

**Reprint
as at 1 February 2017**



**Financial Markets Conduct (Overseas Registered Banks
and Licensed Insurers) Exemption Notice 2015
(LI 2015/122)**

Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015: revoked, on the close of 31 January 2017, by clause 8 of the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2016 (LI 2016/245).

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 (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015.

2 Commencement

This notice comes into force on 29 May 2015.

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.

3 Revocation

This notice is revoked on the close of 28 May 2020.

4 Application

An exemption granted by this notice applies to the following accounting periods of an exempt issuer:

- (a) an accounting period of the issuer 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 be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approved auditor, in relation to an exempt issuer, means an accountant who is qualified under the law of the home jurisdiction to give an opinion as to whether financial statements or group financial statements comply with an overseas GAAP required or permitted in that jurisdiction

exempt issuer has the meaning set out in subclause (2)

home jurisdiction, in relation to—

- (a) a licensed insurer, has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010; and
- (b) a registered bank, has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

overseas GAAP, in relation to an exempt issuer, means generally accepted accounting practice or principles that is or are required or permitted in the home jurisdiction

overseas person, in relation to—

- (a) a licensed insurer, has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010; and
- (b) a registered bank, has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

Regulations means the Financial Markets Conduct Regulations 2014.

- (2) In this notice, an entity is an **exempt issuer** if it is a licensed insurer or a registered bank that is an overseas person.

- (3) 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.

6 Exemptions

Every exempt issuer is exempted from—

- (a) sections 455(1)(c), 461B, 461D, and 461G of the Act; and
- (b) sections 460, 461, and 461A of the Act to the extent that those sections require the exempt issuer to ensure that its financial statements, or group financial statements, comply with generally accepted accounting practice.

7 Conditions

The exemptions in clause 6 are subject to the conditions that—

- (a) the exempt issuer, in relation to the financial statements or group financial statements prepared under sections 460 to 461A of the Act, must comply with the law and regulatory requirements of the home jurisdiction that relate to the preparation, content, and audit of those statements and, in particular, the exempt issuer must ensure that—
 - (i) those statements comply with overseas GAAP; and
 - (ii) those statements are audited by an approved auditor; and
 - (iii) an audit report is prepared by the approved auditor in respect of that audit; and
- (b) the exempt issuer must ensure that there are kept at all times accounting records that will enable the issuer to ensure that—
 - (i) the financial statements or group financial statements prepared under sections 460 to 461A of the Act comply with paragraph (a)(i); and
 - (ii) the New Zealand business financial statements under paragraph (c) or (d) (if any) comply with generally accepted accounting practice; and
- (c) if the exempt issuer has 1 or more subsidiaries, the group financial statements of the exempt issuer must, when those statements are delivered for lodgement under section 461H of the Act, be accompanied by financial statements for the group's New Zealand business (if any) prepared in accordance with generally accepted accounting practice; and
- (d) if the exempt issuer has no subsidiaries, the financial statements of the exempt issuer must, when those statements are delivered for lodgement under section 461H of the Act, be accompanied by financial statements for the exempt issuer's New Zealand business (if any) prepared in accordance with generally accepted accounting practice; and

- (e) the financial statements of the New Zealand business (if any) must be audited by a qualified auditor or an approved auditor; and
- (f) a copy of the auditor's report on the financial statements of the New Zealand business (if any) must accompany the financial statements or group financial statements of the exempt issuer when those statements are delivered for lodgement under section 461H of the Act; and
- (g) the financial statements or group financial statements that are delivered to the Registrar for lodgement under section 461H of the Act are—
 - (i) accompanied by written notification to the Registrar that the exempt issuer is relying on this notice in respect of the accounting period to which the statements relate; and
 - (ii) in English or accompanied by an accurate English translation; and
- (h) a governmental body for securities regulation in the home jurisdiction is a full signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

Dated at Wellington this 25th day of May 2015.

Liam Mason,
General Counsel.

Statement of reasons

This notice comes into force on 29 May 2015 and is revoked on the close of 28 May 2020.

This notice applies to overseas banks that are registered and overseas insurers that are licensed by the Reserve Bank of New Zealand (the **Reserve Bank**).

This notice exempts overseas registered banks and overseas licensed insurers from the following provisions of the Financial Markets Conduct Act 2013 (the **Act**):

- section 455(1)(c) (which requires an FMC reporting entity to keep accounting records that will enable it to ensure that its financial statements comply with generally accepted accounting practice);
- sections 460 to 461A of the Act to the extent that those sections require the financial statements that are prepared to comply with New Zealand generally accepted accounting practice (**NZ GAAP**);
- section 461B of the Act (which relates to financial statements for the New Zealand business);

- sections 461D and 461G (which relate to auditing).

The exemptions are subject to a number of conditions. These include requirements that—

- the entities prepare financial statements that comply with the laws and regulatory requirements of their home jurisdiction:
- the home jurisdiction, through a securities regulator in that jurisdiction, be a full signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information. This would allow the Financial Markets Authority to seek the assistance of the equivalent authority in the home jurisdiction should enforcement issues arise.

The main effects of the exemptions for entities relying on them are as follows:

- the financial statements that are prepared will comply with the overseas generally accepted accounting practice (**overseas GAAP**) that is or are required or permitted in the home jurisdiction rather than NZ GAAP:
- those financial statements will be audited by an overseas approved auditor who is qualified under the laws of the home jurisdiction to give an opinion as to whether the financial statements comply with the relevant overseas GAAP:
- if the entity has a New Zealand business, those financial statements will be accompanied by separate financial statements for the New Zealand business that comply with NZ GAAP:
- those New Zealand business financial statements must be audited by a qualified auditor (as that term is defined in the Act) or an overseas approved auditor.

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 Reserve Bank assesses the financial reporting and audit requirements of the home jurisdiction of any overseas bank or insurer seeking registration or licensing in New Zealand. In these circumstances, the FMA is satisfied that the financial reporting and audit requirements of the home jurisdiction will provide sufficient and appropriate information to the Reserve Bank for it to undertake its prudential regulation of these entities and to investors for them to make investment decisions. Investors in these entities will have access to broadly similar, and equivalent, information to the information that they would otherwise have access to:
- the overseas entities that will rely on the notice are regulated in jurisdictions that, through their securities regulators, are signatories to an international memorandum of understanding for co-operation and information sharing. This means that the FMA will be able to obtain co-operation from the securities regulator in an entity's home jurisdiction if any compliance concerns arise in relation to the entity:

- the costs associated with an entity having to prepare and audit financial statements in accordance with the requirements of a home jurisdiction, in addition to the costs associated with preparing NZ GAAP-compliant financial statements audited by a New Zealand qualified auditor, would outweigh the benefits to investors in having access to financial statements prepared according to NZ GAAP rather than overseas GAAP:
- the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and by promoting flexibility in financial markets:
- the exemptions only address the particular difficulties experienced by entities that are overseas registered banks or licensed insurers. Given the limited application of the exemptions and that investors will still have access to financial statements, lodged in New Zealand, that meet financial reporting and audit requirements in reputable jurisdictions, the exemptions are not broader than is reasonably necessary to address the matters to which they relate.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 May 2015.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015 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*

Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2016 (LI 2016/245): clause 8