

Securities Act (Heartland Bank Regulatory Capital) Exemption Notice (No 2) 2014

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

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Interpretation	1
5 Exemptions from sections 37 and 37A of the Securities Act 1978 for specified equity securities	3
6 Conditions of exemptions in clause 5	3
7 Exemption from regulation 26 of the Securities Regulations 2009	7
8 Conditions of exemption in clause 7	7
9 Existing notice revoked	8

Schedule

Notice

- 1 Title**
This notice is the Securities Act (Heartland Bank Regulatory Capital) Exemption Notice (No 2) 2014.
- 2 Commencement**
This notice comes into force on 19 December 2014.
- 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 or nominated rating agency means a rating agency approved or nominated by the Reserve Bank of New Zealand under section 80 of the Reserve Bank of New Zealand Act 1989
buffer ratio means the buffer ratio, excluding any countercyclical buffer, prescribed in document BS2A or document BS2B (as applicable)

continuous disclosure information means information relating to a security and its issuer that is required to be disclosed under a specified securities market's continuous disclosure rules

convertible security means any security issued by Heartland Bank the terms and conditions of which allow the security to be converted into, or exchanged for, an equity security

document BS2A means the document BS2A "Capital Adequacy Framework (Standardised Approach)" of the RBNZ Banking Supervision Handbook (Revised edition), and includes any document that amends or replaces it

document BS2B means the document BS2B "Capital Adequacy Framework (Internal Models Based Approach)" of the RBNZ Banking Supervision Handbook (Revised edition), and includes any document that amends or replaces it

Heartland Bank means Heartland Bank Limited

minimum prescribed buffer ratio means the minimum buffer ratio (if any) prescribed in Heartland Bank's conditions of registration

parent entity has the meaning given to it in document BS2A or BS2B (as applicable)

RBNZ Banking Supervision Handbook means the documents and Orders in Council that apply from time to time to the Reserve Bank of New Zealand's registration of banks and prudential supervision of banks under Part 5 of the Reserve Bank of New Zealand Act 1989

Regulations means the Securities Regulations 2009

regulatory capital means capital that meets the regulatory capital requirements under—

- (a) document BS2A; or
- (b) document BS2B

regulatory capital instrument means a convertible security that on issuance is treated, by the Reserve Bank of New Zealand, as regulatory capital

relevant convertible security means the convertible security that was converted into, or exchanged for, the specified equity security

risk-weighted assets means—

- (a) risk-weighted assets as that term is defined in document BS2A; or
- (b) risk-weighted assets as that term is defined in document BS2B

specified equity security means an equity security—

- (a) into which a regulatory capital instrument is converted; or
- (b) for which a regulatory capital instrument is exchanged

specified securities market means any securities market operated by—

- (a) NZX Limited; or
 - (b) ASX Limited (being a company incorporated in Australia).
- (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 that Act.
- (3) Any term or expression that is defined in the Regulations and used in this notice, but not defined in this notice or in the Act, has the same meaning as in those regulations.

5 Exemptions from sections 37 and 37A of the Securities Act 1978 for specified equity securities

Heartland Bank, its parent entity, and every person acting on behalf of either or both of them are exempt from the requirements of sections 37 and 37A of the Act in respect of a specified equity security if the conditions in clause 6 are complied with.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the following conditions:
- (a) the issuer of the specified equity security must be Heartland Bank or its parent entity; and
 - (b) Heartland Bank or its parent entity must have had equity securities quoted on a specified securities market at the time of the offer and allotment of the relevant convertible security; and
 - (c) the relevant convertible security must have been quoted on a specified securities market—
 - (i) at the time of its allotment; or
 - (ii) if it was the subject of a complete application for quotation at the time of its offer, after its allotment; and
 - (d) the relevant convertible security must have been issued under an investment statement that includes the following:
 - (i) the following statement displayed prominently on its front cover:

"This investment is riskier than a bank deposit. The securities are not call deposits or term deposits with Heartland Bank Limited and may not be suitable for many investors."; and
 - (ii) immediately after the information required under clause 1 of Schedule 13 of the Regulations, the warning statement set out in Part 1 of the Schedule of this notice; and

