



Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022

Cindy Kiro, Governor-General

Order in Council

At Wellington this 27th day of June 2022

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 351, 543, and 548 of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made,—
 - (i) in the case of Part 1 of these regulations, after consulting the Financial Markets Authority in accordance with section 549 of that Act; and
 - (ii) in the case of Part 2 of these regulations, in accordance with section 351(3) of that Act.

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Regulations

1 Title

These regulations are the Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022.

2 Commencement

These regulations come into force on 28 July 2022.

Part 1

Amendments to Financial Markets Conduct Regulations 2014

3 Principal regulations

This Part amends the Financial Markets Conduct Regulations 2014.

4 Regulation 3 amended (Overview)

In regulation 3(c), replace “9” with “9A”.

5 Regulation 5 amended (Interpretation)

In regulation 5(1), insert in its appropriate alphabetical order:

bank perpetual preference share means an equity security—

- (a) in respect of which a registered bank is the issuer; and
- (b) that, when issued, will be additional tier 1 capital for the purposes of the capital adequacy requirements set out in a condition of registration

imposed under section 74 of the Banking (Prudential Supervision) Act 1989; and

- (c) that is not a financial product that the registered bank, in the ordinary course of its business, continuously offers

6 Regulation 49H amended (Cleansing notice)

- (1) Revoke regulation 49H(5).
- (2) In regulation 49H(7), revoke the definition of **NXT market**.

7 Regulation 72 amended (Provisions relating to exclusions and other Schedule 1 of Act matters)

After regulation 72(2), insert:

- (3) The provisions in Schedule 9A have effect for the purpose of prescribing matters for the purposes of clause 26C of Schedule 8.

8 Regulation 72AA amended (Civil liability for contravention of certain provisions in Schedule 8)

- (1) After regulation 72AA(1)(f), insert:
 - (fa) clause 26B(1) and (3)(a) (offeror must provide limited disclosure document and comply with ongoing disclosure duties):
 - (fb) clause 26C(1)(a) and (2) (limited disclosure document must comply with Schedule 9A and requirements that apply to equivalent PDS):
- (2) After regulation 72AA(2)(g), insert:
 - (ga) clause 26B(3)(b) (offeror must provide limited disclosure document and comply with ongoing disclosure duties):
 - (gb) clause 26C(1)(b) (limited disclosure document must comply with Schedule 9A and requirements that apply to equivalent PDS):

9 Schedule 8 amended

- (1) In Schedule 8, revoke clause 20(4).
- (2) In Schedule 8, clause 20(5), revoke the definition of **NXT market**.
- (3) In Schedule 8, clause 24(3)(b) and (c), replace “for a breach of regulation 51” with “in respect of regulation 51”.
- (4) In Schedule 8, after clause 26, insert:

26A Application

- (1) Clauses 26B to 26E apply to a person (A) who offers bank perpetual preference shares to another person (B) in reliance on clause 21(a) of Schedule 1 of the Act (*see* clause 44(1A)(h) of this schedule).
- (2) However, those clauses do not apply if the bank perpetual preference shares have previously been offered for issue or sale under an offer for which a dis-

closure document was required to be provided under clause 26 of Schedule 1 of the Act (or would have been required but for an exemption granted under subpart 2 of Part 9 of the Act).

26B Offeror must provide limited disclosure document and comply with ongoing disclosure duties

- (1) A must not accept an application, or issue or transfer the bank perpetual preference shares to B, if a limited disclosure document was not provided to B before the application was made.
- (2) The limited disclosure document must be provided by giving it to B or delivering or sending it to B's address.
- (3) A must comply with the following provisions (including any regulations relating to those provisions) in respect of the bank perpetual preference shares issued or transferred to B:
 - (a) section 97 of the Act:
 - (b) sections 96 (other than in respect of regulation 51) and 100 of the Act:
 - (c) sections 95, 96 (in respect of regulation 51), and 98 of the Act.
- (4) Subclause (3) is subject to clause 26E.
- (5) For the purposes of subclause (3), the provisions referred to in that subclause apply with all necessary modifications as if the bank perpetual preference shares were regulated products.
- (6) See clauses 37 to 43 (which provide for other disclosure requirements).

