

Financial Markets Conduct (Heartland Group) Exemption Notice 2018

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 (Heartland Group) Exemption Notice 2018.

2 Commencement

This notice comes into force on 15 August 2018.

3 Revocation

This notice is revoked on the close of 31 January 2019.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approval meeting means the meeting of Heartland Bank shareholders that is to be held to consider and vote on whether to approve the arrangement

arrangement means the scheme of arrangement relating to the proposal, ordered by the High Court of New Zealand under Part 15 of the Companies Act 1993 and to be voted on at the approval meeting

Heartland Bank shares means fully paid ordinary shares in Heartland Bank Limited

Heartland Bank shareholders means all registered holders of Heartland Bank Limited shares

Heartland Group means, before the implementation of the arrangement, Heartland Bank Limited and all of its subsidiaries, and, after the implementation of the arrangement,

Heartland Group Holdings Limited and all of its subsidiaries

Heartland Group Holdings shares means fully paid ordinary shares in Heartland Group Holdings Limited

NZX Main Board means the main equities market operated by NZX Limited as a licensed market

proposal means the restructure of the Heartland Group involving the issue of Heartland Group Holdings shares to Heartland Bank shareholders in exchange for the transfer of the Heartland Bank shares held by Heartland Bank shareholders to Heartland Group Holdings Limited in accordance with the arrangement

Regulations means the Financial Markets Conduct Regulations 2014

scheme booklet means the scheme booklet prepared by Heartland Bank Limited in respect of the arrangement and containing the information prescribed in clauses 6 (h) and (i)

Takeovers Panel means the Takeovers Panel established pursuant to the Takeovers Act 1993

voting eligibility date means the date identified as such by Heartland Bank Limited and announced to the NZX Main Board.

- (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

Heartland Bank Limited and Heartland Group Holdings Limited are exempted from Part 3 of the Act in respect of offers of Heartland Group Holdings shares made to Heartland Bank shareholders in accordance with the arrangement.

6 Conditions

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

- (a) the proposal proceeds by way of the arrangement approved by the High Court of New Zealand under Part 15 of the Companies Act 1993; and
- (b) it is a term of the offer that, immediately after the implementation of the arrangement, only Heartland Bank shareholders will be holders of Heartland Group Holdings shares, in the same proportion as their shareholding in Heartland Bank Limited immediately preceding the implementation of the arrangement (excluding those Heartland Bank shareholders that are resident in a jurisdiction that is ineligible to participate in the arrangement); and
- (c) it is a term of the offer that, immediately after the implementation of the arrangement, Heartland Group Holdings Limited is the parent company of the Heartland Group; and
- (d) it is a term of the offer that, immediately after the implementation of the arrangement, the assets and business of the Heartland Group are materially the same as the assets and business of the Heartland Group immediately prior to the implementation of the arrangement, except that the assets of the Heartland Group after the implementation of the arrangement will include all Heartland Bank shares; and
- (e) no Heartland Group Holdings shares are issued pursuant to the arrangement unless the application for quotation of the Heartland Group Holdings shares on the NZX Main Board is approved by NZX Limited within two months of the date of the approval meeting; and

- (f) no Heartland Group Holdings shares are issued pursuant to the arrangement until after the application for quotation of the Heartland Group Holdings shares on the NZX Main Board is approved by NZX Limited; and
- (g) the scheme booklet is sent to all Heartland Bank shareholders, as at the voting eligibility date, together with the notice of meeting for the approval meeting; and
- (h) the scheme booklet includes particulars of all matters that, to the knowledge of the directors of Heartland Bank Limited after making all inquiries that are reasonable in the circumstances, are material to a Heartland Bank shareholder making a decision on whether to approve the proposal; and
- (i) without limiting (h) above, the scheme booklet includes the following:
 - (i) a description of the rights attaching to Heartland Group Holdings shares:
 - (ii) the purpose and effect of the proposal:
 - (iii) the steps necessary to bring the proposal into effect:
 - (iv) a statement of the reasons why the directors of Heartland Bank Limited believe the proposal is in the best interests of Heartland Bank shareholders:
 - (v) a summary of the material advantages and disadvantages of the proposal:
 - (vi) a summary of the costs of the proposal:
 - (vii) a statement of the material differences (if any) between the constitution of Heartland Bank Limited and the constitution of Heartland Group Holdings Limited, including the rights of Heartland Bank shareholders immediately prior to the implementation of the proposal and the rights of shareholders under the constitution of Heartland Group Holdings Limited immediately following the implementation of the proposal:
 - (viii) the name and address of every person who will be a director of Heartland Group Holdings Limited immediately after implementation of the proposal:
 - (ix) particulars of any material New Zealand taxation liabilities of Heartland Bank shareholders caused by the change in shareholding resulting from the implementation of the proposal, including particulars of any material differences in the taxation obligations and liabilities of New Zealand shareholders holding, or disposing of, Heartland Bank shares as opposed to the taxation liabilities and obligations of New Zealand shareholders holding, or disposing of, shares in Heartland Group Holdings Limited:
 - (x) a report from an independent adviser approved by the Takeovers Panel on the merits of the arrangement for Heartland Bank shareholders and a statement of the relevant qualifications of the independent adviser giving the report.

