FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO ~ NEW ZEALAND

Consultation Paper:
Class exemption review

7 December 2012

About this project update and consultation paper

In this paper we provide an update and seek submissions on proposals relating to the review the Financial Markets Authority (FMA, or we) are undertaking on 17 class exemption notices.

14 of these notices are notices on which we have already received and considered submissions. We are now in a position to published advanced proposals for comment on these notices, which extended until 31 March 2013 to enable this further consultation. 3 additional notices have been added to our review because they are due to expire in 2013. We provide proposals for consultation on these additional notices.

Why are we issuing this project update and 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 expiring exemptions from all stakeholders to assist with this review process.

Financial Markets Authority

Level 2
1 Grey Street
WELLINGTON

Level 5, Ernst & Young Building
2 Takutai Square
Britomart
AUCKLAND

Website: www.fma.govt.nz

Ref: 100-002 / # 1006362

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 is an important tool we use to achieve this objective. 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. We carefully consider the costs 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, their advisers and representatives can contact us at any time to discuss inefficiencies or 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 provide an update on, and seek submissions on proposals relating to, the review we are undertaking on 17 class exemption notices.

6. 14 of these notices are notices on which we have previously received and considered submissions. We are now in a position to published advanced proposals for comment. These notices were extended until 31 March 2013 to enable this further consultation.

7. 3 additional notices have been added to our review because they are due to expire during 2013. We have undertaken an initial review and based on this provide proposals for consultation.

8. We discuss FMA's proposals on the notices on which we are seeking submissions in groups categorised by the issues they address.

Appendix 1: Notices relating to Australian issuers

(i) Securities Act (Australian Issuers), SR 2002/314, expires 31.03.13
(ii) Securities Act (Australian Registered Managed Investment Schemes), SR 2008/327, expires 31.09.13

Appendix 2: Notices relating to other overseas issuers

(i) Securities Act (Overseas Companies), SR 2002/299, expires 31.03.13
(ii) Securities Act (Overseas Employee Share Purchase Schemes), SR 2002/329, expires 31.03.13
(iii) Securities Act (Overseas Listed Issuers), SR 2002/326, expires 31.03.13
(iv) Financial Reporting Act (Overseas Companies), SR 2007/275, expires 31.03.13
(v) Financial Reporting Act (Overseas Issuers), SR 2009/2, expires 31.03.13

Appendix 3: Notices relating to deposit takers

(i) Securities Act (Building Societies), SR 2002/319, expires 31.03.13
(ii) Securities Act (Friendly Societies), SR 2011/61, expires 31.03.13
(iii) Securities Act (Financial Institutions), SR 2011/62, expires 31.03.13
(iv) Securities Act (Industrial and Provident Societies), SR 2011/60, expires 31.03.13

Appendix 4: Notices relating to reconstruction of issuers or securities

(i) Securities Act (Renewals and Variations), SR 2002/292, expires 31.03.13
(ii) Securities Act (Takeovers), SR 2011/63, expires 31.03.13
(iii) Securities Act (Rights, Options, and Convertible Securities), SR 2002/318, expires 31.03.13
(iv) Securities Act (Co-operative Companies), SR 2011/59, expires 31.03.13

Appendix 5: Notices relating to externally managed schemes

(i) Securities Act (Externally Managed Group Investment Funds), SR 2003/86, expires 30.04.13
(ii) Securities Act (Externally Managed KiwiSaver Schemes and Superannuation Schemes), SR 2008/116, expires 08.0513

9. Additionally we note that significant issues have been identified with the regulation of the following 3 products:
   (a) Contributory mortgages offered by lawyers
   (b) Debt and participatory securities offered by charitable and religious organisations
   (c) Property investments structured as proportionate ownership schemes

10. We are continuing to develop proposals in relation to the regulation of these products.

11. Further we expect to consult shortly on proposals to improve the Securities Act (Real Property Developments) Exemption Notice 2007 (RPD Notice). This notice provides relief from the usual securities law requirements for securities offered as ancillary features to real estate transactions through which residents in a property development can use communal facilities and be required to contribute to maintenance costs. In contrast to the circumstances of proportionate investment in property, the RPD Notice recognises that while these ancillary interests are securities in terms of the legislation, they are not offered as 'investments' in the conventional sense.

12. We noted in our first consultation paper published in April 2012 that we consider the general policy of the RPD Notice remains appropriate – that these 'securities' are not investments in the conventional sense, and that substantial exemptions from the ordinary conduct and disclosure requirements of the Securities Act and Regulations are appropriate. We also noted that we consider the detailed compliance requirements of the RPD Notice could usefully be simplified. For this reason we proposed a first principles policy review of the notice to determine the extent of conditions appropriate for these exemptions which in substance relate to standard real estate purchases, rather than investments in securities. We are currently finalising some proposals for consultation.

Relevance of upcoming law reform

13. Law reform envisaged by the Financial Markets Conduct Bill may address some of issues currently addressed by these exemptions. However, the content of the new laws is still to be settled. In any event, 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.

14. 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

15. We invite and encourage all stakeholders to make submissions on the notices under review. We are keen to receive feedback on any particular questions raised in relation to each of the notices. Additionally however submissions are welcome on any matter you consider relevant to the exemption.

16. Please provide us with two versions of your submission: a PDF and a word document.

17. 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 that the email contains a submission on the class exemption review, and who the submission is from, eg 'Submission on Class Exemption Review by [submitter's name]'.

18. The deadline for submissions is **14 January 2013**.

19. To complete our review of a particular notice it may be necessary or useful for us to share and discuss a submission with another regulator. In particular we note that all submissions received in relation to notices affecting deposit takers are likely to be shared with the Reserve Bank, and submissions received in relation to the Takeovers Notice with the Takeovers Panel.

20. 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.

21. 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

22. To remain advised of the proposals and progress of review of any particular notice of interest to you:

    (a) when you provide your submissions on the notices of interest to you clearly identify the notices in relation to which 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'.

23. You can also contact Natalie Muir, Manager, Exemptions, for any further information about this review.

Appendix 1: Notices for Australian issuers

Securities Act (Australian Issuers) Exemption Notice 2002

1. This notice (the Australian Issuers Notice) applies to all companies incorporated in Australia, whether or not listed. It also applies to all companies listed, or which have applied for listing, on the Australian Stock Exchange (ASX), including if the company is incorporated in New Zealand but has its primary listing on the ASX.

2. The Australian Issuers Notice allows these Australian issuers, subject to conditions, to use an Australian prospectus for an offer of equity or debt securities in New Zealand. The exemption also allows Australian issuers to use an Australian trustee and trust deed for offers of debt securities in New Zealand. A New Zealand law compliant investment statement remains required.

Submissions sought

3. In June 2008 the Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2008 (MRSO) came into force. In general, the Securities Act and MRSO provide a comprehensive regulatory regime for the offer of securities by Australian issuers in New Zealand. When reviewing the Australian Issuers Notice we sought to identify any exemptions that should be retained where an offer by an Australian issuer is not adequately covered by MRSO or there would be excessive compliance costs in relying on that regulatory regime.

4. For this purpose we particularly sought submissions on any exemptions not available under MRSO where there remains appropriate securities law policy justification for those exemptions. We asked submitters about:

   (a) any circumstances where issuers are not able to rely on MRSO but can rely on the Australian Issuers Notice?

   (b) whether, in view of the policy preference to rely on MRSO where this is possible, there are any exemptions available in the Australian Issuers Notice which should be retained because reliance on MRSO would cause an undue compliance burden in a particular circumstance?

5. We noted that the Australian Issuers Notice enables a broader scope of exemption than available under MRSO in relation to the offer of securities in New Zealand made in the context of some reconstructions undertaken in accordance with the Corporations Act 2001 (Aust). Some offers in the context of reconstructions are not 'regulated offers' for the purposes of MRSO because they do not require a 'disclosure document', 'product disclosure statement' or similar offer document recognised under Australian securities legislation. Accordingly we also specifically sought submissions on any

interest in a class exemption for Australian issuers offering securities in New Zealand in the context of a reconstruction.

Consideration of issues raised in submissions

6. Generally the submissions on the Australian Issuers Notice did not raise any instance of reliance on the Australian Issuers Notice because the issuer was unable to rely on MRSO or where reliance on MRSO would cause an undue compliance burden.

7. The exception was a submission from an Australian company operating similarly to a co-operative company. It noted a preference for reliance on the notice, rather than MRSO. Compliance with MRSO would require compliance with Australian securities laws including for offers made in New Zealand. This would require the issuer to comply with Australian securities law anti-hawking requirements. Whilst in New Zealand there are certain restrictions on door to door sales, there are currently no equivalent anti-hawking laws. The issuer complies with these requirements in relation to its Australian operations, but not currently in relation to its New Zealand operations and would prefer to retain this position. We do not consider this provides good reason to continue the Australian issuers notice. The policy behind the Australian Issuers Notice is recognition of the sufficiency of the Australian regulatory requirements. If any relief is appropriate for an Australian co-operative we consider this would more appropriately be addressed by a separate consideration of the policy relating particularly to anti-hawking requirements as they apply to the company's operations.

8. We did not receive any submissions in support of a general exemption relating to reconstructions by Australian issuers. A number of individual notices have been granted to address these circumstances. This has the advantage of enabling the required disclosures and conduct requirements to be tailored to the circumstances of the offer. In these circumstances we propose to continue to address these situations by individual consideration as the need arises. If a significant number of individual exemptions reveal common circumstances were it is appropriate to provide relief on particular conditions we can further consider class relief.

