

Financial Markets Conduct (Spark New Zealand Limited Group) Exemption Notice 2016

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

Contents

1	Title	1
2	Commencement	1
3	Revocation	1
4	Application	1
5	Interpretation	2
6	Exemption	2
7	Conditions	2

Notice

1 Title

This notice is the Financial Markets Conduct (Spark New Zealand Limited Group) Exemption Notice 2016.

2 Commencement

This notice comes into force on 18 March 2016.

3 Revocation

This notice is revoked on the close of 17 March 2021.

4 Application

(1) An exemption granted by this notice applies to the following accounting periods of an exempt person:

(a) an accounting period of an exempt person that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements for that period would, but for the exemptions contained in this notice, be required to be delivered to the Registrar for lodgement under section 461H of the Act; and

(b) subsequent accounting periods.

(2) However, an exemption granted by this notice does not apply to the exempt person in respect of an accounting period if the exempt person is an FMC reporting entity in that accounting period because it is an FMC reporting entity within the meaning of section 451 of the Act for a reason other than being a recipient of money from a conduit issuer.

(3) Clause 6 is subject to this clause.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

consolidated group means Spark and every subsidiary of Spark

exempt person means a subsidiary of Spark that is, or becomes, a recipient of money from a conduit issuer (within the meaning of section 453 of the Act) by virtue of receiving 10% or more of the money that has been raised by Spark Finance by the issue of any Spark debt securities

guaranteeing group means the group comprising—

- (a) Spark; and
- (b) every subsidiary of Spark that is—
 - (i) unconditionally liable (whether or not jointly or severally with Spark or any other person) to repay the Spark debt securities; or
 - (ii) liable to repay the Spark debt securities subject only to the conditions that Spark or any other person has failed to do so.

prospective investor, in relation to a Spark debt security, means any person who, under the terms of issue of the Spark debt security, is eligible to subscribe for the Spark debt security

Regulations means the Financial Markets Conduct Regulations 2014

Spark means Spark New Zealand Limited

Spark debt security means a debt security offered by Spark Finance under a regulated offer or an offer made by Spark Finance, in the prescribed circumstances for the purposes of section 453(b)(ii) of the Act, in reliance on an exclusion in Schedule 1 of the Act

Spark Finance means Spark Finance Limited.

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

6 Exemptions

- (1) Every exempt person is exempted from subpart 2 and subpart 3 of Part 7 of the Act in respect of Spark debt securities.
- (2) Spark Finance is exempted from —
- (a) clause 28(4) of schedule 2 of the Regulations to the extent that this clause would require disclosure in a product disclosure statement in relation to an exempt person; and
 - (b) clause 67(1)(c) of schedule 2 of the Regulations to the extent that this clause would require information to be lodged with the Registrar in relation to an exempt person.

7 Conditions

The exemptions in clause 6 are subject to the following conditions—

- (a) group financial statements for the consolidated group are prepared and audited in accordance with Part 7 of the Act; and
- (b) copies of the group financial statements referred to in paragraph (a) together with a copy of the auditor's report on those statements are delivered to the Registrar for lodgement in accordance with Part 7 of the Act; and

Handwritten signature

- (c) Spark will, within 5 working days of receiving a request from a holder of a Spark debt security or a prospective investor for a copy of the group financial statements referred to in paragraph (a), without fee, send, or cause to be sent, to that person a copy of those statements together with a copy of the auditor's report on those statements; and
- (d) the guaranteeing group provides unconditional unlimited guarantees of each issued Spark debt security.

Dated at Auckland this 11th day of March 2016.


Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice comes into force on 18 March 2016 and is revoked on the close of 17 March 2021.

This notice exempts certain subsidiaries of Spark New Zealand Limited (**Spark**) from the following obligations which apply to entities in receipt of funds from a conduit issuer: subpart 2 (accounting records obligations) and subpart 3 (obligations to prepare, audit, and lodge financial statements) of Part 7 of the Financial Markets Conduct Act 2013 (**Act**).

This notice also exempts Spark Finance Limited (**Spark Finance**) from clause 28(4) (in respect of its obligation as a conduit issuer to disclose in the applicable PDS, the Spark subsidiaries' receipt of money from Spark Finance) and clause 67(1)(c) (obligations to lodge certain information with the Registrar identifying the recipient of funds) of schedule 2 of the Financial Markets Conduct Regulations 2014 (**Regulations**).

The exemptions are on the conditions that group financial statements for the consolidated group are prepared and audited, that copies of the group financial statements and the auditor's report are lodged with the Registrar, that Spark will provide a copy of the group financial statements and the auditor's report upon request, and that the guaranteeing group will provide unconditional unlimited guarantees of the issued debt securities.

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

- sometimes entities make regulated offers through special purpose vehicles or finance subsidiaries known as 'conduit issuers'. These conduit issuers loan most of the funds to related parties. In these situations, the related parties are considered 'recipients of the funds from a conduit issuer' and become FMC reporting entities in their own right:
- the conduit issuer provisions of the Act are intended to require public reporting by entities that have the effective use of funds raised from the public, but which have structured themselves in such a way as to avoid being FMC reporting entities under the Act. These circumstances do not apply to Spark's offer of debt securities. Rather, in the situation covered by this notice, Spark (together with other members of its group) provides a guarantee of the obligations of Spark Finance under the debt securities. As such the investors will have access to the information they require to evaluate the true risk of their investment and, in particular, to make an informed assessment of the consolidated group's financial position. This is consistent with promoting the confident and informed participation of businesses, investors and consumers in the financial markets:

- The consolidated group reports provide a good indication of the financial position and performance of the group as a whole. Where there are intra-group guarantees, the risk of investment is spread across this reporting group. The guaranteeing group provides unconditional unlimited guarantees of the issued debt securities. As such the exemptions are consistent with promoting the confident and informed participation of businesses, investors and consumers in the financial markets and providing timely, accurate and understandable information to persons to assist those persons to make decisions relating to financial products:
- The costs associated with a requirement for the subsidiaries of Spark to separately prepare financial statements and have those audited would outweigh the benefits to investors given that the consolidated group financial statements will also be prepared, audited and lodged with the Registrar. As such the exemptions avoid unnecessary compliance costs:
- If Spark Finance were required to prepare product disclosure statements and lodge information with the Registrar, then the compliance costs are likely to outweigh the benefit to investors. As such the exemptions avoid unnecessary compliance costs.

The FMA is satisfied that the granting of the exemption is desirable in order to promote the purposes of the Act specifically by promoting the confident and informed participation of business, investors and consumers in the financial markets, avoiding unnecessary compliance costs, and providing for timely, accurate, and understandable information to investors to assist them in making decisions relating to financial products.

The FMA is further satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to them, given that—

- the conditions require an intra-group guarantee in respect of the Spark debt securities and for group financial statements for the consolidated group to be prepared, audited and lodged in accordance with the Act and made available to investors:
- the notice does not apply to those subsidiaries of Spark that are FMC reporting entities for any reason other than being a recipient of money from a conduit issuer.

WPK