



Securities Act (NZX Issuers) 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 (NZX Issuers) 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 30 September 2012.

4 Interpretation

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

accounting period, in relation to a NZX issuer, means a year ending on the balance date of the NZX issuer

Act means the Securities Act 1978

balance date, in relation to a NZX issuer, means the close of 31 March or of any other date that the directors of the NZX issuer adopt as the NZX issuer's balance date

existing securities means specified securities in a NZX issuer that have previously been allotted, but excludes previously allotted securities to which section 6(1) of the Act refers

interim accounting period, in relation to a NZX issuer, means a period ending 6 months after the balance date of the NZX issuer

NZX issuer means an issuer that has entered into a listing agreement with New Zealand Exchange Limited for listing on a NZX market

NZX market means any securities market operated by New Zealand Exchange Limited

offer means an offer to the public that comprises either or both of the following:

- (a) an offer by an offeror of existing securities;
- (b) an offer by a NZX issuer of new specified securities in the NZX issuer

offeror means the holder of existing securities which are to be included in an offer

Regulations means the Securities Regulations 1983

specified securities means equity securities in a NZX issuer that will be offered as part of an offer and that are either—

- (a) securities of a class that are already quoted on a NZX market; or

- (b) securities in respect of which an application for quotation on a NZX market has been made to New Zealand Exchange Limited and, at the time of the offer of the securities, the issuer has complied with all the requirements in respect of the application with which it is required to comply at that time.
- (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 regulations 3(1) and 7A(1) of Regulations

Every NZX issuer, every offeror, and every person acting on behalf of either or both of them are exempted from—

- (a) regulation 3(1) of the Regulations to the extent that it requires a registered prospectus to contain information about the offeror as an issuer of the specified securities; and
- (b) regulation 7A(1) of the Regulations to the extent that it requires an investment statement to contain information about the offeror as an issuer of the specified securities.

6 Conditions of exemptions in clause 5

The exemptions in clause 5 are subject to the conditions that—

- (a) the registered prospectus and the investment statement contain a description of the effect of the exemptions in clause 5; and
- (b) the registered prospectus and the investment statement contain a statement to the effect that the offeror—
 - (i) is an issuer of the specified securities; and
 - (ii) has obligations as an issuer under the Act and the Regulations; and
- (c) the registered prospectus contains any information about the offeror that, but for the exemption in clause 5, would be required under clause 40 of Schedule 1 of the Regulations.

7 Exemption from clause 1(4) of Schedule 1 of Regulations
Every NZX issuer, every offeror, and every person acting on behalf of either or both of them are exempted from clause 1(4) of Schedule 1 of the Regulations in respect of any specified securities to the extent that the registered prospectus relating to the offer cannot state the price or other consideration to be paid or provided for those securities.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that the registered prospectus relating to the offer—

- (a) describes the procedure for fixing the subscription price for the specified securities including, if more than one price is to be fixed, the procedure for fixing different prices and a description of when those prices will apply; and
- (b) states the indicative price range for the specified securities; and
- (c) describes the factors that may be taken into account in fixing the subscription price or prices for the specified securities; and
- (d) states when the subscription price or prices for the specified securities are expected to be fixed; and
- (e) describes how the specified securities will be allocated; and
- (f) states whether the NZX issuer or the offeror reserves the right to set a subscription price or prices for the specified securities outside the indicative price range; and
- (g) states how an investor may ascertain the subscription price or prices after the price has, or prices have, been fixed; and
- (h) describes the procedures on which money that is paid to subscribe for the specified securities will be held by, or on behalf of, the NZX issuer or the offeror; and
- (i) describes how over-subscriptions for the specified securities will be treated and the procedure for making refunds; and
- (j) states, in terms permitted by regulation 23 of the Regulations, that an application has been made to New

Zealand Exchange Limited for permission to quote the specified securities on a NZX market.

9 Exemption from clause 8(5) of Schedule 1 of Regulations

Every NZX issuer, every offeror, and every person acting on behalf of either or both of them are exempted from clause 8(5) of Schedule 1 of the Regulations in respect of any specified securities for which the net tangible asset backing of the securities cannot be shown because it cannot be ascertained how many specified securities will be allotted.

