

**Reprint  
as at 1 April 2016**



**Securities Act (APN Media (NZ) Limited) Exemption  
Notice 2010  
(SR 2010/398)**

Securities Act (APN Media (NZ) Limited) Exemption Notice 2010: expired, on the close of 31 March 2016, 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 (APN Media (NZ) 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 31 March 2016.

## 4 Interpretation

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

**Act** means the Securities Act 1978

**APN group** means, at any time, APN News & Media Limited and each of its subsidiaries and associates (as determined in accordance with Australian generally accepted accounting principles at the time)

**APN guaranteeing group** means, at any time, the group comprising—

- (a) APN Media (NZ) Limited; and
- (b) APN News & Media Limited, and every subsidiary of APN News & Media Limited, to the extent that APN News & Media Limited or the subsidiary, as the case may be,—
  - (i) is unconditionally liable (whether or not jointly or severally with APN Media (NZ) Limited or any other person) to repay the specified debt securities or is liable to repay the specified debt securities subject only to the condition that APN Media (NZ) Limited or any other person has failed to do so; and
  - (ii) agrees to submit to the jurisdiction of the New Zealand courts in the event of a dispute regarding the specified debt securities

**consolidated financial statements** means the publicly available consolidated audited financial statements of APN group, prepared in accordance with Australian generally accepted accounting principles

**EBITDA** means, in relation to APN group, the earnings before interest, tax, depreciation, and amortisation of APN group for an accounting period

**material subsidiary** means any wholly owned subsidiary of APN News & Media Limited—

- (a) that has assets that represent 5% or more of the total assets of APN group as determined in accordance with, and by reference to, the most recent consolidated financial statements; or
- (b) whose contribution to EBITDA, as at the balance date of the consolidated financial statements, is 5% or more of EBITDA as at that date

**new material subsidiary** means any wholly owned subsidiary of APN News & Media Limited that becomes a material subsidiary after the balance date of the consolidated financial statements

**non-guaranteeing subsidiary** means, at any time, a subsidiary of APN News & Media Limited that is not a member of the APN guaranteeing group

**pro forma statement** means an unaudited pro forma statement showing the consolidated assets, less the consolidated liabilities, of the APN guaranteeing group, prepared in accordance with Australian generally accepted accounting principles

**prospectus** means the full registered prospectus for an offer of specified debt securities

**Regulations** means the Securities Regulations 2009

**relevant date** means the date of the most recent annual or half-yearly consolidated financial statements that are available when a request under section 54B(1) of the Act is made, as referred to in clause 8

**specified assets** means total assets less goodwill

**specified debt securities** means debt securities of which APN Media (NZ) Limited is the issuer, and that are guaranteed by APN News & Media Limited and 1 or more of its subsidiaries, and that are issued after this notice comes into force.

- (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 regulation 26 of Regulations

APN Media (NZ) Limited 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.

## 6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the following conditions:

- (a) to the extent that an advertisement for the specified debt securities states the amount of total assets, or net assets, of the borrowing group, the advertisement must comply with regulation 26 of the Regulations in respect of those statements:
- (b) to the extent that an advertisement for the specified debt securities states the amount of total assets, or net assets, of any person other than the borrowing group, the advertisement must comply with regulation 26 of the Regulations in respect of those statements as if references to the borrowing group or group were references to APN group:
- (c) to the extent that an advertisement for the specified debt securities contains or refers to a statement of financial position for APN Media (NZ) Limited, that statement of financial position must comply with generally accepted accounting practice:

- (d) to the extent that an advertisement for the specified debt securities contains or refers to a statement of financial position for APN group, that statement of financial position must comply with Australian generally accepted accounting principles:
- (e) to the extent that an advertisement for the specified debt securities contains or refers to a summary statement of financial position for APN Media (NZ) Limited or for APN group, the summary statement of financial position must be prepared in accordance with FRS-43:
- (f) every advertisement for the specified debt securities that states the amount of total assets, or net assets, of any person other than the borrowing group 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 APN group rather than of the APN guaranteeing group; and
  - (ii) state the amount of the net assets, or the amounts of the total assets and total liabilities, of the APN guaranteeing group as at the date of the most recent annual or half-yearly statement of financial position of APN group, being in each case an amount or amounts derived from the pro forma statement contained in the prospectus; and
  - (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:
- (g) every advertisement for the specified debt securities that includes a statement of financial position of APN group or a summary statement of financial position of APN group must—
  - (i) contain a statement to the effect that the statement of financial position, or summary statement of financial position, is that of APN group rather than of the APN guaranteeing group; and
  - (ii) 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.

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

APN Media (NZ) Limited and every person acting on its behalf are exempted from section 54B(1) of the Act to the extent that that provision requires APN Media (NZ) Limited 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) of the Regulations.

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

- (1) The exemption in clause 7 is subject to the condition that APN Media (NZ) Limited 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) of the Regulations, send to the holder either—
  - (a) all of the information referred to in subclause (2); or
  - (b) a copy of the most recent annual or half-yearly financial statements of the APN guaranteeing group.
- (2) The information referred to for the purpose of subclause (1)(a) is all of the following:
  - (a) a copy of the most recent annual or half-yearly consolidated financial statements of APN group (together with a copy of the audit report on those financial statements, if they are required to be audited under applicable law) and all documents that are required by any enactment or rule of law to be incorporated in, be attached to, or accompany those financial statements; and
  - (b) a statement prepared by the auditor of APN News & Media Limited that describes the principal differences between Australian generally accepted accounting principles and New Zealand generally accepted accounting practice; and
  - (c) a statement to the effect that the consolidated financial statements and other documents referred to in paragraph (a) are those of APN group and not those of the APN guaranteeing group; and
  - (d) a statement listing the members of the APN guaranteeing group as at the relevant date; and
  - (e) a pro forma statement for the APN guaranteeing group; and
  - (f) a statement by the directors of APN Media (NZ) Limited that they are satisfied that each material subsidiary that is not prohibited by applicable law or contractual obligation from being a member of the APN guaranteeing group either—
    - (i) is a member of the APN guaranteeing group as at the date of the statement; or
    - (ii) in the case of a new material subsidiary, will become a member of the APN guaranteeing group within 60 days after the directors of APN Media (NZ) Limited become aware that it is a material subsidiary; and
  - (g) a statement by the directors of APN Media (NZ) Limited—
    - (i) of the specified assets of the APN guaranteeing group as at the relevant date (excluding any related party asset balances within the APN guaranteeing group); and

