

Reprint
as at 1 August 2020



**Financial Markets Conduct (Equine Bloodstock)
Exemption Notice 2016**
(LI 2016/289)

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 (Equine Bloodstock) Exemption Notice 2016.

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 1 December 2016.

3 Revocation

This notice is revoked on the close of 30 November 2021.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

code of practice means a code of practice that—

- (a) forms part of the rules made by a designated association under section 37 of the Racing Industry Act 2020; and
- (b) is made for the regulation of offers of investments relating to bloodstock used for breeding or racing; and
- (c) is administered by a designated association; and
- (d) is approved for the time being by the FMA

designated association means—

- (a) New Zealand Thoroughbred Racing Incorporated;
- (b) Harness Racing New Zealand Incorporated

registered means—

- (a) registered under—
 - (i) the New Zealand Rules of Racing of New Zealand Thoroughbred Racing Incorporated; or
 - (ii) the New Zealand Rules of Harness Racing of Harness Racing New Zealand Incorporated; or
- (b) recorded on a foaling return, stud book certificate, certificate of export, or equivalent document and deposited with a designated association

Regulations means the Financial Markets Conduct Regulations 2014

Securities Act notice means the Securities Act (Bloodstock) Exemption Notice 2002 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice

specified issuer means,—

- (a) in relation to an offer of equity securities, any company—
 - (i) that is bound by the rules of a designated association to comply with a code of practice in relation to that offer; and
 - (ii) the business of which consists of—

- (A) the ownership of any registered horse, or any interest in a registered horse, that is used, or intended to be used, for the purpose of breeding or racing; or
 - (B) the ownership of any registered horse, or any interest in a registered horse, that is used, or intended to be used, for the purpose of breeding or racing and any progeny of that horse, or any interest in that progeny, being progeny that is eligible to be, but is not, registered:
- (b) in relation to an offer of specified managed investment products, any person who is bound by the rules of a designated association to comply with a code of practice in relation to that offer

specified managed investment product means a managed investment product relating exclusively to—

- (a) any managed investment scheme in respect of the ownership of any registered horse, or any interest in a registered horse, that is used, or intended to be used, for the purpose of breeding or racing; or
 - (b) any managed investment scheme in respect of the ownership of any registered horse, or any interest in a registered horse, that is used, or intended to be used, for the purpose of breeding or racing and any progeny of that horse, or any interest in that progeny, being progeny that is eligible to be, but is not, registered.
- (2) 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.

Clause 4(1) **code of practice** paragraph (a): amended, on 1 August 2020, by section 129 of the Racing Industry Act 2020 (2020 No 28).

5 Application

An exemption granted under clause 9(2) or 10(2) applies to the following accounting periods of the specified issuer:

- (a) an accounting period of the specified 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, but for the exemption in clause 9(2) or 10(2), as applicable, be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

6 Exemptions for equity securities

Every specified issuer (A) is exempted from Parts 3 and 4 of the Act in respect of any equity securities of which A is the issuer that are offered on or after 1 December 2016.

7 Exemptions for managed investment products

Every specified issuer (A) is exempted from Parts 3 and 4 of the Act in respect of any specified managed investment products of which A is the issuer that are offered on or after 1 December 2016.

8 Offers made in reliance on this notice are not regulated offers

An offer of financial products made in reliance on clause 6 or 7 of this notice is not a regulated offer.

9 Exemptions for equity securities offered in reliance on Securities Act notice

- (1) Every specified issuer (A) is exempted from subpart 4 of Part 3, Part 4, and clause 30(1) of Schedule 4 of the Act in respect of any equity securities that were offered by A in reliance on the Securities Act notice.
- (2) Every specified issuer (A) is exempted from Part 7 of the Act if A would be treated as being an FMC reporting entity only by virtue of having issued the equity securities referred to in subclause (1).

10 Exemptions for managed investment products offered in reliance on Securities Act notice

- (1) Every specified issuer (A) is exempted from subpart 4 of Part 3, Part 4, section 388, and clauses 22(1)(b) and (c) and 30(1) of Schedule 4 of the Act in respect of any managed investment products that were offered by A in reliance on the Securities Act notice.
- (2) Every specified issuer (A) is exempted from Part 7 of the Act if A would be treated as being an FMC reporting entity only by virtue of having issued managed investment products referred to in subclause (1).

