

**Reprint  
as at 1 October 2015**



**Securities Act (TrustPower Limited) Exemption Notice  
2010  
(SR 2010/312)**

Securities Act (TrustPower Limited) Exemption Notice 2010: expired, on 1 October 2015, 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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**Notice**

**1 Title**

This notice is the Securities Act (TrustPower Limited) Exemption Notice 2010.

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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.**

## 2 Commencement

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

## 3 Expiry

This notice expires on the close of 30 September 2015.

## 4 Interpretation

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

**Act** means the Securities Act 1978

**consolidated financial statements** means, at any date, the most recent of the following publicly available financial statements of the TrustPower group:

- (a) the consolidated audited financial statements;
- (b) the consolidated unaudited interim financial statements

**guaranteeing group**, in relation to an offer of specified debt securities, means the group comprising—

- (a) TrustPower; and
- (b) every guaranteeing subsidiary

**non-guaranteeing subsidiary**, in relation to an offer of specified debt securities, means a subsidiary of TrustPower that is not a guaranteeing subsidiary

**pro forma statement** means an unaudited pro forma statement showing the consolidated assets, less the consolidated liabilities, of the guaranteeing group as at the relevant date

**prospectus** means the registered prospectus or the simplified disclosure prospectus for an offer of specified debt securities

**Regulations** means the Securities Regulations 2009

**relevant date** means,—

- (a) for the purposes of clauses 6 and 8, the date of the most recent annual or half-yearly statement of financial position of the TrustPower group; and
- (b) for the purposes of clause 10, the date of the most recent annual or half-yearly consolidated financial statements of the TrustPower group that are available when a request under section 54B(1) of the Act is made, as referred to in clause 9

**specified debt securities** means debt securities of which TrustPower is the issuer, and which are guaranteed by the guaranteeing group, that are issued—

- (a) after this notice comes into force; or
- (b) for the purposes of clauses 9 and 10 only, before or after this notice comes into force

**TrustPower** means TrustPower Limited

**TrustPower group** means, at any time, TrustPower and each of its subsidiaries at that time.

- (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 Exemption from certain requirements relating to financial statements in prospectus**

TrustPower and every person acting on its behalf are exempted from the following with respect to specified debt securities:

- (a) regulation 5(b) of the Regulations, to the extent that it requires a registered prospectus to contain the information, statements, and other matters in clauses 8, 17, 18, and 22 of Schedule 2 of the Regulations:
- (b) regulation 9(b) of the Regulations, to the extent that it requires a simplified disclosure prospectus to contain the information, statements, and other matters in clauses 7, 8, and 9 of Schedule 10 of the Regulations (to the extent that they relate to financial statements or interim financial statements):
- (c) regulation 10(b)(ii) of the Regulations, to the extent that it requires a simplified disclosure prospectus to contain the information, statements, and other matters in clauses 16, 17, and 18 of Schedule 12 of the Regulations (to the extent that they relate to financial statements or interim financial statements).

## **6 Conditions of exemption in clause 5**

- (1) The exemption in clause 5 is subject to the following conditions:
- (a) if the prospectus is a full prospectus, it must contain the information, statements, and other matters referred to in clauses 8, 17, and 22 of Schedule 2 of the Regulations, applied as if—
    - (i) references to financial statements were references to the annual consolidated financial statements; and
    - (ii) references to the group were references to the TrustPower group:
  - (b) if the prospectus is a simplified disclosure prospectus, it must include the information, statements, and other matters referred to in clauses 7 and 9 of Schedule 10, or in clauses 16 and 18 of Schedule 12, of the Regulations, applied as if—
    - (i) references to financial statements or interim financial statements were references to the annual or half-yearly consolidated financial statements; and
    - (ii) references to the group were references to the TrustPower Group:

