

**Reprint
as at 1 April 2013**



**Securities Act (Financial
Institutions) Exemption Notice
2011**

(SR 2011/62)

Securities Act (Financial Institutions) Exemption Notice 2011: revoked, on
1 April 2013, by clause 16 of the Securities Act (Deposit Takers) Exemption
Notice 2013 (SR 2013/59).

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 Financial Markets Authority.

non-guaranteeing subsidiary means, in relation to an offer of debt securities by a financial institution,—

- (a) a subsidiary of a financial institution that is not a guaranteeing subsidiary, in respect of the periods since it became that subsidiary; and
- (b) a former subsidiary of a financial institution that was not a guaranteeing subsidiary, in respect of the periods during which it was that subsidiary

NZ IFRS 7 means the financial reporting standard known as the New Zealand Equivalent to International Financial Reporting Standard 7 (Financial Instruments: Disclosures) that has been approved under the Financial Reporting Act 1993

Regulations means the Securities Regulations 2009.

- (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 Application of this notice

- (1) This notice applies to a financial institution if—
 - (a) the financial institution has non-guaranteeing subsidiaries; and
 - (b) the aggregate profit or loss after taxation of the non-guaranteeing subsidiaries for the most recently completed accounting period (as incorporated in the consolidated financial statements of the financial institution group), and since, does not exceed 5% of the consolidated profit or loss after taxation, before the deduction of all non-controlling interests, of the financial institution group; and
 - (c) the aggregate carrying amount of the assets of the non-guaranteeing subsidiaries on the balance date of the most recently completed accounting period (as incorporated in the consolidated financial statements of the financial institution group), and since, does not exceed 5% of the consolidated amount of the assets of the financial institution group; and
 - (d) the aggregate amount of investment by members of the financial institution group in the non-guaranteeing subsidiaries on the balance date of the most recently com-

pleted accounting period, and since, does not exceed 5% of the consolidated equity of the financial institution group.

- (2) In subclause (1)(d), **amount of investment** includes the carrying amount of equity held in the non-guaranteeing subsidiaries and the amount of all loans and advances made to the non-guaranteeing subsidiaries.

6 Exemption from section 37A(1)(c) of Act

Every financial institution to which this notice applies and every person acting on its behalf are exempted from section 37A(1)(c) of the Act in respect of debt securities of that financial institution.

7 Condition of exemption in clause 6

The exemption in clause 6 is subject to the condition that no allotment of a debt security offered to the public by the financial institution is made if the date of allotment would be more than,—

- (a) in the case of a registered prospectus relating to the security that contains or refers to financial statements or interim financial statements under clause 11(1)(c) or (d) and for which no certificate has been registered under section 37A(1A) of the Act, 9 months after the later of—
- (i) the date of the statement of financial position contained or referred to in the registered prospectus; and
 - (ii) the last day of the interim accounting period to which the interim financial statements relate; or
- (b) in the case of a registered prospectus relating to the security that contains or refers to financial statements under clause 11(1)(c) (but not interim financial statements) and for which a certificate has been registered under section 37A(1A) of the Act, 9 months after the date of that certificate; or
- (c) in any other case, 6 months after the date of the registered prospectus.

8 Exemption from section 37A(1A)(d) of Act

Every financial institution to which this notice applies and every person acting on its behalf are exempted from section 37A(1A)(d) of the Act in respect of debt securities of that financial institution.

9 Conditions of exemption in clause 8

The exemption in clause 8 is subject to the conditions that—

- (a) a certificate delivered to the Registrar for registration under section 37A(1A) of the Act is accompanied by interim financial statements of the financial institution group for the 6-month period from the date of the statement of financial position contained or referred to in the registered prospectus; and
- (b) those interim financial statements are prepared in accordance with NZ IAS 34 (but need not be audited).

10 Exemptions from various clauses of Schedule 2 of Regulations

Every financial institution to which this notice applies and every person acting on its behalf are exempted from clauses 8, 9, 16 to 20, and 22 of Schedule 2 of the Regulations in respect of debt securities of that financial institution.

11 Conditions of exemptions in clause 10

- (1) The exemptions in clause 10 are subject to the condition that the registered prospectus relating to the debt securities contains all of the information, statements, and other matters specified in the following that are applicable:
 - (a) clause 8 of Schedule 2 of the Regulations but applied as if the reference to—
 - (i) the group were a reference to the financial institution group; and
 - (ii) the statement of financial position contained or referred to in the prospectus under clause 17 were a reference to the statement of financial position contained or referred to in the prospectus under paragraph (c) of this subclause; and