10 Condition of exemption in clause 9

The exemption in clause 9 is subject to the condition that the registered prospectus relating to the offer contains the information required by clause 8(5) of Schedule 1 of the Regulations, but—

- (a) calculated as if the number of specified securities on which the assumptions are based is calculated by reference to the maximum number of specified securities that would be allotted if the subscription price for the specified securities was fixed at the high point, at the mid-point, and at the low point of the indicative price range stated in the registered prospectus; and
- (b) presented in tabular form.

11 Exemption from clause 10(1)(c) of Schedule 1 of Regulations

Every NZX issuer, every offeror, and every person acting on behalf of either or both of them are exempted from clause 10(1)(c) of Schedule 1 of the Regulations in respect of any specified securities that are offered under a registered prospectus that is registered on a date that is not the balance date of the NZX issuer.

12 Conditions of exemption in clause 11

The exemption in clause 11 is subject to the conditions that—

- (a) the registered prospectus relating to the offer contains a prospective statement of cash flows for the issuing group in respect of each of the following periods:

- (i) the period commencing on the later of either the date of incorporation of the NZX issuer or the last balance date of the NZX issuer and ending on the next balance date of the NZX issuer; and
 - (ii) either the accounting period, or the interim accounting period, of the NZX issuer that is subsequent to the period referred to in subparagraph (i); and
- (b) the prospective statements of cash flows referred to in paragraph (a) comply with clause 10(2) of Schedule 1 of the Regulations.

13 Interface with Securities Act (NZX–NZAX Market) Exemption Notice 2005

Nothing in the Securities Act (NZX–NZAX Market) Exemption Notice 2005 applies to specified securities that are offered in reliance on any exemption granted by this notice.

Dated at Wellington this 12th day of September 2007.

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

[Seal]

N O Todd,
Member.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2012.

The notice exempts, subject to conditions, any issuer that has entered into a listing agreement with New Zealand Exchange Limited for listing on a NZX market (a **NZX issuer**), and the holder of previously allotted specified securities in the NZX issuer (the **offeror**), from certain provisions of the Securities Regulations 1983

(the **Regulations**) in respect of securities in that NZX issuer. The notice applies to issuers that have entered into a listing agreement for listing on the NZSX, the NZAX, and the NZDX.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- when Part 2 of the Securities Act 1978 applies to an offer of previously allotted securities to the public, both the person offering the securities and the original allotter of the securities have a responsibility for the offer as issuers:
- information relating to the offeror as issuer is unlikely to be useful to potential investors in considering whether to subscribe for securities in the original allotter, and may be confusing:
- the conditions of the exemptions require potential investors to be advised that the offeror remains legally responsible as an issuer and of any information about the offeror that is material to the offer of the securities:
- an issuer and offeror cannot comply with clause 1(4) or 8(5) of Schedule 1 of the Regulations if the price of the securities is to be determined via a book-building process and will not be known at the date the prospectus is to be registered, or if the number of securities that may be allotted will not be known at that time. The conditions of the exemption require that investors receive the information that can be produced about how the price is to be set, and about the potential net tangible asset backing per security:
- the exemption from clause 10(1)(c) of Schedule 1 of the Regulations will allow the prospective financial information to be aligned with the issuer's normal accounting period. This means that the prospective information will be more easily comparable to financial statements that are produced by the issuer. This will make the information of more use to investors:
- the issuer will be required by New Zealand's financial reporting standards to provide comparative historical financial statements for the same periods as are required by the conditions of the exemption. Investors will be able to compare the statements and will be provided with an explanation of any material differences:

- the conditions of the exemption require that the prospective statement of cash flows contain all the information normally required under the Regulations:
 - exemptions from these provisions have commonly been sought by companies making initial public offers on a NZX market. The class exemption does not extend the policy behind the exemptions but will reduce the compliance costs incurred by these companies in their preparation for public offerings.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 13 September 2007.

This notice is administered by the Securities Commission.
