Consultation paper

9 July 2020

Consultation: Review of 16 class exemption notices expiring in 2021

About this consultation paper

We are seeking feedback on our review of 16 class exemption notices that support the regime under the Financial Markets Conduct Act 2013 (FMC Act). These notices will expire between August and December 2021.

We would like feedback to inform our review of these class notices. We invite your comments on the matters discussed in this paper. Please use the feedback form provided. Your feedback will be considered in the development of our proposals.

If you have questions, please email questions@fma.govt.nz or call us on 0800 434 566 (or +64 3 962 2698 if calling from outside New Zealand).

Submissions close at 5pm on Thursday, 20 August 2020

This consultation is for all interested people including market participants, investors, advisers and industry groups.	It seeks feedback on our review of 16 class exemption notices expiring in 2021.

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Document history

This version was issued in July 2020 and is based on legislation and regulations as at the date of issue.

Overview

The FMA has powers to exempt persons or transactions from some financial markets law requirements. These powers enable us to remove rigidities in the law to take into account circumstances that are unique to a particular class of market participant. In some circumstances we can tailor requirements for businesses to ensure they are reasonable and cost-effective, while still ensuring that investors are appropriately protected. We are aware that issues may arise for market participants operating under the FMC Act regime, and exemptions may be required in some cases.

There are 16 existing class exemption notices supporting the FMC Act regime that will expire in the second half of 2021. These exemption notices were granted soon after the regime commenced.

The solutions to regulatory compliance issues provided by exemptions must be both pragmatic and principled. We seek to effectively support market activity by promoting the purposes of the FMC Act regime and ensuring that the benefits of regulation are proportionate to the costs. We are reviewing these expiring notices to ensure they remain effective to meet these goals. We are keen to work with all stakeholders, including market participants, investors, advisers and industry groups, to assist with this review. We need your feedback to help us determine whether it is appropriate to continue providing relief by way of exemption.

FMA's exemption powers

The FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets. We have powers to exempt persons or transactions from compliance with requirements in the FMC Act and associated regulations.

Any exemption we grant must not be broader than necessary to address the matters that gave rise to it. We must also be satisfied that the exemption is necessary or desirable to promote one or more of the following purposes of the FMC Act regime:

- confident and informed participation in financial markets
- development of fair, efficient and transparent financial markets
- to provide for timely, accurate and understandable information to assist investment decisions
- to ensure appropriate governance arrangements apply to financial products and services, and allow for effective monitoring and reduce governance risks
- to avoid unnecessary compliance costs
- to promote innovation and flexibility in the financial markets.

This review provides us with the opportunity to work with stakeholders, including market participants, investors, advisers and representatives, to ensure that the exemptions subject to this review meet these goals. We encourage all stakeholders to provide submissions. We can only renew exemptions where we are satisfied that the statutory requirements are met. We need information from you to enable us to do this.

Questions that apply to all the notices can be found on pages 7-9. Schedule 2 has additional questions on some notices. We also welcome other feedback you may have on the notices we are reviewing.

Expiring class exemption notices

The following 16 class exemption notices will expire before the end of 2021. They support obligations under the FMC Act. We have already consulted on our review of some class notices supporting the Financial Advisers Act 2008 regime that also expire in 2021. They are not included in this consultation paper.

The table in **Schedule 1** has a brief summary of the key effects and key reasons for each notice.

No. and Group	Name of notice	Expiry date
Group A		
1.	Employee share purchase schemes	6.08.21
2.	Licensed independent trustees of restricted schemes	15.09.21
3.	Overseas subsidiary balance date alignment	13.10.21
4.	Communal facilities in real property developments	27.10.21
5.	Equine bloodstock	30.11.21
6.	Forestry schemes	17.11.21
7.	Property schemes – custody of assets	17.11.21
8.	Employee share purchase schemes shares offered under Securities Act 1978	30.11.21
9.	Small co-operatives	22.12.21
Group B		
10.	Disclosure using overseas GAAP	3.11.21
11.	Overseas FMC reporting entities	3.11.21
12.	Overseas registered banks and licensed insurers	3.11.21
13.	Incidental offers	17.11.21
14.	Recognised exchanges	17.11.21
15.	Securities Offered under Securities Act 1978 Exemptions Recognising Overseas Regimes	30.11.21
16.	Overseas Banks offering simple debt products	30.11.21

Review timing and process

We are reviewing all 16 class notices and plan to complete the review of each notice before it expires. This will allow market participants to seamlessly continue to rely on the notices that are renewed without substantive amendment.

If we decide that an exemption is no longer warranted, or that substantive amendments are required, we will give you notice of this and if needed provide transitional provisions, to give you an opportunity to make any necessary changes to your business systems and processes.

Our process and timeline will vary depending on the significance of issues under consideration. The indicative timetable is noted below.

