

Financial Markets Conduct (EML Payment Solutions Limited) 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.

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Application	1
5 Interpretation	1
6 Exemptions	3
7 Conditions of exemptions	3

Notice

1 Title

This notice is the Financial Markets Conduct (EML Payment Solutions Limited) Exemption Notice 2021.

2 Commencement

This notice comes into force on 15 March 2021.

3 Revocation

This notice is revoked on the close of 14 March 2026.

4 Application

An exemption granted by clause 6(1) of this notice applies to the following accounting periods of the exempt entity-

- (a) the accounting period ending 30 June 2021; and
- (b) subsequent accounting periods.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

applicable auditing and assurance standard in relation to:



- (a) an audit carried out, and an audit report prepared, by an approved auditor on financial statements prepared in accordance with Australian GAAP, means an auditing and assurance standard that applies to an audit of, and an audit report on, financial statements prepared in accordance with Australian GAAP; and
- (b) an audit carried out, and an audit report prepared, by a qualified auditor on financial statements prepared in accordance with generally accepted accounting practice has the meaning set out in section 5(1) of the Financial Reporting Act 2013

approved auditor means, in relation to the exempt entity, an accountant who is qualified under the laws of Australia to give an opinion as to whether financial statements comply with Australian GAAP

ASIC means the Australian Securities and Investments Commission

Australian GAAP means Australian equivalents to International Financial Reporting Standards that are required or permitted in Australia

continuous issue PDS has the meaning set out in regulation 5(1) of the Regulations

call debt security has the meaning set out in regulation 3 of the Declared-out Entities Regulations

Declared-out Entities Regulations means the Non-bank Deposit Takers (Declared-out Entities) Regulations 2015

exempt entity means EML Payment Solutions Limited (ACN 131 436 532)

exempt offer means any offer of call debt securities in the form of prepaid instruments in respect of which the exempt entity is the issuer

International Financial Reporting Standards means—

- (a) International Financial Reporting Standards, International Accounting Standards, and Standing Interpretations Committee interpretations that have been issued, endorsed, or adopted by the International Accounting Standards Board in accordance with the constitution of the International Financial Reporting Standards Foundation; and
- (b) final interpretations by the International Financial Reporting Standards Interpretations Committee approved by the International Accounting Standards Board in accordance with that constitution

New Zealand business, in relation to the exempt entity, means the New Zealand business (if any) of the exempt entity

payment facility provider has the meaning set out in regulation 7 of the Declared-out Entities Regulations

prepaid instrument has the meaning set out in regulation 7 of the Declared-out Entities Regulations

Regulations means the Financial Markets Conduct Regulations 2014.

- (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.
- (3) Regulation 9 of the Regulations applies, with all necessary modifications, to the statement required under clause 7(2)(a).

6 Exemptions

- (1) The exempt entity is exempted from—
 - (a) sections 455(1)(c), 461B, 461D, and 461G of the Act; and
 - (b) section 460 of the Act to the extent that that section requires the exempt entity to ensure that its financial statements—
 - (i) comply with generally accepted accounting practice; and
 - (ii) are dated and signed in accordance with section 460(1)(b).
- (2) The exempt entity is, in respect of each exempt offer, exempted from—
 - (a) clauses 37 and 39 of Schedule 2 of the Regulations; and
 - (b) clause 64 of Schedule 2 of the Regulations.

7 Conditions of exemptions


- (1) The exemptions in clause 6(1) are subject to the conditions that—
 - (a) the exempt entity, in relation to the financial statements prepared under section 460 of the Act, must comply with the law and regulatory requirements of, or permitted by, the Commonwealth of Australia that relate to the preparation, content, audit and public filing of those statements and, in particular, the exempt entity must ensure that—
 - (i) those statements comply with Australian GAAP; and
 - (ii) those statements are audited by an approved auditor; and
 - (iii) an audit report is prepared by the approved auditor in respect of that audit; and
 - (iv) those statements are lodged with ASIC within the time for lodgement prescribed by the Corporations Act 2001 (Cth); and
 - (b) the exempt entity must ensure that there are kept at all times accounting records that will enable the exempt entity to ensure that—
 - (i) the financial statements prepared under section 460 of the Act comply with clause 7(1)(a)(i); and
 - (ii) the New Zealand business financial statements prepared under clause 7(1)(c) (if any) comply with clause 7(1)(c)(i); and
 - (c) the financial statements delivered for lodgement under section 461H of the Act must be accompanied by financial statements for the New Zealand business (if any), and the exempt entity must ensure that—
 - (i) those statements are prepared in accordance with Australian GAAP or generally accepted accounting practice; and
 - (ii) those statements are audited by an approved auditor or a qualified auditor who must, in carrying out the audit on those statements, comply with all applicable auditing and assurance standards; and
 - (iii) an audit report is prepared by the approved auditor or qualified auditor in respect of that audit that must comply with the requirements of all applicable auditing and assurance standards; and

