

Consultation Paper: Issuer exemptions from licensed auditor requirement

26 November 2012

About this consultation paper

In this paper we seek submissions on proposals relating to the review the Financial Markets Authority (FMA, or we) are undertaking on class exemptions from the Financial Reporting Act 1993 in light of the introduction of auditor licensing requirements under the Auditor Regulation Act 2011. This paper proposes policy positions regarding when Financial Reporting Act exemptions will generally be given to relieve an issuer from using a licensed auditor, discusses specific amendments to existing class exemption notices, and considers whether any new class exemption notices may be required.

The policy positions consulted on in this paper will also influence our future consideration of individual exemptions from the requirement issuers use a licensed auditor. However, this paper does not directly consider amendments to any existing individual exemption notices.

Why are we issuing this consultation paper?

FMA has the ability to grant exemptions from various provisions of the Securities Act 1978, Financial Reporting Act 1993, Securities Markets Act 1988, Financial Advisers Act 2008 and regulations made under those Acts. We recognise that the solutions to regulatory compliance issues provided by exemptions must be both pragmatic and principled, so that they can most effectively support market activity by promoting and facilitating fair, efficient and transparent investment markets in which the benefits of regulation are proportionate to the costs.

FMA is keen to work with all stakeholders including market participants, investors, and advisers, and representatives to see that the exemptions it grants work together with the legislative regime provided by these Acts and Regulations to meet these goals. We therefore seek submissions on the proposals in this paper from all stakeholders to assist with this review process.

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FMA's purpose in granting exemptions

1. FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.
2. Our power to grant exemptions to issuers from various provisions of the Securities Act, Securities Markets Act and Financial Reporting Act (FRA) is an important tool we use to achieve this objective. In granting exemptions, FMA must consider whether the exemptions would cause significant detriment to the investors in the issuer. When we exercise our exemption power we look to facilitate the development of New Zealand's capital markets, while balancing the need to ensure investors are fully informed and that financial markets participants are appropriately regulated in line with the policy of financial markets legislation. We carefully consider the cost implications the terms of any exemptions might have for issuers, and we appreciate that these costs will in most cases ultimately be paid for by investors.
3. This review provides us with the opportunity to work with stakeholders including market participants, investors, and advisers, and representatives to see that the exemptions subject to this review meet these goals. We encourage all stakeholders to provide submissions.
4. More generally market participants and their representatives can contact us at any time to discuss difficulties they encounter in complying with the legislative regimes prescribed by these Acts and Regulations made under them. When considering how to address these problems we encourage market participants to think about the scope of our exemption power, and whether we may be able to assist with an appropriate solution. We are always interested in hearing from the market participants with proposals for pragmatic solutions.

Notices on which submissions are sought

5. In this paper we seek submissions on proposals relating to the review of three class exemption notices. The proposals focus on issues raised in light of new auditor licensing and oversight requirements. In FMA's consultation this year on the broader class exemption review of a significant number of class notices we have previously consulted on other issues in relation to the two Financial Reporting class exemptions for overseas issuers due to expire on 31 March 2013 (the Financial Reporting Act (Overseas Companies) Exemption Notice 2007 and the Financial Reporting Act (Overseas Issuers) Exemption Notice 2009). Included in our consideration of the review of those notices was a consideration of the particular jurisdictions which should be recognised by the notices. We are in the process of finalising views on these broader issues. A further paper on the class exemption review will be published to update our position. Whilst in this paper we particularly raise questions on issues arising in relation to the new auditor requirements, comments on any aspects of the notices do remain welcome.
6. You can read the notices, and their statements of reasons, on the New Zealand legislation website: www.legislation.govt.nz. You can locate any notice by searching the 'regulations' using some selected key words from the title of the notice.
7. We discuss FMA's proposals on the notices on which we are seeking submissions in groups categorised by the jurisdictions to which they relate.

