

Financial Markets Conduct (Kiwibank Limited–Offer of PPS) Exemption Notice 2021

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 (Kiwibank Limited–Offer of PPS) Exemption Notice 2021.

2 Commencement

This notice comes into force on 8 October 2021.

3 Revocation

This notice is revoked on the close of 30 June 2022.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

AT1 capital means capital that qualifies as "Additional Tier 1 capital" for the purposes of Reserve Bank of New Zealand Banking Prudential Requirements Document *BPR110: Capital Definitions*

disclosure statement has the same meaning as in the Reserve Bank of New Zealand Act 1989

Kiwibank means Kiwibank Limited

Kiwibank group means the group comprising Kiwibank and its subsidiaries

PDS means the product disclosure statement for the offer of PPS

PPS means perpetual preference shares in respect of which Kiwibank is the issuer that:

- (a) are to be offered by Kiwibank to New Zealand retail and institutional investors; and
- (b) when issued, will constitute AT1 capital,

but are not equity securities that Kiwibank, in the ordinary course of its business, continuously offers

register entry means the entry for the offer of PPS in the register of offers of financial products

Regulations means the Financial Markets Conduct Regulations 2014

Schedule 3 means Schedule 3 of the Regulations.

- (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 for offer of PPS

Kiwibank is exempted, in respect of an offer of PPS, from-

- (a) section 57(1)(b)(ii) of the Act to the extent that it requires the register entry to contain any disclosure statement published by Kiwibank or any group financial statements for the Kiwibank group for any period; and
- (b) clauses 2(1), 3(1), 4(1) and (3), 5, 6, 8(1)(d), (3) and (4), 10(1)(a) and (3), 11, 12(1) and (4), 13, 16 to 24, 26, 30(2) to (4), 32(1) to (4), 33 to 40, 42, 43, 53, 54(1)(b), (2) and (2A) and 55 of Schedule 3.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the conditions that (in addition to all of the information specified in Schedule 3 that is applicable and from which no exemption is granted under this notice)-
 - (a) the PDS must contain all of the information specified in Part 1 of the Schedule of this notice that is applicable as if that information were specified in Part 1 of Schedule 3 under the clause number corresponding to the clause number used in Part 1 of the Schedule of this notice and (where applicable) in place of the information required by the relevant exempted clause; and
 - (b) the register entry must contain all of the information specified in Part 2 of the Schedule of this notice that is applicable as if that information were specified in Part 2 of Schedule 3 under the clause number corresponding to the clause number used in Part 2 of the schedule of this notice and (where applicable) in place of the information required by the relevant exempted clause; and
 - (c) Kiwibank must lodge with the Registrar the information specified in Part 3 of the Schedule of this notice-
 - (i) as if that information were specified in Part 3 of Schedule 3 under clause 55 and in place of the information required by the exempted clause 55; and
 - (ii) within the time specified in the clause.
- (2) For the purposes of subclause (1), references to section headings and section numbers in the information specified in Schedule 3 are to be read as if those section headings and section numbers were amended to correspond to the section headings and section numbers contemplated by the information that is specified in Part 1, Part 2 and Part 3 of the Schedule of this notice.

Schedule

Part 1

Information to be included in the PDS

Clause number

- 3(1)** The PDS must have sections that are headed up and ordered as follows:
- 1 Key information summary
 - 2 Purpose of the offer
 - 3 Key dates and offer process
 - 4 Terms of the offer
 - 5 Key features of [*name of financial products*]
 - 6 Risks of investing
 - 7 Tax
 - 8 Where you can find more information
 - 9 How to apply
 - 10 Contact information
- 4(1)** The KIS must have sections that are headed up and ordered as follows:
- What is this?
About [*name of issuing group*]
Purpose of this offer
Key terms of the offer
How pricing of [*name of financial products*] is fixed
How you can get your money out
How [*name of financial products*] rank for repayment
Key risks affecting this investment
What is [*name of issuer*]'s credit rating?/What is [*name of financial product*]'s credit rating?*
- *Select one
- 5** **What is this?**
- (1)** The KIS must contain a statement in the following form:
- "This is an offer of [*name of financial products*]. [*Name of financial products*] are equity securities issued by [*name of issuer*]. You give [*name of issuer*] money, and in return [*name of issuer*] promises to pay you scheduled distributions. If [*name of issuer*] runs into financial trouble, you might lose some or all of the money you invested."
- (2)** The KIS must include a statement in the following form after the statement in subclause (1):
- “Warning**
- These [*name of financial products*] do not have the same rights [*if applicable* (including voting rights)], privileges and opportunity for growth as ordinary shares. Scheduled distributions may be cancelled (and those cancelled distributions will not be paid at a later date). The [*name of financial products*] are perpetual and have no fixed term. You have no right to require repayment for any reason.”
- 6** **About [*name of issuing group*]**
- (1)** The KIS must contain a brief description of the issuing group's business.

