

**11(3) [Where manager is issuer]** Despite subsection (1)(b), if a debt security is offered for the purposes of a managed investment scheme, the manager of the scheme is the issuer for the purposes of this Act.

**11(4) [Issuers of derivatives]** If each person that enters into a derivative is a derivatives issuer, each of those persons is the issuer.

**Example**

A and B enter into a futures contract.

Both A and B are derivatives issuers. Accordingly, both A and B are issuers of the futures contract.

Although both parties are issuers, whether any particular party has disclosure or other obligations will depend on the circumstances.

If both A and B hold a market services licence, both A and B will be wholesale investors under clause 37(1)(f) of Schedule 1. Accordingly, neither party will be required to make disclosure under Part 3 to the other party.

**11(5) [Reference to issuer before issuance]** In this Act, a reference to an issuer in relation to events, circumstances, or other matters before the financial products are issued is a reference to the person that will be, or is intended to be, the issuer when those products are issued.

**11(6) [Where person ceases to be issuer]** In this Act, a person ceases to be an issuer in relation to financial products when those products are cancelled, redeemed, or forfeited, or all of the obligations owing under those products have been discharged.

**11(7) [Declaration prevails]** Subsections (1) to (6) are subject to a declaration under section 562(1)(g).

**11(8) [An issue is not a sale]** For the purposes of this Act, the issue of a financial product is not a sale of the financial product.

**11(9) [Treatment of separate payments]** If the terms of a financial product require or allow the person acquiring the product to pay separate amounts of money at different times, each of those payments must, for the purposes of this Act, be treated as payment for the same financial product as each of those other payments.

**SECTION 12 MEANING OF ASSOCIATED PERSON AND RELATED BODY CORPORATE**

**12(1) [Where person is associated]** In this Act, a person (A) is associated with, or an associated person of, another person (B) if—

- (a) A is a body corporate and B has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attaching to 25% or more of the voting products of the body corporate (or vice versa):
- (b) A and B are relatives or related bodies corporate:
- (c) A and B are partners to whom the Partnership Act 1908 applies:
- (d) A is a director or senior manager of B (or vice versa):
- (e) A and B are acting jointly or in concert:

- (f) A acts, or is accustomed to act, in accordance with the wishes of B (or vice versa):
- (g) A is able, directly or indirectly, to exert a substantial degree of influence over the activities of B (or vice versa):
- (h) A and B are bodies corporate that consist substantially of the same members or shareholders or that are under the control of the same persons:
- (i) there is another person with which A and B are both associated.

**12(2) [Where body corporate is related body corporate]** In this Act, a body corporate (A) is related to another body corporate (B) if—

- (a) B is A's holding company or subsidiary within the meaning of section 5 of the Companies Act 1993; or
- (b) more than half of A's voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) are held by B and bodies corporate that are related to B (whether directly or indirectly, but other than in a fiduciary capacity), or vice versa; or
- (c) more than half of the voting products (other than voting products that carry no right to participate beyond a specified amount in a distribution of either profits or capital) of each of A and B are held by members of the other (whether directly or indirectly, but other than in a fiduciary capacity); or
- (d) the businesses of A and B have been so carried on that the separate business of each body corporate, or a substantial part of that business, is not readily identifiable; or
- (e) there is another body corporate to which A and B are both related.

**SECTION 13 MISCELLANEOUS INTERPRETATION PROVISIONS RELATING TO STATEMENTS AND INFORMATION**

**13(1) [Where statement false, misleading, deceptive or confusing]** In this Act, a reference to a statement or other information that is false, misleading, deceptive, or confusing includes a reference to a statement or information that is false, misleading, deceptive, or confusing (as the case may be) by reason of—

- (a) the form or context in which the statement or information is made, published, or provided; or
- (b) the omission of any other information that is material in the form and context in which it is made, published, or provided.

**13(2) [Where statement is included in document]** For the purpose of considering whether a PDS, a register entry, or any other document or communication provided under this Act is false, misleading, deceptive, or confusing, a statement or other information must be treated as being included in the PDS, register entry, or other document or communication if it—

- (a) is contained in the PDS, register entry, or document or communication (as the case may be); or

- (b) appears on the face of the PDS, register entry, or document or communication (as the case may be); or
- (c) is contained in any financial statements, report, or other document that accompanies, or is incorporated by reference or referred to in, or distributed with, the PDS, register entry, or document or communication (as the case may be).

**13(3) [Incorporation by reference]** For the purposes of this section, if a PDS, a register entry, or any other document or communication specifically identifies a particular page or section of an Internet site or of another document, only that page or section is incorporated by reference or referred to in the PDS, register entry, or other document or communication (except in the prescribed circumstances).

**13(4) [Where incorporation of document authorised]** If this Act or the regulations require information or any other matter to be contained or included in a PDS, register entry, or document or communication, the information or other matter may be incorporated by reference only if this is authorised by the regulations.

#### SECTION 14 STATUS OF EXAMPLES

**14(1) [Example illustrative only]** An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

**14(2) [Provisions prevail]** If an example and a provision to which it relates are inconsistent, the provision prevails.

### Act binds the Crown

#### SECTION 15 ACT BINDS THE CROWN

**15** This Act binds the Crown.

### General application provision

#### SECTION 16 APPLICATION OF ACT

**16(1) [Act prevails]** The provisions of this Act have effect despite anything to the contrary in any other enactment or in any agreement, deed, application, disclosure document, or advertisement.

**16(2) [Where agreement void]** A provision of an agreement or a deed is void if it provides that a party to the agreement or deed is—

- (a) required or bound to waive compliance with any requirement of this Act or the regulations; or
- (b) taken to have notice of any agreement, document, or matter not specifically referred to in the relevant disclosure document (if any).

**16(3) [Illegal Contracts Act 1970 not limited]** Nothing in this section or in any other provision of this Act or the regulations limits the Illegal Contracts Act 1970.

## PART 2 — FAIR DEALING

### SECTION 17 OVERVIEW

**17(1) [Overview of Pt 2]** This Part provides for fair dealing in relation to financial products and financial services as follows:

- (a) sections 19 to 33 prohibit misleading or deceptive conduct, the making of false or misleading representations, and the making of unsubstantiated representations;
- (b) sections 34 to 37 prohibit offers of financial products in the course of unsolicited meetings.

**17(2) [Guide only]** Subsection (1) is only a guide to the general scheme and effect of this Part.

### SECTION 18 INTERPRETATION IN THIS PART

**18** In this Part,—

**financial product—**

- (a) has the meaning set out in section 7; and
- (b) includes, for the purposes of any provision of this Part or section 464, any class or classes of financial product (within the meaning of section 5 of the Financial Advisers Act 2008) declared by the regulations to be a financial product for the purposes of that provision

**trade** means any trade, business, industry, profession, occupation, activity of commerce, or undertaking.

### Misleading or deceptive conduct, false or misleading representations, and unsubstantiated representations

#### SECTION 19 MISLEADING OR DECEPTIVE CONDUCT GENERALLY

**19(1) [Prohibited conduct relating to financial products or services]** A person must not, in trade, engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to—

- (a) any dealing in financial products; or
- (b) the supply or possible supply of a financial service or the promotion by any means of the supply or use of financial services.

**19(2) [Prohibited conduct for quoted financial products]** A person must not engage in conduct that is misleading or deceptive or likely to mislead or deceive in relation to any dealing in quoted financial products.

**19(3) [Application of subs (2)]** Subsection (2) applies regardless of whether or not the dealing is in trade.

Compare: 1986 No 121 s 9; 1988 No 234 s 13

## SECTION 20 MISLEADING CONDUCT IN RELATION TO FINANCIAL PRODUCTS

**20** A person must not, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of financial products.

Compare: 1986 No 121 s 10

## SECTION 21 MISLEADING CONDUCT IN RELATION TO FINANCIAL SERVICES

**21** A person must not, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of financial services.

Compare: 1986 No 121 s 11

## SECTION 22 FALSE OR MISLEADING REPRESENTATIONS

**22** A person must not, in trade, in connection with any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services, make a false or misleading representation—

- (a) that the products or services are of a particular kind, standard, quality, grade, quantity, composition, or value, or have had a particular history; or
- (b) that the products or services are offered, issued, transferred, or supplied by a particular person, by a person of a particular trade, qualification, or skill, or by a person who has other particular characteristics; or
- (c) that a particular person has agreed to acquire the products or services; or
- (d) that the products or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or
- (e) that a person has any sponsorship, approval, endorsement, or affiliation; or
- (f) with respect to the price of the products or services; or
- (g) concerning the need for the products or services; or
- (h) concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993; or
- (i) concerning the place of origin of the products or services.

Compare: 1986 No 121 s 13

## SECTION 23 UNSUBSTANTIATED REPRESENTATIONS

**23(1)** [Representation prohibited in trade] A person must not, in trade, make an unsubstantiated representation.

**23(2)** [Definition of unsubstantiated] A representation is **unsubstantiated** if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether the representation is false or misleading.

**23(3)** [Where this section does not apply] This section does not apply to a representation that a reasonable person would not expect to be substantiated.

**23(4)** [Definition of representation] In this section and sections 24 to 27, **representation** means a representation that is made—

- (a) in respect of financial products or financial services; and
- (b) in connection with—
  - (i) any dealing in financial products; or
  - (ii) the supply or possible supply of financial services or the promotion by any means of the supply or use of financial services.

