

**Reprint
as at 1 January 2016**



**Securities Act (Jacks Point Development) Exemption
Amendment Notice 2010**

(SR 2010/489)

Securities Act (Jacks Point Development) Exemption Amendment Notice 2010: expired, on 1 January 2016, pursuant to clause 3 of the Securities Act (Jacks Point Development) Exemption Notice 2010 (SR 2010/204).

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 (Jacks Point Development) Exemption Amendment Notice 2010.

2 Commencement

This notice comes into force on 30 December 2010.

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.

3 Principal notice amended

This notice amends the Securities Act (Jacks Point Development) Exemption Notice 2010.

4 Expiry

Clause 3 is amended by omitting “31 December 2010” and substituting “31 December 2015”.

5 Interpretation

Clause 4(1) is amended by revoking the definition of **developer** and substituting the following definition:

developer—

- (a) means any of the following:
 - (i) Jacks Point Limited;
 - (ii) Jacks Point Village Limited;
 - (iii) Jacks Point Land Holdings Limited;
 - (iv) Arith Holdings Limited;
 - (v) Henley Downs Village Limited; and
- (b) includes any assignee or successor in title of any of the companies referred to in paragraph (a) (in whole or in part) that continues the promotion and carrying out of the development

6 Exemptions from sections 33(3), 37, 37A, 38A, and 54 of Act and Regulations (except regulation 23)

- (1) Clause 5 is amended by omitting “The developer” and substituting “Every developer”.
- (2) Clause 5 is amended by omitting “the developer” and substituting “any developer”.

7 Conditions

- (1) Clause 6(1) is amended by revoking paragraphs (a) and (b) and substituting the following paragraphs:

- (a) subscribers for specified securities have, before subscription, received from the developer or the relevant vendor a copy of each of the following documents:
 - (i) the rules;
 - (ii) the management agreement for the society (if any);
 - (iii) a specimen of all deeds or agreements providing for the transfer of communal facilities from the developer to the society or for the lease or licence of communal facilities by the society;

- (iv) a specimen of the sale agreement;
 - (v) any agreement between the water company, the society, and the developer in connection with the supply of water to the development;
 - (vi) a specimen of all material instruments that will be executed by subscribers for specified securities, deeds, or agreements that contain provisions concerning the rights and obligations referred to in paragraph (b)(iii); and
- (b) subscribers for specified securities have, before subscription, received from the developer a document that sets out a description of—
- (i) the areas of land that make up the development; and
 - (ii) the communal facilities that are intended to be owned, leased, licensed, maintained, administered, or operated in whole or in part by the society at the completion of the development; and
 - (iii) the rights and obligations of members of the society in relation to the communal facilities and the specified securities; and
 - (iv) the voting rights of the subscriber, as a member of the society, in respect of the specified securities (including a statement as to whether the rules provide for voting by classes of members, or by a representative, in relation to particular matters); and
- (ba) if the developer represents or agrees that the development will be completed in stages, subscribers for specified securities have, before subscription, received from the developer a document that sets out,—
- (i) for each stage of the development, the intended communal facilities and when those facilities are intended to be transferred, leased, or licensed to, or completed or constructed by or for, or procured by, the society; and
 - (ii) the material risks of those communal facilities not being transferred, leased, or licensed to, or completed or constructed by or for, or procured by, the society at each stage; and
 - (iii) a statement as to what stage the development is at, or expected to be at, at the end of each calendar year within the period beginning on the date of commencement of the development and ending on the estimated date of the completion of the development; and
- (bb) it is a term of the offer of the specified securities that the rules provide that the specified securities may be subscribed for by entering into a sale agreement; and
- (bc) it is a term of the offer of the specified securities that the developer must not represent or agree that an owner of a developed property will have access, use, or enjoyment of the communal facilities unless the rules provide that the owner is entitled to be a member of the society; and

