

Securities Act (HSBC Overseas Banks) Exemption Notice 2015

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority being satisfied of the matters sets out in section 70B(2) of the Securities Act 1978 gives the following notice.

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Notice

1 Title

This notice is the Securities Act (HSBC Overseas Banks) Exemption Notice 2015.

2 Commencement

This notice comes into force on 12 June 2015.

3 Revocation

This notice is revoked on the close of 30 November 2016.

4 Interpretation

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

Act means the Securities Act 1978

approved auditor means an accountant who is qualified under the law of the relevant HSBC overseas bank's home jurisdiction to give an opinion as to whether the financial statements comply with the laws of the relevant HSBC overseas bank's home jurisdiction that relate to the preparation, content and audit of those statements

financial statements means the financial statements that are required to be prepared in respect of a HSBC overseas entity and its group in accordance with the laws of its home jurisdiction

home jurisdiction, in relation to a HSBC overseas bank, means the country in which that entity is incorporated

HSBC overseas bank means any of-

- (a) HSBC Bank plc, a company incorporated in England and Wales; or

- (b) HSBC Bank Australia Limited, a company incorporated in Australia; or
- (c) HSBC Bank USA, N.A., a company incorporated under the laws of the United States of America.

Regulations means the Securities Regulations 2009.

- (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 Exemption

A HSBC overseas bank and every person acting on its behalf are exempted from section 53E of the Act.

6 Condition

The exemption in clause 5 is subject to the condition that the financial statements of the relevant HSBC overseas bank are audited at least once a year by an approved auditor.

Dated at Wellington this 8 day of June 2015.



Liam Mason
General Counsel
Financial Markets Authority

Statement of reasons

This notice comes into force on 12 June 2015 and is revoked on the close of 30 November 2016.

This notice exempts the directors of each of HSBC Bank plc, HSBC Bank Australia Limited and HSBC Bank USA, N.A. (each a **HSBC Overseas Bank**), from compliance with the requirement under the Securities Act 1978 (the **Act**) to ensure that the relevant HSBC Overseas Banks financial statements are audited at least once a year by a qualified auditor (including a New Zealand licensed auditor or New Zealand registered audit firm).

The exemption is on the condition that the financial statements of the relevant HSBC Overseas Bank are audited at least once a year by an approved auditor, that is, an accountant who is qualified under the law of the relevant HSBC Overseas Bank's home jurisdiction.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 70B of the Act, considers it appropriate to grant the exemption because-

- each of the HSBC Overseas Banks is an issuer in New Zealand for the purposes of the Financial Reporting Act 1993 (**FRA 1993**), and so, in the absence of an exemption, would have ongoing financial reporting requirements under the FRA 1993:
- the HSBC Overseas Banks have been exempted from the requirements of the FRA 1993 to prepare, have audited and register financial statements, subject to conditions that require the relevant bank to prepare financial statements in accordance with its jurisdictions law and GAAP, have those financial statements audited by a person qualified to act as an auditor in its jurisdiction. In addition to the audit requirements of the FRA 1993, section 53E of the Act imposes a further requirement for an annual audit. If the HSBC Overseas Banks were not

granted an exemption from section 53E of the Act, they would be required to have an audit by a New Zealand licensed auditor or registered audit firm each year even though they had been exempted from the requirement in the FRA 1993 to do so:

- we have had regard to the financial reporting and audit requirements, and the auditor oversight regime under the law of each jurisdiction where each bank is incorporated. We are satisfied that the financial reporting requirements and the nature and extent of the regulatory oversight for issuers are equivalent to those that exist for New Zealand issuers:
- in these circumstances we consider that there will be no significant detriment to investors who are members of the public in New Zealand as a result of a HSBC Overseas Bank being annually audited by an auditor meeting the requirements of its home jurisdiction instead of a New Zealand licensed auditor or registered audit firm:
- the costs associated with a requirement that a HSBC Overseas Bank have its financial statements audited by a New Zealand licensed auditor or registered audit firm would outweigh the benefits to investors of having available financial statements audited by a New Zealand licensed auditor or registered audit firm rather than the financial statements being audited by an auditor meeting their jurisdictions requirements:
- the exemption addresses particular difficulties experienced by HSBC Overseas Banks which will have been exempted from the requirements of the FRA 1993 to have their financial statements audited by a licensed auditor or registered audit firm. Accordingly, we are satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.