

**Reprint
as at 1 December 2014**



**Securities Markets (Unsolicited
Offers) Regulations 2012**

(SR 2012/331)

Securities Markets (Unsolicited Offers) Regulations 2012: revoked, on 1 December 2014, by section 5(l) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 29th day of October 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 48DB of the Securities Markets Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Commerce in accordance with section 48DB(3) of that Act, makes the following regulations.

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.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

Contents		Page
1	Title	3
2	Commencement	3
<i>Preliminary provisions</i>		
3	Interpretation	3
4	Status of examples	4
5	Application of regulations	4
6	Obligations do not apply to offers to certain persons	6
<i>Offeror obligations</i>		
7	Offeror must notify intention to make unsolicited offer	7
8	Unsolicited offer must be made in disclosure document	8
9	Contents of disclosure document	9
10	Presentation of information and statements	11
11	Disclosure document and conduct must not be false, misleading, deceptive, or confusing	11
12	Offer period	12
13	Withdrawal of offer	12
14	Terms of offer cannot be varied	13
<i>Cancellation</i>		
15	Right to cancel	13
16	Effect of cancellation where offer to acquire securities	14
17	Effect of cancellation where offer to acquire power to dispose of securities or acquire other interests or rights attaching to securities	15
18	FMA may give notice that requirements do not apply	16
<i>Miscellaneous provisions</i>		
19	Prohibition on inviting offers to sell	17
20	Unsolicited offer obligations	17
21	Protection from liability in connection with unsolicited offer obligations	17
22	No contracting out of these regulations	18
Schedule 1		19
Form of information and statements at front of disclosure document		

Schedule 2

24

**Statement in disclosure document if payment to be
made more than 90 days after date of offer**

Regulations

1 Title

These regulations are the Securities Markets (Unsolicited Offers) Regulations 2012.

2 Commencement

These regulations come into force on 1 December 2012.

Preliminary provisions

3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

Act means the Securities Markets Act 1988

agreement means the agreement that results from the acceptance of an unsolicited offer

disclosure document means the document referred to in regulation 8(1)

issuer, in relation to an unsolicited offer, means the public issuer or issuer of the securities to which the offer relates

offeree means a person to whom an unsolicited offer is made

offeror means a person who makes an unsolicited offer

same, or substantially similar, terms includes terms that have, in substance, the same, or substantially similar, effect

securities register means—

(a) a register kept under section 51 of the Securities Act 1978; or

(b) a register of securities kept under any other enactment or overseas law.

(2) In these regulations, securities are of the **same class** if those securities have attached to them identical rights, privileges, limitations, and conditions (including, in the case of debt securities, the same redemption date).

4 Status of examples

- (1) An example used in these regulations is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

5 Application of regulations

- (1) These regulations apply to an unsolicited offer made by a person **(A)** to another person **(B)** if—
 - (a) the securities are—
 - (i) listed securities; or
 - (ii) securities of a class that has previously been offered to the public in New Zealand (within the meaning of section 3 of the Securities Act 1978); and
 - (b) A or an associated person of A or both have made, are making, or intend to make (in aggregate) unsolicited offers on the same, or substantially similar, terms to 20 or more other persons in the period that begins 6 months before the date of the offer to B and ends 6 months after that date.

Example

A makes an unsolicited offer to purchase the shares of B. Those shares are listed securities.

A makes substantially similar offers to 10 other persons in the 6-month period before the offer.

At the date of the offer to B, A intends to make substantially similar offers to a further 10 persons in the 6-month period after the offer. It does not matter for the purposes of counting the number of persons to whom an offer is made under subclause (1)(b) that some of those offers are made to persons referred to in regulation 6.

These regulations apply to the offer to B because A has made, is making, or intends to make unsolicited offers on substantially similar terms to 20 other persons in the period referred to in subclause (1)(b).