- (iii) a description of Heartland Bank and its parent entity at the time of the offer; and
- (iv) a description of the specified equity securities at the time of the offer; and
- (v) a statement that the equity securities of Heartland Bank or its parent entity will be quoted on a specified securities market at the time of offer and that it is intended that they will continue to be quoted (including when the specified equity securities are allotted); and
- (vi) a statement advising where further information relating to the issuer of the specified equity securities can be obtained, including the issuer's latest annual report and financial statements and its latest disclosure statement (if any); and
- (vii) a statement to the effect that a change in circumstances occurring between the date of the allotment of the convertible security and the conversion or exchange date of that security could materially affect the specified equity securities (including their price); and
- (viii) a statement that continuous disclosure information for the relevant convertible security will be disclosed on the specified securities market on which that security is quoted; and
- (ix) a statement that continuous disclosure information for equity securities of the same class as the specified equity security will be disclosed on the specified securities market on which those securities are quoted; and
- (x) a statement describing the principal risks assumed by holders of the convertible security; and
- (xi) a statement to the effect that holders of the convertible security have no right to elect whether to convert or exchange; and
- (xii) a statement that specified equity securities will or may be allotted even if, at the time of allotment, there are adverse circumstances that make the investment statement false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to those circumstances; and
- (xiii) if Heartland Bank is required to maintain a buffer ratio under its conditions of registration as a bank:
 - A an explanation of the steps (specified in Heartland Bank's conditions of registration as a

bank) that the Reserve Bank of New Zealand is likely to require Heartland Bank to take if its buffer ratio falls below the minimum prescribed buffer ratio; and

B a statement that if Heartland Bank's buffer ratio falls below the minimum prescribed buffer ratio, Heartland Bank will disclose that fact on the specified securities market on which the relevant convertible security is quoted; and

(xiv) if Heartland Bank is not required to maintain a buffer ratio under its conditions of registration as a bank:

A an explanation of the steps that the Reserve Bank of New Zealand may take if Heartland Bank breaches any of its conditions of registration as a bank relating to regulatory capital; and

B a statement that if Heartland Bank breaches any of its conditions of registration as a bank relating to regulatory capital, Heartland Bank will disclose that fact on the specified securities market on which the relevant convertible security is quoted; and

(xv) if Heartland Bank has obtained a rating for the relevant convertible security from an approved or nominated rating agency, details of the rating, including a statement that highlights and explains the difference between the rating of Heartland Bank and the rating of the convertible security; and

(xvi) if Heartland Bank has not obtained a rating for the relevant convertible security from an approved or nominated rating agency, a statement highlighting that no rating has been obtained and an explanation of the reasons why no rating has been obtained; and

(xvii) if the terms of the convertible security allow Heartland Bank to vary the terms of conversion or exchange,—

A a clear statement that Heartland Bank may vary the terms of conversion or exchange; and

B a clear statement of what steps Heartland Bank will take to inform holders of convertible securities of any variation to the terms of conversion or exchange; and

(xviii) if the terms of the convertible security allow Heartland Bank to vary the terms of conversion or exchange to substitute a different parent entity as the issuer of the specified equity security in place of Heartland Bank's parent entity at the time of offer, a

clear statement that Heartland Bank may vary the terms of conversion or exchange to make such a substitution and an explanation of the circumstances in which such a substitution might occur and the effects of such a change;

- (xix) a statement to the effect that Heartland Bank is relying on this notice together with a summary of the conditions set out in paragraphs (e) to (i) and a statement to the effect that those conditions apply for the benefit of subscribers for the relevant convertible security and any subsequent holder of the security; and
- (e) the relevant convertible security must remain quoted on the specified securities market for so long as it is outstanding, unless it is delisted by—
 - (i) a statutory manager, an administrator, or a liquidator; or
 - (ii) the operator of the specified securities market; and
- (f) unless the equity securities of the issuer of the specified equity security are delisted by a statutory manager, an administrator, a liquidator, or the operator of the specified securities market, the specified equity security or equity securities of the same class must be quoted on a specified securities market at the time of the allotment of the specified equity security; and
- (g) the continuous disclosure information for the relevant convertible security and the specified equity security must be notified to the operator of the specified securities market on which the relevant security is quoted within the time required by that market's continuous disclosure rules (for the purpose of that information being made available to participants in that market), unless the relevant security has been delisted; and
- (h) if either the relevant convertible security or the specified equity security has been delisted, for so long as the relevant convertible security is outstanding—
 - (i) the continuous disclosure information for the delisted security that would have been required to have been disclosed if the security had not been delisted must be notified to the operator of the specified securities market for the listed security within the time required by that market's continuous disclosure rules (for the purpose of that information being made available to participants in that market); and
 - (ii) a link to that information must be published on the Internet site of the issuer of the delisted security; and

- (i) if both the relevant convertible security and the specified equity security have been delisted, a link to the continuous disclosure information for both securities (which would have been required to have been disclosed if the securities had not been delisted) must be published on the Internet sites of the issuers of both securities for so long as the relevant convertible security is outstanding.
- (2) The exemptions in clause 5 are subject to the further condition that the terms of the relevant convertible security must include a requirement (being a term that continues to apply after this notice is revoked) that Heartland Bank—
 - (a) will comply with the condition in subclause (1)(e); and
 - (b) if it is also the issuer of the specified equity security, will comply with the conditions in subclause (1)(f) to (i); and
 - (c) if it is not the issuer of the specified equity security,—
 - (i) will use reasonable endeavours to ensure that the issuer of the specified equity security complies with the condition in subclause (1)(f); and
 - (ii) will comply with the conditions in subclause (1)(g) to (i) to the extent that the conditions relate to matters within the control of Heartland Bank; and
 - (iii) will use reasonable endeavours to ensure that the issuer of the specified equity security complies with the conditions in subclause (1)(g) to (i) to the extent that the conditions relate to matters within the control of the issuer of the specified equity security.

