

## Financial Markets Conduct (Bonus Bonds) Exemption Notice 2016

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

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## Notice

### 1 Title

This notice is the Financial Markets Conduct (Bonus Bonds) Exemption Notice 2016.

### 2 Commencement

This notice comes into force on 18 November 2016.

### 3 Revocation

This notice is revoked on 31 October 2021.

### 4 Interpretation

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

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

**Bondholder** means the holder of one or more Bonus Bonds

**Bonds Transaction** means the issue of Bonus Bonds but does not include the payment of a prize to a Bondholder by way of the issue of further Bonus Bonds

**Bonus Bond** means a unit in the scheme

**effective date** means, in accordance with clause 19 of schedule 4 of the Act, the earlier of the date the manager elects to transition to the Act and 1 December 2016

**manager** means the person designated or appointed as the manager of the scheme

**PDS** means the product disclosure statement for the offer of Bonus Bonds by the manager

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

**related party** has the meaning set out in section 172(2) of the Act

**reserve fund** means the amount equal to the total assets of the scheme less the total liabilities of the scheme (including the scheme's liability to repay each investor a redemption amount of \$1 per Bonus Bond held)

**scheme** means the Bonus Bonds Scheme, a scheme established by Trust Deed dated 17 September 1990, as amended and restated from time to time, and which is an approved unit trust within the meaning of that term in section 3 of the Finance Act (No 2) 1990

**specified date** means the date that the public notice required under clause 31(a) of this notice is published for the first time

**specified existing investor** means a Bondholder on the specified date for whom the manager does not have an email address and either the manager has received notice that the Bondholder no longer resides at the last known address for that Bondholder held by the manager or their most recent Bonds Transaction was made more than five years prior to the scheme's effective date

**website** means the website for the scheme [www.bonusbonds.co.nz](http://www.bonusbonds.co.nz)

**zero balance customer** means a person who previously held but no longer holds Bonus Bonds on the specified date but who is still treated as a customer of the scheme such that they could apply for further Bonus Bonds as if they were a current Bondholder.

- (2) A requirement to give information by public notice means —
- (a) published in a quarter page notice in at least one week day and one weekend print publication of the following daily newspapers:
    - (i) The New Zealand Herald
    - (ii) The Dominion Post
    - (iii) The Press
    - (iv) Waikato Times
    - (v) Otago Daily Times; and
  - (b) published in a notice, that contains a hyperlink to the relevant information, on the home page of at least one week day and one weekend publication of the following news media websites:
    - (i) [www.nzherald.co.nz](http://www.nzherald.co.nz)
    - (ii) [www.stuff.co.nz](http://www.stuff.co.nz)
    - (iii) [www.odt.co.nz](http://www.odt.co.nz).
- (3) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

### *Product disclosure statement exemptions*

#### **5 Exemption in respect of the sections of the PDS**

The manager of the scheme is exempted from clause 2(1) of Part 1 of Schedule 5 of the Regulations.

#### **6 Condition of exemption in clause 5**

The exemption in clause 5 is subject to the condition that the PDS must have sections that are headed up and ordered as follows:

- (1) Key information summary
- (2) How [*Name of scheme*] works
- (3) What [*name of scheme*] invests in
- (4) Terms of the offer
- (5) [*Name of scheme*]'s financial information
- (6) Risks to returns from [*name of scheme*]
- (7) What are the fees?
- (8) Tax
- (9) About [*name of manager*] and others involved in [*name of scheme*]
- (10) How to complain
- (11) Where you can find more information
- (12) How to apply.

**7 Exemption in respect of the sections of the key information summary**

The manager of the scheme is exempted from clause 3(1) of Part 1 of Schedule 5 of the Regulations.

**8 Condition of exemption in clause 7**

The exemption in clause 7 is subject to the condition that the KIS must have sections that are headed up and ordered as follows:

What is this?

Who manages this scheme?

What are you investing in?

Key terms of the offer

How you can get your money out

Key drivers of returns

Key risks of this investment

[*Name of scheme*]'s financial information

What fees will you pay?

How will your investment be taxed?

**9 Exemption in respect of the *What is this?* section of the KIS**

The manager of the scheme is exempted from clause 4(1) of Part 1 of Schedule 5 of the Regulations.

**10 Condition of exemption in clause 9**

The exemption in clause 9 is subject to the condition that the KIS must contain a statement in the following form:

"This is an offer of [*name of financial products*]. Your money will be pooled with other investors' money and invested. [*Name of manager*] invests the money in assets, such as [*specify relevant examples*], and takes fees.

Instead of earning interest or receiving investment gains, each eligible Bonus Bond you hold gives you one entry into the monthly prize draw. The types of investments, your chances of winning a prize and the fees and expenses paid from the scheme are described in this document.

There is a risk that you may lose some or all of the money you invest."

**11 Exemption in respect of the *What are you investing in?* section of the KIS**

The manager of the scheme is exempted from clause 6(2)(c) of Part 1 of Schedule 5 of the Regulations.

**12 Exemption in respect of the *Key drivers of returns* section of the KIS**

The manager of the scheme is exempted from clause 9(1) of Part 1 of Schedule 5 of the Regulations.



**13 Condition of exemption in clause 12**

The exemption in clause 12 is subject to the condition that the KIS must give a brief summary of what the manager considers to be the key drivers of returns to an investor in the scheme.

**14 Exemption in respect of the *[Name of scheme]'s financial information section of the KIS***

The manager of the scheme is exempted from clause 10(1) of Part 1 of Schedule 5 of the Regulations.

**15 Conditions of exemption in clause 14**

(1) The exemption in clause 14 is subject to the conditions that the KIS must include—

- (a) one or more tables containing the following information, in each case for each of the five most recently completed accounting periods before the date of the PDS:
  - (i) the average number of Bonus Bonds eligible for a monthly prize draw;
  - (ii) the average number and value of prizes awarded in a monthly prize draw;
  - (iii) the average odds of winning a prize in a monthly prize draw;
  - (iv) the average monthly value of prizes awarded as a percentage of average monthly scheme assets during each accounting period, but also noting that those percentages show the returns to investors as a whole and are not indicative of the returns to any individual investor;
- (b) an estimate of the odds of any eligible Bonus Bond winning a prize during the 12 months after the date of the PDS (which may be expressed as a range);
- (c) a statement to the effect that the scheme's governing document requires the manager to manage the prize pool for the scheme so as to ensure that the chance of a Bonus Bond winning a prize is no better than 1 in 9,600; and
- (d) one or more tables containing the following information, in each case for the five most recently completed accounting periods before the date of the PDS:
  - (i) the average amount of Bonus Bonds on issue at the end of each month (assuming that each Bonus Bonds is valued at \$1) ("Average Bonus Bonds on Issue"); and
  - (ii) the average amount of the reserve fund at the end of each month, expressed in dollar terms and as a percentage of Average Bonus Bonds on Issue.

(2) In this clause, **monthly scheme assets** means the average of the scheme assets at the start of the month and the scheme assets at the end of the month.

**16 Exemptions in respect of the *Key risks of this investment section of the KIS***

The manager of the scheme is exempted from clauses 11(1) and (2) of Part 1 of Schedule 5 of the Regulations.

**17 Conditions of exemptions in clause 16**

The exemptions in clause 16 are subject to the conditions that—

- (a) the KIS must include a statement in the following form:

“Investments in managed investment schemes are risky. You should consider whether the degree of uncertainty about [*name of scheme*]’s future performance and returns is suitable for you.”

- (b) statements to the effect (and expressed in the following order) that the most significant risks of investing in the scheme are—
- (i) the investor may not win a prize and therefore not receive any return on his or her investment;
  - (ii) reduced investment returns on the assets of the scheme may result in a smaller prize pool, which will result in fewer or smaller prizes; and
  - (iii) the investor may not receive \$1 back for every Bonus Bond held when they are cashed in.

