



Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2021

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.

Contents

		Page
1	Title	1
2	Commencement	1
3	Revocation	1
4	Interpretation	1
5	Exemptions for products previously offered in reliance on Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011	2

Notice

1 Title

This notice is the Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2021.

2 Commencement

This notice comes into force on 1 December 2021.

3 Revocation

This notice is revoked on the close of 30 November 2026.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Regulations means the Financial Markets Conduct Regulations 2014

Securities Act notice means the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice.

- (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.

5 Exemptions for products previously offered in reliance on Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011

- (1) Every issuer is exempted from subpart 4 of Part 3, and Part 4, of the Act in respect of any financial products if the offer of the financial products was made in reliance on the Securities Act notice.
- (2) Every issuer is exempted from Part 7 of the Act if that issuer would be treated as being an FMC reporting entity only by virtue of having issued financial products to which subclause (1) applies.
- (3) An exemption granted under subclause (2) applies to the following accounting periods of an issuer:
- (a) an accounting period of the issuer that commences 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 contained in subclause (2), be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
 - (b) subsequent accounting periods.

Dated at Wellington this 23rd day of August 2021.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 1 December 2021 and is revoked on the close of 30 November 2026. The notice continues, with minor changes, the exemptions granted under the Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2016.

This notice relates to certain shares that were offered through a New Zealand company's employee share purchase scheme in reliance on the Securities Act (Employee

Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 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 obligations of the Financial Markets Conducts Act 2013 (the **FMC Act**) would, but for an exemption, have applied to the shares. Those obligations include obligations under—

- subpart 4 of Part 3 of the FMC Act (ongoing disclosure); and
- Part 4 of the FMC Act (governance of financial products); and
- Part 7 of the FMC Act (financial reporting and audit).

This notice exempts the companies from those ongoing requirements in respect of the shares. Companies relying on this notice may still be required to comply with the more limited financial reporting and auditing requirements of the Companies Act 1993. The effect of this exemption is to better align the requirements relating to these previously offered securities with the requirements that apply to securities offered in reliance on the exclusion for employee share purchase schemes in clause 8 of Schedule 1 of the FMC Act.

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

- the exemptions allow securities previously offered through employee share purchase schemes under the Securities Act 1978 to be treated more consistently with securities offered through the employee share purchase schemes exclusion in Schedule 1 of the FMC Act. Without these exemptions, unlisted New Zealand companies that have previously offered securities through employee share purchase schemes would incur significantly higher compliance costs than unlisted New Zealand companies offering financial products under the FMC Act:
- the exemptions strike a balance between lowering compliance costs for companies that have previously offered securities through employee share purchase schemes and providing sufficient information in financial reporting for employees to make informed decisions about the securities offered through these schemes. Consistent with the policy for the exclusion for employee share purchase schemes in clause 8 of Schedule 1 of the FMC Act, the FMA considers that the reduced compliance requirements provided by the exemptions are appropriate in light of the nature of the relationship between the company and its employees, and the desirability of encouraging participation in employee share purchase schemes by reducing unnecessary compliance costs:
- for these reasons, the exemptions are desirable in order to promote the purposes of the FMC Act, specifically promoting and facilitating the development of fair, efficient, and transparent financial markets and avoiding unnecessary compliance costs:

**Financial Markets Conduct (Employee Share Purchase
Scheme Shares Offered under Securities Act 1978)**

Statement of reasons

Exemption Notice 2021

2021/226

- the exemptions are limited to securities previously offered through employee share purchase schemes in reliance on the Securities Act notice by unlisted companies incorporated in New Zealand. Further, companies relying on the exemptions may still need to comply with the financial reporting and auditing requirements imposed by the Companies Act 1993. As such, the FMA is satisfied that the exemptions are not broader than is 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*: 26 August 2021.

This notice is administered by the Financial Markets Authority.

Wellington, New Zealand:

Published under the authority of the New Zealand Government—2021