Dated at Wellington this 13th day of August 2018.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 15 August 2018 and is revoked on 31 January 2019.

The notice exempts Heartland Bank Limited (**Heartland Bank**) and Heartland Group Holdings Limited (**Heartland Group Holdings**), subject to conditions, from Part 3 (Disclosure of offers of financial products) of the Financial Markets Conduct Act 2013 (**Act**) in relation to an offer of shares in Heartland Group Holdings to Heartland Bank shareholders under a proposed scheme of arrangement pursuant to Part 15 of the Companies Act 1993.

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 offer is made in connection with a proposal to restructure Heartland Bank and its subsidiaries (the **Heartland Group**). It asks Heartland Bank shareholders to exchange their shares in Heartland Bank, the current parent of the Heartland Group, for shares in Heartland Group Holdings, the proposed new parent of the Heartland Group. This means that the offer is limited to shareholders of Heartland Bank and therefore to persons expected to already be familiar with the assets and business of the Heartland Group. Conditions of the exemptions require that the offer can only be made if Heartland Group Holdings becomes the parent company of the Heartland Group, and the underlying assets and business of the Heartland Group are the same after the implementation of the arrangement as before it (except that the assets of the Heartland Group after the implementation of the arrangement will include all Heartland Bank shares):
- the disclosure requirements of the Act and Financial Market Conduct Regulations 2014 (**Regulations**) focus on providing information about financial products being offered so would require information to be provided about Heartland Group Holdings and the shares being offered in Heartland Group Holdings only. However, in the circumstances of what is essentially a share exchange scheme, the shareholders to whom the offer is made to exchange shares must decide whether subscribing for shares in Heartland Group Holdings is preferable to continuing to hold shares in Heartland Bank. Therefore, the nature of the information shareholders require to make that assessment is different from that prescribed by the Act and Regulations:
- the offer is made pursuant to a court approved scheme of arrangement under Part 15 of the Companies Act 1993 and is subject to other legislation and the listing rules in New Zealand. In order to comply with these requirements, Heartland Bank shareholders are provided with a scheme booklet containing information relevant to evaluating the proposal and which is approved by the High Court. Conditions of the exemptions also require that investors receive all material information in the scheme booklet to enable them to make an informed decision on the proposal:
- the arrangement will be overseen by the High Court. The Court will need to be satisfied that the scheme documents (including the scheme booklet) include sufficient information for an Heartland Bank shareholder to make an informed decision as to how to vote on the arrangement:
- Heartland Bank and Heartland Group Holdings remain subject to the fair dealing provisions in Part 2 of the Act and therefore Heartland Bank's shareholders will have protection against misleading or deceptive information being included in the scheme booklet:
- as such, the FMA is satisfied that the exemptions are desirable in order to promote the purposes of the Act, namely to provide for timely, accurate and understandable information to be provided to Heartland Bank shareholders to assist them to make decisions relating to the proposed share exchange, and also in order to avoid unnecessary compliance costs by requiring

Heartland Bank to produce a product disclosure statement and register entry under the Act and Regulations, in addition to the scheme booklet and other documents relating to the proposal:

- in the circumstances that the exemptions are limited to the offer of financial products to existing Heartland Bank shareholders made in the context of the proposal, and its key impact is to provide relief from the requirement to provide information that is not material to Heartland Bank shareholders' decision on whether to approve the proposal, the FMA is satisfied that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.