

**Reprint
as at 1 November 2010**



**Securities Act (NZX—Share and
Unit Purchase Plans) Exemption
Amendment Notice 2009**

(SR 2009/267)

Securities Act (NZX—Share and Unit Purchase Plans) Exemption Amendment Notice 2009: expired, on 1 November 2010, pursuant to clause 3 of the Securities Act (NZX—Share and Unit Purchase Plans) Exemption Notice 2005 (SR 2005/289).

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 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.

This notice is administered by the Securities Commission.

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Notice

1 Title

This notice is the Securities Act (NZX—Share and Unit Purchase Plans) Exemption Amendment Notice 2009.

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 (NZX—Share and Unit Purchase Plans) Exemption Notice 2005.

4 Interpretation

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

“**private placement** means the placement of securities of the same class as the specified securities to persons who are not members of the public in terms of section 3(2)(a) of the Act”.

5 Requirements for share purchase plan and unit purchase plan

- (1) Clause 5(1)(e) is revoked and the following paragraph substituted:

“(e) the subscription price must be equal to or less than the lower of the following:

- “(i) the average end of day market price of securities of the same class as the specified securities during a period specified in the share purchase plan or the unit purchase plan that falls within the period of 30 days immediately before either—
“(A) the date of the offer to subscribe for the specified securities; or

“(B) the date of the issue of the specified securities:

“(ii) the lowest price paid by investors in a private placement (if the offer under the share purchase plan or the unit purchase plan is made at the same time as, or within 30 days after, a private placement); and”.

- (2) Clause 5(1)(h) is amended by omitting “\$5,000” and substituting “\$15,000”.
- (3) Clause 5(2) is amended by omitting “\$5,000” in each place where it appears and substituting in each case “\$15,000”.

6 New clause 6A inserted

The following clause is inserted after clause 6:

“6A Exemptions do not apply if any securities of NZX issuer have been suspended for 5 trading days or more within previous 12 months

Clause 6 does not apply in respect of any securities of a NZX issuer if, at any time within the 12-month period before the offer is first made under the share purchase plan or the unit purchase plan, trading in any securities of the NZX issuer on a securities market operated by NZX has been suspended for a total period of 5 trading days or more (whether the trading has been suspended on 1 or more occasions).”

Dated at Wellington this 21st day of September 2009.

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 (NZX—Share and Unit Purchase Plans) Exemption Notice 2005 to—

- change the pricing condition that applies for a share purchase plan or a unit purchase plan to take into account the price paid by investors under a private placement; and
- increase the annual cap for offers under the principal notice from \$5,000 to \$15,000; and
- prevent the exemptions from applying if any securities of the NZX issuer have been suspended for 5 trading days or more within the last 12 months.

The Securities Commission considers that it is appropriate to amend the principal notice because—

- the changes to the notice are consistent with changes recently made to the equivalent class order made by the Australian Securities and Investments Commission and maintain parity in trans-Tasman rules for share and unit purchase plans:
- the increased annual cap for offers under the notice will increase NZX listed issuers' ability to extend share purchase plans to retail investors at low cost. The \$15,000 cap remains consistent with the policy objective of limiting the risk to individual investors by capping participation at a relatively modest amount:
- the conditions of the exemptions limit offers made under the notice to people who already hold securities of the same class as those being offered and require issuers to provide investors with certain important information about the offer. At the time the price for the new securities is set, the directors of the issuer must not have any information that is not publicly available and that would, or would be likely to, have a material effect on the price of the securities:
- the changes to the application and conditions of the exemptions increase protection for investors as follows:

- any issuer whose securities have been suspended from quotation for a period of more than 5 trading days in the preceding 12 months will not be able to use the notice, but will need to apply to the Commission for an individual exemption, allowing the Commission to assess the reasons for the suspensions and whether, at the time of the intended offer, the market appears to be fully informed about the affairs of the issuer:
- the new condition concerning pricing applies where a share or unit purchase plan follows a private placement and requires that retail investors can subscribe for securities at a price no higher than that paid by the investors under the private placement.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 24 September 2009.

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Notes

1 *General*

This is a reprint of the Securities Act (NZX—Share and Unit Purchase Plans) Exemption Amendment Notice 2009. The reprint incorporates all the amendments to the notice as at 1 November 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

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/editorial-conventions/> or Part 8 of the *Tables of New Zealand 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)*

Securities Act (NZX—Share and Unit Purchase Plans) Exemption Notice 2005
(SR 2005/289): clause 3
