

Securities Act (New Zealand Racing Board) Exemption Notice 2016

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.

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Notice

1 Title

This notice is the Securities Act (New Zealand Racing Board) Exemption Notice 2016.

2 Commencement

This notice comes into force on 22 April 2016.

3 Revocation of this notice

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

betting account means a betting account issued by the Board under the Betting Rules made pursuant to the Racing Act 2003

betting voucher means a betting voucher issued by the Board under the Betting Rules made pursuant to the Racing Act 2003

Board means the New Zealand Racing Board

net amount, in relation to specified debt securities, means an amount equivalent to the face value of all specified debt securities issued by the Board less any amounts paid by the Board for the redemption or cancellation of the specified debt securities

Regulations means the Securities Regulations 2009

Senior Officer means the Chief Executive Officer of the Board or the Chief Financial Officer of the Board (or if that office does not exist, the person who has responsibility for the management of the financial affairs of the Board)

specified debt securities means debt securities that are betting accounts and betting vouchers issued by the Board in favour of security holders.

- (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 from trustee and trust deed requirements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 33(2) of the Act.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) the Board maintains an amount that exceeds the net amount in a separate bank account kept specially for that purpose at a registered bank (as that term is defined in section 2(1) of the Reserve Bank of New Zealand Act 1989); and
- (b) there is a trust deed for the separate bank account that declares the account is to be held on trust for holders of the specified debt securities and gives those holders the right to a proportion of the account equal to the value of their specified debt security; and
- (c) it is a term of the offer that the Board is liable to repay the face value of any specified debt securities not later than 1 working day after any demand is made, except in the limited circumstances stated in the Betting Rules available at <http://www.tab.co.nz> and TAB outlets; and
- (d) the Senior Officer provides a monthly certificate to the Board that—
 - (i) certifies that, at the time the certificate is issued, the amount in the bank account referred to in paragraph (a) exceeds the net amount; and
 - (ii) is retained by the Board and available for inspection by holders of specified debt securities.

7 Exemption relating to receipt of investment statements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 37A(1)(a) of the Act.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) every betting voucher includes the statement “This voucher is governed by the Betting Rules available at <http://www.tab.co.nz> and TAB outlets. Subject to conditions, refunds are available.”:



- (b) all hard copy and electronic statements for the betting accounts include the statement “The use of this account (including the right of the account holder to withdraw money from the account) is governed by the Betting Rules available at <http://www.tab.co.nz> and TAB outlets.”

9 Exemptions from certain prospectus requirements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 37A(1)(c) of the Act and clauses 8, 9, 14, 16 to 18, 21, and 22 of Schedule 2 of the Regulations.

10 Conditions of exemptions in clause 9

The exemptions in clause 9 are subject to the conditions that—

- (a) every registered prospectus containing or referring to an offer of the specified debt securities contains, or is accompanied by, a copy of the most recent audited financial statements of the Board that—
 - (i) comply with the Financial Reporting Act 1993; and
 - (ii) have been presented to the House of Representatives in accordance with section 21 of the Racing Act 2003; and
- (b) the Board delivers to the Registrar an annual certificate that—
 - (i) refers to the most recent audited financial statements of the Board; and
 - (ii) is signed on behalf of the directors by at least 2 directors of the Board; and
 - (iii) is dated not later than 6 months after the date of the most recent audited financial statements of the Board; and
 - (iv) states that, in the opinion of the directors of the Board after due inquiry by them, the registered prospectus is not, at the date of the certificate, false or misleading in a material particular by failing to refer or give proper emphasis to adverse circumstances; and
 - (v) either—
 - A states that the information contained in the registered prospectus under clause 13 of Schedule 2 of the Regulations (relating to ranking of securities) is correct; or
 - B contains a current statement of the information; and
 - (vi) states that the certificates referred to in clause 6(d) have been provided to the Board and has copies of those certificates attached to it.

