

Reprint  
as at 1 December 2016



**Securities Act (Australian Registered Managed  
Investment Schemes) Exemption Notice 2008**  
(SR 2008/327)

Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2008: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

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 (Australian Registered Managed Investment Schemes) Exemption Notice 2008.

**2 Commencement**

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

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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.**

### 3 Revocation

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

Clause 3: replaced, on 21 June 2013, by clause 4 of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Amendment Notice 2013 (SR 2013/277).

### 4 Interpretation

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

**Act** means the Securities Act 1978

**Australian disclosure document** means a document—

- (a) that contains—
  - (i) an offer of Australian participatory securities by a responsible entity; or
  - (ii) an offer of Australian participatory securities that have been previously allotted by a responsible entity (being an offer by the holder of those securities); and
- (b) that is—
  - (i) a product disclosure statement (within the meaning of the Corporations Act 2001 (Aust)) that complies with the laws of Australia; or
  - (ii) a prospectus within the meaning of section 9 of the Corporations Act 2001 (Aust); and
- (c) by means of which it is lawful under the laws of Australia to accept applications for securities offered under that document; and
- (d) that is applicable to the offer of the Australian participatory securities in New Zealand

**Australian participatory securities** means participatory securities in the form of interests in an Australian registered scheme

**Australian registered scheme** means a managed investment scheme (within the meaning of section 9 of the Corporations Act 2001 (Aust)) that is registered with the Australian Securities and Investments Commission under section 601EB of that Act

**Regulations** means the Securities Regulations 2009

**responsible entity** means the company named as the responsible entity or temporary responsible entity of an Australian registered scheme in the Australian Securities and Investments Commission's record of the scheme's registration.

- (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.

Clause 4(1) **Regulations**: amended, on 21 June 2013, by clause 5 of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Amendment Notice 2013 (SR 2013/277).

## **5 Exemptions for distribution reinvestment schemes**

- (1) This clause applies to any Australian participatory securities allotted only to a person who already holds Australian participatory securities that are the same kind as the securities allotted and that are offered under a plan that—
  - (a) entitles that person to subscribe for those securities by applying all or any specified part of any distribution payable under the Australian registered scheme to that person; or
  - (b) requires the responsible entity to allot those securities to that person as fully paid securities in consideration only for that person forgoing the right to receive all or any specified part of any distribution otherwise payable under the Australian registered scheme to that person; or
  - (c) involves the compulsory reinvestment of distributions to which the person is entitled under the Australian registered scheme towards the allotment of those securities as fully paid securities.
- (2) Every responsible entity and every person acting on its behalf are exempted from sections 33(3), 37, 37A, 38A, and 51 to 54 of the Act and the Regulations (except regulation 23) in respect of any Australian participatory securities to which this clause applies.

Clause 5(2): amended, on 21 June 2013, by clause 6 of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Amendment Notice 2013 (SR 2013/277).

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

- (1) The exemptions in clause 5 are subject to the condition that, before the person referred to in clause 5 to whom Australian participatory securities are to be allotted subscribes for the Australian participatory securities to which clause 5 applies, that person has received a document that contains—
  - (a) an offer of securities under a distribution reinvestment scheme; and
  - (b) a description of the distribution reinvestment scheme and its terms and conditions; and
  - (c) a statement that the securities are to be allotted in accordance with the terms and conditions set out in the Australian disclosure document relating to the securities (if any) and the constitution for the scheme; and
  - (d) a statement that there is available from the responsible entity, on request and free of charge, a copy of—
    - (i) the most recent annual report of the scheme (if any); and
    - (ii) the most recent financial statements of the scheme (if any); and
    - (iii) the current Australian disclosure document relating to the securities (if any); and
    - (iv) the constitution of the scheme and any amendments to it; and
  - (e) a statement that, within 30 days of the day on which the Australian participatory securities are allotted to a person under the scheme, the person

will be sent a statement of the amount of the distribution and the number of securities that have been allotted to that person.

