

Legal update - Exemption for wholesale investors

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10 February 2016

Background

The Financial Markets Authority (FMA) has released an exemption notice for certain offers of unsubordinated debt securities using the \$750,000 minimum investment "wholesale investor" exclusion (the Large Investment Exclusion) under the Financial Markets Conduct Act (FMC Act). The exemption notice, the Financial Markets Conduct (Wholesale Investor Exclusion - \$750,000 Minimum Investment) Exemption Notice 2016, can be accessed on the [FMA's website](#).

The Financial Markets Conduct Regulations imposed a requirement on debt issuers to include a warning statement and receive an acknowledgement from subscribers when relying on the Large Investment Exclusion. Participants in the wholesale debt markets were very concerned that these requirements would be unworkable, especially for Kauri Bonds, and would discourage wholesale debt issues, having an adverse effect on both capital raising and investment options for New Zealanders.

Buddle Findlay, along with other industry interests, were closely involved with the FMA in the consultation and drafting process.

Key features of the exemption

The exemption notice applies to the following classes of offers of unsubordinated debt securities made in reliance on the Large Investment Exclusion:

- Issuers (and sellers on the secondary markets) of Kauri bonds (defined in the notice as unsubordinated debt securities denominated in New Zealand dollars, recorded in a New Zealand register and issued by an issuer that is incorporated, formed or established outside New Zealand) have a full exemption from the warning and investor acknowledgement requirements, without any conditions.
- Issuers and sellers of other unsubordinated debt securities must include a warning statement in their term sheets, but are not required to obtain investor acknowledgements. When reselling, sellers must include the same warning statements in their term sheets, and this must be either given directly to investors or made available via Bloomberg, and as with issuers, sellers do not need to obtain investor acknowledgements.

Comment

The exemption notice has been granted for a twelve month period, in order to enable the FMA to monitor its use, and we hope it will be extended in due course. We consider that the exemption notice should be welcomed as an appropriate use of the FMA's exemption power, preventing unnecessary compliance costs that would otherwise affect our wholesale debt capital markets.

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