

## Financial Markets Conduct (Kiwi Capital Funding Limited) 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 (Kiwi Capital Funding Limited) Exemption Notice 2016.

#### 2 Commencement

This notice comes into force on 14 November 2016.

#### 3 Revocation

This notice is revoked on the close of 14 November 2017.

#### 4 Interpretation

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

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

**KCFL** means Kiwi Capital Funding Limited

**KIS** means the key information summary for the PDS

**Offer** means the proposed regulated offer of perpetual capital notes by KCFL

**PDS** means the product disclosure statement for the Offer

**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.

#### 5 Exemptions from regulations 22(3) and 29(2)(b) of the Regulations

KCFL is exempt from regulations 22(3) and 29(2)(a) of the Regulations in respect of the PDS and KIS.

## 6 Conditions of exemptions in clause 5

The exemptions in clause 5 are subject to following conditions:

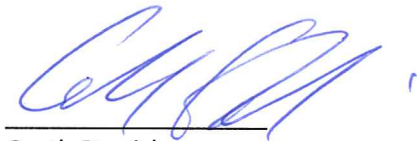
- (a) the PDS and KIS, respectively, comply with regulations 23(2) and 29(2)(b) of the Regulations; and
- (b) the statement that is required to be included in the PDS under regulation 20(1)(e) of the Regulations must be in the following form:

“This document gives you important information about this investment to help you decide whether you want to invest. There is other useful information about this offer on [*specify Internet site address of offer register*].

These [*name of securities*] are complex financial products that are not suitable for many investors. If you do not fully understand how they work or the risks associated with them, you should not invest in them. You can seek advice from a financial adviser to help you make an investment decision.

[*Name of issuer*] has prepared this document in accordance with the Financial Markets Conduct Act 2013.”

Dated at Auckland this <sup>2nd</sup> day of November 2016.



Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

## Statement of reasons

This notice comes into force on 14 November 2016 and is revoked on the close of 14 November 2017.

The notice exempts Kiwi Capital Funding Limited (**KCFL**) from regulations 22(3) and 29(2)(a) of the Financial Markets Conduct Regulations 2014 (**Regulations**) in relation to its proposed offer of Perpetual Capital Notes (**Notes**). Regulations 22(3) and 29(2)(a) of the Regulations specify the length limits that a PDS and KIS prepared for a regulated offer of debt securities must comply with.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (**Act**) considers that it is appropriate to grant the exemptions because:—

- The Regulations recognise that the short length limits that apply to disclosures in relation to debt securities are not appropriate if those debt securities convert into equity securities. A longer length limit is required in order for adequate disclosure to be made to investors regarding the circumstances in which conversion may occur, the features of the equity securities issued on conversion, and the related additional risks. Although the Notes are not themselves a convertible product, an investment in the Notes is economically equivalent to an investment in Kiwibank Perpetual Bonds, a debt security issued by Kiwibank Limited that can convert into equity. The returns to investors in the Notes will change if the Kiwibank Perpetual Bonds are required to be converted. Investors in the Notes need to be made aware of the circumstances in which a conversion can occur, the equity-type returns they are exposed to, and the associated risks. For these reasons, it is appropriate that the longer length limits for convertible products should apply.

- The FMA is satisfied that the exemption is desirable in order to promote the purposes of the Act. The exemption will enable investors in the KCFL Notes to be provided with more comprehensive disclosure which is appropriate having regard to the essential nature of the investment. Investors will be better informed and better able to compare the offer of Notes with offers of other convertible securities and bank hybrids.
- The exemption does not exempt KCFL from any other disclosure requirements applicable to the offer of the Notes. The condition that the PDS and KIS comply with the longer length limits that apply to convertible securities means KCFL is placed in a similar position to issuers of convertible securities. The condition that the warning statement that is required for convertibles must be included is also an appropriate restriction, given the nature of the Notes. As such, the FMA does not consider the exemption is broader than is reasonably necessary to address the matters that gave rise to the exemption.