

Financial Markets Conduct (Spark New Zealand Limited Group) Exemption Notice 2024

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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Notice

1 Title

This notice is the Financial Markets Conduct (Spark New Zealand Limited Group) Exemption Notice 2024.

2 Commencement

This notice comes into force on 26 September 2024.

3 Revocation

This notice is revoked on the close of 25 September 2029.

4 Application

- (1) The exemptions in clause 6(1) apply to the following accounting periods of an exempt person:
 - (a) an accounting period of an exempt person that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements for that period would, but for the exemptions contained in this notice, be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
 - (b) subsequent accounting periods.
- (2) However, an exemption granted by this notice does not apply to an exempt person in respect of an accounting period if the exempt person is an FMC reporting entity in that accounting

period for any reason other than being a recipient of money from a conduit issuer (within the meaning of section 453 of the Act).

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

consolidated group means Spark and every subsidiary of Spark

exempt person means a subsidiary of Spark that is, or becomes, an FMC reporting entity solely for the reason that it is a recipient of money from a conduit issuer (within the meaning of section 453 of the Act) by virtue of receiving 10% or more of the money that has been raised by Spark Finance by the issue of any Spark debt securities

FMC reporting entity has the meaning set out in section 451 of the Act

prospective investor, in relation to a Spark debt security, means any person who, under the terms of issue of the Spark debt security, is eligible to subscribe for the Spark debt security

Regulations means the Financial Markets Conduct Regulations 2014

Spark means Spark New Zealand Limited

Spark debt security means a debt security offered by Spark Finance under a regulated offer or an offer made by Spark Finance, in the prescribed circumstances for the purposes of section 453(b)(ii) of the Act, in reliance on an exclusion in schedule 1 of the Act

Spark Finance means Spark Finance Limited.

(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 Exemptions

(1) Every exempt person is exempted from subpart 2 and subpart 3 of Part 7 of the Act in respect of Spark debt securities.

(2) Spark Finance is exempted from —

(a) clause 28(4) of schedule 2 of the Regulations to the extent that this clause would require disclosure in a product disclosure statement in relation to an exempt person; and

(b) clause 67(1)(c) of schedule 2 of the Regulations to the extent that this clause would require information to be lodged with the Registrar in relation to an exempt person.

7 Conditions

The exemptions in clause 6 are subject to the following conditions—

(a) group financial statements for the consolidated group are prepared and audited in accordance with Part 7 of the Act; and

(b) copies of the group financial statements referred to in paragraph (a) together with a copy of the auditor's report on those statements are delivered to the Registrar for lodgement in accordance with Part 7 of the Act; and

(c) Spark will, within 5 working days of receiving a request from a holder of a Spark debt security or a prospective investor for a copy of the group financial statements referred to in paragraph (a), without fee, send, or cause to be sent, to that person a copy of those statements together with a copy of the auditor's report on those statements; and

- (d) Spark provides unlimited guarantees of each Spark debt security; and
- (e) financial statements for Spark Finance that are prepared, audited and delivered to the Registrar for lodgement in accordance with Part 7 of the Act disclose whether any guarantee provided by Spark in respect of Spark debt securities is subordinated and, if so, how Spark's liability under that guarantee ranks in a liquidation of Spark compared to other debts or liabilities of Spark.

Dated at Wellington this 23rd day of September 2024.



John Horner
Director of Markets, Investors and Reporting
Financial Markets Authority

Statement of reasons

This notice comes into force on 26 September 2024 and is revoked on the close of 25 September 2029.

This notice exempts certain subsidiaries of Spark New Zealand Limited (**Spark**) from the following obligations which apply to entities in receipt of money from a conduit issuer: subpart 2 (accounting records obligations) and subpart 3 (obligations to prepare, audit, and lodge financial statements) of Part 7 of the Financial Markets Conduct Act 2013 (**Act**). These financial reporting exemptions apply in relation to funds received by those subsidiaries from Spark Finance Limited (**Spark Finance**) that are raised through the issue of debt securities by Spark Finance under a regulated offer or an offer made in certain prescribed circumstances (**Spark Debt Securities**).

