

**Reprint
as at 1 December 2016**



**Securities Act (Takeovers) Exemption Notice 2013
(SR 2013/55)**

Securities Act (Takeovers) Exemption Notice 2013: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Note

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

Notice

1 Title

This notice is the Securities Act (Takeovers) Exemption Notice 2013.

2 Commencement

This notice comes into force on 1 April 2013.

3 Revocation

This notice is revoked on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

Code means the Takeovers Code under the Takeovers Act 1993

code offer—

(a) means a full offer or a partial offer for voting securities of a target company made—

(i) in accordance with the Code; or

(ii) if the offer is being made in reliance upon an exemption granted under section 45 of the Takeovers Act 1993, in accordance with the terms and conditions of the exemption and the applicable provisions of the Code from which there is no exemption; and

(b) includes an acquisition of voting securities in a target company under Part 7 of the Code

full offer has the same meaning as in rule 3(1) of the Code

listed company means a company that is a party to a listing agreement with NZX Limited

listed unit trust means a unit trust if the manager of that trust is a party to a listing agreement with NZX Limited under which the units in the trust are, or are to be, quoted

NZX market means any securities market operated by NZX Limited

offer document has the same meaning as in rule 3(1) of the Code

offeror means a person who makes a code offer

partial offer has the same meaning as in rule 3(1) of the Code

quoted securities means equity securities, debt securities, or units in a unit trust that—

(a) are issued by a listed company or by a manager of a listed unit trust; and

- (b) are quoted on an NZX market at the time of the making of a code offer; and
- (c) are offered as consideration or part consideration for a code offer

Regulations means the Securities Regulations 2009

takeover notice has the same meaning as in rule 3(1) of the Code

target company has the same meaning as in rule 3(1) of the Code

unquoted securities means equity securities, debt securities, or units in a unit trust, other than quoted securities, that are offered as consideration or part consideration for a code offer

voting security has the same meaning as in rule 3(1) of the Code.

- (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 from certain prospectus content requirements for issuers of unquoted equity securities

Every issuer and every person acting on its behalf are exempted from the following provisions of Schedule 1 of the Regulations in the case of unquoted securities that are equity securities:

- (a) clauses 1(4), 2(a) and (b), and 11(1)(b):
- (b) clause 12(3) to the extent that that subclause relates to the target company.

6 Conditions of exemptions in clause 5

- (1) The exemption from clause 1(4) of Schedule 1 of the Regulations is subject to the condition that the registered prospectus for the offer of unquoted securities contains the following statement:

“Information about the price or other consideration to be paid or provided for the securities is contained in [*specify clause or paragraph reference*] of the takeover offer document for this offer.”
- (2) The exemption from clause 11(1)(b) of Schedule 1 of the Regulations is, if the issuer is also the offeror, subject to the condition that the registered prospectus for the offer of unquoted securities contains a statement of—
 - (a) the expected effect on the operations of the target company of the acquisition by the issuer of securities in the target company resulting from the proposed code offer; and
 - (b) the plans of the directors of the issuer for the target company.
- (3) The exemption from clause 12(3) of Schedule 1 of the Regulations is subject to the condition that the registered prospectus for the offer of unquoted securities—

- (a) contains all the information required under clause 12(3)(a) to (f) of that schedule relating to the target company that is within the knowledge, possession, or control of the issuer and that is not already contained in the offer document; and
 - (b) specifies the information required under clause 12(3)(a) to (f) of that schedule relating to the target company that is contained in the offer document together with cross-references; and
 - (c) specifies the information required under clause 12(3)(a) to (f) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.
- (4) The exemptions from clauses 1(4), 2(a) and (b), 11(1)(b), and 12(3) of Schedule 1 of the Regulations are subject to the condition that the registered prospectus for the offer of unquoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

7 Exemptions from certain prospectus content requirements for issuers of unquoted debt securities

Every issuer and every person acting on its behalf are exempted from the following provisions of Schedule 2 of the Regulations in the case of unquoted securities that are debt securities:

- (a) clauses 1(4) and 2(a) and (b):
- (b) clause 9(3) to the extent that that subclause relates to the target company.

8 Conditions of exemptions in clause 7

- (1) The exemption from clause 1(4) of Schedule 2 of the Regulations is subject to the condition that the registered prospectus for the offer of unquoted securities contains the following statement:
- “Information about the price or other consideration to be paid or provided for the securities is contained in [*specify clause or paragraph reference*] of the takeover offer document for this offer.”
- (2) The exemption from clause 9(3) of Schedule 2 of the Regulations is subject to the conditions that the registered prospectus for the offer of unquoted securities—
- (a) contains all the information required under clause 9(3)(a) to (f) of that schedule relating to the target company that is within the knowledge, possession, or control of the issuer and that is not already contained in the offer document; and
 - (b) specifies the information required under clause 9(3)(a) to (f) of that schedule relating to the target company that is contained in the offer document together with cross-references; and

- (c) specifies the information required under clause 9(3)(a) to (f) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.
- (3) The exemptions from clauses 1(4), 2(a) and (b), and 9(3) of Schedule 2 of the Regulations are subject to the condition that the registered prospectus for the offer of unquoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

9 Exemptions from certain prospectus content requirements for issuers of unquoted units in unit trust

Every issuer and every person acting on its behalf are exempted from the following provisions of Schedule 4 of the Regulations in the case of unquoted securities that are units in a unit trust:

- (a) clause 1(6):
- (b) clause 11(3) to the extent that that subclause relates to the target company.

