

Securities Act (Lloyds Banking Group) Exemption Notice 2014

Pursuant to section 70B 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.

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Notice

- Title**
This notice is the Securities Act (Lloyds Banking Group) Exemption Notice 2014.
- Commencement**
This notice shall come into force on 30 November 2014.
- 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

Call debt securities means a debt security under which,-

- (a) the security holder has a right to demand repayment of the principal sum in full at any time; and
- (b) the issuer has an obligation to repay the principal sum in full not later than 1 working day after the demand is made; and
- (c) the rate of interest payable or any other benefit provided does not alter as a result of a demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time

category 2 debt products means call debt securities and fixed term deposit products

direct marketing means: advertising:

- (a) directly to a member of the public in New Zealand; or
- (b) in media targeted solely or principally at persons in New Zealand but excludes:
 - (i) direct communication to persons after they have become customers of an LBG overseas bank; or
 - (ii) direct communication to a corporation sole, a body corporate or an unincorporated body; or
 - (iii) direct communication to a person who has contacted the LBG overseas bank to become a customer of the LBG overseas bank prior to receiving a direct communication from the LBG overseas bank

home jurisdiction, in relation to an LBG overseas bank, means the country in which that body is incorporated

LBG account, in relation to an LBG overseas bank, means an account opened with the LBG overseas bank by a subscriber for category 2 debt products issued by that bank

LBG overseas bank means each of the banks set out below:

Lloyds Bank plc;
Bank of Scotland plc;
Lloyds Bank International Ltd;
Scottish Widows Bank plc

Regulations means the Securities Regulations 2009

Structured term deposit product means a fixed term deposit product of which the LBG overseas bank is the issuer on which the interest rate is set otherwise than by reference to a fixed interest rate

- (2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.
- 5 Exemptions from sections 33(2), 37, 37A(1)(a), 51, 52 and 54 of the Act**
Each LBG overseas bank and every person acting on its behalf are exempted from sections 33(2), 37, 37A(1)(a), 51, 52 and 54 of the Act in respect of category 2 debt products offered by the LBG overseas bank and of which the LBG overseas bank is the issuer.
- 6 Exemption from regulation 27(1) of the Regulations**
Each LBG overseas bank and every person acting on its behalf is exempted from regulation 27(1) of the Regulations in respect of category 2 debt products offered by the LBG overseas bank and of which the LBG overseas bank is the issuer.
- 7 Exemption from regulation 30 of the Regulations**
Each LBG overseas bank that, and every other person who distributes an advertisement to the public relating to category 2 debt products of which the LBG overseas bank is the issuer, is exempted from regulation 30 of the Regulations in respect of the distribution of that advertisement.
- 8 Condition of exemptions in clauses 5 to 7**
The exemptions in clauses 5 to 7 in respect of an offer of category 2 debt products by the LBG overseas bank are subject to the condition that the LBG overseas bank is licensed or authorised by the central banking authority of its home jurisdiction to carry on banking business in that jurisdiction at the time the offer of the category 2 debt products is made and at the time the allotment of the category 2 debt products.
- 9 Further conditions of exemptions in clause 5 relating to financial statements**
The exemptions in clause 5 are subject to the further conditions that at the time the offer of category 2 debt products is made and at the time of the allotment of the category 2 debt products is made—
- (a) Lloyds Bank plc maintains an investment grade credit rating for its long-term senior unsecured obligations, and that credit rating is available on the Internet site of Lloyds Bank plc; and
- (b) either—
- (i) the most recent published financial statements of the LBG overseas bank are available on the Internet site of the LBG overseas bank; or

- (ii) if the most recent published financial statements of the LBG overseas bank are not available on the Internet site of the LBG overseas bank, the Internet site of the LBG overseas bank states that the most recent published financial statements are available from the LBG overseas bank to subscribers, free of charge, on request and provides the contact details of a person at the LBG overseas bank to whom a request for copies of those financial statements may be made.

10 Further conditions of exemptions in clause 5 relating to LBG accounts opened in New Zealand

- (1) The exemptions in clause 5, in respect of category 2 debt products in a LBG account opened while the subscriber is in New Zealand, are subject to the further conditions that—
 - (a) prior to the LBG account being opened with the LBG overseas bank,—
 - (i) the LBG overseas bank provides the subscriber with a description of the terms and conditions and fees and charges relating to the LBG account; and
 - (ii) the LBG overseas bank takes all reasonable steps to ensure that a statement or information is provided to the subscriber to the effect set out in subclause (2) before the first allotment of category 2 debt products to the subscriber in that account, after the subscriber has notified the LBG overseas bank of its New Zealand residential address.
- (2) The statement or information referred to in subclause (1)(a)(ii) is the following, which must be set out under the heading “Important Information for New Zealand Depositors”:
 - (a) the name and address of the LBG overseas bank;
 - (b) that the LBG overseas bank is located in a foreign jurisdiction and therefore may not be subject in all respects to New Zealand law;
 - (c) that the LBG account with the LBG overseas bank will be operated under the laws of the relevant jurisdiction;
 - (d) that the LBG overseas bank is not a registered bank in New Zealand and accordingly the prudential supervisory regime operated by the Reserve Bank of New Zealand and applicable to New Zealand registered banks will not apply to it;
 - (e) where the LBG account with the LBG overseas bank is denominated in a currency other than New Zealand currency, that the LBG account may carry with it a currency risk;