Appendix 1: Notices relating to Australian issuers

- (i) Financial Reporting Act (Australian Parent Entity Financial Statements) Exemption Notice 2011

Appendix 2: Notices relating to other overseas issuers

- (i) Financial Reporting Act (Overseas Companies) Exemption Notice 2007
- (ii) Financial Reporting Act (Overseas Issuers) Exemption Notice 2009

Appendix 3: Exemptions from section 53E of the Securities Act

Recent law reform: the Auditor Regulation Act 2011

8. On 1 July 2012 the Auditor Regulation Act 2011 (ARA) came into force.
9. Previously, audits of issuers could be carried out by any (NZICA) chartered accountant holding a certificate of public practice or any member of certain Australian, UK and US professional bodies permitted to conduct statutory audits under the laws of the corresponding home jurisdiction. In practice, audits of most significant issuers were carried out by specialist auditors who were a subset of the persons permitted to carry out audits. However, the regulatory model and the broad definition of qualified auditor made New Zealand's auditor regulation regime substantially more relaxed than comparable jurisdictions.
10. The introduction of the ARA means that all auditors (both New Zealand based and overseas) who conduct issuer audits must be licenced. Additionally, where an issuer audit engagement is undertaken in the firm name, the audit firm must be registered.
11. In the New Zealand audit profession, the ARA has the effect of requiring those auditors who conduct issuer audits to meet higher minimum standards of qualification and experience than was previously required. It also imposes greater oversight of the systems, policies and procedures implemented by their firms or practices. This will ensure that issuer audits are being undertaken by audit specialists with the skill and knowledge to undertake those audits.
12. For overseas auditors, the ARA requires auditors who undertake issuer audits to be licensed in New Zealand in addition to their home jurisdiction. There are some requirements, likely to require additional work, by overseas auditors before they can obtain a license. In particular an overseas auditor may need to gain additional experience or qualifications in New Zealand commercial law and taxation. A further issue is that audits are generally undertaken in the name of a firm. The ARA requires that firms undertaking audits be registered. The ARA prescribes that an audit firm can only be registered if it is an ordinary partnership (not a limited partnership). Additionally standards imposed under the ARA require that over 50% of the partners are full members of an accounting professional body. These requirements are inconsistent with structure options permitted for accountancy firms which practice audit work in some foreign jurisdictions.

13. FMA has no jurisdiction under the ARA to exempt auditors who undertake issuer audits from the need to be licensed. However, FMA may exempt their issuer clients from the Securities Act and the FRA requirements for an issuer audit, on conditions which would require an audit that is not an 'issuer audit'.
14. We are reviewing the FRA class exemption notices in light of the new auditor licensing requirements. We recognise the general value and importance of these new requirements to ensuring audits of issuers' financial statements are carried out by appropriately qualified and regulated specialists. We are however conscious to ensure that the ARA does not impose an undue burden on overseas companies which extend offers to New Zealand investors not matched by a commensurate benefit to investors. In particular in some circumstances where the issuer is already regulated to a comparable standard by the requirements of the issuer's home jurisdiction, the burden on the issuer may outweigh the benefit of the new requirements to investors. FMA recognises that in these circumstances there is a material risk that the opportunity to invest may not be made available to New Zealand investors, or if it is, additional costs incurred by the issuer will be borne by the investors.

Broader impact of ARA

15. The ARA also impacts on the audit requirements for financial information required under the Securities Act in offer documents. You should contact us if you consider you or your client requires any Securities Act exemption, or review of a current Securities Act exemption that it relies on which provides relief from financial reporting or audit requirements relating to financial information in offer documents.

Upcoming law reform

16. Law reform envisaged by the Financial Markets Conduct Bill and the Financial Reporting Bill may address some of the issues currently addressed by these exemptions. However, the content of the new law is still to be settled. In any event any these class exemptions are likely to be required for a number of years given the timeframe anticipated for settling the new Act, passing relevant regulations, and providing for a transitional period.
17. We are therefore reviewing these notices with the purpose for providing for the fair, transparent and efficient offer of these products up until and during the period of transition to the new regulatory regime envisaged by the FMC Bill.

Submissions process

18. We invite and encourage all stakeholders to make submissions on the notices under review. We are particularly keen to receive comments on the proposals discussed on each of the notices under review. Submissions are also invited on any other issue relating to issuers' financial reporting or audit obligations that you consider could be usefully addressed by an exemption, or is otherwise relevant.
19. Please provide us with two versions of your submission: a PDF and a word document.
20. Please send your submission by e-mail only (no posted or delivered versions please) to exemptions@fma.govt.nz. The e-mail subject line should identify the submitter and that the

email contains a submission on the consultation on exemptions from licensed auditor requirements.