- (ii) that the aggregate amount of the specified assets of the APN guaranteeing group as at the relevant date (excluding any related party asset balances within the APN guaranteeing group) is not less than 85% of the specified assets of APN group (excluding any related party asset balances within APN group); and
  - (h) a statement by the directors of APN Media (NZ) Limited—
    - (i) of the aggregate amount of the consolidated profit or loss before interest and tax (but excluding minority interests) of the APN guaranteeing group for the accounting period ending on the relevant date; and
    - (ii) that the aggregate amount of the consolidated profit or loss before interest and tax (but excluding minority interests) of the APN guaranteeing group for the accounting period ending on the relevant date is not less than 90% of the aggregate consolidated profit or loss before interest and tax (but excluding minority interests) of APN group for that period; and
  - (i) a statement by the directors of APN Media (NZ) Limited that they consider that the consolidated financial statements and other documents referred to in paragraph (a), when read together with the statements made in paragraphs (f), (g), and (h), provide a reasonable basis on which to assess the financial position of the APN guaranteeing group in relation to the specified debt securities.
- (3) The exemption in clause 7 is subject to the further condition that, on the date that consolidated financial statements and other documents referred to in subclause (2)(a) are sent to the holder of the specified debt securities, the directors of APN Media (NZ) Limited are satisfied that—
  - (a) the aggregate amount of the specified assets of the non-guaranteeing subsidiaries (excluding any related party asset balances within APN group) is not material in comparison with the amount of specified assets of APN group (excluding any related party asset balances within APN group), given the level of specified assets permitted to remain outside APN guaranteeing group as set out in subclause (2)(g)(ii); and
  - (b) the aggregate amount of consolidated profit or loss before interest and tax of the non-guaranteeing subsidiaries (but excluding minority interests) for the most recently completed accounting period is not material in comparison with the amount of consolidated profit or loss before interest and tax (but excluding minority interests) of APN group for that period, given the level of profit or loss permitted to remain outside the APN guaranteeing group as set out in subclause (2)(h)(ii).
- (4) The exemption in clause 7 is subject to the further condition that, when sending financial statements and other documents to the security holder under subclause (1), APN Media (NZ) Limited—

- (a) must not require payment of any fee; and
- (b) must comply with section 54B(2) of the Act.

Dated at Wellington this 2nd day of November 2010.

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

[Seal]

David Mayhew,  
Member.

### **Statement of reasons**

This notice comes into force on the day after its notification in the *Gazette* and expires on 31 March 2016.

The notice relates to debt securities issued by APN Media (NZ) Limited and guaranteed by a guaranteeing group comprising APN News & Media Limited, and some (but not all) of APN News & Media Limited's subsidiaries (the **APN guaranteeing group**).

The notice exempts APN Media (NZ) Limited, subject to conditions, from certain requirements of the Securities Act 1978 and the Securities Regulations 2009 that relate to references to guarantors in—

- advertisements for debt securities; and
- information provided to persons who request it.

The normal requirements relating to advertisements include a reference to the assets of the borrowing group or guarantors, and information provided to security holders who request information can include financial statements of the guaranteeing group at the option of the issuer, rather than separate financial statements of members of the guaranteeing group. No financial statements are prepared for the APN guaranteeing group. The conditions of the exemption therefore require information to be given about the assets of **APN group** (which comprises APN News & Media Limited and all of its subsidiaries) instead, along with certain other information.

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

- APN News & Media Limited does not currently prepare half-yearly or annual financial statements for the APN guaranteeing group. Annual financial statements are also not prepared for a number of the members of the APN guaranteeing group. Preparing those financial statements would impose significant cost, given the size of the group:
- the conditions of the exemptions require APN Media (NZ) Limited to provide security holders with consolidated financial information about APN group and significant financial information that is available about the APN guaranteeing group and its members. Restrictions are imposed on variations permitted between the assets and earnings of APN group and the APN guaranteeing group. In those circumstances, security holders will not be materially disadvantaged in assessing the ability of the APN 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 APN Media (NZ) Limited to be satisfied that the assets and earnings of the APN guaranteeing group are within the variations permitted at the time that 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 specified debt securities align with the financial information contained in the prospectuses for those securities:
- the exemption allows APN Media (NZ) Limited to use the APN group financial statements already prepared in accordance with Australian generally accepted accounting principles. Those financial statements have been accepted under section 14(5) of the Financial Reporting Act 1993 as complying with section 14 of the Financial Reporting Act 1993 and every applicable financial reporting standard. The financial statements have been accepted on the basis that they comply with Australian law, the requirements of which are substantially the same as those of the Financial Reporting Act 1993.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 4 November 2010.



## **Reprints notes**

### **1    *General***

This is a reprint of the Securities Act (APN Media (NZ) 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 (APN Media (NZ) Limited) Exemption Notice 2010 (SR 2010/398): clause 3