

**Reprint  
as at 1 January 2011**



**Securities Act (Fletcher Building  
Limited) Exemption Notice 2009**

(SR 2009/68)

Securities Act (Fletcher Building Limited) Exemption Notice 2009: expired,  
on 1 January 2011, by clause 3.

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**

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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.**

**1 Title**

This notice is the Securities Act (Fletcher Building Limited) Exemption Notice 2009.

**2 Commencement**

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

**3 Expiry**

This notice expires on the close of 31 December 2010.

**4 Interpretation**

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

**Act** means the Securities Act 1978

**custodian** means a holder of Fletcher Building ordinary shares—

(a) that—

(i) is a trustee corporation or a nominee company; and

(ii) holds those shares by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; or

(b) that holds those shares by reason only that the person is a bare trustee of a trust to which the shares are subject

**Fletcher Building** means Fletcher Building Limited

**Fletcher Building ordinary shares** means ordinary shares in Fletcher Building

**NZX** means NZX Limited

**Regulations** means the Securities Regulations 1983

**share purchase plan** means a share purchase plan that complies with clause 5

**specified securities** means Fletcher Building ordinary shares that are to be—

(a) issued by Fletcher Building under a share purchase plan to existing holders of Fletcher Building ordinary shares; and

(b) listed on a securities market operated by NZX

**subscription price** means the subscription price for the specified 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 Requirements for share purchase plan**

- (1) For the purposes of this notice, a share purchase plan must comply with the following requirements:
- (a) the right to subscribe for the specified securities must be offered to all security holders holding Fletcher Building ordinary shares, except a security holder in a jurisdiction outside New Zealand who is excluded by Fletcher Building to avoid a risk of breaching the law in that jurisdiction; and
  - (b) the right to subscribe for the specified securities must be offered on the same terms and conditions to all the security holders to whom the offer is made; and
  - (c) the right to subscribe for the specified securities must not be renounceable; and
  - (d) the specified securities issued under the share purchase plan to holders of Fletcher Building ordinary shares must enjoy the same rights—
    - (i) as each other; and
    - (ii) as the Fletcher Building ordinary shares that qualify a security holder to subscribe for the specified securities; and
  - (e) the subscription price must be less than the average end of day market price of Fletcher Building ordinary shares during a period specified in the share purchase plan that falls within the period of 30 days immediately before either—
    - (i) the date of the offer to subscribe for the specified securities; or
    - (ii) the date of the issue of the specified securities; and
  - (f) the subscription price must be fixed before allotment of the specified securities; and

- (g) the subscription price must be disclosed in accordance with clause 7(2) before allotment of the specified securities; and
  - (h) in any 12-month period, the total subscription price of the specified securities allotted to a security holder must not be more than \$12,500.
- (2) Despite subclause (1)(h), Fletcher Building may allot to a custodian in any 12-month period specified securities the total subscription price of which is more than \$12,500 if—
- (a) the custodian certifies the following in writing to Fletcher Building:
    - (i) that the custodian holds Fletcher Building ordinary shares directly or indirectly as a custodian for beneficial owners; and
    - (ii) the number of those beneficial owners; and
    - (iii) in respect of each of the beneficial owners, how many specified securities the beneficial owner, or its agent, has instructed the custodian to accept on behalf of that beneficial owner; and
    - (iv) that the custodian undertakes not to accept on behalf of any of those beneficial owners for which it acts directly or indirectly as a custodian, in any 12-month period, specified securities the total subscription price of which is more than \$12,500; and
  - (b) Fletcher Building is reasonably satisfied that in any 12-month period the total subscription price of the specified securities allotted to any beneficial owner is not more than \$12,500, whether those specified securities are allotted—
    - (i) through the custodian; or
    - (ii) if the beneficial owner is also a security holder, in their own right as a security holder.

**6 Exemptions from sections 37 and 37A of Act and Regulations (except regulation 8)**

Fletcher Building and every person acting on its behalf are exempted from sections 37 and 37A of the Act and the Regulations (except regulation 8) in respect of the specified securities.

