



Securities Act (Fulton Hogan Limited) Exemption Notice 2007

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 (Fulton Hogan Limited) Exemption Notice 2007.

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 22 November 2012.

4 Interpretation

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

Act means the Securities Act 1978

control has the same meaning as in section OD 1(1) of the Income Tax Act 2004

eligible person means—

- (a) an employee or director of Fulton Hogan or of any of its subsidiaries; or
- (b) a person who provides personal services (other than as an employee) principally to Fulton Hogan or any of its subsidiaries; or
- (c) a relative or a de facto partner of a person described in paragraphs (a) or (b); or
- (d) a trustee for a person described in paragraphs (a), (b), or (c); or
- (e) a company that is controlled by a person described in paragraph (a), (b), (c), or (d)

employee share purchase scheme means the scheme established by Fulton Hogan and existing on the date this notice comes into force under which eligible persons may acquire specified equity securities

FRS–24 means the financial reporting standard known as Financial Reporting Standard No 24 (Interim Financial Statements) that has been approved under the Financial Reporting Act 1993

Fulton Hogan means Fulton Hogan Limited

NZ IAS 34 means the financial reporting standard known as the New Zealand Equivalent to International Accounting Standard 34 (Interim Financial Reporting) that has been approved under the Financial Reporting Act 1993

Regulations means the Securities Regulations 1983

specified equity securities means any interest in or right to an ordinary share in Fulton Hogan offered under the employee share purchase scheme.

- (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 Exemptions from Act and Regulations

Fulton Hogan, each subsidiary of Fulton Hogan, and every person acting on behalf of any or all of them, are exempted from the following provisions in respect of specified equity securities:

- (a) section 37A(1)(c) of the Act; and
- (b) clauses 1(3) and (4), 4 to 20, 22 to 38, and 40 to 42 of Schedule 1 of the Regulations; and
- (c) clause 21 of Schedule 1 of the Regulations, to the extent that it requires the registered prospectus to contain the dates, time periods, and price terms relevant to the particular offer under the employee share purchase scheme and information personal to the person to whom the registered prospectus is distributed; and
- (d) clause 5(1)(c) of Schedule 3D of the Regulations; and
- (e) regulation 17 of the Regulations, in relation to advertisements containing information personal to a person to whom the advertisement is distributed.

6 Condition that equity securities allotted only to eligible persons

The exemptions in clause 5 are subject to the condition that the specified equity securities are allotted only to the following persons:

- (a) persons who are eligible persons at the time of allotment of the equity securities;
- (b) in the case of equity securities that are allotted on the exercise of rights or options to acquire shares, persons

who are eligible persons at the time of allotment of those rights or options.

7 Condition that information sent to subscribers

The exemptions in clause 5 are subject to the condition that, before an eligible person or a person referred to in clause 6(b) subscribes for specified equity securities, Fulton Hogan provides that person with the following:

- (a) a copy of the most recent audited consolidated financial statements of the issuing group that comply with the Financial Reporting Act 1993; and
- (b) if the specified equity securities are offered more than 9 months after the date of the most recent audited consolidated financial statements of the issuing group, a copy of interim financial statements for the most recently completed financial half-year of the issuing group that complies with FRS-24 or NZ IAS 34; and
- (c) Fulton Hogan's most recent annual report, which includes or is accompanied by a statement setting out the following matters:
 - (i) particulars of entries in the interests register, concerning directors of Fulton Hogan, made during the accounting period to which the report relates; and
 - (ii) the date of, names of the parties to, and general nature of any material contract (excluding a contract entered into in the ordinary course of business) entered into by a member of the issuing group at any time in the 2 years preceding a date not more than 20 working days before the date of circulation of the annual report; and
 - (iii) a brief description of any legal proceedings or arbitrations concerning the issuing group that are pending at a date not more than 20 working days before the date of circulation of the annual report and that might have a material adverse effect on the issuing group; and
 - (iv) a statement by 2 directors of Fulton Hogan as to whether, after inquiry by them in relation to the period between the date of the latest statement of financial position attached to, or contained in, the

annual report and a date not more than 20 working days before the date of circulation of the annual report, there have, in their opinion, arisen any circumstances that materially adversely affect the issuing group's—

- (A) trading or profitability; or
- (B) asset value; or
- (C) ability to pay liabilities due within the next 12 months.

8 Condition about sale arrangements

The exemptions in clause 5 are subject to the condition that the investment statement relating to the specified equity securities must contain a description of the arrangements under which persons who hold specified equity securities can sell those securities (before and after they cease to be eligible persons).

