

Version
as at 4 November 2021



Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016

(LI 2016/253)

Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016: revoked, on the close of 3 November 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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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This notice is administered by the Financial Markets Authority.

Notice

1 Title

This notice is the Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016.

2 Commencement

This notice comes into force on 4 November 2016.

3 Revocation

This notice is revoked on the close of 3 November 2021.

4 Application

An exemption granted by this notice applies to the following accounting periods of an exempt entity:

- (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

approved auditor, in relation to an exempt entity, means an accountant who is qualified or permitted under the law of a relevant jurisdiction to give an opinion as to whether financial statements or group financial statements comply with an overseas GAAP required or permitted in that jurisdiction

Australian auditor means an accountant who is qualified under the law of Australia to give an opinion as to whether financial statements or group financial statements comply with Australian equivalents to International Financial Reporting Standards

exempt entity has the meaning set out in subclause (2)

International Financial Reporting Standards means—

- (a) International Financial Reporting Standards, International Accounting Standards, and Standing Interpretations Committee interpretations that have been issued, endorsed, or adopted by the International Accounting Standards Board in accordance with the constitution of the International Financial Reporting Standards Foundation; and

- (b) final interpretations by the International Financial Reporting Standards Interpretations Committee approved by the International Accounting Standards Board in accordance with that constitution

New Zealand business, in relation to an exempt entity, means,—

- (a) if the exempt entity has 1 or more subsidiaries, the New Zealand business of the exempt entity's group (as defined in section 6(1) of the Act):
- (b) if the exempt entity has no subsidiaries, the exempt entity's New Zealand business

overseas GAAP, in relation to an exempt entity, means generally accepted accounting practice or principles specified in Schedule 1 that is or are required or permitted in a relevant jurisdiction

overseas market means a financial product market that is authorised to operate in a jurisdiction specified in Schedule 2

Regulations means the Financial Markets Conduct Regulations 2014

relevant jurisdiction, in relation to an exempt entity, means a jurisdiction specified in Schedule 2 in which the overseas market referred to in subclause (2) is authorised to operate.

- (2) In this notice, an entity is an **exempt entity** if—
 - (a) financial products of the entity are approved for trading on an overseas market; and
 - (b) the overseas market has primary jurisdiction for the listing requirements for the entity and the quotation of those financial products; and
 - (c) the entity is an FMC reporting entity only because it is 1 or more of the following:
 - (i) an issuer of a regulated product:
 - (ii) a listed issuer:
 - (iii) a recipient of money from a conduit issuer.
- (3) 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.

6 Exemptions

Every exempt entity is exempted from—

- (a) sections 455(1)(c), 461B, 461D, and 461G of the Act; and
- (b) sections 460 and 461 of the Act to the extent that those sections require the exempt entity to ensure that its financial statements, or group financial statements,—
 - (i) comply with generally accepted accounting practice; and

- (ii) are dated and signed in accordance with section 460(1)(b) or 461(1)(b).

7 Conditions

The exemptions in clause 6 are subject to the conditions that—

- (a) the exempt entity, in relation to the financial statements or group financial statements prepared under section 460 or 461 of the Act, must comply with the law and regulatory requirements of, or permitted by, a relevant jurisdiction that relate to the preparation, content, audit, and public filing of those statements and, in particular, the exempt entity must ensure that—
 - (i) those statements comply with overseas GAAP; and
 - (ii) those statements are audited by an approved auditor; and
 - (iii) an audit report is prepared by the approved auditor in respect of that audit; and
- (b) the exempt entity must ensure that there are kept at all times accounting records that will enable the entity to ensure that—
 - (i) the financial statements or group financial statements prepared under section 460 or 461 of the Act comply with paragraph (a)(i); and
 - (ii) the New Zealand business financial statements prepared under paragraph (c) (if any) comply with paragraph (c)(i); and
- (c) the financial statements or group financial statements delivered for lodgement under section 461H of the Act must be accompanied by financial statements for the New Zealand business (if any), and the exempt entity must ensure that—
 - (i) those statements are prepared in accordance with overseas GAAP or generally accepted accounting practice; and
 - (ii) those statements are audited by an approved auditor, an Australian auditor, or a qualified auditor; and
 - (iii) an audit report is prepared by the approved auditor, Australian auditor, or qualified auditor in respect of that audit; and
- (d) if an auditor's report referred to in paragraph (a)(iii) or (c)(iii) was qualified or referred to a fundamental matter in any respect, the exempt entity must, within 7 working days after the report is signed, provide a copy of the report, and a copy of the financial statements or group financial statements to which it relates, to—
 - (i) the FMA; and
 - (ii) the External Reporting Board; and

- (e) the financial statements or group financial statements that are delivered to the Registrar for lodgement under section 461H of the Act—
 - (i) are accompanied by written notification to the Registrar that the exempt entity is relying on this notice in respect of the accounting period to which the statements relate; and
 - (ii) are in English or accompanied by an accurate English translation.