## SECTION 24 COURT MUST HAVE REGARD TO CERTAIN MATTERS

**24(1)** [Where contravention of s 23] In a proceeding concerning a contravention of section 23, and in assessing whether a person had reasonable grounds for a representation, a court must have regard to all of the circumstances, including—

- (a) the nature of the financial products or financial services in respect of which the representation was made;
- (b) the nature of the representation (for example, whether it was a representation about quality or quantity);
- (c) any research or other steps taken by or on behalf of the person before the person made the representation;
- (d) the nature and source of any information that the person relied on to make the representation;
- (e) the extent to which the person making the representation complied with the requirements of any standards, codes, or practices relating to the grounds on which such a representation may be made, and the nature of those requirements;
- (f) the actual or potential effects of the representation on any person.

**24(2)** [Application to ss 499 to 504] Subsection (1) does not limit sections 499 to 504.

## SECTION 25 LIMITATION ON COMMENCEMENT OF PROCEEDINGS IN RELATION TO UNSUBSTANTIATED REPRESENTATIONS

**25** Despite anything to the contrary in Part 8, only the FMA may commence a proceeding or make an application under that Part in relation to a contravention of section 23.

## SECTION 26 SECTION 23 DOES NOT APPLY TO REPRESENTATIONS IN PDSS, REGISTER ENTRIES, OR OTHER DISCLOSURE DOCUMENTS

**26** Section 23 does not apply to a representation made in a disclosure document or a register entry.

**SECTION 27 SECTION 23 SUBJECT TO OTHER ENACTMENTS**

27 Section 23 does not apply to a representation made by a person in a particular trade, business, industry, profession, occupation, activity of commerce, or undertaking if, when the representation is made,—

- (a) another enactment sets out requirements relating to the grounds on which representations may be made by a person in that trade, business, industry, profession, occupation, activity of commerce, or undertaking (whether more or less onerous than section 23); and
- (b) the person complies with those requirements.

**SECTION 28 CERTAIN CONDUCT DOES NOT CONTRAVENE VARIOUS PROVISIONS**

28(1) [Conduct where no contravention] Conduct that contravenes section 82, 99, 262, 265, or 427 or clause 27 of Schedule 1 does not contravene sections 19 to 23.

28(2) [Conduct where no offence or liability] For the purpose of this section, conduct must be treated as contravening section 82, 99, 262, 265, or 427 or clause 27 of Schedule 1 even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

Compare: Australian Securities and Investments Commission Act 2001 ss 12DA(1A), 12DB(2) (Aust)

**SECTION 29 LIMITED APPLICATION OF PROVISIONS IN RELATION TO NEWSPAPERS, MAGAZINES, BROADCASTING, ETC**

29(1) [Allowable forms of publication] Nothing in sections 19 to 23 applies to the publication of any information or matter in a newspaper or magazine, or on a news media or financial market commentary Internet site, by the relevant person, not being—

- (a) the publication of an advertisement; or
- (b) the publication of any information or matter relating to any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services by—
  - (i) the relevant person or, if the relevant person is a body corporate, by a related body corporate; or
  - (ii) a person who is a party to any agreement with the relevant person relating to the content, nature, or tenor of the information or matter.

29(2) [Allowable forms of broadcast and exhibition] Nothing in sections 19 to 23 applies to the broadcasting or exhibiting of any information or matter by the relevant person, not being—

- (a) the broadcasting or exhibiting of an advertisement; or
- (b) the broadcasting or exhibiting of any information or matter relating to any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services by—
  - (i) the relevant person or, if the relevant person is a body corporate, by a related body corporate; or
  - (ii) a person who is a party to any agreement with the relevant person relating to the content, nature, or tenor of the information or matter.

29(3) [Definitions] In this section,—

**exhibiting** means—

- (a) exhibiting by means of an audio or visual service; or
- (b) exhibiting films to the public

**newspaper** has the same meaning as in section 2 of the Films, Videos, and Publications Classification Act 1993

**relevant person** means, in relation to—

- (a) a newspaper or magazine, the proprietor of the newspaper or magazine;
- (b) a news media or financial market commentary Internet site, the person that controls the content of the Internet site;
- (c) broadcasting, the broadcaster;
- (d) an audio or visual service, the person that controls the content of the audio or visual service;
- (e) exhibiting films to the public, the person that exhibits the films.

Compare: 1986 No 121 s 15

**SECTION 30 DEFENCE FOR PUBLISHER**

30 In any proceeding against a person (A) for contravention of any of sections 19 to 23 committed by the publication of an advertisement, it is a defence if A proves that—

- (a) A's business is publishing or arranging for the publication of advertisements; and
- (b) A received the advertisement, or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of the provision.

Compare: 1986 No 121 s 44(4)

**SECTION 31 LICENSED MARKET OPERATOR DOES NOT CONTRAVENE BY NOTIFYING DISCLOSURES**

31 A licensed market operator does not contravene any of sections 19 to 23 by the notification of any disclosure made to it under subpart 4, 5, or 6 of Part 5 or under an alternative disclosure obligation.

**SECTION 32 OTHER EXCEPTIONS**

32(1) [Exception where takeover laws apply] Sections 19 to 23 do not apply to conduct in relation to a takeover offer for financial products under the Takeovers Code or to conduct under that offer to the extent that the conduct is regulated by the Takeovers Code, the Takeovers Act 1993, or an exemption granted under that Act.

32(2) [Exception for share repurchase or redemption] Sections 19 to 23 do not apply to conduct in relation to the acquisition or redemption by a company of its shares under the Companies Act 1993 to the extent that the conduct is regulated by that Act.

Compare: 1988 No 234 ss 14, 15

**SECTION 33 TERRITORIAL SCOPE OF SECTIONS 19 TO 23**

**33(1) [Application to conduct in New Zealand]** Sections 19 to 23 apply to—

- (a) conduct in New Zealand; and
- (b) conduct outside New Zealand by any person resident, incorporated, registered, or carrying on business in New Zealand to the extent that that conduct relates to dealing in financial products, or the supply of a financial service, that occurs (in part or otherwise) within New Zealand.

**33(2) [Where communications distributed outside New Zealand]** Sections 19 to 23 also apply to a restricted communication that is distributed or to be distributed to a person outside New Zealand by any person resident, incorporated, registered, or having a principal place of business in New Zealand.

**33(3) [Proceedings commenced by FMA only]** Despite anything to the contrary in Part 8, only the FMA may commence a proceeding or make an application under that Part in relation to conduct to which this Part applies by virtue of subsection (2).

**33(4) [Meaning of registered]** In this section, **registered** means registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Compare: 1988 No 234 s 18; 1978 No 103 s 7(3)

### Offers in course of unsolicited meetings

#### SECTION 34 PROHIBITION OF OFFERS IN COURSE OF UNSOLICITED MEETINGS WITH PERSONS ACTING OTHERWISE THAN IN TRADE

**34(1) [Offer banned in unsolicited meeting]** A person must not offer financial products for issue or sale to a person who is acting otherwise than in trade (A) in the course of, or because of, an unsolicited meeting with A.

**34(2) [Where offer allowed in meeting]** Subsection (1) does not prohibit an offer of financial products if—

- (a) the offer does not require disclosure under Part 3 because of an exclusion under Part 1 of Schedule 1 (other than an exclusion under clause 12 or 16 of that schedule); or
- (b) the offer is through an authorised financial adviser or a QFE adviser who is acting in the ordinary course of business as a financial adviser; or
- (c) the offer is an offer of quoted financial products made to A through a person who, under the Financial Advisers Act 2008, is permitted to give personalised financial advice to A in respect of those products (including as a result of an exemption by or under that Act); or
- (d) the offer is an offer of the financial products of a co-operative where becoming a holder of those products is—
  - (i) a necessary incident of doing business with the co-operative; or
  - (ii) the means by which a person can access the benefits of membership of the co-operative; or
- (e) the offer is made in the prescribed circumstances.

**34(3) [Application where receipt in New Zealand]** This section applies to offers of financial products received by persons in New Zealand, regardless of—

- (a) where any resulting issue or transfer occurs;
- (b) where the issuer or offeror is resident, incorporated, or carries on business.

**34(4) [Definitions]** In this section,—

**meeting** includes—

- (a) a telephone call; or
- (b) a meeting held by means of audio, audio and visual, or electronic communication where the participants can simultaneously communicate with each other throughout the meeting

**co-operative** means—

- (a) a co-operative company; or
- (b) an industrial and provident society; or
- (c) an entity of a prescribed kind.

Compare: Corporations Act 2001 s 736 (Aust)

#### SECTION 35 RIGHT TO WITHDRAW

**35(1) [Offer contravenes s 34]** If financial products are issued or transferred to a person (A) as a result of an offer that contravenes section 34, A has the right to—

- (a) withdraw from holding the financial products and to have the relevant money repaid (in any case other than a derivative); or
- (b) in the case of a derivative, withdraw from the derivative.

**35(2) [Time limit]** The right referred to in subsection (1) is exercisable by A giving to the offeror notice of the exercise of the right within 1 month after the date of the issue or transfer.

**35(3) [Form of notice]** Notice under this section may be expressed in any way (including oral or written) that shows the intention of A to withdraw from holding the financial product or from the derivative.

**35(4) [Other liability not limited]** This section and sections 36 and 37 do not limit any other liability that a person may have for a contravention of section 34.