FMA proposal

9. Our conclusion is that the exemption is redundant. We propose to leave it to expire on 31 March 2012.

Further submissions sought

10. Any additional submissions remain welcome. Given our analysis above, any submission to the effect that the notice remains required and appropriate would need to be supported by clear policy reasons.

Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2008

11. This notice (the ARMIS Notice) was reviewed in 2008 following the introduction of MRSO to determine whether any of the exemptions in it continued to be required and remained appropriate. Prior to that review the notice allowed offers to be made by issuers of Australian registered managed investment schemes to the public in New Zealand with Australian offer documents in place of New Zealand documents. The review identified offers of securities in Australian registered managed investment schemes under distribution reinvestment plans as a circumstance where Australian issuers would not be able to rely on MRSO. This is because these offers are not 'regulated offers' for the purposes of MRSO – they do not need a disclosure document, product disclosure statement or similar offer document under the Australian securities legislation as required by MRSO. Consequently the notice was amended and relief was limited to offers under distributions reinvestment plans.

FMA proposal

12. No significant issues have been raised in relation to the ARMIS Notice since its review in 2008. We consider minor amendments are required to update the notice for direct reference to the Securities Regulations 2009 in place of the revoked Securities Regulations 1983, and remove the redundant transitional provision in clause 8.

Submissions sought

13. We seek submissions on the ARMIS Notice, and particularly on the following matters:

    (a) the extent to which you, or your clients or members, rely on the notice, including information about the number of offers and approximate value of securities offered in reliance on the notice;

    (b) whether you support the renewal of the notice with the minor amendments we propose? What are the reasons for your view?

    (c) if you support the renewal of the notice, do you consider any additional amendments are necessary or would be useful to facilitate the efficient and transparent offer of the securities?

14. In relation to renewal and any amendments proposed please explain your reasons, including:

    (a) why you consider the renewal, and any amendments proposed, are consistent with securities law policy including MRSO and any particular statutory provisions from which the exemption is proposed;

(b) the impact on market participants including in terms of compliance costs;

(c) the impact on investors including in relation to any benefit or detriment to protection of investors interests and information available to investors;

(d) why you consider the exemption is no broader than reasonably necessary to address the matters that gave rise to the need for the exemption;

(e) any effect on competition in the market.

Appendix 2: Notices for other overseas issuers

1. The following notices grant exemptions to overseas issuers from certain requirements under the Securities Act 1978 or Financial Reporting Act 1993 in recognition of the adequacy of the disclosure or financial reporting regimes in foreign jurisdictions:

   - Securities Act (Overseas Companies) Exemption Notice 2002 SR 2002/299;
   - Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 SR 2002/329;
   - Securities Act (Overseas Listed Issuers) Exemption Notice 2002 SR 2002/326;
   - Financial Reporting Act (Overseas Companies) Exemption Notice 2007 SR 2007/275; and
   - Financial Reporting Act (Overseas Issuers) Exemption Notice 2009 SR 2009/2.

2. By way of general summary, the effect of each of these notices is as follows:

   (a) Securities Act (Overseas Companies) Exemption Notice 2002

   This notice (the SA Overseas Companies Notice) provides exemptions for securities offered by overseas companies from most requirements of the Securities Act and Regulations including the prospectus, investment statement, trustee and statutory supervisor requirements. It applies to securities of overseas companies quoted on a stock exchange in the UK, Australia, Canada, the US, Spain or Hong Kong. Offers may only be made to members of the public in New Zealand that are existing security holders in that overseas company, holders of securities in a related or associated overseas company that is a promoter of the offer, or persons in whose favour an offer is renounced.

   The notice also provides these exemptions to offers of securities that vary existing quoted securities of an overseas company; offers of an overseas company's quoted securities in consideration for the acquisition or cancellation of securities of another overseas company or under a capital reduction arrangement.

   The offers must comply with the requirements of the jurisdiction in which the securities are quoted.

   (b) Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002

   This notice (the SA OESPS Notice) allows overseas issuers incorporated and listed in one of a number of recognised jurisdictions to offer securities in New Zealand to employees and directors under an overseas employee share purchase scheme (or associated saving scheme) without a registered

prospectus or investment statement and without complying with trustee or statutory supervisor provisions.

Recognised jurisdictions are Australia, Austria, Canada, Denmark, Finland, France, Germany, Ireland, the Netherlands, Norway, Singapore, South Africa, Sweden, Switzerland, UK and US.

(c) Securities Act (Overseas Listed Issuers) Exemption Notice 2002

This notice (the SA Overseas Listed Issuers Notice) allows issuers from England, Wales, Scotland, Northern Ireland, the US, or any US state to offer their quoted securities in New Zealand using their home prospectus and a New Zealand securities law compliant investment statement. Additionally, for an offer of debt or participatory securities, there is no need to appoint a trustee or statutory supervisor. Exemptions are also given from ongoing obligations relating to register, accounting records, audits and securities certificates. The exemption also extends to offers by the holders of previously allotted quoted securities of an overseas issuer. The securities offered must be quoted on the principal official list of the London, NASDAQ or New York exchanges. The offer must also be open in the home jurisdiction.

(d) Financial Reporting Act (Overseas Companies) Exemption Notice 2007

This notice (the FRA Overseas Companies Notice) exempts the directors of US, UK and Australian issuers who offer securities in New Zealand under the Securities Act (Overseas Companies) Notice or corresponding notices. The directors are given relief from the preparation, content, auditing and filing requirements of the Financial Reporting Act. These exemptions are subject to the condition that the issuer complies with the financial reporting obligations and GAAP in their own jurisdiction. Further information and explanations must be added to the issuer's financial statements where necessary to ensure that those statements present a true and fair view.

(e) Financial Reporting Act (Overseas Issuers) Exemption Notice 2009

This notice (the FRA Overseas Issuers Notice) exempts directors of issuers incorporated in France, Germany, Ireland, the Netherlands, US or UK who offer securities in New Zealand under the SA OESPS Notice, the SA Overseas Listed Issuers Notice, and two other notices both of which relate to particular overseas employee share purchase schemes. Directors are given relief from the preparation, content, auditing and filing requirements of the Financial Reporting Act. Directors must instead register group financial statements in New Zealand that comply with the content and audit requirements of their home jurisdiction.

Submissions sought

3. In our April consultation paper we sought submissions on these notices. In particular we invited submissions on any additional overseas jurisdictions submitters considered should be recognised in these notices and sought information from submitters proposing the addition of any jurisdiction, on a number of matters relevant to the assessment of a jurisdiction.

Submissions received

4. We received 15 submissions on these notices. In general the submissions supported renewal of the notices and confirmed reliance on these notices.

5. Submissions also proposed the recognition of additional jurisdictions in some notices. A general theme was that we align the list of jurisdictions recognised in each of the Financial Reporting Act notices with those in the applicable Securities Act notices. There were also various suggestions such as recognition of OECD countries, countries with major developing markets, our major trading partners, or all European countries. Supporting information was generally not provided on the adequacy of the offering or financial reporting regimes in the jurisdictions proposed to be recognised. Nor was information provided on the extent of likely reliance on exemptions recognising additional jurisdictions.

FMA proposals

6. After reviewing the notices and considering the submissions received we have concluded that the policy basis for each of these notices remains valid and relevant and that, subject to proposals for particular amendments discussed below in relation to each notice, the exemptions should be granted for a further term.

7. We have considered the submissions requesting recognition of further jurisdictions and the matters relevant to assessing whether an additional jurisdiction should be recognised. On the basis of the information we have available we consider some additional jurisdictions should be recognised under the notices – we note these in respect of each of the notices addressed below.

8. Recognition of additional jurisdictions, for which we have not previously assessed the securities law or financial reporting requirements, and for which submitters have not provided supporting information, would require significant additional investigation. We invite any submitters who would like to rely on any of the exemptions in these notices in respect of offers or financial reporting requirements in relation to an additional jurisdiction to contact us. We are happy to consider the addition of further jurisdictions on application supported by the information we require to assess the applications (see details provided in our Consultation Paper published 5 April 2012, which remains available on our website under ‘Laws we enforce’, ‘Policy’, ‘Closed consultations’).

Consultation on issuer exemptions from licensed auditor requirement

9. FMA has also been conducting a review of class exemptions from the Financial Reporting Act in light of the introduction of auditor licensing requirements of the Auditor Regulation Act 2011. On 26 November 2012, FMA released a consultation paper calling for submissions on its proposals in relation to that review: see Consultation Paper: Issuer exemptions from licensed auditor requirement. This paper is available on our website at: 'Laws we enforce', 'Policy', 'Current consultations'. That consultation paper sets out FMA's proposals regarding when Financial Reporting Act exemptions will generally be given to relieve an issuer from using a licensed auditor and specific amendments to existing class notices, including the two Financial Reporting Act notices discussed in this appendix.

10. The proposals in that paper should be considered in addition to the proposals discussed in this paper. We do not address the proposals in both papers. Comments remain welcome on the proposals in that paper.

Further submissions sought

11. Submissions on the proposals in relation to each notice are sought. In the case of the three Securities Act exemptions we attach draft notices reflecting the proposals. Comments are also sought on the drafts.

Securities Act (Overseas Companies) Exemption Notice

12. At **appendix 2A** we attach a marked up version of the notice incorporating the proposed amendments discussed below.

Recognition of further jurisdictions

13. Submissions on the recognition of additional jurisdictions in this notice included:
    - other major trading nations (eg China, Korea and Indonesia)
    - making recognition more consistent (ie why recognise Spain but not Germany, Hong Kong but not Japan)
    - all OECD countries
    - all major developing markets such as Brazil, India, and China or Asian markets such as Singapore or Malaysia
    - all European Union countries beyond simply the UK and Spain
    - ensuring consistency between the jurisdictions recognised in this notice and the Financial Reporting Act (Overseas Companies) Exemption Notice.

