

Financial Markets Conduct (BNP Paribas S.A.) Exemption Notice 2021

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.

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Notice

1 Title

This notice is the Financial Markets Conduct (BNP Paribas S.A.) Exemption Notice 2021.

2 Commencement

This notice comes into force on 16 September 2021.

3 Revocation

This notice is revoked on the close of 15 September 2026.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

BNPP means BNP Paribas S.A. a public limited company incorporated in France with registration no. 662 042 449 (RCS Paris)

BNPP entity means—

(a) BNPP; or

(b) any subsidiary of BNPP that is granted a lending authority by a client

borrower means the entity that enters, or may enter, into a securities lending arrangement with the client

client means a client of a BNPP entity that grants a lending authority to that BNPP entity in connection with a securities lending arrangement to be entered into between the client and the borrower

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exempt person means—

- (a) a BNPP entity; and
- (b) a related body corporate of a BNPP entity

lending authority means an authority granted to a BNPP entity to act as agent on behalf of a client in connection with a securities lending arrangement to be entered into between the client and the borrower, under which the client grants the BNPP entity the right—

- (a) to transfer financial products held by or on behalf of the client to the borrower; and
- (b) to accept, transfer, deliver or return all or any of the property provided as collateral by the borrower in connection with the securities lending arrangement

master securities lending agreement means—

- (a) an Australian Master Securities Lending Arrangement published by the Australian Securities Lending Association; or
- (b) a Global Master Securities Lending Agreement published by the International Securities Lending Association; or
- (c) a written agreement that is on substantially the same terms as an agreement referred to in (a) or (b) above

Regulations means the Financial Markets Conduct Regulations 2014

securities lending arrangement means an arrangement documented under a master securities lending agreement under which—

- (a) the client agrees that it will—
 - (i) deliver financial products (**delivered financial products**) to the borrower or to an entity nominated by the borrower; and
 - (ii) vest title in the delivered financial products in the entity to which they are delivered; and
 - (b) the borrower agrees that it will, when required to do so under the applicable master securities lending agreement—
 - (i) deliver the delivered financial products or financial products equivalent to the delivered financial products (**equivalent financial products**) and any required collateral to the client or to an entity nominated by the client; and
 - (ii) vest title in the delivered financial products or equivalent financial products and any required collateral in the entity to which they are delivered.
- (2) Any term or expression that is defined in the Act or Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption

Every exempt person is exempted from sections 276 to 279 of the Act in respect of any relevant interest in a financial product that the exempt person has merely as a result of a lending authority granted to a BNPP entity by a client.

6 Conditions of exemption

The exemptions in clause 5 are subject to the conditions that—

- (a) a BNPP entity must not, under the lending authority, have the power to exercise, or control the exercise of, a right to vote attached to any financial product; and
- (b) a BNPP entity must not, under the lending authority, hold any financial products on trust for, or on behalf of, the client; and
- (c) a BNPP entity must not, under the lending authority, facilitate a securities lending arrangement that the BNPP entity knows, or ought reasonably to know, is being entered into by the client or the borrower (or both) for the purpose of avoiding, circumventing or evading the requirement to comply with sections 276 to 279 of the Act.

Dated at Wellington this 10th day of September 2021.



Sarah Vrede
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 16 September 2021 and is revoked on the close of 15 September 2026.

This notice exempts exempt persons (being BNP Paribas S.A. and its subsidiaries (each a **BNPP entity**) and a related body corporate of a BNPP entity) from the substantial product holder disclosure obligations contained in sections 276 to 279 of the Financial Markets Conduct Act 2013 (the **Act**) in respect of any relevant interest in a financial product that an exempt person has as merely a result of a BNPP entity being granted an authority (**lending authority**) to act as agent on behalf of a client (the **client**) to lend approved financial products owned by the client to another entity (the **borrower**) in connection with a securities lending arrangement entered into between the client and the borrower (**securities lending arrangement**).

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

- the relevant interests in financial products to which the exemptions apply arise merely as a result of the limited authority granted to a BNPP entity to act as agent on behalf of the client for the purpose of lending financial products to the borrower, and dealing with any approved collateral required to be provided by the borrower, under a securities lending arrangement. The lending authority does not transfer the beneficial ownership of financial products to a BNPP entity and the exemption is subject to conditions that a BNPP entity must not, under the lending authority, have the power to exercise, or control the exercise of, a right to vote attached to any financial product nor hold any financial products on trust for, or on behalf of, the client:
- the client and the borrower will still be required to comply with the substantial product holder regime in respect of the relevant interests they have in financial products that are delivered on behalf of the client, or provided by the borrower as approved collateral, under the relevant securities lending arrangement. Requiring further disclosure by a BNPP entity in its capacity as

agent of the client in respect of the same financial products may inhibit an informed market and potentially confuse or mislead the market with respect to the true ownership, or control of voting rights, of the financial products:

- the exemption is consistent with the policy of the Act, which excludes certain interests in financial products from the definition of relevant interest and exempts certain substantial product holdings from the disclosure obligations, thereby limiting the scope of the circumstances in which substantial holdings in financial products must be disclosed to where the disclosure is useful:
- as such, the FMA is satisfied that the granting of the exemption is desirable to promote the purposes of the Act. Specifically, to promote the confident and informed participation of businesses, investors and consumers in the financial markets and, given there is no benefit to requiring disclosure in the circumstances covered by the exemption, the granting of the exemption will also avoid unnecessary compliance costs:
- by limiting the scope of the exemption to relevant interests in financial products that arise merely as a result of a limited authority granted to a BNPP entity to act as agent on behalf of a client in connection with a securities lending arrangement, and given that the client and the borrower will still be required to comply with the substantial product holder regime in respect of the relevant interests they have in those financial products, the FMA is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.