- (d) if an auditor's report referred to in clause 7(1)(a)(iii) or clause 7(1)(c)(iii) was qualified or referred to a fundamental matter in any respect, the exempt entity must, within 7 working days after the report is signed, provide a copy of the report, and a copy of the financial statements to which it relates, to—
 - (i) the FMA; and
 - (ii) the External Reporting Board; and
 - (iii) the supervisor in relation to the call debt securities offered under each exempt offer; and
 - (e) the financial statements that are delivered to the Registrar for lodgement under section 461H of the Act—
 - (i) are accompanied by written notification to the Registrar that the exempt entity is relying on this notice in respect of the accounting period to which the statements relate; and
 - (ii) are in English.
- (2) The exemptions in clause 6(2) are subject to the conditions that—
- (a) the PDS must include a statement in the following form in section 7 of the PDS—
 - (i) if the PDS is not a continuous issue PDS, after the statement in clause 36(1) of Schedule 2 of the Regulations; or
 - (ii) if the PDS is a continuous issue PDS, after the information required under clause 7(3)(c):

“The law normally requires the financial information to be determined or prepared in accordance with New Zealand generally accepted accounting practice. In this case, the financial information is determined or prepared in accordance with Australian equivalents to International Financial Reporting Standards. This is allowed under the Financial Markets Conduct (EML Payment Solutions Limited) Exemption Notice 2021.”
 - (b) section 7 of the PDS (which relates to financial information) must contain all of the information specified in clause 37 of Schedule 2 of the Regulations that is applicable (prepared in accordance with the rules in clause 39 of that Schedule) but applied with all necessary modifications as if the references in clauses 37 and 39 of that Schedule to—
 - (i) GAAP were references to Australian GAAP; and
 - (ii) non-GAAP were references to non-Australian GAAP; and
 - (iii) a qualified auditor were references to an approved auditor; and
 - (iv) clause 37 or 39 or any subclause or paragraph of those clauses were references to those clauses, subclauses or paragraphs as applied by the conditions of this notice; and
 - (c) the register entry must contain a statement to the effect that—
 - (i) the law normally requires the financial information and financial statements on the register to be determined or prepared in accordance with New Zealand generally accepted accounting practice; and

- (ii) in this case, the financial information and financial statements are determined or prepared in accordance with Australian GAAP; and
 - (iii) this is allowed under the Financial Markets Conduct (EML Payment Solutions Limited) Exemption Notice 2021; and
- (d) the register entry must contain all of the information specified in clause 64 of Schedule 2 of the Regulations that is applicable but applied with all necessary modifications as if—
 - (i) the references in that clause to GAAP were references to Australian GAAP; and
 - (ii) the references to any of clauses 37, 39 or 64 or the subclauses or paragraphs of those clauses were references to those clauses, subclauses or paragraphs as applied by the conditions of this notice; and
 - (iii) clause 64(2)(a) were to read “the group financial statements for the most recent period must be prepared in accordance with Australian GAAP”; and
 - (iv) the references in that clause to a qualified auditor were references to an approved auditor; and
 - (v) the reference in that clause to NZ IAS 34 were a reference to the standard or standards of Australian GAAP that relate to interim financial reporting.
- (3) If the PDS is a continuous issue PDS, the following apply—
 - (a) the information required by clauses 37 and 39 of Schedule 2 of the Regulations (each as applied by the conditions of this notice) may be incorporated by reference to a document that is publicly available; and
 - (b) that document must be included in the offer register; and
 - (c) regulations 33(2) and 33(3) of the Regulations apply with all necessary modifications.
- (4) Regulations 7(2) to 7(4) of the Regulations apply for the purposes of clause 7(2) as if the references in those provisions to GAAP were references to Australian GAAP.
- (5) The exemptions in clause 6 are subject to the further conditions that—
 - (a) the exempt entity is a payment facility provider to which all of the circumstances in regulation 8(3) of the Declared-out Entities Regulations apply; and
 - (b) the exempt entity must hold an Australian Financial Services Licence issued by ASIC; and
 - (c) ASIC must continue to be a member of the International Organisation of Securities Commissions (IOSCO) and a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

Dated at Wellington this 12th day of March 2021.



Sarah Vrede
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 15 March 2021 and is revoked on 14 March 2026.

