



Securities Act (Takeovers) Exemption Notice 2001

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

Contents

1	Title	10	Exemption from certain provisions of First Schedule of Securities Regulations 1983 for issuers of unquoted equity securities
	Part 1 Preliminary		
2	Commencement	11	Conditions
3	Expiry	12	Exemption from certain provisions of Second Schedule of Securities Regulations 1983 for issuers of unquoted debt securities
4	Interpretation	13	Conditions
	Part 2 Exemption from regulation 3(1) and (2) of Securities Regulations 1983 for quoted equity and debt securities		Part 4 Exemption from clauses 1 and 5 of Schedule 3D of Securities Regulations 1983 for quoted and unquoted equity and debt securities
5	Application of this Part	14	Application of this Part
6	Exemption from First Schedule of Securities Regulations 1983 for issuers of quoted equity securities	15	Exemption from clauses 1(1) and 5 of Schedule 3D of Securities Regulations 1983 for issuers of quoted and unquoted equity and debt securities
7	Exemption from Second Schedule of Securities Regulations 1983 for issuers of quoted debt securities	16	Conditions
8	Condition		
	Part 3 Exemption from certain provisions of First and Second Schedules of Securities Regulations 1983 for unquoted equity and debt securities		
9	Application of this Part		

Notice

- 1 Title**
This notice is the Securities Act (Takeovers) Exemption Notice 2001.

Part 1 Preliminary

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 31 July 2006.

4 Interpretation

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

Act means the Securities Act 1978

annual report means the annual report and financial statements (including the auditor's report on those financial statements) that the issuer is required by the rules of the Exchange to send to equity security holders of the issuer

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000

code offer means a full offer or a partial offer for voting securities of a target company made in accordance with the Code; and includes an acquisition of voting securities in a target company under Part 7 of the Code

Exchange means the New Zealand Stock Exchange

full offer has the same meaning as in rule 3(1) of the Code

half-yearly report means the half-yearly report and financial statements (including the auditor's report on those financial statements, if any) that the issuer is required by the rules of the Exchange to send to equity security holders of the issuer

interim report means any interim report and interim financial statements (including the auditor's report on those financial statements, if any) that the issuer has sent to equity security holders of the issuer (other than the half-yearly report)

listed company means a company that is a party to a listing agreement with the Exchange

offer document has the same meaning as in rule 3(1) of the Code

offeror means a person who makes a code offer

partial offer has the same meaning as in rule 3(1) of the Code

quoted securities means equity or debt securities that—

- (a) are issued by a listed company; and
- (b) have been quoted on the Exchange continuously for at least 12 months before the making of a code offer or belong, or will when issued belong, to a class of equity or debt securities that has been quoted on the Exchange continuously for at least 12 months before the making of a code offer; and
- (c) are offered as consideration or part consideration for a code offer

Regulations means the Securities Regulations 1983

target company has the same meaning as in rule 3(1) of the Code

target company statement has the same meaning as in rule 3(1) of the Code

unquoted securities means equity or debt securities, other than quoted securities, that are offered as consideration or part consideration for a code offer

voting security has the same meaning as in rule 3(1) of the Code.

- (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.

Part 2

Exemption from regulation 3(1) and (2) of Securities Regulations 1983 for quoted equity and debt securities

5 Application of this Part

This Part applies to quoted securities that are equity securities or debt securities and that are offered as consideration or part consideration for a code offer.

6 Exemption from First Schedule of Securities Regulations 1983 for issuers of quoted equity securities

Every issuer and every person acting on its behalf are exempted from regulation 3(1) of the Regulations in the case of quoted securities that are equity securities.

**7 Exemption from Second Schedule of Securities
Regulations 1983 for issuers of quoted debt securities**

Every issuer and every person acting on its behalf are exempted from regulation 3(2) of the Regulations in the case of quoted securities that are debt securities.