**Schedule 1
Overseas GAAPs**

cl 5(1)

Australian equivalents to International Financial Reporting Standards

Canadian equivalents to International Financial Reporting Standards

European Union International Financial Reporting Standards

Hong Kong Financial Reporting Standards

International Financial Reporting Standards

Singapore Financial Reporting Standards

Generally accepted accounting principles in the United States of America

Schedule 2 Relevant jurisdictions

cl 5(1)

Canada
Commonwealth of Australia
Federal Republic of Germany
France
The Netherlands
Republic of Ireland
Republic of South Africa
Singapore
Switzerland
United Kingdom
United States of America

Dated at Auckland this 1st day of November 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 4 November 2016 and is revoked on the close of 3 November 2021.

This notice applies to certain overseas FMC reporting entities. It exempts these entities from certain financial reporting obligations in Part 7 of the Financial Markets Conduct Act 2013 (the **Act**), including—

- sections 460 and 461 of the Act to the extent that those sections require the financial statements that are prepared to comply with New Zealand generally accepted accounting practice (**NZ GAAP**) and to be dated and signed by 2 directors (or, if the entity has only 1 director, by that director);
- sections 461D and 461G of the Act (which relate to auditing).

The exemptions are subject to conditions that require these entities to prepare financial statements that comply with the overseas legislation of a relevant overseas jurisdiction. The main effects of the exemptions for entities relying on them are as follows:

- the financial statements that are prepared will comply with an overseas generally accepted accounting practice (**overseas GAAP**) that is or are required or permitted in the relevant overseas jurisdiction rather than NZ GAAP:
- those financial statements will be audited by an auditor who is qualified or permitted under the laws of the relevant overseas jurisdiction to perform the audit (an **overseas approved auditor**):
- if the entity has a New Zealand business, those financial statements will be accompanied by separate financial statements for the New Zealand business that comply with overseas GAAP or NZ GAAP:
- those New Zealand business financial statements will be audited by a qualified auditor (as that term is defined in the Act), an overseas approved auditor, or an auditor who is qualified under the laws of Australia.

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 exemptions because—

- the exemptions are only available to FMC reporting entities with a primary listing on a financial product market regulated by the laws of a jurisdiction where the FMA is satisfied that the financial reporting required or permitted in that jurisdiction, and the nature and extent of regulatory oversight, for those entities and their auditors are of high quality and broadly equivalent to those that apply in New Zealand. As such, investors in those entities will have access to broadly similar, and equivalent, information to the information they would otherwise receive:
- the costs associated with an entity having to prepare and audit financial statements in accordance with the requirements of an overseas jurisdiction, in addition to the costs associated with preparing NZ GAAP compliant financial statements audited by a New Zealand qualified auditor, would outweigh the benefits to investors in receiving financial statements prepared according to NZ GAAP rather than overseas GAAP:
- the exemptions are also limited to jurisdictions where the jurisdiction's regulatory body is an ordinary member of the International Organization of Securities Commissions (**IOSCO**) and a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This means the FMA will be able to obtain co-operation from the securities regulator in the overseas jurisdiction if any compliance concerns arise in relation to the overseas entity or its auditor:
- as such, the FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically the exemptions will avoid unnecessary compliance costs and promote flexibility in the financial markets:
- given that the exemptions will be limited to entities listed on overseas markets that are preparing financial statements and subject to audit oversight broadly

equivalent to New Zealand, and that the exemptions only allow the use of overseas GAAP in place of NZ GAAP with respect to the preparation of financial statements and allow those financial statements to be audited by an overseas approved auditor rather than a New Zealand qualified auditor, the FMA is satisfied that the exemptions are not broader than is reasonably necessary to address the matters to which they relate.

Issued under the authority of the Legislation Act 2019.
Date of notification in *Gazette*: 3 November 2016.

Notes

1 *General*

This is a consolidation of the Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016 (LI 2016/253): clause 3