Date	Action
9 July 2020	Consultation paper published
20 August 2020	Feedback due to FMA
September 2020 to April 2021	Analysis of submissions, further development of policy proposals with additional targeted or public consultation if required
Late February to March 2021	Policy decisions for Group A exemptions announced
Late April to May 2021	Policy decisions for Group B exemptions announced
March to December 2021	If relevant, drafting of notices, granting of exemptions and publication of notices to give effect to policy decisions in advance of the expiry date for each notice. Possible additional targeted consultation on drafting, transitional arrangements etc.

Feedback requested

We encourage all interested people to make submissions on the notices under review. If we do not receive sufficient information to indicate that the exemptions in any notice are still needed and that the statutory test for renewing the exemption is met, a further exemption cannot be granted. We need detailed information that provides evidence about the extent of reliance, the impact of the exemptions (and what the impact of not having the exemptions would be) and compliance costs. We are particularly keen to receive feedback on the questions below. For each notice you are making a submission on, please answer the following questions (and any additional questions in Schedule 2). Please clearly note in your feedback the notice to which your comments relate.

Reliance

Q1. To what extent do you, your clients or your members rely on the notice (or to what extent are you or they likely to rely on it in the future)? Please give details of:

a. the approximate value of any financial products offered or issued, financial services provided, or funds managed in reliance on the exemption; and
b. the impact of the notice (or its discontinuance) on regulatory compliance costs. Please give actual or estimated dollar amounts.

Q2. Where possible, for context, please provide a description of the relevant market or market sector as a whole and the relevant participants, products or services in that market or market sector. What proportion of the total population in the market or market sector relies on the relevant exemption notice?

Note: We want to gain a clear picture of the extent of reliance on each notice and how this relates to the total activity or participants in the relevant market or market sector. Before granting any notice, the FMA needs to be satisfied there is a need for the exemption and that the exemption is not broader than is reasonably necessary to address the regulatory issue. We will not be able to renew a class notice if we do not receive submissions or other information confirming continued reliance (or likely future reliance) on the exemptions in that notice. We also need to consider the impact of the exemptions on the wider market or market sector and therefore we are requesting contextual information to assist us in understanding this.

Support for renewal

Q3. Do you support the renewal of the notice or not? What are the reasons for your view?

Q4. If you think the notice should be renewed, please fully explain in particular:

a. why you consider renewal would be consistent with one or more of the purposes of the FMC Act;
b. why you think the original reasons for granting the exemptions remain relevant and valid (you can find the reasons in the statement of reasons at the end of each notice);

c. the impact renewal would have on market participants, including a description of any compliance costs that would be avoided. Please give actual or estimated dollar amounts. Please also explain why you think those compliance costs are unnecessary;
d. the impact of renewal on investors, including any benefit or detriment to protection of investors' interests or information available to investors;
e. whether and how any conditions in the notice provide adequate alternative protection for investors
f. why you consider the exemptions, if renewed, would be no broader than reasonably necessary to address the matters that gave rise to them;
g. any effect renewal would have on competition in the market.

Note: If we cannot obtain evidence and data that supports the continued need for the exemptions in a notice and confirms that the statutory test for granting an exemption is met, then we may not be able to renew that notice.

Regulatory burden

Q5. Please tell us if the notice:

a. has not effectively minimised any unnecessary compliance costs it aims to address. Please describe the compliance costs including actual or estimated dollar amounts. Please explain why those compliance costs are unnecessary;
b. causes unintended unnecessary compliance costs through its conditions. Please describe the compliance costs including actual or estimated dollar amounts. Please explain why those compliance costs are unnecessary; or
c. could go further to address unnecessary compliance costs not identified when the notice was made. Please describe the compliance costs including actual or estimated dollar amounts. Please explain why those compliance costs are unnecessary.

Q6. Please tell us how the notice could be amended to address the unnecessary compliance costs identified.

Amendments needed

Q7. Do you think any amendments are needed to the notice if it is renewed? Please specify, if possible, the amendments you propose.

Your feedback may include, for example:

a. amendments needed because you consider that exemptions or conditions in the notice are inconsistent with the purposes of the FMC Act or because the reasons why the exemptions were originally granted are no longer relevant or valid;
b. additional exemptions you consider should be included in the notice to address related regulatory issues, and the conditions to which you consider those exemptions should be subject;
c. amendments to solve technical or practical difficulties that could prevent intended reliance on the notice.

For each proposed amendment, please fully explain why you think it is needed, and in particular:

a. why you consider the proposed amendment would be consistent with one or more of the purposes of the FMC Act, and the original reasons for granting the exemptions;

b. the impact on market participants, including compliance costs (please give actual or estimated dollar amounts and explain why you think those compliance costs are unnecessary);
c. the impact on investors, including any benefit or detriment to protection of investors' interests or information available to investors;
d. if you propose an amendment to the conditions in the notice, whether and how the amended conditions would provide adequate alternative protection for investors;
e. why you consider the exemptions, if amended, would be no broader than reasonably necessary to address the matters that gave rise to them;
f. any effect on competition in the market from the proposed amendment.