8 Condition

The exemptions are subject to the condition that the registered prospectus for the offer of the quoted securities contains the following information or is accompanied by the following documents:

- (a) the name of the issuer and, if the issuer and the offeror are different persons, the relationship of the issuer to the offeror:
- (b) the material terms and conditions of the quoted securities:
- (c) a statement that a copy of the most recent annual report of the issuer is available on request:
- (d) a copy of the most recent half-yearly report of the issuer relating to a period after the annual report referred to in paragraph (c), if any:
- (e) a copy of the most recent interim report of the issuer relating to a period after the annual report referred to in paragraph (c), if any, or, if a copy of a half-yearly report has been disclosed under paragraph (d), a copy of any interim report of the issuer relating to a period after that half-yearly report, if any:
- (f) any other information that could reasonably be expected to be material to the making of a decision by the target company's shareholders to accept or reject the code offer or, if there is no such information, a statement to that effect.

Part 3

Exemption from certain provisions of First and Second Schedules of Securities Regulations 1983 for unquoted equity and debt securities

9 Application of this Part

This Part applies to unquoted securities that are equity securities or debt securities and that are offered as consideration or part consideration for a code offer.

10 Exemption from certain provisions of First Schedule of Securities Regulations 1983 for issuers of unquoted equity securities

Every issuer and every person acting on its behalf are exempted from the following provisions of the First Schedule of the Regulations in the case of unquoted securities that are equity securities:

- (a) clauses 1(4), 2(a) and (b), and 10(1)(b) and (2);
- (b) clause 11(3)(b) to the extent that that paragraph relates to the target company.

11 Conditions

- (1) The exemption from clause 1(4) of the First Schedule of the Regulations is subject to the condition that the registered prospectus for the unquoted securities contains the following statement:

“Information about the price or other consideration to be paid or provided for the securities is contained in clause 5 of the takeover offer document for this offer.”

- (2) The exemption from clause 10(1)(b) of the First Schedule of the Regulations is, if the issuer is also the offeror, subject to the condition that the registered prospectus for the securities contains a statement of—
 - (a) the expected effect on the operations of the target company of the acquisition by the issuer of securities in the target company resulting from the proposed code offer; and
 - (b) the plans of the directors of the issuer for the target company.
- (3) The exemption from clause 10(2) of the First Schedule of the Regulations is, if the issuer is also the offeror, subject to the

- condition that the prospective statement of cash flows required by clause 10(1)(c) of the First Schedule of the Regulations shows—
- (a) the likely effect on the cash flows of the issuer of the acquisition by the issuer of securities in the target company resulting from the proposed code offer; and
 - (b) the principal assumptions on which the statement of cash flows is based.
- (4) The exemption from clause 11(3)(b) of the First Schedule of the Regulations is subject to the conditions that—
- (a) the registered prospectus for the unquoted securities contains all the information required under clause 11(3)(c) to (g) of that schedule relating to the target company that is within the knowledge, possession, or control of the issuer and that is not already contained in the offer document; and
 - (b) the registered prospectus for the unquoted securities specifies the information required under clause 11(3)(c) to (g) of that schedule relating to the target company that is contained in the offer document together with cross-references; and
 - (c) the registered prospectus for the unquoted securities specifies the information required under clause 11(3)(c) to (g) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.

12 Exemption from certain provisions of Second Schedule of Securities Regulations 1983 for issuers of unquoted debt securities

Every issuer and every person acting on its behalf are exempted from the following provisions of the Securities Regulations 1983 in the case of unquoted securities that are debt securities:

- (a) clauses 1(4) and 2(a) and (b):
- (b) clause 8(3)(b) to the extent that that paragraph relates to the target company.

13 Conditions

- (1) The exemption from clause 1(4) of the Second Schedule of the Regulations is subject to the condition that the registered prospectus for the unquoted securities contains the following statement:

“Information about the price or other consideration to be paid or provided for the securities is contained in clause 5 of the takeover offer document for this offer.”
- (2) The exemption from clause 8(3)(b) of the Second Schedule of the Regulations is subject to the conditions that—
 - (a) the registered prospectus for the unquoted securities contains all the information required under clause 8(3)(c) to (g) of that schedule relating to the target company that is within the knowledge, possession, or control of the issuer and that is not already contained in the offer document; and
 - (b) the registered prospectus for the unquoted securities specifies the information required under clause 8(3)(c) to (g) of that schedule relating to the target company that is contained in the offer document together with cross-references; and
 - (c) the registered prospectus for the unquoted securities specifies the information required under clause 8(3)(c) to (g) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.

