

**Reprint
as at 23 January 2009**



**Financial Reporting Act (Overseas
Issuers—United States of America)
Exemption Notice 2007**

(SR 2007/171)

Financial Reporting Act (Overseas Issuers—United States of America)
Exemption Notice 2007: revoked, on 23 January 2009, by clause 8 of the
Financial Reporting Act (Overseas Issuers) Exemption Notice 2009 (SR
2009/2).

Pursuant to section 35A of the Financial Reporting Act 1993, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

Contents

| | Page |
|--|------|
| 1 Title | 2 |
| 2 Commencement | 2 |
| 3 Expiry | 2 |
| 4 Application | 2 |
| 5 Interpretation | 2 |
| 6 Exemptions for directors of exempt issuers | 3 |
| 7 Conditions | 4 |

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

The Financial Reporting Act (Overseas Issuers—United States of America) Exemption Notice 2007 is administered by the Securities Commission.

Notice

1 Title

This notice is the Financial Reporting Act (Overseas Issuers—United States of America) Exemption Notice 2007.

2 Commencement

This notice comes into force on its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 30 June 2012.

4 Application

An exemption granted by this notice applies to the following accounting periods of an exempt issuer:

- (a) an accounting period of the exempt issuer that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if,—
 - (i) in the case of copies of financial statements or group financial statements for that period that are required to be delivered for registration under section 18 of the Act, the exemption is granted before those documents are required to be delivered for registration under that section; or
 - (ii) in any other case, the exemption is granted before the financial statements or group financial statements for that period are required to be completed; and
- (b) subsequent accounting periods.

5 Interpretation

In this notice, unless the context otherwise requires,—

Act means the Financial Reporting Act 1993

approved auditor means an accountant who is qualified under Part 210 of the Code of Federal Regulations (US)

exempt issuer means an issuer that—

- (a) is incorporated in the United States of America; and

- (b) has specified financial statements prepared in respect of it; and
- (c) offers securities to the public in New Zealand in reliance on—
 - (i) the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 (or a notice that, with or without modification, replaces or corresponds to that notice); or
 - (ii) the Securities Act (Overseas Listed Issuers) Exemption Notice 2002 (or a notice that, with or without modification, replaces or corresponds to that notice); and
- (d) does not offer securities to the public in New Zealand otherwise than in reliance on either or both of the notices referred to in paragraph (c)

specified financial statements, in relation to an exempt issuer, means the group financial statements that are required to be prepared in respect of the exempt issuer in accordance with the laws of the United States of America (including the Securities Exchange Act of 1934 (US) and the Code of Federal Regulations (US))

US GAAP means generally accepted accounting practice in the United States of America.

6 Exemptions for directors of exempt issuers

- (1) Every director of an exempt issuer is exempted from the following provisions in respect of the exempt issuer:
 - (a) sections 10(1), 11, 14, and 16 of the Act; and
 - (b) section 13 of the Act to the extent that it requires the group financial statements prepared in relation to the exempt issuer to comply with section 14 of the Act; and
 - (c) section 15(1) of the Act to the extent that it requires financial statements of the exempt issuer to be audited; and
 - (d) section 18(1) of the Act to the extent that it requires copies of the financial statements of the exempt issuer, together with a copy of the auditor's report on those statements, to be delivered to the Registrar for registration.

- (2) Subclause (1)(c) and (d) do not apply in relation to the group financial statements that are required to be prepared in relation to the exempt issuer under section 13 of the Act.

7 Conditions

The exemptions in clause 6 are subject to the conditions that—

- (a) the specified financial statements of the exempt issuer comply with US GAAP; and
- (b) if, in complying with US GAAP, the specified financial statements do not give a true and fair view of the matters to which they relate, the directors of the exempt issuer add information and explanations that will give a true and fair view of those matters; and
- (c) the specified financial statements are accompanied by a report by an approved auditor that complies with the requirements of Part 210 of the Code of Federal Regulations (US).

Dated at Wellington this 25th day of June 2007.

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 its notification in the *Gazette* and expires on 30 June 2012, exempts the directors of certain issuers

incorporated in the United States of America (the **United States**) from various provisions of the Financial Reporting Act 1993 (the **Act**).

The effect of the exemptions is to allow issuers incorporated in the United States that offer securities in New Zealand under the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 or the Securities Act (Overseas Listed Issuers) Exemption Notice 2002 (the **Securities Act exemption notices**) to provide the financial statements that they are required to prepare under financial reporting requirements in the United States. The principal differences in financial statements provided by issuers relying on the exemptions are—

- the directors of the issuer will prepare and register consolidated financial statements only (not stand-alone parent company financial statements):
- the consolidated financial statements will comply with generally accepted accounting practice in the United States (rather than generally accepted accounting practice in New Zealand):
- the consolidated financial statements will be audited in accordance with the requirements set out in United States legislation and the auditor's report will provide the information required by United States legislation instead of the Act.

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

- there will not be any significant detriment to subscribers for the exempt issuer's securities who are members of the public in New Zealand since the exemptions only apply to subscribers for offers of securities made in reliance on the Securities Act exemption notices. These notices allow overseas issuers to provide offer documents that comply with overseas requirements (including in relation to financial statements). Therefore, the ongoing financial disclosure provided under the exemptions is consistent with the initial offer documents provided to the subscribers; and
- the Commission has had regard to the financial reporting and audit requirements that must be complied with by United States issuers who rely on the exemptions. The exemptions are limited to issuers that must comply with the financial

reporting and audit requirements set out in the Securities Exchange Act of 1934 (US) and the Code of Federal Regulations (US); and

- the Commission is satisfied that the consolidated financial statements required to be prepared under United States financial reporting laws provide sufficient information to avoid any detriment to subscribers who invest in issuers incorporated in the United States; and
- the exemptions address the particular difficulties experienced by United States issuers that issue securities in New Zealand. The exemptions are not broader than what is reasonably necessary to address these difficulties and still require that group financial statements be filed in New Zealand.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 26 June 2007.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Financial Reporting Act (Overseas Issuers—United States of America) Exemption Notice 2007. The reprint incorporates all the amendments to the notice as at 23 January 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/legislation/reprints.shtml> or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint
(most recent first)***

Financial Reporting Act (Overseas Issuers) Exemption Notice 2009 (SR 2009/2): clause 8
