

**Reprint  
as at 1 December 2016**



**Securities Act (Rights, Options, and Convertible  
Securities) Exemption Notice 2013**  
(SR 2013/65)

Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2013: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

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).

**Contents**

	Page
1 Title	2
2 Commencement	2
3 Revocation	2
4 Interpretation	2
<i>Exemptions relating to options and other convertible securities</i>	
5 Exemption from section 37 of Act for equity securities and units allotted under convertible security	3
6 Exemption from section 37A of Act for equity securities allotted under pre-October 1997 convertible security	3
7 Requirements for issuers before exemptions in clauses 5 and 6 apply	3
8 Conditions of exemptions in clauses 5 and 6	4
9 Exemption from section 37A(1)(a), (ab)(i), (b), and (c) of Act for equity securities or units allotted under convertible securities	5
10 Requirements before exemption in clause 9 applies	6
11 Conditions of exemption in clause 9 from section 37A(1)(a) and (ab)(i) of Act	6

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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.**

12	Conditions of exemption in clause 9 from section 37A(1)(b) and (c) of Act if election to convert available	7
13	Condition of exemptions in clause 9 from section 37A(1)(b) and (c) of Act if no election to convert available	9
	<i>Exemption relating to rights issues</i>	
14	Exemption from section 37A(1)(a) and (ab)(i) of Act relating to rights issue	9
	<i>Revocation</i>	
15	Revocation of Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002	10

## Notice

### 1 Title

This notice is the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2013.

### 2 Commencement

This notice comes into force on 1 April 2013.

### 3 Revocation

This notice is revoked on the close of 30 September 2017.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**complete application for quoting**, in relation to any time, means an application for quoting securities on a specified securities market in respect of which the issuer of the securities has complied with all the requirements of the operator of the specified securities market relating to the application with which it is required to comply at that time

**conversion date** means the date of the allotment of a new security or, if earlier, the date of the exercise of any right conferred by a convertible security

**convertible security** means any option, share warrant, convertible note, preference share, or preference unit

**new security** means an equity security or a unit that is, or is to be, allotted under the terms of, or on the exercise by a person of a right conferred by, a convertible security

**registered holder** means the person shown as the holder of a security in the register of securities kept by the issuer in accordance with section 51 of the Act

**share warrant** means a warrant stating that the bearer of the warrant is entitled to the shares specified in the warrant, being shares for which no amount is payable to the issuer of the shares

**simplified disclosure prospectus** means a prospectus that contains all of the information, statements, and other matters specified in Schedule 10, 11, or 12 of the Regulations (as required by the Regulations) that are applicable

**Regulations** means the Securities Regulations 2009

**specified securities market** means a securities market operated by NZX Limited or by ASX Limited, a company incorporated in Australia.

- (2) In this notice,—
- (a) a reference to an option, share warrant, convertible note, preference share, or preference unit includes a reference to a security that is in the nature of an option, share warrant, convertible note, preference share, or preference unit;
  - (b) a security is **current** until it is cancelled, redeemed, or forfeited, or all of the obligations owing under the security have been discharged.
- (3) 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.

*Exemptions relating to options and other convertible securities*

**5 Exemption from section 37 of Act for equity securities and units allotted under convertible security**

If the requirements in clause 7 are met, every person is exempted from section 37 of the Act in respect of any equity security or unit that is, or is to be, allotted under the terms of, or on the exercise by any person of a right conferred by, any convertible security.

**6 Exemption from section 37A of Act for equity securities allotted under pre-October 1997 convertible security**

Every person is exempted from section 37A of the Act in respect of any equity security that is, or is to be, allotted under the terms of, or on the exercise by any person of a right conferred by, any convertible security if—

- (a) the requirements in clause 7 are met; and
- (b) the convertible security was allotted before 1 October 1997.

**7 Requirements for issuers before exemptions in clauses 5 and 6 apply**

- (1) The requirements referred to in clauses 5 and 6 are that—
- (a) the issuer of the new security and the issuer of the convertible security must be the same person; or

- (b) the issuer of the convertible security must be a wholly owned subsidiary of the issuer of the new security (the **new issuer**) at the time of the offer and allotment both of the convertible security and of the new security, and that the requirements for securities in subclause (2) are met.
- (2) The requirements referred to in subclause (1)(b) are that—
  - (a) equity securities (if the new security is an equity security) or units (if the new security is a unit) issued by the new issuer (**relevant securities**)—
    - (i) were quoted on a specified securities market—
      - (A) at the time of the offer and allotment of the convertible security; or
      - (B) after the allotment of the relevant securities, if they were the subject of a complete application for quotation at the time of the offer of the convertible security; and
    - (ii) are quoted on a specified securities market at the time of the offer and allotment of the new security; and
  - (b) the convertible security—
    - (i) was quoted on a specified securities market—
      - (A) on its allotment; or
      - (B) after its allotment, if it was the subject of a complete application for quotation at the time of its offer; and
    - (ii) remains quoted on the specified securities market for the period that it is current; and
  - (c) the new security is quoted on the specified securities market on its allotment.

