



Financial Markets Conduct (Recognised Exchanges) Exemption Amendment Notice 2020

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.

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Notice

1 Title

This notice is the Financial Markets Conduct (Recognised Exchanges) Exemption Amendment Notice 2020.

2 Commencement

This notice comes into force on 15 October 2020.

3 Principal notice

This notice amends the Financial Markets Conduct (Recognised Exchanges) Exemption Notice 2016 (the **principal notice**).

4 Clause 4 amended (Interpretation)

In clause 4(1), definition of **overseas offer document**, paragraph (a), replace “issuer” with “offeror”.

5 Clause 5 amended (Exemptions for offers of overseas listed products)

In clause 5, delete “in reliance on this notice”.

6 Clause 6 amended (Conditions relating to disclosure)

(1) In clause 6(1)(b), replace “issuer” with “offeror”.

(2) Replace clause 6(1)(b)(i) with:

- (i) copies of the overseas offer document and any documents that supplement the overseas offer document; and

7 Clause 7 amended (Conditions relating to financial reporting)

After clause 7(1), insert:

(1A) This clause applies in relation to the issuer and its financial statements, even if the offeror is not the issuer.

8 Clause 8 replaced (Condition that documents be received by Registrar)

Replace clause 8 with:

8 Condition that documents be received by Registrar

(1) The exemptions in clause 5 are subject to the further condition that, before an offer is made in reliance on this notice,—

- (a) the offeror must lodge with the Registrar a notice that complies with subclause (2); and
- (b) if the offeror is not the issuer, the issuer must lodge with the Registrar a notice that complies with subclause (4).

(2) The offeror’s notice must—

- (a) state that the offeror intends to make an offer in reliance on this notice; and
- (b) specify the financial products to be offered; and
- (c) specify the proposed offer period for each of the following:
 - (i) the offer of the financial products in New Zealand;
 - (ii) the offer of the financial products in the relevant jurisdiction; and
- (d) state the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept

- service in New Zealand at that address of documents on behalf of the offeror; and
- (e) state that the offeror submits to the jurisdiction of the courts of New Zealand in relation to the offer; and
 - (f) state the offeror's New Zealand overseas offeror registration number allocated by the Registrar (if any); and
 - (g) be accompanied by the documents and information specified in clause 9.
- (3) For the purposes of subclause (2)(c)(ii), the proposed offer period for the offer of the financial products in the relevant jurisdiction must include the proposed offer period for the offer of the financial products in New Zealand.
- (4) The issuer's notice must state—
- (a) the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the issuer; and
 - (b) that the issuer submits to the jurisdiction of the courts of New Zealand in relation to the offer.

9 Clause 9 amended (Documents and information that must accompany notice that is lodged with Registrar)

- (1) In clause 9, replace “clause 8(1)(g)” with “clause 8(2)(g)”.
- (2) In clause 9(a), before “the overseas”, insert “copies of”.
- (3) In clause 9(a), replace “document that supplements” with “documents that supplement”.

10 Clause 10 amended (Condition relating to warning statements)

In clause 10, replace “issuer” with “offeror”.

11 Schedule 2 amended

- (1) In Schedule 2, Part 1, replace “The issuer” with “The [*offeror**/*issuer and offeror*†] of the financial products”.
- (2) In Schedule 2, Part 1, replace “are different” with “may be different”.
- (3) In Schedule 2, before Part 2, insert:

*If the offeror is the issuer.

†If the offeror is not the issuer.

Dated at Auckland this 2nd day of October 2020.

Nick Kynoch,
General Counsel, Financial Markets Authority.

Statement of reasons

This notice comes into force on 15 October 2020 and amends the Financial Markets Conduct (Recognised Exchanges) Exemption Notice 2016 (the **2016 notice**).

The 2016 notice exempts issuers from the disclosure and governance requirements in Parts 3 and 4 of the Financial Markets Conduct Act 2013 (the **Act**) in relation to offers of financial products that are or will be approved for trading on the principal official list of the London Stock Exchange, the Nasdaq Stock Market, or the New York Stock Exchange.

This notice extends those exemptions so that offerors of those products who are not the issuers are also exempt from those provisions of the Act. The conditions to which the exemptions are subject are also amended to ensure that they apply appropriately to both issuers and offerors.

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 amend the 2016 notice to extend the exemptions 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 in relation to financial products that are or will be approved for trading on the principal official list of the 3 named exchanges; and
- the exemptions recognise the adequacy of the regulation of financial product offerings in certain overseas jurisdictions with certain characteristics; and
- in the absence of extending these exemptions to offerors, the FMA considers that these offers may not be made available to New Zealand investors due to additional costs and compliance obligations or legal uncertainty.

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 innovation and flexibility in the financial markets. The FMA is further satisfied that the exemptions granted are not broader than are reasonably necessary to address the matters that gave rise to the exemptions as the exemptions only apply to exempt issuers or offerors who are subject to regulatory oversight broadly equivalent to that in New Zealand.

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**Financial Markets Conduct (Recognised Exchanges)
Exemption Amendment Notice 2020**

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This notice is administered by the Financial Markets Authority.

Wellington, New Zealand:

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