This notice also exempts Spark Finance from clause 28(4) (obligation to disclose in the applicable PDS certain information about the Spark subsidiaries' receipt of money from Spark Finance) and clause 67(1)(c) (obligation to lodge certain information identifying the Spark subsidiaries that receive money from Spark Finance with the Registrar) of schedule 2 of the Financial Markets Conduct Regulations 2014 (**Regulations**).

The exemptions are granted on the conditions that group financial statements for Spark and all its subsidiaries (**Spark Group**) are prepared and audited, that copies of the group financial statements and the auditor's report are lodged with the Registrar, that Spark will provide a copy of the group financial statements and the auditor's report upon request, that Spark will provide unlimited guarantees of the Spark Debt Securities, and that Spark Finance discloses in its financial statements whether any guarantee provided by Spark in respect of Spark Debt Securities is subordinated and, if so, how Spark's liability under that guarantee ranks in a liquidation of Spark compared to other debts or liabilities of Spark.

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

- sometimes entities make regulated offers through special purpose vehicles or finance subsidiaries known as conduit issuers. These conduit issuers lend most of the money raised by the offers to related parties. In these situations, the related parties are considered recipients of money from a conduit issuer and become FMC reporting entities in their own right:
- the conduit issuer provisions of the Act are intended to require public reporting by entities that have the effective use of money raised from retail investors, but which have structured themselves in such a way as to avoid being FMC reporting entities under the Act. This is not the case in respect of the Spark Debt Securities. Spark will guarantee the obligations of Spark Finance under the Spark Debt Securities and audited group financial statements for the Spark Group will be available for investors:
- where Spark provides an unlimited guarantee of the Spark Debt Securities, the risk of investment will be spread across the Spark Group. Consolidated financial statements for the Spark Group will provide useful information about the financial position and performance of the Spark Group and the risk of investing in Spark Debt Securities. As such, the financial reporting exemptions will promote the confident and informed participation of businesses, investors and consumers in financial markets and provide for timely, accurate and understandable information to be provided to persons to assist those persons to make decisions relating to financial products:
- the costs associated with requiring the relevant Spark subsidiaries to separately prepare financial statements and have those audited would outweigh the benefits to investors given that the consolidated financial statements for Spark Group will be prepared, audited and lodged

with the Registrar. As such, the financial reporting exemptions avoid unnecessary compliance costs:

- funds raised by Spark Finance are typically used for the purposes of the Spark Group rather than any particular purpose or subsidiary, and the funds used to repay investors may not come from a subsidiary that received funds raised under a particular offer. Where Spark Debt Securities are guaranteed by Spark, information about the consolidated financial position of the Spark Group is most relevant. Therefore, identifying in the PDS and register entry details about the recipients, amount and use of funds raised under an offer of Spark Debt Securities is likely to increase costs without providing useful information for investors. As such, the exemptions in relation to certain PDS and register entry requirements also avoid unnecessary compliance costs.

The FMA is satisfied that the granting of the exemptions is desirable in order to promote the purposes of the Act specifically by promoting the confident and informed participation of businesses, investors and consumers in the financial markets, avoiding unnecessary compliance costs, and providing for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to financial products.

The FMA is further satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to them, given that—

- the notice only provides an exemption from the provision of financial information from Spark subsidiaries who are recipients of money from a conduit issuer where consolidated financial statements for Spark Group will provide relevant information about the financial position and performance of the Spark Group and the risk of investing in Spark Debt Securities:
- the notice does not apply to any Spark subsidiary that is an FMC reporting entity for any reason other than being a recipient of money from a conduit issuer:
- Spark Finance is only exempt from the obligation to disclose specific information in its PDS and register entry relating to receipt and use of money from a conduit issuer.