

## Financial Markets Conduct (Crédit Agricole S.A.) 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 (Crédit Agricole S.A.) Exemption Notice 2016.

#### 2 Commencement

This notice comes into force on 1 December 2016.

#### 3 Revocation

This notice is revoked on the close of 19 December 2017.

#### 4 Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**Auditor** means any person appointed as the auditor of CASA under the laws of France

**CASA** means Crédit Agricole S.A.

**Licensed Supervisor** means the person designated or appointed as the trustee under the Trust Deed and licensed under the Financial Markets Supervisors Act 2011

**Notes** means the perpetual subordinated notes allotted by CASA on 19 December 2007 and quoted on the NZDX with the ticker code CASHA

**NZDX** means the debt security market operated by NZX Limited, which is a licensed market under the Act

**Trust Deed** means the trust deed dated 19 November 2007 under which the Notes were allotted.

- (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

- (1) CASA is exempt from the following provisions of the Act in relation to the Notes:
- (a) subpart 1 of Part 4; and
  - (b) clauses 21(1)(a) and 30 of Schedule 4.
- (2) The Licensed Supervisor is exempt from sections 111(2) and 112(2) (b) of the Act in relation to the Notes.
- (3) The Auditor is exempt from sections 198(3) and (4), 199 and 200 of the Act in relation to the Notes.

## 6 Conditions

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

- (a) the Notes remain quoted on the NZDX; and
- (b) the Trust Deed remains in force; and
- (c) the Licensed Supervisor is at all times a supervisor that is licensed under the Financial Markets Supervisors Act 2011 and whose licence covers supervision of the Notes; and
- (d) CASA lodges a copy of the Trust Deed with the Registrar before 1 December 2016 and lodges any subsequent amendments to the Trust Deed with the Registrar within 5 working days of the amendment.

Dated at Wellington this 24<sup>th</sup> day of November 2016.

  
Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

## Statement of reasons

This notice comes into force on 1 December 2016 and is revoked on 19 December 2017.

The notice exempts Crédit Agricole S.A. (**CASA**) from subpart 1 of Part 4 and clauses 21(1)(a) and 30 of Schedule 4 of the Financial Markets Conduct Act 2013 (the **Act**) in relation to the perpetual subordinated notes previously allotted by CASA on 19 December 2007 under the Securities Act 1978 (**Securities Act**) and quoted on the NZX Debt Market with the ticker code CASHA (the **Notes**).

The effect of this notice is to relieve CASA, subject to conditions, from the requirement to lodge a trust deed for the Notes that complies with the Act when CASA transitions the Notes from the Securities Act to the Act and to notify existing Noteholders of the transition. The effect of the notice is to also relieve CASA from certain other issuer obligations in relation to the Notes, including requirements for meetings of Noteholders and reporting to the supervisor in respect of the Notes.

The exemptions are subject to conditions that the Notes remain quoted on the NZX Debt Market, the trust deed under which the Notes were originally allotted (**Trust Deed**) remains in force, the trustee under the Trust Deed is at all times a licensed supervisor under the Financial Markets

Supervisors Act 2011 in relation to the Notes (**Licensed Supervisor**), that CASA lodges a copy of the Trust Deed with the Registrar prior to 1 December 2016 and that CASA lodges any subsequent amendments to the Trust Deed with the Registrar within 5 working days of the amendment.

This notice also exempts the Licensed Supervisor for the Notes from:—

- section 111(2) of the Act (which prohibits the Licensed Supervisor from delegating any of its functions); and
- section 112(2)(b) of the Act (which requires the Licensed Supervisor to act in accordance with any direction given by a special resolution of holders of the Notes).

This notice also exempts the auditor of CASA (**Auditor**), in relation to the Notes, from the requirements under sections 198(3) and (4), 199 and 200 of the Act to provide reports to CASA, or disclose information or report to the Licensed Supervisor, in certain circumstances.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act considers that it is appropriate to grant the exemptions because:—

- the Trust Deed is governed by English and French law. As CASA is a French publicly-traded company and regulated credit institution, it is also subject to general rules of French law and European Union (**EU**) law. The proceeds of the issue of the Notes are treated as Tier 1 regulatory capital for CASA in accordance with EU and French banking regulations. Accordingly, compliance with certain governance requirements of the Act relating to the Trust Deed would have a significant adverse impact on CASA as an overseas regulated financial institution because of the conflict between these requirements and the overseas laws which CASA is currently subject to and may result in CASA and its Auditor breaching the overseas laws they are subject to:
- amending the Trust Deed to comply with all governance requirements of the Act may also result in a risk that the proceeds of the issue of the Notes will no longer be recognised as Tier 1 regulatory capital for CASA:
- exemptions for the Licensed Supervisor and the Auditor are necessary because of the conflict between the requirements in the Act and the overseas laws that CASA is subject to and because of the provisions in the Trust Deed:
- there will be no significant detriment to Noteholders because the Notes will continue to receive the benefit of the governance arrangements already in place, including those required by the Securities Act and the indirect benefit from prudential supervision of CASA by the French and EU banking regulatory bodies. As a listed issuer CASA remains subject to continuous disclosure and financial reporting obligations under the Act. There is a New Zealand licensed supervisor in respect of the Notes. Other obligations of the Act will still apply to CASA in respect of the Notes, for example, Part 2, subpart 4 of Part 3, Part 7 and certain obligations in Part 4 of the Act:
- the exemption will apply until 19 December 2017, which is the first date CASA has a right to redeem the Notes. The exemptions do not apply to any new offers CASA might make:
- as such, the FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically to ensure that appropriate governance arrangements apply to financial products and to avoid unnecessary compliance costs. Since the Notes have already been offered and allotted and the conditions ensure that the protections afforded to Noteholders remain unchanged and by only exempting CASA, the Auditor and the Licensed Supervisor from the requirements of the Act that conflict with overseas law or would require amendments to the Trust Deed, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemption.