



Financial Markets Conduct (Incidental Offers) 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 (Incidental Offers) 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

dividend has the meaning given in clause 10(2) of Schedule 1 of the Act

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 an overseas market 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 an overseas market for the financial products to be approved for trading (being an overseas market 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 overseas market 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 an overseas market immediately after the products are issued (being an overseas market that will have primary jurisdiction for the listing requirements for the issuer and the quotation of those financial products):
- (d) the financial products are, or will be, issued under a dividend reinvestment plan and the issuer believes, on reasonable grounds, that the financial products will be approved for trading on an overseas market promptly after the products are issued (being an overseas market that

will have primary jurisdiction for the listing requirements for the issuer and the quotation of those financial products)

overseas market means a financial product market that is authorised to operate in a jurisdiction specified in Schedule 1

Regulations means the Financial Markets Conduct Regulations 2014

relevant jurisdiction, in relation to overseas listed products, means a jurisdiction specified in Schedule 1 in which the overseas market referred to in the definition of overseas listed products is authorised to operate

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.

5 Exemptions for offers to existing holders

- (1) 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—
- (a) the financial products are overseas listed products; and
 - (b) the only retail investors to whom the financial products are offered in New Zealand are—
 - (i) persons who, at the time fixed for determining entitlements to participate in the offer, are holders of financial products issued by A; or
 - (ii) persons who, at the time fixed for determining entitlements to participate in the offer, are holders of financial products described in subclause (2); or
 - (iii) persons in whose favour an offer to which subparagraph (i) or (ii) applies has been renounced.
- (2) The financial products referred to in subclause (1)(b)(ii) are financial products issued by an associated person of A, or a related body corporate of A, that—
- (a) are overseas listed products; or
 - (b) confer the right to acquire overseas listed products of which the associated person or related body corporate is the issuer; or
 - (c) will or may, in accordance with the terms of those financial products, be converted into overseas listed products of which the associated person or related body corporate is the issuer.

6 Exemptions for exchanges 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—

- (a) the financial products are overseas listed products; and
- (b) the financial products—
 - (i) are offered as all or part of the consideration for the acquisition or cancellation of any overseas listed products issued by another entity; or
 - (ii) are offered to holders of overseas listed products in another issuer under an arrangement that results in a capital reduction of that issuer.

7 Exemptions for offers of interim financial 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—

- (a) the financial products—
 - (i) are offered as all or part of the consideration for the acquisition or cancellation of any overseas listed products issued by another entity; or
 - (ii) are offered to holders of overseas listed products in another issuer under an arrangement that results in a capital reduction of that issuer; and
- (b) under the terms of the offer, the financial products will immediately on issue be—
 - (i) exchanged for other overseas listed products of which the issuer is A, an associated person of A, or a related body corporate of A; or
 - (ii) cancelled, and in consideration of the cancellation, investors will be issued other overseas listed products of which the issuer is A, an associated person of A, or a related body corporate of A.

8 Exemptions for variations of overseas listed products

- (1) This clause applies to an offer made in reliance upon clause 24 of Schedule 1 of the Act in relation to a variation of the terms or conditions of an overseas listed product.
- (2) Every issuer, and every holder of financial products issued by A in reliance on this notice, is exempted from clause 26 of Schedule 1 of the Act to the extent that it requires the issuer or holder to comply with clauses 33 to 35 of Schedule 8 of the Regulations.

9 Condition for offer to be made in compliance with overseas law

The exemptions in clauses 5 to 8 are subject to the condition that the offer of the financial products to retail investors in New Zealand is made in compliance with—

- (a) the law of the relevant jurisdiction; and
- (b) any code, rules, or other requirements relating to the offer of the financial products that apply in the relevant jurisdiction.

10 Conditions relating to financial reporting

(1) The exemptions in clauses 5 to 8 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 generally accepted accounting practice or principles specified in Schedule 2 that is or are required or permitted in the relevant jurisdiction.

(2) 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.

11 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
Relevant jurisdictions**

cl 4

Canada
Commonwealth of Australia
Federal Republic of Germany
France
The Netherlands
Republic of Ireland
Republic of South Africa
Singapore
Switzerland
United Kingdom
United States of America

Schedule 2 Overseas GAAPs

cl 10(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

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 replaces, on substantially the same terms, the Financial Markets Conduct (Incidental Offers) Exemption Notice 2016, which is revoked on 17 November 2021.

The notice exempts issuers, and holders of financial products issued by those issuers, from the disclosure and governance requirements in Parts 3 and 4 of the Financial Markets Conduct Act 2013 (the **Act**) in relation to the following offers:

- offers of financial products that are or will be listed on an overseas market (**overseas listed products**) where the offers are made to existing holders of the issuer's financial products:
- offers of overseas listed products where, for example, the financial products are offered as the consideration for the acquisition or cancellation of any other overseas listed products:
- offers of interim financial products that are offered as all or part of the consideration for the acquisition or cancellation of any overseas listed products or are offered to holders of overseas listed products in another issuer under an arrangement that results in a capital reduction of that issuer.

This notice also exempts issuers from disclosure requirements in clauses 33 to 35 of Schedule 8 of the Financial Markets Conduct Regulations 2014 for offers of variations of overseas listed products.

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) do not apply. Any other financial market conduct obligations that the exempted issuer may have, including obligations under Part 2 of the Act, are not affected.

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—

- this notice applies only to offers made to people who already hold financial products listed on exchanges in jurisdictions with a level of regulation broadly comparable to New Zealand and who can be taken to have assumed the degree of risk that might accompany overseas investment. This notice cannot be used for an offer of financial products to New Zealand investors more generally. The notice allows 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 shareholders in this country due to the cost of compliance:
- the exemptions recognise the adequacy of the regulation of financial product offerings in certain overseas jurisdictions. The regulations in those 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 overseas issuer is subject to financial reporting (including overseas generally accepted accounting practice or principles) and audit standards that are broadly comparable to New Zealand:
 - 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 issuer:
- 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 subject to regulatory oversight broadly equivalent to New Zealand and making offers that only incidentally target New Zealand investors, the FMA is satisfied that the exemp-

tions 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.