



## **Financial Markets Conduct (Recognised Exchanges) 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 (Recognised Exchanges) Exemption Notice 2021.

## 2 Commencement

This notice comes into force on 18 November 2021.

## 3 Revocation

This notice is revoked on the close of 17 November 2026.

## 4 Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**International Financial Reporting Standards** means—

- (a) International Financial Reporting Standards, International Accounting Standards, and Standing Interpretations Committee interpretations that have been issued, endorsed, or adopted by the International Accounting Standards Board in accordance with the constitution of the International Financial Reporting Standards Foundation; and
- (b) final interpretations by the International Financial Reporting Standards Interpretations Committee approved by the International Accounting Standards Board in accordance with that constitution

**overseas listed products** means financial products to which any 1 or more of the following applies:

- (a) the financial products are approved for trading on the principal official list of a recognised exchange that has primary jurisdiction for the listing requirements for the issuer and the quotation of those financial products:
- (b) the issuer has—
  - (i) applied to a recognised exchange for the financial products to be approved for trading on the principal official list of the recognised exchange (being a recognised exchange that will, after the products are approved for trading, have primary jurisdiction for the listing requirements for the issuer and the quotation of those financial products); and
  - (ii) at the time of the offer of the financial products to retail investors in New Zealand, complied with all the requirements of the recognised exchange relating to the application with which it must comply at that time:
- (c) it is a term of the offer of the financial products that the financial products will be approved for trading on the principal official list of a recognised exchange immediately after the products are issued (being a recognised exchange that will have primary jurisdiction for the listing requirements for the issuer and the quotation of those financial products)

**overseas offer document** means a document—

- (a) that contains an offer of the overseas listed products by the offeror; and

- (b) that is identical to a document that is lodged or registered under the law of the relevant jurisdiction, if required to be lodged or registered under the law of the relevant jurisdiction, and that is signed by the persons (if any) that are required by that law to sign that document; and
- (c) by means of which it is lawful under the law of the relevant jurisdiction to make an offer of those overseas listed products to the public in that jurisdiction

**recognised exchange** means the London Stock Exchange, the Nasdaq Stock Market, or the New York Stock Exchange

**Regulations** means the Financial Markets Conduct Regulations 2014

**relevant jurisdiction**, in relation to overseas listed products, means the jurisdiction in which the recognised exchange referred to in the definition of overseas listed products has its principal place of business (being either the United Kingdom or the United States of America)

**retail investor** has the same meaning as in regulation 5(1) of the Regulations.

- (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.
- (3) Regulation 9 of the Regulations applies, with all necessary modifications, to a warning statement required to be provided by this notice.

## 5 Exemptions for offers of overseas listed products

Every 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 any financial products of which A is the issuer if the financial products are overseas listed products.

## 6 Conditions relating to disclosure

- (1) The exemptions in clause 5 are subject to the conditions that—
  - (a) there is an overseas offer document relating to the overseas listed products at the time that offers of the products are open for acceptance in New Zealand; and
  - (b) the offeror must, within 5 working days after receiving a request of a retail investor in New Zealand for a copy of the overseas offer document, provide to that investor, in accordance with subclause (2),—
    - (i) copies of the overseas offer document and any documents that supplement the overseas offer document; and
    - (ii) copies of any documents that, under the law of the relevant jurisdiction, must accompany any copy of the overseas offer document provided to any person to whom an offer of the overseas listed products is made in that jurisdiction.
- (2) A document referred to in subclause (1)(b) must be provided—

- (a) by giving it to the investor or delivering or sending it to the investor's address; and
- (b) without fee.

## 7 Conditions relating to financial reporting

- (1) The exemptions in clause 5 are subject to the conditions that—
  - (a) the issuer, in relation to its financial statements, complies with the law and regulatory requirements of, or permitted by, the relevant jurisdiction that relate to the preparation, content, auditing, and public filing of those statements; and
  - (b) the financial statements of the issuer comply with the generally accepted accounting practice or principles specified in Schedule 1 that is or are required or permitted in the relevant jurisdiction.
- (2) This clause applies in relation to the issuer and its financial statements, even if the offeror is not the issuer.
- (3) In this clause, **financial statements**, in relation to an issuer,—
  - (a) means the financial statements that are required to be prepared in respect of either or both of the issuer and its group, as applicable, in accordance with the law and regulatory requirements of, or permitted by, the relevant jurisdiction; and
  - (b) includes, in respect of an issuer who is an issuer of managed investment products, financial statements in respect of each managed investment scheme and, if the liabilities of the issuer or the scheme are limited to a separate fund, financial statements for that separate fund that are prepared in accordance with the law and regulatory requirements of, or permitted by, the relevant jurisdiction.

## 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 Documents and information that must accompany notice that is lodged with Registrar**

The documents and information referred to in clause 8(2)(g) are—

- (a) copies of the overseas offer document relating to the overseas listed products and any documents that supplement the overseas offer document; and
- (b) copies of any documents that, under the law of the relevant jurisdiction, must accompany any copy of the overseas offer document provided to any person to whom an offer of the overseas listed products is made in that jurisdiction.

## **10 Condition relating to warning statements**

The exemptions in clause 5 are subject to the further condition that, if an overseas offer document, or any other document that supplements the overseas offer document, is provided by or on behalf of the offeror to a retail investor in New Zealand, the document must be accompanied by—

- (a) the warning statement set out in Part 1 of Schedule 2; and
- (b) the additional warning statement set out in Part 2 of Schedule 2 if the offer involves payments that are not in New Zealand dollars.