- (iii) any interim financial statements set out in the prospectus under clause 18 were a reference to any interim financial statements set out in the prospectus under paragraph (d) of this subclause:
- (b) clause 9 of Schedule 2 of the Regulations but applied as if the reference to a statement of financial position contained or referred to in the prospectus under clause 17 were a reference to a statement of financial position contained or referred to in the prospectus under paragraph (c) of this subclause:
- (c) clause 17 of Schedule 2 of the Regulations but applied as if the references to the group were references to the financial institution group:
- (d) clause 18 of Schedule 2 of the Regulations but applied as if the references to—
 - (i) the group were references to the financial institution group; and
 - (ii) the financial statements contained or referred to in the prospectus under clause 17 were references to the financial statements contained or referred to in the prospectus under paragraph (c) of this subclause:
- (e) clause 19 of Schedule 2 of the Regulations but applied as if the references to the financial statements for the group referred to in clause 17(1) were references to the financial statements for the financial institution group that are referred to in the prospectus under paragraph (c) of this subclause:
- (f) clause 20 of Schedule 2 of the Regulations but applied as if the reference to the financial statements referred to in the prospectus under clause 17(1) were references to the financial statements referred to in the prospectus under paragraph (c) of this subclause:
- (g) clause 22 of Schedule 2 of the Regulations but applied as if the references to—
 - (i) any of the issuer's guaranteeing subsidiaries (in clause 22(1)(c)) were a reference to any of the issuer's subsidiaries; and

- (ii) the group were references to the financial institution group; and
 - (iii) the financial statements contained or referred to in the prospectus under clause 17 were references to the financial statements contained or referred to in the prospectus under paragraph (c) of this subclause; and
 - (iv) the amounts stated under clauses 8 and 9(2) and (3) were references to the amounts stated under paragraphs (a) and (b) of this subclause.
- (2) An interim statement of financial position is required under subclause (1)(d) only if the directors of the financial institution consider it necessary or desirable (after having regard to clause 7).

12 Securities Act (Financial Institutions) Exemption Notice 2007 revoked

The Securities Act (Financial Institutions) Exemption Notice 2007 (SR 2007/113) is revoked on the close of 31 March 2011.

13 Transitional provisions

- (1) If, before 1 July 2010, a financial institution offered debt securities in reliance on the Securities Act (Financial Institutions) Exemption Notice 2007 under a prospectus that was registered before that date, the financial institution 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 2011).
- (2) If, on or before 31 March 2011, a financial institution offered debt securities in reliance on the Securities Act (Financial Institutions) Exemption Notice 2007 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2010 under a prospectus that is registered on or before that date, the financial institution may continue to rely on those notices in respect of securities offered under that prospectus (as if those notices continued in force after 31 March 2011).

Dated at Wellington this 22nd day of March 2011.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012**

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2012, replaces the Securities Act (Financial Institutions) Exemption Notice 2007 (the **2007 notice**).

The notice provides financial institutions with exemptions, subject to conditions, from—

- section 37A(1)(c) and (1A)(d) of the Securities Act 1978 (the **Act**); and
- various prospectus content requirements in Schedule 2 of the Securities Regulations 2009 (the **2009 regulations**) that relate to financial statements.

The exemptions allow financial institutions that have non-guaranteeing subsidiaries that do not exceed 5% of the total assets, equity, and profit or loss after taxation of the group to use the financial statements for the whole of the financial institution group (including non-guaranteeing subsidiaries) in respect of a prospectus for debt securities.

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

- allowing the financial institutions referred to above to use the financial statements for the whole of the financial institution group reduces the regulatory compliance costs of preparing a prospectus. The 5% threshold ensures the financial statements presented provide a reasonable representation of the financial backing to the debt securities on offer:
- consequential exemptions are appropriate to provisions of the Act that define the life of the prospectus (by reference to the date of the financial statements contained or referred to in the prospectus) and to provisions of the Act that specify the financial statements that must accompany a directors' certificate extending the life of a prospectus. The exemptions tie these requirements to the financial statements for the whole of the financial institution group:
- these exemptions continue existing exemptions in the 2007 notice from provisions of the Securities Regulations 1983 in respect of equivalent provisions of the 2009 regulations for these financial institutions with non-material non-guaranteeing subsidiaries:
- the financial statement disclosure requirements prescribed by the 2009 regulations are now consistent with generally accepted accounting practice. Accordingly, the exemptions that have been continued in this notice are no longer required to align the financial statements requirements with generally accepted accounting practice. In particular, conditions in the 2007 notice prohibiting the use of equity accounting are not continued because, unlike the Securities Regulations 1983, the 2009 regulations do not prohibit the inclusion in prospectuses of financial statements that have used equity accounting as a basis of reflecting the value of non-wholly owned subsidiaries:
- the exemptions in the 2007 notice for financial institutions that have material non-guaranteeing subsidiaries (non-guaranteeing subsidiaries that exceed the 5% threshold tests) are not continued in this notice. The purpose of these exemptions was to align the financial statement disclosure requirements with generally accepted accounting practice and so these exemptions are now redundant:

- the transitional provisions reduce the short-term compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2007 notice. These issuers may continue to rely on the 2007 notice in respect of securities offered under an existing registered prospectus.

Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:

- **Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012**

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 24 March 2011.

Securities Act (Deposit Takers) Exemption Notice 2013

(SR 2013/59)

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).

Notice

1 Title

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

2 Commencement

This notice comes into force on 1 April 2013.

17 Transitional provision

If, on or before 31 March 2013, an issuer offered debt securities in reliance on the Securities Act (Financial Institutions) Exemption Notice 2011 under a registered prospectus, 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.

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 (Financial Institutions) Exemption Notice 2011. 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 (Deposit Takers) Exemption Notice 2013 (SR 2013/59): clause 16

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