

Financial Markets Conduct (Rabo Capital Securities 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 577 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Rabo Capital Securities Limited) Exemption Notice 2016.

2 Commencement

This notice comes into force on 1 December 2016.

3 Revocation of this notice

This notice is revoked on the close of 30 November 2021.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Capital Securities means the perpetual non-cumulative non-voting capital securities offered and allotted by RCSL in accordance with the Prospectus and quoted on the NZDX with the ticker code RCSHA

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

Prospectus means the prospectus registered under the Securities Act 1978 on 17 April 2009 by RCSL in respect of the Capital Securities

Public Trust means the Crown entity of that name established under the Public Trust Act 2001

Rabobank Nederland means Coöperatieve Rabobank U.A., a cooperative with limited liability established under the laws of the Netherlands

RCSL means Rabo Capital Securities Limited

Security Trust Deed means the security trust deed between RCSL, Rabobank Nederland, and Public Trust dated 16 April 2009, a copy of which is included with the Prospectus governing the holding of the Underlying Securities by Public Trust for the benefit of holders of the Capital Securities and the payment of income from the Underlying Securities to RCSL

Supplemental Trust Deed means the deed between RCSL and Public Trust dated on or about the commencement date of this notice pursuant to which the Trustee accepts certain obligations relating to the oversight and supervision of RCSL in respect of the Capital Securities in accordance with the terms of this exemption notice

Trustee means Public Trust or any other person that is subsequently appointed trustee under the Security Trust Deed

Underlying Securities mean the parcel of debt securities issued by Rabobank Nederland, acquired by RCSL using funds raised through the offer of the Capital Securities.

- (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 Exemption

RCSL is exempted from clause 21 of Schedule 4 of the Act in respect of the Capital Securities.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the following conditions that:

- (a) the Security Trust Deed and the Supplemental Trust Deed remain in force; and
- (b) the Capital Securities remain quoted on the NZDX; and
- (c) the provisions of subpart 3 of Part 4 of the Act apply in respect of the Capital Securities as if—
 - (i) the Security Trust Deed is a trust deed prepared in accordance with subpart 1 of Part 4 of the Act; and
 - (ii) the Trustee is a licensed supervisor appointed in accordance with subpart 1 of Part 4 of the Act; and
- (d) the Trustee is at all times a licensed supervisor that is licensed under the Financial Markets Supervisors Act 2011; and
- (e) before the commencement date of this notice, RCSL—
 - (i) lodges a copy of the Security Trust Deed and Supplemental Trust Deed with the Registrar; and
 - (ii) supplies the Registrar and the Financial Markets Authority, the names and addresses of the persons who, on the commencement date of this notice, will be the issuer and Trustee of the Capital Securities.

Dated at Auckland this ^{19th} day of October 2016.



Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 1 December 2016 and is revoked on 30 November 2021, exempts Rabo Capital Securities Limited (**RCSL**) from clause 21 of Schedule 4 of the Financial Markets Conduct Act 2013 (the **Act**) in respect of perpetual non-cumulative non-voting capital securities that were offered and allotted in 2009 (**Capital Securities**).

The effect of this notice is to relieve RCSL, subject to conditions, from the requirement to prepare a trust deed and appoint a supervisor for the Capital Securities when RCSL transitions the Capital Securities to the Act.

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 for the following reasons:

- RCSL is a special purpose vehicle incorporated for the purpose of providing regulatory capital for its parent, Coöperatieve Rabobank U.A., a cooperative with limited liability established under the laws of the Netherlands (**Rabobank Nederland**). RCSL offered and allotted the Capital Securities in 2009 using a prospectus registered under the Securities Act 1978. The Capital Securities are listed on the NZDX. The funds raised from the offer of Capital Securities were used to acquire debt securities issued by Rabobank Nederland (**Underlying Securities**):
- The Underlying Securities are held on trust by Public Trust in accordance with the Security Trust Deed dated 16 April 2009 between Public Trust, Rabobank Nederland, and RCSL (**Security Trust Deed**). In summary the funds raised by the offer of the Capital Securities were applied to acquire the Underlying Securities, and title to the Underlying Securities was transferred to Public Trust. Under the terms of the Security Trust Deed Public Trust is required to pay the interest payments on the Underlying Securities to RCSL:
- RCSL's activities are limited to holding the beneficial interest in the Underlying Securities, receiving the interest payments on the Underlying Securities from Public Trust, and issuing dividends to the holders of the Capital Securities:
- At the time of the offer and allotment the Capital Securities were treated as equity securities in terms of the then Securities Act 1978 and RCSL was not required to enter into a trust deed or appoint a trustee in respect of the Capital Securities:
- The Capital Securities have aspects that are more pertinent to debt securities than equity securities and in substance, the Capital Securities were treated as debt securities as they are listed on New Zealand Exchange Limited's debt market, NZDX. Also, given the redemption rights attaching to the Capital Securities they fall within definition of a 'debt security' in section 8(1)(b)(iii) of the Act and therefore are debt securities under the FMC Act. Transitioning the Capital Securities requires RCSL to appoint a supervisor and enter into a trust deed in accordance with Schedule 4 of the Act. As a listed issuer RCSL remains subject to continuous disclosure and financial reporting obligations under the Act:
- In order to ensure that the protections available to investors under subpart 3 of Part 4 of the FMC Act are available to holders of the Capital Securities RCSL and Public Trust have entered

into a supplemental trust deed dated on or about the commencement date of this notice (**Supplemental Trust Deed**), and coming into effect on the same day as this notice. Under the terms of the Supplemental Trust Deed Public Trust acknowledges its obligations under the conditions of exemption, and RCSL agrees to provide information to Public Trust in accordance with the terms of this notice:

- The exemption is subject to conditions that the Security Trust Deed and the Supplemental Trust Deed remains in force, that the Capital Securities remain quoted on the NZDX, that the Security Trust Deed is considered to be a trust deed prepared for the purposes of subpart 1 of Part 4 of the Act and is lodged with the Registrar (together with the Supplemental Trust Deed), that the Public Trust remains a licensed supervisor under the Financial Markets Supervisors Act 2011 and that the Registrar and the FMA are provided with the names and addresses of the issuer and security trustee:
- Given the limited scope of RCSL's activities, the protection for holders of the Capital Securities that is provided by the Security Trust Deed and the Supplemental Trust Deed and the ongoing continuous disclosure and financial reporting obligations, the FMA considers that the additional benefits of a trust deed prepared in accordance with the Act and having a supervisor that would be provided to holders of the Capital Securities would be out of proportion with the associated compliance costs. Therefore the relief provided by the exemptions is desirable in order to avoid unnecessary compliance costs in accordance with the additional purpose set out in section 4(c) of the Act:
- Since the Capital Securities have already been offered and allotted and the conditions ensure that the protections accorded to holders of the Capital Securities at the time the shares were offered and allotted remain unchanged, and as this notice does not apply to any new offers that RCSL might make, its effect is not broader than is necessary to address the matters that gave rise to the need for the exemption.