

Reprint  
as at 28 February 2020



## Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2016

(LI 2016/3)

Pursuant to sections 70 and 88 of the Non-bank Deposit Takers Act 2013, the Reserve Bank of New Zealand, being satisfied of the matters set out in section 70(2) of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2016.

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#### 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.**

## 2 Commencement

This notice comes into force on 15 February 2016.

## 3 Expiry and revocation

This notice expires and is revoked at the close of 29 February 2024.

Clause 3: amended, on 28 February 2020, by clause 4 of the Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2020 (LI 2020/4).

## 4 Application

This notice applies to—

- (a) the exemption year beginning on 1 March 2016; and
- (b) every subsequent exemption year up to and including the exemption year beginning on 1 March 2023.

Clause 4(b): amended, on 28 February 2020, by clause 5 of the Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2020 (LI 2020/4).

## 5 Transitional provisions

The transitional provisions set out in the Schedule have effect.

## 6 Interpretation

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

**Act** means the Non-bank Deposit Takers Act 2013

**advertisement** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**average consolidated liabilities** means average consolidated liabilities calculated in accordance with clause 8 (and any reference in this notice to the average consolidated liabilities of a borrowing group must be treated as a reference to the average liabilities of an NBDT where the NBDT does not have any guaranteeing subsidiaries)

**capital ratio** means a capital ratio calculated in accordance with regulation 9 of the Deposit Takers (Credit Ratings, Capital Ratios, and Related Party Exposures) Regulations 2010

**exemption year** means a period of 12 months beginning on 1 March in any year and ending at the close of the last day of February in the following year

**generally accepted accounting practice** has the same meaning as in section 8 of the Financial Reporting Act 2013

**liabilities** does not include contingent liabilities

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

**notification date** means,—

- (a) in respect of the exemption year beginning on 1 March 2016, 29 February 2016; and
- (b) in respect of each subsequent exemption year, the last working day of the previous exemption year

**product disclosure statement** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013

**register entry** has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013.

- (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.

Clause 6(1) **generally accepted accounting practice**: replaced, on 28 February 2020, by clause 6 of the Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2020 (LI 2020/4).

## **7 Exemptions from section 23 of Act**

- (1) An NBDT that commences business as an NBDT on or after the measurement date for an exemption year is exempted from section 23 of the Act until the end of the exemption year if, as soon as practicable after it commences business, the NBDT provides the Bank with a written statement, signed by all directors of the NBDT, setting out the following:
  - (a) the date on which the NBDT commenced business;
  - (b) a statement that the NBDT will be operating on the basis of the exemption until the end of that exemption year.
- (2) An NBDT (other than an NBDT described in subclause (1)) is exempted from section 23 of the Act in respect of an exemption year if—
  - (a) the NBDT's capital ratio as at the measurement date for that exemption year is at least 10%; and
  - (b) the average consolidated liabilities of the borrowing group as at the measurement date for that exemption year, calculated in accordance with clause 8, are less than \$20 million; and
  - (c) on or before the notification date for that exemption year, the NBDT provides the Bank with a written statement, signed by all directors of the NBDT, setting out the following:
    - (i) a statement that, according to the NBDT's assessment, it meets the requirements for the exemption (including the requirements in paragraphs (a) and (b));
    - (ii) the figures that the NBDT relies on in calculating the average consolidated liabilities for the purpose of paragraph (b);
    - (iii) a statement that the NBDT will be operating on the basis of the exemption for that exemption year; and

- (d) the NBDT maintains a capital ratio of at least 10% for the exemption year.
- (3) An NBDT (other than an NBDT described in subclause (1) or (2)) is exempted from section 23 of the Act in respect of an exemption year if—
  - (a) the NBDT's capital ratio as at the measurement date for that exemption year is at least 12%; and
  - (b) the average consolidated liabilities of the borrowing group as at the measurement date for that exemption year, calculated in accordance with clause 8, are \$20 million or more but less than \$40 million; and
  - (c) on or before the notification date for that exemption year, the NBDT provides the Bank with a written statement, signed by all directors of the NBDT, setting out the following:
    - (i) a statement that, according to the NBDT's assessment, it meets the requirements for the exemption (including the requirements in paragraphs (a) and (b));
    - (ii) the figures that the NBDT relies on in calculating the average consolidated liabilities for the purpose of paragraph (b);
    - (iii) a statement that the NBDT will be operating on the basis of the exemption for that exemption year; and
  - (d) the NBDT maintains a capital ratio of at least 12% for the exemption year.

### **8 Average consolidated liabilities of borrowing group**

- (1) The average consolidated liabilities of a 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:

$$\Sigma x \div n$$

where—

$\Sigma x$  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 NBDT commenced business earlier than 12 months before the measurement date, 12; or
- (b) if the NBDT commenced business during the period of 12 months ending immediately before the measurement date, the number of

calendar months that the NBDT has been in business, including the month in which the NBDT commenced business.

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**Example**

The consolidated liabilities of NBDT 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 2015, are—

30 September 2015	\$24 million
31 August 2015	\$23.5 million
31 July 2015	\$22 million
30 June 2015	\$20 million
31 May 2015	\$21 million
30 April 2015	\$19 million
31 March 2015	\$20 million
28 February 2015	\$18 million
31 January 2015	\$17 million
31 December 2014	\$18 million
30 November 2014	\$19 million
31 October 2014	\$18 million

$$(24 + 23.5 + 22 + 20 + 21 + 19 + 20 + 18 + 17 + 18 + 19 + 18) \div 12 = 19.9583$$

- (2) The example in subclause (1) is illustrative only and, in the case of any inconsistency between the example and this clause, this clause prevails.

