

**Reprint
as at 10 October 2013**



**Securities Act (Flight Centre (NZ)
Limited) Exemption Notice 2008**

(SR 2008/385)

Securities Act (Flight Centre (NZ) Limited) Exemption Notice 2008: expired,
on 10 October 2013, 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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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

note means a note that is issued by Flight Centre under the employee note scheme

NZ IAS 34 means the financial reporting standard known as the New Zealand Equivalent to International Accounting Standard 34 (Interim Financial Reporting) that has been approved under the Financial Reporting Act 1993

offer means the offer of notes under the employee note scheme

Regulations means the Securities Regulations 1983.

- (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 Exemptions

Flight Centre and every person acting on its behalf are exempted from the following provisions of the Act and the Regulations in respect of any interest in or right to a note:

- (a) section 37A(1)(c) of the Act; and
- (b) regulation 17 of the Regulations, in relation to advertisements containing information personal to a person to whom the advertisement is distributed; and
- (c) clauses 1(4), 5 to 11, 13(2), 15 to 32, and 34 to 36 of Schedule 2 of the Regulations; and
- (d) clause 14(1) of Schedule 2 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 note scheme and information personal to the person to whom the registered prospectus is distributed.

6 Condition that notes allotted only to eligible person

The exemptions in clause 5 are subject to the condition that the notes are only allotted to a person who is an eligible person at the time of allotment of the notes.

7 Condition that information sent to subscribers

The exemptions in clause 5 are subject to the condition that, before an eligible person subscribes for the notes, Flight Centre provides that person with the following:

- (a) a copy of the most recent audited consolidated financial statements of the borrowing group that comply with the Financial Reporting Act 1993; and
- (b) if the notes are offered more than 9 months after the date of the most recent audited consolidated financial statements of the borrowing group, a copy of interim financial statements for the most recently completed financial half-year of the borrowing group that complies with FRS-24 or NZ IAS 34; and
- (c) Flight Centre's most recent annual report, which includes or is accompanied by a statement setting out the following matters:
 - (i) particulars of entries in the interests register concerning directors of Flight Centre made during the accounting period to which the report relates; and
 - (ii) the date of, names of the parties to, and general nature of any material contract (excluding a contract entered into in the ordinary course of business) entered into by a member of the borrowing group at any time in the 2 years preceding a date not more than 20 working days before the date the annual report is made available to shareholders of Flight Centre in accordance with section 209 of the Companies Act 1993; and
 - (iii) a brief description of any legal proceedings or arbitrations concerning the borrowing group that are pending at a date not more than 20 working days before the date the annual report is made available to shareholders of Flight Centre in accordance with section 209 of the Companies Act 1993 and that might have a material adverse effect on the borrowing group; and
 - (iv) a statement by 2 directors of Flight Centre as to whether, after inquiry by them in relation to the period between the date of the latest statement of financial position attached to, or contained in, the annual report and a date not more than 20 working days before the date the annual report is

made available to shareholders of Flight Centre in accordance with section 209 of the Companies Act 1993, there have, in their opinion, arisen any circumstances that materially adversely affect the borrowing group's—

- (A) trading or profitability; or
 - (B) asset value; or
 - (C) ability to pay liabilities due within the next 12 months; and
- (v) brief particulars of any restrictions on the ability of any member of the borrowing group to borrow, being restrictions that result from any undertaking given, or contract or deed entered into, by the member, and that are not set out elsewhere in the registered prospectus or annual report.

8 Condition about redemption arrangements

The exemptions in clause 5 are subject to the condition that the investment statement relating to the notes contains a description of the arrangements for holders of the notes to redeem the notes (before and after they cease to be eligible persons).

9 Condition that terms of employee note scheme available

The exemptions in clause 5 are subject to the condition that the investment statement relating to the notes contains—

- (a) a brief description of the terms of the employee note scheme; and
- (b) a statement of the place or places where the terms of the employee note scheme are available free of charge to an eligible person.

10 Condition that Flight Centre undertakes to redeem notes

The exemptions in clause 5 are subject to the condition that Flight Centre undertakes to redeem the notes held by an eligible person if that person ceases to be an eligible person.

11 Condition that offer accompanied by statement as to fixed interest and returns

The exemptions in clause 5 are subject to the condition that the offer of the notes is accompanied by a prominent statement to the effect that the notes do not earn fixed interest and that the returns on the notes may vary depending on the performance of the relevant business unit to which the notes relate.

12 Further condition of exemption from regulation 17 of Regulations

The exemption in clause 5(b) from regulation 17 of the Regulations is subject to the further condition that Flight Centre has complied with regulation 17 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.

13 Further condition of exemption from clause 1(4) of Schedule 2 of Regulations

The exemption in clause 5(c) from clause 1(4) of Schedule 2 of the Regulations is subject to the further condition that the registered prospectus states the formula or method by which the price or consideration for the notes will be determined.

14 Further conditions of exemption from clause 14(1) of Schedule 2 of Regulations

The exemption in clause 5(d) from clause 14(1) of Schedule 2 is subject to the following further conditions:

- (a) Flight Centre gives to every eligible person to whom the offer is made a document that contains the information that, but for the exemption under clause 5(d), would be required by clause 14(1) of Schedule 2 of the Regulations to be contained in the registered prospectus; and
- (b) the registered prospectus contains all terms of the offer and of the notes except—
 - (i) those implied by law; or
 - (ii) those set out in a document that is registered with a public official, is available for inspection, and is referred to in the registered prospectus.

Dated at Wellington this 7th day of October 2008.

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

[Seal]

Neville Todd,
Member.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2013, exempts, subject to conditions, Flight Centre (NZ) Limited (**Flight Centre**) and every person acting on its behalf from certain provisions of the Securities Act 1978 and the Securities Regulations 1983 (the **Regulations**) in respect of the offer of notes (the **notes**) under Flight Centre's employee note scheme (the **scheme**).

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

- although Flight Centre is making an offer of debt not equity, the return on the notes is linked to performance of the employee's business unit. Therefore the scheme encourages the employee's involvement in the performance of the business unit, in a manner similar to that of an employee share purchase scheme:
- the exemptions seek to lower Flight Centre's costs of compliance, while requiring Flight Centre to provide employees with the information that they need to make an informed decision as to whether to subscribe for notes under the scheme:
- the terms on which an employee may be offered notes under the scheme may vary according to the circumstances of the

employee, his or her remuneration package, and the business unit to which the employee belongs. As a result, Flight Centre is not able to set out in a single prospectus or investment statement all the terms of the offer as required by the Regulations:

- the exemptions in this notice allow Flight Centre to prepare personalised supplements to the prospectus and investment statement, containing the terms or other information personal to each employee. It would be impractical for Flight Centre to prepare a separate prospectus for each employee:
- allowing Flight Centre to create a template 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.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 9 October 2008.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Flight Centre (NZ) Limited) Exemption Notice 2008 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Securities Act (Flight Centre (NZ) Limited) Exemption Notice 2008 (SR 2008/385): clause 3
