

**Reprint  
as at 1 October 2014**



**Securities Act (HSBC Overseas  
Banks) Exemption Notice 2009**

(SR 2009/295)

Securities Act (HSBC Overseas Banks) Exemption Notice 2009: expired, on  
1 October 2014, by clause 3.

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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**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.**

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## Notice

### 1 Title

This notice is the Securities Act (HSBC Overseas Banks) Exemption Notice 2009.

### 2 Commencement

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

### 3 Expiry

This notice expires on the close of 30 September 2014.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**call account**, in relation to an HSBC overseas bank, means an account opened with the HSBC overseas bank by a subscriber for call debt securities issued by that bank

**call debt security** means a debt security under which—

- (a) the security holder has a right to demand repayment of the principal sum in full at any time; and
- (b) the issuer has an obligation to repay the principal sum in full not later than 1 working day after such a demand is made; and
- (c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time

**home jurisdiction**, in relation to an HSBC overseas bank, means the country in which that body is incorporated

**HSBC** means The Hongkong and Shanghai Banking Corporation Limited, a company incorporated in the Hong Kong Special Administrative Region of the People’s Republic of China

**HSBC Holdings** means HSBC Holdings plc, a public limited company incorporated in England and Wales

**HSBC NZ** means the New Zealand branch of HSBC

**HSBC overseas bank** means—

- (a) HSBC Bank plc, a company incorporated in England and Wales;
- (b) HSBC Bank Australia Limited, a company incorporated in Australia;
- (c) HSBC Bank USA, N.A., a company incorporated under the laws of the United States of America

**investment grade credit rating** means a credit rating—

- (a) of BBB– or better by Standard & Poor’s or by Fitch Ratings; or
- (b) of Baa3 or better by Moody’s Investor Service

**Regulations** means the Securities Regulations 1983.

- (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 Exemptions from sections 33(2), 37, 37A(1)(a), 51, 52, and 54 of Act**

Each HSBC overseas bank and every person acting on its behalf is exempted from sections 33(2), 37, 37A(1)(a), 51, 52, and 54 of the Act in respect of call debt securities offered by the HSBC overseas bank and of which the HSBC overseas bank is the issuer.

**6 Exemption from regulation 14(1) of Regulations**

Each HSBC overseas bank and every person acting on its behalf is exempted from regulation 14(1) of the Regulations in respect of call debt securities offered by the HSBC overseas bank and of which the HSBC overseas bank is the issuer.

**7 Exemption from regulation 17 of Regulations**

Each HSBC overseas bank that, and every other person who, distributes an investment statement or other advertisement to the public relating to call debt securities of which the HSBC overseas bank is the issuer is exempted from regulation 17 of

the Regulations in respect of the distribution of that advertisement.

**8 Condition of exemptions in clauses 5 to 7 relating to authorisation to carry on banking business in home jurisdiction**

The exemptions in clauses 5 to 7 are subject to the condition that the HSBC overseas bank is licensed or authorised by the central banking authority of its home jurisdiction to carry on banking business in that jurisdiction at the time the offer of call debt securities is made and at the time of the allotment of the call debt securities.

**9 Further conditions of exemptions in clause 5 relating to credit rating and financial statements**

The exemptions in clause 5 are subject to the further conditions that at the time the offer of call debt securities is made and at the time of the allotment of the call debt securities—

- (a) the HSBC overseas bank has an investment grade credit rating for its long-term senior unsecured obligations, and that credit rating is available on the Internet site of the HSBC overseas bank and on the Internet site of HSBC NZ; and
- (b) either—
  - (i) the most recent published financial statements of the HSBC overseas bank and HSBC Holdings are available on the Internet site of the HSBC overseas bank or on the Internet site of HSBC NZ; or
  - (ii) if the most recent published financial statements of the HSBC overseas bank and HSBC Holdings are not available on the Internet site of the HSBC overseas bank or on the Internet site of HSBC NZ, the Internet site of HSBC NZ states that the most recent published financial statements are made available by HSBC NZ to depositors, free of charge, on request and provides the name and contact address of a person at HSBC NZ to whom a request for copies of those financial statements may be made.

**10 Further conditions of exemptions in clause 5 relating to call accounts opened in New Zealand**

- (1) The exemptions in clause 5, in respect of call debt securities in a call account opened while the subscriber is in New Zealand, are subject to the further conditions that—
  - (a) the call account is opened by HSBC NZ as agent for the HSBC overseas bank; and
  - (b) at the time the call account is opened with the HSBC overseas bank,—
    - (i) the HSBC overseas bank, through HSBC NZ as its agent, provides the subscriber with a description of the terms and conditions and fees and charges relating to the call account; and
    - (ii) a statement or information to the effect set out in subclause (2) is given to the subscriber before the first allotment of call debt securities to the subscriber in that account.
- (2) The statement or information referred to in subclause (1)(b)(ii) is the following, which must be set out under the heading “Important Information for New Zealand Depositors”:
  - (a) the name and address of the HSBC overseas bank;
  - (b) that the HSBC overseas bank is located in a foreign jurisdiction and therefore may not be subject in all respects to New Zealand law;
  - (c) that the call account with the HSBC overseas bank will be operated under the laws of the relevant jurisdiction;
  - (d) that the HSBC overseas bank is not a registered bank in New Zealand and accordingly the prudential supervisory regime operated by the Reserve Bank of New Zealand and applicable to New Zealand registered banks will not apply to it;
  - (e) that the HSBC overseas bank is not a participant in the New Zealand Crown retail deposit guarantee scheme relating to guarantees given by the Minister of Finance on behalf of the Crown in respect of certain financial institutions and that any call debt security issued by the bank will not be covered by the Crown guarantee;
  - (f) where the call account with the HSBC overseas bank is denominated in a currency other than New Zealand cur-