10 Conditions of exemptions in clause 9

- (1) The exemption from clause 1(6) of Schedule 4 of the Regulations is subject to the condition that the registered prospectus for the offer of unquoted securities contains the following statement:

“Information about the price or other consideration to be paid or provided for the securities is contained in [*specify clause or paragraph reference*] of the takeover offer document for this offer.”
- (2) The exemption from clause 11(3) of Schedule 4 of the Regulations is subject to the conditions that the registered prospectus for the offer of unquoted securities—
 - (a) contains all the information required under clause 11(3)(a) to (d) of that schedule relating to the target company that is within the knowledge, possession, or control of the issuer and that is not already contained in the offer document; and
 - (b) specifies the information required under clause 11(3)(a) to (d) of that schedule relating to the target company that is contained in the offer document together with cross-references; and
 - (c) specifies the information required under clause 11(3)(a) to (d) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.
- (3) The exemptions from clauses 1(6) and 11(3) of Schedule 4 of the Regulations are subject to the condition that the registered prospectus for the offer of un-

quoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

11 Exemptions from clauses 1(1) and 5 of Schedule 13 of Regulations for issuers of unquoted securities

- (1) Every issuer and every person acting on its behalf are exempted, in the case of unquoted securities, from the requirement to include in an investment statement in the list of questions referred to in clause 1(1) of Schedule 13 of the Regulations the question “*How much do I pay?*”.
- (2) Every issuer and every person acting on its behalf are exempted, in the case of unquoted securities, from clause 5 of Schedule 13 of the Regulations and the italicised question above that clause.

12 Conditions of exemptions in clause 11

- (1) The exemption in clause 11(1) is subject to the condition that, in place of the question “*How much do I pay?*”, the investment statement includes the question “*What will this cost me?*”.
- (2) The exemption in clause 11(2) is subject to the condition that the investment statement—
 - (a) contains a brief description of the terms of exchange of the unquoted securities and the securities in the target company under offer; and
 - (b) states the proportion of voting securities of the shareholders in the target company that the offeror wishes to acquire; and
 - (c) states the number of unquoted securities offered as consideration for securities in the target company, expressed as a ratio; and
 - (d) states the amount of any cash sum offered as consideration for each target company security under offer; and
 - (e) describes how a holder of securities in the target company may accept the code offer.
- (3) The exemptions in clause 11 are subject to the condition that the investment statement for the offer of unquoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

13 Securities Act (Takeovers) Exemption Notice 2011 revoked

The Securities Act (Takeovers) Exemption Notice 2011 (SR 2011/63) is revoked.

14 Transitional provisions

- (1) If, before 1 April 2013, an issuer offered quoted securities or unquoted securities in reliance on the Securities Act (Takeovers) Exemption Notice 2011 under a prospectus that was registered before that date, the issuer may continue

to rely on that notice in respect of securities offered under that prospectus (as if that notice continued in force after 31 March 2013).

- (2) In this clause, **quoted securities** and **unquoted securities** have the same meanings as in the Securities Act (Takeovers) Exemption Notice 2011.

Dated at Wellington this 25th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 April 2013 and is revoked on 30 September 2017, replaces the Securities Act (Takeovers) Exemption Notice 2011 (the **2011 notice**).

This notice is, in many respects, on substantially the same terms as the 2011 notice. However, this notice does not apply to offers of quoted securities because those offers can now be made using a simplified disclosure prospectus.

The notice exempts issuers of unquoted equity and debt securities and units in a unit trust offered as consideration or part of the consideration for a takeover under the Takeovers Code. The exemptions are from compliance with particular prospectus content requirements in the Securities Regulations 2009 (the **Regulations**). The notice applies to full and partial offers under the Takeovers Code and to compulsory acquisitions under Part 7 of the Code. The notice also exempts those issuers from clauses 1(1) and 5 of Schedule 13 of the Regulations. These provisions relate to investment statement disclosures concerning how much the subscriber must pay for the securities.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978, considers it appropriate to grant the exemptions because—

- the exemptions have been in place for a number of years and the policy reasons for those exemptions in the 2011 notice that are to be continued remain valid. Consultation by the Financial Markets Authority demonstrates the continued relevance of these exemptions; and
- the exemptions reduce compliance costs for issuers of securities and address rigidities in the application of the law in the context of a takeover; and
- the notice only relates to securities not quoted on a securities market operated by NZX Limited (**unquoted securities**). Exemptions from some, but not all, of the usual prospectus content requirements are appropriate where unquoted se-

curities are offered on the basis of the information that is available in the takeover notice; and

- in the circumstances that the securities being offered are the consideration for the acquisition by the issuer of the target company's securities, it is more useful for prospective subscribers to receive information in the investment statement that explains the terms of the exchange of securities proposed, the consideration ratio, the proportion of target company securities the offeror wishes to acquire, any cash sum offered, and how to accept the offer, rather than the usually required information about how much the subscriber must pay; and
- the transitional provisions reduce the short-term compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2011 notice. Those issuers may continue to rely on the 2011 notice in respect of securities offered under an existing registered prospectus; and
- in these circumstances, the reduced-content prospectus supplemented by other additional information that is more appropriate in the context of a takeover provides sufficient information disclosure in a cost-effective manner that is appropriate for the prospective investors. The Financial Markets Authority is satisfied that this information is sufficient to avoid any significant detriment to those prospective investors; and
- the Financial Markets Authority is also satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to the exemptions, because the exemptions only relate to the offer of unquoted securities (quoted securities being able to be offered in an efficient manner using a simplified disclosure prospectus) and only provide exemptions to the extent appropriate to reduce regulatory compliance costs while requiring the provision of relevant information in an appropriate alternative manner.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 March 2013.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Takeovers) Exemption Notice 2013 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, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

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*

Financial Markets Conduct Regulations 2014 (LI 2014/326): Schedule 1 clause 26