

Financial Markets Conduct (New Zealand Local Government Funding Agency Limited Sustainable Financing Bond Offer) Exemption Notice 2023

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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Notice

1 Title

This notice is the Financial Markets Conduct (New Zealand Local Government Funding Agency Limited Sustainable Financing Bond Offer) Exemption Notice 2023.

2 Commencement

This notice comes into force on 31 March 2023.

3 Revocation

This notice is revoked on the close of 30 March 2028.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

excluded information means information to which a 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 listing rules for the NZX Debt Market

existing quoted debt securities means existing quoted debt securities of LGFA referred to in clause 5(a)

financial reporting obligations, in relation to LGFA, means requirements imposed under—

- (a) the Act or another enactment, to prepare financial statements in relation to LGFA for the most recently completed accounting period, to have those statements audited, and to lodge or register those statements; and
- (b) any listing rules of the NZX Debt Market that provide for financial statements to be released to the market for a more recent interim accounting period than the period referred to in paragraph (a)

LGFA means New Zealand Local Government Funding Agency Limited

NZX Debt Market means the NZX Debt Market operated by NZX Limited as a licensed market

Principal Terms Sheet means a document that—

- (a) contains the key terms of the Sustainable Financing Bond Offer; and
- (b) is the principal means by which the terms of a Sustainable Financing Bond Offer are communicated to investors; and
- (c) is prepared by or on behalf of LGFA

Regulations means the Financial Markets Conduct Regulations 2014

relevant time, in relation to a Sustainable Financing Bond Offer, means—

- (a) a time within the 24-hour period before the offer is made; or
- (b) an earlier time required by NZX Limited

Sustainable Financing Bond Framework means LGFA's sustainable financing bond framework that sets out how LGFA intends to issue and manage bonds (or other accepted financing instruments) with proceeds notionally allocated to lending instruments advanced by LGFA that LGFA has identified as supporting borrowers to deliver positive environmental or social outcomes

Sustainable Financing Bond means a debt security offered for issue by LGFA that has a Sustainable Financing Status

Sustainable Financing Bond Offer means an offer by way of issue by LGFA of Sustainable Financing Bonds

Sustainable Financing Status means, in relation to any debt securities, that—

- (a) those debt securities are labelled, referred to, or marketed as "sustainable financing bonds", "sustainability bonds", "sustainable bonds", "sustainability-linked bonds", "green bonds", "social bonds" or similar terminology; and
 - (b) the proceeds of issue of those debt securities are intended by LGFA to be applied in accordance with the Sustainable Financing Bond Framework.
- (2) 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 Sustainable Financing Bond Offer

LGFA is exempt from Parts 3, 4, and 7 of the Act in respect of a Sustainable Financing Bond Offer, if—

- (a) the Sustainable Financing Bonds have attached to them identical rights, privileges, limitations, and conditions as an existing class of quoted debt securities issued by LGFA,

except for having a different redemption date, or interest rate, or both, and having Sustainable Financing Status; and

- (b) that class of existing quoted debt securities have been quoted on the NZX Debt Market at all times during the 3-month period before the time of the Sustainable Financing Bond Offer; and
- (c) trading in that class of existing quoted debt securities on the NZX Debt Market 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 Sustainable Financing Bond Offer that LGFA will take any necessary steps to ensure that the Sustainable Financing Bonds are, immediately after the issue, quoted; and
- (e) the market rules of the NZX Debt Market contain continuous disclosure provisions.

6 Application of exemptions in clause 5

The exemptions in clause 5 do not apply if—

- (a) the Sustainable Financing Bond Offer is made within 3 months after a change to the essential nature of LGFA's business; or
- (b) the Sustainable Financing Bond Offer is made within 3 months after a transaction for which LGFA has provided disclosure to the NZX Debt Market as if it were listing on that market; or
- (c) the Sustainable Financing Bond Offer is made in connection with enabling—
 - (i) a change to the essential nature of LGFA's business; or
 - (ii) a transaction for which LGFA will be required to provide disclosure to the NZX Debt Market as if it were listing on that market.

