

**Reprint
as at 1 December 2019**



Financial Markets Conduct (NZCDC Settlement System) Exemption Notice 2014

(LI 2014/355)

Financial Markets Conduct (NZCDC Settlement System) Exemption Notice 2014: revoked, on the close of 30 November 2019, by clause 3.

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 (NZCDC Settlement System) Exemption Notice 2014.

2 Commencement

This notice comes into force on 1 December 2014.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint. Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

3 Revocation

This notice is revoked on the close of 30 November 2019.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

C&S Rules means New Zealand Clearing Limited's Clearing and Settlement Rules that are part of the rules of the NZCDC settlement system

clearing house means the central counterparty clearing house operated by New Zealand Clearing Limited as part of the NZCDC settlement system

clearing participant means a participant in the NZCDC settlement system that participates in the clearing house, but does not include New Zealand Clearing Limited

depository means the central product depository operated by New Zealand Depository Limited as part of the NZCDC settlement system

depository operating rules means New Zealand Depository Limited's Depository Operating Rules that are part of the rules of the NZCDC settlement system

depository participant means a participant in the NZCDC settlement system that participates in the depository, but does not include New Zealand Depository Limited

NZCDC settlement system means the settlement system owned by, and operated and managed by or on behalf of, New Zealand Clearing and Depository Corporation Limited that is declared to be a designated settlement system pursuant to section 156N of the Reserve Bank of New Zealand Act 1989

Regulations means the Financial Markets Conduct Regulations 2014

settlement transaction—

- (a) means a settlement transaction as defined in the C&S Rules;
- (b) does not include a settlement transaction arising from trading activities on a licensed market operated by NZX Limited where the specified participant acquires or disposes of financial products on its own behalf;
- (c) does not include a settlement transaction arising from a lending transaction (as defined in the depository operating rules)

specified participant means a person that is both a clearing participant and a depository participant.

(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 for specified participants from sections 276 to 279 of Act

Every specified participant is exempted from sections 276 to 279 of the Act in respect of any relevant interest in a financial product that the specified participant has as a result of both of the following:

- (a) being a party to a settlement transaction on the clearing house under the C&S Rules; and
- (b) the performance of its functions in connection with that settlement transaction in the ordinary course of its business as a clearing participant under the C&S Rules or as a depository participant under the depository operating rules.

Dated at Wellington this 21st day of November 2014.

Liam Mason,
General Counsel.

Statement of reasons

This notice comes into force on 1 December 2014 and is revoked on 30 November 2019.

The notice exempts specified participants from the substantial product holder requirements in sections 276 to 279 of the Financial Markets Conduct Act 2013 (the **Act**) in respect of certain relevant interests in financial products that are the result of participation in the NZCDC settlement system.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemption because—

- the relevant interests in financial products to which the exemption applies arise as a result of the holding and transfer of relevant interests through the operation of NZX Limited's markets and the NZCDC settlement system;
- granting the exemption is necessary in order to promote and facilitate the development of fair, efficient, and transparent financial markets, because the clearing and settlement of trades on the NZCDC settlement system by relevant participants and the related holding of financial products and the lodgement of financial products in the depository in connection with settlement are a necessary corollary of trading activities on NZX Limited's markets;
- given the nature of the interests that may arise, and the extent to which interests may arise, by virtue of the operation of the NZCDC settlement system, and given the parties that may hold interests, compliance with the Act in full may

inhibit an informed market. Specified participants have legal title to these financial products only for the purposes of participating in the settlement system, and do not have the beneficial interests attaching to those products. Further, the holdings will constantly change, and to require disclosure would distract from the market being aware of genuine relevant interests:

- the exemption is consistent with the policy of the Act, which excludes certain interests in financial products from the definition of relevant interest, thereby limiting the scope of the circumstances in which substantial holdings in financial products must be disclosed to where the disclosure is useful;
- further, given there is no benefit to requiring disclosure in the circumstances covered by the exemption, to do so would create an unnecessary compliance cost;
- the exemption will not adversely affect listed issuers and, by facilitating trading in financial products in listed issuers, will provide benefits to investors. By limiting the scope of the exemption to the specified participants, the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 27 November 2014.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (NZCDC Settlement System) Exemption Notice 2014 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets Conduct (NZCDC Settlement System) Exemption Notice 2014 (LI 2014/355): clause 3