7 Exemption from regulation 26 of the Securities Regulations 2009

Heartland Bank, its parent entity, and every person acting on behalf of either or both of them are exempted from regulation 26 of the Regulations with respect to any advertisement for convertible securities or specified equity securities if the conditions in clause 8 are complied with.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject to the conditions that every advertisement for convertible securities or specified equity securities must—
 - (a) comply with regulation 26 of the Regulations as if—
 - (i) that regulation applied to the issuer of the security, the subsidiaries of the issuer, the issuer's parent entity, and the subsidiaries of the parent entity; and
 - (ii) references in that regulation to "registered prospectus" include the issuer's most recent

disclosure statement or, if the issuer is not required to produce disclosure statements, its most recent annual or half-year report published on the specified securities market; and

- (b) if the advertisement states the amount of risk-weighted assets, cash, or other liquid assets of any person, state the amount of those assets as they appeared in the most recent disclosure statement for the issuer or, if the issuer is not required to produce disclosure statements, its most recent annual or half-year report published on the specified securities market; and
 - (c) if the advertisement states the amount of total assets, or net assets, of the issuer of the specified equity securities, contain a statement to the effect that the amount of total assets, or net assets, of the issuer of the specified equity securities is likely to be different at the time the specified equity securities are allotted.
- (2) To avoid doubt, subclause (1)(a) is subject to subclause (1)(b).

9 Existing notice revoked

The Securities Act (Heartland Bank Regulatory Capital) Exemption Notice 2014 is revoked on the close of 18 December 2014.

Schedule

Part 1

FMA warning statement

This investment is riskier than a bank deposit. These [convertible securities] are complex instruments and might not be suitable for many investors.

These [convertible securities] carry similar risks to shares in [Heartland Bank] but do not have the same opportunity for growth as shares. The risks associated with these [securities] could result in the loss of your investment and any associated income.

The [securities] are not guaranteed by [Heartland Bank] or any other person. If [Heartland Bank] or its parent entity experiences severe financial difficulty, the [convertible securities] may be [converted to/exchanged for] ordinary shares of [Heartland Bank/parent entity] or written off.

You will not have any choice as to whether a [conversion/exchange] or write-off occurs, and you may not have a chance to sell your [convertible securities] before the [conversion/exchange] or write-off.

The value of the [specified equity securities] that you receive if this occurs is likely to be less than the amount you invest in these [convertible securities].

If [conversion/exchange] is required but is not possible, the [convertible securities] will be immediately written off in part or in whole and you will lose your investment.

The table shows how these [securities] would rank upon a winding-up of [Heartland Bank] if [conversion/exchange] does not occur and the [security] is not written off.

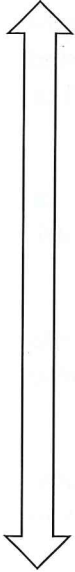
[Insert table setting out the higher ranking, equal ranking, and lower ranking obligations of Heartland Bank, an example of which is set out in Part 2 of this schedule]

We recommend that you consult an independent financial adviser before deciding whether or not to invest and that you make certain that you are comfortable that this investment is suitable for your needs.

Further information about key risks of this investment can be found on page(s) [specify page or pages] of this investment statement.

Part 2

Example of table setting out the higher ranking, equal ranking, and lower ranking obligations of Heartland Bank

		Examples	Examples of existing Heartland Bank Limited securities
<p>Higher ranking/ earlier priority/ first to be repaid</p> 	Higher-ranking obligations	Secured debt and creditors preferred by law	Secured creditors such as money held with clearing systems. Liabilities given preference by law including employee entitlements and taxes.
		Unsubordinated unsecured debt	Deposit accounts, senior bonds, and trade and general creditors.
		Term subordinated unsecured debt	Heartland Bank Limited subordinated notes issued in [insert date].
		Perpetual subordinated unsecured debt	Heartland Bank Limited perpetual capital floating rate notes issued in [insert date].
	Equal ranking obligations	Preference shares and other equally ranked instruments	Convertible securities and preference shares issued in [insert date].
Lower ranking/ later priority/ last to be repaid	Lower-ranking obligations	Ordinary shares	Ordinary shares in Heartland Bank Limited.

Dated at Wellington this 16th day of December 2014.