Part 4**Exemption from clauses 1 and 5 of Schedule 3D of Securities Regulations 1983 for quoted and unquoted equity and debt securities****14 Application of this Part**

This Part applies to offers of quoted and unquoted equity and debt securities that are offered as consideration or part consideration for a code offer.

15 Exemption from clauses 1(1) and 5 of Schedule 3D of Securities Regulations 1983 for issuers of quoted and unquoted equity and debt securities

- (1) Every issuer and every person acting on its behalf are exempted, in the case of quoted or unquoted equity or debt securities, from the requirement to include in an investment statement in the list of questions referred to in clause 1.1 of Schedule 3D of the Regulations, the question “*How much do I pay?*”
- (2) Every issuer and every person acting on its behalf are exempted, in the case of quoted and unquoted equity or debt securities, from clause 5 of Schedule 3D of the Regulations and the italicised question above that clause.

16 Conditions

- (1) The exemption granted by clause 15(1) is subject to the condition that, in place of the question “*How much do I pay?*”, the investment statement includes the question “*What will this cost me?*”
- (2) The exemption granted by clause 15(2) is subject to the condition that the investment statement—
 - (a) contains a brief description of the terms of exchange of the quoted or unquoted equity or debt securities and the securities in the target company under offer;
 - (b) states the proportion of voting securities of the shareholders in the target company that the offeror wishes to acquire;
 - (c) states the number of quoted or unquoted equity or debt securities offered as consideration for securities in the target company, expressed as a ratio;
 - (d) states the amount of any cash sum offered as consideration for each target company security under offer;
 - (e) describes how a holder of securities in the target company may accept the code offer.

Dated at Wellington this 21st day of August 2001.

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

[L.S.]

M. R. H. Webb,
Chairperson.

Explanatory note

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

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 July 2006.

The notice exempts issuers of quoted and unquoted equity and debt securities offered as consideration or part of the consideration for a takeover under the Takeovers Code from compliance with provisions of the Securities Regulations 1983 (the **Regulations**). The notice applies to full and partial offers under the Takeovers Code and to compulsory acquisitions under Part 7 of the Code.

Quoted securities are equity or debt securities that—

- are issued by a listed company; and
- have been quoted on the New Zealand Stock Exchange continuously for at least 12 months before the making of a code offer or belong, or will when issued belong, to a class of equity or debt securities that has been quoted continuously for at least 12 months before the making of a code offer.

Unquoted securities are equity or debt securities, other than quoted securities.

The exemptions differ depending on whether the securities are quoted or unquoted securities.

Part 1 of the notice relates to the commencement and expiry of the notice. It also defines terms used in the notice.

Part 2 of the notice applies to quoted equity and debt securities.

Clause 6 exempts issuers of quoted equity securities from the requirements of the First Schedule of the Regulations.

Clause 7 exempts issuers of quoted debt securities from the requirements of the Second Schedule of the Regulations.

The exemptions in *clauses 6* and *7* are subject to the condition that the registered prospectus discloses the name of the issuer and its relationship with the takeover offeror and certain financial information about the issuer. The financial information is the same as that required in a takeover notice by *clause 18* of Schedule 1 of the Takeovers Code.

Part 3 of the notice applies to unquoted equity and debt securities.

Clause 10 exempts issuers of unquoted equity securities, subject to the conditions in *clause 11*, from *clauses 1(4)*, *2(a)* and *(b)*, *10(1)(b)* and *(2)*, and *11(3)(b)* of the First Schedule of the Regulations. The exemption from *clause 11(3)(b)* of the First Schedule applies only to the extent that the provision relates to the target company.

Clause 12 exempts issuers of unquoted debt securities, subject to the conditions in *clause 13*, from *clauses 1(4)*, *2(a)* and *(b)*, and *8(3)(b)* of the Second Schedule of the Regulations. The exemption from *clause 8(3)(b)* of the Second Schedule applies only to the extent that the provision relates to the target company.

Part 4 of the notice relates to both quoted and unquoted equity and debt securities.

Clause 15 exempts issuers of quoted and unquoted equity and debt securities, subject to the conditions in *clause 16*, from *clauses 1(1)* and *5* of Schedule 3D of the Regulations. Schedule 3D sets out the information that must be included in an investment statement for an offer of securities.

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

Date of notification in *Gazette*: 23 August 2001.

This notice is administered in the Securities Commission.