## **8 Conditions of exemptions in clauses 5 and 6**

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the convertible security has been allotted under—
  - (a) a registered prospectus (including a simplified disclosure prospectus) if the prospectus also contains particulars of all material matters relating to the offer of the new security; or
  - (b) a simplified disclosure prospectus if the prospectus also contains all of the information, statements, and other matters specified in Schedule 10 of the Regulations that are applicable in relation to the offer of the new security.
- (2) The exemptions in clauses 5 and 6 are subject to the further condition that, before the conversion date, the following documents have been sent to every person who was, at the time the documents were sent, a registered holder of securities of the same class as the convertible security:
  - (a) either—

- (i) a copy of the latest financial statements; or
    - (ii) a notice under section 209(1)(b) of the Companies Act 1993 (being a notice that refers to an annual report that includes the latest financial statements); and
  - (b) if the conversion date would be later than 9 months after the date of the statement of financial position included in the latest financial statements,—
    - (i) interim financial statements, for the period from the date of the latest financial statements and ending on a stated date that is no more than 9 months after the date of those financial statements, that are prepared in accordance with NZ IAS 34 (except that they need not be audited); or
    - (ii) a notice under the NZSX/NZDX listing rules or the NZAX listing rules that refers to the half-yearly report required by those listing rules, and includes the interim financial statements referred to in subparagraph (i); and
  - (c) if the conversion date would be later than 9 months after the date of the statement of financial position included in the latest financial statements, a statement containing a description of the group or unit trust.
- (3) The exemptions in clauses 5 and 6 are subject to the further condition that the conversion date is not more than 9 months after the date of the latest financial statements or the interim financial statements sent, or referred to in a notice sent, under subclause (2).
- (4) In this clause, **latest financial statements** means the most recent financial statements that comply with, and have been registered under, the Financial Reporting Act 1993 (or are prepared and audited as if they were to be registered under that Act).
- (5) The documents referred to in subclause (2) must relate to the group (if the new security is an equity security) or the unit trust (if the new security is a unit).

**9 Exemption from section 37A(1)(a), (ab)(i), (b), and (c) of Act for equity securities or units allotted under convertible securities**

If the requirements in clause 10 are met, every person is exempted, in respect of the allotment of equity securities or units under the terms of, or on the exercise by any person of a right conferred by, a convertible security, from—

- (a) section 37A(1)(a) and (ab)(i) of the Act; and
- (b) section 37A(1)(b) of the Act (so far as it relates to an investment statement or a simplified disclosure prospectus relating to the new security); and
- (c) section 37A(1)(c) of the Act (so far as it relates to a simplified disclosure prospectus relating to the new securities).

**10 Requirements before exemption in clause 9 applies**

The requirements referred to in clause 10 are that—

- (a) the new security is of the same class as securities (**relevant securities**) that—
  - (i) were quoted on a specified securities market—
    - (A) at the time of the offer and allotment of the convertible security; or
    - (B) after allotment of the relevant securities, if they were the subject of a complete application for quotation at the time of the offer of the convertible security; and
  - (ii) are quoted on a specified securities market at the time of the offer and allotment of the new security; and
- (b) the convertible security—
  - (i) was quoted on a specified securities market—
    - (A) on its allotment; or
    - (B) after its allotment, if it was the subject of a complete application for quotation at the time of its offer; and
  - (ii) remains quoted on the specified securities market for the period that it is current; and
- (c) the new security is quoted on a specified securities market on its allotment.

**11 Conditions of exemption in clause 9 from section 37A(1)(a) and (ab)(i) of Act**

The exemptions in clause 9 from section 37A(1)(a) and (ab)(i) of the Act are subject to the conditions that—

- (a) the convertible security was issued under an investment statement or simplified disclosure prospectus that relates to both the convertible security and the new security; and
- (b) if the terms of the convertible security permit the issuer to vary the terms of the convertible security or the new security (and so vary the terms of conversion), the investment statement or simplified disclosure prospectus—
  - (i) states clearly that the issuer may vary the terms of conversion; and
  - (ii) states what steps the issuer will take, before an election to convert is made, to inform holders of convertible securities of the terms of conversion.