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- (c) if the prospectus includes or refers to an interim statement of financial position for the purposes of clause 18 of Schedule 2, clause 8 of Schedule 10, or clause 17 of Schedule 12, of the Regulations,—
- (i) the interim statement of financial position must comply with the relevant clause, applied as if references to the group were references to the TrustPower group; and
  - (ii) the prospectus must include the information, statements, and other matters referred to in the relevant clause, applied as if references to the group were references to the TrustPower group:
- (d) the prospectus must contain the following:
- (i) a statement to the effect that the information, statements, and other matters referred to in paragraphs (a) to (c) relate to the TrustPower group rather than the guaranteeing group:
  - (ii) a statement listing and describing the members of the guaranteeing group as at the relevant date:
  - (iii) a pro forma statement for the guaranteeing group:
  - (iv) a statement by the directors of TrustPower of the aggregate amount of the total tangible assets of all the non-guaranteeing subsidiaries (excluding balances with other members of the TrustPower group) as at the relevant date, and a statement that, on that date, that amount is not more than 15% of the total tangible assets of the TrustPower group (excluding balances with other members of the TrustPower group):
  - (v) a statement by the directors of TrustPower of the aggregate amount of the consolidated profit or loss before interest and tax of all the non-guaranteeing subsidiaries for the accounting period ending on the relevant date, and a statement that that amount is not more than 10% of the aggregate consolidated profit or loss before interest and tax of the TrustPower group for that period:
  - (vi) a statement by the directors of TrustPower that they consider that the information, statements, and other matters referred to in paragraphs (a) to (c), when read together with the pro forma statement, provide a reasonable basis on which to assess the financial position of the guaranteeing group in relation to the specified debt securities:
- (e) no specified debt securities are allotted under the prospectus more than 9 months after the date of the financial statements contained or referred to in the prospectus.
- (2) The exemption in clause 5 is subject to the further condition that, on the specified date, the directors of TrustPower are satisfied that—

- (a) the aggregate amount of the total tangible assets of all the non-guaranteeing subsidiaries (excluding balances with other members of the TrustPower group) is not material in comparison with the amount of total tangible assets of the TrustPower group (excluding balances with other members of the TrustPower group), given the level of total tangible assets permitted to remain outside the guaranteeing group as set out in subclause (1)(d)(iv); and
- (b) the aggregate amount of consolidated profit or loss before interest and tax of all non-guaranteeing subsidiaries for their most recently completed accounting period is not material in comparison with the amount of consolidated profit or loss before interest and tax of the TrustPower group for that period, given the level of profit or loss permitted to remain outside the guaranteeing group as set out in subclause (1)(d)(v).

#### **7 Exemption from certain requirements relating to advertisements**

TrustPower and every person acting on its behalf are exempted from regulation 26 of the Regulations with respect to any advertisement for the specified debt securities.

#### **8 Conditions of exemption in clause 7**

The exemption in clause 7 is subject to the following conditions:

- (a) every advertisement for the specified debt securities that states the amount of assets, or net assets, of any person must comply with regulation 26 of the Regulations applied as if references to the borrowing group or group were references to the TrustPower group:
- (b) every advertisement for the specified debt securities that states the amount of assets, or net assets, of any person must—
  - (i) contain a statement to the effect that the amount of the net assets, or the amounts of the total assets and total liabilities, stated in the advertisement refer to the amount of the net assets, or the amounts of the total assets and total liabilities, of the TrustPower group rather than the guaranteeing group:
  - (ii) state the amount of the net assets, or the amounts of the total assets and total liabilities, of the guaranteeing group as at the relevant date, being in each case an amount or amounts derived from the pro forma statement contained in the prospectus:
  - (iii) refer to this notice and contain a statement to the effect that more information on the exemptions in this notice is set out in the prospectus.

**9 Exemption from certain requirements relating to requests under section 54B(1) of Act**

TrustPower and every person acting on its behalf are exempted from section 54B(1) of the Act to the extent that that provision requires TrustPower to provide, at the request of a holder of specified debt securities, the most recent annual or half-yearly financial statements and other documents referred to in regulation 44(d)(ii) and (i)(ii) of the Regulations.