- (2) The KIS must include—
- (a) a statement to the effect that information about the issuer and the issuer's financial statements are published in disclosure statements required under the Reserve Bank of New Zealand Act 1989; and
 - (b) a link to the page on the issuer's Internet site where its disclosure statements are published.
- (3) In this clause, **disclosure statement** has the same meaning as in the Reserve Bank of New Zealand Act 1989.
- 8(1)**
- (d) the number or amount of the equity securities being offered; and
 - (da) a statement that the investor has no right to redeem the equity securities; and
 - (db) if the equity securities are redeemable by the issuer in certain circumstances, a statement to this effect and a reference to the section of the KIS headed “How you can get your money out” where a brief description of those circumstances and the intended redemption price can be found; and
 - (dc) a statement—
 - (i) of the distribution rate or rates that may be earned by holding the equity securities (if the rate or rates are fixed at the date of the PDS); or
 - (ii) of the basis on which or the method by which the distribution rate or rates will be ascertained; and
 - (dd) the dates on which, or frequency with which, distributions are scheduled to be paid; and
 - (de) a statement explaining that distributions may be cancelled in certain circumstances and a reference to the section of the PDS where more information on that matter can be found; and
 - (df) a statement that any cancelled distributions are non-cumulative.
- 10(1)** (a) “[Name of issuer] intends to quote these [name of financial products] on [name of licensed market]. This means you may be able to sell them on the [name of licensed market] if there are interested buyers. If you sell your [name of financial products], the price you get will vary depending on factors such as the financial condition of the [name of issuer], demand for the [name of financial products], and movements in the market interest rates. You may receive less than the full amount that you paid for them.”
- 10(3)** The KIS must contain a statement that the investor has no right to redeem the equity securities.
- 10(3A)** If the equity securities are redeemable by the issuer in certain circumstances, the KIS must contain a statement to this effect and a brief description of those circumstances and the intended redemption price or, if the equity securities are not redeemable by the issuer, the KIS must contain a statement to that effect.
- 11** **How [name of financial products] rank for repayment**
- The KIS must include—
- (a) a brief summary of the ranking of the equity securities on a liquidation of the issuer, including that-
 - (i) the equity securities rank below all liabilities, securities and other obligations of the issuer other than those set out in subparagraphs (ii) and (iii) below; and
 - (ii) the equity securities rank equally with all other preferred equity and other securities that rank equally with the equity securities; and

- (iii) the equity securities rank above ordinary shares; and
- (iv) in a liquidation of the issuer, the maximum entitlement of the holder is the issue price; and

(b) a reference to the section of the PDS where more information on that matter can be found.

12(1) The KIS must include a statement in the following form:

"Investments in equity securities of this nature have risks. A key risk is that you will not be paid a distribution on your investment or that your investment will not be repaid (credit risk). Cancelled distributions will not be paid at a later date.

The distribution rate for the *[name of financial products]* should also reflect the degree of credit risk. In general, higher returns are demanded by investors from businesses with a higher risk of defaulting on their commitments. You need to decide whether the offer is fair.

Section 6 of this document (risks of investing) discusses the main factors that give rise to the risk. You should consider if the credit risk of these equity securities is suitable for you.

[Name of issuer] considers that the most significant risk factors are: *[brief summary of the circumstances that must be disclosed under clause 42A (specific risks) that the issuer considers most significantly increase the risk that the issuer cancels distributions or that the investor loses all money invested]*.

[Name of issuer] can also repay the *[name of financial products]* in certain circumstances and with the prior written approval of the Reserve Bank of New Zealand."

12(4) The KIS must include a statement in the following form after the statement in subclause (1):

"This summary does not cover all of the risks of investing in *[name of financial products]*. You should also read *[references to section 6 of the PDS (risks of investing) and to other places in the PDS that describe risk factors (for example, risks arising for investors from the nature of the product)]*."

13 **What is *[name of issuer]*'s credit rating?/What is *[name of financial product]*'s credit rating?**

(1) The KIS must include—

- (a) the heading "What is *[name of issuer]*'s credit rating?" or "What is *[name of financial product]*'s credit rating?" (whichever heading better applies); and
- (b) the statement specified in subclause (2).

