



## **Financial Markets Conduct (Incidental Offers) Exemption Amendment Notice 2018**

Pursuant to sections 556 and 572 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.

### **Contents**

		Page
1	Title	1
2	Commencement	1
3	Principal notice	1
4	Clause 5 amended (Exemptions for offers to existing holders)	1
5	Clause 6 amended (Exemptions for exchanges of overseas listed products)	2
6	Clause 7 amended (Exemptions for offers of interim financial products)	2

### **Notice**

- 1 Title**  
 This notice is the Financial Markets Conduct (Incidental Offers) Exemption Amendment Notice 2018.
- 2 Commencement**  
 This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Principal notice**  
 This notice amends the Financial Markets Conduct (Incidental Offers) Exemption Notice 2016 (the **principal notice**).
- 4 Clause 5 amended (Exemptions for offers to existing holders)**  
 In clause 5(1), delete “in reliance on this notice”.

**5 Clause 6 amended (Exemptions for exchanges of overseas listed products)**

In clause 6, delete “in reliance on this notice”.

**6 Clause 7 amended (Exemptions for offers of interim financial products)**

In clause 7, delete “in reliance on this notice”.

Dated at Auckland this 6th day of April 2018.

Nick Kynoch,  
General Counsel.

**Statement of reasons**

This notice, which comes into force on the day after the date of its notification in the *Gazette*, amends the Financial Markets Conduct (Incidental Offers) Exemption Notice 2016 (the **2016 notice**).

The 2016 notice grants exemptions to every issuer (**A**) and every holder of financial products issued by A in reliance on the notice. This notice omits the references to financial products being issued in reliance on the notice. These references could inhibit the intended application of the 2016 notice. These references mean that a holder would not be able to rely on an exemption if the financial products had been issued to the holder in circumstances where the exemptions in the 2016 notice were not relied on. The effect of this notice is to extend the scope of application of the exemptions in the 2016 notice to the scope that applied under the Securities Act (Overseas Companies) Exemption Notice 2013.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (the **Act**), considers it appropriate to amend the 2016 notice because the policy reasons for granting the exemptions remain valid and relevant with the amended scope of application. This is because—

- the exemptions still only apply to offers made to persons who already hold financial products listed on exchanges in jurisdictions with a level of regulation broadly comparable to that in New Zealand and who can be taken to have assumed the degree of risk that might accompany overseas investment; and
- the exemptions cannot be used for an offer of financial products to New Zealand investors more generally; and
- this notice and the 2016 notice allow New Zealanders who hold financial products on recognised overseas markets to participate in rights offers and offers arising from reconstructions that might otherwise not be extended to investors in New Zealand due to the cost of compliance; and

- the exemptions recognise the adequacy of the regulation of financial product offerings in certain overseas jurisdictions with certain characteristics.

The FMA is therefore satisfied that the amendments to the 2016 notice are necessary or desirable in order to promote 1 or more of the purposes of the Act. Specifically, they will avoid unnecessary compliance costs and promote flexibility in the financial markets.

The FMA is further satisfied that the amendments are not broader than is reasonably necessary to implement the intended policy of the exemptions because the exemptions are limited to offers that are subject to regulatory oversight broadly equivalent to that in New Zealand and making offers that only incidentally target New Zealand investors.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 11 April 2018.

This notice is administered by the Financial Markets Authority.