14. We propose to recognise Austria as an additional jurisdiction. This can be achieved without significant extra investigation because it was assessed when it was recognised in the OESPS Notice. As noted above, we are happy to consider the addition of further jurisdictions on application.

Offers of 'interim' securities to be exchanged for quoted securities

15. One submission sought amendment to permit the offer of unquoted 'interim' securities, in consideration for the acquisition of the quoted securities of another overseas issuer, where those interim securities will be exchanged on allotment for securities (of that issuer or another issuer) that are quoted. Currently clause 6 requires that securities offered are quoted securities or that an application for quotation has been made and all requirements complied with before the offer is made.

16. We agree this is consistent with the underlying policy of the notice, and propose to add a further exemption in the notice to accommodate this.

Offers of securities that will be quoted on a specified exchange at the time of allotment

17. Another submission sought amendment to allow offers of securities where an application for quotation cannot be made prior to the offer but is made prior to allotment of the securities. This would recognise the different quotation process that applies in London under which shares to be admitted to the UK Official list require an approved prospectus and therefore a listing application cannot be made before the offer is made.

18. Again we consider this is appropriate, and propose to accommodate this providing it is a term of the offer of securities that they will be quoted on a specified exchange at the time of allotment.

Condition that offer complies with laws of jurisdiction in which securities are quoted

19. Generally the exemptions in the notice are conditional on the offer being made in compliance with the laws and other requirements of the jurisdiction in which the relevant securities are quoted. This is not currently the case for the exemption in clause 5 for offers of overseas quoted securities to existing security holders. We consider it is consistent with the policy basis for the notice that this condition should apply to all the exemptions under the notice and propose to amend the notice to provide for this.

Restriction on application of exemptions to convertible securities

20. Currently clause 8 of the notice provides that the exemptions do not apply to securities that are convertible into or can be exchanged for securities of a different issuer or that give the holder a right to subscribe for such securities. We consider this restriction should also apply to the new exemption in clause 6A(3) for overseas quoted securities that are allotted to subscribers in exchange for the 'interim' overseas securities.

21. We also consider that a similar restriction should apply to the exemption in clause 5A for securities that vary overseas quoted securities. This would mean that the exemption would not apply to a security that varies the terms of an existing security to

allow that existing security to be converted into or exchanged for securities of a different issuer or that gives the holder a right to subscribe for such securities.

Other minor amendments

22. Additionally we propose other minor amendments to improve clarity and update the notice including to directly refer to relevant provisions of the Securities Regulations 2009, and update references to an additional overseas companies named in the schedule.

Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice

23. At **appendix 2B** we attach a marked up version of the notice incorporating the proposed amendments discussed below.

Recognition of further jurisdictions

24. Submissions on the recognition of additional jurisdictions in this notice included:
    - other major trading nations (eg China, Korea and Indonesia)
    - Hong Kong
    - ensuring that the jurisdictions recognised in the Financial Reporting Act (Overseas Issuers) Exemption Notice are consistent with the jurisdictions recognised in the notice and in the Securities Act (Overseas Listed Issuers) Exemption Notice.

25. We propose to recognise Hong Kong and Spain as additional jurisdictions. This can be achieved without significant extra investigation because they were previously assessed when they were recognised in the SA Overseas Companies Notice. As noted above, we are happy to consider the addition of further jurisdictions on application.

Condition that subscribers receive information

26. Clause 8 of the notice has a condition requiring that subscribers either receive (i) an English version or translation of certain information on the overseas issuer and the scheme prior to subscription or (ii) a notice that this information is available on the internet or an intranet. We appreciate that in some cases overseas issuers may wish to provide some information directly to subscribers and make other information available on the internet or intranet. We therefore propose to amend this condition to allow overseas issuers flexibility in how they provide information to subscribers in relation to an offer under an employee share purchase plan while ensuring that subscribers get all the information they require to decide whether to invest.

Other minor amendments

27. Additionally we propose other minor amendments to improve clarity and update the notice including to directly refer to relevant provisions of the Securities Regulations 2009, and update references to entities recognised in Schedule 1 as notified to FMA.

Securities Act (Overseas Listed Issuers) Exemption Notice

28. At **appendix 2C** we attach a marked up version of the notice incorporating the proposed amendments discussed below.

Recognition of further jurisdictions

29. Submissions on the recognition of additional jurisdictions included:
    - other major trading nations (eg China, Korea and Indonesia);
    - jurisdictions recognised in the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice; and
    - ensuring that the jurisdictions recognised in the Financial Reporting Act (Overseas Issuers) Exemption Notice are consistent with the jurisdictions recognised in the notice and in the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice.

30. We do not propose at this stage to recognise any additional jurisdictions in this notice. This notice relates to offers of securities made to the general public in New Zealand as opposed to offers to persons who have an existing connection with the overseas company making the offer or who already hold shares in overseas listed issuers. In these circumstances the threshold for recognising additional regimes is higher than for the other notices discussed. We have not received any application, and supporting information, in order to assess any particular additional jurisdiction. As noted above, we are happy to consider the addition of further jurisdictions on application.

Other minor amendments

31. We propose minor amendments to improve clarity and update the notice including to directly refer to relevant provisions of the Securities Regulations 2009, and update references to NZX in place of the New Zealand Stock Exchange.

Financial Reporting Act (Overseas Companies) Exemption Notice

Recognition of further jurisdictions

32. Submissions on the recognition of additional jurisdictions included:
    - other major trading nations eg China, Korea and Indonesia
    - jurisdictions recognised in the notice should be consistent with the Securities Act (Overseas Companies) Exemption Notice

33. We do not propose at this stage to recognise any additional jurisdictions in this notice. We have not received any application, and supporting information, in order to assess any particular additional jurisdiction. As noted above, we are happy to consider the addition of further jurisdictions on application.

Compliance with overseas GAAP

34. Currently the notice requires that the parent and group financial statements of the overseas company comply with overseas GAAP specified in the schedule.

35. Some overseas jurisdictions do not require parent entity financial statements where an issuer is required to prepare group financial statements. In these circumstances we consider it is sufficient if the group financial statements of the overseas company comply with overseas GAAP and the applicable laws of the overseas issuer's home jurisdiction that relate to the preparation, content, auditing and public filing (including any requirements to provide information related to the parent entity).

36. To address this we propose to amend the definition of specified financial statements, and the condition requiring that the financial statements of the overseas issuer comply with overseas legislation and overseas GAAP, consistent with those in the Financial Reporting Act (Overseas Issuer) notice.

Exemptions only available if issuer in home jurisdiction

37. We propose to restrict the exemptions to overseas companies that have allotted securities pursuant to a regulated offer of securities in their jurisdiction of incorporation, and have not redeemed those securities.

38. While overseas issuers must be listed on an exchange in a specified jurisdiction to rely on the Securities Act (Overseas Companies) Exemption Notice, they do not need to be incorporated in that same jurisdiction. Where a company incorporates in one jurisdiction and is listed on an exchange operating in another jurisdiction, it is likely to be regulated as a public issuer in the home jurisdiction of the exchange, but it may not be regulated as an issuer in its jurisdiction of incorporation. Financial Reporting Act class exemptions are generally granted on the basis that the issuer complies with the requirements in its jurisdiction of incorporation.

39. FMA is aware that, like New Zealand, many jurisdictions have significantly more limited financial reporting requirements for most companies that are not regulated as issuers in that jurisdiction, and in some cases audit and public filing requirements are waived all together. FMA has assessed the requirements in the jurisdictions it has included or proposes to include on the basis of the requirements for public issuers. This proposed amendment is designed to ensure exempted companies are public issuers, or subject to the same financial reporting requirements as public issuers, in their place of incorporation where those financial statements are to be used to meet requirements in New Zealand.

40. Where a company is not subject to the financial reporting requirements for issuers in their home country, but is required under another regime to prepare financial statements which it considers should be acceptable to FMA, individual exemptions may be available. In these cases, we would wish to look at the arrangements on a case by case basis.

Other minor amendments

41. Additionally we propose other minor amendments to improve clarity and update the notice including to:
    - make the definition of overseas GAAP consistent with the definition of that term in the Financial Reporting Act (Overseas Issuers) notice
    - update references to overseas legislation in the Schedule
    - ensure that a reference to overseas legislation in the notice also refers to legislation made in replacement for or that corresponds to that legislation (whether or not modified).

Financial Reporting Act (Overseas Issuers) Exemption Notice

Recognition of further jurisdictions

42. We received submissions that the notice should recognise other major trading nations (eg China, Korea and Indonesia) and that the jurisdictions recognised in the notice should be consistent with the Securities Act notices with which it is linked.

43. We propose to recognise Switzerland as an additional jurisdiction on the condition that a Swiss issuer prepares group financial statements that comply with US GAAP or IFRS. We consider this is appropriate in the circumstances that the rules of the Swiss exchange, and Swiss domestic law, recognise these financial reporting requirements for listed issuers. Again, this can be achieved without significant extra investigation because it was previously assessed in response to a previous individual application. As noted above, we are happy to consider the addition of further jurisdictions on application.

Submission on exemption from registering group financial statements in NZ

44. One submitter proposed that listed companies relying on the Securities Act (Overseas Employee Share Purchase Schemes) notice should be exempt from registering financial statements with the Registrar. The submitter noted financial statements are required under that Securities Act notice at the time of offer, and that information is available online from other sources such as stock exchanges. It was noted that once an overseas company is an issuer the obligation to file is indefinite in duration.

