

Reprint
as at 5 February 2017



**Financial Markets Conduct (Wholesale Investor
Exclusion—\$750,000 Minimum Investment) Exemption
Notice 2016**
(LI 2016/2)

Financial Markets Conduct (Wholesale Investor Exclusion—\$750,000 Minimum Investment) Exemption Notice 2016: revoked, on the close of 4 February 2017, by clause 3.

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

Contents

		Page
1	Title	1
2	Commencement	2
3	Revocation	2
4	Interpretation	2
5	Application	2
6	Exemption for Kauri bonds	3
7	Exemption for other unsubordinated debt securities	3
8	Condition of exemption in clause 7 for offers by way of issue	3
9	Condition of exemption in clause 7 for secondary sales	4

Notice

1 Title

This notice is the Financial Markets Conduct (Wholesale Investor Exclusion—\$750,000 Minimum Investment) Exemption Notice 2016.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

2 Commencement

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

3 Revocation

This notice is revoked on the close of 4 February 2017.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

application, in relation to an investor (**B**), means an application for the financial products that is made by B

Bloomberg means the product information page or pages for debt securities made available by electronic means on the Bloomberg Professional service that is provided (directly or indirectly) by Bloomberg Finance L.P. (a limited partnership incorporated in the United States of America)

Kauri bond means an unsubordinated debt security that—

- (a) is denominated in New Zealand dollars and recorded in a financial products register kept in New Zealand; and
- (b) is issued by an issuer that is incorporated, formed, or established outside New Zealand

principal terms sheet, in relation to debt securities, means a document that—

- (a) contains the key terms of the offer to issue the debt securities; and
- (b) is the principal means by which the terms of that offer are communicated to investors; and
- (c) is prepared by or on behalf of the issuer of the debt securities

Regulations means the Financial Markets Conduct Regulations 2014

unsubordinated debt security means a debt security that is not, under its terms, subordinated to any of the issuer's other debts to unsecured creditors.

- (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.
- (3) Regulation 9 of the Regulations applies, with all necessary modifications, to a warning statement required to be provided by this notice.

5 Application

This notice applies to a person (**A**) who offers debt securities to another person (**B**) in reliance upon clause 3 of Schedule 1 of the Act on the basis that B is a wholesale investor under clause 3(3)(b)(i) or (ii) of that schedule.

6 Exemption for Kauri bonds

A is exempted from clauses 4 and 5 of Schedule 8 of the Regulations in respect of an offer of Kauri bonds to B.

7 Exemption for other unsubordinated debt securities

- (1) A is exempted from clauses 4 and 5 of Schedule 8 of the Regulations in respect of an offer of unsubordinated debt securities to B.
- (2) Nothing in this clause or clause 8 or 9 applies to Kauri bonds.

8 Condition of exemption in clause 7 for offers by way of issue

- (1) The exemption in clause 7 is subject to the condition that A does not accept an application, or issue the financial products to B, unless—
 - (a) the principal terms sheet includes at the front (in a prominent position) a warning statement in the form required by subclause (2); and
 - (b) the principal terms sheet is provided to B in accordance with subclause (3) before the application is made.
- (2) The warning statement must be in the following form:

“Warning

The law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because there is an exclusion for offers where the amount invested upfront by the investor (plus any other investments the investor has already made in the financial products) is \$750,000 or more. As a result of this exclusion, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for this investment.

Investments of this kind are not suitable for retail investors.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.”

- (3) The principal terms sheet must be provided by giving it to B or delivering or sending it to B’s address.
- (4) The warning statement need not be at the front of the principal terms sheet, despite subclause (1)(a), if—
 - (a) the offer is also made in 1 or more overseas jurisdictions; and
 - (b) the issuer reasonably considers that having the statement in that position would not be reasonably practicable because having the statement in that position would—

- (i) be inconsistent with market practice in 1 or more of those jurisdictions; or
 - (ii) contravene the laws of 1 or more of those jurisdictions; or
 - (iii) contravene the listing rules of a financial product market on which the products will be traded in 1 or more of those jurisdictions; and
- (c) the warning statement is included in a prominent position in the principal terms sheet.
- (5) This clause does not apply to an offer of financial products by way of sale.