The notice exempts EML Payment Solutions Limited (exempt entity), an Australian incorporated company that holds an Australian Financial Services Licence, from—

- certain financial reporting obligations in Part 7 of the Financial Markets Conduct Act 2013 (the Act), including—
 - sections 455(1)(c) (which requires an FMC reporting entity to keep accounting records that will enable it to ensure that its financial statements comply with generally accepted accounting practice (NZ GAAP)), and 461B (which relates to financial statements for the New Zealand business (if any)) of the Act; and
 - section 460 of the Act to the extent that that section requires the financial statements that are prepared to comply with NZ GAAP and to be dated and signed by 2 directors (or, if the entity has only 1 director, by that director); and
 - sections 461D and 461G of the Act (which relate to auditing); and
- certain provisions of Schedule 2 of the Financial Markets Conduct Regulations 2014 (the Regulations) to the extent that those provisions require the PDS and register entry to contain financial information determined or prepared in accordance with NZ GAAP and audited by a qualified auditor (as that term is defined in the Act).

These exemptions are subject to the conditions that require the exempt entity to prepare the relevant financial information in accordance with Australian equivalents to International Financial Reporting Standards (Australian GAAP). The main effects of the exemptions are as follows—

- the financial statements that are prepared will comply with Australian GAAP rather than NZ GAAP; and
- those financial statements will be audited by an auditor who is qualified under the laws of Australia to perform the audit (an approved auditor); and
- if the entity has a New Zealand business, those financial statements will be accompanied by separate financial statements for the New Zealand business that comply with Australian GAAP or NZ GAAP; and
- those New Zealand business financial statements will be audited by an approved auditor or a qualified auditor who must comply with all applicable auditing and assurance standards; and
- the PDS and register entry for each exempt offer will contain the financial statements and financial information for the exempt entity that would ordinarily be required by the Regulations, except that the financial statements and financial information will have been determined or prepared in accordance with Australian GAAP instead of NZ GAAP and (as applicable) audited by an approved auditor instead of a qualified auditor.

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 exemptions because—

- the exemptions only relate to the offer of call debt securities in the form of prepaid instruments in respect of which the exempt entity is the issuer and are subject to the condition (among others) that the exempt entity is a payment facility provider to which all of the circumstances in regulation 8(3) of the Non-bank Deposit Takers (Declared-out Entities) Regulations 2015 apply.

Those circumstances include a requirement that the exempt entity holds an amount equal to or greater than the net amount (as defined in those Regulations) in a trust account with a bank on trust for holders of all call debt securities (trust account requirement):

- the FMA is satisfied that, in the case of the accounting period ended 30 June 2020, the financial statements to be contained on the register will be at least equivalent to those that would ordinarily be required were it not for the exemptions. As such, investors in the exempt entity will have access to broadly similar and equivalent information to the information that they would otherwise receive and in circumstances where those investors will also have the benefit of the protections resulting from the trust account requirement:
- the FMA is satisfied that, in the case of the accounting period ending 30 June 2021 and subsequent accounting periods, the financial reporting required or permitted in Australia, and the nature and extent of regulatory oversight, for the exempt entity and its auditors, when considered together with the conditions to the exemptions, are of high quality and at least equivalent to those that apply in New Zealand. As such, investors in the exempt entity will have access to broadly similar and equivalent information to the information that they would otherwise receive:
- the PDS and register entry for each exempt offer will contain all the financial information for the exempt entity that would ordinarily be required by the Regulations, except that the financial information will have been determined or prepared in accordance with Australian GAAP instead of NZ GAAP and (as applicable) audited by an auditor who is qualified under the laws of Australia to perform the audit instead of a qualified auditor under New Zealand law:
- additionally, the conditions require that the PDS and register entry inform prospective investors that the financial statements and financial information for the exempt entity have been determined or prepared in accordance with Australian GAAP instead of the usually required NZ GAAP:
- the exemptions also are subject to the condition that the Australian Securities and Investment Commission (ASIC) must continue to be an ordinary member of the International Organization of Securities Commissions (IOSCO) and a full signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This means that the FMA will be able to obtain co-operation from ASIC if any compliance concerns arise in relation to the exempt entity or its auditor:
- the costs associated with a requirement for the exempt entity to prepare NZ GAAP compliant financial statements and have those statements audited by a New Zealand qualified auditor would outweigh the benefits to investors in receiving NZ GAAP compliant financial information and statements rather than financial information and statements determined or prepared in accordance with Australian GAAP:
- as such, the FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and promoting flexibility in financial markets:
- given that the nature and extent of Australian regulatory oversight for the exempt entity and its auditors in the case of the accounting period ending 30 June 2021 and subsequent accounting periods are broadly equivalent to New Zealand, and that the exemptions only allow the use of Australian GAAP in place of NZ GAAP with respect to the determination and preparation of financial statements and financial information and allow the relevant financial statements to be audited by an Australian qualified auditor rather than a New Zealand qualified auditor, the FMA

is satisfied that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemption.