

**Reprint
as at 1 April 2013**



**Securities Act (Australian Issuers)
Exemption Notice 2002**

(SR 2002/314)

Securities Act (Australian Issuers) Exemption Notice 2002: revoked, on 1 April 2013 (after expiring on 31 March 2013), by clause 6 of the Securities Act (Australian Issuers—Transitional Provision) Exemption Notice 2013 (SR 2013/58).

Pursuant to the Securities Act 1978, the Securities Commission gives the following 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 Financial Markets Authority.

Notice

1 Title

This notice is the Securities Act (Australian Issuers) Exemption Notice 2002.

2 Commencement

This notice comes into force on 1 October 2002.

3 Expiry

This notice expires on 31 March 2013.

Clause 3: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

4 Interpretation

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

Act means the Securities Act 1978

Australian issuer means—

- (a) a company incorporated under the laws of Australia or any corresponding previous law:
- (b) a company incorporated in a country, other than Australia or New Zealand, that is admitted to the official list of the Australian Stock Exchange:
- (c) a company incorporated in a country, other than Australia or New Zealand, that has applied to be admitted to the official list of the Australian Stock Exchange:
- (ca) a company incorporated in New Zealand—
 - (i) that is admitted to the official list of the Australian Stock Exchange; and
 - (ii) in relation to which the Australian Stock Exchange has primary jurisdiction for the listing requirements for the company and the quotation of its securities:
- (cb) a company incorporated in New Zealand—
 - (i) that—
 - (A) has applied to be admitted to the official list of the Australian Stock Exchange; or
 - (B) has stated or implied in the Australian prospectus relating to the equity securities

or debt securities that the securities that are to be offered are to be quoted on the Australian Stock Exchange (for the purposes of section 724(1)(b) of the Corporations Act 2001 of the Commonwealth of Australia); and

- (ii) in relation to which the Australian Stock Exchange will have primary jurisdiction for the listing requirements for the company and the quotation of its securities after the company is admitted to the official list of the Australian Stock Exchange:

- (d) a person named in the Schedule

Australian prospectus means a document—

- (a) that contains—
 - (i) an offer of equity securities or debt securities by an Australian issuer, being equity securities or debt securities of which it is the issuer; or
 - (ii) an offer of equity securities or debt securities that have previously been allotted by an Australian issuer, being an offer by the holder of those securities; and
- (b) that is identical to a document that is lodged or registered under the laws of Australia and that is signed by, or on behalf of, the persons (if any) that are required by that law to sign that document; and
- (c) by means of which it is lawful under the laws of Australia to make an offer of those equity securities or debt securities to the public in Australia; and
- (d) if the Australian issuer is a person described in paragraph (c) of the definition of that term in this clause, that contains a statement to the effect that that person has made, or will within 3 days after the issue of the document make, an application to be admitted to the official list of the Australian Stock Exchange

lodged means lodged under the laws of Australia

registered means registered under the laws of Australia

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.

Clause 4(1) **Australian issuer** paragraph (ca): inserted, on 29 October 2004, by clause 3 of the Securities Act (Australian Issuers) Exemption Amendment Notice 2004 (SR 2004/370).

Clause 4(1) **Australian issuer** paragraph (cb): inserted, on 29 October 2004, by clause 3 of the Securities Act (Australian Issuers) Exemption Amendment Notice 2004 (SR 2004/370).

5 Exemptions

- (1) Every Australian issuer and every person acting on its behalf are exempted from the following provisions in respect of any equity securities or debt securities of which the Australian issuer is the issuer:

- (a) section 33(2) of the Act; and
- (b) section 37 of the Act; and
- (c) section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and
- (d) sections 51 to 54 of the Act.

- (2) Every person who is the holder of equity securities or debt securities that have been previously allotted by an Australian issuer and every person acting on behalf of that holder are exempted, in respect of any such securities, from—

- (a) section 33(2) of the Act; and
- (b) section 37 of the Act; and
- (c) section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and
- (d) sections 51 to 54 of the Act.

- (3) Subclauses (1)(c) and (2)(c) apply in respect of an Australian prospectus only, and not in respect of any investment statement or other advertisement.

