

Reprint  
as at 24 July 2018



## Financial Markets Conduct (Overseas Custodians— Assurance Engagement) Exemption Notice 2017

(LI 2017/24)

Financial Markets Conduct (Overseas Custodians—Assurance Engagement) Exemption Notice 2017:  
revoked, on the close of 23 July 2018, by clause 3.

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 Custodians—Assurance Engagement) Exemption Notice 2017.

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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 Financial Markets Authority.**

## 2 Commencement

This notice comes into force on 24 February 2017.

## 3 Revocation

This notice is revoked on the close of 23 July 2018.

## 4 Interpretation

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

**exempt period**, in relation to a custodian, means the relevant period referred to in clause 5(1)

**NZ scheme property** means scheme property of a registered scheme

**overseas assurance engagement** has the meaning given in clause 6(2)

**Regulations** means the Financial Markets Conduct Regulations 2014.

- (2) Any term or expression that is defined in the Financial Markets Conduct Act 2013 or the Regulations (including in regulations 87 and 88) and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemption from assurance engagement requirement

- (1) A custodian is exempted from regulation 87(1) and (2) of the Regulations in relation to a relevant date (and therefore the relevant period ending on that date) if—

- (a) the custodian has its principal place of business outside New Zealand; and
- (b) the custodian's relevant date is on or after 24 February 2017 but before 24 February 2018; and
- (c) the custodian complies with clauses 6 and 7.

- (2) If a custodian is exempted under subclause (1), any sub-custodian appointed by the custodian is also exempted if the custodian has complied with clauses 6 and 7 in respect of all of the NZ scheme property held by the sub-custodian.

## 6 Overseas assurance engagement

- (1) For the purposes of clause 5(1)(c), a custodian must obtain 1 or more overseas assurance engagements that together cover all NZ scheme property held by the custodian, or any sub-custodians appointed by the custodian, during the exempt period.

- (2) An **overseas assurance engagement** means an assurance engagement—

- (a) obtained in a jurisdiction—
  - (i) in which the custodian, or any of those sub-custodians, carried on business as a custodian during the exempt period; and
  - (ii) that is listed in the Schedule; and

- (b) with an auditor who is registered or licensed to provide assurance engagements in that jurisdiction; and
  - (c) that complies with the legal requirements and auditing and assurance standards in that jurisdiction; and
  - (d) that includes the auditor's assessment of the custodian's processes, procedures, and controls relating to the custody of property, including the suitability of their design and their operating effectiveness.
- (3) Subclause (1) must be complied with within 4 months after the end of the exempt period.

#### **7 Report to be given to relevant persons**

- (1) For the purposes of clause 5(1)(c), a custodian must ensure that the following are given to each of the relevant persons:
- (a) a copy of the assurance report for the exempt period provided under each of the overseas assurance engagements referred to in clause 6(1); and
  - (b) for each report,—
    - (i) a statement of all of the custodial services provided by the custodian or any sub-custodian appointed by the custodian in relation to NZ scheme property that are covered by the report (if the report does not include a statement to that effect); and
    - (ii) to the extent that the report addresses matters that are the same or similar to those set out in regulation 88 of the Regulations, information identifying where in the report those matters are addressed.
- (2) Subclause (1) must be complied with within 20 working days after the custodian obtains the assurance report (or the last of them, if there is more than 1).

### **Schedule Overseas jurisdictions**

cl 6(2)

Commonwealth of Australia  
Canada  
France  
Luxembourg  
United Kingdom  
United States of America

Dated at Wellington this 21st day of February 2017.

Nick Kynoch,  
General Counsel, Financial Markets Authority.

### Statement of reasons

This notice comes into force on 24 February 2017 and is revoked on 23 July 2018.

The notice exempts certain overseas custodians from the requirement in regulation 87 of the Financial Markets Conduct Regulations 2014 (the **Regulations**) to obtain an assurance engagement from a New Zealand auditor that covers the New Zealand assurance engagement matters specified in regulation 88.

The exemption applies to an overseas custodian who obtains assurance engagements in 1 or more of the jurisdictions listed in the *Schedule* that together cover all of the scheme property of registered schemes held by the custodian or its sub-custodians. The exemption applies for the custodian's relevant period ending on or after 24 February 2017 but before 24 February 2018.

The Financial Markets Authority (the **FMA**), after satisfying itself of the matters set out in section 557 of the Financial Markets Conduct Act 2013, considers it appropriate to grant this exemption because—

- the exemption applies only to custodians who have their principal place of business outside New Zealand, and who obtain assurance engagements in 1 or more of the jurisdictions listed in the *Schedule* that together cover all of the scheme property of registered schemes held by the custodian or its sub-custodians:
- the exemption applies only in relation to jurisdictions in which custodians are required to obtain assurance engagements from auditors who are subject to auditing standards and oversight that are broadly equivalent to those applying in New Zealand. As such, the FMA is confident of the comparability and quality of those overseas assurance engagements:
- if a custodian obtains an assurance engagement that is prepared by an auditor who is registered or licensed to provide assurance engagements in one of those jurisdictions and complies with the regulatory requirements in that jurisdiction, the costs associated with requiring the custodian to also obtain an assurance engagement prepared by a New Zealand auditor in compliance with regulations 87 and 88 of the Regulations outweigh the benefits to investors and are unnecessary compliance costs:
- the securities regulators in the jurisdictions listed in the *Schedule* are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and

the Exchange of Information. This will allow the FMA to seek assistance from the relevant regulator if enforcement issues arise:

- as such, the FMA is satisfied that granting of the exemption is desirable in order to promote a number of purposes of the Financial Markets Conduct Act 2013, specifically it will ensure appropriate governance arrangements that allow for effective monitoring, avoid unnecessary compliance costs, and promote flexibility in financial markets:
- as the exemption is limited to custodians preparing assurance engagements and those custodians are subject to audit oversight that is broadly equivalent to that in New Zealand, the FMA is satisfied that the exemption is not broader than is reasonably necessary to address the matters that give rise to it.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 23 February 2017.

## Reprints notes

### **1** *General*

This is a reprint of the Financial Markets Conduct (Overseas Custodians—Assurance Engagement) Exemption Notice 2017 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 Custodians—Assurance Engagement) Exemption Notice 2017 (LI 2017/24): clause 3