Compare: Corporations Act 2001 s 738 (Aust)

#### SECTION 36 OFFEROR OBLIGATIONS IF NOTICE OF WITHDRAWAL GIVEN

**36(1) [Financial products other than derivatives]** If a notice is given under section 35 in relation to a financial product other than a derivative,—

- (a) the offeror must ensure that the relevant money is repaid as soon as practicable; and
- (b) if the relevant money is not repaid within 1 month after the notice is given, the offeror and the directors of the offeror are jointly and severally liable to repay the relevant money together with interest at a prescribed rate from the date on which the notice was given.

**523(3) [Effective period]** An order may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

Compare: 1978 No 103 s 60H; 1988 No 234 s 43Q

#### SECTION 524 INTERIM ORDERS

**524(1) [Order for application under s 522]** If an application is made to the court for an order under section 522, the court may, if in the opinion of the court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

**524(2) [No undertaking required by FMA]** The court must not require the FMA, as a condition of making an interim order, to give an undertaking as to damages.

**524(3) [Court not to take into account]** In determining the FMA's application for the grant of an interim order, the court must not take into account that the FMA is not required to give an undertaking as to damages.

Compare: 1978 No 103 s 60I; 1988 No 234 s 43R

#### SECTION 525 RELATIONSHIP WITH OTHER LAW

**525** Nothing in this subpart affects the powers that the court has apart from this subpart.

Compare: 1978 No 103 s 60J; 1988 No 234 s 43S

### Subpart 8 — Indemnities or insurance for directors, employees, and auditors of issuers, offerors, and licensees

#### SECTION 526 PROHIBITION ON INDEMNITIES OR INSURANCE FOR DIRECTORS OR EMPLOYEES OF ISSUERS, OFFERORS, OR LICENSEES THAT ARE NOT NEW ZEALAND COMPANIES

**526(1) [Where prohibited]** A specified person, or a related body corporate, must not indemnify, or directly or indirectly effect insurance for, a director or an employee of the specified person in respect of—

- (a) liability, in connection with conduct regulated by the financial markets legislation, for any contravention, involvement in a contravention, negligence, breach of duty, or breach of trust in his or her capacity as a director or an employee; or
- (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to that liability.

**526(2) [Where indemnity void]** An indemnity given in breach of this section is void.

**526(3) [Application of Companies Act 1993]** This section does not apply to a specified person or related body corporate that is a company within the meaning of section 2(1) of the Companies Act 1993 (*see* section 162 of the Companies Act 1993, which provides for limitations on indemnities and insurance).

**526(4) [Related provisions]** This section is subject to sections 527 and 528.

Compare: 1978 No 103 s 61

### Sec 523(3)

#### SECTION 527 PERMITTED INDEMNITIES FOR CERTAIN LIABILITIES OR COSTS

**527(1) [Where judgment in favour or discontinuation]** A specified person, or a related body corporate, may, if expressly authorised by its constitution, indemnify a director or an employee of the specified person for any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in section 526(1)(a) if—

- (a) judgment is given in his or her favour or if he or she is acquitted; or
- (b) the proceeding is discontinued.

**527(2) [Where liability to any other person]** A specified person or a related body corporate may, if expressly authorised by its constitution, indemnify a director or an employee of the specified person in respect of—

- (a) liability to any person other than the specified person for any act or omission in his or her capacity as a director or an employee (not being a liability specified in subsection (3)); or
- (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability.

**527(3) [Interpretation]** The liability specified in this subsection is—

- (a) criminal liability; or
- (b) a liability that arises out of a failure to act in good faith when acting in the capacity as a director or an employee.

Compare: 1978 No 103 s 61A

#### SECTION 528 PERMITTED INSURANCE FOR CERTAIN LIABILITY OR COSTS

**528(1) [What insurance may cover]** A specified person, or a related body corporate, may, if expressly authorised by its constitution and with the prior approval of its board of directors, effect insurance for a director or an employee of the specified person in respect of—

- (a) liability (other than criminal liability) of a kind referred to in section 526(1)(a); or
- (b) costs incurred by that director or employee in defending or settling any claim or proceeding relating to that liability; or
- (c) costs incurred by that director or employee in defending any criminal proceedings—

- (i) that have been brought against the director or employee in relation to any alleged act or omission in his or her capacity as a director or employee; and
- (ii) in which he or she is acquitted.

**528(2) [Directors' certificate]** The directors of the specified person, or of the related body corporate, who vote in favour of authorising the insurance under subsection (1) must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the specified person or related body corporate (as the case may be).

**528(3) [Where director or employee liable]** The director or employee who is insured is personally liable to the specified person or related body corporate for the cost of effecting insurance if—

- (a) subsection (2) has not been complied with in effecting the insurance; or
- (b) reasonable grounds did not exist for the opinion set out in the certificate given under subsection (2).

**528(4) [Where subs (3) does not apply]** However, subsection (3) does not apply to the extent that the insurance was fair to the specified person or related body corporate at the time the insurance was effected.

Compare: 1978 No 103 s 61B

### SECTION 529 PROHIBITION ON INDEMNITY OR INSURANCE FOR AUDITORS OF ISSUERS, OFFERORS, OR LICENSEES

**529(1) [Where indemnity not allowed]** A specified person, or a related body corporate, must not indemnify, or directly or indirectly effect insurance for, an auditor of the specified person, or an auditor engaged by the specified person, in respect of—

- (a) liability, in connection with conduct regulated by the financial markets legislation, for any contravention, involvement in a contravention, negligence, breach of duty, or breach of trust in his or her capacity as an auditor; or
- (b) costs incurred by that auditor in defending or settling any claim or proceeding relating to that liability.

**529(2) [Where judgment in favour or discontinuation]** However, a specified person, or a related body corporate, may indemnify an auditor referred to in subsection (1) for any costs incurred by him or her in defending or settling a proceeding that relates to liability of a kind referred to in subsection (1)(a) if—

- (a) judgment is given in his or her favour or if he or she is acquitted; or
- (b) the proceeding is discontinued.

**529(3) [Where indemnity void]** An indemnity given in breach of this section is void.

### SECTION 530 INTERPRETATION FOR THIS SUBPART

**530** In this subpart,—

**director** includes a former director

**effect insurance** includes to pay, whether directly or indirectly, the costs of the insurance

**employee** includes a former employee

**specified person** means—

- (a) an issuer of financial products offered under a regulated offer; or
- (b) an offeror of financial products offered under a regulated offer; or
- (c) a person that holds a market services licence or is an authorised body; or
- (d) a licensed market operator; or
- (e) a licensed supervisor.

Compare: 1978 No 103 s 61C

## Subpart 9 — Appeals

### SECTION 531 APPEALS AGAINST MARKET SERVICES LICENCE DECISIONS

- 531** A person may appeal to the court against a decision of the FMA under Part 6 to—
- (a) decline to issue a licence to the person or to authorise the person to provide a service under the licence; or
  - (b) impose conditions on the person's licence or proposed licence or to vary, revoke, add to, or substitute any conditions on the person's licence; or
  - (c) decline an application to vary the conditions of the person's licence; or
  - (d) exercise a power in respect of the person under section 414 or 418 (which relates to the FMA's powers in the case of contraventions, etc).

### SECTION 532 APPEALS AGAINST OTHER DECISIONS OF FMA ON QUESTIONS OF LAW ONLY

**532** An aggrieved person that considers that any of the following decisions of the FMA is wrong in law may appeal to the court against the decision on a question of law only:

- (a) a refusal to give a certificate under section 126(2)(e)(iii) (certificate that the FMA is satisfied that a scheme complies with certain requirements);
- (b) a decision under section 134 (direction to change a registration);
- (c) a decision under section 193(1)(a) (removal of a supervisor of a registered scheme);
- (d) a decision under section 195 (cancellation of the registration of a scheme);
- (e) a decision under section 205 (direction to the supervisor or issuer);
- (f) a decision under section 361 (direction to a licensed market operator);
- (g) a decision under subpart 1 (FMA's enforcement powers).

Compare: 1988 No 234 s 47A

## Subpart 10 — Miscellaneous

### Accessories and attribution of liability

### SECTION 533 INVOLVEMENT IN CONTRAVENTIONS

**533(1) [Definition]** In this Act, a person is **involved in a contravention** if the person—

- (a) has aided, abetted, counselled, or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

**533(2) [Where subs (1) does not apply]** Subsection (1) does not apply to proceedings for offences (but *see* Part 4 of the Crimes Act 1961, which relates to parties to the commission of offences).

Compare: Corporations Act 2001 s 79 (Aust)

### SECTION 534 DIRECTORS TREATED AS HAVING CONTRAVENED IN CASE OF DEFECTIVE DISCLOSURE OR FINANCIAL REPORTING CONTRAVENTION

**534(1) [Where this section applies]** This section applies if, in a proceeding under subpart 3, the court is satisfied that—

- (a) an offeror has contravened section 82 (defective disclosure in PDS or register entry); or
- (b) an issuer has contravened section 99 (defective ongoing disclosure); or
- (c) a licensee or an authorised body has contravened section 427 (defective disclosure statement); or
- (ca) an FMC reporting entity has contravened any of sections 460 to 461B, 461D, and 461H (financial reporting obligations); or
- (d) an entity that provided a disclosure document under clause 26 of Schedule 1 has contravened clause 27 of that schedule (defective disclosure document).

#### History

S 534(1) amended by No 102 of 2013, s 53(2), by inserting para (ca); effective 1 April 2014 (LI 2014/52, cl 3(1)).