7 Condition that LGFA must give notice to NZX Limited and be in compliance with continuous disclosure and financial reporting obligations

- (1) The exemptions in clause 5 are subject to the condition that LGFA must not offer the Sustainable Financing Bonds, or issue those products, unless LGFA—
 - (a) has, at a relevant time, provided a notice to NZX Limited in accordance with subclause 7(2) for the purpose of the information in the notice being notified to the NZX Debt Market; and
 - (b) is, as at the date of the notice, in compliance with its continuous disclosure obligations that apply to it in relation to the existing quoted debt securities; and
 - (c) is, as at the date of the notice, in compliance with its financial reporting obligations.
- (2) The exemptions in clause 5 are subject to the condition that LGFA must take all reasonable steps to ensure that the notice under subclause (1)(a)—
 - (a) states that an offer for issue is being made to investors in reliance upon the exemptions in clause 5; and
 - (b) states that the notice is provided under subclause (1)(a); and
 - (c) states that, as at the date of the notice, LGFA is in compliance with the continuous disclosure obligations that apply to it in relation to the existing quoted debt securities; and

- (d) states that, as at the date of the notice, LGFA is in compliance with its financial reporting obligations; and
 - (e) sets out the information (if any) that is excluded information as at the date of the notice; and
 - (f) in the case of the existing quoted debt securities, sets out the information that would (if the existing quoted debt securities had had the same redemption date, interest rate or Sustainable Financing Status as the Sustainable Financing Bonds) be—
 - (i) required to be disclosed under a continuous disclosure obligation; or
 - (ii) excluded information.
- (3) The notice must contain information under subclause (2)(e) and (f) only to the extent to which it is material information within the meaning of section 59 of the Act.

8 Condition to correct defective notice

- (1) This clause applies if—
- (a) the notice given under clause 7 is defective; and
 - (b) LGFA becomes aware of the defect in the notice—
 - (i) in the case of subclause (3)(a)(i) or (ii), within 12 months after the Sustainable Financing Bonds are issued; or
 - (ii) in the case of subclause (3)(a)(iii), before the Sustainable Financing Bond Offer closes.
- (2) If this clause applies, the exemptions in clause 5 are subject to the condition that LGFA must, within a reasonable time after LGFA becomes aware of a defect, provide to NZX Limited a notice that sets out the information necessary to correct the defect for the purpose of the information being notified to the NZX Debt Market.
- (3) The notice 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 7; or
 - (iii) a circumstance that has arisen since the notice was given but before the Sustainable Financing Bond Offer closes that would have been required by clause 7 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 subclause (a) is materially adverse from the point of view of an investor.

9 Condition to include statement in Principal Terms Sheet

- (1) The exemptions in clause 5 are, in respect of Sustainable Financing Bonds offered by LGFA to another person (**B**), subject to further conditions that—
- (a) LGFA must ensure that —

- (i) a statement under subclause (2) is included at the front (in a prominent position) of the Principal Terms Sheet and every document provided to B that contains the key terms of the Sustainable Financing Bond Offer; and
 - (ii) the information under subclause (3) is included in the Principal Terms Sheet provided to B; and
 - (iii) it has provided the Principal Terms Sheet to NZX Limited for the purpose of the Principal Terms Sheet being notified to the NZX Debt Market; and
 - (b) if the Principal Terms Sheet is not provided to B, LGFA must not accept an application, or issue the Sustainable Financing Bonds to B, if a statement under subclause (2) and information under subclause (3) was not, before the application was made, given to B or delivered or sent to B's address.
- (2) The statement referred to in subclause (1)(a)(i) must—
- (a) clearly identify the Sustainable Financing Bond Offer as an offer of debt securities that have attached to them identical rights, privileges, limitations, and conditions as the existing quoted debt securities, except for having a different redemption date, or interest rate, or both, and having Sustainable Financing Status; and
 - (b) contain a statement to the effect that LGFA is subject to a disclosure obligation that requires it to notify certain material information to NZX 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 NZX Limited that relates to the Sustainable Financing Bonds or LGFA); and
 - (c) provide a list that identifies the existing quoted 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 LGFA thinks fit); and
 - (d) contain a statement to the effect that investors should look at the market price of the existing quoted debt securities to find out how the market assesses the returns and risk premium for those debt securities; and
 - (e) contain a brief description of how the proceeds of the issue of the Sustainable Financing Bonds are intended to be applied.
- (3) The information referred to in subclause (1)(a)(ii) is—
- (a) a statement that explains whether a failure to maintain the Sustainable Financing Status would constitute an event of default or other breach of the contractual terms of the Sustainable Financing Bonds; and
 - (b) a brief description of circumstances that may lead to the Sustainable Financing Bonds losing the Sustainable Financing Status; and
 - (c) a brief description of the scope and nature of any third-party external review engagement relating to the review of the Sustainable Financing Bond Framework (or underlying lending instruments advanced by LGFA) for alignment with current sustainable finance market principles and a link to or URL for the page or section of the internet site where any such external review is located; and
 - (d) a brief description of the Sustainable Financing Bond Framework, a statement to the effect that investors should read the Sustainable Financing Bond Framework and a link to or URL

