

Reprint

as at 1 August 2007

Securities Act (UBS Securities New Zealand Limited) Exemption Notice 2005

(SR 2005/200)

Securities Act (UBS Securities New Zealand Limited) Exemption Notice 2005:
expired, on 1 August 2007, 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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This notice is administered by the Securities Commission.

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Notice

1 **Title**

This notice is the Securities Act (UBS Securities New Zealand Limited) Exemption Notice 2005.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

2 **Commencement**

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

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

3 **Expiry**

This notice expires on the close of 31 July 2007.

4 **Interpretation**

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

Act means the Securities Act 1978

company means UBS Securities New Zealand Limited

company instalment receipts means equity securities issued by the company—

(a) in the form of an instrument evidencing the arrangements, and having the characteristics, described in the trust deed; and

(b) on terms providing for the delivery of specified equity securities to the holders of those securities

Regulations means the Securities Regulations 1983

Schedule 1 means Schedule 1 of the Regulations

specified equity securities means fully paid ordinary shares in the capital of Telecom Corporation of New Zealand Limited

trust deed means the trust deed dated on or about July 2005 between the company and the trustee that provides, among other things, for the trustee to hold the specified equity se-

curities on separate trusts for each of the subscribers for the company instalment receipts

trustee means The New Zealand Guardian Trust Company Limited

UBS entity means the company or a related company of the company (as defined in the Companies Act 1993).

- (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.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

5 Exemption from section 37A(1)(c) of Act

The company, and every person acting on its behalf, are exempt from section 37A(1)(c) of the Act in respect of company instalment receipts.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that any registered prospectus relating to the company instalment receipts contains prominent statements to the effect that—
- (a) if information or a statement in the registered prospectus becomes false or misleading in any material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances, the registered prospectus will be immediately withdrawn or amended; and
 - (b) until maturity of the company instalment receipts, the company will lodge certificates with the Registrar that (in each case)—
 - (i) relate to the current registered prospectus relating to the company instalment receipts; and
 - (ii) are signed on behalf of the company by at least 2 directors; and
 - (iii) are dated not more than 7 months after the date of the current registered prospectus relating to the company instalment receipts or after the date of the last certificate lodged in relation to that

- current registered prospectus (whichever is the later); and
- (iv) state that, in the opinion of the directors of the company, after due enquiry by them, the current registered prospectus relating to the company instalment receipts is not, at the date of the certificate, false or misleading in any material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
 - (v) state that, except to the extent permitted by exemptions granted by the Securities Commission in respect of the company instalment receipts, the information contained in the current registered prospectus complies with Schedule 1.
- (2) The exemption in clause 5 is subject to the condition that no company instalment receipt is allocated under a registered prospectus later than the maturity date of that company instalment receipt.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

7 Exemptions from clauses 1(4), 4, 5A to 17, 20, 22 to 38, 41, and 42 of Schedule 1

The company, and every person acting on its behalf, are exempted from clauses 1(4), 4, 5A to 17, 20, 22 to 38, 41, and 42 of Schedule 1 in respect of company instalment receipts.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the following conditions:
- (a) that any registered prospectus relating to the company instalment receipts contains the following information:
 - (i) a brief description of the principles and procedures used to calculate the subscription price for a company instalment receipt; and