- (f) the Internet site where the most recent financial statements of the LBG overseas bank can be located free of charge or, if those financial statements are not available on an Internet site, the contact details of a person at the LBG overseas bank from whom copies of the latest financial statements of the LBG overseas bank are available on request, free of charge;
- (g) under the heading "Agreement as to Jurisdiction",—
 - (i) that, in respect of a dispute concerning the LBG account with the LBG overseas bank, the LBG overseas bank—
 - (A) agrees to submit to the non-exclusive jurisdiction of New Zealand courts; and
 - (B) a person in New Zealand (whose contact details shall be specified) has been appointed to accept service on behalf of the LBG overseas bank; and
 - (C) agrees that the statement is an agreement with each customer for the purposes of section 389(1)(e) of the Companies Act 1993; and
 - (ii) that despite the statements in subparagraph (i), the contract in respect of the category 2 debt products may not always be enforceable in New Zealand courts; and
 - (iii) that a person in New Zealand (whose name shall be specified) is appointed as agent of the LBG overseas bank to accept service in New Zealand of any document on behalf of the LBG overseas bank.

11 Further condition of exemptions in clause 5 relating to direct marketing of LBG accounts in New Zealand

The exemptions in clause 5 are subject to the further condition that the category 2 debt products referred to in clause 5 are not subject to direct marketing.

12 Further condition of exemptions in clause 5 relating to structured term deposit products

The exemptions in clause 5 in respect of structured term deposit products are subject to the further condition that the subscriber has previously held structured term deposit products.

DATED at Wellington this 28th day of November 2014.



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

Statement of reasons

This notice, which comes into force on 30 November 2014 and is revoked on 30 November 2016, relates to the ability of four banks operating overseas; Lloyds Bank plc, Bank of Scotland plc, Lloyds Bank International Limited and Scottish Widows Bank plc (the LBG overseas banks), to offer call debt securities and fixed term deposit products (category 2 debt products) to customers in New Zealand. It exempts the LBG overseas banks from the following in respect of category 2 debt products, subject to conditions:

- The trust deed and prospectus requirements of the Securities Act 1978 (the **Act**):
- The requirement in section 37A(1)(a) of the Act that, before the allotment of a security offered to the public for subscription, the subscriber has received an investment statement:
- Regulation 27 of the Securities Regulations 2009 (the Regulations), which requires advertisements for category 2 debt products to state either that the securities are secured or unsecured or the nature and ranking of the securities:
- Regulation 30 of the Regulations, which prohibits the distribution of an advertisement containing an offer of securities unless a certificate that complies with the regulations has been completed at the time the advertisement is distributed:
- Certain other requirements of the Act and the Regulations.

The Financial Markets Authority (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—

- Registered banks in New Zealand have statutory exemptions from large parts of the Act (as of April 2014).
- The category 2 debt products (excluding the structured term deposit products) being offered by the LBG overseas banks are similar to call accounts and term deposits offered by New Zealand registered banks.

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- The LBG overseas banks are licensed or otherwise authorised by the central banking authority in their home jurisdiction to carry on banking business in that jurisdiction.
- Before the category 2 debt products are allotted in an account opened by LBG overseas banks for New Zealand customers information will be provided to the account holder by LBG overseas banks highlighting the differences between such an account and an equivalent account in a New Zealand registered bank.
- The LBG overseas banks are based in jurisdictions that have signed up to the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding, which would allow the FMA to seek the assistance of the relevant securities regulator should enforcement issues arise.
- Depositors with LBG overseas banks would have access to financial and other information about the relevant overseas bank that would allow them to assess the risks of entering into the category 2 debt products and the financial strength of the LBG overseas banks.
- New Zealand subscribers will have reasonable access to complaints and dispute management processes available to customers of LBG overseas banks.
- The exemptions in respect of structured term deposit products are subject to the further condition that the subscriber has previously held structured term deposit products because these are products that are not commonly offered within New Zealand and are higher risk than standard fixed term deposits products or call debt securities.
- The conditions of the exemption require that prior to entering into the LBG category 2 products, New Zealand investors receive appropriate information to enable them to make an informed decision and prevent LBG overseas banks from offering structured term deposit products to New Zealand investors who have not held them previously. The exemptions should, therefore, not cause significant detriment to relevant New Zealand investors.
- The exemptions provide LBG overseas banks with the same relief from the Act as New Zealand registered banks on the basis that LBG is subject to at least equivalent oversight as New Zealand registered banks and subject to conditions consistent with the Securities Act (HSBC Overseas Banks) Exemption Notice 2014 as appropriate, together with a further condition relating to structured deposit products. As a result, FMA considers that the exemptions are not broader than are reasonably necessary to address the matters that gave rise to the exemption.
- The Reserve Bank was consulted on this application.