45. We do not propose to exempt the financial statement registration requirement. It can be difficult to access overseas companies' financial statements from foreign websites. The Companies Register provides an important reference for FMA and other regulatory agencies on the overseas issuers who are relying on the notice and on their financial position, and registration of these financial statements on an additional registry facility is not a significant burden for issuers to comply with.

Exemptions only available if issuer listed in home jurisdiction

46. Similarly to in the FRA Overseas Companies Notice, we propose to restrict the exemptions to overseas companies that have allotted securities pursuant to a regulated offer of securities in their jurisdiction of incorporation, and have not redeemed those securities.

47. While overseas issuers generally must be listed on an exchange in a specified jurisdiction to rely on the SA Overseas Issuers or SA OESPS Notice, they do not need to be incorporated in that same jurisdiction. This proposed amendment is designed to ensure exempted companies are public issuers, or subject to the same financial reporting requirements as public issuers, in their place of incorporation where those financial statements are to be used to meet requirements in New Zealand.

48. Where a company is not subject to the financial reporting requirements for issuers in their home country, but is required under another regime to prepare financial statements which it considers should be acceptable to FMA, individual exemptions may be available. In these cases, we would wish to look at the arrangements on a case by case basis.

Other minor amendments

49. Additionally we propose other minor amendments to improve clarity and update the notice including to:
    - update references to overseas legislation in the Schedule
    - ensure that a reference to overseas legislation in the notice also refers to legislation made in replacement for or that corresponds to that legislation (whether or not modified).
    - consistently with the FRA Overseas Companies notice, remove the exemption from section 16 in clause 6(1)(a) of the notice which is not required when an exemption is given from section 15 of that Act.

Appendix 3: Notices for deposit takers

1. The following notices grant exemptions from the Securities Act and Regulations to entities that take 'deposits' in various forms from the public or who are otherwise subject to regulation by the Reserve Bank:

   (i) Securities Act (Building Societies) Exemption Notice 2002 SR 2002/319
   (ii) Securities Act (Friendly Societies) Exemption Notice 2011 SR 2011/61
   (iii) Securities Act (Financial Institutions) Exemption Notice 2011 SR 2011/62
   (iv) Securities Act (Industrial and Provident Societies) Exemption Notice 2011 SR 2011/60

2. In our April consultation paper we noted that all notices giving exemptions to deposit takers, and in particular giving any deposit taker an exemption from the trust deed and trustee requirements where these would otherwise apply, required review in light of the new prudential requirements for deposit takers in the Reserve Bank of New Zealand Act 1989 (Reserve Bank Act).

3. We asked for comments on interaction between the notice and the prudential supervisory regime for deposit takers under the Reserve Bank Act. We also invited submissions generally in relation to the notices including on the extent of reliance, on support for their renewal or revocation and on any amendments that might be required. In relation to the Building Societies Notice we asked for submissions on the treatment of debt-like instruments offered by Building Societies.

4. We have consulted with the Reserve Bank in relation to the supervisory regime for deposit takers under the Reserve Bank Act and its implications for the notices. We have also completed our review of these notices in terms of securities law policy.

5. We note below our proposals that have been concluded on following this process. In each case we also attach a draft notice incorporating amendments to give effect to those proposals. We seek comments on both the proposals and the notices.

Securities Act (Building Societies) Exemption Notice 2002

6. This notice (the Building Societies Notice) provides exemptions to allow the different types of building society shares to be treated as either debt or equity securities for the purposes of disclosure to investors rather than as participatory securities. Shares that are in substance debt securities will have a trustee instead of a statutory supervisor. Shares that are in effect equity securities are exempted from the statutory supervisor requirements. The notice also provides exemptions relating to the keeping of registers, the receipt of investment statements and the securities certificate requirements. Other exemptions permit building societies to use a reduced content prospectus, and

proceed with rights issues as if they were companies issuing ordinary shares (with necessary modifications).

7. The notice recognises that the characteristics of building society shares are in effect substantially similar to debt or equity securities.

General proposal

8. We received 7 submissions on this notice. There was general support for renewal of the notice and confirmation that it is relied upon. After reviewing the notice and considering the submissions made we have concluded that the policy basis for the notice remains valid and relevant and that, subject to proposals for amendments discussed below, the exemptions should be granted for a further term.

9. We discuss particular issues raised by submitters, and other issues we have identified, below. We also attach at **appendix 3A** a draft notice to give effect to the amendments proposed.

Electronic delivery of investment statements and securities certificates

10. One submitter proposed changes to facilitate electronic delivery of investment statements and securities certificates:

- amendment to the condition in clause 12 requiring delivery of an investment statement in respect of a continuous issue at least 3 days prior to allotment to reduce the stand down period from 3 working days to one working day where delivery is by electronic means and to clarify that delivery may be by email or by push to an app;
- amendment to the condition in clause 16 which requires delivery of securities certificate to expressly permit delivery via email or notification to an app.

11. We consider a reduced stand down period of 2 days is appropriate where an investment statement is delivered to an electronic address (including a fax number or email address) specified by the subscriber for the purpose. This is consistent with notices requirements under the Financial Advisers Act, and provision in other reviewed exemption notices. We do not believe there is any policy reason to differentiate between investment statements sent by facsimile and email. This reduced stand down period recognises the increased use by issuers and investors of Internet based communications that enable information to be delivered at greater speed.

12. We propose to amend the condition relating to certificate requirements in clause 16, consistent with recent changes to the Unit Trust Certificates and Continuous Debt Issuers notices. This will allow a society to deliver, as an alternative to a certificate, a six monthly statement that the security holder has the right to receive a certificate and how the security holder may obtain the certificate, including by electronic means

(noting that this is consistent with the approach taken in section 209 of the Companies Act with regard to the provision of annual reports to shareholders). This recognises the increased use by issuers and investors of Internet-based communications.

13. We do not propose any amendment to clarify that certificates can be sent electronically. We consider the definition of 'send' in the Securities Act adequately addresses these requirements.

Duplication of exemptions in Continuous Debt Issues Notice

14. It was noted there was some overlap between the exemptions in the notice relating to receipt of investment statements and provision of certificates for continuous debt issues and comparable exemptions under the Securities Act (Continuous Debt Issues) Exemption Notice 2002 that could be addressed by excluding the application of the exemptions in the notice in relation to continuous debt issues.

15. We agree that there may be an overlap in relation to the exemptions available in relation to building society debt securities. However, given the securities certificate exemption in this notice also applies to building society participatory securities we consider there is no harm retaining both exemptions in this notice. Addressing both exemptions available to building societies in one notice, and where market participants are already familiar with it, assists with transparency of the requirements.

Status of building society participatory securities

16. A further submission proposed that the status of participatory securities for building societies should be clarified in legislation and consistency achieved with the treatment of securities of other deposit takers. It was noted that shares in building societies are considered to be debt securities but shares held in an industrial and provident societies are stated to resemble equity securities. It was also noted that legislation amending the Reserve Bank Act will align the treatment of securities between the deposit taker regime and the securities regime.

17. We do not consider changes are required in relation to this point. The exemption notices for building, industrial and provident and friendly societies are tailored according to the particular characteristics and activities of the relevant entity type, the securities they offer and the applicable statutory framework. Achieving consistency would require wider legislative change. However we note that under the Financial Markets Conduct Bill building society and industrial and provident society shares are to be treated as equity securities unless they are, in substance, debt securities.

Minor amendments

18. We propose other minor amendments to directly refer to provisions of the Securities Regulations 2009, update references to designated building societies relying on the notice, and generally to improve clarity of the notice.

Securities Act (Friendly Societies) Exemption Notice 2011

19. This notice exempts friendly societies that are registered under the Friendly Societies and Credit Unions Act 1982 and are named in the Schedule to the notice from provisions of the Securities Act and the Regulations in respect of participatory securities and life insurance policies. The notice takes account of the fact that a number of exempted requirements are substantially duplicated in the Friendly Societies and Credit Unions Act and the policy basis that giving money to a friendly society is not an investment decision per se but is made in the interest of providing for the future wellbeing of a person's family.

20. We note that although friendly societies may fall under Reserve Bank supervision by reason of being a licensed insurer they are not deposit takers subject to the prudential supervision regime under the Reserve Bank Act.

Submissions received

21. There were 3 submissions on this notice. The societies named in the schedule to the notice confirmed their continuing reliance on the notice and support for its renewal.

22. One submission proposed that a full review is undertaken of the issuer requirements between the Friendly Societies and Credit Unions Act and the Securities Act (post-exemption notice application) for consistency with other deposit takers. We consider that the exemption notices for friendly societies, industrial and provident societies and building societies are tailored according to the particular characteristics and activities of the entity concerned, the securities it issues and the statutory framework that applies to it.

General proposal

23. After reviewing the notice and considering the submissions made we consider the policy basis for the notice remains valid and relevant and that, subject to proposals for amendments discussed below, the exemptions should be granted for a further term.

24. We discuss particular issues we have identified, below. We also attach at **appendix 3B** a draft notice to give effect to the amendments proposed.

Electronic delivery of securities certificates

25. We propose changes should be made to the certificate requirements in the notice consistent with those discussed above in relation to the Building Societies Notice.

Securities Act (Financial Institutions) Exemption Notice 2011

26. This notice (the Financial Institutions Notice) exempts 'financial institutions' on conditions from certain debt prospectus content requirements in the Securities Regulations relating to financial statements. The exemptions allow financial institutions with non-guaranteeing subsidiaries not exceeding 5% of the total assets, equity, and profit or loss after taxation of the group to use the financial statements for the whole of the financial institution group (including non-guaranteeing subsidiaries) for a prospectus for debt securities.

27. Consequential exemptions provide relief from provisions of the Securities Act that define the life of the prospectus (by reference to the date of the financial statements contained or referred to in the prospectus) and from provisions of the Securities Act that specify the financial statements that must accompany a directors' certificate extending the life of a prospectus. The exemptions tie these requirements to the financial statements for the whole of the financial institution group.

Submissions received

28. We received 5 submissions on the Financial Institutions Notice. There was general support for renewal and confirmation that it is relied upon.

General proposal

29. After reviewing the Financial Institutions Notice and considering the submissions made we consider that the policy basis for the notice remains valid and relevant and that, subject to proposals for amendments discussed below, the exemptions should be granted for a further term.

30. We discuss particular issues raised by submitters, and other issues we have identified, below. We also attach at **appendix 3C** a draft notice to give effect to the amendments proposed.

Definition of 'financial institution' able to rely on the notice

31. 'Financial institution' is defined as having the same meaning as in **appendix E** of NZ IFRS 7. Appendix E contains additional New Zealand specific disclosure requirements for certain entities. One of the reasons justifying the exemption is the requirement to comply with these additional disclosure requirements.

32. The definition in appendix E was however amended in March 2011 to change the types of entities covered from 'financial institutions' to 'deposit takers' as defined in the Reserve Bank Act. We propose therefore to align the application of the Financial Institutions Notice to apply to these entities to which the **appendix E** additional disclosure requirements apply.

33. The name of the Financial Institutions Notice would also be changed in alignment with this to the 'Deposit Takers' notice.

Advertising exemption

34. One submission suggested the Financial Institutions Notice should also exempt financial institutions with non-guaranteeing subsidiaries not exceeding 5% of the total assets, equity, and profit or loss after taxation of the group from the restrictions in regulation 26 the Securities Regulations on making statements in advertisements in relation to assets.

35. We propose to grant an exemption from these advertising restrictions on conditions that a financial institution complies with the requirements of regulation 26 as if the references to borrowing group or group were references to the whole of the financial institution group, and that the advertisement contains statements explaining the implications.

On request information exemption

36. We consider a consequential exemption is required from the obligation in section 54B(1) of the Act to provide information to security holders when requested. This will allow a financial institution to provide financial statements for the financial institution group rather than those for the borrowing group. A condition will require that an explanatory statement accompanies the financial statements.

Securities Act (Industrial and Provident Societies) Exemption Notice 2011

37. This notice (the Industrial and Provident Societies Notice) applies to societies registered under the Industrial and Provident Societies Act 1908 and named in the schedule to the notice who offer securities to members of the society or persons who will be members of the society after allotment.

38. For participatory securities (ie shares issued by a society under the Industrial and Provident Societies Act) the Industrial and Provident Societies Notice permits a reduced content evergreen prospectus and the information required to be provided is as if the securities were equity securities. It also provides exemptions on conditions from the statutory supervisor and deed of participation requirements and from the securities certificate requirements. These exemptions recognise that although shares in an industrial and provident society are technically participatory securities, in practice they more resemble equity.

39. For debt securities (which are amounts owing by a society to a member of that society that are credited to the member's account and are either calculated from the purchases of goods or services made by the member, or are from the society's earnings where the total amount to be credited to all members has been determined by the society's general meeting) the Industrial and Provident Societies Notice permits a

reduced content evergreen prospectus. It also provides exemptions on conditions from the securities certificate requirements.

40. The reduced disclosure requirements and certificate exemptions recognise the nature of the securities, the regularity of the issues, and relationship subscribers have with the issuer.

Submissions received

41. Four submissions were received on the Industrial and Provident Societies Notice. There was also confirmation that the notice is relied upon by all industrial and provident societies currently recognised in the schedule to the notice.

General proposal

42. After reviewing the Industrial and Provident Societies Notice and considering the submissions made we consider that the policy basis for the notice remains valid and relevant and that, subject to proposals for amendments discussed below, the exemptions should be granted for a further term.

43. We discuss particular issues raised by submitters, and other issues we have identified, below. We attach at **appendix 3D** a draft notice to give effect to the amendments proposed.

Comments on nature of securities

44. One submission called for clarification in respect of the securities provided for under the Industrial and Provident Societies Notice. It noted that shares held in building societies are considered to be debt securities whereas shares held in an industrial and provident society are stated to resemble equity securities. It suggested that the status of participatory securities for industrial and provident societies should be clarified in conjunction with other deposit takers and provided for in the legislation for the avoidance of doubt. It also submitted that these organisations are seen as financial service providers and the issuer requirements applying to them should be reviewed for consistency with other deposit takers such as building societies and credit unions.

45. In our view the Industrial and Provident Societies Notice is tailored to take account of the particular characteristics and activities of industrial and provident societies, the securities they issue and the statutory framework that applies. Achieving consistency of treatment with other entities such as building societies and friendly societies would require changes to be made to the wider legislation affecting each entity and this is beyond the scope of this review. We note that under the Financial Markets Conduct Bill building society and industrial and provident society shares will be treated as equity securities unless they are in substance debt securities.

Material transactions

46. The Industrial and Provident Societies Notice (like the Co-operative Companies notice) provides that, except upon an initial public offering of participatory securities or debt securities, an industrial and provident society is exempt from compliance with provisions in the Regulations requiring disclosure in the prospectus of all material matters relating to the offer. However, where an investment statement is distributed by, or on behalf of, a society more than nine months after the date of the most recent statement of financial position it must contain, or attach, a directors' statement that contains particulars of such material matters.

47. We consider that the Industrial and Provident Societies Notice, in its present form, works well where the industrial and provident society is operating in 'business as usual' mode. However, we do not consider there is justification for this limited disclosure where a society is proposing to undertake a significant transaction (for example an acquisition, disposition or capital restructuring) other than in the case of an IPO. To address this concern, we propose two changes to the notice in line with similar changes being proposed in relation to the Co-operative Companies notice:

(a) The notice currently does not require disclosure of clause 12 Schedule 1, or clause 9 Schedule 2 information relating to significant acquisitions which have been or are proposed to be undertaken. We proposed an amendment to provide that if the society acquired a business or subsidiary after the date of its latest statement of financial position or intends to acquire a business or a subsidiary where the consideration exceeds 20% of the society's total tangible assets, the prospectus must contain the information usually required by clause 12(3) of Schedule 1 or clause 9(3) of Schedule 2 (as the case may be) in relation to the acquisition;

(b) Secondly, we propose that where the society is proposing a major transaction (as defined in the Companies Act 1993) or a transaction or series of related transactions which would change the essential nature of the society's business, the society would be required to disclose:

(i) the parties to the transaction;

(ii) the key terms of the transactions (including the consideration payable by the society or its subsidiary); and

(iii) further information and explanation as is necessary to enable a prospective member to understand the nature and implications for the society and its members of the transaction.

We propose that the relevant information should be disclosed in either:

(i) the industrial and provident society's investment statement; or

(ii) a directors' statement signed by each 'director' of the industrial and provident society (or their agents authorised in writing) which is attached to the investment statement.

Certification provisions

48. We also propose an amendment to the condition relating to securities certificates reflecting recent changes to the Unit Trust Certificates and Continuous Debt Issuers notices. This change followed a call for recognition of electronic delivery of certificates.

49. Where there has been a change in the securities held by a member we propose to increase the requirement to provide an update to the relevant member to a minimum of six monthly. This is consistent with the reporting threshold required of other continuous issuers. Given the issue of securities by industrial and provident societies can however be sporadic, we do however propose to retain the exemption from the requirement to provide updated information where the holding of the member has not changed at all since the last update.

50. Consistent with the changes to certificates required from other continuous issuers we also propose to allow a society to deliver, as an alternative to delivering the certificate, a six monthly statement that the member has the right to receive the certificate and how the member may obtain such certificate, including by electronic means (noting that this is consistent with the approach taken in section 209 of the Companies Act with regard to the provision of annual reports to shareholders). This recognises the increased use by issuers and investors of Internet-based communications.

Appendix 4: Notices relating to reconstructions of issuers or securities

1. The following notices broadly relate to reconstructions of the securities or the issuer to which they relate:
   - Securities Act (Renewals and Variations) Exemption Notice 2002, SR 2002/292
   - Securities Act (Takeovers) Exemption Notice 2011, SR 2011/63
   - Securities Act (Rights, Options and Convertible Securities) Exemption Notice 2002, SR 2002/318
   - Securities Act (Co-operative Companies) Exemption Notice 2002, SR 2002/403

2. In our April consultation paper we noted review is required to ensure the requirements in the exemption notices appropriately support the primary regime requirements - overall ensuring clarity and conciseness of the required information package in a manner consistent with securities law policy.

3. Further, we noted one aspect of the Securities Act (Co-operative Companies) Exemption Notice 2011 raises a related issue - namely the appropriate information requirements for co-operative companies proposing an IPO that involves the purchase of another business. The co-operative companies notice provides for a reduced content prospectus. We proposed to review the notice to ensure appropriate information disclosure is required about significant assets or subsidiaries proposed to be acquired.

4. We sought comments generally on these notices, and particularly on these issues. We considered the comments, and reviewed the notices further. In July we published a further consultation paper with detailed proposals on each of the notices. This remains available on our website at 'Laws we enforce', 'Policy', 'Closed consultations'.

5. We have considered the further submissions received. Given the level of technical detail and change proposed we considered it would be useful for market participants to have an opportunity to review and submit on the further developed proposals and draft notices before we finalise our proposals and grant new exemptions.

6. The proposals, and draft notices reflecting them, are provided below. We welcome submissions on the proposals and notices.

Securities Act (Renewals and Variations) Exemption Notice 2002

7. Under the Act, the variation of the terms or conditions of an existing security is treated as a new security. In the absence of exemptions granted by FMA, the variation requires compliance with the full prospectus, investment statement and other requirements applicable to an issue of securities to the public.

8. This notice (the Renewals and Variations Notice) provides:

   (a) an exemption from the requirement to appoint a trustee and have a compliant trust deed in respect of a variation of a debt security when compliance with these requirements was not necessary in respect of the original offer of the existing security; and

   (b) exemptions from the requirements in the Act:

      (i) to have a registered prospectus;
      (ii) for the subscriber to have received an investment statement or a simplified disclosure prospectus; and
      (iii) for the issuer to send a security or certificate to the subscriber.

      in respect of the variation of the terms and conditions of an existing security unless the variation:

      (i) extends the time for payment of money due, or to become due, under the existing security by the issuer; or
      (ii) changes the issuer of the existing security.

<u>Change of manager of collective investment scheme</u>

9. In the submissions we received in response to our April consultation, questions were raised surrounding whether a change of manager of a collective investment scheme amounts to a variation of the existing security. We therefore sought to clarify this in our July consultation. We sought comments on our view that, where the change of manager of a participatory security or unit trust is expressly permitted by, and undertaken in accordance with, the applicable trust deed or scheme documentation, the change of manager is not a variation of the terms or conditions of the existing security. Consequently, there is no 'offer' of securities – and therefore no reliance on the Notice is necessary in order to effect the change of manager.

10. Conversely, where the change of manager of a participatory security or unit trust is not expressly permitted by, and is not undertaken in accordance with, the applicable trust deed or scheme documentation, it is likely to be a variation of the terms and conditions of the existing security - so an offer of securities is likely to have occurred. It is generally appropriate policy for investors to have the full protection and disclosure required by the Act and Regulations, and the class exemption does not address this situation. (Individual exemptions could be considered if merited in a particular case.)

11. Three submissions were received in relation to the Renewals and Variations Notice. Two of these concurred with FMA's proposal and the other recorded that it had no comments.

Additional exemption for statutory supervisor

12. In response to questions raised from the April consultation, submissions were also sought in the July consultation in respect of an amendment to the Renewals and Variations Notice to exempt compliance with the requirements for appointment of a statutory supervisor and register a deed of participation where compliance with those requirements was not necessary in respect of the original offer of the existing security

13. Those who submitted concurred with the proposed changes.

FMA proposal

14. We propose to amend the Renewals and Variations Notice to exempt compliance with the requirements for appointment of a statutory supervisor and registration of a deed of participation in relation to the variation of a participatory security where compliance with those requirements was not necessary in respect of the original offer of the existing security.

15. The Act currently requires appointment of a statutory supervisor and registration of a deed of participation with respect to variation of a participatory security even if no statutory supervisor or deed of participation was required for the original offer of the existing participatory security. There is no policy difference between the requirement for a trustee and a trust deed in the context of a debt security (in respect of which an exemption is provided in the Renewals and Variations Notice) and a statutory supervisor and deed of participation in the context of a participatory security.

16. A draft copy of the operative provisions of the Renewals and Variations Notice, with proposed changes to give effect to our proposals, is attached at **appendix 4A**.

Securities Act (Takeovers) Exemption Notice 2002

17. Where there is a takeover bid under the Takeovers Code involving an offer of equity or debt securities or units as all, or part, of the consideration, the existing notice (the Takeovers Notice) exempts an issuer from some disclosure requirements imposed by the Regulations. The intention of the notice is to reduce the overlap between disclosure requirements of the Act, the Regulations and the Takeovers Code.

18. The Takeovers Notice divides securities offered as consideration for a takeover bid into two classes: securities that have been quoted on NZX for at least 12 months ('quoted securities') and other securities ('unquoted securities'). The nature of the exemptions granted under the existing notice depends upon whether the securities being offered as consideration in the takeover bid are quoted securities or unquoted securities.

Submissions and initial proposals

19. In response to FMA's consultation paper there was some support for the retention of this notice.

20. The Takeovers Panel however advised that its observation was that with the introduction of the SDP regime, the provisions of the existing notice dealing with the offer of quoted securities are no longer being relied on, instead bidders were registering an SDP. This being the case, the exemptions for quoted securities appeared redundant.

21. On this basis we proposed in our further consultation paper that the provisions dealing with the offer of quoted securities be removed from the Takeovers Notice. No objections were received to this proposal.

Proposals for immediate amendments to notice

22. We continue to propose that the Takeovers Notice retain the exemption for offers of unquoted securities in substantially the same form as provided in the current notice, but discontinues the exemption for quoted securities. We will work to give effect to this on or before the expiry of the current notice on 31 March 2013.

23. We do not attach a draft notice reflecting this amendment, in the instance it simply discontinues the provisions of the notice relating to quoted securities. Do contact us if you have any questions about how this would be given effect to.

Further investigation of exemptions for quoted securities

24. Further discussions with the Takeovers Panel however raise a question as to whether additional exemptions for quoted securities may be appropriate. We welcome feedback on our further questions to assist with our consideration of this issue. These questions relate to the Takeovers Panel's observation that there are very limited takeover offers offering securities, rather than cash, in consideration for the securities of the target company (scrip offers).

25. We appreciate this is likely largely to be because cash is usually the most attractive consideration a bidder can offer existing security holders. However we are keen to investigate if there are any unnecessary regulatory compliance obligations deterring scrip offers.

26. In considering the compliance issues faced by bidders considering scrip offers we appreciate that the use of the SDP does substantially reduce the compliance requirements that must be met by a bidder making a takeover offer. However we also appreciate that there may remain some procedural difficulties in using an SDP in conjunction with a takeover offer.

27. We seek comments on the extent (if any) to which the need to submit an SDP for registration, get the SDP registered prior to sending the takeover notice to the target company, NZX, and Takeovers Panel, and then make provision for the 5 day review period during which securities can be offered but not allotted may raise material procedural delays or difficulties with a loss of confidentiality prior to what the bidder may prefer to be the first publication of the offer.

28. Information about the prospectus registration requirements is available on FMA's website at: 'Help me comply', 'Issuers', 'Prospectus registration'. In particular we note section 42 requires any prospectus submitted to the Registrar to be registered promptly unless the Registrar has reason to refuse it in terms of section 42 of the Securities Act. Immediately after registration the Registrar notifies FMA of the registration. FMA then has an opportunity to review the prospectus in accordance with the requirements of section 43C and 43D of the Securities Act. Generally no allotments may be made for 5 working days, or such later date as specified by the FMA by notice to the issuer.

29. Particular issues we ask submitters to address to assist us to assess whether an exemption may assist, and if so, the nature of any exemption include:

    (a) any reasons submitters see for the low level of scrip offers;

    (b) the nature and extent of any procedural difficulties encountered, or foreseen, by issuers and their advisers in using an SDP in conjunction with a takeover offer;

    (c) whether, in particular, it is anticipated that the requirements around SDP registration prior to sending the takeover notice to the target company, NZX, and Takeovers Panel, and the 5 day review period may raise difficulties for scrip offers;

    (d) if submitters see difficulties with the registration process or use of the SDP, proposals on what exemptions and conditions submitters would consider workable and appropriate.

Securities Act (Rights, Options and Convertible Securities) Exemption Notice 2002

30. The notice (the ROCS Notice) provides exemptions for convertible securities and rights offers.

31. Where an offer of convertible securities is made in a prospectus containing full information about the new securities (ie the securities that will be allotted on exercise of the convertible security) the issuer does not need to register a separate prospectus for the allotment of the new securities. The exemption applies where either the issuer of both the convertible and the new securities is the same person, or the issuer of the convertible is a wholly-owned subsidiary of the issuer of the new securities (who must be a listed issuer) and both the convertible and the new securities are listed on NZX.

The notice also provides an exemption from the requirement to have a new investment statement for the new securities upon conversion of the convertibles.

32. Issuers of equity securities are also exempted from the investment statement requirements for rights offers made in a short form prospectus where the offer is renounced in favour of another person. The person in whose favour the right was renounced does not have to receive an investment statement before subscribing.

Submissions sought

33. Following our April consultation, a number of submissions received identified ways in which the notice could be improved. Therefore, in our July consultation we sought submissions on whether:

(a) the ROCS Notice should apply when convertible securities and new securities issued upon conversion of convertible securities are offered in an SDP - in the same manner as when they are offered in an investment statement;

(b) amendments are made to the notice so that, in the context of the issuing of new securities under an IPO, it is sufficient that the equity securities or units of the issuer are the subject of an application for quotation at the time that the convertible securities are offered and allotted (rather than having to be quoted);

(c) the pre-conversion statement regime should be able to be used by issuers in relation to their allotment of new securities upon conversion of convertible securities offered prior to 21 December 2007, even though the investment statement in relation to those securities did not contain the required warning statements and a notification about the giving of a pre-conversion statement prior to conversion (which are both required to be contained in an investment statement issued after that date);

(d) the notice should be amended to deal more appropriately with convertible securities which can be converted at any time prior to their expiry or maturity rather than having a defined exercise period.

Consideration of submissions

34. We received four submissions, all of which supported the changes to the ROCS Notice. One of the submissions proposed an extension of the notice to accommodate a convertible security that is offered in an investment statement by a registered bank. This is addressed below.

