

**Version  
as at 18 November 2021**



**Financial Markets Conduct (Incidental Offers)  
Exemption Amendment Notice 2018  
(LI 2018/55)**

Financial Markets Conduct (Incidental Offers) Exemption Amendment Notice 2018: revoked, on the close of 17 November 2021, pursuant to clause 3 of the Financial Markets Conduct (Incidental Offers) Exemption Notice 2016 (LI 2016/267).

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 (Incidental Offers) Exemption Amendment Notice 2018.

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**Note**

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This notice is administered by the Financial Markets Authority.**

## 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 2019.  
Date of notification in *Gazette*: 11 April 2018.

## Notes

### **1** *General*

This is a consolidation of the Financial Markets Conduct (Incidental Offers) Exemption Amendment Notice 2018 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Financial Markets Conduct (Incidental Offers) Exemption Notice 2016 (LI 2016/267): clause 3