(2) A statement under this subclause must be in the following form (and must be accompanied by the diagram required by subclause (3)(b)):

"A credit rating is an independent opinion of the capability and willingness of an entity to repay its debts (in other words, its creditworthiness). It is not a guarantee that the financial product being offered is a safe investment. A credit rating should be considered alongside all other relevant information when making an investment decision.

[Specify either the name of the issuer or, in the case of an issue rating, the name of the financial products] has/have* been rated by *[name of approved rating agency]*. *[Name of approved rating agency]* gives ratings from *[specify the top rating]* through to *[specify the lowest rating, excluding ratings attaching to entities in default]*."

*Select one

(3) For the purposes of subclause (2),—

- (a) **approved rating agency** has the same meaning as in section 60(3) of the Act:

- (b) the KIS must include a diagram—
 - (i) showing the range of credit ratings given by the approved rating agency; and
 - (ii) showing, for each of those credit ratings, the approved rating agency's summary description of the rating (for example, AAA—"Extremely strong"); and
 - (iii) showing, for each of those credit ratings that are entity ratings, the approved rating agency's statistics on the rate of default for entities with that rating over a period of at least 5 years (if the agency provides those statistics) (for example, "1 in 600"); and
 - (iv) indicating the placement within that range of the issuer's or issue's current credit rating;
 - (c) if the approved rating agency has given a statement relating to future changes to the rating (for example, a credit outlook of "stable"), that statement must be disclosed with the diagram:
 - (d) if the equity securities have been given a credit rating by an approved rating agency, that rating must be used (rather than a credit rating for the issuer):
 - (e) if a credit rating is given for the issuer but the equity securities (if those securities were to be given a credit rating by an approved rating agency) would be likely to be given a lower credit rating, the diagram under paragraph (b) must include—
 - (i) a statement to that effect; and
 - (ii) a brief explanation as to why the rating would be likely to be lower:
 - (f) if this paragraph applies under subclause (4),—
 - (i) the statement under subclause (2) must be amended to refer to the ratings given by each approved rating agency; and
 - (ii) the diagram under paragraph (b) must include, at a minimum, the information under paragraphs (b)(i) to (iv) and (c) for any one of those ratings; and
 - (iii) the information under paragraphs (b)(i) and (iv) and (c) for each other current credit rating must be given in or under the diagram.
- (4) Subclause (3)(f) applies if the rating to be referred to in the statement under subclause (2) is a credit rating for—
- (a) the equity securities and another current credit rating for the equity securities has been given by another approved rating agency:
 - (b) the issuer and another current credit rating for the issuer has been given by another approved rating agency.

26 Purpose of the offer

The PDS must give a brief description of the purpose of the offer, including-

- (a) a statement as to whether a minimum amount must be raised before the equity securities are issued or transferred (see section 77(1)(b) of the Act); and
- (b) a statement as to the extent to which the offer is underwritten.

30(2) The following information must be provided in or below the table:

- (a) the distribution rate or the basis on which the distribution rate will be ascertained:
- (b) the dates on which, or frequency with which, the distributions from the equity securities are scheduled to be paid:

- (c) a statement explaining that distributions may be cancelled in certain circumstances and an explanation of those circumstances:
- (d) a statement that the investor has no right to redeem the equity securities and a description of any provision for issuer redemption of the equity securities:

30(3) The PDS must-

- (a) refer to the constitution and any other document that sets the terms of the equity securities or other terms of the offer; and
- (b) include a statement to the effect that these documents may be obtained from the offer register.

30(4) Subclause (1) does not apply-

- (a) to any terms implied by law; or
- (b) to a term set by the constitution or any other document that the issuer considers is not a key term of the offer.

32(1) The PDS must include-

- (a) a description of the key features (which include the absence of the same opportunity for growth as ordinary shares) of the equity securities (to the extent that those features are not already disclosed in section 4 of the PDS (terms of the offer) and are not features that apply to ordinary shares in a company generally); and
- (b) particulars of any voting rights or pre-emptive rights attaching to the equity securities; and
- (c) a reference to section 4 of the PDS (terms of the offer) if key features of the equity securities are disclosed in that section (rather than in section 5).

32(2) The description under subclause (1) must—

- (a) be sufficient to make it clear why a feature is of significance to investors; and
- (b) include a description of the ranking of the equity securities on a liquidation of the issuer, including a diagram showing the total liabilities and total equity of the issuer; and
- (c) include a statement to the effect that distributions are not guaranteed, are non-cumulative, are at the discretion of the issuer, and the issuer's ability to pay distributions may be restricted in certain circumstances by the requirements of the issuer's conditions of registration.