Notices that may be redundant

Is there an ongoing need for the following notices? Our initial review has identified that they may be redundant because they are not relied on:

- Financial Markets Conduct (Disclosure using Overseas GAAP) Exemption Notice 2016
- Financial Markets Conduct (Recognised Exchanges) Exemption Notice 2016 (see also Schedule 2).

Q8. If you consider there remains an ongoing need for one or both these notices please explain the reasons for your view and, if relevant, suggest any amendments to solve technical or practical difficulties that impede reliance on a notice.

Additional information and questions on certain notices

Schedule 2 has additional information and questions in relation to the following notices:

- Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2020
- Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016
- Financial Markets Conduct (Recognised Exchanges) Exemption Notice 2016
- Financial Markets Conduct (Incidental Offers) Exemption Notice 2016
- Financial Markets Conduct (Employee Share Purchase Schemes) Exemption Notice 2016
- Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2016[1]
- Financial Markets Conduct (Overseas Banks Offering Simple Debt Products) Exemption Notice 2016
- Financial Markets Conduct (Small Co-operatives) Exemption Notice 2016.

Please provide answers to any additional questions in Schedule 2 for notices covered by your submission.

Our review, or submissions received, may identify additional questions about other notices. If this happens we may do further public or targeted consultation on the relevant notice or notices.

[1] The additional question in **Schedule 2** relates to the class designation notice that is related to this exemption notice.

SCHEDULE 1- Brief summary of class exemption notices expiring in 2021

Name of notice	Expiry date and link to Legislative Instrument	Brief summary of the key effects and key reasons for notice
Financial Markets Conduct (Employee Share Purchase Schemes) Exemption Notice 2016	06.08.21 LI 2016/175	Under Schedule 1 of the FMC Act, shares offered under employee share purchase schemes are excluded from the standard regulated offers regime. The framing of the exclusion means it can't easily be applied to: • offers made to employee trusts and relatives • offers made under share schemes that have an ancillary debt or managed investment scheme component, for example saving scheme securities. We have provided relief to extend the benefit of the statutory exclusion in these instances. We have also addressed difficulties with the operation of the 10 percent limit on the number of equity securities that can be issued or transferred in a 12-month period where the employer provides employees interests by creating equitable interests in existing voting securities. To do this, we have provided relief to allow non-voting equitable interests to be issued up to 10 percent of the corresponding class of voting securities. In calculating this figure, we have avoided double counting of the equity securities and equitable interests.
Financial Markets Conduct (Licensed Independent Trustees of Restricted Schemes) Exemption Notice 2016	15.09.21 LI 2016/205	Under the FMC Act, a restricted scheme must have a licensed independent trustee. To meet this requirement, the scheme may use a sole corporate trustee, provided it has at least one licensed independent trustee director. However, 'independent' is defined by the FMC Act, with respect

		to restricted schemes, in such a way that if the sole corporate trustee is related to the scheme provider, the director will fail the independence test. We consider this result is unintended, as the purpose of the independence requirement is to ensure the independence of the licensed independent trustee, rather than any corporate structure in which that licensed independent trustee sits. This exemption provides relief from this situation.
Financial Markets Conduct (Overseas Subsidiary Balance Date Alignment) Exemption Notice 2016	13.10.21 LI 2016/223	The FMC Act requires the balance date of an FMC reporting entity to be the same as the balance date of its subsidiaries. Compliance may be difficult or impossible for entities with subsidiaries in overseas jurisdictions that have inflexible balance dates. The exemption relieves FMC reporting entities with an overseas subsidiary in a jurisdiction with an inflexible balance date from meeting the balance date alignment requirement. A balance date is considered inflexible when it may not be changed at the absolute discretion of the FMC reporting entity or its subsidiary, regardless of whether it may be changed through a process that involves the approval of a regulator.
Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2016	27.10.21 LI 2016/244	This notice gives relief to companies that manage communal facilities in real property developments. It applies to shares that were offered to residents in the development, in reliance on Securities Act exemptions. The notice gives relief from financial reporting requirements and ongoing disclosure and governance obligations. This recognises that shares in communal facilities companies are not a financial investment and do not pose financial market risks. The offer of shares would have been ancillary to the sale of land. The offer of the shares, and ongoing management of the communal facilities by the company vehicle, allows residents of a development to use and enjoy communal facilities, and contribute to their maintenance. This notice is related to the Financial Markets Conduct (Communal Facilities in Real Property Developments) Designation Notice 2016.
Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2020	03.11.21 LI 2020/80	Registered banks and licensed insurers are FMC reporting entities and must lodge financial statements compliant with New Zealand GAAP (generally accepted accounting principles) and audited by a New Zealand-licensed auditor. Many overseas banks and insurers operate in New Zealand via a branch rather than through an incorporated subsidiary. As a result, the overseas entity as a whole is an FMC reporting entity even though its New Zealand operations may form a small portion of its business.