26C Limited disclosure document must comply with Schedule 9A and requirements that apply to equivalent PDS

- (1) The limited disclosure document must comply with the following provisions (including any regulations relating to those provisions) as if the limited disclosure document were an equivalent PDS and the offer were a regulated offer:
 - (a) sections 57(1)(a) and 60 of the Act:
 - (b) section 62 of the Act:
 - (c) sections 49 and 61(1) of the Act.
- (2) However, the limited disclosure document must contain all of the information specified in Schedule 9A that is applicable (rather than the information specified in Part 1 of Schedule 3).
- (3) For the purposes of regulation 34, the **relevant section**, in relation to the limited disclosure document, is section 7 of that document.

26D Register entry for bank perpetual preference shares

- (1) For the purposes of clause 38(1)(c) and (2)(b) of this schedule, the following provisions in Part 2 of Schedule 3 do not apply:

- (a) clause 53 of Schedule 3 (which requires the register entry to contain certain financial information):
- (b) clause 54(1)(b) of Schedule 3 (which requires the register entry to contain information about material contracts).
- (2) However, subclause (1)(a) is subject to A lodging with the Registrar a notice referring to the availability of its disclosure statements (including a link to the page on its Internet site where its disclosure statements are published).
- (3) Clause 52(1)(d) of Schedule 3 applies for the purposes of clause 38(1)(c) and (2)(b) of this schedule as if it required the brief description of the bank perpetual preference shares to include a statement of—
 - (a) the distribution rate or rates that may be earned by holding the shares (if the rate or rates are fixed at the date of the limited disclosure document); or
 - (b) the basis on which or the method by which the distribution rate or rates will be ascertained.
- (4) The register entry must also contain a copy of each report that gives a credit rating referred to in clause 11 of Schedule 9A.
- (5) Subclause (4) does not apply to a report if—
 - (a) lodging the report with the Registrar or otherwise making the report available on the register entry would breach a legal obligation that is binding on the issuer under a contract with the rating agency; and
 - (b) the rating agency has expressly refused to waive the legal obligation to the extent necessary to allow it to be contained on the register entry.
- (6) Despite clause 38(1)(c) and (2)(b) of this schedule, information contained in a disclosure statement is not required to be supplied to the Registrar or contained in the register entry under those provisions if that information would otherwise be required to be supplied or contained only as a result of the application of section 57(1)(b)(ii) of the Act (which relates to material information).
- (7) In this clause, **disclosure statements** has the same meaning as in the Banking (Prudential Supervision) Act 1989.

26E Additional information to be lodged with Registrar for updating register

- (1) Regulation 51(b) applies for the purposes of clause 26B(3) of this schedule as if clause 55 of Schedule 3 also required A to lodge the following information with the Registrar within the time specified in subclause (2):
 - (a) if the distribution rate or rates are fixed after the date of the limited disclosure document, a statement of those rates:
 - (b) if the basis on which or the method by which the distribution rate or rates will be ascertained involves a variable and that variable is fixed after the date of the limited disclosure document, a statement of the amount at which the variable has been fixed:

- (c) if the price of, or other consideration for, the bank perpetual preference shares is fixed after the date of the limited disclosure document, a statement of that price or consideration.
- (2) The time specified is within 5 working days after the distribution rate or rates are fixed, or the variable, or the price or other consideration, is fixed.
- (5) In Schedule 8, after clause 29(2)(a), insert:
 - (b) to an offer of call debt securities or fixed term deposit products by Public Trust in reliance on clause 22(1)(f) of Schedule 1 of the Act; or
- (6) In Schedule 8, clause 30(3)(b) and (c), replace “for a breach of regulation 51” with “in respect of regulation 51”.
- (7) In Schedule 8, replace clause 37(1)(a) with:
 - (a) clause 23 (registered bank exclusion relating to certain debt securities):
 - (aa) clause 26A (registered bank exclusion relating to bank perpetual preference shares):
- (8) In Schedule 8, clause 38(2)(a)(i), after “25,”, insert “26C,”.
- (9) In Schedule 8, clause 38(2)(a)(iii), after “25(2)”, insert “, 26C(2),”.
- (10) In Schedule 8, clause 38(4), after “26”, insert “, 26D,”.
- (11) In Schedule 8, clause 39(1), after “24(1),”, insert “26B(1),”.
- (12) In Schedule 8, clause 39(1) and (2), after “24,”, insert “26B,” in each place.
- (13) In Schedule 8, clause 40(1), after “24(1),”, insert “26B(1),”.
- (14) In Schedule 8, after clause 44(1A)(g), insert:
 - (h) a bank perpetual preference share.

