

Financial Markets Conduct (South32 Limited) Exemption Notice 2015

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 (South32 Limited) Exemption Notice 2015.
- 2 Commencement**
This notice comes into force on 16 March 2015.
- 3 Revocation**
This notice is revoked on the close of 15 March 2020.
- 4 Application**
An exemption granted by this notice applies to the following accounting periods of South32:
 - (a) an accounting period of South32 that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would be required to be lodged under the Act; and
 - (b) subsequent accounting periods.
- 5 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
Act means the Financial Markets Conduct Act 2013;

BHP Billiton Group means the group comprising BHPB Ltd and BHPB Plc, acting as a unified economic entity by virtue of certain dual listed company arrangements;

BHPB Ltd means BHP Billiton Limited, a company incorporated in Australia with a primary listing on the Australian Securities Exchange;

BHPB Plc means BHP Billiton Plc, a company incorporated in England and Wales with a listing on the premium segment of the official list on the main market of the London Stock Exchange;

Corporations Act 2001 means the Corporations Act 2001 (Australia);

demerger means the divestment of certain aluminium, coal, manganese, nickel and silver assets from BHP Billiton Group to South32 to be effected by a dividend in specie to shareholders of BHPB Ltd and BHPB Plc to be satisfied by the transfer of the shares BHPB Ltd and BHPB Plc will own in South32 to BHPB Plc and BHPB Ltd shareholders in proportion to their respective shareholdings in BHPB Plc and BHPB Ltd;

Regulations means the Financial Markets Conduct Regulations 2014;

South32 means South32 Limited, a company incorporated in Australia;

specified financial statements means the financial statements prepared in accordance with the financial reporting requirements of Australia of:

- (a) South32 where South32 does not have any subsidiaries; or
- (b) the group where South32 has 1 or more subsidiaries; and

specified securities means shares in South32 to be transferred to the BHPB Plc and BHPB Ltd shareholders pursuant to the demerger.

- (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.

6 Exemptions

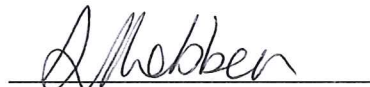
South32, BHPB Ltd and BHPB Plc are exempted in relation to the specified securities from Part 3 and Part 7 of the Act.

7 Conditions

- (1) The exemptions in clause 6 are subject to the following conditions:
 - (a) the only persons to whom the specified securities are offered in New Zealand are persons who, at the time of the offer, are shareholders of either or both of BHPB Plc and BHPB Ltd; and

- (b) prior to the transfer of the specified securities to any person to whom the offer is made in New Zealand, South32 is admitted to listing on the Australian Securities Exchange in Australia; and
 - (c) BHPB Plc and BHPB Ltd are offerors of the specified securities; and
 - (d) at the time of the offer, the only person who is a shareholder of South32 is BHPB Ltd or one of its subsidiaries; and
 - (e) the offer of the specified securities to persons in New Zealand is made in compliance with the laws of Australia and the United Kingdom and any code, rules, or other requirements relating to the offer of those securities that apply in Australia and the United Kingdom.
- (2) The exemptions in clause 6 are subject to the further conditions that South32 —
- (a) is incorporated in Australia; and
 - (b) in relation to its specified financial statements, complies with the laws of Australia that relate to the preparation, content, audit, and public filing of those statements (including the Corporations Act 2001).

Dated at Wellington this 13th day of March 2015.



Simone Robbers
Director of Primary Markets and Investor Resources
Financial Markets Authority

Statement of reasons

This notice comes into force on 16 March 2015 and is revoked on 15 March 2020.

This notice exempts South32 Limited (**South32**), BHP Billiton Limited (**BHPB Ltd**) and BHP Billiton Plc (**BHPB Plc**), from compliance with New Zealand financial markets law offer information and financial reporting requirements contained in the Financial Markets Conduct Act 2013 (the **FMC Act**) in respect of an offer to existing New Zealand shareholders in two companies, BHPB Ltd and BHPB Plc. These companies operate as a single economic enterprise.

The transfer of the shares in South32 to the shareholders will be in proportion to their existing shareholdings in the two companies. The purpose of the transfer is to effect the demerger of the two companies to South32, so that the existing shareholders of the two companies will continue to own the assets that will be held by South32.

The exemptions are on the conditions that the offer in New Zealand is made only to persons who are shareholders of either or both of BHPB Plc and BHPB Ltd, that the offer is made in compliance with UK and Australian laws and that South32's financial statements are prepared in accordance with Australian law.

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

- in making the offer during the transitional period from the Securities Act to the FMC Act, the companies would have been able to rely on the Securities Act (Overseas Companies) Exemption Notice 2013 (the **Class Notice**) but for a technicality, which is that South32 does not fall within the definition of associated or related body corporate of BHPB Plc for the purposes of the Class Notice:
- the policy reasons for the Class Notice continue to be valid under the FMC Act, that is, the offer will only be made to shareholders in New Zealand who already hold shares in listed companies in both Australia and the UK and who can be taken to have assumed a degree of risk that might accompany an overseas investment. In these circumstances, it is appropriate that UK and Australian law applies to this offer to existing shareholders in these companies:
- the exemptions will allow New Zealand shareholders to participate in the offer of shares in South32 and by requiring compliance with relevant Australian and UK financial markets law promote confident and informed participation of investors:
- the exemption will also avoid unnecessary compliance costs by duplication of disclosure and financial reporting documents:
- in providing exemptions only from the New Zealand specific offer and financial reporting requirements, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.