**534(2) [Where this section does not apply]** However, this section does not apply in the prescribed circumstances.

**534(3) [Directors treated as contravening]** For the purposes of subpart 3, every director of the offeror, issuer, licensee, authorised body, FMC reporting entity, or entity at the time of the contravention must be treated as also having contravened the provision referred to in subsection (1)(a), (b), (c), (ca), or (d) (as the case may be).

#### History

S 534(3) amended by No 102 of 2013, s 53(3) and (4), by inserting (i) "FMC reporting entity," after "authorised body,"; and (ii) "(ca)," after "(c),"; effective 1 April 2014 (LI 2014/52, cl 3(1)).

**534(4) [Pecuniary penalty and compensation]** Every director that is treated as contravening a provision under this section may, under subpart 3, be ordered to pay to the Crown a pecuniary penalty, ordered to pay compensation under section 495, or subject to any other order under subpart 3.

**534(5) [Liability not limited]** Nothing in this section limits the liability of the offeror, issuer, licensee, authorised body, FMC reporting entity, or entity referred to in subsection (1).

#### History

S 534(5) amended by No 102 of 2013, s 53(3), by inserting "FMC reporting entity," after "authorised body,"; effective 1 April 2014 (LI 2014/52, cl 3(1)).

**534(6) [Related provisions]** *See* sections 499(1)(a), 500, and 501, which provide defences to a director.

#### History

S 534 heading amended by No 102 of 2013, s 53(1), by inserting "or financial reporting contravention" after "disclosure"; effective 1 April 2014 (LI 2014/52, cl 3(1)).

### SECTION 535 STATE OF MIND OF DIRECTORS, EMPLOYEES, OR AGENTS ATTRIBUTED TO BODY CORPORATE OR OTHER PRINCIPAL

**535(1) [State of mind of body corporate]** If, in a proceeding under this Act in respect of any conduct engaged in by a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, acting within the scope of his or her actual or apparent authority, had that state of mind.

**535(2) [State of mind of non-body corporate]** If, in a proceeding (other than a proceeding for an offence) under this Act in respect of any conduct engaged in by a person other than a body corporate, being conduct in relation to which any provision of this Act applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, acting within the scope of his or her actual or apparent authority, had that state of mind.

**535(3) [Definition]** In this Act, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

Compare: 1986 No 5 s 90(1), (3), (5)

### SECTION 536 CONDUCT OF DIRECTORS, EMPLOYEES, OR AGENTS ATTRIBUTED TO BODY CORPORATE OR OTHER PRINCIPAL

**536(1) [Attributed conduct of body corporate]** Conduct engaged in on behalf of a body corporate by any of the following must be treated, for the purposes of this Act, as having been engaged in also by the body corporate:

- (a) a director, employee, or agent of the body corporate, acting within the scope of his, her, or its actual or apparent authority;
- (b) any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee, or agent of the body corporate, given within the scope of the actual or apparent authority of the director, employee, or agent.



**536(2) [Attributed conduct of non-body corporate]** Conduct engaged in on behalf of a person other than a body corporate (A) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by A:

- (a) an employee or agent of A acting within the scope of his, her, or its actual or apparent authority;
- (b) any other person at the direction or with the consent or agreement (whether express or implied) either of A or of an employee or agent of A, given within the scope of the actual or apparent authority of the employee or agent.

Compare: 1986 No 5 s 90(2), (4)

### Miscellaneous

#### SECTION 537 TIME FOR FILING CHARGING DOCUMENT FOR CERTAIN OFFENCES

**537(1) [Limitation period]** Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011, the limitation period in respect of a category 1 offence or a category 2 offence under this Act ends on the date that is 3 years after the date on which the offence was committed.

**537(2) [Application of Criminal Procedure Act 2011]** Nothing in subsection (1) affects the application of section 25 of the Criminal Procedure Act 2011 in relation to any offence not mentioned in that subsection.

**537(3) [Definitions]** In this section, **category 1 offence** and **category 2 offence** have the same meanings as in section 6(1) of the Criminal Procedure Act 2011.

#### SECTION 538 JURISDICTION OF COURTS IN NEW ZEALAND

**538** The High Court has exclusive jurisdiction to hear and determine proceedings in New Zealand under this Act, other than proceedings for offences.

Compare: 1978 No 103 s 65A

#### SECTION 539 ORDERS TO SECURE COMPLIANCE

**539** The court may, for the purpose of securing compliance with any other order it makes under this Act, direct a person to do or refrain from doing a specified act.

Compare: 1978 No 103 s 65C; 1988 No 234 s 43X

#### SECTION 540 GENERAL PROVISIONS AS TO COURT'S ORDERS

**540(1) [Terms and conditions of order]** A court order under this Act may be made on the terms and conditions the court thinks fit.

**540(2) [Court may vary or revoke order]** The court may revoke, vary, or suspend an order made under this Act on the terms and conditions the court thinks fit.

Compare: 1978 No 103 s 65E; 1988 No 234 s 43Z

#### SECTION 541 PERSONS ENTITLED TO APPEAR BEFORE COURT

**541** The following persons are entitled to appear and be heard at the hearing of an application to the court taken under this Act:

- (a) the applicant;
- (b) a relevant issuer, offeror, or service provider;
- (c) a person who is alleged to have suffered, or to be likely to suffer, loss or damage because of an alleged contravention (whether that person or another person makes the allegation);
- (d) the FMA;
- (e) any relevant licensed market operator;
- (f) a person directed to be given notice of the application;
- (g) with the leave of the court, any other person.

Compare: 1988 No 234 s 43ZA

#### SECTION 542 SAVING OF LIABILITY UNDER CRIMES ACT 1961 AND GENERAL LAW

**542** Nothing in this Act limits or diminishes any liability that any person may incur under any rule of law or the Crimes Act 1961 or any other enactment other than this Act (*see*, for example, sections 220 and 242 of the Crimes Act 1961, which relate to theft by a person in a special relationship and false statements by promoters).

Compare: 1978 No 103 s 65

**CLAUSE 4 APPROVAL OF MARKET RULES**

4(1) The Main Board/Debt Market Listing Rules dated 16 April 2015 are approved as market rules for the NZSX and NZDX markets operated by NZX.

4(2) The NZAX Listing Rules dated 16 April 2015 are approved as market rules for the NZAX market operated by NZX.

4(3) The FSM Rules dated 16 April 2015 are approved as market rules for the FSM operated by NZX.

4(4) The Derivatives Market Rules dated 16 April 2015 are approved as market rules for the derivatives market operated by NZX.

4(5) The Participant Rules dated 16 April 2015 are approved as market rules for the licensed markets operated by NZX.

4(6) The NZ Markets Disciplinary Tribunal Rules dated 16 April 2015 are approved as market rules for the licensed markets operated by NZX.

**FINANCIAL MARKETS LEGISLATION  
(PHASE 1) COMMENCEMENT  
ORDER 2014**

**LI 2014/51**

*[gazetted 27 February 2014]*

Pursuant to section 2 of the Financial Markets Conduct Act 2013 and section 2 of the Financial Markets (Repeals and Amendments) Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

**CONTENTS**

Clause	Title
1	Commencement of specified provisions of Financial Markets Conduct Act 2013 for phase 1 implementation stage
2	Commencement of specified provisions of Financial Markets (Repeals and Amendments) Act 2013 for phase 1 implementation stage
3	Commencement of specified provisions of Financial Markets (Repeals and Amendments) Act 2013 for phase 1 implementation stage

**ORDER****CLAUSE 1 TITLE**

1 This order is the Financial Markets Legislation (Phase 1) Commencement Order 2014.

**CLAUSE 2 COMMENCEMENT OF SPECIFIED PROVISIONS OF  
FINANCIAL MARKETS CONDUCT ACT 2013 FOR PHASE 1  
IMPLEMENTATION STAGE**

2(1) The following provisions of the Financial Markets Conduct Act 2013 come into force on 1 April 2014:

- (a) Part 1 (preliminary provisions):
- (b) Part 2 (fair dealing), other than—
  - (i) sections 23 to 27 (which relate to unsubstantiated representations);
  - (ii) sections 34 to 37 (which relate to offers in the course of unsolicited meetings);
- (c) those provisions of Part 6 (licensing and other regulation of market services) that are not already in force on 1 April 2014, other than —
  - (i) sections 388 and 389 (which relate to when a provider of market services needs to be licensed and exemptions);
  - (ii) section 422(a) (which relates to the application of subpart 4 to the provision of discretionary investment management services);