32(3) The information under subclause (2)(b) must be under the subheading "Ranking".

32(4) The description under subclause (2)(b) must—

- (a) state that, after the issue, the issuer could create further liabilities that rank equally with, or in priority to, the equity securities on a liquidation of the issuer; and
- (b) if any other class of equity securities of the issuer that would rank equally with, or in priority to, the equity securities on offer could be issued, the PDS must—
 - (i) state that fact; and
 - (ii) briefly describe the circumstances in which those securities could be issued.

32A Diagram showing ranking of equity securities

(1) The diagram under clause 32(2)(b) must be prepared in accordance with the following rules:

- (a) the diagram must state the amount of the issuer's liabilities and equity including:

- (i) the liabilities that rank in priority to the equity securities:
 - (ii) the total amount of preferred equity and liabilities that rank equally with the equity securities:
 - (iii) the total amount of the issuer's equity (other than preferred equity):
 - (b) the amounts must be indicative amounts based on the financial position of the issuer at its most recent balance date or any more recent stated date that is adjusted to reflect the changes in the value of the issuer's assets, liabilities and equity that the issuer reasonably expects to result from the issue or sale:
 - (c) the amounts must be calculated on the basis of an assumption as to the number of equity securities on issue, being a number that the issuer reasonably considers is likely to provide the most useful information for investors.
- (2) The diagram under clause 32(2)(b) must be prepared in accordance with an applicable framework or methodology (if any).
- (3) The PDS must—
- (a) disclose the number of equity securities that is used for the purposes of subclause (1)(c); and
 - (b) briefly explain the effect of using that number.

42 General risks

- (1) The PDS must include the subheading "**General risks**" and a statement to the effect that the investor's investment is subject to the general risk or risks summarised under subclause (2).
- (2) For the purposes of subclause (1), the PDS must include a summary relating to the following risks (if applicable):
- (a) the risk that the investor will not be paid a distribution on their investment or get their investment repaid; and
 - (b) if the investor wishes to sell the equity securities, the risk that the investor is unable to find a buyer or that the amount received is less than the amount paid for the equity securities.

42A Specific risks

- (1) The PDS must include the subheading "**Specific risks relating to [name of issuer]'s creditworthiness**" and a description of the circumstances that the issuer is aware of that exist or are likely to arise that significantly increase the risk that investors will not be paid a distribution on their investment or get their investment repaid.
- (2) The description of the circumstances must include—
- (a) particulars that make it clear why each circumstance is of particular significance in relation to the particular issuer or the particular equity securities (as compared to other issuers or other equity securities of this nature); and
 - (b) particulars that will, to the extent that is reasonably practicable, assist an investor to assess the likelihood of any impact arising from those circumstances, the nature of that impact, and the potential magnitude of that impact.
- (3) The description is required to include information about circumstances only to the extent that the information is material information.

43 Risks otherwise disclosed in PDS or register entry

- (1) To the extent that information about a risk is included elsewhere in the PDS (other than the KIS) or in the register entry, that information is not required to be repeated in section 6 of the PDS (risks of investing) for the purposes of clause 42A (specific risks).
- (2) However, if information about a risk is not included in section 6 of the PDS (risks of investing) as a result of subclause (1), that section must—
- (a) at least include a brief summary of the circumstances referred to in clause 42A (specific risks); and
 - (b) refer to where the information about the risk is elsewhere included in the PDS or register entry.
- 45(1A) If New Zealand residents will have resident withholding tax deducted from distributions, the PDS must include a statement to that effect.

Part 2

Information to be included in the register entry

Clause number

- 52(1) (ea) a statement (to be included in the register entry field “Product description”):
- (i) of the distribution rate or rates that may be earned by holding the equity securities (if the rate or rates are fixed at the date of the PDS); or
 - (ii) of the basis on which or the method by which the distribution rate or rates will be ascertained:
- 54(1) (b) a copy of each report giving a credit rating referred to in clause 13; and
- (ba) a notice referring to the availability of the issuer’s disclosure statements required under the Reserve Bank of New Zealand Act 1989 (including a link to the page on its Internet site where its disclosure statements are published); and
- 54(2) Subclause (1)(b) does not apply to a report if—
- (a) lodging the report with the Registrar or otherwise making the report available on the register entry would breach a legal obligation that is binding on the issuer under a contract with the rating agency; and
 - (b) the rating agency has expressly refused to waive the legal obligation to the extent necessary to allow it to be contained on the register entry.

