last to be repaid			

Dated at Wellington this 11th day of March 2014.

Liam Mason,
Head of Legal, Financial Markets Authority

Statement of reasons

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

- **Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014**

This notice, which comes into force on the day after the date of its notification in the *Gazette* and is revoked at the close of 30 November 2016, exempts New Zealand-registered banks and their parent companies from certain provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **Regulations**) for convertible securities and equity securities issued on conversion of a convertible security.

This notice provides exemptions from the requirements for registered banks and their parent companies to register a prospectus and provide a separate investment statement for the new equity securities that are to be allotted on conversion of convertible securities if they—

- comply with the relevant prudential standards as set by the Reserve Bank of New Zealand and the Australian Prudential Regulation Authority; and
- offer the convertible securities in an investment statement that includes additional disclosures and warning statements about the high-risk nature of the instruments and the relevant conversion features.

The relevant prudential standards require that additional tier 1 and tier 2 capital instruments issued by registered banks have “loss absorbency” terms that require write-off of the instrument or conversion of the instrument into equity securities of the registered bank (or the bank’s ultimate parent company) in certain prescribed “non-viability” or “loss-absorption” circumstances. These requirements reflect the new global regulatory standards for bank capital adequacy and liquidity released by the Basel Committee on Banking Supervision in December 2010 (known as “Basel III”).

The exemptions and conditions are similar to those in the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2013 (the **existing ROCS notice**). However, banks are unable to rely on that notice for technical reasons.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant these exemptions because,—

- where an offer of convertible securities is made in an offer document containing relevant information about the securities that will be allotted on conversion, so long as the issuer provides investors with certain updated information prior to the allotment of the converted equity securities, the issuer does not need to register a separate prospectus, or provide a separate investment statement, for the allotment of the converted equity securities, as this will duplicate information already provided or readily available to investors. Therefore, the standard disclosure requirements will not provide the most relevant information for investors:

- for mandatory convertible securities, the investment decision is made at the time the convertible securities are offered and no further investment decision is required at the time of conversion:
- the existing ROCS notice recognises this policy but registered banks are unable to rely on the existing ROCS notice for technical reasons and FMA considers a separate exemption notice is appropriate:
- the convertible securities will be listed on the NZX debt securities market and, as a result, ongoing material information on the convertible securities will be available to investors (including information relating to the converted equity securities and any events leading to conversion):
- the exemptions only apply to registered banks issuing regulatory capital instruments in accordance with the requirements set by the Reserve Bank of New Zealand and the Australian Prudential Regulation Authority. As a result, FMA considers that the exemptions are not broader than is reasonably necessary to address the matters that give rise to them:
- in the case of exemptions from the requirement in regulation 26 of the Regulations to allow an advertisement to state the amount of assets of the issuer, the exemptions recognise that the issuer of the convertible security may be different from the issuer of specified equity security and that information about the asset position of the issuer of specified equity security may be relevant to investors in the convertible security:
- the conditions of exemption ensure that potential investors receive relevant up-front and ongoing information on the convertible securities and the converted equity securities. These alternative disclosure requirements will ensure that investors receive more appropriate information to make informed investment decisions. The exemptions should, therefore, not cause significant detriment to the holders of convertible securities when the convertible securities are converted and the new equity securities are allotted.

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

- **Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 13 March 2014.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 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*

Securities Act (Banks' Regulatory Capital) Exemption Amendment Notice 2014 (LI 2014/400)

Securities Act (Banks' Regulatory Capital) Exemption Notice 2014 (LI 2014/72): clause 3