- (2) For the purposes of subclause (1)(b),—

- (a) the intention to make further offers must be considered as at the date of the offer to B:
 - (b) if A or an associated person of A makes unsolicited offers on the same, or substantially similar, terms to other persons during the 6-month period after the date of the offer to B, it must be presumed that A or the associated person intended, as at the date of the offer to B, to make those offers unless the contrary is proved by A:
 - (c) in determining the number of offers to other persons,—
 - (i) offers to persons referred to in regulation 6 must be counted even though regulations 7 to 18 do not apply to those offers:
 - (ii) offers to persons made before or after commencement of these regulations must be counted:
 - (iii) invitations to persons to make offers to sell securities, to confer powers to dispose of securities, or to sell interests in or rights attaching to securities must be counted as offers to acquire securities, to acquire powers to dispose of securities, or to acquire other interests in or rights attaching to securities (as the case may be).
- (3) However, these regulations do not apply to an unsolicited offer—
- (a) that is made in connection with an amalgamation under Part 13 of the Companies Act 1993; or
 - (b) that is made in connection with an arrangement or amalgamation under Part 15 of the Companies Act 1993; or
 - (c) to acquire securities issued by a body corporate that is incorporated outside New Zealand if the offer is made—
 - (i) by that body corporate; or
 - (ii) as part of, or in connection with, a takeover offer that is regulated by overseas law or rules; or
 - (d) that is made before the commencement of these regulations (but *see* subclause (2)(c)(ii)).
- (4) For the purposes of subclause (3)(c),—

overseas law or rules, in relation to the body corporate referred to in that paragraph, means—

- (a) the law of the country, State, or jurisdiction in which the body corporate is incorporated; or
- (b) the rules of an overseas market on which the securities issued by the body corporate are quoted

overseas market means an overseas securities market that operates, and has its principal place of business located, in a country, State, or jurisdiction outside New Zealand.

6 Obligations do not apply to offers to certain persons

(1) Regulations 7 to 18 do not apply to an offer made to any of the following:

- (a) an associated person of the offeror;
- (b) a relative (within the meaning of the Securities Act 1978) of a director of the offeror;
- (c) a close business associate of the offeror or of a director of the offeror;
- (d) a person whose principal business is the investment of money or who, in the course of and for the purposes of the person's business, habitually invests money;
- (e) a person who is wealthy (as defined in section 5(2CD) of the Securities Act 1978);
- (f) a person who is experienced in investing money (*see* subclause (2)).

(2) In this regulation, a person is **experienced** in investing money if—

- (a) an independent financial service provider (within the meaning of section 5(2CF) of the Securities Act 1978) is satisfied on reasonable grounds that the person to whom the unsolicited offer is made is, as a result of having experience of that kind, able to assess—
 - (i) the merits of the offer; and
 - (ii) the value of the security; and
 - (iii) the risks involved in accepting the offer; and
 - (iv) that person's own information needs; and
 - (v) the adequacy of the information given by the person making the offer; and

- (b) the financial service provider gives the person to whom the unsolicited offer is made, before the unsolicited offer is accepted, a written statement of the financial service provider's reasons for being satisfied as to those matters; and
- (c) the person to whom the unsolicited offer is made signs a written acknowledgment, before the unsolicited offer is accepted, that the person understands that the Securities Markets (Unsolicited Offers) Regulations 2012 will not apply and, accordingly, the person will not receive information under those regulations.

Offeror obligations

- 7 Offeror must notify intention to make unsolicited offer**
- (1) A person must not make an unsolicited offer unless the person has given written notice to the issuer, at least 5 working days before the offer is made, of the person's intention to do so.
 - (2) However, the written notice must not be given more than 10 working days before the offer is made.
 - (3) The written notice must be accompanied by—
 - (a) a copy of the standard disclosure document that will be given to the offerees (excluding information relating only to a particular offeree); and
 - (b) a list of the names and addresses of every offeree to whom the disclosure document will be given; and
 - (c) a list of the names and addresses of every other person to whom the offeror or an associated person of the offeror or both have made, are making, or intend to make an unsolicited offer on the same, or substantially similar, terms in the period referred to in regulation 5(1)(b).
 - (4) The list of names and addresses under subclause (3)(b) or (c) does not have to include the name and address of a person (A) if A's name and address have previously been notified to the issuer under this regulation in relation to an unsolicited offer on the same, or substantially similar, terms.
 - (5) If the person referred to in subclause (1) intends to make the offer to all of the persons who, as at a particular date, are regis-

tered on a securities register as holding securities of a particular class, the written notice—