21. The deadline for submissions is 17 December 2012.
22. To complete our review we may share and discuss a submission with another regulator. More generally we note we will not treat any part of your submission as confidential unless you specifically request we do so. Submissions will be subject to the Official Information Act 1982. We may make submissions available on our website, may compile a summary of the submissions, or draw attention to individual submissions in internal or external reports.
23. If you would like us to withhold any commercially sensitive, confidential or proprietary information included in your submission, please clearly state this in your submission and identify the relevant extracts of information. We will consider any request to have information withheld in accordance with our obligations under the Official Information Act.

Further information

24. To remain advised of the proposals and progress of this review:
 - (a) please identify if you want to be put on an email list to receive any proposals released;
 - (b) watch the FMA website. Proposals and progress in relation to the review of the notices will be published on the website under 'Help Me Comply' - 'Issuers' - 'Exemptions'.
25. You can also contact Natalie Muir, Manager, Exemptions, for any further information about this review.

Proposed Financial Reporting Act exemptions for Australian Issuers

Current class exemption: The Australian Parent Entities Notice

1. The Financial Reporting Act generally requires all issuers, including overseas issuers, to prepare, have audited, and register financial statements that comply with New Zealand Generally Accepted Accounting Practice (NZ GAAP). NZ GAAP for issuers is the New Zealand Equivalents to International Financial Reporting Standards (NZ IFRS).
2. Australian financial reporting standards applicable to companies with no subsidiaries are substantially the same as NZ IFRS. Accordingly the Registrar of Companies has discretion to accept those company's Australian financial statements without the need for an exemption. However under Australian law Australian companies that are required to prepare group financial statements are not required to prepare separate financial statements for the parent entity. The Registrar is therefore not able to accept the financial statements of Australian issuers which have subsidiaries on this basis.
3. Provided any additional material information about the financial performance, position and cash flows of the parent entity is disclosed, FMA does not consider that this difference in accounting standards is likely to cause any significant detriment to New Zealand investors. For this reason FMA granted an exemption to enable Australian incorporated issuers to use their Australian financial statements. This exemption, the Securities Act (Australian Parent Entity Financial Statements) Exemption Notice 2011 (Australian Parent Entities Notice), exempts directors of Australian companies that have subsidiaries from the requirements of the Financial Reporting Act to register financial statements that comply with New Zealand law.¹ This is subject to requirements that they instead register financial statements and the corresponding audit report prepared in accordance with Australian law together with any additional material information about the parent entity necessary to disclose all material information to New Zealand investors. The Australian Parent Entities Notice does not apply to companies which have no subsidiaries.
4. The exemptions contained in the Australian Parent Entities Notice include an exemption from the audit provisions of the Financial Reporting Act, subject to conditions which permit exempted issuers to use an approved auditor qualified under the laws of Australia. At the time the Australian Parent Entities Notice was granted, this condition was appropriate because a 'qualified auditor' otherwise required under New Zealand law would have included any registered company auditor who is a member of either the Institute of Chartered Accountants of Australia or CPA Australia Limited. However a 'qualified auditor' under New Zealand law for an issuer is now a licensed auditor under the ARA, unless exemptions alter this position.

¹ There is no exemption from the requirement to register financial statements for the company's New Zealand business.

5. The Australian Parent Entities Notice does not contain any restrictions linked to how the issuer came to be an issuer for the purposes of New Zealand law. This means that Australian companies that are issuers in New Zealand because they have offered securities in New Zealand under a New Zealand registered prospectus would currently be able to rely on the Notice to avoid the requirement imposed by the Financial Reporting Act and ARA to use a licensed auditor.²
6. The exemptions do not apply to the obligation to register financial statements in respect of the group's New Zealand business. This means that an Australian Incorporated issuer that has a New Zealand branch would need to prepare New Zealand branch financial statements in accordance with NZ IFRS and have these New Zealand branch financial statements audited by a licensed auditor, even though it is exempted in respect of the audit of the financial statements for the group.