		The notice exempts overseas banks that are registered banks in New Zealand, and overseas insurers that are licensed insurers in New Zealand, from certain financial reporting and audit obligations of the FMC Act. The key effects of the exemption are: • overseas-registered banks and licensed insurers are allowed to use overseas GAAP and an overseas qualified auditor to prepare their group or entity financial statements • the financial statements do not have to be dated and signed by two directors if that is not a requirement in the home jurisdiction of the overseas registered bank or licensed insurer • the auditor for the New Zealand branch financial statements is permitted to be from New Zealand, Australia or certain overseas jurisdictions.
Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016	03.11.21 LI 2016/253	Under the FMC Act, FMC reporting entities must prepare financial statements according to New Zealand GAAP (generally accepted accounting principles), and have them audited by an auditor qualified under New Zealand law. We do not think it is justifiable for overseas issuers to incur the additional cost of restating their accounts in New Zealand GAAP if they have already prepared high-quality financial statements in another jurisdiction subject to appropriate financial reporting regulation. This exemption provides relief to these issuers by allowing them to use the accounting practices (overseas GAAP) and auditors allowed in that jurisdiction to meet their financial reporting requirements. The exemption is limited to issuers listed in overseas jurisdictions where we have assessed that financial statements are prepared according to accounting standards broadly comparable to New Zealand GAAP and where auditors are subject to audit standards and requirements that are broadly comparable to New Zealand standards. This exemption also exempts issuers from the New Zealand-specific requirement of signing financial statements, and allows New Zealand business financial statements to be prepared in overseas GAAP, and audited by either a New Zealand or Australian qualified auditor, or an auditor allowed in the overseas jurisdiction. The exemption is conditional upon the issuer complying with the requirements for the preparation, content, auditing and public filing of financial statements of the overseas market where its products are issued. Issuers relying on the exemption must also notify the Registrar they are relying on the notice when lodging their financial statements.

Financial Markets Conduct (Disclosure Using Overseas GAAP) Exemption Notice 2016	03.11.21 LI 2016/254	Under the FMC Act, financial information in a product disclosure statement (PDS) or register entry must be prepared according to New Zealand GAAP (generally accepted accounting principles) and, in some cases, audited by an auditor qualified under New Zealand law. We do not think it is justifiable for overseas issuers to incur the additional cost of restating their accounts in New Zealand GAAP when they have already prepared high-quality financial statements in another jurisdiction subject to appropriate financial reporting regulation. This exemption provides relief to these issuers by allowing them to use the accounting practices (overseas GAAP) and auditors allowed in that jurisdiction to prepare a PDS and register entry. The exemption is limited to issuers listed in overseas jurisdictions where we have assessed that financial statements are prepared according to accounting standards broadly comparable to New Zealand GAAP, and where auditors are subject to audit standards and requirements broadly comparable to New Zealand standards. The exemption is conditional upon the issuer including statements in the PDS and register entry disclosing the use of overseas GAAP and stating that they are relying on the notice.
Financial Markets Conduct (Incidental Offers) Exemption Notice 2016	17.11.21 LI 2016/267	Where an issuer listed on an overseas market makes an offer to existing holders of securities (e.g., a rights offer), New Zealand investors may incidentally receive that offer. Without an exemption, the standard requirements of the FMC Act would normally apply, raising additional costs for the issuer. This exemption applies where the securities are listed (or are to be listed) in a jurisdiction the FMA considers to have a high-quality regulatory regime with requirements broadly equivalent to New Zealand's. The exemption relieves the issuer (and related parties) from disclosure, governance, financial reporting and auditing obligations of the FMC Act. Issuers relying on the exemption can rely almost exclusively on the requirements of the overseas jurisdiction when making an incidental offer to New Zealand investors.
Financial Markets Conduct (Recognised Exchanges) Exemption Notice 2016	17.11.21 LI 2016/268	Where an issuer listed on a major, high-quality exchange makes an offer under the laws of an overseas jurisdiction and that offer has been extended to New Zealand investors but does not principally target them (e.g. an initial public offer), the standard requirements of the FMC Act will normally apply. Without an exemption, compliance with the FMC Act will raise additional costs for the issuer.

		This exemption relieves issuers listed on the principal official list of certain recognised exchanges from disclosure, governance, financial reporting and auditing obligations of the FMC Act when making such an offer to New Zealand investors. Issuers relying on the exemption can rely almost exclusively on the requirements of the overseas jurisdiction when making such an offer to New Zealand investors. However, issuers will need to provide warning statements when providing offer documents to potential investors, and will need to establish a register entry containing the overseas offer document and any documents required to be provided to retail investors in the relevant jurisdiction.
Financial Markets Conduct (Property Schemes – Custody of Assets) Exemption Notice 2016	17.11.21 LI 2016/266	This notice gives relief for property scheme managers, supervisors and custodians from some of the FMC Act governance obligations that relate to custody of scheme assets. The main effects of the exemption are: • closed property schemes that transitioned to the FMC Act are not required to have real property held by the supervisor or an independent custodian, provided that property is held on trust for the scheme and the supervisor holds a registered encumbrance or mortgage over the property • property scheme custodians are not required to reconcile scheme cash records daily, but they must be reconciled at a frequency suited to the level of transactions for the scheme • property scheme custodians (except for custodians of schemes where the manager has more than $200m gross assets under management for all registered schemes) are not required to obtain an assurance engagement annually; this is required when the supervisor determines it is necessary to provide reasonable assurance in relation to custody of the scheme property.