- (iii) section 429(a) and (b) (which relate to the application of subpart 5 to the provision of discretionary investment management services and derivatives issuers):
- (iv) subpart 6 (additional regulation of discretionary investment management services):
- (d) Part 7 (financial reporting) (as replaced by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013):
- (e) Part 8 (enforcement, liability, and appeals), other than—
  - (i) sections 470 to 473 (which relate to various FMA orders):
  - (ii) sections 510 and 511 (which relate to offences for defective disclosure):
- (f) section 597 (transitional provisions) (but only for the purpose of the provisions of Schedule 4 that are coming into force under paragraph (h)):
- (g) the following provisions of Schedule 1 (provisions relating to exclusions):
  - (i) clause 1 (overview of Part):
  - (ii) clause 2 (Part subject to FMA's power to require disclosure):
  - (iii) clause 6 (offers of financial products through licensed intermediaries):
  - (iv) clause 8 (offers under employee share purchase schemes):
  - (v) clause 9 (offers to persons under control do not need disclosure):
  - (vi) clause 10 (offers of financial products under dividend reinvestment plans):
  - (vii) clauses 12 to 14 (which relate to small offers):
  - (viii) clause 15 (offers of controlling interest where 5 or fewer investors):
  - (ix) clause 19 (exclusion for offers of financial products of same class as quoted financial products):
  - (x) clause 21 (offers of category 2 products or debt securities by registered banks), other than paragraph (b):
  - (xi) clauses 25 to 29 (which relate to limited disclosure and other requirements) (including clause 27A as inserted by section 60 of the Financial Reporting (Amendments to Other Enactments) Act 2013):
  - (xii) clauses 48 and 49 (control and other definitions for schedule):
- (h) the following provisions of Schedule 4 (transitional provisions):
  - (i) clause 1 (overview):
  - (ii) clause 2 (transitional provisions subject to transitional regulations and exemptions):
  - (iii) clause 3 (interpretation):
  - (iv) clauses 13(2) and (3) and 14 (which relate to fair dealing):
  - (v) clause 51 (section 10A of Auditor Regulation Act 2011 also applies to exemptions granted under Securities Act 1978):

- (vi) clause 58 (exclusions for employee share purchase schemes and small offers can take into account offers under former law):
  - (vii) clause 59 (additional Securities Act 1978 exemption).
- 2(2) Sections 23 to 27 of the Financial Markets Conduct Act 2013 come into force on 17 June 2014.

### CLAUSE 3 COMMENCEMENT OF SPECIFIED PROVISIONS OF FINANCIAL MARKETS (REPEALS AND AMENDMENTS) ACT 2013 FOR PHASE 1 IMPLEMENTATION STAGE

3 The following provisions of the Financial Markets (Repeals and Amendments) Act 2013 come into force on 1 April 2014:

- (a) sections 6 to 9 (amendments to the Fair Trading Act 1986):
- (b) sections 10, 11, 13, 35, 37 to 39, 41, 42(1) to (3), 43 to 47, 49, 52, 53, 58, and 61(2) to (10) (various amendments to the Financial Advisers Act 2008):
- (c) section 42(4), other than as far as it relates to new subsection (1A):
- (d) sections 62, 64, 65, 66(1), 67 to 69, 70(1), (4), and (6), and 71 (various amendments to the Financial Markets Authority Act 2011):
- (e) section 150 (amendments to other enactments) (but only for the purpose of the items that are coming into force under paragraph (f)):
- (f) the following items in the Schedule (consequential amendments):
  - (i) the item relating to the definition of issuer audit in the item relating to the Auditor Regulation Act 2011:
  - (ii) the item relating to new section 10A in the item relating to the Auditor Regulation Act 2011:
  - (iii) the items relating to section 383 in the item relating to the Companies Act 1993, other than the items relating to section 383(1)(c)(i) and (4A):
  - (iv) the item relating to section 385(3) in the item relating to the Companies Act 1993:
  - (v) the item relating to section 5(ab) in the item relating to the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
  - (vi) the item relating to section 8A in the item relating to the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
  - (vii) the second item relating to Schedule 2 in the item relating to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (relating to persons who hold, or are authorised bodies under, a market services licence):
  - (viii) the item relating to the definition of infringement notice in the item relating to the Summary Proceedings Act 1957:
  - (ix) the items relating to section 44G in the item relating to the Takeovers Act 1993.

# FINANCIAL MARKETS LEGISLATION (PHASE 2) COMMENCEMENT ORDER

## 2014

### LI 2014/325

[gazetted 4 November 2014]

Pursuant to section 2 of the Financial Markets Conduct Act 2013 and section 2 of the Financial Markets (Repeals and Amendments) Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

### CONTENTS

Clause	Title
1	Commencement of certain provisions of Financial Markets Conduct Act 2013
2	Commencement of certain provisions of Financial Markets (Repeals and Amendments) Act 2013
3	Commencement of certain provisions of Financial Markets (Repeals and Amendments) Act 2013

### ORDER

#### CLAUSE 1 TITLE

1 This order is the Financial Markets Legislation (Phase 2) Commencement Order 2014.

#### CLAUSE 2 COMMENCEMENT OF CERTAIN PROVISIONS OF FINANCIAL MARKETS CONDUCT ACT 2013

2 The remaining provisions of the Financial Markets Conduct Act 2013 that have not earlier been brought into force come into force on 1 December 2014 except—

- section 310;
- section 597 in so far as it relates to clause 42(7) and (8) of Schedule 4;
- clause 42(7) and (8) of Schedule 4.

#### CLAUSE 3 COMMENCEMENT OF CERTAIN PROVISIONS OF FINANCIAL MARKETS (REPEALS AND AMENDMENTS) ACT 2013

3 The remaining provisions of the Financial Markets (Repeals and Amendments) Act 2013 that have not earlier been brought into force come into force on 1 December 2014 except the amendment in Part 1 of the Schedule inserting, by substitution, a new section 3(1)(h) of the Financial Transactions Reporting Act 1996.

# FINANCIAL MARKETS LEGISLATION (PHASE 3) COMMENCEMENT ORDER 2015

LI 2015/252

[gazetted 29 October 2015]

Pursuant to section 2 of the Financial Markets Conduct Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

## CONTENTS

Clause	Title
1	Commencement of specified provisions of Financial Markets Conduct Act 2013

## ORDER

### CLAUSE 1 TITLE

1 This order is the Financial Markets Legislation (Phase 3) Commencement Order 2015.

### CLAUSE 2 COMMENCEMENT OF SPECIFIED PROVISIONS OF FINANCIAL MARKETS CONDUCT ACT 2013

2 The following provisions of the Financial Markets Conduct Act 2013 come into force on 1 December 2015:

- (a) section 310;
- (b) section 597 in so far as it relates to clause 42(7) and (8) of Schedule 4;
- (c) clause 42(7) and (8) of Schedule 4.

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# FAIR TRADING (UNINVITED DIRECT SALES—FINANCIAL PRODUCTS) REGULATIONS 2014

LI 2014/189

[gazetted 12 June 2014]

Pursuant to section 36S of the Fair Trading Act 1986, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Consumer Affairs made in accordance with section 36S(2) of that Act, makes the following regulations.

## TABLE OF REGULATIONS

Regulation	Title
1	Commencement
2	Interpretation
3	Exempting agreements for issue or sale of financial product from uninvited direct sale provisions
4	

## REGULATIONS

### REGULATION 1 TITLE

1 These regulations are the Fair Trading (Uninvited Direct Sales—Financial Products) Regulations 2014.

### REGULATION 2 COMMENCEMENT

2 These regulations come into force on 17 June 2014.

### REGULATION 3 INTERPRETATION

3(1) In these regulations, unless the context otherwise requires, **FMC Act** means the Financial Markets Conduct Act 2013.

3(2) Any term or expression that is defined in the FMC Act and used, but not defined, in these regulations has the same meaning as in the FMC Act.

### REGULATION 4 EXEMPTING AGREEMENTS FOR ISSUE OR SALE OF FINANCIAL PRODUCT FROM UNINVITED DIRECT SALE PROVISIONS

4 An agreement for the issue or sale of a financial product is exempt from sections 36L to 36R of the Fair Trading Act 1986 if the agreement results from—

- (a) an offer described in section 34(2)(a) of the FMC Act in respect of the exclusions in any of the following clauses of Schedule 1 of that Act:
  - (i) clauses 3 to 5 (offers to wholesale investors, close business associates, or relatives):

# FINANCIAL MARKETS CONDUCT ACT (TAKEOVERS PANEL) EXEMPTION NOTICE 2015

[gazetted 23 July 2015]

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.

## CONTENTS

Clause	Title
1	Commencement
2	Revocation
3	Interpretation
4	Exemption
5	

## NOTICE

### CLAUSE 1 TITLE

1 This notice is the Financial Markets Conduct Act (Takeovers Panel) Exemption Notice 2015.

### CLAUSE 2 COMMENCEMENT

2 This notice comes into force on 16 July 2015.

### CLAUSE 3 REVOCATION

3 This notice is revoked on the close of 15 July 2020.

### CLAUSE 4 INTERPRETATION

4(1) In this notice, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**Code** means the Takeovers Code under the Takeovers Act 1993

**Code company** means a Code company under rule 3A of the Code

**enforceable undertakings** means any undertaking or deed poll in favour of, and enforceable by, the Panel—

(a) for the purposes of exercising its enforcement powers under the Takeovers Act 1993; and/or

(b) for the purposes of its role in relation to section 236A of the Companies Act 1993

**listed issuer** means a listed issuer as defined in section 6 of the Act

**Panel** means the Takeovers Panel established under the Takeovers Act 1993

**quoted** means quoted as defined in section 6 of the Act

**Regulations** means the Financial Markets Conduct Regulations 2014

**relevant interest** means a relevant interest as defined in sections 235 to 238 of the Act

**substantial holding** means a substantial holding as defined in section 274 of the Act

**voting product** means a voting product as defined in section 6 of the Act.

**4(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.

#### CLAUSE 5 EXEMPTION

**5** The Panel is exempted from sections 276 to 279 of the Financial Markets Conduct Act 2013 to the extent that the Panel has a relevant interest in quoted voting products of a listed issuer, which relevant interest arises as the result of an enforceable undertaking and results in the Panel having a substantial holding in the listed issuer.