Proposed general policy

7. We propose the following policy on when exemptions would in principle be available in respect of the preparation, content and registration of the financial statements:
 - (a) Australian incorporated issuers (except licensed insurers) that have subsidiaries would continue to be exempt from the requirement to prepare and register group and parent financial statements that comply with NZ IFRS. This would be on the condition that they prepare and register group financial statements that comply with Australian financial reporting standards.
 - (b) Australian incorporated issuers that do not have subsidiaries would remain able to seek confirmation from the Registrar of Companies that they can use financial statements which comply with Australian financial reporting standards on the basis that their financial statements comply with requirements which are substantially the same as NZ IFRS.
 - (c) Australian incorporated issuers that have a New Zealand branch would continue to be required to prepare financial statements for that branch that comply with NZ IFRS.
8. Further we propose the following policy on when exemptions would in principle be available in respect of the financial statement audit requirements:
 - (a) Australian incorporated issuers (except licensed insurers) that allotted the same class of securities to both New Zealand and Australia investors as part of a single offer would be entitled to exemptions from the audit requirement of the Financial Reporting Act. This would be subject to conditions requiring the financial statements instead be audited by an auditor qualified to audit an issuer's financial statements in accordance with the requirements of Australian law.

² Companies which do not additionally have an exemption from section 53E of the Securities Act will, notwithstanding the FRA exemption, in a practical sense be required use a licensed auditor in order to meet their audit obligation under this section of the Securities Act.

- (b) Australian incorporated issuers that have allotted one or more classes of securities to New Zealand investors, but not also to Australian investors in an offer regulated in Australia, will be required to use a NZ licensed auditor.
 - (c) These requirements would apply regardless of whether or not the issuer had subsidiaries.
9. FMA has no jurisdiction to grant any FRA exemption in respect of an issuer that is a licensed insurer. Accordingly no exemptions from any of the financial statement preparation, content, auditing or registration requirements are proposed for licensed insurers.

FMA's reasons

10. The policy of allowing Australian law compliant financial statements to be used in place of NZ IFRS compliant financial statements (despite the differences in the presentation of parent company information) remains appropriate. This is unchanged by the introduction of the ARA.
11. However, in light of the introduction of the ARA, it is necessary to reconsider the appropriateness of exemptions from the requirement to be audited by a licensed auditor. The current distinction created by the Australian Parent Entities Notice (based on whether or not the company has a 'group' in respect of which it prepares financial statements) is not principled. This distinction arose because an exemption from the audit requirements on the basis of compliance with Australian requirements had limited practical effect at the time the exemption was granted.

Offers also made in Australia

12. We consider that an exemption from the audit requirements should be available where an Australian issuer has made an offer of the same classes of securities in both New Zealand and Australia. In these circumstances the offer will be subject to Australian regulatory requirements and fall under ASIC's supervisory jurisdiction. We have considered the requirements relating to Australian auditors, including the auditor oversight regime and we are satisfied the Australian requirements prescribed by the Corporations Act are equivalent to New Zealand requirements. As such, we do not consider the exemptions contemplated would cause detriment to investors.
13. By contrast we consider it is not generally appropriate to grant exemptions to Australian issuers who have not made a regulated offer of securities in Australia. In this case the offers may not be subject to supervision in Australia or may be subject to reduced financial reporting obligations under Australian law. An exemption to this effect would enable issuers who offer securities solely to New Zealanders to incorporate in Australia to avoid regulatory oversight.
14. An exception is that we consider that the exemptions from the New Zealand audit requirements should extend to certain minor or incidental offers that may not be 'regulated offers' in Australia. This includes rights offers, offers under dividend reinvestment schemes, offers under employee share purchase schemes, and offers of securities which are variations of existing securities. Securities Act exemptions recognise incidental offers in these cases and provide varying degrees of relief from securities law disclosure and conduct requirements, generally on the basis the offer is also made in Australia and complies with any Australian law requirements that do apply. Further, the scope of any exemption would ensure that Australian issuers making these incidental offers are regulated as issuers in

Australia and, therefore, would be subject to financial reporting requirements under Australian law.

Broader exemptions for Australian issuers than other foreign issuers

15. As a general position, we consider that issuers from other foreign jurisdictions should only be exempted where the offers are an extension of, or incidental to, broader offers in the issuer's home jurisdiction.
16. By contrast we consider broader exemptions are appropriate for Australia issuers. This is consistent with the special recognition by New Zealand securities law of Australian securities regulation.
17. Australia securities law regulation has received a unique level of recognition within New Zealand securities law. Historically, Australian issuers have been able to rely on class exemptions granted to recognise Australian regulated offers such as the Securities Act (Australian Issuers) Exemption Notice 2002 and the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003 (together 'the Australia Exemptions'). More recently, the special status of Australian securities regulation has been recognised by the Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2008 ('the MRSO Regulations'). The Australia Exemptions and the MRSO Regulations permit Australian issuers to offer securities largely on the basis of Australian rather than New Zealand securities law requirements.