for the page or section of the internet site where the Sustainable Financing Bond Framework is located; and

- (e) a statement to the effect that there is a risk that if the Sustainable Financing Bonds cease to have Sustainable Financing Status under the Sustainable Financing Bond Framework the price at which the Sustainable Financing Bonds can be sold may be affected.

10 Condition about information that must be included in Principal Terms Sheet or Sustainable Financing Bond Framework

- (1) The exemptions in clause 5 are subject to the condition that LGFA must ensure that the information in subclause (2) is included in—
 - (a) the Principal Terms Sheet; or
 - (b) the Sustainable Financing Bond Framework.
- (2) The information is—
 - (a) a description of the basis for the Sustainable Financing Bonds being labelled or marketed as 'sustainable financing', 'sustainable', 'sustainability', 'green' or 'social' or similar (as applicable); and
 - (b) a summary of the outcomes relevant to the Sustainable Financing Bonds that the Sustainable Financing Bond Framework aims to achieve and the circumstances that LGFA is aware of that exist or are likely to arise that significantly increase the risk these outcomes are not achieved; and
 - (c) a description of how and when the outcomes relevant to the Sustainable Financing Bonds that the Sustainable Financing Bond Framework aims to achieve are to be measured and reported on under the Sustainable Financing Bond Framework; and
 - (d) a description of the nature of the underlying bonds or loans for which funding from the Sustainable Financing Bonds may be notionally allocated under the Sustainable Financing Bond Framework; and
 - (e) a summary of the governance processes under the Sustainable Financing Bond Framework, including the extent to which LGFA's board has oversight over it; and
 - (f) a summary of the circumstances that LGFA is aware of that exist or are likely to arise that significantly increase the risk that the Sustainable Financing Bond Framework may not be complied with; and
 - (g) a description of the approach LGFA intends to follow in relation to notification and reporting to investors if non-compliance with the Sustainable Financing Bond Framework is identified by LGFA or the third-party external reviewer; and
 - (h) a description of any material potential consequences, in LGFA's view, of non-compliance with the Sustainable Financing Bond Framework by LGFA; and
 - (i) a description of the material circumstances that, in LGFA's view, may constitute a loss of Sustainable Financing Status and how this is expected to be reflected in the labelling or marketing of the bonds under the Sustainable Financing Bond Framework; and
 - (j) a description of the approach LGFA intends to follow in relation to notification and reporting to investors (including as to method and timing) if the Sustainable Financing Bonds lose their Sustainable Financing Status; and
 - (k) a description of the scope and nature of any third-party external review in relation to the Sustainable Financing Bond Framework, including its purpose and frequency under the

Sustainable Financing Bond Framework and, where such external review has been completed, a link to or URL for the page or section of the internet site where that external review is located; and

- (l) if a third-party external review in relation to the Sustainable Financing Bond Framework has not been undertaken with the frequency described in the Sustainable Financing Bond Framework, a statement to that effect; and
- (m) if an external review in relation to the Sustainable Financing Bond Framework is not provided by a third-party provider, a statement to that effect; and
- (n) if a holder of the Sustainable Financing Bonds will or may be liable to make further payments or to pay fees or charges relating to the Sustainable Financing Status, a brief description of the nature of that liability or of those fees or charges; and
- (o) if any amounts are paid or agreed to be paid, or any benefits are given or agreed to be given, to any third-party provider in connection with any third-party external review obtained in connection with the Sustainable Financing Bond Framework (or underlying lending instruments advanced by LGFA) for alignment with current sustainable finance market principles, by, or on behalf of LGFA or an associated person of LGFA, the name of the third-party provider, a brief description of the nature of those amounts and benefits and an estimate of the total of such amounts or total value of such benefits.

