

**Reprint  
as at 24 February 2019**



## **Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2017**

(LI 2017/23)

Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2017:  
revoked, on the close of 23 February 2019, by clause 3.

Pursuant to section 148 of the Financial Advisers Act 2008, the Financial Markets Authority, being satisfied of the matters set out in section 148(2) of that Act, gives the following notice.

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### **Notice**

#### **1 Title**

This notice is the Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2017.

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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.**

## 2 Commencement

This notice comes into force on 24 February 2017.

## 3 Revocation

This notice is revoked on the close of 23 February 2019.

## 4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
- exempt period**, in relation to a custodian, means the relevant period referred to in clause 5
- overseas assurance engagement** has the meaning given in clause 6(2)
- Regulations** means the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014.
- (2) Any term or expression that is defined in the Financial Advisers Act 2008 or the Regulations (including regulations 9 and 10) and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemption from assurance engagement requirement

A custodian is exempted from regulations 9(1) and (2) and 10(1) and (2) of the Regulations in relation to a relevant date (and therefore the relevant period ending on that date) if—

- (a) the custodian has its principal place of business outside New Zealand; and
- (b) the custodian's relevant date is on or after 24 February 2017 but before 24 February 2018; and
- (c) the custodian complies with clauses 6 and 7.

## 6 Overseas assurance engagement

- (1) For the purposes of clause 5(c), a custodian must obtain 1 or more overseas assurance engagements that together cover all FMCA custodial services provided by the custodian, or any sub-custodians appointed by the custodian, to a client of the custodian in New Zealand in relation to client money and client property during the exempt period.
- (2) An **overseas assurance engagement** means an assurance engagement—
- (a) obtained in a jurisdiction—
    - (i) in which the custodian, or any of those sub-custodians, carried on business as a custodian during the exempt period; and
    - (ii) that is listed in the Schedule; and
  - (b) with an auditor who is registered or licensed to provide assurance engagements in that jurisdiction; and

- (c) that complies with the legal requirements and auditing and assurance standards in that jurisdiction; and
  - (d) that includes the auditor's assessment of the custodian's processes, procedures, and controls relating to the custody of property, including the suitability of their design and their operating effectiveness.
- (3) Subclause (1) must be complied with within 4 months after the end of the exempt period.

**7 Report to be given to FMA and clients on request**

- (1) For the purposes of clause 5(c), a custodian must ensure that the required information is given,—
- (a) to the FMA, within 20 working days after the custodian obtains the overseas assurance report for the exempt period (or the last of those reports if there is more than 1); and
  - (b) to any client of the custodian who requests a copy, within 10 working days after the request is received.

- (2) In this clause,—

**overseas assurance report** means an assurance report provided under an overseas assurance engagement referred to in clause 6(1)

**required information**, for the exempt period, means—

- (a) a copy of each of the custodian's overseas assurance reports for the exempt period; and
- (b) for each report,—
  - (i) a statement of all of the FMCA custodial services provided by the custodian or any sub-custodian appointed by the custodian that are covered by the report (if the report does not include a statement to that effect); and
  - (ii) to the extent that the report addresses matters that are the same or similar to those set out in regulation 10 of the Regulations, information identifying where in the report those matters are addressed.

**Schedule**  
**Overseas jurisdictions**

cl 6(2)

Commonwealth of Australia

Canada

France

Luxembourg

United Kingdom  
United States of America

Dated at Wellington this 21st day of February 2017.

Nick Kynoch,  
General Counsel, Financial Markets Authority

### Statement of reasons

This notice comes into force on 24 February 2017 and is revoked on 23 February 2019.

The notice exempts certain overseas custodians from the requirements in regulations 9 and 10 of the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 (the **Regulations**) to obtain an assurance engagement from a New Zealand auditor that covers the New Zealand assurance engagement matters specified in regulation 10.

The exemption applies to an overseas custodian who obtains assurance engagements in 1 or more of the jurisdictions listed in the *Schedule* that together cover all FMCA custodial services provided by the custodian or its sub-custodians to New Zealand clients. The exemption applies for the custodian's relevant period ending on or after 24 February 2017 but before 24 February 2018.

The Financial Markets Authority (the **FMA**), after satisfying itself of the matters set out in section 148(2) of the Financial Advisers Act 2008, considers it appropriate to grant this exemption because—

- the exemption applies only to custodians who have their principal place of business outside New Zealand, and who obtain assurance engagements in 1 or more of the jurisdictions listed in the *Schedule* that together cover all FMCA custodial services provided by the custodian or its sub-custodians to New Zealand clients;
- the exemption applies only in relation to jurisdictions in which custodians are required to obtain assurance engagements from auditors who are subject to auditing standards and oversight that are broadly equivalent to those applying in New Zealand. As such, the FMA is confident of the comparability and quality of those overseas assurance engagements;
- if a custodian obtains an assurance engagement that is prepared by an auditor who is registered or licensed to provide assurance engagements in one of those jurisdictions and complies with the regulatory requirements in that jurisdiction, the costs associated with requiring the custodian to also obtain an assurance

engagement prepared by a New Zealand auditor in compliance with regulations 9 and 10 of the Regulations outweigh the benefits to investors and would not be justified by the benefit of compliance:

- the securities regulators in the jurisdictions listed in the *Schedule* are signatories to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This will allow the FMA to seek assistance from the relevant regulator if enforcement issues arise.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 23 February 2017.

## Reprints notes

### **1** *General*

This is a reprint of the Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2017 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 Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2017 (LI 2017/23): clause 3