10 New Schedule 9A inserted

After Schedule 9, insert the Schedule 9A set out in the Schedule of these regulations.

Part 2

**Revocation of Financial Markets Conduct (NZX–NXT Market)
Regulations 2014**

**11 Revocation of Financial Markets Conduct (NZX–NXT Market)
Regulations 2014**

The Financial Markets Conduct (NZX–NXT Market) Regulations 2014 (LI 2014/328) are revoked.

Schedule New Schedule 9A inserted

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		r 72(3)
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1	Interpretation	
(1)	In this schedule,—	
	bank perpetual preference shares means the bank perpetual preference shares that are being offered under the LDD	
	LDD means a limited disclosure document for an offer of bank perpetual preference shares made in reliance on clause 21(a) of Schedule 1 of the Act (<i>see</i> clause 44(1A)(h) of Schedule 8 of these regulations).	
(2)	In this schedule, a reference to the issue or sale means the issue or sale of the bank perpetual preference shares that are being offered under the LDD.	
<i>LDD sections</i>		
2	LDD sections	
(1)	The LDD must have sections that are headed up and ordered as follows:	
1	Key information summary	
2	Purpose of the offer	
3	Key dates and offer process	
4	Terms of the offer	
5	Key features of [<i>name of financial products</i>]	
6	Risks of investing	

- 7 Tax
 - 8 Where you can find more information
 - 9 How to apply
 - 10 Contact information
- (2) The sections of the LDD must be numbered sequentially.
- (3) Nothing in this schedule prevents the LDD from being called a PDS or a product disclosure statement if the issuer thinks fit.

Key information summary

3 Key information summary

- (1) The KIS must have sections that are headed up and ordered as follows:
- What is this?
 - About [*name of issuer*]
 - Purpose of this offer
 - Key terms of the offer
 - How you can get your money out
 - How [*name of financial products*] rank for repayment
 - Key risks affecting this investment
 - What is [*name of issuer*]'s credit rating?/What is [*name of financial product*]'s credit rating?*
- *Select one.
- (2) Clauses 4 to 11 specify the information that must be contained in the KIS under each of the headings in subclause (1).

4 What is this?

- (1) The KIS must contain a statement in the following form:
- “This is an offer of [*name of financial products*]. [*Name of financial products*] are equity securities issued by [*name of issuer*]. You give [*name of issuer*] money, and in return you may receive scheduled distributions. If [*name of issuer*] runs into financial trouble, you might lose some or all of the money you invested.”
- (2) The KIS must include a statement in the following form after the statement in subclause (1):
- “Warning**
- These [*name of financial products*] do not have the same rights (including voting rights)* or privileges, or the same opportunity to increase in value, as ordinary shares. Scheduled distributions may be cancelled and those cancelled distributions will not be paid at a later date/the issuer is under no obligation to

pay cancelled distributions at a later date[†]. The [*name of financial products*] are perpetual and have no fixed term. You have no right to require repayment for any reason.”

*Omit “(including voting rights)” if inapplicable.

[†]Select one.

5 **About [*name of issuer*]**

- (1) The KIS must contain a brief description of the issuer’s business.
- (2) The KIS must include—
 - (a) a statement to the effect that information about the issuer and the issuer’s financial statements are published in disclosure statements required under the Banking (Prudential Supervision) Act 1989; and
 - (b) a link to the page on the issuer’s Internet site where its disclosure statements are published.
- (3) In this clause, **disclosure statement** has the same meaning as in the Banking (Prudential Supervision) Act 1989.

6 **Purpose of this offer**

The KIS must contain a brief description of the purpose of the offer (including what the money raised under the offer is to be used for and that the money raised under the offer will help the issuer meet regulatory capital requirements).

7 **Key terms of the offer**

- (1) The KIS must contain the key terms of the offer briefly summarised in a table, including—
 - (a) a brief description of the equity securities; and
 - (b) the fixed price of, or other fixed consideration for, the bank perpetual preference shares (if any) or the (fixed or indicative) range within which that price or consideration may be fixed (if any); and
 - (c) the number or amount of the bank perpetual preference shares being offered; and
 - (d) a statement that the investor has no right to redeem the bank perpetual preference shares; and
 - (e) if the bank perpetual preference shares are redeemable by the issuer in certain circumstances, a statement to that effect and a reference to the section of the KIS where the statement required by clause 8(4) is located; and
 - (f) a statement—