**18 Exemption in respect of the *What fees will you pay?* section of the KIS**

The manager of the scheme is exempted from clause 12(1) of Part 1 of Schedule 5 of the Regulations.

**19 Condition of exemption in clause 18**

The exemption in clause 18 is subject to the condition that the KIS must include a statement in the following form:

“The table below summarises the fees and expenses that are charged to administer and manage the scheme. These are charged to the scheme.”

**20 Exemption in respect of the *How will your investment be taxed?* section of the KIS**

The manager of the scheme is exempted from clause 13(2) of Part 1 of Schedule 5 of the Regulations.

**21 Condition of exemption in clause 20**

The exemption in clause 20 is subject to the condition that the KIS must include a statement in the following form:

“The scheme is not a portfolio investment entity (PIE).

You do not have to pay income tax on any prizes you win from the scheme.”

**22 Exemption in respect of the *Key features of the scheme* section of the PDS**

The manager of the scheme is exempted from clause 16(1)(d) of Part 1 of Schedule 5 of the Regulations.

**23 Exemption in respect of the *Related party benefits* section of the PDS**

The manager of the scheme is exempted from clause 25 of Part 1 of Schedule 5 of the Regulations.

**24 Condition of exemption in clause 23**

The exemption in clause 23 is subject to the condition that the PDS must include a brief description of the types of transactions that the scheme has entered into with related parties in the 2-year period before the date of the PDS.

**25 Exemption in respect of the *Selected financial information* section of the PDS**

The manager is exempted from clause 27(2) of Part 1 of Schedule 5 of the Regulations.

**26 Condition of exemption in clause 25**

The exemption in clause 25 is subject to the condition that the PDS must include, in each case, in respect of the five most recently completed accounting periods before the date of the PDS, 1 or more tables that contain financial and other information that the manager considers provides a useful indication of—

- (a) the returns of the scheme;
- (b) the odds of an eligible Bonus Bond winning a prize; and
- (c) the level of the reserve fund.

**27 Exemption in respect of the *What are the fees?* section of the PDS**

The manager is exempted from clause 35(4) of Part 1 of Schedule 5 of the Regulations.

**28 Exemption in respect of the *Tax* section of the PDS**

The manager is exempted from clause 37(2) of Part 1 of Schedule 5 of the Regulations.

**29 Condition of exemption in clause 28**

The exemption in clause 28 is subject to the condition that the PDS must include a statement to the effect that investors do not have to pay income tax on any prizes won from the scheme.

*Exemptions relating to specified existing investors and zero balance customers*

**30 Exemptions from the requirement to provide information to specified existing investors and zero balance customers**

- (1) Subject to clause 30(2) of this notice, the manager is exempted, in respect of the scheme, from—
  - (a) clause 30(1) of Schedule 4 of the Act to the extent that clause requires a written notice to be sent to a specified existing investor's last known address;
  - (b) section 50(2) of the Act to the extent that section requires the PDS to be given to a specified existing investor prior to accepting an application from or issuing further Bonus Bonds to them; and
  - (c) section 50(2) of the Act to the extent that section requires the PDS to be given to a zero balance customer prior to accepting an application from or issuing further Bonus Bonds to them.
- (2) The exemption in clause 30(1)(c) of this notice only applies until 30 September 2017.

**31 Conditions of exemptions in clause 30**

The exemptions in clause 30 are subject to the following conditions:

- (a) the manager must ensure that, before the effective date the information required to be sent by written notice under clause 30(1) of Schedule 4 of the Act is—
  - (i) given by public notice; and

- (ii) published on the home page of the website and maintained on the website for a period of not less than three months after the effective date;
- (b) the manager must ensure that a statement to the effect that the PDS may help the investor to make decisions about whether or not to acquire the relevant financial products is included in the public notice given under clause 31(a) of this notice;
- (c) the manager must ensure that a PDS has been lodged before the effective date; and
- (d) the manager must ensure that the written notice that is required to be sent to Bondholders under clause 30 of Schedule 4 of the Act (other than to specified existing investors pursuant to this notice) is also sent to zero balance customers (unless they would also be specified existing investors if they were Bondholders on the specified date).

