

Financial Markets Conduct (Deutsche Bank AG) Exemption Notice 2017

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 (Deutsche Bank AG) Exemption Notice 2017.

2 Commencement

This notice comes into force on 16 March 2017.

3 Revocation

This notice is revoked on the close of 31 December 2017.

4 Application

The exemptions granted by this notice apply to the accounting period of the exempt issuer that commenced on 1 January 2016.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approved auditor means an accountant who is qualified under the law of the Federal Republic of Germany to give an opinion as to whether group financial statements of the exempt issuer comply with EU IFRS

Australian auditor means an accountant who is qualified under the law of Australia to give an opinion as to whether financial statements comply with Australian equivalents to International Financial Reporting Standards

BaFin means the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*)

EU IFRS 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,

in each case, adopted by the European Union

exempt issuer means Deutsche Bank AG

New Zealand business means the New Zealand business of the exempt issuer's group (as defined in section 6(1) of the Act)

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.

6 Exemptions

The exempt issuer is exempted from—

- (a) sections 455(1)(c), 461B, 461D, and 461G of the Act; and
- (b) section 461 of the Act to the extent that that section requires the exempt issuer to ensure that its group financial statements:—
 - (i) comply with generally accepted accounting practice; and
 - (ii) are dated and signed in accordance with section 461(1)(b).

7 Conditions

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

- (a) the exempt issuer, in relation to the group financial statements prepared under section 461 of the Act, must comply with the law and regulatory requirements of the European Union that relate to the preparation, content, audit, and public filing of those statements and, in particular, the exempt issuer must ensure that:—
 - (i) those statements comply with EU IFRS; 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
- (b) the exempt issuer must ensure that there are kept at all times accounting records that will enable the exempt issuer to ensure that:—
 - (i) the group financial statements prepared under section 461 of the Act comply with paragraph (a)(i); and
 - (ii) the financial statements for the New Zealand business prepared under paragraph (c) comply with generally accepted accounting practice; and

- (c) the group financial statements delivered for lodgement under section 461H of the Act must be accompanied by financial statements for the New Zealand business, and the exempt issuer must ensure that:
 - (i) the financial statements for the New Zealand business are prepared in accordance with generally accepted accounting practice; and
 - (ii) those financial statements are audited by an Australian auditor; and
 - (iii) an audit report is prepared by the Australian auditor in respect of that audit; and
- (d) the financial statements that are delivered to the Registrar for lodgment under paragraph (c) must be accompanied by a copy of the audit report on those financial statements prepared under paragraph (c)(iii); and
- (e) if an audit report referred to in paragraph (a)(iii) or (c)(iii) indicates that the requirements of EU IFRS (in respect of the group financial statements under paragraph (a)) or the requirements of generally accepted accounting practice (in respect of the financial statements for the New Zealand business under paragraph (c)) have not been complied with, the exempt issuer must, within 7 working days after the relevant auditor signs the report, send 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
- (f) the group 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 issuer is relying on this notice; and
 - (ii) are in English or accompanied by an accurate English translation; and
- (g) BaFIN must continue to be a full signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

Dated at Auckland this 15th day of March 2017.



Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice comes into force on 16 March 2017 and is revoked on the close of 31 December 2017.

This notice exempts the exempt issuer from the following provisions of the Financial Markets Conduct Act 2013 (Act)—

- Section 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):

- Section 461 to the extent that section requires the exempt issuer to ensure that its group financial statements that are prepared comply with New Zealand generally accepted accounting practice (**NZ GAAP**) and are dated and signed by 2 directors (or, if the entity has only 1 director, by that director):
- Section 461B (which relates to financial statements for the New Zealand business):
- Sections 461D and 461G (which relate to auditing of financial statements).

The exemptions are subject to a number of conditions. These include requirements that—

- The exempt issuer prepares financial statements that comply with the laws and regulatory requirements of the European Union (the **EU**); and
- Germany, through the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (**BaFin**), continues to be a full signatory to the International Organization of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This would allow the Financial Markets Authority (the **FMA**) to seek the assistance of BaFin should enforcement issues arise.

The main effects of the exemptions for the exempt issuer are as follows:

- Rather than complying with NZ GAAP, the group financial statements that are prepared will comply with International Financial Reporting Standards that are required or permitted in the EU (**EU IFRS**); and
- Those financial statements will be audited by an auditor who is qualified under the laws of Germany to give an opinion as to whether group financial statements of the exempt issuer comply with EU IFRS (an **approved auditor**), rather than a qualified auditor (as that term is defined in the Act); and
- Those financial statements will be accompanied by separate financial statements for the New Zealand business that comply with NZ GAAP; and
- Those New Zealand business financial statements will be audited by an auditor who is qualified under the laws of Australia.

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 Reserve Bank of New Zealand is required to assess the financial reporting and audit requirements of the home jurisdiction of any overseas bank seeking registration or licensing in New Zealand. In these circumstances, given that the exempt issuer was a registered bank from 8 November 1996 until it relinquished that status on 29 August 2016, the FMA is satisfied that the financial reporting and audit requirements of the EU will provide sufficient and appropriate information to investors for them to make investment decisions. Investors in the exempt issuer will have access to broadly similar, and equivalent, information to the information that they would otherwise have access to; and
- The exempt issuer is regulated in Germany and, through BaFin, is a signatory to an international memorandum of understanding for co-operation and information sharing. This means that the FMA will be able to obtain co-operation from BaFin if any compliance concerns arise in relation to the exempt issuer; and
- The reason for the exempt issuer seeking these exemptions is that, as a consequence of it relinquishing its registered bank status on 29 August 2016, it no longer qualifies for the benefit of the exemptions contained in the Financial Markets Conduct (Overseas Registered

Banks and Licensed Insurers) Exemption Notice 2016 (the **registered banks exemptions**) for the 2016 accounting period (although it was a registered bank for most of the 2016 accounting period). The exemptions in this notice are equivalent to (and no broader than) the registered banks exemptions, and will only apply to the exempt issuer for the 2016 accounting period; and

- The costs associated with the exempt issuer having to prepare and audit financial statements in accordance with the requirements of the EU, in addition to the costs associated with preparing NZ GAAP compliant financial statements audited by a New Zealand qualified auditor, would outweigh the benefits to investors in having access to financial statements prepared according to NZ GAAP rather than to EU IFRS; and
- As such, the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and by promoting flexibility in financial markets; and
- The exemptions only address the particular difficulties experienced by the exempt issuer. Given the limited application of the exemptions and that investors will still have access to financial statements, lodged in New Zealand, that meet financial reporting and audit requirements in a reputable jurisdiction, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.