FMA proposal

35. After further review of the notice, and consideration of the submissions, we propose to renew the ROCS Notice upon the same terms as the existing ROCS Notice, but with amendments to:

    (a) Align the notice fully with the simplified disclosure prospectus (SDP) regime provided for in the Act and Regulations so that the notice applies equally to offers of convertible securities and new securities made in investment statements as to those made in SDPs;

    (b) Facilitate the issue of convertible securities at the time of an initial public offering;

    (c) Permit use of the pre-conversion statement regime provided for in relation to convertible securities issued prior to 21 December 2007;

    (d) Operate effectively in relation to convertible securities that are exercisable at any time prior to expiry or maturity rather than having a defined exercise period; and

    (e) Update the description of the financial statements required to be made available and also update the manner in which those financial statements may be made available to reflect recent changes to the Companies Act 1983 and the NZX Listing Rules.

36. We discuss these proposed amendments in further detail below. We also attach at **appendix 4B** a notice reflecting these proposed amendments.

Use of a Simplified Disclosure Prospectus

37. We propose that the ROCS Notice is updated to align fully with the SDP regime so that the exemptions in the ROCS Notice apply equally when the convertible securities and the new securities to be offered upon conversion are offered in an SDP - as when they are offered in an investment statement.

38. The ROCS Notice currently provides an exemption in certain circumstances from the requirement for a registered prospectus and receipt by the holder of convertible securities of an investment statement in respect of the new securities to be issued upon conversion of the convertible securities. We therefore propose that a similar exemption is granted where an offer of convertible securities and associated new securities is made in an SDP.

39. Given that the conversion of a convertible security frequently occurs some considerable time after the convertible security was initially issued, the ROCS Notice also provides an exemption from the prohibition in the Act on allotment of securities after the original investment statement becomes misleading. Investors are, however, protected by the pre-conversion statement regime in the notice. This requires that:

(a) the investment statement relating to both the convertible securities and the new securities contains certain 'warning' statements and informs investors that a pre-conversion statement containing specified information will be provided to the market prior to the earliest date on which the election to convert may be made; and

(b) the pre-conversion statement must be made to the market between 5 and 10 working days prior to the earliest date on which the election to convert may be made.

40. This also prohibits the allotment of the new securities where, as a consequence of events after the giving of the pre-conversion statement, the investment statement taken together with the pre-conversion statement is known by the issuer or any of its directors to be false or misleading by reason of failing to refer, or give proper emphasis to, adverse circumstances whenever those adverse circumstances occurred. We propose that similar exemptions, granted on similar conditions, are appropriate in relation to the allotment of new securities offered in an SDP after the SDP has become misleading.

41. In addition, as an SDP may contain financial statements and conversion of the convertible securities offered under the SDP may occur more than 9 months after the date of the financial statements (or, if interim financial statements are included in the SDP, more than 6 months after the date of those interim financial statements), we propose that an exemption from section 37A(1)(c) (which would otherwise prohibit the allotment of the new securities upon exercise or conversion of the convertible securities after those dates) is also required in relation to an offer of convertible securities and associated new securities in an SDP. The terms of the ROCS Notice already require that before allotment of the new security and before the exercise of any convertible security, updated financial statements (and, where applicable, interim financial statements) be provided to the holder of the convertible securities.

<u>Issue of convertible securities in an initial public offering</u>

42. The ROCS Notice requires that where the issuer of the convertible securities is a wholly owned subsidiary of the issuer of the new securities, in order to gain the benefit of the exemptions from the requirement to have a prospectus in respect of the new securities to be issued upon conversion of a convertible security and, in the case of convertible securities issued before 1 October 1997, from the requirement that the subscriber has received an investment statement in respect of the new securities, (among other things) equity securities or units (as the case may be) issued by the issuer of the new security must be quoted on a specified securities market both at the time of the offer and allotment of the convertible security and at the time of offer and allotment of the new security.

43. However, where convertible securities are issued in an initial public offering, equity securities or units issued by the issuer of the associated new securities are unlikely to

be quoted on a specified securities market at time of the offer and allotment of the convertible security. Because an application for quotation of the new securities or units may have been made at that time we propose that the conditions of the ROCS Notice are amended so that it is sufficient that equity securities or units of the issuer of the new securities are the subject of an application for quotation at the time at which the convertible securities are offered and allotted and those equity securities and units are quoted at the time of offer and allotment of the new security.

Use of pre-conversion statement regime in relation to convertible securities issued prior to 21 December 2007

44. As noted above, the ROCS Notice provides an exemption from the prohibition contained in the Act on allotment after a prospectus or investment statement has become misleading. However, in order to enjoy the benefit of this exemption, the ROCS Notice requires compliance with the pre-conversion statement regime.

45. Investment statements issued prior to 21 December 2007 (being the date on which the pre-conversion statement regime took effect) for convertible securities and associated new securities do not contain the necessary warning statements or inform investors about the making of a pre-conversion statement. Consequently, issuers who offered convertible securities prior to 21 December 2007 are currently unable to rely on the exemption from the prohibition on allotment after the prospectus or investment statement has become misleading.

46. We propose that issuers which offered convertible securities prior to 21 December 2007 should be entitled to the benefit of the exemption from section 37A(1)(b) (despite not including the prescribed warning statements in their investment statement and/or a notification that a pre-conversion statement would be issued) provided that they meet all other applicable requirements of the ROCS Notice, including the requirement for a pre-conversion statement to be given prior to conversion of the securities.

47. In our view, the issuers and holders of convertible securities issued prior to the introduction of the pre-conversion statement regime should not be prejudiced in their ability to enjoy the benefit of the ROCS Notice because their investment statement was issued before the pre-conversion statement regime was introduced and therefore does not include the required warning statements and a notification that a pre-conversion statement will be issued.

48. We propose that the ROCS Notice is amended to enable issuers which issued convertible securities prior to 21 December 2007 to rely on the exemption from the restriction on allotment after a prospectus or investment statement has become misleading provided they meet all other applicable requirements of the ROCS Notice, including the requirement for a pre-conversion statement to be given prior to conversion of the securities.

Open exercise period for convertible securities

49. Following our further consultation it is apparent that whilst the pre-conversion statement regime (specifically the requirement that the pre-conversion statement be given between 5 and 10 working days before the earliest date upon which the convertible security can be exercised or converted) works for convertible securities that have an election period shortly before maturity or which arises on a specified date or on expiry of a specified period (often shortly before expiry of the convertible security), the notice does not work well for convertible securities that are exercisable at any time prior to maturity or expiry, as it is unclear when a pre-conversion statement should be given. It would also seem odd if a pre-conversion statement were to be given immediately following issue of the convertible security, although this is conceivably possible.

50. Accordingly we propose that the ROCS Notice is amended to distinguish between the two types of convertible securities. Where the convertible securities can only be exercised or converted in a defined period or after a certain date, a pre-conversion statement must continue to be given between 5 and 10 working days before the earliest date on which an election to convert may be made. However, where the convertible securities are exercisable or convertible at any time, we propose that the time for giving a pre-conversion statement should be at the issuer's discretion. However, the issuer will not be permitted to allot securities where the pre-conversion statement has not been given at the time that the election to convert is made.

51. An issuer will not be required to issue periodic pre-conversion statements (although may do so if it chooses). However, an issuer will be prohibited by the terms of the ROCS Notice from allotting shares where, as a consequence of events after the giving of the pre-conversion statement, the investment statement or SDP (as the case may be) taken together with the latest pre-conversion statement is known by the issuer or any of its directors to be false or misleading by reason of failing to refer, or give proper emphasis to, adverse circumstances whenever those adverse circumstances occurred.

Technical changes

52. Finally we propose some technical changes to the notice to update it to take account of other recent regulatory changes, including the manner in which financial statements may be made available to security holders under the Companies Act 1993 and the NZX Listing Rules.

Exemption for convertible securities issued by registered banks

53. We understand that next year new capital adequacy requirements applying to registered banks will take effect to enable their compliance with Basel III requirements. The Reserve Bank is shortly to publish the detail of these new capital adequacy requirements. As a general point we understand that the Reserve Bank intends to

apply Basel III by requiring certain registered bank regulatory capital iinstruments to either be written off or automatically converted to equity upon specified trigger events (essentially being non-viability).

54. We are currently considering, and consulting with the Reserve Bank, on what exemptions may be necessary and appropriate to reduce securities law regulatory compliance requirements in these circumstances.

55. We understand that registered banks are unlikely to be able to rely on the ROCS Notice. Rather than amend the ROCS Notice our initial view is that the special circumstances relating to these securities, the conversion obligations, and registered banks' disclosure obligations, means that an exemption particularly tailored to registered banks is likely to be appropriate.

56. We are interested in hearing from submitters on proposed exemptions and conditions.

Securities Act (Co-operative Companies) Exemption Notice 2011

57. This notice (the Co-operative Companies Notice) applies to all co-operative companies registered under Part 2 or Part 3 of the Co-operative Companies Act 1996 offering securities to persons who are, or are to become, transacting shareholders of the company concerned. A 'transacting shareholder' is essentially a person who supplies goods or services to the co-operative, acquires goods or services from the co-operative or enters into other commercial transactions with the co-operative.

58. Co-operative companies have traditionally been accorded different legal status and treatment from ordinary companies. This is based on the premise that co-operative companies operate on a different basis to ordinary companies in that they are owned or substantially owned by those using the company's services, and their principal business is the provision of services to members. Shareholders in co-operative companies tend to treat shareholding as an incident of doing business with the co-operative, or the means by which they can access the benefits of membership. Co-operative shares are often issued at nominal value, which precludes the possibility of capital gain. In the case of dairy co-operatives, it is compulsory for suppliers to apply for shares.

59. This exemption recognises the special nature of co-operative companies by exempting them, when offering securities to transacting shareholders, from many of the disclosure requirements in the Act and Regulations. Nevertheless, there is still an investment decision to be made and securities law policy requires that investors and prospective investors receive material information in a timely fashion. This exemption is intended to enable co-operative companies to meet the requirements of the law in a cost effective manner that is appropriate to the nature of their business.