- (ii) a statement of how an investor may ascertain the subscription price for a company instalment receipt; and
 - (iii) a brief summary of the consequences of a subscriber failing to pay the final instalment of a company instalment receipt; and
 - (iv) the date of the trust deed; and
 - (v) the names of the parties to the trust deed; and
 - (vi) brief particulars of the duties stated by the trust deed to be those of the trustee; and
 - (vii) a brief description of the principal terms of the trust deed; and
 - (viii) a statement that copies of the trust deed may be obtained on request to the company and without charge; and
 - (ix) a statement specifying where copies of the trust deed may be obtained; and
 - (b) that at the date of the allotment of the company instalment receipts the trustee has complied, and undertakes in the trust deed to comply throughout the period of the company instalment receipts, with the conditions in paragraph (c); and
 - (c) that the trustee holds (subject to and in accordance with the trust deed) specified equity securities—
 - (i) sufficient to meet the obligation to deliver specified equity securities under the terms of the company instalment receipts; and
 - (ii) for the exclusive benefit of holders of company instalment receipts, subject only to a charge in favour of the company that secures payment of the final instalment of the company instalment receipts.
- (2) The condition in subclause (1)(c)(i) does not apply insofar as it requires the trustee to hold specified equity securities in respect of company instalment receipts beneficially owned by a UBS entity provided that—
- (a) those company instalment receipts are held by the trustee on behalf of the UBS entity; and

- (b) the UBS entity may not demand a transfer of those company instalment receipts, or any corresponding specified equity securities, unless and until the company transfers, or procures the transfer of, a sufficient number of specified equity securities to the trustee.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

9 Conditions of exemptions in clauses 5 and 7

The exemptions in clauses 5 and 7 are subject to the conditions that the company—

- (a) does not discharge or retire the trustee from its position as trustee until—
- (i) all functions and duties of that position have been fulfilled and performed; or
 - (ii) the company has appointed another person who is either a trustee corporation or a person approved for the purpose by the Commission in accordance with section 48 of the Act as the trustee in its place, and that person has accepted appointment as such; and
- (b) immediately appoints another person as the trustee, in accordance with paragraph (a)(ii), if New Zealand Guardian Trust Company Limited otherwise ceases to be the trustee or to be a trustee corporation.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

Dated at Wellington this 30th day of June 2005.

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

[LS]
J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 July 2007, exempts UBS Securities New Zealand Limited (**UBS**), subject to conditions, from certain prospectus requirements of the Securities Act 1978 and the Securities Regulations 1983 in respect of instalment receipts representing a right to purchase Telecom Corporation of New Zealand Limited shares (**Telecom instalments**).

The Securities Commission considers that it is appropriate to grant the exemptions from certain prospectus requirements of the Securities Act 1978 and the Securities Regulations 1983 because—

- the exemptions are consistent with the Commission’s policy in cases where returns on the securities offered are dependent upon the performance of securities issued by a third party, and not on the performance of the offeror of the securities to which the exemption relates. In these circumstances, much of the information that would otherwise be required about the offeror as issuer is likely to be irrelevant and potentially confusing for prospective investors:
- a significant amount of the disclosure required in respect of new equity securities is not appropriate where the end product is a share currently trading on the NZSX and where there is a trustee interposed as legal owner of the underlying security on behalf of the owners of the Telecom instalments during the period of the Telecom instalments:
- the exemptions will allow UBS to offer Telecom instalments to the public under a registered prospectus that contains information tailored to suit the nature of the product. This is intended to result in investors receiving information that is more relevant and useful than some of the disclosure that would be required if the exemptions had not been granted:
- compliance with the NZX Participant Rules requires the market maker to be ready to buy and sell the Telecom instalments on a continuous basis until maturity of the Telecom instalments. The ability to allot Telecom instalments on an “as required” basis until maturity will ensure that there is a supply of Telecom instalments to meet this obligation:

- as the prospectus will not contain financial statements of the issuer, it would usually be valid for only 6 months. In this case, as financial information about the issuer is not material for investors, the issuer should not be penalised by the omission of the information. The conditions require the directors to register a certificate stating that the prospectus is not false or misleading in any material particular, and require the immediate withdrawal or amendment of the prospectus should the registered prospectus become false or misleading at any time.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 4 July 2005.

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Notes

1 *General*

This is an eprint of the Securities Act (UBS Securities New Zealand Limited) Exemption Notice 2005. It incorporates all the amendments to the notice as at 1 August 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Securities Act (UBS Securities New Zealand Limited) Exemption Notice 2005 (SR 2005/200): clause 3
