



Financial Markets Conduct (Catalist Public Market) 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.

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Notice

1 Title

This notice is the Financial Markets Conduct (Catalist Public Market) Exemption Notice 2021.

2 Commencement

This notice comes into force on 21 June 2021.

3 Revocation

This notice is revoked on the close of 20 June 2026.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

alternative disclosure obligation has the same meaning as in regulation 3 of the Financial Markets Conduct (Catalist Public Market) Regulations 2021

alternative disclosure provisions has the same meaning as in regulation 3 of the Financial Markets Conduct (Catalist Public Market) Regulations 2021

Catalist market rules has the same meaning as in regulation 3 of the Financial Markets Conduct (Catalist Public Market) Regulations 2021

Catalist Public Market means the licensed market operated by Catalist Markets Limited under that name

exempt issuer, in relation to—

(a) clauses 5 to 9, has the meaning set out in clause 5(6)(b):

(b) clauses 10 and 11, has the meaning set out in clause 10(5)(b)

financial reporting obligations, in relation to an exempt issuer, means requirements imposed under—

(a) the Act, the Companies Act 1993, or another enactment, or the Financial Markets Conduct (Catalist Public Market) Regulations 2021, to prepare financial statements or group financial statements in relation to the issuer, its group, or (if it is a manager) a scheme of which it is the manager for the most recently completed accounting period, to have those statements audited, and to lodge or register those statements; and

(b) any Catalist market rules that provide for financial statements to be released to the market for a more recent interim accounting period than the period referred to in paragraph (a)

market capitalisation, in relation to—

- (a) an issuer of equity securities that are or will be quoted on the Catalist Public Market (whether or not it is also an issuer of debt securities that are or will be quoted), means the higher of the following:
 - (i) the value of all of the issuer's equity securities, as implied by the market price or fair value of those equity securities (*see* subclause (3)):
 - (ii) the net assets of the issuer and its subsidiaries (if any) as reported in the most recent financial statements or group financial statements prepared in accordance with generally accepted accounting practice for the issuer and those subsidiaries (if any):
- (b) an issuer to which paragraph (a) does not apply, means the net assets of the issuer and its subsidiaries (if any) as reported in the most recent financial statements or group financial statements prepared in accordance with generally accepted accounting practice for the issuer and those subsidiaries (if any)

option underlyings, in relation to an offer of options, means the underlying financial products to which the options relate

public auction means an auction (within the meaning of regulation 3 of the Financial Markets Conduct (Catalist Public Market) Regulations 2021) in which all registered investors are permitted to participate

registered investor means an investor who has been approved by Catalist Markets Limited to be able to participate in auctions

Regulations means the Financial Markets Conduct Regulations 2014.

- (2) For the purposes of calculating the amount of money raised by A by issuing financial products in clauses 5 and 10, the following must be included:
 - (a) the amount payable for the products at the time when the products are issued:
 - (b) if the products are shares issued partly paid, any amount payable at a future time if a call is made:
 - (c) if the product is an option, any amount payable on the exercise of the option:
 - (d) if the products carry a right to convert the products into other financial products, any amount payable on the exercise of the right.
- (3) For the purposes of paragraph (a)(i) of the definition of market capitalisation in subclause (1), fair value must be determined in accordance with generally accepted accounting practice.
- (4) 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.

*Exemptions for quoted financial products***5 Exemptions for offers of financial products of same class as Catalist Public Market-quoted financial products**

- (1) Every exempt issuer (A), and every holder of financial products issued by A, is exempted from the provisions referred to in subclause (3) in respect of an offer of any financial products of which A is the issuer if—
 - (a) the financial products are equity securities, debt securities, or managed investment products in a registered scheme; and
 - (b) the financial products are of the same class as quoted financial products that have been quoted on the Catalist Public Market at all times during the 3-month period before the time of the offer; and
 - (c) at least 3 public auctions allowing trading in that class of financial products on the Catalist Public Market have been held; and
 - (d) in the case of an offer by way of issue, it is a term of the offer that the issuer will take any necessary steps to ensure that the financial products are, immediately after issue, quoted; and
 - (e) in the case of an offer by way of sale, the offeror has reasonable grounds to believe that the financial products will, immediately after the sale, be quoted; and
 - (f) the offer does not result in a breach of the \$20 million limit under subclause (4) or (5); and
 - (g) the Catalist market rules contain alternative disclosure provisions; and
 - (h) no disciplinary action has been taken by Catalist Markets Limited for a failure by A to comply with any of the Catalist market rules relating to the disclosure of information during the 3-month period before the offer is made.
- (2) Every exempt issuer (A), and every holder of financial products issued by A, is exempted from the provisions referred to in subclause (3) in respect of an offer of options to acquire, by way of issue, financial products (and the offer of those option underlyings) of which A is the issuer if—
 - (a) the options and option underlyings are equity securities, debt securities, or managed investment products in a registered scheme; and
 - (b) the option underlyings are of the same class as quoted financial products that have been quoted on the Catalist Public Market at all times during the 3-month period before the time of the offer; and
 - (c) at least 3 public auctions allowing trading in that class of financial products on the Catalist Public Market have been held; and
 - (d) in the case of an offer by A, it is a term of the offer that A will take any necessary steps to ensure that, immediately after the option underlyings are issued, the option underlyings are quoted; and

