

Financial Markets Conduct (Coöperatieve Rabobank U.A.) Exemption Notice 2017

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 (Coöperatieve Rabobank U.A.) Exemption Notice 2017.

2 Commencement

This notice comes into force on 30 June 2017.

3 Revocation

This notice is revoked on the close of 29 June 2022.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Bank Recovery and Resolution Directive means any relevant laws and regulations applicable to Rabobank or other members of Rabobank group at the relevant time pursuant to, or which implement, or are enacted within the context of, a directive and/or regulation of the European Parliament and of the European Council establishing a framework for the recovery and resolution of credit institutions and investment firms

Dutch Bail-in Power means any write-down and/or conversion power existing from time to time under any laws, regulations, rules, directives or requirements relating to the resolution of banks, banking group companies, credit institutions and/or investment firms established in The Netherlands in effect and applicable in The Netherlands to Rabobank or other members of Rabobank group, including but not limited to any such laws, regulations, rules, directives or

requirements that are implemented, adopted or enacted within the context of the Bank Recovery and Resolution Directive and/or within the context of a Dutch resolution regime under the Special Measures Financial Institution Act (*Interventiewet*) (as amended from time to time), or otherwise, pursuant to which obligations of a bank, banking group company, credit institution or investment firm or any of its affiliates can be reduced, cancelled and/or converted into shares or other securities or other obligations of Rabobank or any other person

exempt issuer means, in relation to an offer of notes, the issuer of the new product in the event that the notes become convertible into new products and the issuer of the new product is a person other than Rabobank

LDD means, in relation to an offer of notes, the limited disclosure document for that offer prepared in accordance with the Regulations

new product means, in relation to an offer of notes, the shares or other securities or other obligations of Rabobank or any other person that the notes become convertible into as a result of the exercise of the Dutch Bail-in Power by the Resolution Authority

note means a medium term note issued, or to be issued, by Rabobank pursuant to the Programme that may become convertible into a new product

offer of notes means an offer of notes made by Rabobank (including through its New Zealand branch) in reliance on clause 21(b) of Schedule 1 of the Act

Programme means Rabobank's Australian and New Zealand A\$15,000,000,000 debt issuance programme (as updated from time to time)

Rabobank means Coöperatieve Rabobank U.A., a cooperative (*coöperatie*) formed under the laws of The Netherlands with its statutory seat in Amsterdam, Trade Register Number 30046259

Regulations means the Financial Markets Conduct Regulations 2014

Resolution Authority means any authority with the ability to exercise a Dutch Bail-in Power.

- (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 Exemptions in respect of Rabobank

- (1) Rabobank is exempted in respect of an offer of notes from—
- (a) regulation 20(1) of the Regulations to the extent that that subclause requires the LDD to contain, at the start of the LDD, the information specified in regulation 20(1)(e); and
 - (b) clauses 5(2), 5(3), 8(2), 10(5) and 24(6) of Schedule 9 of the Regulations.
- (2) Rabobank is exempted, in connection with an offer of notes, from Part 3 of the Act in respect of the offer of the new product.
- (3) Subclause (2) applies to the offer of the new product in the event that the notes become convertible into the new product and the issuer of the new product is Rabobank.

6 Conditions of exemptions in respect of Rabobank

- (1) The exemptions in clause 5 are subject to the conditions that—
- (a) the LDD must contain, at the start of the LDD, a statement in the form required by subclause (2); and

- (b) the LDD must contain, in section 1 under the heading “What is this?”, a warning statement in the form required by subclause (3), immediately after the statement required under clause 5(1) of Schedule 9 of the Regulations; and
 - (c) the LDD must contain, in section 1 under the heading “Key terms of the offer” and in section 5 under the heading “Key features of the Notes”—
 - (i) a statement to the effect that, if Rabobank experiences financial difficulty, some or all of the notes may be converted into new products or written off completely as a result of the exercise of the Dutch Bail-in Power; and
 - (ii) a reference to where more information on the Dutch Bail-in Power can be found in section 6 of the LDD; and
 - (d) the LDD must contain, in section 6 under the heading ‘Dutch Bail-in Power’—
 - (i) a description of the Dutch Bail-in Power including (without limitation)—
 - (A) an explanation of the source and scope of Dutch Bail-in Power and the circumstances in which the Dutch Bail-in Power can be exercised by the Resolution Authority; and
 - (B) an explanation of the consequences for a note holder if the Dutch Bail-in Power were exercised in relation to the notes; and
 - (ii) a statement to the effect that further information relating to the Dutch Bail-in Power is available on the offer register; and
 - (e) the LDD must contain the following information in section 12 under a heading ‘Rabobank is not providing information usually required’:
 - (i) a statement identifying the information relating to convertibles usually required under clauses 5(2), 5(3), 8(2), 10(5) and 24(6) of Schedule 9 of the Regulations that has not been provided in the LDD in reliance on the exemption contained in clause 5:
 - (ii) a statement as to why the information referred to in paragraph (e)(i) has not been provided:
 - (iii) a statement that Rabobank considers that not including the information referred to in paragraph (e)(i) will not have a material adverse effect on investors:
 - (iv) a statement as to why Rabobank considers the information referred to in clause 6(d)(i) will be more useful to investors in assessing the merits of the offer than the information referred to in paragraph (e)(i); and
 - (f) the register entry for the offer of notes must contain the following:
 - (i) a document that contains the more detailed overview of Dutch Bail-in Power extracted from the most recent information memorandum for the Programme:
 - (i) a document that contains the full text of the term of the notes that requires note holders to agree to be bound by, and consent to, the exercise of any Dutch Bail-in Power.
- (2) The statement required by clause 6(1)(a) must be in the following form:
- “This document gives you important information about this investment to help you decide whether you want to invest. There is other useful information about this offer on [*specify Internet site address of offer register*].

