

## Financial Markets Conduct (Flight Centre (NZ) Limited) Exemption Notice 2016

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Flight Centre (NZ) Limited) Exemption Notice 2016.

#### 2 Commencement

This notice comes into force on 30 November 2016.

#### 3 Revocation

This notice is revoked on the close of 29 November 2021.

#### 4 Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**Eligible Person** means:—

- (a) an employee or director of Flight Centre or any of its subsidiaries (**Employee**); or
- (b) a trustee for a trust in respect of which an Employee is a beneficiary; or
- (c) a company that is controlled by an Employee.

**Flight Centre** means Flight Centre (NZ) Limited

**Note** means an unsecured note issued pursuant to the Scheme

**Noteholder** means the holder of a Note

**Offer** means an offer to an Eligible Person of Notes under the Scheme

**Regulations** means the Financial Markets Conduct Regulations 2014

**Relevant Financial Statement** has the meaning set out in clause 2 of Schedule 8 of the Regulations

**Scheme** means the Flight Centre (NZ) Limited Business Ownership Scheme under which an Eligible Person may acquire Notes issued by Flight Centre.

- (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 Part 3 of the Act**

- (1) Flight Centre is exempt from Part 3 of the Act in respect of an Offer of Notes.
- (2) An Offer of Notes made in reliance on this exemption notice is not a regulated offer.

## **6 Conditions of exemption in clause 5**

- (1) The exemptions in clause 5 are subject to the following conditions:
- (a) Flight Centre must not accept an application, or issue or transfer Notes to an Eligible Person unless Flight Centre has provided the Eligible Person with a document that contains:—
- (i) the warning statement set out in the Schedule; and
  - (ii) a prominent statement to the effect that the Notes do not earn fixed interest and that the returns on the Notes may vary depending on the performance of the relevant business unit to which the Notes relate; and
  - (iii) a description of the Scheme and its terms and conditions, including but not limited to:—
    - A a brief description of the Offer and the Notes; and
    - B a description of the basis on which or the method by which the interest rate or rates applying to the Notes will be ascertained; and
    - C the dates on which, or frequency with which, the interest from the Notes will be due and paid; and
    - D if a Noteholder will or may be liable to make further payments or to pay fees or charges relating to the Notes, a brief description of the nature of that liability or of those fees or charges; and
    - E if Flight Centre has the right to extend the time for payment of the principal or interest, or to reduce or cancel the principal or interest, under the Notes, a statement to that effect and where more information on that matter can be found; and
    - F a description of the ranking of the Notes on a liquidation of Flight Centre; and
    - G a description of any provision for repayment of the Notes to occur before

- the end of their term; and
      - H a description of any arrangements for Noteholders to redeem the Notes (before and after they cease to be Eligible Persons); and
      - I if the Notes are not transferable or able to be sold to anyone else, a statement to that effect; and
      - J a reference to the trust deed and any other deed or agreement that sets the terms of the Notes or other terms of the Offer; and a statement as to how these documents may be obtained by a Noteholder; and
      - K the information required by clauses 10, 13, 48(2), 49, 52 and 56 of Schedule 2 of the Regulations (to the extent that the information is applicable); and
- (b) Either:
  - (i) a copy of Flight Centre's latest annual report and Flight Centre's Relevant Financial Statements accompanied by a copy of the auditor's report on those financial statements or if those financial statements are unaudited, a statement to that effect; or
  - (ii) a notice containing a statement that the Eligible Person has a right to receive from Flight Centre, free of charge, a copy of the documents referred to in paragraph 6(1)(b)(i), if the Eligible Person makes a request to Flight Centre to receive a copy of those documents, and a statement as to how the Eligible Person may obtain a copy of those documents by electronic means; and
- (2) One or more of the documents specified in paragraph 6(1) may be combined in a single document; and
- (3) Flight Centre must, if an Eligible Person requests a document referred to in paragraph 6(1), provide the Eligible Person with that document within 5 working days after Flight Centre receives the request, by delivering or sending it to the Eligible Person's address; and
- (4) The exemptions in clause 5 are subject to the further conditions that:—
  - (a) Flight Centre complies with Subpart 1 of Part 4 of the Act (other than sections 103(1)(a)(ii), section 103(3) to the extent it relates to section 103(1)(a)(ii); and sections 110 and 123) and sections 215 to 217 of the Act, as if an Offer made in reliance on this notice was a regulated offer;
  - (b) the trust deed for the Notes provides that the functions of the supervisor of the Notes include those set out in section 111 of the Act and that the duties of the supervisor of the Notes include those set out in sections 112 and 113 of the Act;
  - (c) Flight Centre redeems, within a reasonable time, any Notes held by an Eligible Person if that person ceases to be an Eligible Person.

## **7 Exemptions for Notes allotted under the Securities Act**

- (1) Flight Centre is exempt from subpart 4 of Part 3, section 103(1)(a)(ii), section 103(3) to the extent it relates to section 103(1)(a)(ii), sections 110, 123 and 215 to 217 and clause 30 of Schedule 4 of the Act, in respect of Notes allotted under the Securities Act 1978.
- (2) Flight Centre is exempt from clause 21 of Schedule 4 of the Act.

