

Reprint

as at 1 January 2009

Securities Act (Calibre Asset Services Limited) Exemption Amendment Notice 2005

(SR 2005/145)

Securities Act (Calibre Asset Services Limited) Exemption Amendment Notice 2005: expired, on 1 January 2009, pursuant to clause 3 of the Securities Act (Calibre Asset Services Limited) Exemption Notice 2004 (SR 2004/4).

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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Note

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

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

This notice is administered by the Securities Commission.

Notice

1 Title

- (1) This notice is the Securities Act (Calibre Asset Services Limited) Exemption Amendment Notice 2005.
- (2) In this notice, the Securities Act (Calibre Asset Services Limited) Exemption Notice 2004 (SR 2004/4) is called “the principal notice”.

2 Commencement

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

3 Interpretation

Clause 4(1) of the principal notice is amended by revoking the definition of **specified participatory securities**, and substituting the following definition:

“**specified participatory securities** means any interests or rights to participate in any capital, assets, earnings, or other property of an Australian unit trust listed in the Schedule; and includes any renewal or variation of the terms or conditions of any of those interests or rights”.

4 Exemptions

Clause 5 of the principal notice is amended by inserting, after paragraph (b), the following paragraph:

“(ba) clause 1(4) of Schedule 3 of the Regulations; and”.

5 New clause 8 inserted

The principal notice is amended by inserting, after clause 7, the following clause:

“8 Condition of exemption in clause 5(ba)

The exemption in clause 5(ba) is subject to the condition that the registered prospectus relating to the specified participatory securities contains a description of the manner by which the price to be paid for the specified participatory securities is fixed.”

6 Unit trusts

- (1) The heading to the Schedule of the principal notice is amended by omitting the word “Unit”, and substituting the words “Australian unit”.
- (2) The Schedule of the principal notice is amended by omitting the words “a unit” in each place where those words appear, and substituting in each case the words “an Australian unit”.
- (3) The Schedule of the principal notice is amended by inserting, after the item relating to the Escalator Trust, the following item:
 - FiRST UP No. 1 Fund, an Australian unit trust established by deed dated 29 November 2002

Dated at Wellington this 7th day of June 2005.

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 (Calibre Asset Services Limited) Exemption Notice 2004 to—

- insert an exemption from clause 1(4) of Schedule 3 of the Securities Regulations 1983 (which concerns the price to be paid for the securities being offered); and
- name the FiRST UP No. 1 Fund as an Australian unit trust for the purposes of that notice; and
- clarify that the securities concerned are interests or rights to participate in any capital, assets, earnings, or other property of Australian unit trusts listed in the Schedule.

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

- the FiRST UP No. 1 Fund is similar to the other Australian unit trusts already exempted by the notice:
- the requirements of section 54 of the Securities Act 1978 can be unsuited to continuous offers, and regular statements of holdings can provide more useful information for investors than individual certificates:
- the conditions of exemption reduce compliance costs for Calibre Asset Services Limited and aim to keep investors informed on a regular basis as to their holdings in the Australian unit trusts:
- the Australian unit trusts' funds are invested in market securities for which it is very difficult to prepare prospective financial information:
- in respect of the FiRST UP No. 1 Fund, the cost of holding a meeting to approve the financial statements would appear to outweigh the benefits to unit holders:
- the statutory supervisor and holders of one-tenth or more of the issued units are still able to call a meeting under clause 4(1)(b) and (2) of Schedule 7 of the Securities Regulations 1983 to give opinions or directions in relation to the exercise of the statutory supervisor's powers:
- in respect of the exemption from clause 1(4) of Schedule 3 of the Securities Regulations 1983, the price of the securities being offered cannot be determined at the time that the secur-

ities are offered due to the nature of the Australian unit trusts. The condition of this exemption requires that investors receive certain relevant information about the pricing mechanism for the securities. This is consistent with the obligations of a New Zealand unit trust:

- Australian unit trusts appear to be more akin to a New Zealand unit trust than they are to other participatory schemes. These exemptions provide equivalent regulatory treatment.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 9 June 2005.

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Notes

1 *General*

This is an eprint of the Securities Act (Calibre Asset Services Limited) Exemption Amendment Notice 2005. It incorporates all the amendments to the notice as at 1 January 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 4 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Securities Act (Calibre Asset Services Limited) Exemption Notice 2004 (SR 2004/4): clause 3