Exemption not required for offers *only* made under MRSO

18. An entity that has allotted securities in New Zealand only under the MRSO Regulations would not, as a result of that offer, be an 'issuer' for the purposes of the FRA (unless it is also a registered bank, a licensed insurer, or an NZX listed entity). Reliance on MRSO Regulations therefore enables an Australian issuer to rely on both the Australian securities law and Australian financial reporting law obligations when offering in New Zealand.
19. However, many Australian entities which now rely on the MRSO Regulations will have previously offered securities (which have not yet been redeemed) under a New Zealand prospectus or in reliance on one of the Australian Exemptions. Where an issuer has allotted securities in New Zealand either by means of a New Zealand prospectus or investment statement, or an exemption notice providing relief from the prospectus or investment statement requirement, the entity will be an issuer under the FRA. Where the entity has allotted securities both under the MRSO Regulations and another regime, the entity would continue to be an 'issuer' for the purposes of the FRA until all securities offered under the New Zealand prospectus or relevant exemption notice have been redeemed.
20. Further, there may be entities who have offered under the Australian exemptions and have not yet redeemed those securities, but who have not made offers since the introduction of the MRSO Regulations.
21. Given the consistency of the policy underlying the Australian Exemptions and the MRSO Regulations, the effective obligations relating to audit supervision should be the same.

New Zealand branch financial statements

22. The Australian Parent Entities Notice expressly does not provide exemptions from the requirement to prepare NZ IFRS financial statements for any New Zealand branch. This reflects the fact that New Zealand branch financial statements are only required for the purposes of New Zealand law. Accordingly, the issuer would have no reason to prepare New Zealand branch financial statements that comply with Australian financial reporting standards. In our view, this exclusion from the exemption permitting that the financial statements be prepared in accordance with Australian law requirements should remain.
23. We recognise however that for some companies, this exclusion may undermine the benefit of the exemptions from the audit provisions. Where an issuer has an exemption from having their group and issuer financial statements audited by a New Zealand licensed auditor but has a New Zealand branch and so must also prepare New Zealand branch financial statements, the issuer would need to either use a licenced auditor to audit both sets of financial statements, or arrange two separate audit engagements.
24. In our view, allowing issuers to use the same Australian auditor to audit their New Zealand branch financial statements, in instances where they would otherwise be permitted by the exemption to use an Australian auditor, would not cause any significant detriment to New Zealand investors. In reaching this view we have considered the fact that the financial statements that are most useful for investors to review to understand the financial situation of an issuer are the issuer or group financial statements. As in the case of our assessment of exemptions more generally appropriate for issuer and group financial statements, we have also considered the requirements imposed on Australian auditors including the auditor oversight regime. We consider it imposes an equivalent standard of audit regulation to the New Zealand regime. Further we have considered the additional costs that an additional audit appointment may impose on the issuer.

Particulars of exemptions proposed

25. We propose to revoke the Australian Parent Entities Exemption.
26. We propose a new exemption from the preparation, content and registration requirements of the FRA (sections 10(1), 11, 13, 14, and 18(1)) for issuers incorporated or constituted in Australia that are required under Australian law to prepare group financial statements. These exemptions would be subject to conditions requiring the issuer:
 - (a) to comply with the laws of Australia relating to preparation, content and public filing of its financial statements;
 - (b) ensure that the financial statements give a true and fair view of the matters to which they relate;
 - (c) ensure that the financial statements contain or are accompanied by all material information about the financial performance, financial position and cashflows of the issuer (including the parent entity where only group financial statements are required by Australian law);