#### Statement of reasons

This notice comes into force on 16 July 2015 and is revoked on 15 July 2020.

This notice exempts the Panel from sections 276 to 279 of the Act to the extent that the Panel has a relevant interest in quoted voting products of a listed issuer, which relevant interest arises as the result of an enforceable undertaking and results in the Panel having a substantial holding in the listed issuer.

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 exemption because—

- the exemption addresses an unintended consequence whereby the Panel may have a substantial holding in a listed issuer by virtue of having the ability to enforce enforceable undertakings for the purposes of enforcing compliance with the Code, or in relation to schemes of arrangement under the Companies Act 1993, thereby giving the Panel a relevant interest in quoted voting products of the listed issuer that comprise 5% or more of that class of quoted voting products. The relevant interest would only arise as a result of the Panel performing its regulatory role in Code regulated transactions. It would not be related to normal trading in the market or any other activity the deterrence of which is the purpose of the substantial holding disclosure provisions as set out in section 273 of the Act:
- the exemption is necessary to prevent any confusion in the market as to the Panel's ownership or control of quoted voting products of a listed issuer. Disclosure of the Panel's relevant interest would not provide the market with any useful information for the purpose of making decisions relating to financial products. Any enforceable undertakings would normally be disclosed in the relevant transaction documents (i.e., in any notices of meeting or offer documents, as the case may be) and/or public announcements by the Panel, and in the event of an enforceable undertaking being enforced by the Panel, the market would also be informed:
- the exemption will promote the confident and informed participation of businesses, investors and consumers in the financial markets by reducing the potential for uncertainty and confusion as to the nature of the Panel's interest in respect of any substantial holdings in listed issuers. The exemption will also promote flexibility in the substantial holdings disclosure regime for an issue that appears to arise as an unintended consequence:
- the exemption avoids unnecessary compliance costs, because without an exemption the Panel would be required to make disclosures under sections 276 to 279 of the Act every time an enforceable undertaking in respect of the quoted voting products of a Code company results in the Panel having a substantial holding:
- the granting of the exemption is desirable in order to promote the purposes of the Act, specifically to promote the confident and informed participation of businesses, investors and consumers in the financial markets, and to avoid unnecessary compliance costs:
- the exemption is not broader than is reasonably necessary to address the matters that gave rise to it, as it applies only in limited and specific circumstances that may arise in the course of the Panel performing its regulatory role in Code regulated transactions



# FINANCIAL MARKETS CONDUCT (US FUTURES COMMISSION MERCHANTS) EXEMPTION NOTICE 2015

LI 2015/255

[gazetted 5 November 2015]

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.

## CONTENTS

Clause	Title
1	Title
2	Commencement
3	Revocation
4	Interpretation
5	Exemption
6	Conditions of exemption
7	Further condition of exemption

## NOTICE

### CLAUSE 1 TITLE

1 This notice is the Financial Markets Conduct (US Futures Commission Merchants) Exemption Notice 2015.

### CLAUSE 2 COMMENCEMENT

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

### CLAUSE 3 REVOCATION

3 This notice is revoked on the close of 30 October 2020.

### CLAUSE 4 INTERPRETATION

4(1) In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

CFTC means the Commodity Futures Trading Commission of the United States of America

**CFTC Regulations** means any rules or regulations made under the Commodity Exchange Act, and includes the regulations contained in Title 17 of Chapter 1 of the Code (or any other rules or regulations that, with or without modification, replace, or correspond to, those rules or regulations)

**Code** means the Code of Federal Regulations of the United States of America

**Commodity Exchange Act** means the Commodity Exchange Act of 1936 of the United States of America (or any other enactment that, with or without modification, replaces, or corresponds to, that Act)

**Form 1-FR-FCM** means the form required by the CFTC under the Commodity Exchange Act to be used by futures commission merchants to report their net capital position and other financial information

**futures commission merchant** means a derivatives issuer that is registered with the CFTC as a futures commission merchant

**New Zealand investor** means, in respect of specified derivatives, an investor that is resident, incorporated, or carrying on business in New Zealand

**NZX** means NZX Limited

**NZX derivatives market** means the derivatives market operated by NZX as a licensed market

**registration terms**, in relation to a futures commission merchant, means the terms and conditions of that merchant's registration as a futures commission merchant

**Regulations** means the Financial Markets Conduct Regulations 2014

**separate account** means a separate account that is a secured account maintained in accordance with the Commodity Exchange Act, the CFTC Regulations, and the futures commission merchant's registration terms

**specified derivative** means a derivative that is available for trading by US derivatives participants on the NZX derivatives market

**US derivatives participant** means a futures commission merchant that is authorised by NZX to participate in the NZX derivatives market.

**4(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.

## CLAUSE 5 EXEMPTION

**5** Every US derivatives participant is exempted from regulations 238 to 250 of the Regulations in respect of specified derivatives.

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## CLAUSE 6 CONDITIONS OF EXEMPTION

**6** The exemption in clause 5 is subject to the conditions that—

- (a) the US derivatives participant must comply with the requirements of each of the following in respect of derivatives investor money and derivatives investor property received from an investor in connection with 1 or more specified derivatives as if that investor were a person located in the United States of America:
  - (i) its registration terms; and
  - (ii) the Commodity Exchange Act; and
  - (iii) the CFTC Regulations; and
- (b) the US derivatives participant must provide its Form 1-FR-FCM (or equivalent) to the FMA at the same time as it provides its Form 1-FR-FCM (or equivalent) to the CFTC; and
- (c) the US derivatives participant must ensure that derivatives investor money and derivatives investor property of New Zealand investors is held in a separate account; and
- (d) the US derivatives participant may withdraw derivatives investor money of New Zealand investors from a separate account only in the circumstances specified in regulation 242 of the Regulations; and
- (e) the US derivatives participant may return, use, or dispose of derivatives investor property of New Zealand investors only in the circumstances specified in regulation 243 of the Regulations; and
- (f) the US derivatives participant must inform each New Zealand investor, before acting for the investor in respect of specified derivatives, that the participant is acting in reliance on this notice, is not required to comply with the obligations in relation to derivatives investor money and derivatives investor property in regulations 238 to 250 of the Regulations, and is instead required to comply with the CFTC Regulations.

## CLAUSE 7 FURTHER CONDITION OF EXEMPTION

**7(1)** This clause applies if a US derivatives participant receives an external auditor's report that shows that the US derivatives participant has failed to comply with—

- (a) its registration terms; or
- (b) the Commodity Exchange Act; or
- (c) the CFTC Regulations.

**7(2)** If this clause applies, the exemption in clause 5 is subject to the further condition that the US derivatives participant must provide the FMA with a copy of the external auditor's report as soon as is reasonably practicable.

New Zealand Financial Markets Legislation

CI 7(2)

### Statement of reasons

This notice comes into force on the day after its notification in the Gazette and is revoked on the close of 30 October 2020.

This notice exempts derivatives participants who are registered with the Commodity Futures Trading Commission (the CFTC) as futures commission merchants and who are participants on the NZX Limited's derivatives market (**US derivatives participants**) from certain requirements relating to the holding of derivatives investor money and derivatives investor property that are contained in the Financial Markets Conduct Regulations 2014 (**FMC Regulations**) (specifically regulations 238 to 250). The exemption applies only to derivatives contracts that US futures commission merchants are authorised to trade as NZX derivatives participants, being those derivatives contracts that are subject to NZX Limited's registration as a Foreign Board of Trade under the Commodity Exchange Act of 1936 of the United States of America (US), which are currently the dairy derivatives contracts.

The conditions of the exemption instead require US derivatives participants to hold derivatives investor money and derivatives investor property in accordance with applicable US requirements.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (the Act), considers it appropriate to grant the exemption because—

- US futures commission merchants are subject to regulation by the CFTC. This exemption will allow US derivatives participants who are authorised NZX derivatives market participants to carry on business with New Zealand investors and trade on the NZX derivatives market under the same rules as apply in respect of dealings with US investors; and
- the US requirements, together with the conditions in the notice, are broadly equivalent to those under the FMC Regulations and provide adequate protection for New Zealand investors' derivatives investor money and property; and
- by requiring US derivatives participants to hold New Zealand investors' derivatives investor money and property in a separate account at all times in accordance with the US requirements and by restricting the way New Zealand investors' derivatives investor money and property can be invested by US derivatives participants, the conditions of the exemption provide adequate alternative safeguards for the protection of derivatives investor money and property. Given the substantial similarities between the FMC Regulations requirements, the US requirements, and the conditions in this notice, the exemption is not broader than is reasonably necessary to address the matters to which it relates; and
- the exemption is desirable in order to promote several of the purposes of the Act, specifically, by promoting and facilitating the development of fair, efficient, and transparent financial markets and innovation and flexibility in the financial markets, and by avoiding unnecessary compliance costs.

## FINANCIAL MARKETS CONDUCT EXEMPTION NOTICES — INDIVIDUAL

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## FINANCIAL MARKETS CONDUCT (CBA CAPITAL AUSTRALIA PTY LIMITED) EXEMPTION NOTICE 2015 (*revoked, 31 December 2015*)

Gazette number: 2015-au6478

[gazetted 5 November 2015]

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 notices.

