

**Reprint
as at 1 December 2016**



Securities Act (Banks) Exemption Notice 2012

(SR 2012/288)

Securities Act (Banks) Exemption Notice 2012: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

1 Title

This notice is the Securities Act (Banks) Exemption Notice 2012.

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.

2 Commencement

This notice comes into force on 1 October 2012.

3 Expiry

This notice expires on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

bank means a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989

electronic address includes a fax number or an email address

New Zealand division, in relation to an overseas bank, means the business of the bank carried on in or from New Zealand

overseas bank means a bank that is an overseas person licensed or authorised by the central banking authority of a country other than New Zealand to carry on banking business in that country

overseas person means—

- (a) a body corporate incorporated outside New Zealand;
- (b) an unincorporated body having its head office or principal place of business outside New Zealand

postal address includes a post office box address or a document exchange box number

Regulations means the Securities Regulations 2009.

- (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 Exemption from section 37A(1)(a) of Act

Every bank and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of any debt securities offered by the bank and of which the bank is the issuer.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that the bank must not allot a debt security unless the bank or any person acting on its behalf has sent an investment statement relating to the debt security,—

- (a) at least 3 working days before the subscriber subscribes for the debt security, to—

- (i) a postal address specified by the subscriber for that purpose; or

- (ii) the last postal address of the subscriber that is known to the bank;
or
 - (b) at least 2 days before the subscriber subscribes for the debt security, to an electronic address specified by the subscriber for that purpose.
- (2) The exemption in clause 5 is subject to the further condition that, if an investment statement relating to the debt security is—
 - (a) sent by fax, the sender's fax machine has generated a record of the transmission of the investment statement to the fax machine of the recipient;
or
 - (b) sent by other electronic means, the machine used to transmit the investment statement has not generated a record that the investment statement has failed to be transmitted.

7 Exemption from regulation 27(1) of Regulations

Every bank and every person acting on its behalf are exempted from regulation 27(1) of the Regulations in respect of any debt securities offered by the bank and of which the bank is the issuer.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject, in the case of a bank other than an overseas bank, to the condition that the aggregate amount of any debt securities that are secured by a mortgage or charge created by the bank over any of its assets and that rank or that will rank, after the allotment of the debt securities referred to in clause 7, in priority to those debt securities is not material in the context of the bank's overall business.
- (2) The exemption in clause 7 is subject, in the case of an overseas bank, to the condition that the aggregate amount of any debt securities that are secured by a mortgage or charge created by the overseas bank over any of the assets of the bank relating to its New Zealand division and that rank or that will rank, after the allotment of the debt securities referred to in clause 7, in priority to those debt securities is not material in the context of the overseas bank's New Zealand division.

9 Exemption from clauses 16 and 17(1) of Schedule 13 of Regulations

Every bank and every person acting on its behalf are exempted from clauses 16 and 17(1) of Schedule 13 of the Regulations in respect of any debt securities offered by the bank and of which the bank is the issuer.

10 Condition of exemption in clause 9

The exemption in clause 9 is subject to the condition that each investment statement for the debt securities contains—

- (a) a statement to the effect that inquiries and complaints about the debt securities can be made at any branch of the bank; and

- (b) descriptions of the officers or employees at branches of the bank to whom inquiries or complaints can be made.

11 Application of Act and Regulations to overseas banks limited to New Zealand business

- (1) Every overseas bank and every person acting on its behalf are exempted from the provisions of the Act and the Regulations to the extent that those provisions require any investment statement or other advertisement that relates to debt securities offered by the overseas bank and of which the overseas bank is the issuer to contain information, statements, or other matters that do not relate to the New Zealand division of the overseas bank.
- (2) For the purposes of subclause (1),—
 - (a) the New Zealand division of an overseas bank must be treated as the only business carried on by the bank; and
 - (b) the property, rights, assets, and liabilities relating to the New Zealand division must be treated as the only property, rights, assets, and liabilities of the overseas bank.

12 Transitional provision

- (1) This clause applies to an investment statement or other advertisement relating to debt securities offered by a bank and of which the bank is the issuer.
- (2) An investment statement or other advertisement to which this clause applies may be distributed on or before 31 December 2012 in reliance upon—
 - (a) this notice; or
 - (b) the Securities Act (Banks) Exemption Notice 2002 (as in force immediately before that notice expired) and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2009 (as if the Securities Act (Banks) Exemption Notice 2002 continued in force).

Dated at Wellington this 24th day of September 2012.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 October 2012 and expires on 30 September 2017, replaces the Securities Act (Banks) Exemption Notice 2002 (the **2002 notice**).

The notice exempts registered banks, subject to conditions, from various provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 that relate to investment statements and other advertisements for debt securities. This includes an exemption from section 37A(1)(a) of the Act, which requires a subscriber to receive an investment statement before subscribing for a security. Instead, there is a period during which the bank may not allot a debt security after the investment statement is sent to the subscriber.

The provisions of the 2002 notice have been carried forward with little change of substance. However, changes have been made to—

- reduce the period during which a bank may not allot a debt security to 2 days (rather than the current 3 working days) if the investment statement is sent to an electronic address specified by the subscriber for this purpose; and
- refer to the Securities Regulations 2009 (rather than the Securities Regulations 1983) and to remove a redundant exemption from those regulations.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions because—

- the 2002 notice provides relief for banks from requirements that impose on banks a burden unlikely to be borne to the same extent by other issuers of debt securities. The 2002 notice recognises the additional prudential requirements imposed on banks and imposes alternative compliance requirements that meet investors' needs:
- changes introduced by the Securities Regulations 2009 have reduced costs for issuers, and improved information for investors, but did not attempt to tailor disclosure and conduct requirements to the extensive range of circumstances to which securities law requirements apply. Accordingly, generally the exemptions continue to be required and remain appropriate in light of the policy of each of the exemptions. One exception is the exemption relating to persons authorised to complete the advertising certificate. The Securities Regulations 2009 provide for completion of advertising certificates by authorised agents of the issuers' directors and so a particular exemption for banks is no longer required:
- the reduced period of delay that this notice permits between sending the investment statement and allotment of securities recognises the increased use by issuers and investors of Internet-based communications that enable information to be delivered at greater speed:
- given the limited application of the notice to certain regulatory requirements that impose a disproportionate burden on banks, and the alternative compliance requirements imposed that meet subscribers' needs, the Financial Markets Authority considers that the exemptions will not cause significant detriment to subscribers and that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 September 2012.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Banks) Exemption Notice 2012 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 Regulations 2014 (LI 2014/326): Schedule 1 clause 26