- (d) register the financial statements with the Companies Office within the timeframe usually required under the FRA.
27. Where an Australian incorporated issuer qualifies under an Australian reduced financial reporting disclosure regime, we propose that company would not be able to use financial statements prepared under that reduced disclosure regime. However rather than full compliance with New Zealand financial reporting requirements we propose it could prepare financial statements in accordance with full Australian financial reporting standards.
28. To give effect to the policy that New Zealand audit requirements should not additionally apply where the offer is made in both Australia and New Zealand we propose an exemption from the audit requirements (section 15) for Australian issuers that have only offered securities to the public in New Zealand in accordance with:
- (a) the MRSO Regulations;
 - (b) the Securities Act (Australian Issuers) Exemption Notice 2002 or the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003;
 - (c) the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2008 or the Securities Act (Dividend Reinvestment) Exemption Notice 1998;
 - (d) the Securities Act (Overseas Companies) Exemption Notice 2002 or the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002;
 - (e) specified individual exemptions (if any are identified where the offer substantially follows the policy of the MRSO or the exemption notices listed above);
 - (f) specified individual exemptions (if any are identified where the offer arises from the exercise of options or the conversion of convertible securities and the original offer of those options or convertible securities fitted, or substantially fitted, within the policy of the within the MRSO or the exemption notices listed above);
 - (g) previous exemptions notices which substantially correspond to any of the exemption notices listed above, or which replace, with or without amendments, any of the exemptions listed above; or
 - (h) the Securities Act (Renewals and Variations) Exemption Notice 2002, to the extent:
 - (i) the securities are listed on a market of the ASX, both before and after the renewal or variation; or
 - (ii) the securities were originally offered in reliance on the MRSO Regulations or one of the exemption notices referred to above.
29. The exemptions from the audit requirements of section 15 would apply to companies which have a primary listing on ASX and a secondary listing on NZX, and to dual listed companies. These exemptions would not however apply to companies which have their sole primary listing on NZX, including any company which has a secondary or courtesy listing on ASX.
30. The preparation, content and registration exemptions would not apply to any obligation to prepare financial statements in respect of a New Zealand branch. Where an Australian company has a New Zealand branch, that company would be required to register NZ IFRS

financial statements for that branch. However, it would be exempted from the need to use an NZ licensed auditor in respect of those branch financial statements.

31. FMA has no jurisdiction to grant FRA exemptions to licensed insurers. Accordingly, any exemptions would not apply to licensed insurers.

Proposed Financial Reporting Act exemptions for other jurisdictions

Current class exemption

1. There are two FRA class exemptions for overseas issuers: the Financial Reporting Act (Overseas Companies) Exemption Notice 2007 (Overseas Companies Notice) and the Financial Reporting Act (Overseas Issuers) Exemption Notice 2009 (Overseas Issuers Notice).
2. Both of these FRA exemptions were granted before the introduction of the ARA's licensed auditor requirements and require review.

The Overseas Companies Notice

3. In summary the Overseas Companies Notice applies to companies:
 - (a) from Australia, the United States and the United Kingdom³;
 - (b) that have offered securities under the Securities Act (Overseas Companies) Exemption Notice 2002 or one of the specified predecessor notices; and
 - (c) that have not made any other offer of securities to the public in New Zealand.
4. The Securities Act (Overseas Companies) Exemption Notice 2002 applies to overseas companies which are listed on a stock exchange in Australia, Canada, Hong Kong, Spain, the United Kingdom or the United States. It exempts offers of quoted securities to persons who already hold securities issued by that issuer or by a related body corporate which is a promoter of the offer.
5. The Overseas Companies Notice provides a complete exemption from the requirements related to preparation, audit, and registration of financial statements, provided the issuer complies with the requirements of their home jurisdiction.

The Overseas Issuers Notice

6. In summary the Overseas Issuers Notice applies to companies:
 - (a) from the United States, the United Kingdom, the Netherlands, Germany, Ireland or France⁴;
 - (b) that have offered securities to the public in reliance on the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002, the Securities Act (Overseas Listed Issuers) Exemption Notice 2002; and
 - (c) that have not offered securities to the public in New Zealand other than in reliance on one or more of those notices.

³ The scope of recognised jurisdictions are currently under review.

⁴ Similarly to the Overseas Companies Notice, the scope of recognised jurisdictions are currently under review.

7. The Securities Act (Overseas Listed Issuers) Exemption Notice 2002 exempts companies from the United Kingdom or the United States in respect of the offer of securities which are, or will be, quoted on the main board of the London Stock Exchange, the NASDAQ National Market, or the New York Stock Exchange.
8. The Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 exempts listed companies (and certain other companies named in a schedule) in respect of offers of securities to employees of the company or its subsidiaries.
9. Exempted companies are not required to comply with the preparation, audit and registration requirements of the Financial Reporting Act, but are instead required to register financial statements and the corresponding audit report prepared in accordance with the requirements of their home jurisdiction.