- (a) must state that intention (including the particular date and the class of securities concerned); but
 - (b) is not required to be accompanied by the lists referred to in subclause (3).
- (6) The information referred to in subclause (3)(b) and (c) must be in a format that is readily accessible by the issuer so as to enable the issuer to readily communicate with the offerees or other persons referred to in those paragraphs.

8 Unsolicited offer must be made in disclosure document

- (1) An offeror must ensure that an unsolicited offer is made only in a disclosure document that—
- (a) complies with regulations 9 and 10; and
 - (b) is given to the offeree.
- (2) An offeror must ensure that a restricted communication is not distributed to a person who is or will be an offeree before the disclosure document is given to the offeree under subclause (1).
- (3) If the disclosure document is accompanied by 1 or more other documents when it is given to the offeree, the offeror must ensure—
- (a) that the disclosure document is prominently identified; and
 - (b) in the case where it is given—
 - (i) otherwise than by electronic means, that the disclosure document is placed in front of any of the other documents;
 - (ii) by electronic means, that the disclosure document is in a position within the group of documents where it is reasonably likely to come to the attention of the offeree.
- (4) In this regulation,—
- given**, in relation to a document, includes given by electronic or other means that enable the offeree to readily store the document in a permanent and legible form

restricted communication means a document or other communication that—

- (a) refers to an unsolicited offer or an intended unsolicited offer (for example, an acceptance form); and
- (b) is authorised or instigated by, or on behalf of, the person who is or will be the offeror or prepared with the co-operation of, or by arrangement with, that person.

9 Contents of disclosure document

- (1) The disclosure document must contain, at the front of the document, the information and statements specified in Schedule 1, in the form set out in that schedule, including,—
 - (a) in the case of an unsolicited offer to acquire listed securities,—
 - (i) the consideration that the offeror is offering under the offer to the offeree for each security; and
 - (ii) the current market price of each security as at a point in time specified in the document (being a time that is not earlier than 10 working days before the date of the offer); and
 - (iii) the total consideration that the offeror is offering under the offer to the offeree; and
 - (iv) the total current market price of the securities that are the subject of the offer to the offeree as at a point in time specified in the document (being a time that is not earlier than 10 working days before the date of the offer); and
 - (v) the unique identification code of the issuer as issued by the relevant registered exchange; and
 - (vi) a statement to the effect that the offeree may check the current market price of the securities on the relevant registered exchange's Internet site and in newspapers; and
 - (vii) the name of that registered exchange and its Internet site address; and
 - (b) in the case of an unsolicited offer to acquire non-listed securities,—

- (i) the consideration that the offeror is offering under the offer to the offeree for each security; and
 - (ii) a fair estimate of the value of each security as at a point in time specified in the document (being a time that is not earlier than 10 working days before the date of the offer); and
 - (iii) the total consideration that the offeror is offering under the offer to the offeree; and
 - (iv) a fair estimate of the total value of the securities that are the subject of the offer to the offeree as at a point in time specified in the document (being a time that is not earlier than 10 working days before the date of the offer); and
 - (v) the basis for making the estimates (including the main assumptions on which the estimates are based); and
 - (vi) a statement as to whether the estimates have been reviewed by an independent third party acting in his or her professional capacity or consist only of the expression of the offeror's opinion; and
- (c) in the case of an unsolicited offer to acquire a power to dispose of securities or to acquire other interests in or rights attaching to securities,—
- (i) the total consideration that the offeror is offering under the offer to the offeree; and
 - (ii) a fair estimate of the total value of the power, interests, or rights that are the subject of the offer to the offeree as at a point in time specified in the document (being a time that is not earlier than 10 working days before the date of the offer); and
 - (iii) the basis for making the estimate (including the main assumptions on which the estimate is based); and
 - (iv) a statement as to whether the estimate has been reviewed by an independent third party acting in his or her professional capacity or consists only of the expression of the offeror's opinion; and