Dated at Auckland this 30th day of March 2023.



Paul Gregory
Executive Director, Response & Enforcement
Financial Markets Authority

Statement of Reasons

This notice comes into force on 31 March, 2023 and is revoked on the close of 30 March, 2028.

The notice exempts New Zealand Local Government Funding Agency Limited (**LGFA**), subject to conditions, from the disclosure, governance, and financial reporting requirements in Parts 3, 4 and 7 of the Financial Markets Conduct Act 2013 (the **Act**) in relation to offers of 'sustainable financing bonds', 'sustainability bonds', 'sustainable bonds', "sustainability-linked bonds", 'green bonds', 'social bonds', or similar bonds (**Sustainable Financing Bonds**) issued under LGFA's sustainable financing bond framework (**Sustainable Financing Bond Framework**). The Sustainable Financing Bond Framework sets out how LGFA intends to issue and manage bonds (or other accepted financing instruments) with proceeds notionally allocated to lending instruments advanced by LGFA that LGFA has identified as delivering positive environmental or social outcomes.

The exemptions are similar to the exclusion in clause 19 of Schedule 1 to the Act for offers of the same class as financial products that are quoted on a licenced market (the **Same Class Offer Exclusion**). LGFA is not able to rely on the Same Class Offer Exclusion because the sustainable financing features of the Sustainable Financing Bonds are rights, powers, privileges or limitations that attach to the Sustainable Financing Bonds, making these a different class from LGFA's existing quoted debt securities that do not have sustainable financing status. The exemptions only apply to bonds that would be of the same class as existing quoted debt securities issued by LGFA, but for the sustainable financing status of the bonds.

The exemptions are subject to conditions that are consistent with the requirements in clause 19 of Schedule 1 to the Act and clauses 19 to 22 and clause 46 of Schedule 8 to the Financial Markets Conduct Regulations 2014 (which relate to the Same Class Offer Exclusion). The exemptions are also subject to additional conditions that are not included in the Same Class Offer Exclusion. These additional conditions require (among other things)—

- key information about the 'sustainable financing' status of the Sustainable Financing Bonds to be provided to investors in the principal terms sheet; and
- certain additional information about the 'sustainable financing' status of the Sustainable Financing Bonds to be included in the principal terms sheet or the Sustainable Financing Bond Framework.

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

- the exemptions promote innovation and flexibility in the financial markets by facilitating the offer of a different type of bond which may fund investments that generate positive environmental and social benefits. This enables investors to access a product that might otherwise not be made available, responding to growing investor demand for products that integrate non-financial factors. This supports the growth of New Zealand's sustainable bond market and is consistent with New Zealand's transition to an integrated financial system that looks beyond financial returns:
- additionally, providing relief from the requirements of Parts 3, 4 and 7 of the Act will enable LGFA to offer the Sustainable Financing Bonds at lower cost, providing a viable option to raise funds using this type of bond as an alternative to 'conventional' bonds. The higher costs of compliance with the requirements of the Act that would apply (but for the exemptions), are not necessary because the Sustainable Financing Bonds will have identical terms to existing quoted debt securities issued by LGFA, other than the interest rate or redemption date, or both, and the sustainable financing status:
- the conditions of the exemptions create tailored disclosure requirements for the Sustainable Financing Bond offering that particularly focuses on the sustainable financing status of the bonds. This means information about the sustainable financing status of the bonds will be clearly presented to investors in a transparent manner that enables investors to readily identify the differences between

the Sustainable Financing Bonds and existing quoted debt securities issued by LGFA. In these circumstances, the FMA is satisfied that the exemptions are desirable in order to promote the purposes of the Act, specifically by ensuring timely, accurate, and understandable information is provided to assist investors to make confident and informed decisions relating to the Sustainable Financing Bond offering:

- given the exemptions apply only to bonds with identical rights, privileges, conditions and limitations as existing quoted debt securities issued by LGFA except for the interest rate or redemption date, or both, and the sustainable financing status of the bonds, and in view of the exemptions being granted on an equivalent basis to the Same Class Offer Exclusion with modifications, limited to the addition of conditions requiring information be provided about the 'sustainable financing' status of the bonds, the FMA is also satisfied that the exemptions are not broader than reasonably necessary to address the matters that give rise to them.