Proposed general policy

10. As a general policy, we propose that issuers that are incorporated or constituted overseas may be exempted if the offers of securities to the public in New Zealand was incidental to an offer made in their home jurisdiction.
11. Where offers to the public by overseas incorporated issuers are made solely or primarily in New Zealand, we consider New Zealand law should govern the obligations, including financial reporting requirements, applying to that issuer. In these circumstances, the issuers are likely to be of less significance to overseas regulators, and may not be regulated at all. In any event, where capital raising activities are targeted principally at New Zealand investors, New Zealand investors can reasonably expect FMA would take a lead regulatory role.
12. Where the offer in New Zealand is incidental to a larger regulated offer in another jurisdiction, exemptions recognise that the costs of complying in New Zealand (which would be in addition to compliance costs incurred in the primary jurisdiction) will often outweigh the benefit of that compliance for New Zealand investors. Additional costs include offer costs and the ongoing compliance costs associated with being an issuer, including financial reporting requirements. The additional costs may mean that the offer is not extended to New Zealand investors.
13. In meeting these criteria the foreign issuer must have made a regulated offer in their home jurisdiction. In this instance the issuers will be subject to regulation by the securities regulator of their home jurisdiction, and may also be subject to oversight by a securities exchange in that jurisdiction.
14. Further, in these instances existing class Securities Act exemption notices often exempt the issuer from some or all New Zealand disclosure requirements on conditions including reliance on foreign offer documents and disclosures about the foreign offer. Generally the circumstances of the offer will make it apparent to investors at the time of the offer that the issuer will be primarily regulated under the laws of the foreign jurisdiction.

Application to New Zealand branch

15. Where an overseas company has a New Zealand branch, it would be required to prepare financial statements for that branch that comply with NZ IFRS and to register those branch

financial statements. As for Australian issuers, this reflects that the New Zealand branch financial statements are being prepared only to meet New Zealand regulatory requirements. Similarly, to the case for Australian issuers, exemptions would provide the option for issuers to have their New Zealand branch audited by the same overseas auditor that has audited their issuer and group financial statements instead of using a licenced auditor.

Proposals for existing exemptions

The Overseas Companies Notice

16. We do not propose any amendments to the Overseas Companies Notice to address the audit regulation issues. Issuers able to rely on this notice, would therefore remain able to use the auditor permitted in their home jurisdiction, to audit their financial statements. In our view, subject to the issues noted in paragraph 19 below, the exemptions remain appropriate.
17. The exemptions granted in this case are more extensive than most other exemption notices. This recognises that many of the companies relying on this notice will be issuers only because they made a rights issue that was extended to a small number of New Zealand investors who already held shares acquired through trading on an overseas exchange. In these circumstances, the New Zealand investors involved could reasonably be expected to understand that that issuer was regulated by its home jurisdiction regulator and to be aware of, or have an investment adviser who is aware of, the sources of information on companies listed on the relevant overseas exchange. The fact that the shares are traded on an exchange also means New Zealand investors are likely to have the ability to exit that investment.
18. We note that FMA will need to be satisfied that the exemptions do not cause any significant detriment to New Zealand investors. In particular, in considering the impact of the ARA on the appropriateness of existing class exemptions, we will consider whether the requirements relating to audits, and the regulation of auditors including oversight of them, under the relevant overseas law is equivalent to New Zealand's audit regulation regime. Our preliminary view is that UK, US and EU jurisdiction that have adopted EU directives on auditor regulation are likely to impose equivalent obligations to New Zealand law, such that the ARA will not change our assessment in relation to this exemption.
19. However, in line with the policy noted above, exemptions will be more limited for companies with a New Zealand branch. We propose there would no longer be any exemptions in relation to the requirement to prepare and register branch financial statements compliant with NZ IFRS (although the exemption from the requirement to use an NZ licensed auditor would be retained on the basis that they use an auditor qualified to undertake an issuer audit in their home jurisdiction). Additionally, where a company is required to register branch financial statements, we propose also requiring the company to register their overseas compliant financial statements and audit report in respect of the whole company and, if relevant, the whole group.