Dated at Auckland this 25th day of November 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 1 December 2016 and is revoked on the close of 30 November 2021.

This notice relates to shares and managed investment products that are offered by horse bloodstock syndicates and bloodstock companies if the horse bloodstock syndicate or bloodstock company is bound by the rules of New Zealand Thoroughbred Racing Incorporated or Harness Racing New Zealand Incorporated to comply with a code of practice under the Racing Act 2003 in relation to the offer of those financial products.

Clauses 6 to 8 relate to shares and managed investment products that are offered on and after 1 December 2016. The clauses exempt horse bloodstock syndicates and bloodstock companies from the disclosure and governance requirements in Parts 3 and 4 of the Financial Markets Conduct Act 2013 (the **FMC Act**) in respect of those shares and managed investment products. This notice also provides that those offers are not regulated offers under the FMC Act. This means that the other requirements of the FMC Act, or other Acts, that apply in connection with regulated offers (such as the requirement for a scheme to be registered and the financial reporting requirements) will not apply. Any other financial market conduct obligations that the exempted entity may have, including obligations under Part 2 of the FMC Act, are not affected.

Clauses 9 and 10 relate to shares and managed investment products that were offered in reliance on the Securities Act (Bloodstock) Exemption Notice 2002 or any earlier notice that, with or without modification, was replaced by or corresponded to that notice (the **Securities Act notice**). On and from 1 December 2016 (or earlier if the issuer so elected), certain ongoing and transitional obligations of the FMC Act will apply to the shares and managed investment products, ie, subpart 4 of Part 3 of the FMC Act (ongoing disclosure), Part 4 of the FMC Act (governance of financial products), Part 7 of the FMC Act (financial reporting and audit), section 388 of the FMC Act, clauses 22(1)(b) and (c) and 30(1) of Schedule 4 of the FMC Act, any regulations made for the purposes of subpart 4 of Part 3, Part 4, or Part 7 of the FMC Act, and any other provision of the FMC Act relating to the enforcement, application, or effect of subpart 4 of Part 3, Part 4, or Part 7 of that Act. This notice exempts horse bloodstock syndicates and bloodstock companies from those ongoing disclosure, governance, financial reporting and audit requirements in respect of those shares and managed investment products and exempts the manager of a horse bloodstock syndicate from the requirement to be licensed and certain other transitional requirements.

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 codes of practice reflect the unique disclosure, governance, and financial reporting and audit requirements for investments in interests in horse bloodstock used for breeding or racing and the existing supervisory and enforcement regime under the Racing Act 2003. The requirements in the codes of practice

will ensure that disclosure, governance, and financial reporting and audit requirements apply to those interests to enable effective monitoring and to reduce governance risks and that timely, accurate, and understandable information is provided to investors:

- allowing exemptions in these circumstances, where the existing regime is long established and where there is provision for disclosure, governance, financial reporting, and audit requirements, will enable the continuation on the same basis of the horse bloodstock syndicates and bloodstock companies that have relied on the Securities Act notice:
- if no exemption were provided, existing horse bloodstock syndicates and bloodstock companies may be wound up, or other procedural steps may be required to be taken to re-establish them on substantially the same basis in order to make new issuances, generating unnecessary compliance costs. It is likely these costs would be passed on to investors. New vehicles could not exist in their current form without an exemption.

As such, the FMA is satisfied that—

- the granting of the exemptions is desirable in order to promote the purposes of the FMC Act, specifically to avoid unnecessary compliance costs and to promote flexibility in financial markets; and
- as the exemptions would be available only to issuers that are required to comply with the codes of practice of either New Zealand Thoroughbred Racing Incorporated or Harness Racing New Zealand Incorporated made under the Racing Act 2003, the exemptions are not broader than reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 30 November 2016.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Equine Bloodstock) 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*

Racing Industry Act 2020 (2020 No 28): section 129