Financial Markets Conduct (Forestry Schemes) Exemption Notice 2016	17.11.21 [LI 2016/265]	This exemption gives relief for forestry scheme managers, supervisors and custodians from some governance and other obligations under the FMC Act. The main effects of the exemption are: • closed forestry schemes that transitioned to the FMC Act are not required to update their governing documents or have a licensed manager if they meet certain criteria • closed forestry schemes that transitioned to the FMC Act don't need to have their real property or carbon credits held by the supervisor or an independent custodian provided those assets are held on trust for the scheme and the supervisor holds a registered security interest over them • forestry scheme custodians are not required to reconcile scheme cash records daily as long as those assets are reconciled at a frequency suited to the level of transactions for the scheme • forestry scheme custodians are not required to obtain an assurance engagement annually; this is required when the supervisor determines it is necessary to provide reasonable assurance in relation to custody of the scheme property • managers of forestry schemes are not required to make quarterly reports on limit breaks for periods when minimal work is being done in the forest if no limit break occurs in that quarter • corporate general partners of schemes that are limited partnerships are exempt from disclosure, governance and financial reporting requirements in relation to shares in the general partner held by or offered to scheme participants, provided information on the shares is included in disclosure information for the scheme.
Financial Markets Conduct (Securities Offered under Securities Act 1978 Exemptions Recognising Overseas Regimes) Exemption Notice 2016	30.11.21 [LI 2016/286]	Under the Securities Act regime, overseas issuers made a number of offers to New Zealand investors relying on Securities Act 1978 exemption notices that recognised the adequacy of the overseas regimes from which those offers originated. The transitional provisions of the FMC Act provide that, on the effective date, the FMC Act (including ongoing disclosure, governance, and financial reporting and auditing requirements) would apply to securities offered under the Securities Act where a prospectus or investment statement was required (except where exemptions were granted). Therefore, after the effective date, the FMC Act applied to securities related to those offers. However, New Zealand investors in these securities invested on the basis of the regulatory regime in place at the time of the offer. For the issuers of those securities (in some cases

		allotted many years ago), compliance now with any increased requirements of the FMC Act would be a significant burden. The exemption provides issuers who offered securities under one of these Securities Act exemptions with complete exemption from ongoing disclosure, governance, and financial reporting and audit requirements of the FMC Act. The exemption also provides relief from certain transitional requirements related to trust deeds, disclosure for Managed Investment Schemes, and notifications to security holders. This recognises that the adequacy of the relevant overseas regime was assessed when each notice was granted, and that the FMA (or the Securities Commission) was satisfied at that time with the overseas requirements applying to the issuers, given the circumstances under which those offers could be made. There are no conditions to the exemption. Issuers should be able to rely almost exclusively on the requirements of the overseas jurisdiction. However, any requirements for the issuer to do financial reporting and auditing in New Zealand for any reason other than having issued securities to New Zealand investors under a Securities Act exemption still apply.
Financial Markets Conduct (Overseas Banks Offering Simple Debt Products) Exemption Notice 2016	30.11.21 LI 2016/285	This notice enables overseas banks in certain recognised jurisdictions to make offers of 'simple debt products' (call debt securities and fixed-term deposits) under a lighter compliance pathway, to provide comparable relief to offers of these products by New Zealand-registered banks. The exemption is not able to be relied upon by overseas banks directly marketing to new investors in New Zealand, except through New Zealand-registered banks within the same banking group. The exemption is subject to conditions including that the bank (or its parent): • must have an investment-grade credit rating for its long-term senior unsecured obligations • complies with home jurisdiction requirements governing the preparation, content, auditing and public filing of financial statements • makes the financial statements available to investors (e.g. through its website).
Financial Markets Conduct (Equine Bloodstock) Exemption Notice 2016	30.11.21 LI 2016/289	This notice exempts shares and managed investment products offered by horse bloodstock syndicates and companies from the disclosure and governance requirements of the FMC Act. The notice declares that such offers are not 'regulated offers' under the FMC Act. This means that the other requirements of the FMC Act, or other Acts, that apply in connection with regulated offers (such as the requirement for a scheme to be registered and the financial