Submissions sought

60. In our April consultation we particularly invited comment on the appropriate information requirements for co-operative companies proposing an IPO which involves the purchase of another business. We noted that the notice provides for a reduced content prospectus but were keen to ensure that appropriate information is disclosed regarding the acquisition of significant assets or subsidiaries.

61. We received one submission on the notice from the New Zealand Cooperatives Association which was generally supportive of the notice but noted that there was scope for improvement in the information that is disclosed to prospective members in the investment statement.

62. In our July 2012 consultation paper we noted that we considered that the Co-operative Companies Notice works well where the co-operative company is operating in 'business as usual' mode. However, where a co-operative company is proposing to undertake a significant transaction (for example an acquisition, disposition or capital restructuring), this may not need to be disclosed to prospective investors prior to them subscribing for securities in the co-operative company. We noted that this may be a matter of concern.

63. To address this, we proposed that the notice was amended to:

(a) provide that if the co-operative company (or any of its subsidiaries) acquired a business or subsidiary after the date of its latest statement of financial position or intends to acquire a business or subsidiary where the consideration exceeds 20% of the co-operative company's total tangible assets, the prospectus must contain the information usually required by clause 12(3) of Schedule 1 or clause 9(3) of Schedule 2 (as the case may be) both of which relate to information to be provided in relation to the business and consideration paid or payable for it;

(b) provide that if the co-operative company (or any of its subsidiaries) is proposing to undertake either:

(i) a major transaction (as defined in the Companies Act 1993); or
(ii) a transaction or series of related transactions which would change the essential nature of the co-operative company's business,

the co-operative company would be required to disclose in its prospectus:

(i) the parties to the transaction;
(ii) the key terms of the transactions (including the consideration payable by the co-operative company or its subsidiary); and
(iii) further information and explanation as is necessary to enable a prospective investor to understand the nature and implications for the co-operative company and its shareholders of the transaction.

Consideration of submissions

64. We received one submission from the New Zealand Co-operatives Association. The Association acknowledged that there was a need for disclosure to non-members concerning acquisitions which have been undertaken by the co-operative company since the last balance date or which are intended to be undertaken by the co-operative company where the consideration paid, payable or proposed to be paid exceeds the 20% asset threshold and the disclosure by a co-operative company of its intention to undertake either a major transaction (as defined in the Companies Act 1993) or a transaction, or series of transactions which would change the essential nature of the co-operatives company's business.

65. In relation to the timing of the disclosure, the Association raised questions as to the point at which a transaction amounts to a proposal and wanted to ensure that disclosure would not be required at preliminary stages of any negotiations, as such information is, at that point, often commercially confidential.

66. The Association also sought greater clarity as to the content of the required additional disclosure and proposed alignment of the disclosure requirements with disclosure requirements, both as to timing and content, with disclosure requirements to existing members under the Companies Act.

67. Finally, the Association noted that in their experience, prospective members rarely request a copy of the co-operative company's prospectus – and so it was preferable for the information to be included with an investment statement and/or on the co-operatives website.

FMA proposal

68. Based on submissions from the further consultation, FMA considers that the relevant information should be disclosed to prospective members in an investment statement, rather than the prospectus – and propose that it be included in either:

    (a) the co-operative's investment statement; or

    (b) a directors' statement signed by each director of the co-operative (or their agents authorised in writing) which is attached to the investment statement.

69. In terms of the content of the disclosure, we do not think that there needs to be a detailed list of matters to be disclosed. Instead, we propose a principles-based test, as this aligns with Companies Act disclosure requirements (which apply to existing members). For example, a notice of meeting must, under the Companies Act, state the 'nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it') and the information which must be provided to shareholders under the Companies Act when considering an

amalgamation proposal similarly includes 'such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed amalgamation'.

70. Therefore we think that the test we propose is the appropriate standard for disclosure to prospective members.

71. In terms of the timing of the disclosure, we consider that once there is a complete proposal or negotiation regarding a major transaction or a transaction or series of transactions which would change the essential nature of the cooperative's business, this is likely to be material and should be disclosed to potential investors. This is the case even although the proposal or transaction may be conditional and despite any confidentiality attaching to it.

72. We also propose transitional provisions to reduce compliance costs resulting from the regulatory changes for issuers who have previously relied on the Co-operative Companies Notice, or earlier corresponding notices. Those issuers will be able to continue to rely on the applicable earlier notice, in respect of securities offered under an existing prospectus, unless the prospectus needs to be amended to prevent it from being false or misleading in a material particular. In addition, similarly to the transitional provision in the existing notice, we propose the transitional provision can only be relied on in the case of an offer of debt securities if the prospectus contains any applicable information specified by clause 4 of Schedule 2 of the Regulations. This relates to guarantors and requires more information than the equivalent provision in the Securities Regulations 1983.

73. A copy of the Co-operative Companies Notice, with these proposed changes to the operative provisions, is attached at **appendix 4C.**

Appendix 5: Notices for externally managed schemes

Securities Act (Externally Managed Group Investment Funds) Exemption Notice 2003

1. This notice enables externally managed group investment funds (ie those where the manager of the fund is independent from the trustee company who established the fund) to offer interests in a group investment fund without the requirement to appoint a statutory supervisor and by using tailored disclosure documents based on disclosure required for unit trusts rather than those required for participatory securities.

2. The exemptions granted under the notice are subject to conditions relating to the contents of the trust deed, the registered prospectus and any contract relating to the fund. There are also particular conditions about the availability of the securities register and the provision of evidence of the nature and ownership of interests in the fund.

3. The structure of an externally managed group investment fund where the trustee is not an issuer enables a level of independent supervision of the issuer equivalent to that required for other participatory securities, debt securities and unit trusts. The manager of an externally managed group investment fund would be under the supervision of a statutory trustee company and appointment of a statutory supervisor as well as a trustee to perform the supervision function adds unnecessary compliance costs that would ultimately be borne by investors.

<u>FMA Proposal</u>

4. With the introduction of the Securities Trustees and Statutory Supervisors Act 2011, which requires securities trustees and statutory supervisors to be licensed, we consider it appropriate to amend the definition of trustee to refer to a person who holds a licence under that Act.

5. We are aware of one amendment that would be useful to align this notice with the Securities Act (Group Investment Funds) Exemption Notice 2011 (GIF Notice). The GIF Notice includes an exemption from the requirements of section 37A(1A)(d) to register interim financial statements with refresher certificates. Such an exemption would only provide relief from the need to register interim financial statements in the event that issuer is able to use a refresher certificate (including by being able to meet the certification requirement of section 37A(1A)(c), that is, that the scheme's financial position has not materially and adversely changed, and the prospectus is not false or misleading in a material particular. If the issuer is not able to certify as to these matters they will need to register interim financial statements.

6. The exemption from section 54 of the Act (Issuers to issue certificates evidencing securities) is subject to various conditions. We propose to update these conditions to reflect current policy relating to exemptions from this section, particularly to reflect the availability of electronic information.

7. Some minor amendments are also required to directly refer to provisions of the Securities Regulations 2009 and to improve clarity and to update the notice. References to revoked legislation should also be removed.

Submissions sought

8. We welcome submissions on the following:

   (a) the extent to which you, or your clients or members, rely on the notice;

   (b) the number of offers and approximate value of securities offered in reliance on the notice;

   (c) whether you support the renewal of the notice and the proposed amendments or not? What are the reasons for your view?

   (d) if you support the renewal of the notice, would you recommend any other amendments to it when renewed?

9. In relation to renewal and any amendments you propose please fully explain your reasons. Please particularly explain:

   (a) why you consider the renewal, and any amendments proposed, are consistent with both the policy of securities or financial reporting law, and the particular policy of the relevant statutory provisions from which the exemption is granted;

   (b) the impact on market participants including in terms of compliance costs;

   (c) the impact on investors including in relation to any benefit or detriment to protection of investors interests and information available to investors;

   (d) why you consider the exemption is no broader than reasonably necessary to address the matters that gave rise to the need for the exemption;

   (e) any effect on competition in the market.

Securities Act (Externally Managed KiwiSaver Schemes and Superannuation Schemes) Exemption Notice 2008

10. The Securities Regulations 1983 required a certificate confirming that an advertisement complied with the Securities Act 1978 and the Securities Regulations 1983, that the advertisement was consistent with the registered prospectus and that the advertisement did not contain any matter likely to deceive, mislead, or confuse with regard to any material particular to be completed before an advertisement is distributed to the public. This notice allows advertisement certificates relating to KiwiSaver schemes or superannuation schemes to be signed by authorised officers of the trustee corporation for the scheme rather than only by directors of the trustee corporation.

11. The need for the exemption notice arose due to changes in the superannuation market, particularly the introduction of KiwiSaver schemes, which resulted in a greatly increased volume of certificates needing to be signed by trustee corporations. It was therefore considered appropriate to grant an exemption which allowed trustee corporations to reduce compliance costs while maintaining an appropriate level of supervision of advertisements.

FMA proposal

12. The Securities Regulations 2009 extended the certification requirement to directors or their agent authorised in writing. We therefore consider that this exemption is no longer required and propose to leave it to expire on 8 May 2013.

13. Issuers who rely on this notice should review the requirements in regulation 30 and schedule 14 of the Securities Regulations 2009 to ensure that they meet requirements in relation to advertisement certificates. We do not propose to provide any transitional provisions in relation to this notice so issuers will need to ensure that they meet the advertisement certificates prior to 8 May 2013.

Submissions sought

14. We welcome your comments on these proposals. Given our analysis above, any submission to the effect that the notice remains required and appropriate would need to be supported by clear policy reasons.