

Version
as at 14 October 2021



Financial Markets Conduct (Overseas Subsidiary Balance Date Alignment) Exemption Notice 2016 (LI 2016/223)

Financial Markets Conduct (Overseas Subsidiary Balance Date Alignment) Exemption Notice 2016:
revoked, on the close of 13 October 2021, by clause 3.

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 (Overseas Subsidiary Balance Date Alignment) Exemption Notice 2016.

2 Commencement

This notice comes into force on 14 October 2016.

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 Financial Markets Authority.

3 Revocation

This notice is revoked on the close of 13 October 2021.

4 Application

An exemption granted by this notice applies to the following accounting periods of an FMC reporting entity referred to in clause 6:

- (a) an accounting period of the entity that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

5 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Financial Markets Conduct Act 2013
specified subsidiary has the meaning set out in clause 6(2).
- (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.

6 Exemption

- (1) The board of an FMC reporting entity that has 1 or more specified subsidiaries is exempted from section 461(3) of the Act.
- (2) In this notice, an entity (A) is a **specified subsidiary** of an FMC reporting entity if—
 - (a) A is incorporated in an overseas jurisdiction; and
 - (b) under the law or regulatory requirements of that jurisdiction, A's balance date cannot be changed at the absolute discretion of A or the FMC reporting entity.
- (3) To avoid doubt, if A's balance date can be changed through a regulatory approval process, the change is not at the absolute discretion of A or the FMC reporting entity.

7 Conditions

The exemption in clause 6 is subject to the following conditions:

- (a) the board of the FMC reporting entity must ensure that the balance date of the FMC reporting entity is the same as the balance date of its subsidiaries that are not specified subsidiaries;
- (b) the group financial statements that are delivered to the Registrar for lodgement under section 461H of the Act must be accompanied by writ-

ten notification to the Registrar that the board of the FMC reporting entity is relying on this notice in respect of the accounting period to which the statements relate.

Dated at Auckland this 6th day of October 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice, which comes into force on 14 October 2016 and is revoked on 13 October 2021, relates to FMC reporting entities with overseas subsidiaries that have inflexible balance dates (because the balance dates cannot be changed at the discretion of the subsidiary or the FMC reporting entity). The notice provides an exemption from section 461(3) of the Financial Markets Conduct Act 2013 (the **Act**) in respect of these subsidiaries. Section 461(3) requires the board of an FMC reporting entity to ensure that the balance date of the FMC reporting entity is the same as the balance date of its subsidiaries. The exemption applies whether or not a change to the overseas subsidiary's balance date could be made through a regulatory approval process.

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 exemption because—

- the exemption recognises the difficulties faced by FMC reporting entities that have overseas subsidiaries with inflexible balance dates in complying with the requirement to ensure that the balance date of the FMC reporting entity is the same as the balance date of its subsidiaries. Without an exemption, an FMC reporting entity in these circumstances would be unable to comply with the Act or would be required to change its balance date to align it with an overseas subsidiary or, if possible, would need to engage in a regulatory process to change the balance date of its subsidiaries:
- these outcomes would not provide any meaningful benefit to investors or financial market regulators using the financial statements and would be likely to add unnecessary compliance costs:
- investors will still have access to consolidated group financial statements, lodged in New Zealand, for the FMC reporting entity and its subsidiaries:
- New Zealand Equivalent to International Financial Reporting Standard 10 already adequately provides for the inclusion of a subsidiary's financial information in consolidated financial statements when the subsidiary has a different balance date:

- for these reasons, the exemption is necessary or desirable to promote the purposes of the Act, specifically, avoiding unnecessary compliance costs and promoting flexibility in the financial markets:
- the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption. This is because the exemption is limited to addressing only the particular difficulties experienced by an FMC reporting entity with overseas subsidiaries that operate in jurisdictions with inflexible balance dates and investors will still have access to consolidated group financial statements, lodged in New Zealand, for the FMC reporting entity and its subsidiaries.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 13 October 2016.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Overseas Subsidiary Balance Date Alignment) Exemption Notice 2016 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*

Financial Markets Conduct (Overseas Subsidiary Balance Date Alignment) Exemption Notice 2016 (LI 2016/223): clause 3