		reporting requirements) will not apply. Similar exemptions apply for shares and managed investment products offered under the Securities Act in reliance on a historical exemption. To rely on these exemptions, the offeror must be bound by the rules of either New Zealand Thoroughbred Racing Incorporated or Harness Racing New Zealand Incorporated to comply with a code of practice in relation to the offer. These rules reflect the unique disclosure, governance, and financial reporting and audit requirements for investments in horse bloodstock interests, and the existing supervisory and enforcement regime under the Racing Act 2003. The requirements in the rules will ensure that disclosure, governance, financial reporting and audit requirements apply to these interests, to enable effective monitoring, reduce governance risks, and ensure timely, accurate, and understandable information is provided to investors. The ability to rely on the exemption does not derogate from any ability for certain offers to be made using the lower-cost compliance pathways under the exclusions in Schedule 1 of the FMC Act where these apply.
Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2016	30.11.21 LI 2016/284	This notice grants an exemption from FMC Act financial reporting requirements and ongoing minor disclosure and governance requirements for New Zealand issuers that have only made offers under the Securities Act (Employee Share Purchase Schemes – Unlisted) Exemption Notice 2011 (or earlier iterations). This better aligns the obligations of these companies with those making offers under the FMC Act Schedule 1 exclusion for employee share purchase schemes and our treatment of overseas employee share purchase schemes.
Financial Markets Conduct (Small Co-operatives) Exemption Notice 2016	22.12.21 LI 2016/310	This notice relieves small co-operative companies, and industrial and provident societies (co-operatives) that have a maximum per shareholder capital investment of $5,000 or less (across all offers) from: • the disclosure requirements in Part 3 of the FMC Act • some limited register and record-keeping requirements in Part 4 of the FMC Act • the financial reporting and auditing requirements in Part 7 of the FMC Act. This exemption is subject to the conditions that the co-operative provides a disclosure document to investors in the prescribed form and includes the prescribed warning statements in every offer document and every set of financial statements. The exemption also provides relief from the FMC Act Part 7 financial reporting and auditing requirements when the co-operative's annual revenue in a particular accounting period is $2m

		or less. This exemption is subject to the condition that the co-operative includes the prescribed warning statements in every set of financial statements. In either case, co-operatives relying on the exemption will still need to comply with the financial reporting and auditing requirements of the Companies Act 1993 or Industrial and Provident Society Act 1908, as applicable.

SCHEDULE 2 – Additional information and questions on certain notices

1. Financial reporting class exemptions

The following notices provide exemptions in favour of overseas entities from similar financial reporting and audit obligations under the FMC Act:

- Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2020 ("Overseas Banks and Insurers Exemption")
- Financial Markets Conduct (Overseas FMC Reporting Entities) Exemption Notice 2016 ("Overseas FMC Reporting Entities Exemption")

The policy underlying both these notices is the same – that if an overseas entity is already required to prepare financial statements using high-quality accounting standards and is subject to appropriate financial reporting and audit regulation, then the requirement to comply with New Zealand financial reporting and audit obligations may be unnecessary.

The table below details the overseas GAAP we consider provide high-quality information to investors, and the jurisdictions with appropriate financial reporting and audit regulation. This forms the basis of the exemptions in the Overseas FMC Reporting Entities Exemption.

Specified GAAP	Specified jurisdictions
• Australian IFRS • Canadian IFRS • EU IFRS • Hong Kong FRS • IFRS (unmodified international standards) • Singapore Financial Reporting Standards • US GAAP	• Australia • Canada • France • Germany • Republic of Ireland • Republic of South Africa • Switzerland • Singapore • The Netherlands • United Kingdom • United States of America

Q9. We invite comment on this list. Please let us know if you believe any further jurisdictions or overseas GAAP should be included, giving your reasons, showing appropriate demand exists and explaining in detail how our criteria would be met.

The Overseas Banks and Insurers Exemption applies to overseas banks that are registered and overseas insurers that are licensed by the Reserve Bank of New Zealand (the Reserve Bank). The Reserve Bank assesses the financial reporting and audit requirements of the home jurisdiction of any overseas bank or insurer seeking registration or licensing in New Zealand.

We have considered the conditions that apply to the Overseas Banks and Insurers Exemption and the Overseas FMC Reporting Entities Exemption.

Auditor of New Zealand GAAP financial statements

Both notices listed above require the relevant overseas entity to file New Zealand business financial statements. Both notices also allow these New Zealand business financial statements to be audited by an auditor from the home jurisdiction, or an Australian or New Zealand auditor. The Overseas Registered Banks and Insurers Exemption requires that these New Zealand financial statements are prepared in accordance with New Zealand GAAP, however the Overseas FMC Reporting Entities Exemption provides for the option of New Zealand GAAP or the relevant overseas GAAP.