**11 Condition relating to offer complying with overseas law and being open to acceptance overseas**

The exemptions in clause 5 are subject to the further condition that the offer of overseas listed products must—

- (a) comply with the requirements of the recognised exchange and the laws of the relevant jurisdiction; and
- (b) be open to acceptance by persons in the relevant jurisdiction at all times during which it is open for acceptance by retail investors in New Zealand.

**12 Notice does not apply if Financial Markets Conduct (Incidental Offers) Exemption Notice 2021 applies**

This notice does not apply to financial products if the Financial Markets Conduct (Incidental Offers) Exemption Notice 2021 applies to the offer of those products.

**13 Offers made in reliance on this notice not regulated offers**

An offer of overseas listed products made in reliance on this notice is not a regulated offer.

**Schedule 1  
Overseas GAAPs**

cl 7(1)(b)

Australian equivalents to International Financial Reporting Standards

Canadian equivalents to International Financial Reporting Standards

European Union International Financial Reporting Standards

Hong Kong Financial Reporting Standards

International Financial Reporting Standards

Singapore Financial Reporting Standards

United Kingdom equivalents to International Financial Reporting Standards

Generally accepted accounting principles in the United States of America

## Schedule 2

### Warning statements

cl 10

#### Part 1

##### Warning statement

This offer and the content of the offer document are principally governed by the laws of [*specify*] rather than New Zealand law. The laws of [*specify*] and the rules of [*name of recognised exchange*] will set out how the offer must be made. There are differences in how financial products are regulated under that law.

The [*offeror\*/issuer and offeror†*] of the financial products may not be subject in all respects to New Zealand law. The rights, remedies, and compensation arrangements available to New Zealand investors in the financial products may also differ from the rights, remedies, and compensation arrangements for New Zealand financial products.

The financial products are able to be traded on [*name of recognised exchange*]. If you wish to trade the financial products through that market, you will have to make arrangements for a participant in that market to sell the financial products on your behalf. The way in which that market operates, the regulation of participants in that market, and the information available to you about the financial products and trading may differ from financial product markets that operate in New Zealand.

A copy of the overseas offer document has been lodged with the Registrar of Financial Service Providers. The overseas offer document may not contain all the information that a New Zealand lodged product disclosure statement is required to contain.

The financial reporting requirements applying in New Zealand and those applying to [*name of issuer*] may be different, and the financial statements of the issuer may not be comparable in all respects with financial statements prepared in accordance with New Zealand law.

The taxation treatment of the financial products may not be the same as for New Zealand financial products.

If you are uncertain about whether this investment is appropriate for you, you should seek advice from a financial advice provider.

\*Select if the offeror is the issuer.

†Select if the offeror is not the issuer.

#### Part 2

##### Additional warning statement: currency exchange risk

The offer may involve a currency exchange risk. The currency for the financial products is not New Zealand dollars. The value of the financial products will go up or down according to changes in the exchange rate between that currency and New Zealand dollars. These changes may be significant. If you expect the financial products to



pay any amounts in a currency that is not New Zealand dollars, you may incur significant fees in having the funds credited to a bank account in New Zealand in New Zealand dollars.

Dated at Auckland this 3rd day of November 2021.

Karen Chang,  
Acting General Counsel,  
Financial Markets Authority.

### Statement of reasons

This notice comes into force on 18 November 2021 and is revoked on the close of 17 November 2026.

The notice exempts offerors 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 certain recognised overseas exchanges (**overseas listed products**). The overseas exchanges are the London Stock Exchange, the Nasdaq Stock Market, and the New York Stock Exchange.

The notice also provides that the offers exempted by this notice are not regulated offers under the Act. This means that other requirements of the Act, or other Acts, that apply in connection with regulated offers (such as the financial reporting requirements) will not apply. Any other financial market conduct obligations the exempted entity may have, including obligations under Part 2 of the Act, are not affected.

The notice replaces, on substantially the same terms, the Financial Markets Conduct (Recognised Exchanges) Exemption Notice 2016, which is revoked on 17 November 2021.

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 grant the exemptions because—

- the exemptions recognise the adequacy of the regulation of financial product offerings on significant exchanges in the United Kingdom and the United States of America. Offers made on significant exchanges in these jurisdictions have the following characteristics:
  - the laws of the jurisdiction require disclosure of information for investors to an extent broadly equivalent with New Zealand financial markets conduct law:

- the financial products are approved for trading on the principal list of a significant overseas exchange and are therefore subject to significant listing thresholds, ongoing disclosure, corporate governance, and financial reporting requirements:
- the issuer is subject to financial reporting (including overseas generally accepted accounting practice or principles) and audit standards that are broadly comparable to New Zealand's:
- the regulatory body in the jurisdiction is an ordinary member of the International Organization of Securities Commissions (**IOSCO**) and a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This means that the FMA will be able to obtain co-operation from the securities regulator in the jurisdiction if any compliance concerns arise in relation to the offeror or issuer:
- the exemptions apply to financial products that are approved for trading on the principal list of a significant overseas exchange. Offers from these exchanges are likely to be of significant size and are unlikely to be targeted predominantly at New Zealand investors:
- the conditions of the exemptions require New Zealand investors to be provided with a warning statement that provides information about the risks that might accompany overseas investment:
- in the absence of an exemption, 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:
- as such, the FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act; specifically, it will avoid unnecessary compliance costs and promote flexibility in the financial markets:
- given that the exemptions will be limited to exempt issuers or offerors subject to regulatory oversight broadly equivalent to New Zealand's and making offers that do not primarily target New Zealand investors, 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 2019.  
Date of notification in *Gazette*: 8 November 2021.  
This notice is administered by the Financial Markets Authority.