

**Reprint
as at 27 March 2010**



**Securities Act (French Issuers
Employee Share Purchase
Schemes) Exemption Notice 2005**

(SR 2005/113)

Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2005: revoked, on 27 March 2010, by clause 11 of the Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010 (SR 2010/70).

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).

Contents

		Page
1	Title	2
2	Commencement	2
3	Expiry	2
4	Interpretation	2
5	Exemptions	3
6	Condition that requires specified securities to be allotted only to eligible persons	3
7	Conditions that require other disclosure to be made	4
8	Condition for specified securities to be offered in France	5

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.

- 9 Condition that requires French issuer to give annual report to Commission 5
-

Notice

1 Title

This notice is the Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2005.

2 Commencement

This notice comes into force on 1 May 2005.

3 Expiry

This notice expires on the close of 30 April 2010.

4 Interpretation

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

Act means the Securities Act 1978

eligible person means, in relation to a French issuer,—

- (a) an employee of the French issuer or of any of its subsidiaries;
- (b) a director of the French issuer or of any of its subsidiaries

employee share purchase scheme means—

- (a) a scheme established by a French issuer, or by any of its subsidiaries, under which eligible persons may acquire shares, or rights or options to acquire shares, issued by the French issuer; or
- (b) a mutual fund established by, or on behalf of, a French issuer, or any of its subsidiaries, in which eligible persons may acquire units

French issuer means a company that—

- (a) is incorporated under the laws of France; and
- (b) has its shares quoted on Eurolist by Euronext

mutual fund means a mutual fund—

- (a) established under the laws of France and the requirements of the Autorité des Marchés Financiers; and
- (b) that is approved by the Autorité des Marchés Financiers

published financial statements means financial statements that are published, issued, or prepared in accordance with the laws of France

Regulations means the Securities Regulations 1983

specified securities means securities issued under an employee share purchase scheme

unit—

- (a) means an interest or right to participate in any capital, assets, earnings, or other property of a mutual fund or a part of a mutual fund; and
 - (b) includes any renewal or variation of the terms or conditions of any of those interests or rights.
- (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

- (1) This clause applies to—
- (a) a French issuer;
 - (b) a manager acting on behalf of a mutual fund;
 - (c) a holder of specified securities previously allotted by a French issuer with a view to their being offered for sale or transfer to eligible persons;
 - (d) a person acting on behalf of a person referred to in paragraph (a), (b), or (c).
- (2) The persons to whom this clause applies are exempt from sections 33(3), 37, 37A, 38A, and 51 to 54B of the Act and from the Regulations (except regulation 8) in respect of specified securities offered to eligible persons.

6 Condition that requires specified securities to be allotted only to eligible persons

The exemptions in clause 5 are subject to the condition that the specified securities are allotted only to the following persons:

- (a) persons who are eligible persons at the time of allotment of the specified securities;
- (b) in the case of specified securities that are allotted on the exercise of rights or options to acquire shares issued by

a French issuer, persons who are eligible persons at the time of allotment of those rights or options.

7 Conditions that require other disclosure to be made

- (1) The exemptions in clause 5 from sections 37, 37A, 38A, 54A, and 54B of the Act are subject to the condition that the person to whom the offer is made has received, before subscribing for the specified security,—
- (a) an English version or English translation of the following information (which may be in 1 or more documents):
 - (i) the most recent annual report of the French issuer; and
 - (ii) the most recent annual report of the mutual fund (if the employee share purchase scheme involves a mutual fund and an annual report has been prepared for the mutual fund); and
 - (iii) the most recent published financial statements of the French issuer; and
 - (iv) the most recent published financial statements of the mutual fund (if the employee share purchase scheme involves a mutual fund and financial statements have been prepared for the mutual fund); and
 - (v) the current rules of the employee share purchase scheme or a summary of those rules; and
 - (vi) the terms of the offer in New Zealand; or
 - (b) a notice stating—
 - (i) that the information described in paragraph (a) is available on an Internet or intranet site operated by, or on behalf of, the French issuer; and
 - (ii) the address of that Internet or intranet site; and
 - (iii) that the information described in paragraph (a) will be sent, without fee, to the person to whom the offer is made on request, and how and to whom that request may be made.
- (2) The exemptions in clause 5 from sections 37, 37A, 38A, 54A, and 54B of the Act are subject to the condition that the infor-

mation described in subclause (1)(a) is received by the Registrar of Companies before the date of allotment.

