



## THE SECURITIES ACT (BANKS) EXEMPTION NOTICE 1988

PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

### NOTICE

**1. Title and commencement**—(1) This notice may be cited as the Securities Act (Banks) Exemption Notice 1988.

(2) This notice shall come into force on the 1st day of July 1988.

**2. Interpretation**—(1) In this notice, unless the context otherwise requires,—

“The Act” means the Securities Act 1978:

“Bank” means a bank referred to in the First Schedule to this notice:

“Branch” means any branch, office or agency of a bank at which members of the public may subscribe for debt securities offered to the public for subscription by that bank, but does not include any branch, office or agency at which debt securities may only be subscribed for by electronic or mechanical means:

“New Zealand division” in relation to an overseas bank, means the business of the bank carried on in or from New Zealand:

“Overseas bank” means a person named in the Second Schedule to this notice:

“The Regulations” means the Securities Regulations 1983:

“Second Schedule” means the Second Schedule to the Securities Regulations 1983.

(2) In this notice a reference to an offer of debt securities made by a bank shall be construed as a reference to an offer of debt securities in respect of which that bank is or remains directly or indirectly liable made in the course of the business of the bank.

(3) Any term or expression which is not defined in this notice but which is defined in the Act or the Regulations shall have the meaning given to it by the Act or the Regulations.

### PART I

**3. Application of this Part of the notice**—This Part of this notice applies to any offer of a debt security other than any offer of a debt security to which Part II of this notice applies.

**4. Banks exempt from certain provisions of Securities Act 1978 in respect of offers of debt securities to which this Part applies**—(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of section 37A (1) (except section 37A (1) (e)) and section 38 (a) and (b) of the Act in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the following terms and conditions:

- (a) That copies of the registered prospectus relating to the debt securities are on display and available to the public during normal business hours at each branch of the bank in New Zealand; and
- (b) That at the date of allotment, the registered prospectus is not known by the bank, or any director of the bank, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of circumstances occurring after the date of the registered prospectus).

**5. Banks exempt from regulations 10, 14 (1) and 17 of Securities Regulations 1983 in respect of offers of debt securities to which this Part applies**—(1) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of regulation 10 of the Regulations in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) Subject to subclause (3) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of regulation 14 (1) of the Regulations in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(3) The exemption granted by subclause (2) of this clause is subject, in the case of a bank other than an overseas bank, to the condition that the aggregate amount of any debt securities that are secured by a mortgage or charge created by the bank over any of its assets and that rank or will, after the allotment of the debt securities referred to in subclause (2) of this clause, rank in priority to such debt securities, is not material in the context of the bank's overall business.

(4) The exemption granted by subclause (2) of this clause is subject, in the case of an overseas bank, to the condition that the aggregate amount of any debt securities that are secured by a mortgage or charge created by the overseas bank over any of the assets of the bank relating to its New Zealand division and that rank, or will, after the allotment of the debt securities referred to in subclause (2) of this clause, rank in priority to such debt securities, is not material in the context of the overseas bank's New Zealand division.

(5) Subject to subclause (6) of this clause, every bank which, and every other person who, distributes an advertisement to the public containing an offer of debt securities to which this Part of this notice applies made by the bank, is exempted from compliance with the provisions of regulation 17 of the Regulations in respect of the distribution of that advertisement.

(6) The exemption granted by subclause (5) of this clause is subject to the condition that a certificate that complies with subclause (7) of this clause

has been completed in respect of the advertisement at the time that the advertisement is distributed to the public.

(7) A certificate for the purposes of subclause (6) of this clause shall be in the form set out in the Fourth Schedule to the Regulations and shall be signed by 2 persons being—

(a) Directors of the bank; or

(b) Executive officers of the bank authorised by the directors of the bank to sign such certificates; or

(c) A director, and an executive officer of the bank who is authorised by the directors of the bank to sign such certificates.

(8) The exemption granted by subclause (5) of this clause is, in the case of a bank, subject to the condition that the certificate is held by the bank for at least 12 months from the date of the last distribution of the advertisement to which it relates.

(9) Nothing in subclauses (5) to (8) of this clause limits or affects regulation 17 (3) of the Regulations.