**9 Conditions of exemption in clause 7**

- (1) The exemptions in clause 7 are subject to the conditions in this clause.
- (2) In every product disclosure statement, register entry, or advertisement relating to an offer of its debt securities, an NBDT must prominently—
- (a) state that the creditworthiness of the NBDT is not rated by a rating agency approved by the Bank under section 86 of the Act; and
  - (b) disclose that the NBDT is not rated because it is operating under an exemption from the requirement under the Act to have a credit rating; and
  - (c) describe the general nature and effect of the exemption; and
  - (d) disclose that the exemption applies, as the case may be, because—
    - (i) the NBDT has only recently commenced business as an NBDT, making it unduly onerous to comply with the requirement under the Act to have a credit rating; or
    - (ii) the NBDT (or its borrowing group) has liabilities of less than \$20 million, making it unduly onerous to comply with the requirement under the Act to have a credit rating, and the NBDT maintains a capital ratio of at least 10%; or

- (iii) the NBDT (or its borrowing group) has liabilities of \$20 million or more but less than \$40 million, making it unduly onerous to comply with the requirement under the Act to have a credit rating, and the NBDT maintains a capital ratio of at least 12%.
- (3) An NBDT must not, in any product disclosure statement, register entry, or advertisement relating to an offer of its debt securities, disclose any assessment of its creditworthiness that is in substance a credit rating (however described) issued by an agency that is not approved by the Bank under section 86 of the Act.

## 10 Revocation

The Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2009 (SR 2009/209) is revoked at the close of 29 February 2016.

## Schedule Transitional provisions

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- 1 This schedule applies to the 2016–17 exemption year.
- 2 In this schedule,—
- 2016–17 exemption year** means the period beginning on 1 March 2016 and ending at the close of 28 February 2017
- investment statement** has the same meaning as in section 38C of the Securities Act 1978 as in force immediately before 1 December 2014
- notification date** means the date on which an NBDT provides a statement under clause 3(c) of this schedule, being a day on or before 29 February 2016
- registered prospectus** has the same meaning as in section 2(1) of the Securities Act 1978 as in force immediately before 1 December 2014.
- 3 Despite clause 7(3) of this notice, an NBDT (other than an NBDT described in clause 7(1) or (2)) is exempted from section 23 of the Act for the 2016–17 exemption year if—
- (a) the NBDT’s capital ratio on the notification date is at least 12%; and
  - (b) the average consolidated liabilities of the borrowing group as at the notification date, calculated in accordance with clause 8, are \$20 million or more but less than \$40 million; and
  - (c) the NBDT provides the Bank with a written statement, signed by all directors of the NBDT, setting out the following:
    - (i) a statement that, according to the NBDT’s assessment, it meets the requirements for the exemption (including the requirements in paragraphs (a) and (b));

- (ii) the figures that the NBDT relies on in calculating the average consolidated liabilities for the purpose of paragraph (b):
  - (iii) a statement that the NBDT will be operating on the basis of the exemption for the 2016–17 exemption year.
- 4 The exemption in clause 3 of this schedule is subject to the conditions in clause 9 of this notice.
- 5 In clause 9 of this notice, except clause 9(2)(d)(iii), **product disclosure statement** includes—
- (a) a registered prospectus:
  - (b) an investment statement.

Dated at Wellington this 9th day of February 2016.

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 the:**

- **Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2020**

This notice, which comes into force on 15 February 2016 and expires at the close of 29 February 2020, exempts entities that are non-bank deposit takers (NBDTs) from the requirement in section 23 of the Non-bank Deposit Takers Act 2013 (the **Act**) to have a credit rating if—

- any of the following applies:
  - an NBDT commences business as an NBDT on or after the measurement date for an exemption year; or
  - an NBDT maintains a capital ratio of at least 10% and the consolidated liabilities of the borrowing group (or, in the case of an NBDT that is not part of a borrowing group, the liabilities of the NBDT) are less than \$20 million measured as an average over a specified 12-month period; or
  - the NBDT maintains a capital ratio of at least 12% and the consolidated liabilities of the borrowing group (or, in the case of an NBDT that is not part of a borrowing group, the liabilities of the NBDT) are \$20 million or more but less than \$40 million measured as an average over a specified 12-month period; and

- the NBDT notifies the Reserve Bank of New Zealand of its intention to operate on the basis of the exemption; and
- the NBDT complies with conditions imposing certain disclosure requirements.

The Reserve Bank of New Zealand, after taking into account the principles set out in section 70 of the Act, considers it is appropriate to grant the exemptions because—

- the Bank is satisfied that the exemptions are consistent with the maintenance of a sound and efficient financial system in that the liabilities of exempt entities represent a very small percentage of the total liabilities of the NBDT sector, and the requirement for exempt entities to maintain a capital ratio of either 10% or 12% compensates for those entities not having a credit rating:
- the additional direct and indirect costs of obtaining a credit rating are unduly onerous when compared with the balance sheet size and average profitability of the exempted NBDTs:
- the benefits of the exemption are that unnecessary compliance costs are avoided and potential barriers to entry are removed, therefore maintaining competition in the NBDT sector:
- the benefits outweigh the costs of inconsistent treatment between small and larger NBDTs and outweigh the loss of information for investors:
- the conditions of the exemption, by imposing disclosure requirements and additional capital requirements on exempted NBDTs, manage the risks posed by the absence of a credit rating, and therefore the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

The notice also revokes the Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2009.

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

- **Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Amendment Notice 2020**

## **Reprints notes**

### **1 *General***

This is a reprint of the Non-bank Deposit Takers (Credit Ratings Minimum Threshold) Exemption Notice 2016 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 Amendment Notice 2020 (LI 2020/4)