

**FINANCIAL MARKETS CONDUCT (SAME CLASS OFFERS ASX/NZX-QUOTED FINANCIAL PRODUCTS)  
EXEMPTION NOTICE 2018**

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

**CONTENTS**

<b>1</b>	<b>Title</b>	<b>1</b>
<b>2</b>	<b>Commencement</b>	<b>1</b>
<b>3</b>	<b>Revocation</b>	<b>1</b>
<b>4</b>	<b>Interpretation</b>	<b>1</b>
<b>5</b>	<b>Exemptions for offers of financial products of same class as ASX quoted financial products</b>	<b>2</b>
<b>6</b>	<b>Condition that issuer must give notice to ASX and be in compliance with Australian continuous disclosure and financial reporting obligations</b>	<b>4</b>
<b>7</b>	<b>Condition to correct defective notice</b>	<b>5</b>
<b>8</b>	<b>Further condition for offers of debt securities</b>	<b>6</b>
<b>9</b>	<b>Exemptions for secondary sales</b>	<b>7</b>
<b>10</b>	<b>Offers made in reliance on this notice not regulated offers</b>	<b>7</b>

**NOTICE**

**1 Title**

This notice is the Financial Markets Conduct (Same Class Offers ASX/NZX-quoted Financial Products) Exemption Notice 2018.

**2 Commencement**

This notice comes into force on [●]2018.

**3 Revocation**

This notice is revoked on the close of [●]2023.

**4 Interpretation**

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

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

**ASIC** means the Australian Securities and Investments Commission

**ASIC technical relief instrument** has the same meaning as in ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73 made under sections 741 and 1020F of the Corporations Act

**ASX** means the securities exchange operated by ASX Limited under that name

**ASX listing rules** means the listing rules of ASX made by ASX Limited that deal with—

- (a) admitting entities to, or removing entities from, the official list of ASX, whether for the purpose of enabling financial products of those entities to be traded on ASX or for other purposes; or

(b) the activities or conduct of entities that are included on the official list

**Australian continuous disclosure provisions** means provisions that require an issuer that is a party to a listing agreement with ASX Limited to notify information about events or matters as they arise for the purpose of that information being made available to participants on ASX

**Corporations Act** means the Corporations Act 2001 of the Commonwealth of Australia

**exempt issuer** has the meaning set out in subclause (2)

**NZX listed issuer** means a person that is a party to a listing agreement with NZX Limited

**official list** has the meaning given in the ASX listing rules

**quoted** means financial products of the issuer that are approved for trading on ASX (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those products is suspended)

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

**secondary listing**, in relation to a listing on a licensed market, means a listing where the exempt issuer has the benefit of reduced requirements, dispensations, or waivers on the basis that similar requirements are imposed by another securities exchange as a result of that exempt issuer also being listed on that securities exchange.

(2) In this notice, an entity is an **exempt issuer**, if—

- (a) it is a NZX listed issuer; and
- (b) financial products of the entity are approved for trading on ASX; and
- (c) ASX has primary jurisdiction for the listing requirements for the entity and the quotation of its financial products; and
- (d) it has a secondary listing on a licensed market operated by NZX Limited; and
- (e) it is admitted and not removed from ASX's official list.

(3) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## **5 Exemptions for offers of financial products of same class as ASX quoted financial products**

(1) Every exempt issuer (A), and every holder of financial products issued by A, is exempted from Parts 3 and 4 of the Act in respect of an offer of any financial products of which A is the issuer if—

- (a) the financial products are equity securities, debt securities, or managed investment products; and
- (b) the financial products are of the same class as quoted financial products that have been quoted on ASX at all times during the 3-month period before the time of the offer; and
- (c) trading in that class of financial products on ASX was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and
- (d) in the case of an offer by way of issue, it is a term of the offer that the issuer will take any necessary steps to ensure that the financial products are, immediately after the issue, quoted; and