We are considering whether it remains appropriate for New Zealand business financial statements, prepared in accordance with New Zealand GAAP, to be audited by an auditor from an overseas jurisdiction (other than Australia). This is a particular concern in relation to the Overseas Banks and Insurers Exemption, as this exemption requires that the New Zealand business financial statements are prepared using New Zealand GAAP, and also is not restricted to particular jurisdictions. Where the overseas GAAP of the home jurisdiction is not IFRS or equivalent, the financial reporting requirements in the home jurisdiction could be very different from those in New Zealand, creating major complexities or issues for an overseas entity or auditor. We therefore propose to amend the Overseas Banks and Insurers Exemption to provide that, if the overseas entity's financial statements are not prepared in accordance with IFRS or equivalent, the New Zealand business financial statements can only be audited by a New Zealand or Australian auditor.

It is also our expectation that, where New Zealand business financial statements are prepared in accordance with New Zealand GAAP and audited by an overseas auditor, that auditor applies New Zealand auditing and assurance standards. We propose to clarify this in both exemptions.

English translations

Both notices listed above also provide that if the financial statements of the overseas entity were not prepared in English, they must be accompanied by an accurate English translation. We are concerned that the English translation may not be subject to the same oversight procedures as the original financial statements. We therefore propose to amend both notices to provide that the English translation must be subject to the same approval process as the original financial statements. This will give confidence in the English version of the statements, as this will be the version relied upon by investors in New Zealand.

Disclosure of differences to New Zealand GAAP

As noted above, the financial reporting requirements in the home jurisdiction of an overseas entity relying on these notices might be very different from those in New Zealand. We are also considering whether it would be helpful for investors if a further condition was added requiring the relevant overseas entity to insert a note in their financial statements explaining the main differences between the home jurisdiction financial reporting requirements and IFRS (where the overseas GAAP is not considered to be an equivalent to IFRS). This note, being part of the financial statements, would therefore be subject to audit.

Q10. Please let us know if you agree or disagree with these proposed changes, giving your reasons where appropriate. Where relevant please include information on likely impacts of the proposed changes, including any compliance costs (please specify actual or estimated dollar amounts).

2. Recognised Exchanges notice

'On-sold IPOs' and redundancy

As noted above, our initial review has identified that the Financial Markets (Recognised Exchanges) Exemption Notice 2016 may be redundant because it is not relied on. Therefore, we are not proposing to renew this notice for a further term following its expiry in November 2021, unless we receive evidence prior to this clearly demonstrating that there is a continuing need for this notice.

We would like to know if there are any technical or practical difficulties that may be impeding reliance on the notice. We are aware that one reason the notice may not be relied on is because (unintentionally) the current wording does not apply to initial public offerings (IPOs) where the issuing company is not the 'offeror'. We received feedback in a previous consultation that it is common for IPOs on the NYSE and NASDAQ to be 'on-sold IPOs' (e.g. the company issues shares to an underwriting investment bank who then on-sells them to investors). We have decided to address this to ensure the relief under the notice applies to offers of on-sold IPOs. We aim to publish an amendment notice giving effect to this change before the end of September 2020.

Q11. Do you consider that the period from the end of September 2020 to November 2021 will provide sufficient time to determine (following the amendments relating to 'on-sold IPOs') whether this notice is needed? Please give reasons for your views.

Note: Please also answer Q8 in relation to this notice.

Recognition of overseas exchanges

The table below details the overseas GAAP we consider provide high-quality information to investors, and major, high-quality exchanges based in overseas jurisdictions (i.e. the United Kingdom and the United States of America) where we are satisfied there are high-quality regulatory regimes relating to financial product offerings (specifically the listing thresholds, ongoing disclosure, corporate governance and financial reporting requirements). This forms the basis of the exemptions in the Recognised Exchanges notice.

Specified GAAP	Specified exchanges
• Australian IFRS • Canadian IFRS • EU IFRS • Hong Kong FRS • IFRS (unmodified international standards) • Singapore Financial Reporting Standards • US GAAP	• London Stock Exchange • Nasdaq Stock Market • New York Stock Exchange

Q12. We invite comment on this list.[2] Please let us know if you believe any further exchanges or overseas GAAP should be included, giving your reasons, showing appropriate demand exists and explaining in detail how our criteria would be met.

3. Incidental Offers notice

Recognition of overseas jurisdictions

[2] We note that we will only consider expanding the list of recognised overseas exchanges and Overseas GAAP if we have evidence that the notice is needed and therefore propose to renew the notice for a further term.

The table below details the overseas GAAP we consider provide high-quality information to investors and the jurisdictions that require disclosure to investors to an extent broadly equivalent with New Zealand law and where the overseas issuer is subject to appropriate financial reporting and audit regulation. This forms the basis of the exemptions in the notice.

Specified GAAP	Specified jurisdictions
• Australian IFRS • Canadian IFRS • EU IFRS • Hong Kong FRS • IFRS (unmodified international standards) • Singapore Financial Reporting Standards • US GAAP	• Australia • Canada • France • Germany • Republic of Ireland • Republic of South Africa • Switzerland • Singapore • The Netherlands • United Kingdom • United States of America

Q13. We invite comment on this list. Please let us know if you believe any further jurisdictions or overseas GAAP should be included, giving your reasons, showing appropriate demand exists and explaining in detail how our criteria would be met.

