

Reprint
as at 1 December 2016



**Securities Act (Overseas Issuers—Audit Requirement)
Exemption Notice 2013**
(SR 2013/129)

Securities Act (Overseas Issuers—Audit Requirement) Exemption Notice 2013: 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 (Overseas Issuers—Audit Requirement) Exemption Notice 2013.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

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 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

approved auditor, in relation to an exempt issuer that is relying on—

- (a) Part 1 of the Financial Reporting Act (Australian Issuers) Exemption Notice 2013, means an approved auditor as defined in that notice:
- (b) the Financial Reporting Act (Overseas Issuers) Exemption Notice 2013, means an approved auditor as defined in that notice:
- (c) the Financial Reporting Act (Dual-listed Issuers) Exemption Notice 2013, means an approved auditor as defined in that notice

exempt issuer means an exempt issuer, as defined in any of the following, that relies on any of the following in respect of its most recently completed accounting period:

- (a) Part 1 of the Financial Reporting Act (Australian Issuers) Exemption Notice 2013:
- (b) the Financial Reporting Act (Overseas Issuers) Exemption Notice 2013:
- (c) the Financial Reporting Act (Dual-listed Issuers) Exemption Notice 2013

Regulations means the Securities Regulations 2009

specified financial statements, in relation to an exempt issuer that is relying on—

- (a) Part 1 of the Financial Reporting Act (Australian Issuers) Exemption Notice 2013, means specified financial statements as defined in that notice and includes scheme financial statements as defined in clause 8(1)(d) of that notice:
 - (b) the Financial Reporting Act (Overseas Issuers) Exemption Notice 2013, means specified financial statements as defined in that notice:
 - (c) the Financial Reporting Act (Dual-listed Issuers) Exemption Notice 2013, means specified financial statements as defined in that notice.
- (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 for exempt issuers

Every exempt issuer and every person acting on its behalf are exempted from section 53E of the Act.

6 Condition

The exemption in clause 5 is subject to the condition that the exempt issuer must ensure that its specified financial statements are audited at least once a year by an approved auditor.

Dated at Wellington this 18th day of April 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and is revoked on the close of 30 September 2017, exempts issuers that rely on Part 1 of the Financial Reporting Act (Australian Issuers) Exemption Notice 2013, the Financial Reporting Act (Overseas Issuers) Exemption Notice 2013, or the Financial Reporting Act (Dual-listed Issuers) Exemption Notice 2013 (together, the **FRA class notices**) from section 53E of the Securities Act 1978 (the **Act**). Section 53E requires the financial statements of those issuers to be audited by a qualified auditor at least once a year. The notice instead requires the issuers to have an audit at least once in each year by an auditor who is qualified under the laws of the issuer's home jurisdiction.

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 exemption because—

- issuers that are able to rely on this notice are overseas incorporated issuers that have been exempted from the requirements of the Financial Reporting Act 1993 to prepare, have audited, and register financial statements, subject to conditions that require those issuers to prepare financial statements in accordance with the laws of their home jurisdiction, have those financial statements audited by a person qualified to act as an auditor in their home jurisdiction, and register those audited financial statements in New Zealand. In addition to the audit requirements of the Financial Reporting Act 1993, section 53E of the Securities Act 1978 imposes a further requirement for an annual audit. If the exempt issuers were not granted an exemption from section 53E, they would be required to have an audit by a New Zealand licensed auditor each year even though they had been exempted from the requirement to do so in the Financial Reporting Act 1993:
- the FRA class notices are only available to issuers in circumstances where the issuer has offered securities in their home jurisdiction, and the offer in New Zealand is an extension of that offer in their home jurisdiction. Issuers are not

able to rely on this notice where they have made an offer solely in New Zealand:

- the Financial Markets Authority has had regard to the financial reporting and audit requirements, and the auditor oversight regime, in each of the jurisdictions in which an exempt issuer may be incorporated. In these circumstances, the Financial Markets Authority considers that there will be no significant detriment to subscribers who are members of the public in New Zealand as a result of these issuers being audited by their home jurisdiction auditor instead of a New Zealand licensed auditor:
- the exemptions address particular difficulties faced by issuers that have been exempted from the requirements of the Financial Reporting Act 1993 to have their financial statements audited by a licensed auditor. The FRA class notices, which provide those exemptions from the Financial Reporting Act 1993, are designed to address specific issues for specific classes of overseas incorporated issuers. Further, many of the issuers that can rely on the FRA class exemption notices will already have exemptions from section 53E of the Securities Act 1978 because of the circumstances in which they originally offered securities to the public. Accordingly, the Financial Markets Authority is satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 26 April 2013.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Overseas Issuers—Audit Requirement) Exemption Notice 2013 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