9 Condition of exemption in clause 7 for secondary sales

- (1) This clause applies to an offer of financial products by way of sale.
- (2) The exemption in clause 7 is subject to the condition that A does not accept an application, or transfer the financial products to B, unless—
- (a) both of the following requirements are met:
 - (i) the entry for the financial products on Bloomberg contains a link to the principal terms sheet, which includes at the front (or in a prominent position) a warning statement in the form required by subclause (3); and
 - (ii) the principal terms sheet provided to B (if any) includes at the front (or in a prominent position) a warning statement in the form required by subclause (3); or
 - (b) both of the following requirements are met:
 - (i) the principal terms sheet includes at the front (or in a prominent position) a warning statement in the form required by subclause (3); and
 - (ii) the principal terms sheet is provided to B in accordance with subclause (4) before the application is made.
- (3) The warning statement must be in the following form:

“Warning

The law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because there is an exclusion for offers where the amount invested upfront by the investor (plus any other investments the investor has already made in the financial products) is \$750,000 or more. As a result of this exclusion, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for this investment.

Investments of this kind are not suitable for retail investors.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.”

- (4) If this subclause applies, the principal terms sheet must be provided by giving it to B or delivering or sending it to B’s address.

Dated at Auckland this 2nd day of February 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and is revoked on the close of 4 February 2017. The notice applies to offers of certain debt securities made in reliance on the \$750,000 minimum investment wholesale investor exclusion in clause 3 of Schedule 1 of the Financial Markets Conduct Act 2013 (the **Act**). Generally, offerors relying on this exclusion must include a warning statement in every offer document and obtain an acknowledgement of the warning from investors (*see* clauses 3 to 5 of Schedule 8 of the Financial Markets Conduct Regulations 2014). The effect of the notice is that—

- offerors of Kauri bonds are exempted from the warning and investor acknowledgement requirements (without conditions);
- offerors on the issue of other unsubordinated debt securities must include a warning statement only in the principal terms sheet (which must be given to the investor) and are exempted from the investor acknowledgement requirement;
- warnings for secondary sales of unsubordinated debt securities must be given in any principal terms sheet provided to the investor. However, it is only mandatory to give the principal terms sheet to the investor if the Bloomberg page does not contain a link to the principal terms sheet (which includes a warning statement). Offerors on the secondary sale of unsubordinated debt securities are exempted from the investor acknowledgement requirement.

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,—

- in relation to Kauri bond offers, there is a real risk that the cost and complexities of the usual warning and investor acknowledgement requirements would discourage overseas issuers from making those offers into New Zealand altogether considering the relative size of New Zealand’s debt capital market. This would have a significant effect on investment opportunities for New Zealand businesses given the importance of Kauri bond issuances. The FMA therefore

considers that the exemption for Kauri bonds promotes the confident and informed participation of businesses, investors, and consumers in the financial markets:

- in relation to offers of other unsubordinated debt securities, the usual warning and investor acknowledgement requirements will have a disproportionate effect on those offers in comparison to offers of other financial products. Wholesale markets for those products are highly fluid, market conditions may change rapidly, and offers must be quickly concluded while market conditions are favourable. The time and monitoring processes required with the usual warning and investor acknowledgement requirements would limit the ability of the market to operate efficiently. This is particularly the case for sales in the secondary market:
- the interests of investors can be appropriately addressed, and unnecessary compliance costs avoided, by a prominent warning in the principal terms sheet (rather than in every offer document) for initial offers under the \$750,000 wholesale investor exclusion and by warnings for secondary offers under this exclusion being included in the principal terms sheet that is given to investors or made available through a link on Bloomberg:
- for these reasons, the exemptions are desirable to promote the purposes of the Act, specifically the confident and informed participation of businesses, investors, and consumers in the financial markets, the development of fair, efficient, and transparent financial markets, and the avoidance of unnecessary compliance costs:
- the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions because they are limited to specific types of debt offerings where the workability issues are particularly difficult. They are also limited to a period of 12 months to allow the FMA to monitor reliance on the exemptions.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Wholesale Investor Exclusion—\$750,000 Minimum Investment) Exemption Notice 2016 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets Conduct (Wholesale Investor Exclusion—\$750,000 Minimum Investment) Exemption Notice 2016 (LI 2016/2): clause 3