- (d) in each case, the terms of payment of the consideration that the offeror is offering under the offer, including—
 - (i) how and when payments will be made; and
 - (ii) the date by which the consideration will be paid in full; and
 - (iii) if payment of the consideration is to be made by way of a single payment more than 90 days after the date of the offer, a statement in the form set out in Part 1 of Schedule 2; and
 - (iv) if payment of the consideration is to be made in instalments, the information and statement referred to in subclause (3).
- (2) Subclause (1)(c) does not apply if subclause (1)(a) or (b) applies.
- (3) The information and statement for the purposes of subclause (1)(d)(iv) are as follows:
 - (a) the amount of each instalment:
 - (b) when each instalment will be paid:
 - (c) how many instalments will be paid:
 - (d) how each instalment will be paid:
 - (e) a statement in the form set out in Part 1 of Schedule 2 if the last instalment is to be made more than 90 days after the date of the offer.
- (4) Consideration, prices, values, or other monetary amounts that must be disclosed in a disclosure document must be expressed in New Zealand currency.

10 Presentation of information and statements

The information and statements required to be contained in a disclosure document must be worded and presented in a clear, concise, and effective manner.

11 Disclosure document and conduct must not be false, misleading, deceptive, or confusing

An offeror—

- (a) must ensure that the disclosure document is not false, misleading, or confusing or likely to mislead or confuse; and

- (b) must not, in connection with the unsolicited offer, engage in conduct that is misleading or deceptive or likely to mislead or deceive.

12 Offer period

- (1) An offeror must ensure that the unsolicited offer—
 - (a) specifies the period for which it will remain open; and
 - (b) remains open for that period.
- (2) The offer period must—
 - (a) commence with the date of the offer; and
 - (b) be not shorter than 30 days and not longer than 12 months.
- (3) A specified person must not, in relation to an unsolicited offer made to a person (**B**), make a representation to B (whether in the disclosure document or otherwise) to the effect that B has less than 30 days after the date of the offer within which to make a decision on the offer.
- (4) In this regulation, **specified person**, in relation to an unsolicited offer, means—
 - (a) the offeror; or
 - (b) an associated person of the offeror; or
 - (c) a person acting on behalf of the offeror or an associated person of the offeror.
- (5) This regulation is subject to regulation 13.

13 Withdrawal of offer

- (1) An unsolicited offer may be withdrawn only with the consent of the FMA.
- (2) A purported withdrawal of an unsolicited offer in contravention of subclause (1) is ineffective.
- (3) The FMA may give its consent subject to the conditions that it thinks fit (for example, conditions relating to notice being given to the offeree and the issuer).
- (4) The offeror must comply with the conditions of the FMA's consent.

14 Terms of offer cannot be varied

- (1) The terms of an unsolicited offer, as set out in the disclosure document, cannot be varied.
- (2) A purported variation of the terms of the offer is ineffective.
- (3) This regulation does not—
 - (a) prevent the offeror from withdrawing the offer in accordance with regulation 13 and making another offer on different terms; or
 - (b) prevent the offeree from making a counter-offer on different terms.