- (e) in the case of an offer by way of sale, the financial products are quoted at the time of the offer and the offeror has reasonable grounds to believe that the financial products will, immediately after the sale, remain quoted; and
  - (f) the ASX listing rules contain Australian continuous disclosure provisions.
- (2) Every exempt issuer (A), and every holder of financial products issued by A, is exempted from Parts 3 and 4 of the Act in respect of an offer of options to acquire, by way of issue, financial products (and the offer of those option underlyings) of which A is the issuer if—
- (a) the options and option underlyings are equity securities, debt securities, or managed investment products; and
  - (b) the option underlyings are of the same class as quoted financial products that have been quoted on ASX at all times during the 3-month period before the time of the offer; and
  - (c) trading in those quoted financial products on ASX was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and
  - (d) it is a term of the offer that the issuer will take any necessary steps to ensure that, immediately after the option underlyings are issued, the option underlyings are quoted; and
  - (e) the ASX listing rules contain Australian continuous disclosure provisions.
- (3) Subclause (1) and (2) are subject to subclause (4).
- (4) The exemptions in subclause (1) or subclause (2) do not apply if—
- (a) the offer is made within 3 months after a change to the essential nature of the issuer's business; or
  - (b) the offer is made within 3 months after a transaction for which the issuer has provided disclosure to ASX as if it were listing on that market; or
  - (c) the offer is made in connection with enabling—
    - (i) a change to the essential nature of the issuer business; or
    - (ii) a transaction for which the issuer will be required to provide disclosure to ASX as if it were listing on that market; or
  - (d) an exemption order under section 340 or 341 of the Corporations Act, other than an ASIC technical relief instrument, covered the issuer, or any person as director or auditor of the issuer, at any time during the period referred to in paragraph (1)(b) or (2)(b); or
  - (e) an exemption under section 111AS or 111AT of the Corporations Act covered the issuer, or any person as director or auditor of the issuer, at any time during the period referred to in paragraph (1)(b) or (2)(b); or
  - (f) ASIC has made a determination under section 708AA(3), 708A(2), 1012DAA(3), or 1012DA(2) of the Corporations Act in respect of the issuer that is in force at the time of the offer; or
  - (g) the FMA has made a direction order under section 468(1)(j) of the Act that is in force at the time of the offer prohibiting the issuer from relying on the exemptions in clause 5.

- (5) In this clause, **option underlyings**, in relation to an offer of options, means the underlying financial products to which the options relate.

**6 Condition that issuer must give notice to ASX and be in compliance with Australian continuous disclosure and financial reporting obligations**

- (1) The exemptions in clause 5 are, in respect of a person (A) who offers financial products to another person (B), subject to the condition that A must not offer the financial products, or issue or transfer those products, unless—
- (a) the issuer has, at a relevant time, provided a notice to ASX Limited and to NZX Limited for the purpose of that notice being notified to those markets; and
  - (b) the issuer, as at the date of the notice, is in compliance with the Australian continuous disclosure obligations that apply to it in relation to the ASX quoted financial products; and
  - (c) the issuer, as at the date of the notice, is in compliance with its Australian financial reporting obligations.
- (2) The notice under subclause (1)(a) must—
- (a) state that an offer for issue or sale is being made to investors in reliance upon the exemptions in clause 5 of this exemption notice; and
  - (b) state that the notice is provided under clause 6(1)(a) of this exemption notice; and
  - (c) state that, as at the date of the notice, the issuer is in compliance with the Australian continuous disclosure obligations that apply to it in relation to the ASX quoted financial products; and
  - (d) state that, as at the date of the notice, the issuer is in compliance with its Australian financial reporting obligations; and
  - (e) set out the information (if any) that is excluded information as at the date of the notice; and
  - (f) in the case of financial products that are equity securities, describe—
    - (i) the potential effect that the offer and acquisition of the equity securities will have on the control of the issuer; and
    - (ii) the consequences of those effects; and
  - (g) in the case of financial products that are debt securities that have a different redemption date or interest rate from that of the ASX quoted financial products, set out the information that would (if the ASX quoted financial products had had the same redemption date or interest rate) be—
    - (i) required to be disclosed under an Australian continuous disclosure obligation; or
    - (ii) excluded information.
- (3) The notice provided under subclause (1)(a) must contain information under subclause (2)(e), (f) and (g) only to the extent to which it is material information within the meaning of section 59 of the Act (applied as if the offer were a regulated offer).
- (4) In this clause,—

**Australian continuous disclosure obligation** means an obligation to notify information in accordance with section 674 of the Corporations Act and any ASX listing rules with which that section requires compliance with

**control** has the same meaning as in clause 48 of Schedule 1 of the Act

**excluded information** means information to which an Australian continuous disclosure obligation would apply but which has not been disclosed under such an obligation as a result of an exclusion in, or a waiver given under, the ASX listing rules