### CONTENTS

Clause	Title
1	Commencement
2	Revocation
3	Application
4	Interpretation
5	Exemptions
6	Conditions
7	

### NOTICE

#### CLAUSE 1 TITLE

1 This notice is the Financial Markets Conduct (CBA Capital Australia Pty Limited) Exemption Notice 2015.

#### CLAUSE 2 COMMENCEMENT

2 This notice comes into effect on 30 October 2015.

#### CLAUSE 3 REVOCATION

3 This notice is revoked on the close of 31 December 2015.

#### CLAUSE 4 APPLICATION

4 An exemption granted by this notice applies to the accounting period of the exempt issuer that ended on 30 June 2015.

#### CLAUSE 5 INTERPRETATION

5(1) In this notice, unless the context otherwise requires,—  
Act means the Financial Markets Conduct Act 2013

**approved auditor** means an accountant who is qualified under Australian law to give an opinion as to whether the specified financial statements comply with Australian Accounting Standards

**Australian Accounting Standards** means the Accounting Standards issued by the Australian Accounting Standards Board, which also comply with the International Financial Reporting Standards

**exempt issuer** means CBA Capital Australia Pty Limited

**International Financial Reporting Standards** means—

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

**NZ GAAP** has the same meaning as in section 8 of the Financial Reporting Act 2013

**specified financial statements** means the audited financial statements of the exempt issuer for the accounting period ended 30 June 2015 that are required to be prepared under section 460 of the Act.

**5(2)** Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

## CLAUSE 6 EXEMPTIONS

**6** The exempt issuer is exempted from—

- (a) section 460 of the Act to the extent that this section requires the exempt issuer to ensure that its financial statements comply with NZ GAAP; and
- (b) sections 455(1)(c), 461B, 461D and 461G of the Act.

## CLAUSE 7 CONDITIONS

**7(1)** The exemptions in clause 6 are subject to the conditions that—

- (a) the exempt issuer, in relation to the specified financial statements, must comply with the applicable Australian laws that relate to the preparation, content, auditing and public filing of those statements and, in particular, the exempt issuer must ensure that—
  - (i) the specified financial statements comply with Australian Accounting Standards; and
  - (ii) the specified financial statements are audited by an approved auditor; and
  - (iii) an audit report is prepared by the approved auditor in respect of that audit; and

**CI 5(2)**

CCH New Zealand Limited

- (b) the exempt issuer must ensure that there are kept at all times accounting records that will enable the exempt issuer to ensure that—
  - (i) the specified financial statements comply with paragraph (a)(i); and
  - (ii) the financial statements of the exempt issuer's New Zealand business prepared under paragraph (c) comply with paragraph (c); and
- (c) the specified financial statements of the exempt issuer must, when those statements are delivered for lodgement under section 461H of the Act, be accompanied by the financial statements for the exempt issuer's New Zealand business prepared in accordance with Australian Accounting Standards; and
- (d) the financial statements of the exempt issuer's New Zealand business must be audited by an approved auditor; and
- (e) a copy of the auditor's report on the financial statements of the exempt issuer's New Zealand business must accompany the specified financial statements of the exempt issuer when those statements are delivered for lodgement under section 461H of the Act; and
- (f) the financial statements of the exempt issuer's New Zealand business that are delivered to the Registrar for lodgement under section 461H of the Act are accompanied by written notification to the Registrar that the exempt issuer is relying on this notice in respect of the accounting period for the financial year ended 30 June 2015.

New Zealand Financial Markets Legislation

**CI 7(1)**

### Statement of reasons

This notice comes into force on 30 October 2015 and is revoked on the close of 31 December 2015. This notice applies to CBA Capital Australia Pty Limited (**exempt issuer**).

The notice only applies for the accounting period ended 30 June 2015. The short timeframe that this notice is in effect reflects that the exemption is needed for only one accounting period due to the exempt issuer no longer offering securities on the NZDX.

This notice exempts the exempt issuer from the following provisions of the Financial Markets Conduct Act 2013 (the **Act**):—

- section 455(1)(c) of the Act (which relates to the requirement to keep accounting records to ensure that the financial statements comply with NZ GAAP);
- section 460 of the Act to the extent that this section requires the financial statements that are prepared to comply with generally accepted accounting practice in New Zealand (NZ GAAP);
- section 461B of the Act (which relates to financial statements for the New Zealand business);
- sections 461D and 461G of the Act (which relate to auditing).

The exemptions are subject to conditions that require the exempt issuer to prepare financial statements that comply with the financial reporting requirements of Australia. The main effects of the exemptions are as follows:—

- the financial statements of the exempt issuer that are required to be prepared under section 460 of the Act will comply with Australian Accounting Standards rather than NZ GAAP;
- the financial statements of the exempt issuer that are required to be prepared under section 460 of the Act will be audited by an approved auditor who is qualified under the laws of Australia to give an opinion as to whether the financial statements prepared under section 460 of the Act comply with Australian Accounting Standards;
- the financial statements of the exempt issuer's New Zealand business will comply with Australian Accounting Standards rather than NZ GAAP and be audited by an approved auditor who is qualified under the laws of Australia to give an opinion as to whether the New Zealand business financial statements comply with Australian Accounting Standards;
- A copy of the auditor's report on the financial statements of the exempt issuer's New Zealand business must accompany the exempt issuer's New Zealand business financial statements when those statements are delivered for lodgement under section 461H of the Act.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- the exempt issuer was considered a reporting entity under the Act during the previous financial year, because it was an issuer of redeemable preference shares on the NZDX during that period. During the relevant financial reporting period these shares were redeemed and therefore the exempt issuer will not have any on-going financial reporting obligations under the Act;
- there will not be any significant detriment to investors, because the financial reporting requirement exemptions in this notice are available only to the exempt issuer who is regulated by ASIC as its home regulator. We are satisfied that the financial reporting requirements, and the nature and extent of the regulatory oversight, for the exempt issuer and its auditors in Australia are equivalent to those that exist for the exempt issuer in New Zealand. As such, the prior investors in the debt securities issued by the exempt issuer will have access to broadly similar, and equivalent, information to that which they would otherwise receive;
- the Australian Securities and Investment Commission (ASIC) entered into a memorandum of understanding with the FMA concerning assistance and cooperation. This means that the FMA will be able to obtain co-operation from ASIC if any compliance concerns arise in relation to the financial reporting requirements of the exempt issuer;
- the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and by promoting flexibility in financial markets;
- the costs associated with a requirement that the exempt issuer prepare NZ GAAP compliant financial statements and have those audited by a New Zealand licenced auditor or registered audit firm would outweigh the benefits to investors of having available NZ GAAP financial statements given that the financial statements will be prepared in accordance with Australian Accounting Standards;
- given the limited application of the exemptions and that the financial statements are still required to be registered in New Zealand, the exemptions are not broader than is reasonably necessary to address the matters to which they relate.

**FINANCIAL MARKETS CONDUCT (CBL CORPORATION LIMITED AND CBLNZ LIMITED) EXEMPTION NOTICE 2015**  
*(revoked, 3 December 2015)*

**Gazette number: 2015-au5211**

*[gazetted 3 September 2015]*

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.

**CONTENTS**

Clause	Title
1	Title
2	Commencement
3	Revocation
4	Interpretation
5	Exemptions from clause 36(2)(c), clause 37 and clause 38(2)(d) of Schedule 3 of the Regulations relating to the content requirements of the PDS
6	Conditions of exemptions in clause 5

**NOTICE**

**CLAUSE 1 TITLE**

1 This notice is the Financial Markets Conduct (CBL Corporation Limited and CBLNZ Limited) Exemption Notice 2015.

**CLAUSE 2 COMMENCEMENT**

2 This notice comes into force on 4 September 2015.

**CLAUSE 3 REVOCATION**

3 This notice is revoked on the close of 3 December 2015.

**CLAUSE 4 INTERPRETATION**

4(1) In this notice, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

**CBL** means CBL Corporation Limited

**CBL Group** means CBL and,—

- (a) all of its subsidiaries at the date of the PDS; and
- (b) Assetinsure Holdings Pty Limited.

**offer** means the regulated offer of specified financial products

**P<sub>+1</sub>** means CBL's accounting period that will immediately follow CBL's most recently completed accounting period before the date of the PDS

**P<sub>+2</sub>** means CBL's accounting period that will immediately follow P<sub>+1</sub>

**PDS** means the product disclosure statement for the offer

**Regulations** means the Financial Markets Conduct Regulations 2014

**specified financial products** means fully paid ordinary shares in CBL

**table 2** means the table headed "Capitalisation table" required to be included in the PDS by clause 36 of Schedule of the Regulations.

**4(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.

#### **CLAUSE 5 EXEMPTIONS FROM CLAUSE 36(2)(c), CLAUSE 37 AND CLAUSE 38(2)(d) OF SCHEDULE 3 OF THE REGULATIONS RELATING TO THE CONTENT REQUIREMENTS OF THE PDS**

**5** CBL and CBLNZ are exempted, in relation to the offer, from the requirement that the PDS contains the information, statements and other matters specified in the following clauses:—

- (a) clause 36(2)(c) of Schedule 3 of the Regulations;
- (b) clause 37 of Schedule 3 of the Regulations; and
- (c) clause 38(2)(d) of Schedule 3 of the Regulations.