- (i) of the distribution rate or rates that may be earned by holding the bank perpetual preference shares (if the rate or rates are fixed at the date of the LDD); or
 - (ii) of the basis on which or the method by which the distribution rate or rates will be ascertained; and
 - (g) the dates on which, or frequency with which, distributions are scheduled to be paid; and
 - (h) a statement explaining that distributions may be cancelled and a reference to section 4 of the LDD (terms of offer) where more information on that matter can be found; and
 - (i) whichever of the following statements better applies:
 - (i) a statement explaining that cancelled distributions will not be paid at a later date:
 - (ii) a statement explaining that the issuer is under no obligation to pay cancelled distributions at a later date; and
 - (j) the intended dates on which the offer opens and closes; and
 - (k) if a holder of the bank perpetual preference shares will or may be liable to make further payments or to pay fees or charges relating to those shares, a brief description of the nature of that liability or of those fees or charges.
- (2) If, at the date of the LDD, there is no fixed price of, or other fixed consideration for, the bank perpetual preference shares and no fixed or indicative range within which that price or consideration may be fixed, the KIS must contain a statement to that effect.

8 How you can get your money out

- (1) The KIS must include whichever of the following statements best applies:
- (a) “[*Name of issuer*] intends to quote these [*name of financial products*] on the [*name of licensed market*]. This means you may be able to sell them on the [*name of licensed market*] if there are interested buyers. If you sell your [*name of financial products*], the price you get will vary depending on factors such as the financial condition of [*name of issuer*], demand for the [*name of financial products*], and movements in the market interest rates. You may get less than the full amount that you paid for them.”:
 - (b) “[*Name of issuer*] does not intend to quote these [*name of financial products*] on a licensed market in New Zealand but they will be able to be traded on the [*describe established market available for trading*]. This means you may be able to sell them on the [*name of established market*] if there are interested buyers. If you sell your [*name of financial products*], the price you get will vary depending on factors such as the finan-

cial condition of [*name of issuer*], demand for the [*name of financial products*], and movements in the market interest rates. You may get less than the full amount that you paid for them.”:

- (c) “[*Name of issuer*] does not intend to quote these [*name of financial products*] on a market licensed in New Zealand and there is no other established market for trading them. This means that you may not be able to sell your [*name of financial products*].”:
 - (d) “These [*name of financial products*] cannot be sold or transferred.”
- (2) For the purposes of subclause (1)(a), if the issuer intends that the bank perpetual preference shares will be approved for trading on an overseas market (as well as being quoted on a licensed market), the statement in that paragraph may be amended to refer to the name of the overseas market as well as the name of the licensed market.
 - (3) The KIS must contain a statement that the investor has no right to redeem the bank perpetual preference shares.
 - (4) If the bank perpetual preference shares are redeemable by the issuer in certain circumstances, the KIS must contain a statement to that effect and a brief description of those circumstances and the intended redemption price.
 - (5) If the bank perpetual preference shares are not redeemable by the issuer, the KIS must contain a statement to that effect.

9 How [*name of financial products*] rank for repayment

- (1) The KIS must include—
 - (a) a brief summary of the ranking of the bank perpetual preference shares on a liquidation of the issuer; and
 - (b) a reference to the section of the LDD where more information on that matter can be found; and
 - (c) a statement that, on a liquidation of the issuer, the maximum entitlement of the holder of the bank perpetual preference shares is the issue price of those shares.
- (2) The brief summary referred to in subclause (1)(a) must include—
 - (a) a statement that, on a liquidation of the issuer, the bank perpetual preference shares rank below all liabilities and other financial products of the issuer other than the financial products described for the purposes of paragraph (b) or (c) (if any); and
 - (b) if any financial products of the issuer rank equally with the bank perpetual preference shares on a liquidation of the issuer,—
 - (i) a description of those financial products; and
 - (ii) a statement that the bank perpetual preference shares rank equally with those financial products on a liquidation of the issuer; and

- (c) a statement that the bank perpetual preference shares rank above [*specify (for example, ordinary shares of the issuer)*] on a liquidation of the issuer.

10 Key risks affecting this investment

- (1) The KIS must include a statement in the following form:

“Investments in equity securities of this nature have risks. A key risk is that you will not be paid a distribution on your investment or that your investment will not be repaid (credit risk). Cancelled distributions will not be paid at a later date/the issuer is under no obligation to pay cancelled distributions at a later date*.

Section 6 of this document (risks of investing) discusses the main factors that give rise to the risk. You should consider whether the credit risk of these shares is suitable for you.