- (4) Every Australian issuer and every person referred to in subclause (2) and every person acting on behalf of such an issuer or person are exempted from section 38(a) of the Act to the extent that that provision requires an Australian prospectus to refer to an investment statement.

Clause 5(1)(b): amended, on 21 September 2007, by clause 3 of the Securities Act (Extension of Term, Amendment, and Revocation of Certain Exemptions) Exemption Notice 2007 (SR 2007/277).

Clause 5(2)(b): amended, on 21 September 2007, by clause 3 of the Securities Act (Extension of Term, Amendment, and Revocation of Certain Exemptions) Exemption Notice 2007 (SR 2007/277).

6 Trustee

The exemptions granted by clause 5(1)(a) and (2)(a) are subject to the condition that a person authorised under the laws of Australia to act as trustee in relation to the securities has been appointed as trustee.

7 Australian prospectus

The exemptions granted by clause 5(1)(b) and (c) and (2)(b) and (c) are subject to the conditions that—

- (a) there is an Australian prospectus relating to the equity securities or debt securities at the time that offers of the securities are made or are open for acceptance in New Zealand; and
- (b) the Australian prospectus contains no statement referring to listing or intended listing of the equity securities or debt securities on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
- (c) it is a term of each offer of the equity securities or debt securities made in New Zealand that the Australian issuer will, within 5 working days of receiving a request of an offeree for a copy of the Australian prospectus relating to the equity securities or debt securities, without fee, send, or cause to be sent, to that offeree—
 - (i) a copy of the Australian prospectus; and
 - (ii) copies of any documents that, under the laws of Australia, must accompany any copy of the Australian prospectus sent to any person to whom an offer of the equity securities or debt securities are made in Australia; and
 - (iii) a copy of any document, or part of a document, lodged with the Australian Securities and Investments Commission that is referred to in the Australian prospectus and is taken to be included in that prospectus under section 712 of the Corpor-

ations Act 2001 of the Commonwealth of Australia.

8 Documents to be received by Registrar of Companies

The exemptions granted by clause 5(1)(b) and (c) and (2)(b) and (c) are subject to the further condition that a copy of each of the following documents has been received by the Registrar of Companies:

- (a) the Australian prospectus relating to the equity securities or debt securities:
- (b) a copy of any document, or part of a document, lodged with the Australian Securities and Investments Commission that is referred to in the Australian prospectus and is taken to be included in that prospectus under section 712 of the Corporations Act 2001 of the Commonwealth of Australia:
- (c) a copy of any exemption granted by the Australian Securities and Investments Commission that relates to the offer of securities:
- (d) any document evidencing lodgement or registration of the Australian prospectus:
- (e) the certificate of incorporation of the Australian issuer:
- (f) in the case of an offer of debt securities, the certificate of incorporation of the trustee and evidence that the trustee is authorised under the laws of Australia to act as trustee in relation to the securities:
- (g) the memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the Australian issuer:
- (h) in the case of an offer of debt securities, the trust deed for the debt securities.

9 Investment statements

(1) The exemptions granted by clause 5(1)(b) and (c) and (2)(b) and (c) are subject to the further condition that any investment statement that relates to the equity securities or debt securities concerned—

- (a) includes, to the extent appropriate, statements to the following effect:

- (i) that allotments of the securities must be made in the manner specified in the Australian prospectus and in the manner prescribed under the laws of Australia; and
- (ii) that investors should satisfy themselves as to the tax implications of investing in the equity securities or debt securities; and
- (iii) that investing in the securities of an Australian issuer may carry with it a currency exchange risk; and
- (iv) that the financial reporting requirements applying in New Zealand and those applying to the Australian issuer may be different and the financial statements of the Australian issuer may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
- (v) that the Australian issuer may not be subject in all respects to New Zealand law; and
- (vi) that although a copy of the overseas prospectus and other documents have been received by the Registrar of Companies, the Australian prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and
- (vii) the general nature and effect of any exemption, order, or declaration that may have been granted by the Australian Securities and Investments Commission in respect of the offer of the equity securities or debt securities; and
- (viii) that it is not a condition of this notice that the Australian issuer be listed on the New Zealand Stock Exchange and that, if the Australian issuer is not listed on the New Zealand Stock Exchange, New Zealand resident investors may not have access to information concerning the Australian issuer in the same way as investors have in relation

