

DRAFT FOR CONSULTATION

Deposit Takers (Moratorium) Exemption Notice 2009

Pursuant to section 157G of the Reserve Bank of New Zealand Act 1989, the Reserve Bank of New Zealand gives the following notice (to which is appended a statement of reasons of the Bank).

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Notice

- 1 Title**
This notice is the Deposit Takers (Moratorium) Exemption Notice 2009.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 1 March 2013.

4 Application

This notice applies to a specified moratorium entity only until the date specified opposite its name in the table in the Schedule.

5 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Reserve Bank of New Zealand Act 1989
specified moratorium entity means a person specified in the first column of the table in the Schedule.
- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

6 Exemption from credit rating requirement

Each specified moratorium entity is exempted from section 157I of the Act.

7 Generic conditions of exemption in clause 6

- (1) The exemption in clause 6 is subject to the conditions that—
 - (a) no debt securities may be offered for subscription by, or on behalf of, the specified moratorium entity; and
 - (b) a term of the specified moratorium entity's trust deed must prevent the specified moratorium entity from offering any further debt securities to the public; and
 - (c) the specified moratorium entity must ensure that any Internet site maintained by or on behalf of the entity displays, at all reasonable times and at no cost to the public, a notice to the effect that the entity is exempted from the requirement to have a credit rating on the basis that it is in moratorium and does not accept any subscriptions from the public for debt securities; and
 - (d) the specified moratorium entity must send a notice in writing to each of its depositors, within 6 months of this notice commencing to apply to the entity, to the effect that the entity is exempted from the requirement to have a credit rating on the basis that it is in moratorium and does not accept any subscriptions from the public for debt securities; and

- (e) the specified moratorium entity must not disclose an assessment of its creditworthiness that is in substance a credit rating (whether called a rating, grading, scoring, ranking, or by any other name) issued by an agency that is not approved by the Bank under section 157J of the Act.
- (2) References in this clause to debt securities do not include debt securities in respect of which the only persons in New Zealand who are able, under the terms of the offer of the securities, to subscribe for the securities are all or any of the following:
 - (a) eligible persons referred to in section 5(2CC) of the Securities Act 1978:
 - (b) persons referred to in section 3(2)(a) of the Securities Act 1978.

Schedule

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Entities in moratorium to which this notice applies

Name of moratorium entity	End date for application of this notice
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Dated at Wellington this day of 2009.

Deputy Governor.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 1 March 2013. It is an exemption from the requirement to have a credit rating.

The notice will apply to any entity that is listed in the Schedule. Entities that have previously issued debt securities to members of the public, but that are now in a wind-down moratorium approved by their stockholders and have not yet repaid all of their depositors, are deemed to be deposit takers under section 157C(3) of the Reserve Bank of New Zealand Act 1989.

The exemption is subject to conditions, for example, the terms of the notice prevent an exempted entity from issuing further debt securities to the public. This restriction does not apply to deposits that could only be accepted by persons who come within the definition of eligible person in the Securities Act 1978 (which relates to wealthy persons and persons experienced in investing money or experienced in the industry or business to which the security relates) or by persons referred to in section 3(2)(a) of the Securities Act 1978 (to whom an offer of securities would not constitute an offer of securities to the public for the purposes of that Act). It is intended that the generic conditions will apply to any entity in moratorium to which the notice applies.

The Bank, after taking into account the principles set out in section 157F of the Act, and satisfying itself as to the matters set out in section 157G(2) of the Act, considers it appropriate to grant the exemption because——

- the Bank is satisfied that the exemption is consistent with the maintenance of a sound and efficient financial system in that an exempted entity will be prevented from accepting deposits from the public:
- the additional direct and indirect costs of obtaining a credit rating are unduly onerous and burdensome in the circumstances. The relevant circumstances are that the deposit taker is prohibited by the terms of its trust deed from offering deposits to the general public, and existing depositors have agreed not to withdraw their deposits until they fall due under the new arrangement. In these circumstances, a credit rating is not likely to provide material additional benefit to depositors:
- the exemption is conditional on the exempted deposit taker not issuing any further debt securities to the public, but at the same time it does not preclude the possibility of investment, for example by a wealthy or experienced investor, that may assist an entity in moratorium; therefore the exemption is not

broader than reasonably necessary to address the matters that gave rise to the exemption.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*:

This notice is administered by the Reserve Bank of New Zealand.
