

Financial Markets Conduct (The Kingdom Resources Trust) Exemption Notice 2016

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 Kingdom Resources Trust) Exemption Notice 2016.

2 Commencement

This notice comes into force on 1 December 2016.

3 Revocation

This notice is revoked on the close of 31 May 2020.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

charity means a society, an institution, or the trustees of a trust that is or are registered as a charitable entity under the Charities Act 2005

debt securities means those debt securities issued prior to the commencement date of this notice in reliance on the Securities Act (Charity Debt Securities) Exemption Notice 2013

effective date means 1 December 2016

Kingdom Resources Trust means The Kingdom Resources Trust, a registered charity.

- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

5 Exemptions

The Kingdom Resources Trust is exempted from Subpart 1 of Part 4 of the Act, and clauses 21 and 30 of Schedule 4 of the Act in relation to the debt securities.

6 Condition about information document

The exemptions in clause 5 are subject to the condition that every holder of a debt security with the Kingdom Resources Trust must, before the effective date, receive an information document that contains the following information:

[Opportunity to continue your investment with the Kingdom Resources Trust

The laws about the requirements that relate to financial products are changing.

You currently have \$[amount] invested with the Kingdom Resources Trust. The terms of your investment are that [explain interest rate, and period of security.]

This financial product (that's your investment with us) was issued to you under an exemption from the standard requirements of the old law which was available to registered charities seeking investments of money to use to support their charitable purposes. This meant that you did not receive all the information usually required when issuing financial products, and that we could receive your money without all the usual requirements being in place about supervision of your money.

The new law would require us to make a number of changes to the way we issue the financial products, and we have decided it is not feasible for us to do this. We have decided to no longer issue these in the future.

A further consequence of the new law is that we would have to make a number of changes to comply if we continue to hold the money you invested with us. We are able to be exempted from these requirements if we cease to issue further financial products, advise you of these arrangements, and prudently manage the existing financial products until they are repaid.

We are writing to ask you if you want to continue to invest the money you already have deposited with us on this basis. If you agree to keep your money invested with us, the terms of your investment will remain the same (as set out above).

We look forward to hearing whether you want to continue to invest your money (that's the money we already currently hold under your existing investment) on this basis. If you do not, the Kingdom Resources Trust will contact you to agree a date for repayment of your money as soon as practicable. Please let me know by [date].]

7 Conditions of exemptions in clause 5

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

- (a) the Kingdom Resources Trust is a registered charity and remains a registered charity until all the debt securities are repaid; and
- (b) the Kingdom Resources Trust relies on the Securities Act (Charity Debt Securities) Exemption Notice 2013 until the debt securities transition to the Act; and
- (c) the debt securities were issued by the Kingdom Resources Trust and have not been repaid at the effective date; and
- (d) the Kingdom Resources Trust will prudently manage the debt securities in a way that avoids the assets being realised at less than fair value, give rise to circumstances that incur early repayment fees, and causes alterations or departures from contractual

terms that result in legal or other costs. The Kingdom Resources Trust will implement a plan to ensure the debt securities are prudently managed until such time all of the debt securities held at the effective date have been fully repaid; and

- (e) the Kingdom Resources Trust's trustees and auditor will annually review the plan under clause 7(d) to ensure the debt securities are being prudently managed; and
- (f) the debt securities subject to this notice are repaid when they become due and are not renewed; and
- (g) the aggregate amount of the principal sums owing under the debt securities as at 1 December 2016 will not exceed \$760,000.

8 Condition about period of exemptions in clause 5

The exemptions in clause 5 are subject to the conditions that the Kingdom Resources Trust can rely on the exemptions until 31 May 2020, this date being 6 months after the last outstanding debt security is repaid.

Dated at Wellington this *22nd* day of *November* 2016.



Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice comes into force on 1 December 2016 and is revoked on the close of 31 May 2020.

The notice exempts The Kingdom Resources Trust (**Kingdom Resources Trust**) from Subpart 1 of Part 4 of the Financial Markets Conduct Act 2013 (**Act**), and clauses 21 and 30 of Schedule 4 to the Act in relation to the debt securities issued by the Kingdom Resources Trust (**debt securities**). The debt securities were allotted under the Securities Act 1978.

The Kingdom Resources Trust will transition and become subject to the requirements of the Act on the effective date of 1 December 2016. The effect of the notice is to relieve the Kingdom Resources Trust, subject to conditions, from the requirement to have a licensed supervisor and a trust deed that complies with the requirements of the Act from 1 December 2016.

The exemptions apply only to the Kingdom Resources Trust in respect of the debt securities it issued prior to the commencement date of this notice in reliance on the Securities Act (Charity Debt Securities) Exemption Notice 2013.

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 set out in the notice for the following reasons:

- The Kingdom Resources Trust is a registered charity, and previously relied on the Securities Act (Charity Debt Security) Exemption Notice 2013 which provided relief in respect of disclosure, having a licenced supervisor and having a trust deed.
- The Kingdom Resources Trust has decided to repay all of its existing securities and to not offer any new debt securities. All existing securities will be repaid by 31 May 2020. Under the Act,

the Kingdom Resources Trust must have a trust deed that is compliant with the Act and a licensed supervisor in place before 1 December 2016. The costs associated with a requirement to have a licenced supervisor and a compliant trust deed, would outweigh the benefits to the debt security holders, particularly in light of the Kingdom Resources Trust's decision to repay the existing securities by 31 May 2020 and not to offer any new debt securities, and taking into account its previous reliance on the Securities Act (Charity Debt Security) Exemption Notice 2013. As such, and taking into account the conditions of the notice, 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.

- The conditions of the notice require the Kingdom Resources Trust to notify debt security holders of the exemptions, explain the effect of the exemptions on their investment and provide holders with the option to redeem their securities. The FMA is satisfied that this promotes the purposes of the Act by providing for timely and understandable information to assist persons to make informed decisions relating to financial products.
- The conditions also require the Kingdom Resources Trust to implement a plan to effect the prudent management of the debt securities in a manner that avoids the holders realising losses or costs. The trustees of the Kingdom Resources Trust and its auditor must review the plan annually, and as the debt securities become due, and ensure they are repaid and not renewed. The FMA is further satisfied that this promotes the purposes of the Act by providing for appropriate oversight of the financial products by ensuring appropriate governance arrangements apply that allow for effective monitoring and reduce governance risks.
- Given that the exemptions only apply to the Kingdom Resources Trust which is a registered charity, is limited to debt securities previously issued which cannot be renewed or reissued, and does not apply to any new debt securities offered by the Kingdom Resources Trust, the FMA is satisfied that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.