

FMA approves class exemptions that recognise existing regulation of overseas issuers

13 June 2016

The FMA's view is that, where an overseas issuer is already subject to regulation in their overseas jurisdiction that is at least equivalent to that applicable in New Zealand, the costs may outweigh the benefits for investors to have the issuer additionally comply with the requirements of the Financial Markets Conduct Act 2013 (FMC Act).

In certain circumstances, we think it will be appropriate to grant exemptions that allow overseas issuers to rely on the disclosure, governance, financial reporting and audit requirements of their overseas jurisdiction. This additional flexibility will encourage broader participation by overseas issuers in the New Zealand market, while preserving appropriate access to information and investor protection. This aligns with our strategic priority of capital market growth and integrity.

As a result, we have approved a series of class exemptions for overseas issuers. We are seeking to finalise exemption notices to give effect to these exemptions by the end of July 2016. Once the exemption notices are finalised, you will be able to find them on our website, and on the New Zealand legislation website.

Offers by overseas issuers

Exemptions will be available to overseas issuers making two types of offers:

- For offers made to existing holders of securities with a primary listing on an overseas exchange in a recognised jurisdiction with a high quality regulatory regime: issuers will receive complete exemptions from the disclosure, governance and financial reporting requirements of the FMC Act. This proposed relief continues that available under the existing Securities Act (Overseas Companies) Exemption Notice 2013.
- For offers made on recognised high quality exchanges under the laws of an overseas jurisdiction and then extended into New Zealand: the overseas issuers making these offers will primarily be able to rely on the requirements of their overseas jurisdiction, however they will also need to prepare a warning statement, appoint an agent for service in New Zealand, and lodge certain documents with the Companies Office. The exemptions will be limited to overseas issuers with a primary listing on the main board of the NYSE, the NASDAQ and the London Stock Exchange. This proposed relief substantially continues that available under the existing Securities Act (Overseas Listed Issuers) Exemption Notice 2002, but removes the requirement to prepare a New Zealand offer document (in that case an investment statement).

Financial reporting and audit

Exemptions will allow overseas issuers with a primary listing on a market in a high quality jurisdiction to use their overseas financial statements and auditors as an alternative to the financial statement and audit requirements in part 3 (PDS disclosure) and part 7 (ongoing financial reporting) of the FMC Act. The exemptions only apply where:

- the financial statements of the overseas issuer are prepared in accordance with accounting standards that are broadly comparable to New Zealand GAAP
- the auditor is subject to audit standards that are broadly comparable to those that apply in New Zealand, including independent auditor oversight.

Securities already issued

As a result of the transitional provisions of the FMC Act, without an exemption overseas issuers will be subject to the full requirements of the FMC Act for securities already issued under Securities Act exemptions.

We consider these issuers should be able to rely on the requirements of their overseas jurisdiction. These issuers will receive:

- exemptions from the ongoing disclosure, governance and financial reporting and audit requirements of the FMC Act
- an exemption from having to notify all security holders that the requirements of the FMC Act will apply after the effective date for the securities.

In our view, relief is warranted where the overseas issuer made an offer into New Zealand relying on one or more of the following Securities Act exemptions below, and has not made any other type of offer into New Zealand:

- Securities Act (Overseas Companies) Exemption Notices
- Securities Act (Overseas Listed Issuers) Exemption Notices
- Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notices
- Securities (Australian Transitional Issuers) Exemption Notice 2013 and the Securities Act (Australian Issuers) Exemption Notice 2002
- Securities Act (Australian Registered Managed Investment Schemes) Exemption Notices
- Securities Act (Great Britain Collective Investment Schemes) Exemption Notices
- Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010
- Other Securities Act individual exemptions granted to overseas issuers for incidental offers or ancillary offers.

Additional exemptions recognising overseas regimes

In addition to the exemptions for overseas issuers discussed above, the FMA has also approved two other class exemptions that recognise audit and assurance standards in recognised overseas jurisdictions as an appropriate substitute for the requirements of the FMC Act:

- Exemptions for overseas custodians from the requirement under the Financial Markets Conduct Regulations 2014 to obtain an assurance engagement from a New Zealand qualified auditor. Where the custodians already conduct a robust assurance engagement in the country in which they are based, it is our view that the costs of engaging a New Zealand auditor may potentially be disproportionate to the benefits to investors. Custodians will also receive similar exemptions from the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014.
- Exemptions for overseas registered banks and licensed insurers that allow Australian auditors to audit their New Zealand business financial statements and remove New Zealand-specific requirements (director signing and timing for lodgement) when they are not aligned with what's required in the home jurisdiction of the overseas registered bank or licensed insurer. These exemptions address technical issues that have prevented certain overseas registered banks and licensed insurers from relying on the existing Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015.

If you have any questions about these exemptions or wish to discuss the circumstances in which the exemptions will apply, please email us at exemptions@fma.govt.nz and we will call you.