The distribution rate for these [*name of financial products*] should also reflect the degree of credit risk. In general, higher returns are demanded by investors from businesses with higher risk of defaulting on their commitments. You need to decide whether the offer is fair. [*Name of issuer*] considers that the most significant risk factors are: [*brief summary of the circumstances that must be disclosed under clauses 24 and 25 that the issuer considers most significantly increase the risk that the issuer will cancel distributions or that the investor will lose some or all of the money they have invested.*]

[*Name of issuer*] can also redeem the [*name of financial products*] in certain circumstances.† See the “How you can get your money out” section for a brief description of those circumstances and the intended redemption price.† You have no right to redeem the [*name of financial products*].”

*Select one.

†Omit this sentence if it is inapplicable.

- (2) The brief summary must include particulars that make it clear why each circumstance is of particular significance in relation to the particular issuer or the particular equity securities (as compared to other issuers or equity securities).
- (3) The KIS must include a statement in the following form after the statement in subclause (1):

“This summary does not cover all of the risks of investing in [*name of financial products*]. You should also read [*references to section 6 of the LDD (risks of investing) and to other places in the LDD that describe risk factors (for example, risks arising for investors from the nature of the product)*].”

11 What is [*name of issuer*]'s credit rating?/What is [*name of financial product*]'s credit rating?

- (1) The KIS must include—

- (a) the heading “**What is [name of issuer]’s credit rating?**” or “**What is [name of financial product]’s credit rating?**” (whichever heading better applies); and
- (b) the statement specified in subclause (2).
- (2) A statement under this subclause must be in the following form (and must be accompanied by the diagram required by subclause (3)(b)):
- “A credit rating is an independent opinion of the capability and willingness of an entity to repay its debts (in other words, its creditworthiness). It is not a guarantee that the financial product being offered is a safe investment. A credit rating should be considered alongside all other relevant information when making an investment decision.
- [Specify either the name of the issuer or, in the case of a financial product rating, the name of the financial products] has/have* been rated by [name of approved rating agency]. [Name of approved rating agency] gives ratings from [specify the top rating] through to [specify the lowest rating, excluding ratings attaching to entities in default].”*
- *Select one.
- (3) For the purposes of subclause (2),—
- (a) **approved rating agency** has the same meaning as in section 60(3) of the Act:
- (b) the KIS must include a diagram—
- (i) showing the range of credit ratings given by the approved rating agency; and
- (ii) showing, for each of those credit ratings, the approved rating agency’s summary description of the rating (for example, AAA—“Extremely strong”); and
- (iii) showing, for each of those credit ratings that are entity ratings, the approved rating agency’s statistics on the rate of default for entities with that rating over a period of at least 5 years (if the agency provides those statistics) (for example, “1 in 600”); and
- (iv) indicating the placement within that range of the issuer’s or issue’s current credit rating:
- (c) if the approved rating agency has given a statement relating to future changes to the rating (for example, a credit outlook of “stable”), that statement must be disclosed with the diagram:
- (d) if the bank perpetual preference shares have been given a credit rating by an approved rating agency, that rating must be used (rather than a credit rating for the issuer):
- (e) if a credit rating is given for the issuer but the bank perpetual preference shares (if those shares were to be given a credit rating by an approved

rating agency) would be likely to be given a lower credit rating, the diagram under paragraph (b) must include—

- (i) a statement to that effect; and
 - (ii) a brief explanation as to why the rating would be likely to be lower:
- (f) if this paragraph applies under subclause (4),—
- (i) the statement under subclause (2) must be amended to refer to the ratings given by each approved rating agency; and
 - (ii) the diagram under paragraph (b) must include, at a minimum, the information under paragraphs (b)(i) to (iv) and (c) for any one of those ratings; and
 - (iii) the information under paragraphs (b)(i) and (iv) and (c) for each other current credit rating must be given in or under the diagram.
- (4) Subclause (3)(f) applies if the rating to be referred to in the statement under subclause (2) is a credit rating for—
- (a) the bank perpetual preference shares and another current credit rating for the bank perpetual preference shares has been given by another approved rating agency;
 - (b) the issuer and another current credit rating for the issuer has been given by another approved rating agency.

12 Table of contents

After the KIS, the LDD must include a table of contents showing the number of each section of the LDD, the heading of each section of the LDD, and the page number of, or cross-reference in, the LDD on which or to where that section starts.

Purpose of the offer

13 Application

Clause 14 applies to section 2 of the LDD (purpose of the offer).

14 Purpose of the offer

The LDD must give a brief description of the purpose of the offer, and must—

- (a) state whether a minimum amount must be raised before the bank perpetual preference shares are issued or transferred (*see* section 77(1)(b) of the Act); and
- (b) state the extent to which the offer is underwritten.

Key dates and offer process

15 Application

Clause 16 applies to section 3 of the LDD (key dates and offer process).

16 Key dates and offer process

- (1) The LDD must include—
 - (a) a table showing the key dates for the offer and the issue or transfer of the bank perpetual preference shares, including the intended dates on which—
 - (i) the offer opens:
 - (ii) the offer closes:
 - (iii) the bank perpetual preference shares are issued or transferred:
 - (iv) the bank perpetual preference shares are quoted:
 - (b) a brief summary of any other information needed to understand those key dates (to the extent not otherwise disclosed in section 4 of the LDD (terms of the offer).
- (2) The table may specify other dates relating to the bank perpetual preference shares (for example, the intended date of the payment of the first distribution).
- (3) In relation to subclause (1)(a)(iv), *see* section 78 of the Act (which provides that an issue or a transfer is void if a quotation condition is not fulfilled).

Terms of the offer

17 Application

Clause 18 applies to section 4 of the LDD (terms of the offer).

18 Terms of the offer

- (1) The LDD must include a table that sets out the terms of the offer or provides a cross-reference to where those terms can be found in the LDD (including the terms that are summarised under clause 7).
- (2) The following information must be provided in or below the table:
 - (a) either—
 - (i) the distribution rate or rates (if fixed at the date of the LDD); or
 - (ii) the basis on which or the method by which the distribution rate or rates will be ascertained:
 - (b) the dates on which, or the frequency with which, distributions from the bank perpetual preference shares are scheduled to be paid:
 - (c) a statement explaining that distributions may be cancelled and the circumstances in which they may be cancelled:

- (d) a statement that the investor has no right to redeem the bank perpetual preference shares and a description of the circumstances (if any) in which the issuer may redeem the bank perpetual preference shares.
- (3) The LDD must—
 - (a) refer to the constitution (if any) and any other document that sets the terms of the bank perpetual preference shares or other terms of the offer; and
 - (b) include a statement to the effect that those documents may be obtained from the offer register.
- (4) Subclause (1) does not apply—
 - (a) to any terms implied by law; or
 - (b) to a term set by the constitution (if any) or any other document that the issuer considers is not a key term of the offer.

Key features of [name of financial products]

19 Application

Clauses 20 and 21 apply to section 5 of the LDD (key features of *[name of financial products]*).

20 Key features

- (1) The LDD must include—
 - (a) a description of the key features of the bank perpetual preference shares (to the extent that those features are not already disclosed in section 4 of the LDD (terms of the offer) and are not features that apply to ordinary shares in a company generally); and
 - (b) a statement that the bank perpetual preference shares do not have the same opportunity to increase in value as ordinary shares; and
 - (c) a statement to the effect that—
 - (i) distributions may be cancelled; and
 - (ii) the issuer has a discretion to cancel distributions and, in certain circumstances, cancellation of distributions may be required by the issuer's conditions of registration as a bank; and
 - (d) whichever of the following better applies:
 - (i) a statement to the effect that cancelled distributions will not be paid at a later date;
 - (ii) a statement to the effect that the issuer is under no obligation to pay cancelled distributions at a later date; and

- (e) a reference to section 4 of the LDD (terms of the offer) if key features of the bank perpetual preference shares are disclosed in that section (rather than in section 5).
- (2) The description under subclause (1)(a) must—
 - (a) be sufficient to make it clear why a feature is of significance to investors; and
 - (b) include particulars of any voting rights or pre-emptive rights attaching to the bank perpetual preference shares; and
 - (c) include a description of the ranking of the bank perpetual preference shares on a liquidation of the issuer, including a diagram showing the total liabilities and total equity of the issuer.
- (3) The description under subclause (2)(c) must—
 - (a) be under the subheading “**Ranking**”; and
 - (b) state that, after the date of the LDD, the issuer may incur liabilities that rank equally with, or in priority to, the bank perpetual preference shares on a liquidation of the issuer.
- (4) If any equity securities that would rank equally with, or in priority to, the bank perpetual preference shares could be issued by the issuer (for example, under its constitution), the description under subclause (2)(c) must—
 - (a) state that fact; and
 - (b) briefly describe the circumstances in which those securities could be issued.