- (2) The exemptions in clause 5 are subject to the conditions that,—
  - (a) at the time the price of the Australian participatory securities is set, the responsible entity does not have any information that is not publicly available that would, or would be likely to, have a material adverse effect on the realisable price of the security if the information were publicly available; and
  - (b) the offer of Australian participatory securities to which clause 5 applies is made to all persons in New Zealand who hold, or have applied to hold, securities of the same kind; and
  - (c) every person to whom the offer is made is given a reasonable opportunity to accept it; and
  - (d) the Australian participatory securities issued to the securities holders are—
    - (i) issued on the terms disclosed to the holders; and
    - (ii) subject to the same rights as the securities issued to all holders of securities of the same kind who agree to receive the securities.
- (3) The exemptions in clause 5 are subject to the condition that, at the same time as offers of the Australian participatory securities are made or are open for acceptance in New Zealand under the distribution reinvestment scheme in reliance on any exemption in clause 5, offers of the Australian participatory securities are also made or are open for acceptance in Australia in accordance with the scheme and the laws of Australia.

## **7 Revocation**

The Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003 (SR 2003/297) is revoked on the close of 30 September 2008.

## **8 Transitional provision**

- (1) If, before the revocation of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003, a person has relied on that notice, the offer of any Australian participatory securities, and the allotment of those securities in connection with the offer, may, until the close of 30 September 2010, be made by that person in accordance with that notice (as in force immediately before that notice was revoked as if that notice were still in force).
- (2) Subclause (1) does not prevent a person offering and allotting securities in accordance with clauses 5 and 6 of this notice or the Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008.

Dated at Wellington this 23rd day of September 2008.

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 reason appended to:**

- Securities Act (Australian Registered Managed Investment Schemes) Exemption Amendment Notice 2013

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2013, replaces the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2003 (the **2003 notice**). This notice only carries over the exemptions relating to offers of securities in Australian registered managed investment schemes under distribution reinvestment plans (*see* clauses 10 and 11 of the 2003 notice). This notice also allows issuers who have previously relied on the 2003 notice to continue to rely on that notice until 30 September 2010.

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

- the 2003 notice has been a long-standing class exemption notice to allow certain Australian issuers to extend offers of securities to members of the public in New Zealand using Australian offer documents. The Securities (Mutual Recognition of Securities Offerings—Australia) Regulations 2008 (the **2008 regulations**), which came into force in June 2008, provide a more comprehensive regulatory regime for the extension of offers made in compliance with Australian law. Therefore the Commission has reviewed the 2003 notice. The Commission is of the view that the exemptions in the 2003 notice should remain only where those offers are not adequately covered by the 2008 regulations or there would be excessive compliance costs in relying on that regulatory regime:
- generally, Australian issuers that offer securities in Australian registered managed investment schemes to the public in New Zealand that have previously

been able to rely on the 2003 notice are able to rely on the 2008 regulations. The exemptions in the 2003 notice for offers of securities in Australian registered managed investment schemes under distribution reinvestment plans are, however, not available under the 2008 regulations. These exemptions are therefore retained in this notice:

- the Commission recognises that Australian issuers that have previously offered securities in reliance on the 2003 notice require time to review requirements for reliance on the 2008 regulations and adjust their compliance procedures so that the introduction of the 2008 regulations does not inadvertently create unnecessary short-term compliance costs for these issuers. A transitional period is therefore provided for these issuers.

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

- Securities Act (Australian Registered Managed Investment Schemes) Exemption Amendment Notice 2013

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 25 September 2008.

## **Reprints notes**

### **1    *General***

This is a reprint of the Securities Act (Australian Registered Managed Investment Schemes) Exemption Notice 2008 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

Securities Act (Australian Registered Managed Investment Schemes) Exemption Amendment Notice 2013 (SR 2013/277)