Cancellation

15 Right to cancel

- (1) An offeree has a right to cancel an agreement by—
 - (a) doing both of the following:
 - (i) giving notice of the cancellation to the offeror not later than 10 working days after the date of the acceptance of the unsolicited offer; and
 - (ii) repaying to the offeror any consideration paid by the offeror to the offeree under the agreement not later than 20 working days after the date of the acceptance of the unsolicited offer; or
 - (b) repaying to the offeror any consideration paid by the offeror to the offeree under the agreement not later than 10 working days after the date of the acceptance of the unsolicited offer.
- (2) Notice of the cancellation under subclause (1)(a)—
 - (a) must be in writing and in a form that indicates (irrespective of the exact words used) the intention of the offeree to cancel or withdraw from the agreement; and
 - (b) may be given by the offeree or any person authorised by the offeree to act on the offeree's behalf.
- (3) A written refusal to complete the relevant transfer of the securities given by or on behalf of the offeree must be treated as satisfying subclause (2)(a).
- (4) This regulation does not limit any other right to cancel the agreement exercisable apart from this regulation.

- (5) If an offeree gives notice of the cancellation under subclause (1)(a) but does not comply with subclause (1)(a)(ii) within 5 working days after the notice is given to the offeror, the offeror must, as soon as practicable, give written notice to the offeree of the obligation to repay under subclause (1)(a)(ii).

16 Effect of cancellation where offer to acquire securities

- (1) This regulation applies in relation to an unsolicited offer to acquire securities.
- (2) If the agreement is cancelled under regulation 15,—
- (a) no party is obliged or entitled to perform it further; and
 - (b) if the securities that are the subject of the unsolicited offer have not been transferred to the offeror, the offeror—
 - (i) must not take any steps to arrange for the transfer of the securities; and
 - (ii) must take all reasonably practicable steps to prevent the registration of a transfer of the securities; and
 - (c) if the securities that are the subject of the unsolicited offer have already been, or are subsequently, transferred to the offeror, the offeror must comply with subclause (3).
- (3) The offeror must—
- (a) either—
 - (i) transfer the securities back to the offeree; or
 - (ii) if the securities have been on-sold, transfer to the offeree an equal number of securities of the same class; and
 - (b) pay to the offeree all dividends and any other distribution received by the offeror in respect of the securities; and
 - (c) transfer to the offeree any other interest, rights, or benefits received by the offeror in respect of the securities.
- (4) The offeror must act under this regulation as soon as practicable, but in any event not later than the end of the specified period after the offeree returns to the offeror any consideration paid by the offeror to the offeree under the agreement.
- (5) In this regulation, **specified period** means,—

- (a) if the securities have been on-sold, 20 working days; or
- (b) in any other case, 10 working days.

17 Effect of cancellation where offer to acquire power to dispose of securities or acquire other interests or rights attaching to securities

- (1) This regulation applies in relation to an unsolicited offer to acquire a power to dispose of securities or to acquire other interests in or rights attaching to securities (and does not apply if regulation 16 applies).
- (2) If the agreement is cancelled under regulation 15,—
 - (a) no party is obliged or entitled to perform it further; and
 - (b) the offeror must not take any steps to arrange for the acquisition of the power, interests, or rights; and
 - (c) if the power, interests, or rights have already been, or are subsequently, acquired by the offeror, the offeror must comply with subclause (3).
- (3) The offeror,—
 - (a) in the case of a power to dispose of securities, must not take any steps to exercise the power and must—
 - (i) take all practicable steps to arrange for the termination of the power; or
 - (ii) if the power has been exercised, transfer to the offeree an equal number of securities of the same class as those that have been disposed of; and
 - (b) in the case of interests in or rights attaching to securities, must—
 - (i) transfer the interests or rights back to the offeree; or
 - (ii) if the interests or rights have been on-sold, transfer to the offeree equivalent interests or rights; and
 - (c) in either case, must pay to the offeree all dividends and any other distribution received by the offeror in respect of the power, interests, or rights; and
 - (d) in either case, must transfer to the offeree any other interest, rights, or benefits received by the offeror in respect of the power, interests, or rights that have been acquired.

- (4) The offeror must act under this regulation as soon as practicable, but in any event not later than the end of the specified period after the offeree returns to the offeror any consideration paid by the offeror to the offeree under the agreement.
- (5) In this regulation, **specified period** means,—
 - (a) if the power, interests, or rights have been exercised or on-sold, 20 working days; or
 - (b) in any other case, 10 working days.

