



## Securities Act (Commonwealth Bank of Australia—Australian Bank Accounts) Exemption Notice 2010

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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### Notice

- 1 Title**  
This notice is the Securities Act (Commonwealth Bank of Australia—Australian Bank Accounts) Exemption Notice 2010.
- 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 5 August 2015.

#### **4 Interpretation**

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

**Act** means the Securities Act 1978

**call account** means an account opened with CBA by a subscriber in New Zealand for specified securities

**call debt security** means a debt security under which—

- (a) the security holder has a right to demand repayment of the principal sum in full at any time; and
- (b) the issuer has an obligation to repay the principal sum in full not later than 1 working day after such a demand is made; and
- (c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time

**CBA** means Commonwealth Bank of Australia, a company incorporated in Australia

**investment grade credit rating** means a credit rating—

- (a) of BBB– or better by Standard & Poor’s or by Fitch Ratings; or
- (b) of Baa3 or better by Moody’s Investor Service

**Regulations** means the Securities Regulations 2009

**specified securities** means call debt securities offered by CBA in New Zealand of which CBA is the issuer.

(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 from section 33(1)(b) of Act**

CBA and every person acting on its behalf are exempted from section 33(1)(b) of the Act in respect of any advertisement relating to the specified securities.

#### **6 Exemption from regulation 24 of Regulations**

CBA and every person acting on its behalf are exempted from regulation 24 of the Regulations in respect of an advertisement for specified securities.

**7 Conditions of exemptions**

- (1) The exemptions in clauses 5 and 6 are subject to the following conditions:
- (a) at the time the offer of specified securities is made and at the time of the allotment of the specified securities, CBA must—
    - (i) be licensed or authorised by the central banking authority of the Commonwealth of Australia to carry on banking business in that jurisdiction; and
    - (ii) be a registered bank (as defined in the Act) in New Zealand; and
    - (iii) have an investment grade rating for its long-term senior unsecured obligations, and that credit rating must be available on the Internet site of CBA:
  - (b) any advertisement in New Zealand for the specified securities must state—
    - (i) that the most recent published financial statements, annual report, and capital adequacy and risk disclosures of CBA are publicly available; and
    - (ii) the Internet site where those documents can be obtained free of charge:
  - (c) at the time a call account is opened with CBA and before the first allotment of specified securities to the subscriber in that account,—
    - (i) CBA must provide the subscriber with a description of the terms and conditions, and the fees and charges, relating to the call account; and
    - (ii) the information specified in subclause (2) must be given to the subscriber.
- (2) The information referred to in subclause (1)(c)(ii), which must be set out under the heading “Important Information for New Zealand Depositors”, is as follows:
- (a) the name and address of CBA:
  - (b) that CBA is a company incorporated in Australia and therefore may not be subject in all respects to New Zealand law:

- (c) that the call account with CBA will be operated under the laws of the Commonwealth of Australia:
  - (d) that CBA is not a participant in the New Zealand Crown retail deposit guarantee scheme relating to guarantees given by the Minister of Finance on behalf of the Crown in respect of certain financial institutions and that any call debt security issued by CBA will not be covered by a New Zealand Crown guarantee:
  - (e) that the call account is denominated in Australian dollars and may carry with it a currency risk:
  - (f) the Internet site where the most recent published financial statements, annual report, and capital adequacy and risk disclosures of CBA can be obtained free of charge:
  - (g) the following, which must be set out under the subheading “Agreement as to Jurisdiction”:
    - (i) that, in respect of a dispute concerning the specified securities, CBA—
      - (A) agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
      - (B) has instructed the New Zealand agent for service referred to in subparagraph (iii) to accept service on behalf of CBA; and
      - (C) agrees that the statement is an agreement with each customer for the purposes of section 389(1)(e) of the Companies Act 1993:
    - (ii) that, despite the statements in subparagraph (i), the contract in respect of the securities may not always be enforceable in New Zealand courts:
    - (iii) the name and address for service of the person in New Zealand who has been appointed by CBA to accept service in New Zealand of any document on its behalf.
- (3) Subclause (2)(d) does not apply if there is no New Zealand Crown retail deposit guarantee scheme under which guarantees may be given in respect of New Zealand registered banks at the time the statement or information must be given to the subscriber.

Dated at Wellington this 3rd day of August 2010.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

J Diplock,  
Chairperson.

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### Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 5 August 2015, relates to an offer by Commonwealth Bank of Australia (**CBA**) of call debt securities. The offer is to be made in New Zealand, but the call debt securities will be issued in Australia and the call accounts will be Australian accounts.

CBA is a company registered in Australia and is also a registered bank in New Zealand (pursuant to *Gazette* notice number 4593 published on 29 June 2000).

As a registered bank, under section 33(1)(b) of the Securities Act 1978 (the **Act**) CBA must make offers of securities in an authorised advertisement. Under regulation 24 of the Securities Regulations 2009 (the **regulations**), the advertisement must not be inconsistent with the disclosure statement, made pursuant to section 81 of the Reserve Bank of New Zealand Act 1989, relating to the securities. This notice exempts CBA from section 33(1)(b) and regulation 24, subject to conditions.

The disclosure statement produced by CBA relates to CBA's New Zealand business as a registered bank. However, in relation to the issue of the call debt securities referred to in this notice, it is information in relation to the Australian business of CBA that is relevant

to the investment, rather than information about CBA's New Zealand business.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- the call debt securities to be offered by CBA are transactional deposits, similar to call accounts offered by registered banks in New Zealand; and
- CBA is licensed or otherwise authorised by the central banking authority in the Commonwealth of Australia to carry on banking business in that jurisdiction; and
- depositors at CBA would have access to financial and other information about the Australian operations of CBA that would allow them to assess the risks of opening such overseas call accounts and the financial strength of CBA.

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

Date of notification in *Gazette*: 5 August 2010.

This notice is administered by the Securities Commission.

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