Part 3

Information to be lodged with Registrar for updating register

Clause number

55 Information to be lodged with Registrar for updating register

- (1) The information to be lodged with the Registrar under regulation 51 is as follows:
- (a) if the distribution rate or rates that may be earned by holding the equity securities are fixed after the date of the PDS, a statement of those rates:

- (b) if the basis on which or the method by which the distribution rate or rates will be ascertained involves a variable and that variable is fixed after the date of the PDS, a statement of the amount at which the variable has been fixed.
- (2) If the price of, or other consideration for, the equity securities is fixed after the date of the PDS, a statement of that price or consideration must be lodged with the Registrar under regulation 51.
- (3) The issuer must comply with regulation 51,—
 - (a) in the case of subclause (1)(a), within 5 working days after the distribution rate or rates are fixed:
 - (b) in the case of subclause (1)(b), within 5 working days after the variable is fixed:
 - (c) in the case of subclause (2), within 5 working days after the price or other consideration is fixed.

Dated at Wellington this 7th day of October 2021.



Sarah Vrede
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 8 October 2021 and is revoked on 30 June 2022.

This notice exempts Kiwibank Limited (**Kiwibank**), which is a registered bank, from certain disclosure requirements under section 57(1)(b)(ii) of the Financial Markets Conduct Act 2013 (the **Act**) and Schedule 3 of the Financial Markets Conduct Regulations 2014 (the **Regulations**) in respect of a proposed offer of perpetual preference shares (the **PPS**) subject to conditions requiring the disclosure of alternative information. The PPS are to be issued by Kiwibank for the purposes of constituting Additional Tier 1 (**AT1**) capital under the Reserve Bank of New Zealand's banking prudential requirements applicable to registered banks.

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

- although the PPS are equity securities for the purposes of the Act, they share a number of similarities with debt securities. These include not carrying any voting rights or equity upside, having scheduled distributions which, if paid, provide a fixed return that will be reset at 5-yearly intervals and receiving a credit rating from a rating agency. As a result, many of the disclosure requirements for equity securities under Schedule 3 of the Regulations are not appropriate for an offer of PPS, and certain requirements from Schedule 9 of the Regulations (which sets out disclosure requirements for offers of debt securities by registered banks) would be more appropriate. Under the conditions of the exemptions, Kiwibank must comply with alternative disclosure requirements which are based on Schedule 9 and are modified to reflect the particular characteristics of the PPS. These alternative disclosure requirements will result in the product disclosure statement (**PDS**) and the register entry for an offer of PPS containing more appropriate and meaningful information for potential investors than disclosure based purely on the requirements of Schedule 3 of the Regulations. This will promote

confident and informed participation in the offer of the PPS and promote the disclosure of accurate and understandable information to potential investors:

- as a registered bank, Kiwibank is required under the Reserve Bank of New Zealand Act 1989 to publish semi-annual disclosure statements containing information about Kiwibank and its financial statements. Kiwibank's disclosure statements are already publicly available and, as a condition of the exemptions, the PDS and register entry for an offer of PPS must draw attention to the disclosure statements and provide a link to the page on Kiwibank's website where they are published. The exemptions relieve Kiwibank from the requirement to ensure that the register entry contains disclosure statements or group financial statements required by section 57(1)(b)(ii) of the Act and the requirement to replicate information in a PDS and register entry that is already contained in its disclosure statements in a different format in order to comply with the requirements of Schedule 3 of the Regulations. This ensures that the offer of PPS can be conducted efficiently while also avoiding unnecessary compliance costs associated with lodging and replicating information that is already publicly available:
- amendments to the Regulations (the **Amendments**) are to be drafted to address the specific disclosure requirements for AT1 capital instruments (such as the PPS). However, the Amendments, if made, are not expected to come into force by the date on which Kiwibank proposes to launch its offer of PPS. The exemptions are therefore required in order to prevent the offer of PPS from being delayed. This approach is consistent with the Act's purpose of promoting innovation and flexibility in the financial markets:
- for the above reasons, the FMA is satisfied that granting the exemptions is necessary and desirable in order to promote the purposes of the Act. In particular, the exemptions will promote the confident and informed participation of investors in the financial markets, provide for timely, accurate and understandable information to be provided to persons to assist those persons to make decisions relating to financial products, avoid unnecessary compliance costs and promote innovation and flexibility in the financial markets:
- the FMA is also satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to them because the exemptions only provide relief from disclosure requirements for an offer of PPS that are either not relevant or require information that is already publicly available and are subject to conditions that require alternative disclosure that is more meaningful for investors and will assist them to make informed decisions about the offer.