8 Condition for specified securities to be offered in France

The exemptions in clause 5 are subject to the condition that, at the time of the offer, specified securities are also offered, or have previously been offered, under the employee share purchase scheme in France.

9 Condition that requires French issuer to give annual report to Commission

- (1) The exemptions in clause 5 (other than the exemptions from sections 37 and 37A of the Act) are subject to the condition, in respect of specified securities offered after 31 March in a calendar year, that the French issuer has sent to the Commission a written report, for the preceding calendar year, that states—
- (a) each employee share purchase scheme under which the French issuer offered specified securities in New Zealand in that year; and
 - (b) for each scheme,—
 - (i) the number of specified securities allotted to eligible persons in New Zealand in that year and the amount of money paid by them; and
 - (ii) the total number of specified securities allotted since 1 January 2004 to eligible persons in New Zealand and the total amount of money paid by them; and
 - (iii) the number of specified securities allotted to persons in other jurisdictions in that year and the amount of money paid by them; and
 - (iv) the total number of specified securities allotted since 1 January 2004 to persons in other jurisdictions and the total amount of money paid by them; and
 - (c) for each scheme, whether the French issuer intends to continue to offer specified securities in New Zealand in reliance on the exemptions granted by this notice.
- (2) This clause applies only in respect of specified securities offered after 31 March 2006.

Dated at Wellington this 26th day of April 2005.

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 (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010.**

This notice comes into force on 1 May 2005 and expires on 30 April 2010.

The notice replaces the Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice (No 2) 2000.

The notice applies to employee share purchase schemes under which shares in a French issuer or units in a mutual fund are offered to employees or directors of the French issuer or of its subsidiaries. The notice exempts French issuers and managers of the mutual funds from sections 33(3), 37, 37A, 38A, and 51 to 54B of the Securities Act 1978 and from the Securities Regulations 1983 (except regulation 8). The effect of the notice is to exempt French issuers and managers of the funds from—

- the prospectus and investment statement requirements of the Act, but not the requirement for offers to be made in an authorised advertisement:

- in the case of units in a mutual fund, the obligation on issuers to appoint a statutory supervisor and enter into a deed of participation:
- the obligations imposed by the Act on issuers in relation to securities registers, accounting records, and auditing:
- the requirement to issue security certificates:
- the mandatory and request disclosure requirements of the Act.

The conditions of this notice have been aligned with the conditions in the Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002 (the **OESPS Exemption Notice**). The main changes to the conditions are—

- to enable electronic disclosure of annual reports, financial statements, rules of the employee share purchase scheme, and terms of the offer in New Zealand:
- to require specified securities to be offered, or to have been offered, under the employee share purchase scheme in France as well as in New Zealand:
- to require the French issuer to provide an annual report to the Securities Commission on each employee share purchase scheme. This condition will, however, only apply to securities offered after 31 March 2006.

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

- the situation of employee share purchase schemes established by French issuers is similar to that covered by the OESPS Exemption Notice. That exemption recognises that issuers incorporated under the laws of certain jurisdictions, and whose shares are listed on an exchange in certain jurisdictions, are already subject to an appropriate level of regulation in respect of offers of shares to employees. In addition, the cost of producing a prospectus and investment statement to comply with New Zealand law may preclude offers being made to New Zealand employees by French issuers; and
- some French issuers are unable to comply with the OESPS Exemption Notice. This is because the offers involve a particular vehicle for offering securities to employees, known as a Fonds Commun de Placement d'Enterprise, that is not covered by that notice. However, the Commission is satisfied that the

policy of the OESPS Exemption Notice should apply in this case; and

- the conditions of the exemptions are consistent with those in the OESPS Exemption Notice.

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

- **Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010.**

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 28 April 2005.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2005. The reprint incorporates all the amendments to the notice as at 27 March 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

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 (French Issuers Employee Share Purchase Schemes) Exemption
Notice 2010 (SR 2010/70): clause 11