### **32 Exemption in respect of requirement to send annual report to investors**

The manager is exempted from Regulation 62(1)(b) of the Regulations in respect of specified existing investors.

### **33 Conditions of exemption in clause 32**

- (1) The exemption in clause 32 is subject to the conditions that before or within 3 months after the effective date, the manager must —
  - (a) give the following information by public notice:
    - (i) a statement to the effect that each year the manager will, within 4 months after each balance date of the scheme, prepare an annual report on the affairs of the scheme during the accounting period ending on that date and will publish a link to that annual report on the website within 28 days after the annual report is prepared;
    - (ii) a statement to the effect that Bondholders have a right to receive from the manager free of charge, a copy of the most recent annual report if the Bondholder makes a request to the manager to receive a copy of the annual report;
    - (iii) a statement to the effect that Bondholders may obtain a copy of the annual report by electronic means; and
    - (iv) a statement as to how Bondholders may obtain a copy of the annual report by electronic means (for example, from the address of the offer register); and
  - (b) publish the information referred to in clause 33(1)(a) of this notice on the home page of the website and maintain that information on the website for a period of not less than 3 months from the date of publication.
- (2) The exemption in clause 32 is subject to the condition that the manager must, within 28 days after each annual report is prepared in respect of the scheme in accordance with regulation 62(1)(a) of the Regulations publish a link to the annual report on the home page of the website for the scheme and maintain that information on the website until the next annual report has been prepared and is available on the website.
- (3) The information in clause 33(1)(a) of this notice may be included in the public notice required under clause 31 of this notice.




## *Exemption relating to annual meeting requirement*

### **34 Exemption from requirement to hold an annual meeting**

The manager is exempted from Regulation 92 of the Regulations in respect of the scheme.

Dated at Wellington this *9<sup>th</sup>* day of *November* 2016.



Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

### **Statement of reasons**

This notice, which comes into force on 18 November 2016 and is revoked on 31 October 2021, exempts the manager of the Bonus Bonds Scheme (the **Scheme**), in relation to the Scheme, from—

- certain matters required by Schedule 5 of the Financial Markets Conduct Regulations 2014 (**Regulations**) to be in the Product Disclosure Statement (**PDS**) for the Scheme, subject to certain conditions requiring the inclusion of alternative material where necessary or desirable:
- compliance with clause 30(1) of Schedule 4 of the Financial Markets Conduct Act 2013 (**Act**) and regulation 62(1)(b) of the Regulations to the extent that those provisions require the manager of the Scheme to communicate with existing investors in the Scheme for whom the manager does not hold an email address and who subscribed for their investments more than five years ago (**specified existing investors**), by way of their last known address. Conditions of the exemption require the manager to communicate by way of other means of communication with these investors. This notice also contains a consequential exemption from the requirement to give specified existing investors a copy of the Scheme's PDS before accepting an application or issuing further units in the Scheme to them. The notice also provides for a similar exemption for people who remain as customers of scheme but who are not current bondholders (**zero balance customers**), but only until 30 September 2017:
- the requirement to hold an annual meeting for the Scheme.

#### *Product Disclosure Statement Exemptions*

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

- the nature of interests in the Scheme (**Bonus Bonds**) are such that the PDS requirements need to be tailored to ensure that investors receive meaningful disclosure:
- in particular, instead of earning interest or receiving investment gains, an investor in Bonus Bonds receives the chance to win cash prizes from a prize pool generated from investment returns on the Scheme assets. As a result, and in contrast to other managed investment schemes, the returns to any particular investor in Bonus Bonds will not directly correlate with the financial performance of the scheme, but instead will be largely determined by whether an investor wins a prize, and the amount of that prize. Another unique feature of Bonus Bonds is that, except in exceptional circumstances, the subscription and redemption price of a Bonus Bond is fixed at \$1:

- having regard to these unique features, the FMA is of the view that without the exemptions the PDS for the Scheme would not adequately convey the key information necessary to assist potential investors to make an informed decision as to whether to invest in Bonus Bonds.

