



Securities Act (UBS Securities New Zealand Limited) Exemption Notice 2006

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 (UBS Securities New Zealand Limited) Exemption Notice 2006.

- 2 **Commencement**
This notice comes into force on notification in the *Gazette*.

- 3 **Expiry**
This notice expires on the close of 30 September 2008.

4 Interpretation

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

Act means the Securities Act 1978

Regulations means the Securities Regulations 1983

Schedule 1 means Schedule 1 of the Regulations

Telecom shares means fully paid ordinary shares in the capital of Telecom Corporation of New Zealand Limited

trust deed means the trust deed dated on or about September 2006 between UBS and the trustee that provides, among other things, for the trustee to hold Telecom shares on separate trusts for each of the subscribers for UBS instalment receipts

trustee means a trustee authorised to act as trustee under the Act

UBS means UBS Securities New Zealand Limited

UBS entity means UBS or a related company of UBS (as defined in the Companies Act 1993)

UBS instalment receipts means equity securities issued by UBS—

- (a) in the form of an instrument evidencing the arrangements, and having the characteristics, described in the trust deed; and
 - (b) on terms providing for the delivery of Telecom shares to the holders of those securities.
- (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 Exemption from section 37A(1)(c) of Act

UBS and every person acting on its behalf are exempt from section 37A(1)(c) of the Act in respect of UBS instalment receipts.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that any registered prospectus relating to UBS instalment receipts contains prominent statements to the effect that—

- (a) if information or a statement in the registered prospectus becomes false or misleading in any material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances, the registered prospectus will be immediately withdrawn or amended; and
 - (b) until maturity of the UBS instalment receipts, UBS will lodge certificates with the Registrar that (in each case)—
 - (i) relate to the current registered prospectus relating to the UBS instalment receipts; and
 - (ii) are signed on behalf of UBS by at least 2 directors; and
 - (iii) are dated not more than 1 month after the end of each 6-month period following the date of registration of the prospectus relating to the UBS instalment receipts; and
 - (iv) state that, in the opinion of the directors of UBS, after due inquiry by them, the current registered prospectus relating to the UBS instalment receipts is not, at the date of the certificate, false or misleading in any material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
 - (v) state that, except to the extent permitted by exemptions granted by the Securities Commission in respect of the UBS instalment receipts, the information contained in the current registered prospectus complies with Schedule 1.
- (2) The exemption in clause 5 is subject to the condition that no UBS instalment receipt is allocated under a registered prospectus later than the maturity date of that UBS instalment receipt.

7 Exemptions from clauses 1(4), 4, 5A to 17, 20, 22 to 38, 41, and 42 of Schedule 1

UBS and every person acting on its behalf are exempted from clauses 1(4), 4, 5A to 17, 20, 22 to 38, 41, and 42 of Schedule 1 in respect of UBS instalment receipts.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the conditions that—
- (a) the registered prospectus relating to the UBS instalment receipts contains the following information:
 - (i) a brief description of the principles and procedures used to calculate the subscription price for a UBS instalment receipt; and
 - (ii) a statement of how an investor may ascertain the subscription price for a UBS instalment receipt; and
 - (iii) a brief summary of the consequences of a subscriber failing to pay the final instalment of a UBS instalment receipt; and
 - (iv) the date of the trust deed; and
 - (v) the names of the parties to the trust deed; and
 - (vi) brief particulars of the duties stated by the trust deed to be those of the trustee; and
 - (vii) a brief description of the principal terms of the trust deed; and
 - (viii) a statement that copies of the trust deed may be obtained on request to UBS and without charge; and
 - (ix) a statement specifying where copies of the trust deed may be obtained; and
 - (b) the trustee has been appointed as trustee in respect of the UBS instalment receipts, and both UBS and the trustee have signed a trust deed relating to the UBS instalment receipts; and
 - (c) at the date of the allotment of the UBS instalment receipts the trustee has complied, and undertakes in the trust deed to comply throughout the period of the UBS instalment receipts, with the conditions in paragraph (d); and
 - (d) for the purposes of paragraph (c) the trustee holds (subject to and in accordance with the trust deed) Telecom shares—
 - (i) sufficient to meet the obligation to deliver Telecom shares under the terms of the UBS instalment receipts; and

- (ii) for the exclusive benefit of holders of UBS instalment receipts, subject only to a charge in favour of UBS that secures payment of the final instalment of the UBS instalment receipts.
- (2) The condition in subclause (1)(d)(i) does not apply insofar as it requires the trustee to hold Telecom shares in respect of UBS instalment receipts beneficially owned by a UBS entity, provided that—
 - (a) those UBS instalment receipts are held by the trustee on behalf of the UBS entity; and
 - (b) the UBS entity may not demand a transfer of those UBS instalment receipts, or any corresponding Telecom shares, unless and until UBS transfers, or procures the transfer of, a sufficient number of Telecom shares to the trustee.

9 Further conditions of exemptions in clauses 5 and 7

The exemptions in clauses 5 and 7 are subject to the further conditions that—

- (a) the trustee appointed in respect of the UBS instalment receipts—
 - (i) is either a trustee corporation or a person approved for the purpose by the Commission in accordance with section 48 of the Act; and
 - (ii) has accepted the appointment; and
- (b) UBS does not discharge or retire the trustee from its position as trustee in respect of the UBS instalment receipts until—
 - (i) all functions and duties of that position have been fulfilled and performed; or
 - (ii) UBS has appointed another person who complies with the requirements of paragraph (a); and
- (c) if the appointed trustee otherwise ceases to be trustee, UBS immediately appoints another person as trustee who complies with the requirements of paragraph (a).

Dated at Wellington this 19th day of September 2006.

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

[Seal]

C A N Beyer,
Member.

Statement of reasons

This notice, which comes into force on notification in the *Gazette* and expires on 30 September 2008, exempts UBS Securities New Zealand Limited and any person acting on its behalf from various provisions of the Securities Act 1978 and the Securities Regulations 1983 in the respect of the offer to the public of instalment receipts for the delivery of ordinary shares in Telecom Corporation of New Zealand Limited.

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

- the exemption is consistent with the Commission's policy in cases where returns on the securities offered are dependent upon the performance of securities issued by a third party, and not on the performance of the offeror of the securities to which the exemption relates. In these circumstances much of the information that would otherwise be required about the offeror as issuer is likely to be irrelevant and potentially confusing for investors:
- the exemption will allow UBS to offer instalment receipts under a registered prospectus that contains information tailored to suit the nature of the product, which is intended to result in investors receiving information that is more relevant and useful than some of the disclosure that would be required without the exemption:
- the underlying securities must be held by a trustee authorised to act as a trustee under the Securities Act 1978. This provides investors with additional protection by ensuring that custody of the underlying securities is maintained by a person who is independent of the issuer:

- compliance with the NZX Participant Rules requires the market maker to be ready to buy and sell the instalment receipts on a continuous basis until maturity of the instalment receipts. The ability to allot the instalment receipts on an as-required basis until maturity will ensure that there is a supply of the instalment receipts to meet this obligation:
- as the prospectus will not contain financial statements of the issuer it would usually be valid for only 6 months. In this case, as financial information about the issuer is not material for investors, the issuer should not be penalised by the omission of the information. The conditions require the directors to register a certificate that the prospectus is not false or misleading in any material particular and the immediate withdrawal or amendment of the prospectus should the registered prospectus become false or misleading at any time.

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

Date of notification in *Gazette*: 21 September 2006.

This notice is administered by the Securities Commission.