- (e) in the case of an offer by a holder of financial products issued by A, the offeror has reasonable grounds to believe that, immediately after the option underlyings are issued, the option underlyings will be quoted; and
 - (f) the offer does not result in a breach of the \$20 million limit under sub-clause (4) or (5); and
 - (g) the Catalist market rules contain alternative disclosure provisions; and
 - (h) no disciplinary action has been taken by Catalist Markets Limited for a failure by A to comply with any of the Catalist market rules relating to the disclosure of information during the 3-month period before the offer is made.
- (3) For the purposes of subclauses (1) and (2), the provisions exempted from are—
- (a) the provisions of Parts 3 and 4 of the Act in the case of an offer of equity securities or debt securities;
 - (b) the provisions of Part 3 of the Act in the case of an offer of managed investment products in a registered scheme.
- (4) An offer by A to issue financial products results in a breach of the \$20 million limit if it results in the amount being raised from the issue of A's financial products exceeding \$20 million in any 12-month period.
- (5) An offer by a holder of financial products issued by A to sell financial products of A results in a breach of the \$20 million limit if it results in the amount being raised by the person from selling A's financial products exceeding \$20 million in any 12-month period.
- (6) In this clause and clauses 6 to 9,—
- (a) **A's financial products** means equity securities, debt securities, and managed investment products issued by A (whether or not those products are of the same class or kind as those under offer):
 - (b) an entity is an **exempt issuer** if, at the time an offer is made in reliance on this clause,—
 - (i) the entity is a party to a listing agreement with Catalist Markets Limited in relation to the Catalist Public Market; and
 - (ii) financial products of the entity are quoted on the Catalist Public Market; and
 - (iii) in the case of an issuer of equity securities or debt securities that are quoted on the Catalist Public Market, its market capitalisation does not exceed \$100 million; and
 - (iv) in the case of an issuer of managed investment products that are quoted on the Catalist Public Market, the total gross value of assets under management by the issuer in respect of all managed investment schemes of which it is the manager does not exceed

\$100 million (calculated in accordance with generally accepted accounting practice).

6 Condition that offer not to be made within certain periods or in certain circumstances

The exemptions in clause 5 are subject to the condition that the offer is not made—

- (a) within 3 months after a change to the essential nature of the exempt issuer's business; or
- (b) within 3 months after a transaction for which the exempt issuer has provided disclosure to the Catalist Public Market as if it were listing on that market; or
- (c) in connection with enabling—
 - (i) a change to the essential nature of the exempt issuer's business; or
 - (ii) a transaction for which the exempt issuer will be required to provide disclosure to the Catalist Public Market as if it were listing on that market.

7 Condition that exempt issuer must give notice to Catalist Markets Limited and be in compliance with alternative disclosure and financial reporting obligations

- (1) The exemptions in clause 5 are subject to the condition that the offeror must not offer the financial products, or issue or transfer those products, unless the exempt issuer—
 - (a) has, at a relevant time, provided a notice to Catalist Markets Limited in accordance with subclause (2) for the purpose of the information in the notice being notified to the Catalist Public Market; and
 - (b) is, as at the date of the notice, in compliance with its alternative disclosure obligations; and
 - (c) is, as at the date of the notice, in compliance with its financial reporting obligations.
- (2) The exemptions in clause 5 are subject to the condition that the offeror has taken all reasonable steps to ensure that the notice under subclause (1)(a)—
 - (a) states that an offer for issue or sale is being made to investors in reliance upon an exemption in clause 5; and
 - (b) states that the notice is provided under subclause (1)(a); and
 - (c) states that, as at the date of the notice, the exempt issuer is in compliance with its alternative disclosure obligations; and
 - (d) states that, as at the date of the notice, the exempt issuer is in compliance with its financial reporting obligations; and