- (3) Flight Centre is exempt from Part 7 of the Act, to the extent Flight Centre would be treated as being a FMC reporting entity only by virtue of having allotted financial products to which paragraph 7(1) applies.

## **8 Condition for exemptions in clause 7**

- (1) The exemptions in clause 7 are subject to the condition that Flight Centre must, before or within 3 months after its effective date, send to each Noteholder (at the Noteholder's last known address) a written notice containing the following information:
- (a) the effective date and a statement to the effect that:—
    - (i) the standard regime of the Act relating to disclosure, governance, financial reporting, and auditing will not apply to the Notes; and
    - (ii) instead, consistent with the treatment of financial products offered through an employee share purchase scheme under the Act, Notes will be subject to the more limited financial reporting and auditing requirements of the Companies Act 1993; and
  - (b) a statement to the effect that a Noteholder:—
    - (i) may obtain a copy of the trust deed, and any other deed or agreement that sets the terms of the Notes, by electronic means and how the Noteholder may do so (for example, from a specified Internet site address); and
    - (ii) has a right to receive from Flight Centre, free of charge, a copy of the documents referred to in paragraph 6(1)(b)(i) above, if the Noteholder, within 15 working days of receiving the notice, makes a request to Flight Centre to receive a copy of any or all of those documents, and how the Noteholder may obtain a copy of those documents by electronic means.

## **Schedule**

### **Warning statements**

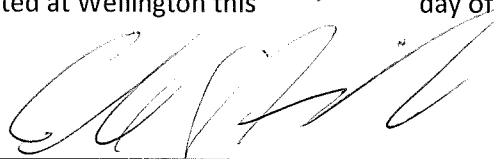
#### **“Warning**

This is an offer of *[name of financial products]*. *[Name of financial products]* are debt securities issued by *[name of issuer]*. You give *[name of issuer]* money, and in return *[name of issuer]* promises to pay you interest and repay the money at the end of the term. If *[name of issuer]* runs into financial trouble, you might lose some or all of the money you invested.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors to make an informed decision. The usual rules do not apply to this offer because it is made under an exemption that allows *[name of issuer]* to offer the *[name of financial products]* to eligible employees. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.”

Dated at Wellington this 8<sup>th</sup> day of November 2016.

  
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Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

### Statement of reasons

This notice comes into force on 30 November 2016, and is revoked on 29 November 2021.

This notice provides an exemption, subject to certain conditions, from Part 3 of the Financial Markets Conduct Act 2013 (**Act**) and the Financial Markets Conduct Regulations 2014 in respect of any unsecured notes (**Notes**) issued pursuant to the Flight Centre (NZ) Limited Business Ownership Scheme (**Scheme**). The Scheme enables Flight Centre to offer Notes to employees or directors of Flight Centre or any of its subsidiaries.

This notice provides that offers of Notes under the Scheme made in reliance on the notice are not regulated offers under the Act. This means that other requirements of the Act, or other Acts, that apply in connection with regulated offers (such as financial reporting requirements) will not apply by reason of the offer. Any other financial market conduct obligations Flight Centre may have, including obligations under Part 2 of the Act, are not affected.

The notice also provides for Notes previously allotted under the Securities Act 1978 and in reliance on the Securities Act (Flight Centre (NZ) Limited) Exemption Notice 2013 to be treated consistently with Notes offered through the Scheme under the Act.

The Financial Markets Authority (**FMA**), being satisfied of the matters set out in section 557 of that Act, considers it appropriate to grant the exemption in relation to an offer of Notes because:—

- under the terms of the Scheme, the return on the Notes is linked to performance of the employee's business unit. Therefore, the Scheme encourages the employee's involvement in the performance of the business unit, in a manner similar to that of an employee share purchase scheme. However, because the Notes represent an offer of debt and not equity, Flight Centre is unable to rely on the exclusion for employee share purchase schemes set out in Schedule 1 of the Act:
- the exemption therefore promotes the purpose of the Act of promoting innovation and flexibility in the financial markets by allowing an offer which is in substance very similar to an employee share purchase scheme to be made on a similar basis as an offer under the exclusion for employee share purchase schemes. The conditions to the exemption ensure that appropriate governance arrangements apply to the Notes which allow for effective monitoring and reduce governance risks having regard to the structure of the Notes and the Scheme:
- the terms on which an employee may be offered Notes under the Scheme may vary according to the circumstances of the employee, his or her remuneration package, and the business unit to which the employee belongs. The conditions to the exemption in this notice require Flight Centre to create a personalised offer document that provides each employee with the information that they need to make an informed decision as to whether to subscribe for Notes under the Scheme:
- as such, the FMA is satisfied that the granting of the exemption is also desirable in order to promote the purposes of the Act, specifically to provide for understandable and accurate

information to be provided to employees to assist them to make an informed investment decision, and by avoiding unnecessary compliance costs:

- in the circumstances that the exemption is limited to the offer of Notes to employees and directors of Flight Centre, and its key impact is to provide the Scheme with equivalent treatment to that which applies to employee share schemes under the Act, the FMA is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.