



Financial Markets Conduct (Wholesale Investor Exclusion—\$750,000 Minimum Investment in Kauri Bonds) 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 (Wholesale Investor Exclusion—\$750,000 Minimum Investment in Kauri Bonds) Exemption Notice 2021.

2 Commencement

This notice comes into force on 5 February 2022.

3 Revocation

This notice is revoked on the close of 4 February 2027.

4 Interpretation

In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

Kauri bond means an unsubordinated debt security that—

- (a) is denominated in New Zealand dollars and recorded in a financial products register kept in New Zealand; and

- (b) is issued by an issuer that is incorporated, formed, or established outside New Zealand

Regulations means the Financial Markets Conduct Regulations 2014

unsubordinated debt security means a debt security that is not, under its terms, subordinated to any of the issuer's other debts to unsecured creditors.

5 Exemption for Kauri bonds

- (1) This clause applies to a person (A) who offers Kauri bonds to another person (B) in reliance upon clause 3 of Schedule 1 of the Act on the basis that B is a wholesale investor under clause 3(3)(b)(i) or (ii) of that schedule.
- (2) A is exempted from clauses 4 and 5 of Schedule 8 of the Regulations in respect of the offer of Kauri bonds to B.

Dated at Wellington this 15th day of October 2021.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 5 February 2022 and is revoked on the close of 4 February 2027. It applies to offers of certain debt securities known as Kauri bonds that are made in reliance on the \$750,000 minimum investment wholesale investor exclusion in clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013 (the **Act**). Generally, offerors relying on this exclusion must include a warning statement in every offer document and obtain an acknowledgement of the warning from investors (*see* clauses 3 to 5 of Schedule 8 of the Financial Markets Conduct Regulations 2014). The effect of this notice is to exempt offerors of Kauri bonds from the warning and investor acknowledgement requirements.

This notice replaces the Financial Markets Conduct (Wholesale Investor Exclusion—\$750,000 Minimum Investment) Exemption Notice 2017, which is revoked on 4 February 2022. However, exemptions for unsubordinated debt securities (other than Kauri bonds) have not been continued.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemption because—

- there is a real risk that the cost and complexities of the usual warning and investor acknowledgement requirements would discourage overseas issuers from making offers of Kauri bonds into New Zealand altogether considering the relative size of New Zealand's debt capital market:

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Statement of reasons

- this could have a significant effect on investment opportunities for New Zealand businesses given the importance of Kauri bond issuances:
- accordingly, the exemption is desirable to promote the purposes of the Act, specifically the confident and informed participation of businesses, investors, and consumers in the financial markets, the development of fair, efficient, and transparent financial markets, and the avoidance of unnecessary compliance costs:
- the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption because it is limited to offers of Kauri bonds where the workability issues are particularly difficult.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 20 October 2021.

This notice is administered by the Financial Markets Authority.