4. Employee Share Purchase Schemes notice

Options to acquire issued shares by way of transfer

We understand that options are a popular choice for some companies as part of their employee share purchase schemes. Currently the statutory exclusion in Clause 8 of Schedule 1 of the FMC Act applies to offers of equity securities. The term 'equity security' includes an option to acquire an equity security by way of issue (see s 8(5)(a)(iii) of FMC Act). It does not include an option to acquire equity securities by way of transfer. The latter falls within the definition of a 'derivative' (see s 8(4)(b)(ii) of the FMC Act).

We have received requests to include offers of options to acquire equity securities by way of transfer under the Financial Markets Conduct (Employee Share Purchase Schemes) Exemption Notice 2016. However, we don't think it would be appropriate to make this significant policy change through an FMA exemption. The statutory exclusion allows for regulations to be made prescribing additional products as 'specified financial products'. We think this would be a more appropriate avenue for this change to be considered.

We further note that there is a statutory exclusion in Clause 20 of Schedule 1 of the FMC Act for offers of derivatives by a person who is not a derivatives issuer. We expect some employers that want to offer options of issued shares by way of transfer may be able to rely on the exclusion in Clause 20.

Increase to 10% threshold

We have also received requests to extend the relief under the notice for unique offerings of non-voting shares under an employee share purchase scheme that go beyond the 10% limit set under the statutory exclusion in Clause 8. The exclusion only applies where the total number of non-voting shares issued under the employee share purchase scheme in any 12-month period does not exceed 10% of the shares of the same class offered by the issuer as at the start of that period. We think the thresholds set by the statutory exclusion are clear policy settings for the application of the exclusion. As such we don't think it is appropriate to change the 10% limit through an FMA exemption.

Q14. We invite your comments on the matters discussed above. We also invite comments on any other situations that may come within the policy of the statutory exclusion for employee share schemes in clause 8 of Schedule 1 to the FMC Act, but which fall outside of that provision on largely technical grounds.

5. Communal Facilities in Real Property Developments notice

No particular issues have been raised in relation to the Financial Markets (Communal Facilities in Real Property Developments) Exemption Notice 2016 but we invite feedback on the related Financial Markets Conduct (Communal Facilities in Real Property Developments) Designation Notice 2016 (the "designation notice").

Q15. The designation notice has no expiry date and we were not proposing to review the notice at this time. However, we welcome comments on any issues that may have arisen with the operation or scope of the designation notice, and specifically on whether the notice effectively identifies, for designation, the class of companies set up to manage costs in common facilities in real property developments, as opposed to companies set up to provide a financial investment or manage financial market risks.

6. Overseas Banks Offering Simple Debt Products notice

The jurisdictions recognised in the Financial Markets Conduct (Overseas Banks Offering Simple Debt Products) Exemption Notice 2016 are:

Specified jurisdictions
• Australia • The Bailiwick of Jersey • United Kingdom • United States of America

We are satisfied that these jurisdictions have prudential regulation, supervision and bank disclosure requirements that are broadly equivalent to those applicable to New Zealand registered banks.

Q16. We invite comment on this list. If you believe any further jurisdictions should be included, please let us know, giving your reasons, showing appropriate demand exists and explaining how our criteria would be met.

7. Small Co-operatives Notice

Renewal for one year

We are proposing to renew the Financial Markets Conduct (Small Co-operatives) Exemption Notice 2016 for one year to enable it to be reviewed together with the Financial Markets Conduct (Irrigation Companies) Exemption Notice 2018 that expires in December 2022. The notices raise similar policy issues.

Q17. Please tell us if you have any comments on our proposal to renew the Small Co-operatives notice for one year to allow it to be reviewed alongside the Irrigation Companies notice.

Small investment test

The $5,000 maximum investment per shareholder limit for reliance on exemptions in the Small Co-operatives notice and the Irrigation Schemes notice was based on information we received in our original consultation process regarding typical shareholder investments, while also recognising that shareholdings fluctuate. We considered that limit of $5,000 would enable a co-op (or irrigation company) to provide information to investors appropriate to the nature of its business, and the shareholder's investment, in a cost-effective way while still maintaining investor protections.

Q18. We invite comment on whether the maximum investment per shareholder limit should be changed from $5,000. Please explain the reasons for your views. We will consider your feedback when the notices are reviewed.

Feedback form: Review of 16 class exemption notices expiring in 2021

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Review of 16 class exemption notices expiring in 2021' in the subject line. Thank you. Submissions close at 5pm on 20 August 2020.

Date: Number of pages:

Name of submitter:

Company or entity:

Organisation type:

Contact name (if different):

Contact email and phone:

Question number	Name of notice	Comment	Recommendation
You don't need to quote from the consultation document if you use question or page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.			
	Feedback summary – *if you wish to highlight anything in particular.*		

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.