**6. Banks exempt from certain provisions of Second Schedule to Securities Regulations 1983 in respect of offers of debt securities to which this Part applies—**(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clauses 1 (2), (3), and (4) and 14 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the registered prospectus relating to the offer contains a statement in the following terms:

“This prospectus invites the public to subscribe for debt securities (within the meaning of the Securities Act 1978) that are offered to the public by [name of bank] from time to time. The terms and conditions of the securities are those agreed between the subscriber and the bank from time to time and include any terms and conditions contained in this prospectus and any terms and conditions implied by law.”

(3) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clauses 8 (3) (g) and 11 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(4) Subject to subclause (5) of this clause, every bank, and every person acting on its behalf, is exempted, in the case of any offer of debt securities to which this Part of this notice applies made by that bank, from compliance with the provisions of clause 30 (b) of the Second Schedule in so far as that clause requires the balance sheet contained in the registered prospectus relating to those securities to include comparative figures as at the end of the preceding accounting period in respect of the matters referred to in clause 20 (c) of that Schedule.

(5) Nothing in subclause (4) of this clause applies in respect of any offer of debt securities to which this Part of this notice applies made by a bank after the 30th day of June 1989.

(6) Subject to subclause (7) of this clause, every bank and every person acting on its behalf, is exempted from compliance with the provisions of clause 30 (d) of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(7) The exemption granted by subclause (6) of this clause is subject to the condition that the registered prospectus relating to the offer of debt securities specifies—

- (a) The final aggregate amounts, where material, in each currency (other than amounts in New Zealand currency) derived by the bank, or in the case of an overseas bank, by its New Zealand division, from amounts reported to it from all sources (whether in New Zealand or elsewhere) for final conversion of any monetary assets and liabilities to New Zealand currency for inclusion in its balance sheet; and
- (b) The exchange rates used to convert such amounts to New Zealand currency.

(8) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clause 31 (b) (i) of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

## PART II

**7. Application of this Part of the notice**—This Part of this notice applies to any offer of a debt security which is—

- (a) A promissory note which is endorsed (without negating or limiting liability), but not made, by a bank; or
- (b) A bill of exchange which is drawn, accepted, or endorsed (without negating or limiting liability) by a bank; or
- (c) Any negotiable or transferable debt security, not being a promissory note or a bill of exchange, in respect of which a bank is directly or indirectly liable otherwise than as the issuer.

**8. Banks exempt from certain provisions of Securities Act 1978 in respect of offers of debt securities to which this Part applies**—(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of sections 37A (1) (except section 37A (1) (e)), 38 (a) and (b), and 41 (b) (i) of the Act in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the following terms and conditions:

- (a) That copies of the registered prospectus relating to the debt securities are on display and available to the public during normal business hours at each branch of the bank in New Zealand; and
- (b) That the registered prospectus contains all the information, statements, certificates and other matters specified in the Second Schedule that are applicable and that the bank is not exempt from including in that registered prospectus; and for the purposes of this paragraph a reference in the Second Schedule to the term “issuer” shall be read and construed as a reference to the bank; and
- (c) That the registered prospectus has been signed by every person who, at the time when the prospectus was delivered to the Registrar for registration under the Act, was a director of the bank or an agent of the director duly authorised in writing; and
- (d) That at the date of allotment, the registered prospectus is not known by the bank, or any director of the bank, to be false or

misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the registered prospectus became so misleading as a result of circumstances occurring after the date of the registered prospectus).

**9. Banks exempt from regulations 10, 14 (1), and 17 of Securities Regulations 1983 in respect of offers of debt securities to which this Part applies**—(1) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of regulations 10 and 14 (1) of the Regulations in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) Subject to subclause (3) of this clause, every bank which, and every other person who, distributes an advertisement to the public containing an offer of debt securities to which this Part of this notice applies made by that bank is exempted from compliance with the provisions of regulation 17 of the Regulations in respect of the distribution of that advertisement.

(3) The exemption granted by subclause (2) of this clause is subject to the condition that a certificate that complies with subclause (4) of this clause has been completed in respect of the advertisement at the time that the advertisement is distributed to the public.

(4) A certificate for the purposes of subclause (3) of this clause shall be in the form set out in the Fourth Schedule to the Regulations and shall be signed—

(a) Where the bank has only one director resident in New Zealand, by that director; or

(b) By 2 persons being—

(i) Directors of the bank; or

(ii) Executive officers of the bank authorised by the directors of the bank to sign such certificates; or

(iii) A director, and an executive officer of the bank who is authorised by the directors of the bank to sign such certificates.