The FMA is therefore satisfied that granting the exemptions is necessary or desirable in order to promote one or more of the main or additional purposes of the Act. In particular, the PDS permitted by the exemptions and related conditions promote—

- the confident and informed participation of the manager of the Scheme and investors in the financial markets:
- greater transparency in relation to the Scheme, thereby contributing to the development of fair, efficient, and transparent financial markets:
- accurate and understandable information being provided to investors to assist them to make decisions relating to the Scheme.

The FMA is further satisfied that the PDS exemptions are not broader than is reasonably necessary to address the matters that give rise to the exemptions because the manager of the Scheme is only exempt from a limited number of specified requirements in Schedule 5 of the Financial Markets Conduct Regulations 2014, and the conditions to the exemptions substitute those requirements with more relevant requirements where necessary or desirable.

***Exemptions relating to specified existing investors, zero balance customers, and annual meetings***

The FMA, after satisfying itself as to the matters set out in section 557 of the Act considers that it is appropriate to grant the exemptions relating to specified existing investors zero balance customers, and annual meetings because—

- due to the particular circumstances of the Scheme, information that the Act and Regulations requires the manager to send to investors is unlikely to reach its target audience for a substantial number of investors via the historic contact details held for them by the manager of the Scheme. The conditions of the exemption require the manager of the Scheme to use alternative and, in the circumstances, more effective and economical means for communicating the required information to specified existing investors:
- due to the exemption from clause 30 of schedule 4 of the Act, the manager of the Scheme is unable to rely on the relief provided in clause 31 of Schedule 4 of the Act in respect of specified existing investors (which treats all investors who are sent a notice under clause 30 as having been given a PDS for the purposes of section 50 of the Act). A consequential exemption is therefore required from section 50 of the Act to allow the manager to continue to issue further Bonus Bonds to specified existing investors. Conditions of the exemption require alternative means of disclosure to these investors. The exemptions treat zero balance customers, the same as existing investors, but the exemption from section 50 of the Act only applies until 30 September 2017 in respect of those investors. In particular the conditions to the exemption require that they receive the same disclosure as existing investors:
- specified existing investors and zero balance customers are likely to have an awareness of how the scheme operates including the information required in a PDS regarding the risks, benefits and costs associated with an investment in the scheme. In these circumstances we believe specified existing investors or zero balance customers are unlikely to be materially disadvantaged by not receiving a copy of the PDS prior to making further investments in the Scheme:
- the Scheme offers a unique financial product and does not have the usual characteristics of a closed-ended fund. The scheme is not equity like and investor interests are not akin to ownership interests. In these circumstances an annual meeting would be of little relevance to

investors and participation rates would likely be low. Requiring an annual meeting would also impose significant costs on the scheme which would outweigh any benefits to investors.

The FMA is therefore satisfied that the exemptions relating to specified existing investors, zero balance customers, and annual meetings are necessary or desirable in order to promote one or more of the main purposes of the Act, specifically:—

- to provide for timely, accurate and understandable information to be provided to persons to assist those persons to make decisions relating to financial products or the provision of financial services; and
- to avoid unnecessary compliance costs.

The FMA is further satisfied that the exemptions relating to specified existing investors, zero balance customers, and annual meetings are not broader than is reasonably necessary to address the matters that give rise to the exemptions. Both new investors and pre-transition investors, for whom the manager has an email address or a postal address that is less than five years old and for whom the manager is not on notice that the address is no longer valid, will still be contacted pursuant to the requirements under the Act. New investors in the scheme will also be required to be given a PDS prior to investing in the Scheme.