- (e) sets out the information (if any) that is excluded information as at the date of the notice; and
- (f) in the case of financial products that are equity securities, describes—
 - (i) the potential effects that the offer and acquisition of the equity securities will have on the control of the exempt issuer; and
 - (ii) the consequences of those effects; and
- (g) in the case of financial products that are debt securities that have a different redemption date or interest rate from that of the quoted financial products, sets out the information that would (if the quoted financial products had had the same redemption date or interest rate)—
 - (i) be required to be disclosed under an alternative disclosure obligation; or
 - (ii) be excluded information; and
- (h) if this paragraph applies in accordance with subclause (3) in relation to an event or a matter,—
 - (i) sets out the material information about the event or matter referred to in subclause (3); and
 - (ii) specifies when the event or matter arose.

Example

ABC Limited manufactures gadgets and widgets. ABC Limited is planning to make an offer of equity securities at an auction on 10 April.

On 15 January, ABC Limited enters into a conditional agreement to sell its gadgets business to purchaser A.

On 7 February, the conditions are not met and the transaction falls over.

On 18 February, ABC Limited enters into negotiations with purchaser B about the sale of its gadgets business.

The deal is signed on 20 March.

Each of these events arose during the 3-month period before the offer is made at the 10 April auction and information about the events is material information. This information is not generally available to the market under section 232 of the Act.

ABC Limited must take all reasonable steps to set out the material information for each event, including information about when each event occurred.

- (3) Subclause (2)(h) applies to an event or a matter if—
 - (a) the event or matter arises at any time during the 3-month period before the offer is made; and
 - (b) the issuer has information about the event or matter that—
 - (i) was material information (within the meaning of section 231 of the Act) at the time that the event or matter arose; and

- (ii) is not generally available to the market (within the meaning of section 232 of the Act).
- (4) The notice must contain—
 - (a) information under subclause (2)(e), (f), and (g) only to the extent to which it is material information within the meaning of section 59 of the Act (applied as if the offer were a regulated offer); and
 - (b) information under subclause (2)(h) only if the offer is made more than 3 months after the end of the last public auction held by the issuer.
- (5) In this clause,—
 - control** has the same meaning as in clause 48 of Schedule 1 of the Act
 - excluded information** means information to which an alternative disclosure obligation would apply but that has not been disclosed under such an obligation as a result of an exclusion in, or a waiver given under, the Catalist market rules
 - quoted financial products** means the financial products that are quoted on the Catalist Public Market and that are of the same class as those that are being offered
 - relevant time**, in relation to an offer of financial products, means—
 - (a) a time within the 24-hour period before the offer is made; or
 - (b) an earlier time required by Catalist Markets Limited.

8 Condition to correct defective notice

- (1) This clause applies if—
 - (a) the notice given under clause 7 is defective; and
 - (b) the exempt issuer or offeror becomes aware of the defect in the notice,—
 - (i) in the case of subclause (3)(a)(i) or (ii), within 12 months after the relevant financial products are issued or transferred; or
 - (ii) in the case of subclause (3)(a)(iii), before the offer closes.
- (2) The exemptions in clause 5 are subject to the condition that the exempt issuer must, within a reasonable time after the exempt issuer or the offeror becomes aware of a defect, provide to Catalist Markets Limited a notice that sets out the information necessary to correct the defect for the purpose of the information being notified to the Catalist Public Market.
- (3) The notice is **defective** if—
 - (a) there is—
 - (i) a statement in the notice that is false or misleading or is likely to mislead; or
 - (ii) an omission from the notice of information that is required to be contained in the notice by clause 7; or

- (iii) a circumstance that has arisen since the notice was given but before the offer closes that would have been required by clause 7 to be disclosed or otherwise contained in the notice if it had arisen before the notice was given, and the circumstance is not so disclosed or contained in the notice; and
- (b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

9 Further condition for offers of debt securities

- (1) The exemptions in clause 5 are, in respect of debt securities offered by a person (A) to another person (B), subject to the further condition that—
 - (a) A must ensure that a statement under subclause (2) is included at the front (in a prominent position) of every document provided to B that contains the key terms of the offer of the debt securities; and
 - (b) if a document referred to in paragraph (a) is not provided to B, A must not accept an application, or issue or transfer the debt securities to B, if a statement under subclause (2) was not, before the application was made, made available to B or delivered or sent to B's address.
- (2) The statement must—
 - (a) clearly identify the offer as an offer of debt securities that are of the same class as certain quoted debt securities of the exempt issuer; and
 - (b) contain a statement to the effect that the exempt issuer is subject to a disclosure obligation that requires it to notify certain material information to Catalist Markets Limited for the purpose of that information being made available to participants in the market and that that information can be found from a specified link or URL (being a link to or a URL for the page of the Internet site maintained by Catalist Markets Limited that relates to the debt securities or the exempt issuer); and
 - (c) provide a list that identifies the debt securities of the exempt issuer that are currently quoted and are in the same class as the offered debt securities (where the securities are identified by reference to the interest rates and redemption dates of those securities and in any other way that A thinks fit); and
 - (d) contain a statement to the effect that investors should look at the market price of the quoted debt securities referred to in paragraph (c) to find out how the market assesses the returns and risk premium for those debt securities.