The Overseas Issuers Notice

20. Again we consider this exemption should be retained. Further, we consider there may be scope for broadening it, consistent with our proposed policy of exempting issuers where the offer of securities in New Zealand was incidental to offers in the issuer's home jurisdiction.
21. We also seek comments on whether submitters consider it would be appropriate to extend the scope of issuers able to rely on the notice to include:
 - (a) companies which have offered shares under both the Securities Act (Overseas Companies) Exemption Notice 2002 and one or more of the Securities Act exemptions notice recognised in the Overseas Issuers Notice. While FRA exemptions have recognised that both offers fit the 'incidental' policy, people who have offered under both the Securities Act (Overseas Companies) Exemption Notice 2002 and one of the Securities Act exemptions currently covered would not qualify under either class exemption notice as currently drafted;
 - (b) companies which have made an offer which is a variation, or which arises from the conversion of convertible securities or the exercise of options; and
 - (c) companies which have allowed New Zealand investors to participate in dividend reinvestment plans.
22. In each case we consider that the issuer should have made no offers other than under one of those categories or a category already covered by the notice.
23. In addition to extensions to the circumstances in which this notice can be relied on, FMA is reviewing jurisdictions recognised in this notice with a view to better aligning the list of jurisdictions with those exempted under the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002. This will involve reassessing the audit regulation regimes of jurisdictions already included in the Overseas Issuers Notice and assessing the financial reporting requirements, including the audit regulation, in jurisdictions that not yet covered by the Overseas Issuers Notice.
24. As with other notices, we propose there would no longer be any exemptions in relation to the requirement to prepare and register branch financial statements. However we propose to continue an exemption from the requirement to use an NZ licensed auditor on the basis that the overseas company uses an auditor qualified to undertake an issuer audit in its home jurisdiction.

Proposed new exemptions

Dual-listed companies

25. We seek submissions on the need and appropriateness of exemptions for companies which are dual-listed on NZX and an overseas exchange.
26. Our initial view is that any exemptions should only be available where the issuer has a primary listing on the overseas exchange. Companies with a secondary listing on NZX and true dual-listed companies (ie with two primary listings) would be entitled to rely on the exemption. Companies with a primary listing on NZX and a secondary listing on an overseas

exchange would need to comply with the Financial Reporting Act unless they applied for, and were granted, an individual exemption.

27. Any exemption is likely to be limited by jurisdiction, and would require consideration of the financial reporting requirements, including audit regulation, in the jurisdiction of company's incorporation. We initially propose exemptions for UK Companies. We seek submissions, with supporting information, on proposals for further jurisdictions which should be covered by the notice.
28. As with other notices, we propose there would no longer be any exemptions in relation to the requirement to prepare and register branch financial statements except in relation to the requirement to use an NZ licensed auditor on the basis that they use an auditor qualified to undertake an issuer audit in their home jurisdiction.

Individual exemptions

1. Individual exemptions will be considered where issuers have made offers which fit the general policy position, but will not be able to rely on the proposed class notices.
2. Please contact us if you or your client is in this position.

Section 53E Securities Act exemptions

1. The new licensed auditor requirements also have implications for ongoing obligations of issuers arising under the Securities Act. In particular we note that companies who have offered securities to the public in New Zealand will often also be required to comply with the separate section 53E Securities Act requirement to be audited by a licensed auditor. This will be the case unless the issuer is specifically exempt from the section 53E requirement.
2. This requirement is not specifically linked to the audit requirement in the Financial Reporting Act. However FMA appreciates that most issuers would seek to have one audit which meets both requirements. This means that an issuer who does not have an exemption under section 53E of the Securities Act would not benefit from any exemptions from the Financial Reporting Act audit requirements.
3. A number of class and individual exemption notices have included exemptions from section 53E of the Securities Act. Some of these notices have been revoked or have lapsed with no specific transitional provision relating to the section 53E exemption, for example the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003.
4. In our view where a security is allotted under an exemption notice which contains a section 53E exemption, that exemption is effective for the term of the securities that were issued during the currency of, and in reliance on, that exemption. However, if the issuer allots additional securities (whether of the same class or another class) pursuant to an offer to which section 53E applies, the issuer would be subsequently required to comply with section 53E.
5. We seek comments on our interpretation of the ongoing effect of a section 53E exemption.
6. Please also contact us, with supporting policy information, if you consider you or your client may require a section 53E exemption.