(5) The exemption granted by subclause (2) of this clause is, in the case of a bank, subject to the condition that the certificate is held by the bank for at least 12 months from the date of the last distribution of the advertisement to which it relates.

(6) Nothing in subclauses (2) to (5) of this clause limits or affects regulation 17 (3) of the Regulations; and for the purposes of this subclause a reference in regulation 17 (3) of the Regulations to the term “issuer” shall be read and construed as a reference to the bank.

**10. Banks exempt from certain provisions of Second Schedule to Securities Regulations 1983 in respect of offers of debt securities to which this Part applies**—(1) Subject to subclause (2) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clauses 1 (2), (3), and (4), and 14 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the registered prospectus relating to the offer contains a statement in the following terms:

“This prospectus invites the public to subscribe for debt securities (within the meaning of the Securities Act 1978) that are offered to

the public by [name of bank] from time to time. The terms and conditions of the securities are those agreed between the subscriber and the bank from time to time and include any terms and conditions contained in this prospectus and any terms and conditions implied by law.”

(3) In any case where no debt securities other than debt securities to which this Part of this notice applies are offered to the public for subscription by the bank—

(a) Nothing in subclause (1) of this clause in so far as it applies to clause 1 (2) of the Second Schedule shall apply to that offer:

(b) Nothing in subclause (2) of this clause shall apply to that offer.

(4) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clauses 2, 4 (2), 6 (2), 8 (3) (g), and 11 of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(5) Subject to subclause (6) of this clause, every bank, and every person acting on its behalf, is exempted, in the case of any offer of debt securities to which this Part of this notice applies made by that bank, from compliance with the provisions of clause 30 (b) of the Second Schedule in so far as that clause requires the balance sheet contained in the registered prospectus relating to those securities to include comparative figures as at the end of the preceding accounting period in respect of the matters referred to in clause 20 (c) of that Schedule.

(6) Nothing in subclause (5) of this clause applies in respect of any offer of debt securities to which this Part of this notice applies made by a bank after the 30th day of June 1989.

(7) Subject to subclause (8) of this clause, every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clause 30 (d) of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

(8) The exemption granted by subclause (7) of this clause is subject to the condition that the registered prospectus relating to the offer of debt securities specifies—

(a) The final aggregate amounts, where material, in each currency (other than amounts in New Zealand currency) derived by the bank, or in the case of an overseas bank, by its New Zealand division, from amounts reported to it from all sources (whether in New Zealand or elsewhere) for final conversion of any monetary assets and liabilities to New Zealand currency for inclusion in its balance sheet; and

(b) The exchange rates used to convert such amounts to New Zealand currency.

(9) Every bank, and every person acting on its behalf, is exempted from compliance with the provisions of clause 31 (b) (i) of the Second Schedule in respect of any offer of debt securities to which this Part of this notice applies made by that bank.

### PART III

**11. Exemptions contained in Parts I and II subject to further condition in case of certain banks**—The exemptions granted by Parts I and II of this notice are, in the case of Post Office Bank Limited and a trustee bank’s successor company, subject to the condition that Post Office Bank Limited or the trustee bank’s successor company, as the case may be,

is a specified institution within the meaning of section 38k of the Reserve Bank of New Zealand Act 1964.

#### PART IV

**12. Application of Securities Act 1978 and Securities Regulations 1983 limited to overseas banks in respect of New Zealand business**—(1) Subject to subclause (3) of this clause, every overseas bank, and every person acting on its behalf, is exempted from compliance with the provisions of the Securities Act 1978 and the Regulations in so far as those provisions require, in their application, any advertisement or registered prospectus which contains an offer of debt securities to the public for subscription made by the overseas bank to contain information, statements, certificates, or other matters other than in relation to the New Zealand division of the overseas bank.

(2) For the purposes of subclause (1) of this clause—

(a) The New Zealand division of an overseas bank shall be treated as the only business carried on by the bank; and

(b) The property, rights, assets and liabilities relating to the New Zealand division shall be treated as the only property, rights, assets and liabilities of the overseas bank.

(3) Nothing in subclause (1) of this clause applies to clauses 1, 2, 3, 5, 33, and 35 of the Second Schedule to the Regulations.