This investment is riskier than a bank deposit. These [*name of the notes*] are complex financial products that are not suitable for many investors. If you do not fully understand how they work or the risks associated with them, you should not invest in them. You can seek advice from a financial adviser to help you make an investment decision.

Rabobank has prepared this document in accordance with the Financial Markets Conduct Act 2013.”

- (3) The warning statement required by clause 6(1)(b) must be in the following form:

“Warning

These Notes carry similar risks to shares but do not have the same opportunity for growth as shares. If Rabobank experiences financial difficulty, some or all of the Notes may be converted into shares or other securities or obligations of Rabobank or another person (**New Products**), or even written off completely, as a result of the exercise of the Dutch Bail-in Power. This means you could lose all of your investment.

The terms of any conversion, including the name and issuer of any New Products you will receive, would be determined by the Resolution Authority exercising the Dutch Bail-in Power. If the Notes convert, the value of any New Product may be significantly less than the amount of your investment in the Notes.

You should also read section 6 of this document for more information on the Dutch Bail-in Power.”

7 Exemption in respect of the offer of the new product by an exempt issuer

- (1) An exempt issuer is exempted, in connection with an offer of notes, from Part 3 and Part 4 of the Act in respect of the offer of the new product.
- (2) Subclause (1) applies to the offer of the new product in the event that the notes become convertible into the new product and the issuer of the new product is an exempt issuer.

Dated at Wellington this 28th day of June 2017.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 30 June 2017 and is revoked on the close of 29 June 2022.

This notice exempts Coöperatieve Rabobank U.A. (**Rabobank**), subject to conditions, from certain provisions of the Financial Markets Conduct Act 2013 (**Act**) and the Financial Markets Conduct Regulations 2014 (**Regulations**) in relation to offers of medium term notes (**Notes**) under Rabobank’s A\$15,000,000,000 debt issuance programme (**Programme**). The Notes are subject to the Dutch Bail-in Power under the laws of The Netherlands that, if exercised by the Dutch authorities in the event

that Rabobank experiences financial difficulty, could result in the conversion of all or a portion of the Notes into shares or other securities or other obligations of Rabobank or another person (**New Product**).

In particular, Rabobank is exempt from —

- the requirement that the limited disclosure document for an offer of Notes (**LDD**) contain, at the start of the LDD, the statement prescribed under regulation 20(1)(e) of the Regulations; and
- the requirement that the LDD include the information under clauses 5(2), 5(3), 8(2), 10(5) and 24(6) of Schedule 9 of the Regulations; and
- the disclosure requirements under Part 3 of the Act in respect of the offer of the New Product in the event that the Notes become convertible into New Products issued by Rabobank.

This notice also exempts, in connection with an offer of Notes, the issuer of the New Product, in the event that the Notes become convertible into New Products issued by a person other than Rabobank, from the disclosure requirements under Part 3 of the Act and the governance requirements under Part 4 of the Act in respect of the offer of the New Product.

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 exemptions because,—

- the existence of Dutch Bail-in Power means that the Notes are treated as convertible financial products for the purposes of section 44 of the Act and the Regulations. However, as the Notes do not become convertible in accordance with their terms, but rather as a result of the exercise of the Dutch Bail-in Power by the Dutch authorities, they would not generally be considered to be convertible financial products by investors. Further, at the time of the offer of Notes, both the type, and the issuer, of the New Product that might be issued following an exercise of the Dutch Bail-in Power by the Dutch authorities is unknown. As a result, it is not possible for Rabobank to include all the information relating to convertible financial products in the LDD that is required by Schedule 9 of the Regulations:
- section 44 of the Act treats an offer of a financial product that may become convertible into another financial product as an offer of both of the financial product that is issued and of the financial product into which it converts. As both the type, and the issuer, of the New Product that might be issued following an exercise of the Dutch Bail-in Power by the Dutch authorities will be unknown at the time that an offer of Notes is made by Rabobank, it is not possible for the issuer of the New Product (whether that is Rabobank or another person) to comply with the disclosure requirements under Part 3 of the Act in respect of the offer of the New Product. Further, in the event that Notes become convertible into New Products which are debt securities issued by a person other than Rabobank, it is not possible for that person to comply with the governance requirements under Part 4 of the Act in respect of the offer of the New Product:
- the exemptions in relation to Rabobank are subject to conditions that the LDD must contain a statement to the effect that that the Notes are complex financial products that are not suitable for many investors, and a warning that, if Rabobank experiences financial difficulty, some or all of the Notes may be converted into New Products, or even written off completely, as a result of the exercise of the Dutch Bail-in Power. In addition, the LDD must contain a description of the Dutch Bail-in Power, including an explanation of the source and scope of the Dutch-Bail-in Power, the circumstances in which it can be exercised, and the consequences for a Note holder if the Dutch Bail-in Power were exercised in relation to Notes. As a result, investors will receive sufficient information to make an informed decision:
- as such, the FMA is satisfied that the granting of the exemptions are desirable to promote the

purposes of the Act, specifically to promote the confident and informed participation of businesses and investors in the financial markets, to provide for timely, accurate and understandable information to be provided to investors to assist them in making decisions relating to financial products, and to promote flexibility in the financial markets:

- the exemptions only apply in circumstances where there has been an offer of Notes by Rabobank that are subject to the exercise of the Dutch Bail-in Power, and their key impact is to provide relief from the requirements to disclose information for the offer of Notes and for the offer of the related New Product that it is not possible to provide at the time when those offers are made. In these circumstances, the FMA is satisfied that the exemptions are not broader than reasonably necessary to address the matters that gave rise to them.

