

Financial Markets Conduct (The Bank of New York Mellon) 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 (The Bank of New York Mellon) Exemption Notice 2018.

2 Commencement

This notice comes into force on 2 February 2018.

3 Revocation

This notice is revoked on the close of 1 February 2023.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

authority means a collateral management authority or lending authority

BNYM means The Bank of New York Mellon, a New York state-chartered bank

borrower has the meaning set out in the definition of lending authority

client has the meaning set out in the definition of lending authority

collateral management authority means an authority granted to BNYM to act as custodian and collateral manager on behalf of parties to a secured transaction, under which—

(a) BNYM holds legal title to financial products as custodian for the parties; and



- (b) the parties grant BNYM the right to transfer or recognise a security interest over those financial products as between the parties, in order to satisfy the terms of that secured transaction relating to the provision of collateral

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

- (a) to transfer financial products held by or on behalf of the client to the borrower; and
- (b) to appropriate, transfer (including to a collateral manager on behalf of BNYM as agent for the client), use, reinvest or otherwise deal with 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) a Global Master Securities Lending Agreement published by the International Securities Lending Association; or
- (b) a Master Securities Lending Agreement governed by New York law published jointly by The Bond Market Association and the Securities Industry 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

secured transaction means a securities lending arrangement, repurchase agreement, over-the-counter derivatives transaction, or secured financing arrangement

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 in the entity to which they are delivered; and
 - (iii) vest title in, or transfer by way of security, (as required under the applicable master securities lending agreement) any required collateral in or to the entity to which they are delivered.
- (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 Exemption


BNYM is exempted from sections 276 to 279 of the Act in respect of any relevant interest in a financial product that BNYM has as a result of an authority granted to it.

6 Conditions of exemption

The exemption in clause 5 is subject to the conditions that—

- (a) BNYM must not, under the authority, have the power to exercise, or control the exercise of, a right to vote attached to any financial product; and
- (b) BNYM must not, under the authority, facilitate a securities lending arrangement or secured transaction that BNYM knows, or ought reasonably to know, is being entered into by any person for the purpose of avoiding the requirement to comply with sections 276 to 279 of the Act.

Dated at Wellington this 30th day of January 2018.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 2 February 2018 and is revoked on the close of 1 February 2023.

This notice exempts The Bank of New York Mellon (**BNYM**) from the substantial product holder requirements 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 BNYM has as a result of 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**); or
- An authority (**collateral management authority**) to act as custodian and collateral manager of approved financial products on behalf of parties to a securities lending arrangement, repurchase agreement, over-the-counter derivatives transaction, or secured financing arrangement (**secured transaction**).

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—

- Given that the relevant interests in financial products to which the exemption relates arise as a result of the limited authority granted to BNYM under the lending authority or the collateral management authority (each, an **authority**) that may be withdrawn, or modified, by the client at any time, compliance with the substantial product holder disclosure requirements in the Act may inhibit an informed market. BNYM has an interest in the financial products only for the purposes of lending those financial products as agent on behalf of the client in connection with a securities lending arrangement, or transferring or recognising a security interest over

those financial products as collateral manager for the parties to a secured transaction. BNYM does not, by virtue of an authority, have the beneficial interests attached to those products, or the power to exercise, or control the exercise of, a right to vote attached to those products.

- The exemption is consistent with the policy of the Act, which excludes certain interests in financial products from the definition of relevant interest, 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.
- The scope of the exemption is limited to circumstances where BNYM has a relevant interest in a financial product as a result of an authority granted to it by a client in connection with a securities lending arrangement or by the parties to a secured transaction. The client and the borrower (in the context of a securities lending arrangement), and the parties (in the context of a secured transaction), will still be required to comply with the substantial product holder requirements in sections 276 to 279 of the Act with respect to any relevant interest they have in the financial product delivered under the securities lending arrangement or secured transaction, as applicable. Further, it is a condition of the exemption that BNYM does not, under the authority, facilitate a securities lending arrangement or secured transaction that BNYM knows, or ought reasonably to know, is being entered into by any person for the purpose of avoiding the substantial product holder disclosure requirements. As such, the FMA is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.