21 Diagram showing ranking of bank perpetual preference shares

- (1) The diagram under clause 20(2)(c) must be prepared in accordance with the following rules:
 - (a) the diagram must state the amount of the issuer’s liabilities and equity, divided into 3 classes that are listed vertically and labelled as follows:
 - (i) the liabilities and equity that rank in priority to the bank perpetual preference shares on a liquidation of the issuer:
 - (ii) the liabilities and equity that rank equally with the bank perpetual preference shares on a liquidation of the issuer:
 - (iii) the equity that ranks below the bank perpetual preference shares on a liquidation of the issuer:
 - (b) the division of the issuer’s liabilities and equity into 3 classes may be subdivided further:
 - (c) the amounts must be indicative amounts based on the financial position of the issuer at its most recent balance date or any more recent stated date that is adjusted to reflect the changes in the value of the issuer’s

assets, liabilities, and equity that the issuer reasonably expects to result from the issue or sale:

- (d) the amounts must be calculated on the basis of an assumption as to the number of bank perpetual preference shares on issue, which must be a number that the issuer reasonably considers is likely to provide the most useful information for investors.
- (2) The diagram under clause 20(2)(c) must be prepared in accordance with an applicable framework or methodology (if any).
 - (3) The LDD must—
 - (a) disclose the number of bank perpetual preference shares that is used for the purposes of subclause (1)(d); and
 - (b) briefly explain the effect of using that number.

Risks of investing

22 Application

Clauses 23 to 26 apply to section 6 of the LDD (risks of investing).

23 General risks

- (1) The LDD must include the subheading “**General risks**” and a statement to the effect that the investor’s investment is subject to the general risk or risks summarised under subclause (2).
- (2) For the purposes of subclause (1), the LDD must include a summary relating to the following risks (if applicable):
 - (a) the risk that the investor will not be paid a distribution on their investment or will lose some or all of the money they invested; and
 - (b) the risk that, if the investor wishes to sell the bank perpetual preference shares, the investor will be unable to find a buyer or that the amount received will be less than the amount paid for the shares.

24 Specific risks

- (1) The LDD must include the subheading “**Specific risks relating to [name of issuer]’s creditworthiness**” and a description of the circumstances that the issuer is aware of that exist or are likely to arise that significantly increase the risk that investors in the bank perpetual preference shares will not be paid a distribution on their investment or will lose some or all of the money they invested.
- (2) The description of the circumstances must include—
 - (a) particulars that make it clear why each circumstance is of particular significance in relation to the particular issuer or the particular equity securities (as compared to other issuers or equity securities); and

- (b) particulars that will, to the extent that is reasonably practicable, assist an investor to assess the likelihood of any impact arising from those circumstances, the nature of that impact, and the potential magnitude of that impact.
- (3) The description is required to include information about circumstances only to the extent that the information is material information.

25 Risks related to investing in bank perpetual preference shares

- (1) The LDD must include the subheading “**Risks related to investing in bank perpetual preference shares**” and a description of the risks of investing in bank perpetual preference shares (as compared to other types of equity securities).
- (2) The description of the risks must include—
 - (a) a description of the features of bank perpetual preference shares that are listed in subclause (3) (as applicable); and
 - (b) particulars that make it clear what risk or risks may arise in relation to a particular feature; and
 - (c) particulars that will, to the extent that is reasonably practicable, assist an investor to assess the likelihood of any impact arising from those features and risks, the nature of that impact, and the potential magnitude of that impact.
- (3) The features referred to in subclause (2)(a) are—
 - (a) that the investor has no right to redeem bank perpetual preference shares:
 - (b) that scheduled distributions may be cancelled:
 - (c) that the issuer either will not, or is not required to, pay cancelled distributions at a later date:
 - (d) that the issuer may redeem bank perpetual preference shares in certain circumstances:
 - (e) that, on a liquidation of the issuer, bank perpetual preference shares rank behind all liabilities of the issuer and all equity other than the liabilities or equity (or both) of the type referred to in clause 21(1)(a)(ii) and (iii).
- (4) The description of the risk is required to include information about features and risks only to the extent that the information is material information.