11 Exemption from certificate requirements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 54 of the Act.

12 Conditions of exemption in clause 11

- (1) The exemption in clause 11 is subject to the conditions that,—




- (a) immediately after a person subscribes for a specified debt security that is a betting voucher, the Board delivers to that person a physical betting voucher representing that specified debt security; and
- (b) at all reasonable times, betting account holders can request (via <http://www.tab.co.nz>, telephone, or any serviced retail outlet operated by the Board) a statement that contains the following information:
 - (i) the balance of the betting account; and
 - (ii) records of transactions occurring over the past 6 months; and
 - (iii) the statement "The use of this account (including the right of the account holder to withdraw money from the account) is governed by the Betting Rules available at <http://www.tab.co.nz> and TAB outlets."; and
- (c) the condition described in paragraph (b) is a term of the Board's General Terms and Conditions for accounts; and
- (d) at all reasonable times, an electronic statement is available at <http://www.tab.co.nz> to every account holder that includes the information required by paragraph (b)(i) to (iii); and
- (e) at all reasonable times, betting account holders are able to check the balance of their betting accounts (via <http://www.tab.co.nz>, telephone, text message, or any serviced retail outlet operated by the Board).

13 Revocation

The Securities Act (New Zealand Racing Board) Exemption Notice 2011 is revoked on the close of 21 April 2016.

Dated at Wellington this 14th day of April 2016.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice which comes into force on 22 April 2016, grants an exemption on the same terms as the Securities Act (New Zealand Racing Board) Exemption Notice 2011 (**original notice**) to extend the exemptions contained within the original notice until 30 November 2016.

This notice exempts the New Zealand Racing Board (**Board**), subject to conditions, from certain provisions of the Securities Act 1978 (**Securities Act**) and the Securities Regulations 2009 (**Securities Regulations**) in respect of debt securities known as betting vouchers and betting accounts. Betting vouchers and betting accounts facilitate betting on sports and racing through the Board-run TAB.

The Board is exempt from the requirements—

- to appoint a trustee and have a trust deed:
- to have an investment statement:

- to provide certain statements and information in or with a prospectus:
- to issue certificates evidencing the holding of betting vouchers or betting accounts.

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

- the policy reasons for the exemptions contained in the original notice remain valid and relevant. The exemptions will enable the Board to continue to issue betting vouchers and betting accounts under the Securities Act during the remaining transitional period under the Financial Markets Conduct Act 2013 (**FMC Act**), while the FMA considers whether a class exemption, or some other form of relief from the FMC Act, is necessary or desirable for offers of pre-payment facilities such as the betting vouchers and betting accounts:
- the nature and features of the betting accounts and betting vouchers are such that they are not intended to be investment products:
- the conditions of the exemption from the trustee and trust deed provisions of the Securities Act provide protection for investors' funds. These protections are that there is a trust deed for a separate bank account that declares the account is to be held on trust for holders of the specified debt securities and gives those holders the right to a proportion of the account equal to the value of their specified debt security:
- the effect of the conditions of the exemptions is that potential purchasers of betting vouchers and potential depositors into a betting account will be provided with sufficient disclosure to enable them to make informed decisions. Information is to be available in a reduced content prospectus, regularly updated financial statements, the Betting Rules, and online account statements. There is no exemption from the requirements of the Securities Act that information provided must not be misleading:
- betting accounts and betting vouchers are similar to call debt securities, which have a statutory exemption from the requirement to have an investment statement. Except in limited circumstances, holders of betting accounts and betting vouchers can withdraw their money within 1 day and without fee, similar to holders of call debt securities. This right is contained in the Betting Rules which is brought to the attention of holders by a statement on the betting vouchers and on betting account statements:
- the conditions of the exemption from the requirement for certificates ensures holders of betting accounts and betting vouchers can easily access information about their holdings:
- with these alternative protections in place that are suited to the operation of the Board's activities, full compliance with the Securities Act and Securities Regulations by the Board would not provide material benefit to betting account holders and purchasers of betting vouchers:
- in these circumstances the FMA considers that the exemptions will not cause significant detriment to subscribers and that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.