**10 Conditions of exemption in clause 9**

- (1) The exemption in clause 9 is subject to the condition that TrustPower must, after receiving a request from a holder of specified debt securities for a copy of any documents referred to in regulation 44(d)(ii) or (i)(ii) of the Regulations, send to the holder—
  - (a) a copy of the most recent annual or half-yearly consolidated financial statements along with a copy of all documents that are required by any enactment or rule of law to be incorporated in, be attached to, or accompany those financial statements;
  - (b) a statement to the effect that the consolidated financial statements and other documents referred to in paragraph (a) are those of the TrustPower group and not those of the guaranteeing group;
  - (c) a statement listing and describing the members of the guaranteeing group as at the relevant date;
  - (d) a pro forma statement for the guaranteeing group;
  - (e) a statement by the directors of TrustPower of the aggregate amount of the total tangible assets of all the non-guaranteeing subsidiaries (excluding balances with other members of the TrustPower group) as at the relevant date, and a statement that, on that date, that amount is not more than 15% of the total tangible assets of the TrustPower group (excluding balances with other members of the TrustPower group);
  - (f) a statement by the directors of TrustPower of the aggregate amount of the consolidated profit or loss before interest and tax of all the non-guaranteeing subsidiaries for the accounting period ending on the relevant date, and a statement that that amount is not more than 10% of the aggregate consolidated profit or loss before interest and tax of the TrustPower group for that period;
  - (g) a statement by the directors of TrustPower that they consider that the consolidated financial statements and other documents referred to in paragraph (a), when read together with the pro forma statement, provide a reasonable basis to assess the financial position of the guaranteeing group in relation to the specified debt securities.
- (2) The exemption in clause 9 is subject to the further condition that, on the date the consolidated financial statements and other documents referred to in sub-

clause (1) are sent to the holder of the specified debt securities, the directors of TrustPower are satisfied that—

- (a) the aggregate amount of the total tangible assets of all the non-guaranteeing subsidiaries (excluding balances with other members of the TrustPower group) is not material in comparison with the amount of total tangible assets of the TrustPower group (excluding balances with other members of the TrustPower group), given the level of total tangible assets permitted to remain outside the guaranteeing group as set out in subclause (1)(e); and
  - (b) the aggregate amount of consolidated profit or loss before interest and tax of all non-guaranteeing subsidiaries for their most recently completed accounting period is not material in comparison with the amount of consolidated profit or loss before interest and tax of the TrustPower group for that period, given the level of profit or loss permitted to remain outside the guaranteeing group as set out in subclause (1)(f).
- (3) The exemption in clause 9 is subject to the further condition that, when sending consolidated financial statements and other documents to the securities holder under subclause (1), TrustPower—
- (a) must not require payment of any fee; and
  - (b) must comply with section 54B(2) of the Act.

Dated at Wellington this 13th day of September 2010.

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

[Seal]

J Diplock,  
Chairperson.

### Statement of reasons

This notice, which comes into force on the day after its notification in the *Gazette* and expires on 30 September 2015, exempts TrustPower Limited (**TrustPower**) from certain requirements of the Securities Act 1978 and the Securities Regulations 2009.

The exemptions relate to debt securities issued by TrustPower and guaranteed by a guaranteeing group comprising TrustPower and some (but not all) of its subsidiaries.

The notice exempts TrustPower, subject to conditions, from certain requirements relating to references to the guaranteeing group in—

- information contained in the registered prospectus or any simplified disclosure prospectus for an offer of specified debt securities; and
- advertisements for the debt securities; and
- information provided to persons who request it.

The normal requirements relating to the provision of information would require TrustPower to prepare financial statements for the guaranteeing group. TrustPower does not prepare financial statements for that particular group. The conditions of the exemptions therefore require that, in place of those financial statements, TrustPower must provide the financial statements of the TrustPower group (ie, TrustPower and all of its subsidiaries), along with certain other information.

The normal requirements relating to advertisements require a reference to the assets of the guaranteeing group. The conditions of the exemption require the information to be given about the assets of the TrustPower group instead, along with certain other information.

The Securities Commission considers that it is appropriate to grant the exemptions for the following reasons:

- TrustPower does not currently prepare audited financial statements for the guaranteeing group. Preparing those financial statements would impose significant cost, given the size of the group:
- the conditions of the exemptions require TrustPower to provide prospective investors and security holders with financial information about the TrustPower group and financial information that is available to TrustPower about the guaranteeing group. Restrictions are imposed on variations permitted between the assets and earnings of the TrustPower group and the guaranteeing group. In those circumstances prospective investors and security holders will not be materially disadvantaged in assessing the ability of the guaranteeing group to meet the obligations due under the specified debt securities:
- when requests are received for information, the conditions of the exemptions require the directors of TrustPower to be satisfied that the assets and earnings of the guaranteeing group are within the variations permitted at the time the information is sent to the security holder:
- it is appropriate that any statements about assets or net assets that are made in advertisements for the securities align with the financial information contained in the prospectuses for those securities.



## Reprints notes

### **1**    *General*

This is a reprint of the Securities Act (TrustPower Limited) Exemption Notice 2010 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*

Securities Act (TrustPower Limited) Exemption Notice 2010 (SR 2010/312): clause 3