**12 Conditions of exemption in clause 9 from section 37A(1)(b) and (c) of Act if election to convert available**

- (1) This clause applies if the holder of a convertible security referred to in clause 9 is entitled to elect to convert that security (whether or not the issuer also has rights in relation to the conversion of the security).
- (2) If this clause applies, the exemptions in clause 9 from sections 37A(1)(b) and (c) of the Act are subject to the following conditions:
  - (a) that the investment statement or simplified disclosure prospectus relating to both the convertible securities and the new securities includes the following:
    - (i) a statement to the effect that changes of circumstance occurring between the date of the allotment of the convertible securities and the conversion date of those securities may have a material effect on the new securities (including their price) or the issuer; and
    - (ii) a statement that important information relating to the convertible securities and new securities (including their price) and the issuer will be disclosed in accordance with the continuous disclosure provisions of the listing rules of each specified securities market on which the convertible security is quoted; and
    - (iii) notice of how and when a pre-conversion statement will be made available as required by paragraph (b); and
    - (iv) a statement that the issuer is not entitled to allot new securities if the pre-conversion statement has not been made available as required by paragraph (b) before the election to convert is made; and
    - (v) notice of what the pre-conversion statement will contain, as described in subclause (3); and
    - (vi) a statement that holders of the convertible securities should consider the pre-conversion statement, the market price of the new securities, and all other information made available concerning the new securities and the issuer, before an election to convert is made; and
  - (b) that the issuer makes a pre-conversion statement that complies with subclause (3) available—
    - (i) to the operator of each specified securities market on which the convertible security is quoted for release to the market,—
      - (A) if there is a restriction on the earliest date on which the election to convert may be made under the terms of conversion, between 5 and 10 working days before that earliest date; or

- (B) if there is no restriction on the earliest date of conversion, at a date determined by the issuer and notified to the operator of the specified securities market; and
    - (ii) following its release to the market, on the issuer's Internet site; and
  - (c) that no new securities may be allotted if—
    - (i) a pre-conversion statement that complies with subclause (3) was not made available in accordance with paragraph (b) before the election to convert is made; or
    - (ii) at the time of allotment, the investment statement or simplified disclosure prospectus, taken together with each pre-conversion statement, is known by the issuer, or any director of the issuer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not it became so false or misleading as a result of a change of circumstances after the date of the investment statement, registered prospectus, or pre-conversion statement).
- (3) The pre-conversion statement must include the following set out in a succinct manner:
  - (a) a statement to the effect that the purpose of the pre-conversion statement is to assist registered holders of convertible securities to decide whether to elect to convert those securities; and
  - (b) a description of any adverse circumstances (whenever they occurred) that make the investment statement or simplified disclosure prospectus false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to those circumstances; and
  - (c) a description of the effect of any adverse circumstances, to the extent that the effect can be assessed, or, where the effect of the adverse circumstances cannot be assessed, a statement to that effect; and
  - (d) a list of any other documents that are, in the opinion of the issuer, relevant to a decision about whether to elect to convert, in which case either the documents must be included in the pre-conversion statement or the pre-conversion statement must clearly indicate how and where those documents are made available to holders of convertible securities; and
  - (e) a statement by the issuer that the pre-conversion statement is not known by the issuer, or any director of the issuer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.
- (4) The conditions in subclause (2)(a) do not apply if the date of the investment statement is on or before 21 December 2007.



**13 Condition of exemptions in clause 9 from section 37A(1)(b) and (c) of Act if no election to convert available**

- (1) This clause applies if the holder of a convertible security referred to in clause 9 does not have a right to elect to convert that security.
- (2) If this clause applies, the exemptions in clause 9 from section 37A(1)(b) and (c) of the Act are subject to the condition that the investment statement or simplified disclosure prospectus relating to both the convertible securities and the new securities includes the following:
  - (a) a statement to the effect that changes of circumstance occurring between the date of the allotment of the convertible securities and the conversion date of those securities may have a material effect on the new securities (including their price) or the issuer; and
  - (b) a statement that important information relating to the convertible securities and new securities (including their price) and the issuer will be disclosed in accordance with the continuous disclosure provisions of the listing rules of each specified securities market on which the convertible security is quoted; and
  - (c) a statement describing the principal risks assumed by holders of the convertible securities; and
  - (d) a statement to the effect that holders of the securities have no right to elect to convert; and
  - (e) a statement that new securities will or may be allotted even if, at the time of allotment, there are adverse circumstances that make the investment statement or simplified disclosure prospectus false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to those circumstances.

*Exemption relating to rights issues*

**14 Exemption from section 37A(1)(a) and (ab)(i) of Act relating to rights issue**

- (1) Every person is exempted from section 37A(1)(a) of the Act in respect of an allotment of securities to a subscriber for those securities in whose favour an offer of those securities (being an offer to which regulation 6(1)(a) and (2) of the Regulations applies) has been renounced.
- (2) Every person is exempted from section 37A(1)(ab)(i) of the Act in respect of an allotment of securities to a subscriber for those securities in whose favour an offer of those securities has been renounced to the extent that the offer is an offer made to persons who already hold securities of the issuer.

