



Securities Act (Revocation of Certain Futures Contracts Exemptions) Notice 2015

Pursuant to sections 70B and 70D 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.

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Notice

1 Title

This notice is the Securities Act (Revocation of Certain Futures Contracts Exemptions) Notice 2015.

2 Commencement

This notice comes into force on 1 December 2015.

3 Notices revoked

The following notices are revoked:

- (a) Securities Act (Authorised Futures Contracts) Exemption Notice 2002 (SR 2002/295);
- (b) Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007 (SR 2007/151).

4 Revocation of this notice

This notice is revoked on 31 December 2015.

Dated at Auckland this 1st day of October 2015.

Joanne Davis-Calvert,
Head of Governance, Policy, and Strategy.

Statement of reasons

This notice, which comes into force on 1 December 2015, revokes the Securities Act (Authorised Futures Contracts) Exemption Notice 2002 and the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007 (the **principal notices**). The principal notices contain exemptions granted under the Securities Act 1978 and have continued in force, despite the repeal of that Act, under the transitional provisions in the Financial Markets Conduct Act 2013 (the **FMC Act**) and the Financial Markets Conduct Regulations 2014. The effect of the revocations is to clarify that those exemptions may no longer be relied upon to make an offer of derivatives.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978 (the **1978 Act**), considers it appropriate to revoke the exemptions because—

- the purpose of the Securities Act (Authorised Futures Contracts) Exemption Notice 2002 was to exempt persons dealing in authorised futures contracts (**futures dealers**) from the 1978 Act and the Securities Regulations 2009 in respect of those contracts, to avoid the risk of duplication. That risk arose because many futures contracts were technically securities as defined in the 1978 Act, but securities regulation did not provide for disclosure that was tailored to those contracts and the needs of investors in those contracts. Under the Financial Markets Conduct Regulations 2014, licensed derivatives issuers who were authorised futures dealers immediately before 1 December 2014 have transitional relief from the disclosure obligations in Part 3 of the FMC Act until the close of 30 November 2015. Derivatives issuers must comply with the disclosure obligations in Part 3 of the FMC Act from 1 December 2015 for offers of derivatives that are regulated offers. This means that the disclosure obligations under the 1978 Act will no longer be relevant to offers made by futures dealers that are issued after the close of 30 November 2015. Therefore, the FMA considers that the Securities Act (Authorised Futures Contracts) Exemption Notice 2002 is no longer relevant or necessary to address the matters that gave rise to that exemption and should, therefore, be revoked from the close of 30 November 2015:
- registered banks are unable to rely on the Securities Act (Authorised Futures Contracts) Exemption Notice 2002. The main purpose of the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007 was to put registered banks on the same footing as futures dealers to whom the Securities Act (Authorised Futures Contracts) Exemption Notice 2002 applied. Since the

FMC Act came into force, registered banks have relied on the transitional provision in clause 7 of Schedule 4 of the FMC Act to continue to offer futures contracts under the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007. Clause 7 of Schedule 4 of the FMC Act does not cease to apply on the close of 30 November 2015. Therefore, it is arguable that registered banks could continue to offer futures contracts after the close of 30 November 2015 in compliance with the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007 rather than under Part 3 of the FMC Act. The failure of registered banks to comply with Part 3 of the FMC Act in respect of offers of derivatives issued after close of 30 November 2015 might cause detriment to the subscribers of such derivatives, as it would mean that inconsistent disclosure documents and standards would apply to different derivatives issuers. For those reasons, the FMA considers that revocation of the Securities Act (Registered Banks Futures Contracts) Exemption Notice 2007 from the close of 30 November 2015 is appropriate and will not cause significant detriment to subscribers.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 8 October 2015.

This notice is administered by the Financial Markets Authority.