



Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Amendment 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 (Employee Share Purchase Schemes—Unlisted Companies) Exemption Amendment Notice 2006.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Principal notice amended

This notice amends the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2005.

4 Interpretation

- (1) The definition of **eligible person** in clause 4(1) is amended by adding “; or” to paragraph (d) and also by adding the following paragraph:

“(e) a company that is controlled by a person described in paragraph (a), (b), (c), or (d)”.

- (2) Clause 4(1) is amended by inserting the following definition in its appropriate alphabetical order:

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

5 New clause 5 substituted

Clause 5 is revoked and the following clause substituted:

“5 Exemptions

An unlisted company, any of its subsidiaries, a trustee of that company’s employee share purchase scheme, and any person acting on their behalf, 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 New clauses 13 to 15 added

The following clauses are added:

“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 this exemption 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 the unlisted company 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 15th day of December 2006.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette*, amends the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2005 by—

- adding companies controlled by an eligible person to the definition of **eligible person**; and
- exempting issuers from clause 21 of Schedule 1 of the Securities Regulations 1983 (the **Regulations**), clause 5(1)(c) of Schedule 3D of the Regulations, and regulation 17 of the Regulations.

The effect of these amendments is that—

- unlisted companies that offer securities under an employee share purchase scheme may provide certain information about the offer in a supplementary document and may use a template advertisement for the format of that document; and
- employers may offer securities to companies that are owned or controlled by eligible persons.

The Securities Commission considers that the amendments to the principal notice are appropriate for the following reasons:

- the Commission's class exemption for employee share purchase schemes seeks to lower compliance costs for companies offering their employees participation in share ownership plans while requiring these companies to provide employees with the information they need to make an

informed decision as to whether or not to join an employee share purchase scheme:

- the terms on which any employee may be offered securities under an employee share purchase scheme can vary according to the circumstances of the employee and his or her remuneration package. In such cases employers are not able to set out in a single prospectus or investment statement all of the terms of the offer, as required by the Securities Regulations 1983:
- the amendments allow issuers that offer differing terms of participation to various employees to prepare personalised supplements to the prospectus and investment statement, containing the terms or other information personal to each employee. It would be impractical in such cases for employers to prepare a separate prospectus for each employee. The conditions of the exemption require the employer to ensure that the prospectus and investment statement, together with the personalised document, contain all the information that each investor is usually entitled to receive:
- offers under employee share purchase schemes may be made to a large number of employees. Allowing employers to create a template advertisement for the personalised offer document, in which the only variable information is the information personal to the person to whom the offer is made, is more efficient and cost-effective than requiring a regulation 17 certificate in respect of each personalised offer document:
- the amendment extending the class of eligible persons allows employees to own shares through a company structure, in addition to direct ownership or ownership through a trust as already allowed under the exemption. This allows employees greater flexibility in how they manage their own shareholdings. The extension does not alter the policy of the exemption as the recipient company must be controlled by a person who qualifies as an eligible person under the notice.

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

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

This notice is administered by the Securities Commission.

