

Securities Act (Fundzi Limited Pre-paid Debit Cards) Exemption Notice 2012

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

Contents

	Page
1 Title	1
2 Commencement	1
3 Expiry	1
4 Interpretation	1
5 Exemptions	2
6 Conditions of exemption in clause 5(a)	2
7 Conditions of exemptions in clause 5(b)	3
8 Conditions of exemption in clause 5(c)	4

Notice

- Title**
This notice is the Securities Act (Fundzi Limited Pre-paid Debit Cards) Exemption Notice 2012.
- Commencement**
This notice comes into force on 9 March 2012.
- Expiry**
This notice expires on the close of 28 February 2017.
- Interpretation**
 - In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978
Fundzi means Fundzi Limited
Fundzi's terms and conditions means the terms and conditions available on Fundzi's website relating to the specified securities
net amount, in relation to specified securities, means an amount of funds equal to the face value of all specified securities less any amounts that have been cancelled, redeemed, or forfeited in accordance with Fundzi's terms and conditions



Regulations means the Securities Regulations 2009

specified securities means call debt securities in the form of credit on pre-paid debit card accounts issued by Fundzi in favour of security holders

trust account means the account maintained by Fundzi pursuant to clause 6(a).

- (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

Fundzi, and every person acting on its behalf are, in respect of specified securities, exempted from—

- (a) section 33(2) of the Act; and
- (b) section 37A(1)(c) of the Act and clauses 8, 9, 14, 16 to 18, 21, and 22 of Schedule 2 of the Regulations; and
- (c) section 54 of the Act.

6 Conditions of exemption in clause 5(a)

The exemption in clause 5(a) is subject to the conditions that—

- (a) Fundzi maintains an amount that equals or exceeds the net amount in a separate bank account kept specially for holding the specified securities at a registered bank (as that term is defined in section 2(1) of the Reserve Bank of New Zealand Act 1989); and
- (b) there is a trust deed that declares that amounts held in the trust account are to be held on trust for holders of the specified securities (less any amounts that have been cancelled, redeemed, or forfeited in accordance with Fundzi's terms and conditions) and gives them the right to a proportion of the amounts in the trust account equal to the face value of their specified securities; and
- (c) Fundzi must have given the registered bank written notice that the funds in the trust account are held on trust for holders of the specified securities; and
- (d) Fundzi must have appointed and maintain a trustee that holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 to supervise the funds held in the trust account; and
- (e) Fundzi must provide to the trustee, within 5 working days after the end of each month, a report, bank records and records of specified securities allotted to demonstrate that

- the amount held in the trust account equals or exceeds the amount owing to holders of the specified securities; and
- (f) Fundzi must, at the trustee's request, make available any records relating to the specified securities and funds held in the trust account and must give to the trustee any related information that the trustee requests; and
 - (g) Fundzi must have granted the trustee permission to obtain any records relating to the specified securities and funds held in the trust account from the registered bank and Fundzi must have given the registered bank written notice of this permission; and
 - (h) the trust deed must require the trustee to, as soon as practicable, report any material breach of paragraph (a) to the Financial Markets Authority; and
 - (i) the trust deed must require the trustee to exercise reasonable diligence to ascertain that Fundzi complies with paragraph (a); and
 - (j) Fundzi must, as soon as practicable, notify the trustee in writing if at any time it does not comply with paragraph (a); and
 - (k) the trust deed must grant the trustee the right to enforce Fundzi's duty in paragraph (m) to repay the holders of the specified securities; and
 - (l) Fundzi must advise the trustee as soon as it becomes aware of any change in ownership of Fundzi that results in a change of control, any change of directors of Fundzi, and any significant change of senior management of Fundzi; and
 - (m) it is a term in Fundzi's terms and conditions that Fundzi is liable to repay to a holder of the specified securities the face value of that holder's specified securities, not later than one working day following a request by that holder of the specified securities.