#### PART V

**13. Part IV not limited by Parts I and II**—Nothing in Parts I and II of this notice limits Part IV of this notice.

#### PART VI

**14. Persons allotting debt securities to which Part II applies exempted from certain provisions of Securities Act 1978**—Every person, not being a bank, who allots or is an issuer of a debt security referred to in clauses 8 to 10 of this notice is exempted from compliance with the provisions of sections 33 (2), 37 (1), and 37A (1) of the Act.

**15. Revocation**—The Securities Act (Registered Banks) Exemption Notice 1987 is hereby revoked\*.

**SCHEDULES**

---

**FIRST SCHEDULE**

Post Office Bank Limited:

Registered banks within the meaning of section 2 of the Reserve Bank of New Zealand Act 1964:

Trustee bank's successor companies within the meaning of section 2 of the Trustee Banks Restructuring Act 1988.

---

**SECOND SCHEDULE**

Westpac Banking Corporation.

Dated at Wellington this 22nd day of June 1988.

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

[L.S.]

P. D. MCKENZIE,  
Member.

---



## EXPLANATORY NOTE

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice, which comes into force on 1 July 1988, replaces the Securities Act (Registered Banks) Exemption Notice 1987.

The notice is in substantially the same terms as the Securities Act (Registered Banks) Exemption Notice 1987. The principal differences are that—

- (a) It applies to Post Office Bank Limited and trustee bank's successor companies as well as to registered banks; and
- (b) It enables Westpac Banking Corporation to treat the Securities Act 1978 and the Securities Regulations 1983 as applying to it, in the case of offers of debt securities, only in respect of its business carried on in or from New Zealand.

Part I of the notice applies to offers of debt securities other than offers of debt securities to which Part II of the notice applies. It exempts a bank (as that term is defined) from compliance with the provisions of sections 37A (1) (a) to (d) and (f), and 38 (a) and (b) of the Securities Act 1978, regulations 10, 14 (1), and 17 of the Securities Regulations 1983 and clauses 1 (2), (3), and (4), 8 (3) (g), 11, 14, 30 (b) and (d), and 31 (b) (i) of the Second Schedule to the Securities Regulations 1983 in the case of offers of debt securities made by a bank.

Part II of the notice applies to any offer of a debt security which is—

- (a) A promissory note which is endorsed (without negating or limiting liability), but not made, by a bank; or
- (b) A bill of exchange which is drawn on, accepted or endorsed (without negating or limiting liability) by a bank; or
- (c) Any negotiable or transferable debt security, not being a promissory note or bill of exchange, in respect of which a bank is liable otherwise than as the issuer.

Part II of the notice exempts a bank from compliance with the provisions of sections 37A (1) (a) to (d) and (f), 38 (a) and (b), and 41 (b) (i) of the Securities Act 1978, regulations 10, 14 (1), and 17 of the Securities Regulations 1983, and clauses 1 (2), (3) and (4), 2, 4 (2), 6 (2), 8 (3) (g), 11, 14, 30 (b) and (d), and 31 (b) (i) of the Second Schedule to the Securities Regulations 1983 in the case of offers of debt securities to which that Part applies.

Part III of the notice provides that the exemptions contained in Parts I and II of the notice are, in the case of Post Office Bank Limited and a trustee bank's successor company, subject to the condition that Post Office Bank Limited or the trustee bank's successor company, as the case may be, is a specified institution subject to prudential supervision under Part Vc of the Reserve Bank of New Zealand Act 1964.

Part IV of the notice exempts an overseas bank (as that term is defined) from compliance with the provisions of the Securities Act 1978 and the Securities Regulations 1983 in so far as those provisions require any advertisement or registered prospectus which contains an offer of debt securities made by the overseas bank to contain information, statements, certificates and other matters other than in relation to the business of the bank carried on in or from New Zealand.

Part V of the notice provides that nothing in Parts I and II of the notice limits Part IV of the notice.

Part VI of the notice exempts any person, not being a bank, from compliance with the provisions of sections 33 (2), 37 (1), and 37A (1) of the Securities Act 1978 in the case of the allotment or issue of a debt security of the kind referred to in Part II of the notice.

---

Issued under the authority of the Regulations Act 1936.

Date of notification in *Gazette*: 24 June 1988.

This notice is administered in the Securities Commission.