9 Condition that terms of employee share purchase scheme available

The exemptions in clause 5 are subject to the condition that the investment statement relating to the specified equity securities contains—

- (a) a brief description of the terms of the employee share purchase scheme; and
- (b) a statement of the place or places where the terms of the employee share purchase scheme are available, free of charge, to a person who is able to acquire securities under the scheme.

10 Condition that there is repurchase offer by Fulton Hogan

The exemptions in clause 5 are subject to the condition that it is a term of the offer that Fulton Hogan offers to repurchase, or makes arrangements to purchase, the specified equity securities under the Companies Act 1993 from eligible persons when they cease to be eligible persons (so long as at that time Fulton Hogan satisfies the solvency test set out in section 4 of the Companies Act 1993).

11 Condition of cap on specified equity securities

- (1) The exemptions in clause 5 are subject to the condition that it is a term of the offer that the number of specified equity securities allotted in any 12-month period is capped at 1% of the ordinary shares of Fulton Hogan.
- (2) Calculations of the number of specified equity securities for the purposes of subclause (1) must exclude the specified equity securities allotted to or held by or on behalf of directors of Fulton Hogan and any other person who—
 - (a) is, at the commencement of any year, a wealthy or experienced person under section 5 of the Act; or
 - (b) would not be regarded as a member of the public under the Act.

12 Condition of exemptions from clause 1(3) and (4) of Schedule 1 of Regulations

The exemptions in clause 5 from clause 1(3) and (4) of Schedule 1 of the Regulations are subject to the further condition that the registered prospectus states—

- (a) the cap on the specified equity securities that can be allotted under the employee share purchase scheme; and
- (b) the price of the specified equity securities or the formula or method by which the price or consideration for the specified equity securities will be determined.

13 Conditions of exemption from clause 21 of Schedule 1 of Regulations

The exemption in clause 5 from clause 21 of Schedule 1 of the Regulations is subject to the further conditions that—

- (a) a document is given to every person who is offered specified equity securities under the employee share purchase scheme that contains any information that would, but for the exemption in clause 5, be required by clause 21 of Schedule 1 of the Regulations to be contained in the registered prospectus; and
- (b) the registered prospectus contains all other terms of the offer and of the specified equity securities except—
 - (i) those implied by law; or

- (ii) those set out in the document that is registered with a public official and is available for inspection and referred to in the registered prospectus.

14 Condition of exemption from clause 5(1)(c) of Schedule 3D of Regulations

The exemption in clause 5 from clause 5(1)(c) of Schedule 3D of the Regulations is subject to the further condition that a document containing the information required by clause 5(1)(c) of Schedule 3D of the Regulations is given to every person to whom the specified equity securities are offered under the employee share purchase scheme.

15 Condition of exemption from regulation 17 of Regulations

The exemption in clause 5 from regulation 17 of the Regulations is subject to the further condition that Fulton Hogan has complied with regulation 17 of the Regulations in relation to another advertisement and the only difference between the 2 advertisements is information personal to a person to whom the advertisement is distributed.

Dated at Wellington this 26th day of November 2007.

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

[Seal]

C A N Beyer,
Member.

Statement of reasons

This notice comes into force on the day after its notification in the *Gazette* and expires on 22 November 2012.

This notice exempts Fulton Hogan Limited (**Fulton Hogan**) and its subsidiaries (subject to conditions) in respect of equity securities issued by Fulton Hogan that are offered under its employee share purchase scheme from section 37A(1)(c) of the Securities Act 1978, and from clauses 1(3) and (4), 4 to 38, and 40 to 42 of Schedule 1, clause 5(1)(c) of Schedule 3D, and regulation 17 of the Securities Regulations 1983. The effect is to allow Fulton Hogan to use an evergreen prospectus.

The Securities Commission considers it appropriate to grant this exemption because—

- Fulton Hogan has operated its employee share purchase scheme since the 1980s, before the establishment of the policy and terms in the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2005 (the **class notice**), which restricts the raising of significant amounts of capital under employee share purchase schemes using limited disclosure. This policy objective is achieved by providing caps on the total and annual amount of securities that can be issued under employee share purchase schemes. Given the long history of Fulton Hogan’s employee share purchase scheme and the quantum of shares issued under the scheme, Fulton Hogan does not comply with the total cap provision in the class notice:
- given the degree of contribution by Fulton Hogan and the small percentage of issues under Fulton Hogan’s employee share purchase scheme in the last 5 years, the Securities Commission is satisfied that Fulton Hogan’s scheme is not a mechanism to raise significant funds. The restriction on the percentage of shares Fulton Hogan can issue in any 12-month period will mean that ongoing capital raising is also limited.

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

Date of notification in *Gazette*: 29 November 2007.

This notice is administered by the Securities Commission.
