

## Green bonds – same class exclusion

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This information sheet explains the circumstances in which an issuer can make an offer of green bonds under the same class exclusion. It also explains when the Financial Markets Authority (FMA) might consider granting an individual exemption to facilitate offers of green bonds with the same credit characteristics as quoted ‘vanilla’ bonds from the same issuer.

Green bonds are a subset of the wider category of “responsible” or “sustainable” integrated financial products that expressly incorporate a very wide range of possible non-financial factors. While this information sheet focuses solely on green bonds, the principles outlined below can extend to other types of responsible and sustainable investment products (e.g. bonds labelled as social, impact, sustainable etc.).

### The same class exclusion

The “same class exclusion” is found in clause 19 of Schedule 1 of the FMC Act. It allows certain financial products (including bonds) that are of the same class as existing quoted financial products to be offered without the offeror having to comply with the full disclosure requirements for regulated offers under the FMC Act<sup>1</sup>. The exclusion reduces compliance costs for issuers.

The same class exclusion recognises that for existing financial products quoted on licensed markets, there is timely, accurate and understandable information publicly available to investors. For quoted products, there is already information available relating to price and trading history. The price and trading history will reflect publicly available information, and continuous disclosure and financial reporting requirements ensure that all relevant information is in the public domain. The current price and recent price history (extending to at least 3 months before quotation) provides investors with up-to-date information about the value of the quoted financial product (and therefore the value of the product of the same class being offered).

### What does “same class” mean?

Section 6(3) of the FMC Act provides that:

Financial products are of the same class if those financial products have attached to them identical rights, privileges, limitations, and conditions (but, in the case of debt securities, the securities may, except in the prescribed circumstances, have a different redemption date or interest rate, or both).

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<sup>1</sup> Provided other relevant criteria are met, such as ensuring the financial product is quoted immediately after the issue.

### Is the same class exclusion available for green bonds?

The same class exclusion is available to an offer of green bonds if an issuer already has quoted green bonds with identical green features, and provided the other relevant criteria in clause 19 of Schedule 1 of the FMC Act and the requirements in clauses 19-22 of Schedule 8 of the Financial Markets Conduct Regulations 2014 (FMC regulations) are met. Issuers may also choose to offer a quoted green bond by complying with the disclosure requirements for regulated offers and issuing a new product disclosure statement (PDS).

However, in the FMA's view, the same class exclusion is not available to an offer of green bonds off the back of an existing quoted vanilla bond. This is because the green features of a green bond are rights, powers, privileges or limitations that attach specifically to the green bond, making it of a different class from a vanilla bond.

The FMA is aware of views in the market that green bonds are the same class as vanilla bonds and that, as such, the same class exclusion should be available. The basis for this view from some market participants seems to be that if there are no contractual consequences arising from a failure to maintain green features then there is nothing that attaches to the bond. This is despite green bonds typically being marketed as being different (i.e. having green features) from vanilla bonds.

The FMA's view is that "attach" has a broader meaning and includes, for example, consequences from contravening Part 2 of the FMC Act (e.g. misleading investors about the nature, characteristics or suitability for a purpose of a bond). There is a clear expectation from investors that they are getting something more from a green bond, or that there is at least a limitation on the use of proceeds compared to a vanilla bond. It is also likely to be confusing for investors to have a green bond described as the "same class" as a vanilla bond – if they are the same class, then what is it that makes the green bond "green"?

### Is the same class exclusion available for quoted vanilla bonds that have undergone a "greening" process?

"Greening" refers to a process of re-characterising a vanilla bond as a green bond. The process typically involves the issuer being certified as green or establishing a green borrowing programme outlining, among various other topics, the existing assets being financed, and disclosing the basis for which these existing assets are now classified as green.

We recommend an appropriate independent third party reviews the assessment undertaken by the issuer in determining the green classification of itself or its existing assets, which should also be separately assured by an independent verifier. Any certification or assurance provided should be made publicly available. If a vanilla bond undergoes a greening process, the same class exclusion is available provided the existing vanilla bond has been quoted at all times, and the green certification has been maintained at all times (i.e. not revoked or expired), for a minimum period of three months from market announcement of completion of the greening process until the time of the offer. To continue to be described as a green bond, the green certification should be maintained post offer.

There are issues beyond the scope of this information sheet that should also be considered, such as disclosure of the greening process and whether the terms of the existing bond have been varied. We encourage issuers who are considering re-characterisation of vanilla bonds to engage with the FMA before embarking on this process.

### Possibility of relief through individual exemption

If a financial product being offered has different rights, privileges, limitations, and conditions (such as green features) from a quoted financial product offered by the same issuer, then the market information relating to the product will not provide investors with all the information they need to:

- properly understand the nature and characteristics of the new product being offered; and
- make informed and deliberate decisions relating to price and suitability of the new product.

On that basis, if a financial product is not of the “same class” as an existing quoted financial product, then to make a regulated offer the issuer will, generally, need to comply with the PDS and other disclosure requirements in Part 3 of the FMC Act and in the FMC regulations.

However, if a green bond has the same credit characteristics as an existing quoted bond, the market information relating to that quoted bond will likely provide investors with much (but not all) of the information needed – for the same reasons that underpin the same class exclusion. As such, there is a balance to be struck between the compliance costs of bringing an offer to the market and the additional information needed to meet the purposes outlined in sections 3 and 4 of the FMC Act.

The FMA is therefore open to considering individual exemption applications to facilitate a green bond offer following principles similar to an offer under the same class exclusion. Before an exemption is granted, the FMA will need to be satisfied it is consistent with the policy of the FMC Act and meets the statutory exemption test outlined in sections 556 and 557. The FMA envisages any exemption would likely be subject to conditions requiring disclosure about what makes the bond “green”.

You can email the FMA at [exemptions@fma.govt.nz](mailto:exemptions@fma.govt.nz) for more information or to apply for an exemption. Information on how to apply for an exemption and what is involved in the process can be found at [www.fma.govt.nz/compliance/exemptions/](http://www.fma.govt.nz/compliance/exemptions/)

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