*Revocation***15 Revocation of Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002**

The Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002 (SR 2002/318) is revoked.

Dated at Wellington this 26th day of March 2013.

Sue Brown,  
Head of Primary Regulatory Operations.

**Statement of reasons**

This notice, which comes into force on 1 April 2013 and is revoked on 30 September 2017, replaces the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002 (the **2002 notice**). The new exemption notice retains the existing exemptions from the Securities Act 1978 (the **Act**) in the 2002 notice with some amendments. In summary, in relation to equity securities and units (**new securities**) issued under convertible securities, this notice—

- continues to grant exemptions from section 37 of the Act (the registered prospectus requirements) for new securities and, for equity securities issued under a convertible security allotted before 1 October 1997, from section 37A of the Act (the investment statement requirements). These exemptions apply only if the issuer of the convertible securities is the same person as, or a wholly owned subsidiary of, the issuer of the new securities. If the issuer of the convertible securities is a wholly owned subsidiary of the issuer of the new securities, that parent must also have equity securities or units quoted or the subject of an application for quotation. By allowing applications for quotation to be sufficient, this notice provides more effectively for the issue of convertible securities in initial public offerings. In addition, both the convertible and the new securities must be quoted:
- requires, as a condition of those exemptions, that the prospectus for the convertible securities also provides the required disclosure for the new securities and that the latest financial statements and other documents be sent to registered holders. This notice updates—
  - the description of the financial statements that must be made available; and

- the manner in which those financial statements may be made available to reflect recent changes to the Companies Act 1993 and the NZX listing rules:
- grants exemptions from section 37A(1)(a), (ab)(i), (b), and (c) of the Act (the requirements that the subscriber for the new securities must receive an investment statement or simplified disclosure prospectus, that the investment statement or prospectus is not false or misleading at the time of allotment of the new security, and as to the date of allotment of the new securities). By extending the exemptions to cover section 37A(1)(ab)(i), this notice allows for offers and allotments of convertible securities and new securities to be done by means of a simplified disclosure prospectus:
- requires, as a condition of those exemptions, that the investment statement or simplified disclosure prospectus cover both the convertible securities and new securities and includes a reference to a pre-conversion statement:
- extends the exemption from section 37A(1)(b) and (c) of the Act to the allotment of new securities upon the conversion of convertible securities issued before 21 December 2007 (which is the date on which the pre-conversion statement regime took effect) by—
  - removing, in relation to such allotments, the requirements for the investment statement to have contained the required warning statements and a notice that a pre-conversion statement would be made available; but
  - otherwise requiring compliance with all other applicable conditions of the notice, including the requirement for a pre-conversion statement to be made available before the conversion:
- provides more effectively for the operation of the pre-conversion statement regime in relation to convertible securities that do not have a specified period within which they may be exercised or converted by—
  - distinguishing between those convertible securities that may be exercised or converted at any time and those that may only be exercised or converted within a specified period; and
  - providing that a pre-conversion statement in relation to the former type of convertible security may be given at the time determined by the issuer and notified to the operator of the specified securities market.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions replacing the 2002 notice with amendments because—

- the 2002 notice has been in place for a number of years and the policy reasons for the notice remain valid and relevant. Consultation with market participants by FMA demonstrates continued reliance on the exemptions in this notice:
- the notice reduces compliance costs for issuers in relation to—

- the offer of new securities and the allotment of those new securities upon the exercise or conversion of convertible securities; and
- the allotment of securities to subscribers in whose favour an offer of securities under a rights issue is renounced:
- the notice enables convertible securities and new securities that are to be allotted upon exercise or conversion of convertible securities to be offered or allotted using a simplified disclosure prospectus in certain circumstances:
- the notice provides more effectively for the issue of convertible securities in an initial public offering where the issuer of convertible securities is a wholly owned subsidiary of the issuer of the new securities, for the application of the pre-conversion statement regime to convertible securities allotted prior to 21 December 2007, and for operation of the pre-conversion statement regime in relation to convertible securities that may be exercised at any time (rather than during a specified period):
- FMA is satisfied that the disclosure requirements, including the pre-conversion statement regime, are sufficient to avoid significant detriment to the holders of convertible securities at the time at which new securities are allotted to them upon exercise or conversion of convertible securities:
- FMA is also satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that give rise to the exemption. The notice only provides exemptions to the extent appropriate to reduce compliance costs in relation to the offer and allotment of new securities on the exercise or conversion of a convertible security, and requires the provision of relevant information in an appropriate alternative manner.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 28 March 2013.

## **Reprints notes**

### **1    *General***

This is a reprint of the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2013 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***

Financial Markets Conduct Regulations 2014 (LI 2014/326): Schedule 1 clause 26