**7 Conditions of exemptions**

- (1) The exemptions in clause 6 are subject to the condition that a person who subscribes for specified securities under a share purchase plan must, before subscribing, have received a document that—
- (a) is signed by each of the directors of Fletcher Building or his or her agent authorised in writing; and
  - (b) contains the offer to subscribe for specified securities under the share purchase plan; and
  - (c) describes the procedure for fixing the subscription price; and
  - (d) specifies the subscription price if the subscription price was fixed before the document is sent to the person; and
  - (e) states when the subscription price was or will be fixed; and
  - (f) describes when and how payment of subscription monies is to be made; and
  - (g) describes the relationship between the subscription price and the market price of the specified securities; and
  - (h) warns that the market price of the specified securities may change between the date of the offer and the date when the specified securities are allotted, and describes the effect this would have on the price or value of the specified securities that a subscriber would receive; and
  - (i) states that a subscriber may obtain from Fletcher Building, free of charge, Fletcher Building's most recent annual report and financial statements.
- (2) The exemptions in clause 6 are subject to the condition that,—
- (a) in the case of the subscription price being fixed before the document referred to in subclause (1) is sent, Fletcher Building must, as soon as practicable after the document is sent, supply to NZX a statement that complies with subclause (3) for the purpose of that statement being made available to participants in the securities market operated by NZX on which the Fletcher Building ordinary shares are listed; or
  - (b) in any other case, Fletcher Building must, as soon as practicable after the subscription price has been fixed,

supply to NZX a statement that complies with subclause (3) for the purpose of that statement being made available to participants in the securities market operated by NZX on which the Fletcher Building ordinary shares are listed.

- (3) For the purposes of subclause (2), the statement must—
- (a) specify the subscription price; and
  - (b) be signed by each of the directors of Fletcher Building or his or her agent authorised in writing; and
  - (c) certify that when the subscription price was fixed Fletcher Building had no information not publicly available that would, or would be likely to, have a material effect on the market price of the specified securities if the information were publicly available.
- (4) The exemptions in clause 6 are subject to the condition that Fletcher Building must not allot the specified securities if, when the subscription price was fixed, Fletcher Building had information not publicly available that would, or would be likely to, have a material effect on the market price of the specified securities if the information were publicly available.

Dated at Wellington this 6th day of April 2009.

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

[Seal]

J Diplock,  
Chairperson.

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### Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 December 2010.

This notice applies to the offer of listed ordinary shares by Fletcher Building Limited (**Fletcher Building**) under a qualifying share purchase plan. It exempts Fletcher Building, subject to conditions, from sections 37 and 37A of the Securities Act 1978 and from the Securities Regulations 1983 (other than regulation 8). One of the conditions of the exemptions is that Fletcher Building must provide investors with an offer document that contains details of the share purchase plan.

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

- the exemptions are on the same conditions as the Commission's class exemption for share purchase plans, but permit participation to a limit of \$12,500 per shareholder, rather than the \$5,000 per shareholder allowed under the class exemption. The \$12,500 limit remains consistent with the policy objective of limiting the risk to individual shareholders by capping participation at a relatively modest amount. The conditions of the exemptions limit the offer to shareholders who already hold ordinary shares in Fletcher Building, and require Fletcher Building to provide investors with certain important information about the offer. At the time the price for the new shares is set, Fletcher Building must not have any information that is not publicly available and that would, or would be likely to, have a material effect on the share price:
- the exemptions give Fletcher Building shareholders the opportunity to participate in a rights offer following a large institutional placement, and thus limit the potential dilution caused by that placement, while reducing the cost for Fletcher Building in making this offer:
- Fletcher Building is listed in both Australia and New Zealand and the offer is intended to be made in both countries. The exemptions are consistent with relief granted by the Australian Securities and Investments Commission for the offer

in Australia. The exemptions therefore maintain consistency  
in trans-Tasman rules for Fletcher Building.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 9 April 2009.

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## **Notes**

### **1 *General***

This is a reprint of the Securities Act (Fletcher Building Limited) Exemption Notice 2009. The reprint incorporates all the amendments to the notice as at 1 January 2011, 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 (Fletcher Building Limited) Exemption Notice 2009  
(SR 2009/68): clause 3

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