

**Reprint
as at 1 December 2016**



**Deposit Takers (Non-trustee Entities Risk Management)
Exemption Notice 2009**

(SR 2009/222)

Deposit Takers (Non-trustee Entities Risk Management) Exemption Notice 2009: revoked, on the close of 30 November 2016, by clause 3.

Pursuant to section 157G of the Reserve Bank of New Zealand Act 1989, the Reserve Bank of New Zealand gives the following notice (to which is appended a statement of reasons of the Bank).

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Notice

1 Title

This notice is the Deposit Takers (Non-trustee Entities Risk Management) Exemption Notice 2009.

2 Commencement

This notice comes into force on 1 September 2009.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint. Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Reserve Bank of New Zealand.

3 Revocation

This notice is revoked on the close of 30 November 2016.

Clause 3: replaced, on 30 November 2013, by clause 4 of the Deposit Takers (Non-trustee Entities Risk Management) Exemption Amendment Notice 2013 (SR 2013/473).

4 Interpretation

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

Act means the Reserve Bank of New Zealand Act 1989

compliance period means—

- (a) the period of 3 months that begins on 1 September 2009 and ends with the close of 30 November 2009; and
- (b) each subsequent period of 12 months that begins on 1 December and ends with the close of 30 November in the following year, up to and including 30 November 2016

notification date means 30 November in each year.

- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

Clause 4(1) **compliance period** paragraph (b): amended, on 30 November 2013, by clause 5 of the Deposit Takers (Non-trustee Entities Risk Management) Exemption Amendment Notice 2013 (SR 2013/473).

5 Exemption from section 157N of Act

A deposit taker is exempted from section 157N of the Act if the deposit taker—

- (a) is not required by the Securities Act 1978 to have a trustee and a trust deed; or
- (b) is exempted from the requirements to have a trustee and a trust deed by an exemption granted under that Act.

6 Condition of exemption

The exemption in clause 5 is subject to the condition that, on or as soon as is reasonably practicable after each notification date, the deposit taker must provide the Bank with a written statement, signed by all of the persons who comprise the governing body of the deposit taker, stating that its governing body is satisfied—

- (a) that the risk management programme of the deposit taker meets the requirements in section 157M(2) of the Act (other than the requirements of section 157M(2)(d)(ii)); and
- (b) that, at all times during the compliance period that ends with the notification date, the deposit taker has taken all practicable steps to comply with that programme.

Dated at Wellington this 14th day of August 2009.

Grant Spencer,
Deputy Governor.

Statement of reasons

Note: the following statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

- Deposit Takers (Non-trustee Entities Risk Management) Exemption Amendment Notice 2013

This notice comes into force on 1 September 2009 and expires on 31 December 2012. Section 157M of the Reserve Bank of New Zealand Act 1989 (the **Act**) requires entities that are deposit takers for the purposes of Part 5D of the Act to have and comply with a risk management programme on and after 1 September 2009.

Section 157N of the Act requires that the risk management programme must be provided to the deposit taker's trustee (under the Securities Act 1978) and must be amended if required by the trustee. This notice exempts deposit takers that are not required to have a trustee from these requirements under section 157N of the Act. The exemption is subject to conditions.

The Reserve Bank of New Zealand, after taking into account the principles set out in section 157F of the Act and satisfying itself as to the matters set out in section 157G(2) of the Act, considers it appropriate to grant the exemption because—

- the additional direct and indirect costs of engaging a trustee only for the purpose of reviewing a risk management programme are unduly onerous and burdensome when compared to the benefits that a trustee would provide to the review process;
- the benefit of this exemption is that unnecessary compliance costs are avoided for a class of deposit takers. This benefit outweighs the costs of—
 - inconsistent treatment between deposit takers that are required to have trustees and those that are not required to have trustees; and
 - the potential for less effective risk management owing to the absence of external review that would occur if the programme was reviewed by a trustee;
- the condition that exempted deposit takers must supply a written statement to the Reserve Bank of New Zealand mitigates the risk posed by the absence of external review of the deposit taker's risk management programme. This also ensures that this exemption is consistent with the maintenance of a sound and efficient financial system:

- this exemption only extends to deposit takers that do not have a trustee (by virtue of an exemption granted by the Securities Commission, an exclusion under the Securities Act 1978, or by not being required to have a trustee under the Securities Act 1978) and only applies for the purposes of review of the risk management programme. This ensures that this exemption does not go further than is reasonably necessary to address the concerns raised above.

Note: the preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to:

- Deposit Takers (Non-trustee Entities Risk Management) Exemption Amendment Notice 2013

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 20 August 2009.

Reprints notes

1 *General*

This is a reprint of the Deposit Takers (Non-trustee Entities Risk Management) Exemption Notice 2009 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Deposit Takers (Non-trustee Entities Risk Management) Exemption Amendment Notice 2013 (SR 2013/473)

Deposit Takers (Non-trustee Entities Risk Management) Exemption Notice 2009 (SR 2009/222): clause 3