**Australian financial reporting obligations**, in relation to an issuer, means requirements imposed under—

- (a) the provisions of Chapter 2M of the Corporations Act, as they apply to the exempt issuer, to prepare financial statements or group financial statements in relation to the issuer, its group, or (if it is a manager) a scheme of which it is a manager for the most recently completed accounting period, to have those statements audited, and to lodge or register those statements; and
- (b) the ASX listing rules in relation to providing financial statements for release to the market in relation to any more recent interim accounting period than the period referred to in paragraph (a)

**ASX quoted financial products** means the ASX quoted financial products that are of the same class as those that are being offered

**relevant time**, in relation to an offer of financial products, means—

- (a) a time within the 24-hour period before the offer is made; or
- (b) an earlier time required by ASX Limited or NZX Limited; or
- (c) if a similar notice is also being given for the purposes of an offer of the financial products in Australia, an earlier time required by ASX Limited for giving the similar notice.

## **7 Condition to correct defective notice**

- (1) If this subclause applies, the exemptions in clause 5 are, in respect of a person (A) who offers financial products to another person (B), subject to the condition that A must, within a reasonable time after becoming aware of a defect, provide to ASX Limited and NZX Limited a notice that sets out the information necessary to correct the defect (for the purpose of ASX Limited and NZX Limited notifying that information to the markets).
- (2) Subclause (1) applies if—
  - (a) the notice given under clause 6(1)(a) is defective; and
  - (b) A becomes aware of the defect in the notice,—
    - (i) in the case of subclause (3)(a)(i) or (ii), within 12 months after the relevant financial products are issued or transferred; or
    - (ii) in the case of subclause (3)(a)(iii), before the offer closes.
- (3) The notice under clause 6(1)(a) is defective if—
  - (a) there is—
    - (i) a statement in the notice that is false or misleading or is likely to mislead; or

- (ii) an omission from the notice of information that is required to be contained in the notice by clause 6; or
  - (iii) a circumstance that has arisen since the notice was given but before the offer closes that would have been required by clause 6 to be disclosed or otherwise contained in the notice if it had arisen before the notice was given, and the circumstance is not so disclosed or contained in the notice; and
- (b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

## **8 Further condition for offers of debt securities**

- (1) The exemptions in clause 5 are, in respect of a person **(A)** who offers debt securities to another person **(B)**, subject to the further condition that—
- (a) A must ensure that a statement under subclause (3) is included at the front (in a prominent position) of every document provided to B that contains the key terms of the offer of the debt securities; and
  - (b) if a document referred to in subclause (1)(a) is not provided to B, A must not accept an application, or issue or transfer the debt securities to B, if a statement under subclause (3) was not, before the application was made, given to B or delivered or sent to B's address.
- (2) Subclauses (3) and (4) apply for the purposes of the statement under subclause (1).
- (3) The statement must—
- (a) clearly identify the offer as an offer of debt securities that are of the same class as certain quoted debt securities of the issuer:
  - (b) contain a statement to the effect that the issuer is subject to a disclosure obligation that requires it to notify certain material information to ASX Limited for the purpose of that information being made available to participants in the market and that that information can be found from a specified link or URL (being a link to or a URL for the page of the Internet site maintained by ASX Limited that relates to the debt securities or the issuer):
  - (c) provide a list that identifies the debt securities of the issuer that are currently quoted and are in the same class as the offered debt securities (where the securities are identified by reference to the interest rates and redemption dates of those securities and in any other way that the issuer thinks fit):
  - (d) contain a statement to the effect that investors should look at the market price of the quoted debt securities referred to in paragraph (c) to find out how the market assesses the returns and risk premium for those debt securities.
- (4) The statement may include (or incorporate by reference) comparable pricing information that complies with clause 23 of Schedule 2 of the Regulations.

**9 Exemptions for secondary sales**

A person who offers financial products for sale within 12 months after the date on which the financial products were issued is exempted from clause 31 and 34 of Schedule 1 of the Act if the products have previously been offered for issue or sale under an offer made in reliance upon the exemptions in clause 5.

**10 Offers made in reliance on this notice not regulated offers**

An offer of equity securities, debt securities, or managed investment products made in reliance on this notice is not a regulated offer.

Dated at [●] this [●] day of [●] 2018

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Financial Markets Authority