#### **CLAUSE 6 CONDITIONS OF EXEMPTIONS IN CLAUSE 5**

**6(1)** The exemptions in clause 5 are subject to the condition that the PDS contains the following statements under table 2,—

- (a) a statement in the following form: "Implied market capitalisation is the value of all of the issuer's equity securities, as implied by the price of the ordinary shares being offered. It tells you what CBL is proposing that CBL's equity is worth"; and
- (b) a clear and concise statement to the effect that the PDS does not contain the usually required:
  - (i) indicative total value of CBL immediately after the issue or sale of the specified financial products; and
  - (ii) implied enterprise value/operating profit for CBL each of P<sub>+1</sub> and P<sub>+2</sub>; and

(c) a clear and concise statement as to why the financial information referred to in subclause (b) has not been included in the PDS and why the directors of CBL consider the inclusion of that information would be potentially misleading to investors; and

(d) a statement from the directors of CBL that, in their opinion, not including the financial information referred to in subclause (b) will not have a material adverse effect on investors.

**6(2)** The exemptions in clause 5 are subject to the further condition that the PDS contains the following information in the financial information section,—

- (a) details of the minimum required and actual amount of regulatory capital held by each of the regulated underwriting entities in the CBL Group; and
- (b) details of the CBL Group's investment portfolio; and
- (c) details relating to CBL Group's external debt facilities.



### Statement of reasons

This notice comes into force on 4 September 2015 and is revoked on 3 December 2015.

This notice exempts CBL Corporation Limited (CBL) and CBLNZ Limited (CBLNZ) from clause 36(2)(c), clause 37 and clause 38(2) of Schedule 3 of the of the Financial Markets Conduct Regulations 2014 (Regulations) in relation to certain specific content requirements of the PDS for the offer of equity securities in CBL (offer).

The Financial Markets Authority (FMA), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (Act), considers that it is appropriate to grant the exemption because—

- The exemptions remove the requirement for the PDS for the offer to include certain information regarding the “indicative enterprise value” of CBL. While CBL can technically comply with these requirements, due to the nature of CBL Group (and the role of debt and cash in its operations) this information is not meaningful for investors and is potentially misleading:
- If CBL was required to include information regarding “indicative enterprise value” in the PDS, this information would need to be surrounded by a large amount of highly technical commentary that would provide limited value to investors:
- The conditions of the exemption require the PDS for the offer to contain the following alternative useful information regarding CBL’s capital structure:—
  - details of the minimum required and actual amount of regulatory capital held by each of the regulated underwriting entities in the CBL Group; and
  - details of the CBL Group’s investment portfolio; and
  - details relating to CBL Group’s external debt facilities.
- The conditions of the exemption also require the directors of CBL to make various statements in the PDS for the offer, including a statement of why the financial information usually required is not provided in the PDS, why the directors consider the inclusion of that financial information would be potentially misleading to investors, and that in their opinion not including that financial information will not have a material adverse effect on investors:
- As such, the FMA is satisfied that the granting of the exemption is desirable in order to promote one of the purposes of the Act, specifically to provide for timely, accurate and understandable information to be provided to persons to assist them to make decisions relating to the financial products:
- The exemption only provides relief from the requirement to provide certain information that is not relevant for CBL, and imposes conditions that require the provision of alternative, more meaningful, financial information for CBL. In these circumstances, FMA considers that the exemption is not broader than reasonably necessary to address the matters that gave rise to the exemption.

## FINANCIAL MARKETS CONDUCT (CHUBB INSURANCE COMPANY OF AUSTRALIA LIMITED) EXEMPTION NOTICE 2015 (revoked, 30 April 2015)

Gazette number: 2015-au2609

[gazetted 7 May 2015]

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.

### CONTENTS

Clause	Title
1	Commencement
2	Revocation
3	Application
4	Interpretation
5	Exemptions
6	Conditions
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### NOTICE

#### CLAUSE 1 TITLE

1 This notice is the Financial Markets Conduct (Chubb Insurance Company of Australia Limited) Exemption Notice 2015.

#### CLAUSE 2 COMMENCEMENT

2 This notice comes into force on 29 April 2015.

#### CLAUSE 3 REVOCATION

3 This notice is revoked on the close of 30 April 2015.

#### CLAUSE 4 APPLICATION

4 An exemption granted by this notice applies to the accounting period of the exempt issuer that ends on 31 December 2014.

**CLAUSE 5 INTERPRETATION**

**5(1)** In this notice, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**approved auditor**, in relation to the exempt issuer, means an accountant who is qualified under the law of Australia to give an opinion as to whether specified financial statements comply with Australian GAAP.

**Australian GAAP**, in relation to the exempt issuer, means generally accepted accounting practice required or permitted in Australia

**exempt issuer** means Chubb Insurance Company of Australia Limited

**Regulations** means the Financial Markets Conduct Regulations 2014

**specified financial statements**, in relation to the exempt issuer, means financial statements of the exempt issuer prepared in accordance with the laws of Australia

**5(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.

**CLAUSE 6 EXEMPTIONS**

**6** The exempt issuer is exempted from sections 455(1)(c), 460, 461D and 461H of the Act.

**CLAUSE 7 CONDITIONS**

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

- (a) the exempt issuer, in relation to its specified financial statements, must comply with the laws of Australia that relate to the preparation, content, audit, and public filing of those financial statements and, in particular, the exempt issuer must ensure that—
  - (i) the specified financial statements comply with Australian GAAP; and
  - (ii) the specified financial 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 issuer must ensure that there are kept at all times accounting records that will enable the issuer to ensure that—
  - (i) the specified financial statements comply with paragraph (a)(i); and
  - (ii) the financial statements under paragraph (c) comply with generally accepted accounting practice; and
- (c) the specified financial statements of the exempt issuer must, when those statements are delivered under paragraph (e), be accompanied by financial statements for the exempt issuer's New Zealand business prepared in accordance with generally accepted accounting practice; and
- (d) the financial statements of the New Zealand business must be audited by a qualified auditor or an approved auditor; and

- (e) the following are delivered to the Registrar for lodgement annually, and not later than the date on which the financial statements of the exempt issuer would, but for the exemptions in clause 6, be required to be delivered for lodgement:
  - (i) the specified financial statements of the exempt issuer together with a copy of the auditor's report on those statements;
  - (ii) the financial statements under paragraph (c) together with a copy of the auditor's report on those statements; and
- (f) the financial statements that are delivered to the Registrar for lodgement under paragraph (e) are accompanied by written notification to the Registrar that the exempt issuer is relying on this notice in respect of the accounting period to which the specified financial statements relate; and
- (g) the exempt issuer continues to be registered with the Australian Securities and Investment Commission.

### Statement of reasons

This notice comes into force on 29 April 2015 and is revoked on the close of 30 April 2015. This notice applies to Chubb Insurance Company of Australia Limited (**exempt issuer**), as an insurer that is licensed by the Reserve Bank of New Zealand (the **Reserve Bank**) and regulated by the financial reporting and audit laws of Australia.

The short timeframe that this notice is in effect reflects that the exemption is needed for only one accounting period. This notice applies to the period ended 31 December 2014 as the FMA is currently considering a class exemption to address future accounting periods.

This notice exempts the exempt issuer from the following provisions of the Financial Markets Conduct Act 2013 (the **Act**) to the extent that they require financial statements prepared in accordance with generally accepted accounting practice in New Zealand (NZ GAAP):

- section 455(1)(c) (FMC reporting entity must keep accounting records that will enable it to ensure that financial statements comply with generally accepted accounting practice);
- section 460 (financial statements must be prepared);
- section 461D (financial statements must be audited);
- section 461H (lodgement of financial statements).

The exemptions are subject to conditions that require the exempt issuer to prepare financial statements in accordance with the financial reporting requirements of Australia. The main effects of the exemptions are as follows:

- the specified financial statements will comply with Australian generally accepted accounting practice (**Australian GAAP**) rather than NZ GAAP.
- the specified financial statements will be audited by an approved auditor who is qualified under the laws of Australia to give an opinion as to whether the specified financial statements comply with the relevant Australian GAAP;
- the specified financial statements will be accompanied by the exempt issuer's New Zealand business financial statements that comply with NZ GAAP and that are audited by an approved auditor in Australia or a qualified auditor in New Zealand.

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 Reserve Bank assesses the financial reporting and audit requirements of the overseas jurisdiction of any overseas insurer seeking licensing in New Zealand. In this case, the overseas jurisdiction of the exempt issuer is Australia. The FMA is satisfied that the financial reporting and audit requirements of Australia will provide sufficient and appropriate information to the Reserve Bank for it to undertake its prudential regulation of the exempt issuer. In addition, the FMA is satisfied that, in the context of the product disclosure requirements for insurance as

a whole, investors will be provided with sufficient and appropriate information for them to make investment and policy purchase decisions. As such, investors in the exempt issuer will have access to broadly similar, and equivalent, information to the information that they would otherwise receive:

- the Australian Securities and Investment Commission (ASIC) and the FMA have a history of co-operation in regulating Trans-Tasman financial markets. ASIC is also a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the exchange of Information. This means that FMA will be able to obtain co-operation from ASIC if any compliance concerns arise in relation to the financial reporting requirements of the entity;
- the costs associated with the exempt issuer preparing and auditing financial statements in accordance with the financial reporting requirements of Australia in addition to preparing financial statements under New Zealand requirements would outweigh the benefits to policy holders in receiving NZ GAAP rather than Australian GAAP financial statements;
- the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and by promoting flexibility in financial markets;
- given that financial statements are still required to be lodged in New Zealand, the exemptions are not broader than is reasonably necessary to address the matters to which they relate.