- to an issuer listed on the New Zealand Stock Exchange; and
- (b) includes information or statements to the following effect, under the heading “Agreement as to Jurisdiction”:
 - (i) that, in respect of a dispute concerning the contract for the equity securities or debt securities, the Australian issuer—
 - (A) agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - (B) has instructed the New Zealand agent for service referred to in subparagraph (iii) to accept service on the Australian issuer’s behalf; and
 - (C) agrees that this statement is an agreement with each investor for the purposes of section 389(1)(e) of the Companies Act 1993; and
 - (ii) that, despite the statements referred to in subparagraph (i), the contract in respect of the securities may not always be enforceable in New Zealand courts; and
 - (iii) includes the name and address of a person in New Zealand who has been appointed by the Australian issuer to accept service in New Zealand of any document on its behalf; and
 - (c) contains no statement referring to listing or intended listing of the securities on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
 - (d) refers to the Australian prospectus wherever the Act or Regulations requires an investment statement to refer to a registered prospectus.
- (2) The conditions in subclause (1) are not breached if there are differences between the information required to be in the investment statement under that subclause and the information presented in that investment statement, but the differences are immaterial.
 - (3) The condition in subclause (1)(b) does not apply to an Australian issuer that is a company incorporated in New Zealand.

- (4) The exemptions granted by clause 5(1)(b) and (c) and (2)(b) and (c) are, in the case of an Australian issuer that is a company incorporated in New Zealand, subject to the further condition that any investment statement that relates to the equity securities or debt securities concerned includes information or statements to the following effect, under the heading “Agreement as to Jurisdiction”:
- (a) that, in respect of a dispute concerning the contract for the equity securities or debt securities, the Australian issuer agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - (b) that, despite the statement referred to in paragraph (a), the contract in respect of the securities may not always be enforceable in New Zealand courts.

Clause 9(3): added, on 29 October 2004, by clause 4 of the Securities Act (Australian Issuers) Exemption Amendment Notice 2004 (SR 2004/370).

Clause 9(4): added, on 29 October 2004, by clause 4 of the Securities Act (Australian Issuers) Exemption Amendment Notice 2004 (SR 2004/370).

10 Offers to be made in Australia at same time

The exemptions granted by clause 5(1)(b) and (c) and (2)(b) and (c) are subject to the further condition that, at the same time as offers of the equity securities or debt securities are made or are open for acceptance in New Zealand, offers of the securities are also made or are open for acceptance in Australia in accordance with the laws of Australia.

**Schedule
Australian issuers**

cl 4(1)

The Australian Gas Light Company

Dated at Wellington this 27th day of September 2002.

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

[Seal]

L A J Kavanagh,
Member.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 September 2002.

**Securities Act (Australian
Issuers—Transitional Provision)
Exemption Notice 2013**

(SR 2013/58)

Pursuant to sections 70B and 70D 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).

Notice

1 Title

This notice is the Securities Act (Australian Issuers—Transitional Provision) Exemption Notice 2013.

2 Commencement

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

5 Transitional provision relating to 2002 notice

- (1) If, before the close of 31 March 2013, an Australian issuer offered equity securities or debt securities of which the Australian issuer is the issuer in reliance on the 2002 notice, the Australian issuer and every person acting on its behalf may continue to rely on the 2002 notice in respect of equity securities or debt securities (as if the 2002 notice continued in force after 31 March 2013).
- (2) However, this clause does not permit equity securities or debt securities to be offered in reliance on the 2002 notice after 31 December 2013.

Dated at Wellington this 25th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Date of notification in *Gazette*: 28 March 2013.

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Notes

1 *General*

This is a reprint of the Securities Act (Australian Issuers) Exemption Notice 2002. The reprint incorporates all the amendments to the notice as at 1 April 2013, 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 (Australian Issuers—Transitional Provision) Exemption Notice 2013 (SR 2013/58): clause 6

Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294): clause 3

Securities Act (Extension of Term, Amendment, and Revocation of Certain Exemptions) Exemption Notice 2007 (SR 2007/277): clause 3

Securities Act (Australian Issuers) Exemption Amendment Notice 2004 (SR 2004/370)