Liam Mason
General Counsel
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 19 December 2014 and is revoked on the close of 30 November 2016, exempts Heartland Bank Limited (**Heartland Bank**) and its parent company from certain provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **Regulations**) for convertible securities and equity securities issued on conversion of a convertible security.

This notice provides exemptions from the requirements for Heartland Bank and its parent company to register a prospectus and provide a separate investment statement for the new equity securities that are to be allotted on conversion of convertible securities if they—

- comply with the relevant regulatory capital requirements as set by the Reserve Bank of New Zealand (**RBNZ**); and
- offer the convertible securities in an investment statement that includes additional disclosures and warning statements about the high-risk nature of the instruments and the relevant conversion features.

The relevant regulatory capital requirements set by RBNZ require that additional tier 1 and tier 2 capital instruments issued by registered banks have “loss absorbency” terms that require write-off of the instrument or conversion of the instrument into equity securities of the registered bank (or the bank’s ultimate parent company) in certain prescribed “non-viability” or “loss-absorption” circumstances. These requirements reflect the new global regulatory standards for bank capital adequacy and liquidity released by the Basel Committee on Banking Supervision in December 2010 (known as “Basel III”).

This notice revokes and replaces the Securities Act (Heartland Bank Regulatory Capital) Exemption Notice 2014 (**Heartland’s existing notice**). The exemptions and conditions under Heartland’s existing notice are substantially the same as those in the Securities Act (Banks’ Regulatory Capital) Exemption Notice 2014 (the **class notice**). Heartland Bank and its parent company were unable to rely on the class notice for technical reasons (including that Heartland Bank’s conditions of bank registration differ from those for other banks in not imposing a conservation buffer ratio).

The Financial Markets Authority (the **FMA**) is amending the class notice and considers that the exemptive relief for regulatory capital granted to Heartland Bank should be changed to reflect relevant changes to the class notice. This notice therefore revokes Heartland’s existing notice and replaces it with a new notice that replicates Heartland’s existing notice except in the following respects:

- it includes a new condition to require Heartland Bank to issue the relevant convertible security on terms that include a requirement to comply (and to continue to comply after the notice is revoked)

with the conditions in clause 6(1)(e) to (i) of the notice. However, if the issuer of the equity security on conversion is Heartland Bank's parent, the requirement to comply with some conditions becomes a requirement to use reasonable endeavours to ensure that Heartland Bank's parent complies with those conditions (to the extent that compliance with those conditions is within the control of Heartland Bank's parent); and

- it also makes technical changes to 3 other conditions in Heartland's existing notice consistently with amendments to the class notice.

The notice applies for the purposes of the transitional provisions under the Financial Markets Conduct Act 2013 and the Financial Markets Conduct Regulations 2014. (See in particular, Schedule 4 of that Act and clause 29 of Schedule 1 of those regulations.)

The FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers that it is appropriate to grant the exemptions because—

- where an offer of convertible securities is made in an offer document containing relevant information about the securities that will be allotted on conversion, so long as the issuer provides investors with certain updated information prior to the allotment of the converted equity securities, the issuer should not need to register a separate prospectus, or provide a separate investment statement, for the allotment of the converted equity securities, as this will duplicate information already provided or readily available to investors. Therefore, the standard disclosure requirements will not provide the most relevant information for investors:
- for mandatory convertible securities, the investment decision is made at the time the convertible securities are offered and no further investment decision is required at the time of conversion:
- this policy is recognised in the class notice and in Heartland's existing notice which is substantially the same as the class notice:
- this notice replicates Heartland's existing notice but with amendments to ensure that the notice is substantially the same as the class notice following its amendment:
- requiring that the conditions related to continued provision of information under the notice apply for the benefit of subsequent holders and initial investors as terms of the relevant convertible security clarifies that those conditions apply as a matter of contract between Heartland Bank and investors after the Act and this notice cease to apply:
- the convertible securities will be listed on the NZX debt securities market and, as a result, ongoing material information on the convertible securities will be available to investors (including

information relating to the relevant equity securities and any event leading to conversion):

- the exemptions only apply to Heartland Bank issuing regulatory capital instruments in accordance with the requirements set by the RBNZ. As a result, FMA considers that the exemptions are not broader than is reasonably necessary to address the matters that give rise to them:
 - in the case of exemptions from the requirement in regulation 26 of the Regulations to allow an advertisement to state the amount of assets of the issuer, the exemptions recognise that the issuer of the convertible security may be different from the issuer of converted equity security and that information about the asset position of the issuer of the converted equity security may be relevant to investors in the convertible security:
 - the conditions of exemption ensure that investors receive more appropriate information to make informed investment decisions. The exemptions should, therefore, not cause significant detriment to the holders of convertible securities when the convertible securities are converted and the new equity securities are allotted.
-

