



## Futures Contracts (Financial Transmission Rights) Notice 2012

Pursuant to section 37(7) of the Securities Markets Act 1988, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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### Notice

- 1 Title**  
 This notice is the Futures Contracts (Financial Transmission Rights) Notice 2012.
- 2 Commencement**  
 This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Interpretation**  
 In this notice, unless the context otherwise requires,—  
**Act** means the Securities Markets Act 1988  
**Code** means the Electricity Industry Participation Code made under the Electricity Industry Act 2010  
**FTR** means a financial transmission right created under sub-part 6 of Part 13 of the Code.

#### 4 Application of Part 3 of Act to FTRs

Every FTR is declared to be an agreement to which Part 3 of the Act applies.

Dated at Wellington this 27th day of March 2012.

Elaine Campbell,  
Head of Compliance Monitoring.

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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*, declares that financial transmission rights (**FTRs**) are agreements to which Part 3 of the Securities Markets Act 1988 applies. FTRs are contracts in relation to the difference in wholesale electricity prices between 2 or more points in the national grid. They are created and allocated under the Electricity Industry Participation Code, which is made under the Electricity Industry Act 2010.

Part 3 of the Securities Markets Act 1988 (the **Act**) is about futures contracts. The definition of futures contracts includes agreements that the Financial Markets Authority declares, under section 37(7) of the Act, to be agreements to which Part 3 applies. The declaration in this notice means that FTRs are treated as futures contracts for the purposes of Part 3 of the Act.

The Financial Markets Authority considers that it is appropriate to make the declaration for the following reasons:

- FTRs are of 2 types. The first (referred to as an **obligation FTR**) has characteristics of a futures contract similar to those in paragraph (b) or (c) of the definition of futures contract in section 37(1) of the Act in that they settle in a future month and the settlement payment (including the direction of that settlement payment) is calculated by reference to the agreed price differential between 2 or more points in the electricity grid and the actual price differential in the settlement month. The sec-

ond, referred to as an **option FTR**, involves the participant paying an agreed premium and receiving the benefit of an obligation FTR (if the actual price differential is favourable) but having no obligation to pay if the actual price differential is unfavourable. Option FTRs have a structure that is similar to the contracts contemplated by paragraph (d) of the definition of futures contract in section 37(1) of the Act:

- however, it is not clear that FTRs will in fact be treated as futures contracts within any of paragraphs (a) to (d) of the definition of futures contract in section 37(1) of the Act. This is because, for both obligation FTRs and option FTRs, the underlying price is the differential between the price of electricity at 2 or more points, rather than the price of electricity per se. As such, it is not linked to the price of a commodity. Also, it is not clear that the difference between two prices amounts to an index:
  - because FTRs relate to the differential between 2 prices, rather than the price of electricity, the contracts are purely synthetic and can never be settled by actual delivery. The fact that contracts are, or can be, cash-settled is a key characteristic of futures contracts:
  - if FTRs are not futures contracts, they may be regulated as securities under the Securities Act 1978. The disclosure requirements (about the clearing manager) under the Securities Act 1978 do not provide the best regulatory solution for FTRs. The treatment of FTRs as futures contracts under the Securities Markets Act 1988 provides a more appropriate regulatory regime for them than treating them as securities under the Securities Act 1978. The declaration enables FTRs to be regulated as futures contracts and provides legal certainty in the market about the regulatory treatment that will be applied to them.
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**Futures Contracts (Financial Transmission  
Rights) Notice 2012**

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This notice is administered by the Financial Markets Authority.

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