7 Conditions of exemptions in clause 5(b)

The exemptions in clause 5(b) are subject to the conditions that—

- (a) every registered prospectus distributed by or on behalf of Fundzi containing or referring to an offer of the specified securities contains, or is accompanied by, a copy of:
 - (i) the latest audited financial statements of Fundzi that comply with, and have been registered under, the Financial Reporting Act 1993; and
 - (ii) the most recent certificate prepared in accordance with paragraph (d);



- (b) the requirement in clause 7(a)(i) does not apply if Fundzi has not yet been required to register financial statements under the Financial Reporting Act 1993;
- (c) the requirement in clause 7(a)(ii) does not apply if Fundzi has not yet been required to file with the Registrar an annual certificate under clause 7(d);
- (d) during the period that the offer of the specified securities remains open for subscription, Fundzi files with the Registrar an annual certificate that—
 - (i) refers to the latest audited financial statements of Fundzi that comply with, and have been registered under, the Financial Reporting Act 1993, the accounting period covered by those statements, and the date of registration; and
 - (ii) is signed by the directors of Fundzi; and
 - (iii) is dated and filed no later than 6 months after the date of the audited financial statements referred to in paragraph (i); and
 - (iv) states that, in the opinion of the directors of Fundzi after due enquiry by them, the registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
- (e) at all reasonable times Fundzi's terms and conditions are available free of charge on Fundzi's website and a link to Fundzi's terms and conditions is prominently displayed on any webpage where a holder of specified securities can access their pre-paid debit card account balance; and
- (f) Fundzi's terms and conditions refer to where holders of specified securities can read the registered prospectus that relates to the specified securities, the latest financial statements of Fundzi, and the annual certificates;
- (g) Fundzi's registered prospectus that relates to the specified securities and Fundzi's terms and conditions each contain a prominent statement about—
 - (i) the rate of interest paid on the specified securities, or if no interest is paid a statement of that fact; and
 - (ii) all fees associated with the use of the pre-paid debit card accounts.

8 Conditions of exemption in clause 5(c)

The exemption in clause 5(c) is subject to the conditions that—

- (a) promptly and without delay after a person deposits funds to subscribe for specified securities, Fundzi updates the balance of that person's pre-paid debit card account to reflect that deposit; and
- (b) at all reasonable times, holders of the specified securities are able to check the balance of their specified securities on Fundzi's website and review records of their transactions over the past 24 months; and
- (c) the conditions described in paragraphs (a) and (b) are terms of Fundzi's terms and conditions.

Dated at Wellington this 8th day of March 2012



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 9 March 2012 and expires on 28 February 2017 exempts Fundzi Limited (Fundzi), subject to conditions, from certain provisions of the Securities Act 1978 (the Act) and the Securities Regulations 2009 (the Regulations) in respect of call debt securities which is credit on Fundzi pre-paid debit card accounts.

The Financial Markets Authority (FMA), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions because—

- the pre-paid debit card accounts are not investment products in the usual sense. In particular they do not pay any return on funds deposited, rather they are promoted as a means for children to save up to buy products and services:
- the conditions of the exemption from the trustee and trust deed provisions of the Act, requiring a special account with a registered bank to hold at least the equivalent of what is owed by Fundzi to card holders on trust for card holders, together with the requirements Fundzi is required to repay card holders an amount reflecting the face value of their securities from this account within 1 working day upon

request, and that a licenced trustee must supervise the funds provides protections for card holders:

- card holders are required to be provided with sufficient disclosure to enable them to make informed decisions. This information must be available in a reduced content prospectus, annually updated financial statements, online account balance and transaction information, and statements in Fundzi's terms and conditions, which are available on its website:
 - with these alternative protections in place suited to the nature and operation of the pre-paid debit card accounts, FMA considers that the exemptions will not cause significant detriment to subscribers and are not broader than reasonably necessary to address the matters that gave rise to the exemptions.
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