- rency, that the call account may carry with it a currency risk:
- (g) the Internet site where the most recent financial statements of the HSBC overseas bank can be located free of charge or, if those financial statements are not available on an Internet site, the name and contact address of a person at HSBC NZ from whom copies of the latest financial statements of the HSBC overseas bank are available on request, free of charge:
  - (h) under the heading “Agreement as to Jurisdiction”,—
    - (i) that, in respect of a dispute concerning the call account with the HSBC overseas bank, the HSBC overseas bank—
      - (A) agrees to submit to the non-exclusive jurisdiction of New Zealand courts; and
      - (B) has instructed HSBC NZ to accept service on behalf of the HSBC overseas bank; and
      - (C) agrees that the statement is an agreement with each customer for the purposes of section 389(1)(e) of the Companies Act 1993; and
    - (ii) that despite the statements in subparagraph (i), the contract in respect of the call debt securities may not always be enforceable in New Zealand courts; and
    - (iii) that HSBC NZ is appointed as agent of the HSBC overseas bank to accept service in New Zealand of any document on behalf of the HSBC overseas bank.
- (3) However, subclause (2)(e) does not apply if there is no New Zealand Crown retail deposit guarantee scheme under which guarantees may be given in respect of New Zealand registered banks at the time the statement or information must be given to the subscriber.

#### **11 Further condition of exemption in clause 6**

The exemption in clause 6 is subject to the further condition that the aggregate amount of any debt securities that are secured by mortgage or charge created by the HSBC overseas

bank over any of the assets of the bank and that rank or that will rank, after the allotment of the call debt securities referred to in clause 6, in priority to those call debt securities is not material in the context of the HSBC overseas bank's overall business.

**12 Further conditions of exemption in clause 7**

- (1) The exemption in clause 7 is subject to the further condition that the only difference between the advertisement and another advertisement in respect of which a certificate that complies with subclause (2) of this clause has been completed is that 1 or more of the following matters differ from 1 or more of those matters shown in the other advertisement:
  - (a) the name of the call account holder:
  - (b) the address of the call account holder:
  - (c) the value of the call debt securities in the account.
- (2) A certificate for the purposes of subclause (1) must be in the form set out in Schedule 4 of the Regulations and must be signed by 2 persons, being—
  - (a) directors of the HSBC overseas bank or HSBC NZ; or
  - (b) executive officers of the HSBC overseas bank or HSBC NZ who are authorised by the directors of the HSBC overseas bank to sign those certificates as agents for those directors.
- (3) The exemption in clause 7 is subject to the further condition that the HSBC overseas bank holds the certificate for at least 12 months from the date of distribution of the advertisement to which it relates.
- (4) Nothing in clause 7 and subclauses (1) to (3) limits or affects regulation 17(3) of the Regulations except that the reference in regulation 17(3) of the Regulations to subclause (2) of that regulation must be read as a reference to subclause (2) of this clause.

Dated at Wellington this 29th day of September 2009.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

J Diplock,  
Chairperson.

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### Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2014, relates to the ability of 3 banks operating overseas, HSBC Bank Australia Limited, HSBC Bank plc, and HSBC Bank USA, N.A. (the **HSBC overseas banks**), to offer call account facilities to people in New Zealand. It exempts the HSBC overseas banks from the following in respect of certain debt securities (**call debt securities**), subject to conditions:

- the trust deed and prospectus requirements of the Securities Act 1978 (the **Act**):
- the requirement in section 37A(1)(a) of the Act that, before the allotment of a security offered to the public for subscription, the subscriber has received an investment statement:
- regulation 14(1) of the Securities Regulations 1983 (the **Regulations**), which requires advertisements for debt securities to state either that the securities are secured or unsecured or the nature and ranking of the securities:
- regulation 17 of the Regulations, which prohibits the distribution of an advertisement containing an offer of securities unless a certificate that complies with the regulations has been completed at the time the advertisement is distributed:
- certain other requirements of the Act and the Regulations.



The Securities Commission considers that it is appropriate to grant the exemptions because—

- registered banks in New Zealand have statutory exemptions from large parts of the Securities Act 1978. The exemptions can be extended to the HSBC overseas banks because—
    - the call debt securities to be offered by HSBC overseas banks are transactional deposits, similar to call accounts offered by New Zealand registered banks:
    - the HSBC overseas banks are licensed or otherwise authorised by the central banking authority in their home jurisdiction to carry on banking business in that jurisdiction:
    - before the call debt securities are allotted in a new account opened in New Zealand through HSBC NZ by any of the HSBC overseas banks, information highlighting the differences between such an account and an equivalent account in a New Zealand registered bank must be brought to the attention of the account holder by the New Zealand branch of The Hongkong and Shanghai Banking Corporation Limited as agent for the HSBC overseas bank:
    - the HSBC overseas banks are based in jurisdictions that have signed up to the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding, which would allow the Commission to seek the assistance of the relevant securities regulator should enforcement issues arise:
    - depositors at each HSBC overseas bank, through the New Zealand branch of The Hongkong and Shanghai Banking Corporation Limited, would have access to financial and other information about the relevant overseas bank that would allow them to assess the risks of opening such overseas call accounts and the financial strength of the HSBC overseas bank:
  - the Reserve Bank was consulted on this application.
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Exemption Notice 2009**

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Reprinted as at  
1 October 2014

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 1 October 2009.

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## **Reprints notes**

### **1     *General***

This is a reprint of the Securities Act (HSBC Overseas Banks) 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***

Securities Act (HSBC Overseas Banks) Exemption Notice 2009 (SR 2009/295):  
clause 3

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