*Exemptions for small offers***10 Exemptions for offers of financial products through Catalist Public Market**

- (1) Every exempt issuer (**A**), and every holder of financial products issued by A, is exempted from Parts 3 and 4 of the Act in respect of an offer of financial products of which A is the issuer if—
 - (a) the financial products are equity securities or debt securities; and
 - (b) the offer is made through the Catalist Public Market and is subject to the Catalist market rules; and
 - (c) the offer does not result in a breach of the \$2 million limit under subclause (2) or (3).
- (2) An offer by A results in a breach of the \$2 million limit if it results in the amount being raised from the issue or transfer of A's financial products under 1 or more relevant offers exceeding \$2 million in any 12-month period.
- (3) An offer by a holder of financial products issued by A to sell financial products of A results in a breach of the \$2 million limit if it results in the amount being raised by the person from selling A's financial products under 1 or more relevant offers exceeding \$2 million in any 12-month period.
- (4) Subclause (1) does not apply to an offer for sale to which clause 31 or 34 of Schedule 1 of the Act applies.
- (5) In this clause,—
 - (a) **A's financial products** means equity securities and debt securities issued by A (whether or not those products are of the same class or kind as those under offer);
 - (b) an entity is an **exempt issuer** if, at the time an offer is made in reliance on this clause,—
 - (i) the entity is a party to a listing agreement with Catalist Markets Limited in relation to the Catalist Public Market; and
 - (ii) in the case of an offer by way of issue, it is a term of the offer that the issuer will take any necessary steps to ensure that the financial products are, immediately after issue, quoted; and
 - (iii) in the case of an offer by way of sale, the offeror has reasonable grounds to believe that the financial products will, immediately after the sale, be quoted; and
 - (iv) the entity's market capitalisation does not exceed \$100 million:
 - (c) **relevant offer** means an offer made in reliance on any of the following:
 - (i) the exemption in subclause (1);
 - (ii) clause 6 of Schedule 1 of the Act (offers of financial products through licensed intermediaries):

(iii) clause 12 of Schedule 1 of the Act (small offers).

11 Condition about warning statement

- (1) The exemptions in clause 10 are subject to the condition that the offeror must not offer the financial products, or issue or transfer those products, to another person (**B**) unless the offeror has taken all reasonable steps to ensure that a warning statement is made prominently available to B immediately before—
- (a) B submits an order; or
 - (b) B authorises an authorised representative to submit an order on B's behalf.

- (2) In this clause,—

authorised representative has the same meaning as in clause 1(1) of the Schedule of the Financial Markets Conduct (Approval of Catalist Electronic Transfer System) Order 2021

order means an order to acquire the financial products submitted using the ETS Internet site (within the meaning of clause 1(1) of the Schedule of the Financial Markets Conduct (Approval of Catalist Electronic Transfer System) Order 2021).

- (3) The warning statement must be in the following form:

“Warning

You are being offered [*name of financial product type (for example, ordinary shares)*] in [*name of issuer*].

This investment carries risks. You may lose your entire investment, and must be in a position to bear this risk without undue hardship.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors to make an informed decision.

The usual rules do not apply to this offer because it is a small offer of \$2 million or less. The issuer must disclose material information about the offer, but this may not include the same information usually required. Legal protections that apply to trading on a licensed market will apply, but you may have fewer other legal protections for this investment.

Ask questions, read all information carefully, and seek independent financial advice before committing yourself.”

- (4) Regulation 9 of the Regulations applies, with all necessary modifications, to a warning statement required under this clause.

*Exempted offers not regulated offers***12 Offers made in reliance on this notice not regulated offers**

An offer of equity securities, debt securities, or managed investment products made in reliance on this notice is not a regulated offer.

Dated at Wellington this 10th day of June 2021.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 21 June 2021 and is revoked on the close of 20 June 2026.

This 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 the same class as financial products that are quoted on the Catalist Public Market (**Catalist Public Market**), a licensed market operated by Catalist Markets Limited (**same class offers**);
- offers of \$2 million or less that are made through the Catalist Public Market (**small offers**).