- (2) Clause 6(1)(d) is amended by inserting the following subparagraph after subparagraph (ii):
- (iia) if the developer represents or agrees that certain communal facilities will be completed or constructed by or for, or procured by, the society at the time of settlement of the sale agreement, those communal facilities have been completed, constructed, or procured in accordance with that representation or agreement; and
- (3) Clause 6(1) is amended by inserting the following paragraphs after paragraph (d):
- (da) in respect of any communal facility that the developer represents or agrees will be owned, leased, or licensed by the society at the completion of a certain stage of the development or at the completion of the development, it is a term of the offer of the specified securities that—
 - (i) a deed of transfer, lease, or licence for that communal facility has been executed in favour of the society; and
 - (ii) in respect of a communal facility that is an interest or estate in land, the transfer or lease is registered immediately after the subdivision of the land and the issue or creation of a separate computer register for an estate in fee simple or leasehold in respect of the land on which the communal facilities are to be situated; and
 - (iii) the deed of transfer, lease, or licence has been provided to the society; and
 - (db) if the development is advertised on the basis that the society will own, lease, license, maintain, administer, or operate certain communal facilities in whole or in part at the completion of certain stages of the development or at the completion of the development, it is a term of the offer of the specified securities that the society owns, leases, licenses, maintains, administers, or operates those communal facilities in whole or in part at the completion of those stages or at the completion of the development (as the case may be); and
 - (dc) if a representation or an agreement is made by the developer to the effect that the developer or an associated person of the developer will make a contribution or payment to the society for the purposes of the society's activities,—
 - (i) a deed has been executed to this effect in favour of the society before the allotment of a specified security to a person to whom the representation is made or with whom the agreement is made; and
 - (ii) the deed has been provided to the society before the allotment of a specified security to a person to whom the representation is made or with whom the agreement is made; and

- (4) Clause 6(1)(j) is amended by inserting the following subparagraph after subparagraph (iii):
- (iiia) managing and administering the society and administering and enforcing the rules:
- (5) Clause 6(1)(n) is amended by revoking subparagraph (i) and substituting the following subparagraph:
- (i) a copy of summary financial statements (if practicable, in tabular form) for the business of the golf course for each of the 5 accounting periods of the operator of the golf course that precede the proposed date of the special resolution, being summary financial statements that comply with clause 9(2) to (4) of Schedule 1 of the Regulations (which, for the purposes of this subparagraph, apply with all necessary modifications):
- (6) Clause 6(1)(p) is amended by omitting “31 December 2010” and substituting “31 December 2015”.
- (7) Clause 6(1)(p) is amended by revoking subparagraphs (iv) and (v) and substituting the following subparagraph:
- (iv) contains, if a levy, fee, or charge is variable, a statement of the factors that influence how the levy, fee, or charge can vary; and
- (8) Clause 6(1)(p) is amended by adding the following subparagraph:
- (viii) contains a statement as to whether the estimates (if any) have been reviewed by an independent third party acting in his or her professional capacity or consist only of the expression of an opinion of the developer; and
- (9) Clause 6(2) is revoked.

8 Transitional provision

If, before the commencement of this notice, specified securities have been subscribed for but have not yet been allotted, those securities may be allotted in reliance on the principal notice as if the amendments made by clause 7 of this notice had not come into force.

Dated at Wellington this 21st day of December 2010.

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

[Seal]

D W Mayhew,
Member.

Statement of reasons

This notice, which comes into force on 30 December 2010, amends the Securities Act (Jacks Point Development) Exemption Notice 2010 to—

- extend the expiry until 31 December 2015; and
- extend the application of the notice to a number of other developers that are acting in respect of the development undertaken within the area of the Jacks Point Zone in Queenstown (the **development**); and
- align some of the conditions in the notice with the conditions in the Securities Act (Real Property Developments) Exemption Notice 2007 (the **class notice**).

The principal notice exempts Jacks Point Limited and various other developers, the Jacks Point Residents & Owners Association Incorporated (the **society**), and certain vendors from sections 33(3), 37, 37A, 38A, and 54 of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (except regulation 23), subject to conditions, in respect of the offer of certain participatory securities. The securities are in the form of membership of the society and confer rights to participate in the ownership and use of all or part of the communal facilities in the development.

The principal notice replaced the Securities Act (Jacks Point Development) Exemption Notice 2006 (the **2006 notice**).

The Securities Commission considers that the amendments are appropriate because—

- since the 2006 notice was granted the Commission has reviewed the class exemption for real property developments and its policy for such exemptions. As a result of this review, the class notice now requires additional information to be provided to subscribers before subscription, especially for developments being completed in stages, among other obligations on developers. The Commission considers that the principal notice should be amended to bring it into line with the policy of the class notice:
- the developers under this notice are not able to rely on the class notice because of particular features of the development. The amendments accommodate those features and ensure that subscribers in respect of the development will receive information and protection equivalent to people who subscribe for securities under the class notice:
- the principal notice was originally granted for a 6-month period only to allow consideration of further conditions required to bring the principal notice into line with the class notice. The Commission considers that, since the policy reasons for granting the exemption contained in the principal notice are still applicable and the development is continuing, the term of that notice should be extended and all developers involved in developments in the Jacks Point Zone should be able to rely on that notice.

Reprinted as at
1 January 2016

**Securities Act (Jacks Point Development) Exemption
Amendment Notice 2010**

Statement of reasons

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 23 December 2010.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Jacks Point Development) Exemption Amendment 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 (Jacks Point Development) Exemption Notice 2010 (SR 2010/204): clause 3