26 Risks otherwise disclosed in LDD or register entry

- (1) To the extent that information about a risk is included elsewhere in the LDD (other than the KIS) or in the register entry, that information is not required to be repeated in section 6 of the LDD for the purposes of clause 24 or 25.
- (2) However, if information about a risk is not included in section 6 of the LDD as a result of subclause (1), that section must—

- (a) at least include a brief summary of the circumstances referred to in clause 24, or the features and risks referred to in clause 25, as applicable; and
- (b) refer to where the information about the risk is elsewhere included in the LDD or register entry.

Tax

27 Application

Clause 28 applies to section 7 of the LDD (tax).

28 Taxation

- (1) The LDD must include a statement to the effect that—
 - (a) tax can have significant consequences for investments; and
 - (b) if an investor has queries relating to the tax consequences of the investment, the investor should obtain professional advice on those consequences.
- (2) If New Zealand residents will have resident withholding tax deducted from distributions that are made under the bank perpetual preference shares, the LDD must include a statement to that effect.
- (3) This LDD section may include other information on the tax consequences of the investment if, and only if, the information relates to the particular bank perpetual preference shares on offer (rather than to equity securities, or classes of equity securities, generally).

Where you can find more information

29 Application

Clause 30 applies to section 8 of the LDD (where you can find more information).

30 Where you can find more information

- (1) The LDD must include a statement to the effect that—
 - (a) further information relating to the issuer and the bank perpetual preference shares is available on the offer register (for example, the issuer's constitution); and
 - (b) a copy of information on the offer register is available on request to the Registrar.
- (2) The statement must be accompanied by a reference to the Internet site address for the offer register.
- (3) The LDD must include—

- (a) a link to, or URL for, an Internet site for a register kept by the Registrar on which there is an entry for the issuer (for example, the New Zealand register or the overseas register kept under the Companies Act 1993); and
 - (b) a statement to the effect that further information relating to the issuer is available from that Internet site.
- (4) The LDD must include a statement—
- (a) briefly describing any information relating to the issuer or the bank perpetual preference shares that is required to be, or otherwise will be, available—
 - (i) to the public by any means other than on the offer register or the register referred to in subclause (3)(a); or
 - (ii) on request to the issuer; and
 - (b) explaining—
 - (i) how that information can be obtained; and
 - (ii) how a request for that information should be made; and
 - (c) specifying whether any charge may be made for the information that is requested and the amount of the charge.

How to apply

31 Application

Clause 32 applies to section 9 of the LDD (how to apply).

32 How to apply

The LDD—

- (a) must include a short statement as to how to apply for the bank perpetual preference shares; and
- (b) may include a link or reference to the application form.

Contact information

33 Application

Clause 34 applies to section 10 of the LDD (contact information).

34 Contact details

- (1) The LDD must state the contact details of—
- (a) the issuer; and
 - (b) the offeror (if the offeror is not the issuer); and
 - (c) the securities registrar.

- (2) The contact details must include an address and a business telephone number.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 28 July 2022, amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

These regulations mainly relate to the registered bank exclusion in clause 21 of Schedule 1 of the Financial Markets Conduct Act 2013 (the **Act**). Clause 21(a) of that schedule provides that an offer of financial products does not require disclosure under Part 3 of the Act if the financial products are of a kind prescribed for the purposes of clause 21(a) and are issued by a registered bank. These regulations—

- prescribe bank perpetual preference shares for the purposes of clause 21(a) of Schedule 1 of the Act; and
- insert a definition of bank perpetual preference shares into the principal regulations. These are shares, issued by a registered bank, that, when issued, are additional tier 1 capital for the purposes of a condition of the bank's registration. The share must not be continuously offered by the bank in the ordinary course of its business; and
- amend regulation 72AA to provide for the new provisions in Schedule 8 that give rise to civil liability; and
- amend Schedule 8 to provide for limited disclosure and other requirements for bank perpetual preference shares; and
- insert *new Schedule 9A* into the principal regulations. *New Schedule 9A* sets out the limited disclosure document requirements that apply for those shares.

These regulations also—

- amend clause 29 of Schedule 8 of the principal regulations so that clauses 30 and 31 of that schedule (which provide for limited disclosure and other requirements for certain offers) do not apply to an offer of call debt securities or fixed term deposit products by Public Trust;
- revoke the Financial Markets Conduct (NZX–NXT Market) Regulations 2014, which are spent, and make related amendments to the principal regulations.

**Financial Markets Conduct (Disclosure Requirements
for Bank Perpetual Preference Shares and Other
Matters) Amendment Regulations 2022**

2022/206

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