This notice also provides that offers made in reliance on this notice are not regulated offers under the Act. This means that legislative requirements that apply to regulated offers will not apply (unless there is some other reasons why they apply). Any other financial markets conduct obligations that the exempt issuer may have, including obligations under Part 2 of the Act, are not affected. The obligations that apply to exempt issuers under Parts 5 and 7 of the Act are modified by the Financial Markets Conduct (Catalist Public Market) Regulations 2021.

Holders of an exempt issuer's financial products are also exempt where they are offering those products by way of sale. Those offerors may otherwise have been required to comply with the disclosure requirements because of Part 2 of Schedule 1 of the Act, which requires disclosure under Part 3 of the Act in certain circumstances.

The exemptions for same class offers—

- are similar to an exclusion relating to same class offers of quoted financial products in clause 19 of Schedule 1 of the Act (the **clause 19 exclusion**). The clause 19 exclusion is not available because the Catalist market rules do not contain continuous disclosure provisions, which is required by clause 19.

Instead, Catalist Public Market listed issuers must comply with alternative disclosure obligations provided for in the Catalist market rules and the Financial Markets Conduct (Catalist Public Market) Regulations 2021. Those regulations allow for periodic, rather than continuous, disclosure of all material information. This reflects that trading of financial products on the Catalist Public Market occurs only during set periods of time (**auctions**). Disclosure obligations apply only during these periodic auctions rather than continuously:

- are subject to requirements and conditions that are consistent, as far as practicable, with the requirements of clause 19 of Schedule 1 of the Act and clauses 19 to 22 and 46 of Schedule 8 of the Financial Markets Conduct Regulations 2014 (which relate to the clause 19 exclusion). Some modifications have been made to reflect the periodic nature of trading and disclosure on the Catalist Public Market. This includes new requirements, that are not included in the clause 19 exclusion, requiring at least 3 previous public auctions to have been held, for the Catalist market rules to contain alternative disclosure provisions (rather than continuous disclosure provisions), and for issuers to provide material information about events or matters that arose during the 3 month period before the offer is made, including when those events or matters arose:
- are subject to a limit of \$20 million on the amount that can be raised by an offeror in any 12-month period.

The exemptions for small offers are similar to an exclusion for small personal offers in clause 12 of Schedule 1 of the Act, and an exclusion for offers through licensed intermediaries, such as providers of crowd funding or peer-to-peer lending services, in clause 6 of Schedule 1 of the Act. Consistent with those exclusions, offerors are limited to raising \$2 million in any 12-month period, and are subject to a condition requiring offerors to take reasonable steps to ensure that a prescribed warning statement is made available to investors before investment.

The FMA, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- granting the exemptions should promote innovation and flexibility in the financial markets by facilitating the development of an innovative growth market. This is also consistent with the Part 5 objective of encouraging a diversity of financial product markets to take account of the differing needs and objectives of issuers and investors; and
- providing relief from regulated offer requirements (for example, preparing a product disclosure statement) should assist small growth companies to raise capital at lower cost, as an alternative to seeking private capital. This has the potential to offer small growth companies more funding options at an earlier stage in their growth cycle, helping to address a funding gap within New Zealand's capital markets. This in turn enables investors to participate in offers that might otherwise not be made available, providing a greater range of investment opportunities; and

- appropriate exemption requirements and conditions seek to ensure investors are in a position to make confident and informed investment decisions. For the exemptions for same class offers, this includes requirements for the financial products to have been quoted for at least 3 months and for at least 3 public auctions to have been held. The exemptions for small offers require issuers to make available a warning statement to investors, and take into account the requirements that apply to the licensed market operator under Part 5 of the Act and its conditions of licence. Additionally, the Catalist market rules and the Financial Markets Conduct (Catalist Public Market) Regulations 2021 require issuers to disclose material information to investors no later than the start of an auction period; and
- for these reasons, the FMA is satisfied that the exemptions are desirable in order to promote the purposes of the Act. Specifically, the exemptions should promote fair and efficient financial markets, promote the confident and informed participation of businesses and investors in the financial markets, avoid unnecessary compliance costs, and promote innovation and flexibility in the financial markets; and
- given the exemptions apply only to offers made by offerors on the Catalist Public Market and are subject to issuer and offer size restrictions, and in view of the exemptions being granted on a similar basis to existing exclusions in Schedule 1 of the Act, the FMA is also satisfied that the exemptions are not broader than reasonably necessary to address the matters that give rise to the exemptions.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 16 June 2021.

This notice is administered by the Financial Markets Authority.