18 FMA may give notice that requirements do not apply

- (1) Regulation 16(3)(a)(ii) or (c) or 17(3)(a)(ii), (b)(ii), or (d) does not apply if the FMA gives a notice to the offeror stating that that provision does not apply.
- (2) The FMA may give a notice under subclause (1) if it is satisfied that,—
 - (a) in the case of regulation 16(3)(a)(ii) or 17(3)(a)(ii) or (b)(ii), the requirement is unduly onerous because of a lack of an established market for the securities, interests, or rights; and
 - (b) in the case of regulation 16(3)(c) or 17(3)(d), the requirement operates unfairly; and
 - (c) in either case referred to in paragraphs (a) and (b), the offeror will pay compensation to the offeree, or take other action, so as to restore the offeree as near as possible to the position the offeree was in before the unsolicited offer was accepted.
- (3) If the FMA exercises a power under this regulation,—
 - (a) it must, immediately after exercising the power, give notice on its Internet site of—
 - (i) the reasons for exercising the power; and
 - (ii) the terms of the notice given to the offeror; and
 - (iii) any other information the FMA thinks relevant in the circumstances; and
 - (b) it may give public notice by any other means of the matters in paragraph (a).

Miscellaneous provisions

19 Prohibition on inviting offers to sell

- (1) A person (A) must not invite another person (B) to—
- (a) make an offer to sell a security in circumstances in which, if the invitation were an offer to acquire the security, it would be an unsolicited offer to which these regulations applied; or
 - (b) make an offer to confer a power to dispose of a security in circumstances in which, if the invitation were an offer to acquire a power to dispose of a security, it would be an unsolicited offer to which these regulations applied; or
 - (c) make an offer to sell an interest in or a right attaching to a security in circumstances in which, if the invitation were an offer to acquire an interest in or a right attaching to a security, it would be an unsolicited offer to which these regulations applied.
- (2) Subclause (1) does not apply to invitations made to any of the persons referred to in regulation 6(1) (applied with all necessary modifications as if A were the offeror).

20 Unsolicited offer obligations

Regulations 7 to 14, 15(5), 16, 17, and 19 are unsolicited offer obligations for the purposes of the Act (which means that a contravention may give rise to an unsolicited offer order, a corrective order, a pecuniary penalty, or another civil remedy order).

21 Protection from liability in connection with unsolicited offer obligations

- (1) The following persons, in relation to an unsolicited offer, are protected persons for the purposes of section 47AA of the Act:
- (a) the issuer;
 - (b) a person who administers a securities register on behalf of the issuer;
 - (c) a person who acts on behalf of a person referred to in paragraph (a) or (b) in connection with a transfer of securities.

- (2) For the purposes of section 47AA(2)(c) of the Act, any thing done or omitted by a person referred to in subclause (1) for the purpose of implementing or giving effect to a cancellation of an agreement under regulations 15 to 17 is a protected act or omission.

22 No contracting out of these regulations

These regulations have effect despite any provision to the contrary in any contract or agreement.

Schedule 1

r 9(1)

Form of information and statements at front of disclosure document

Form

Information and statements at front of disclosure document

Important information

This is an unsolicited offer by *[full name of offeror]* to buy your investment in *[describe security]*/to buy the power to dispose of your investment in *[describe security]*/to buy *[describe interests in or rights attaching to securities]* in your *[describe security]**.

*Select one.

Financial Markets Authority warnings

**[List Financial Markets Authority warnings required to be contained in the document under an order made under section 49 of the Financial Markets Authority Act 2011.]*

*Omit this text (and the heading above it) if no warnings are required under section 49 of the Financial Markets Authority Act 2011.

Make sure you read carefully and understand all of the terms of this unsolicited offer, including any fine print in this document or in any other documents or forms relating to the offer. It is recommended that you talk to an authorised financial adviser and find out what your investment is really worth before selling it. Alternatively, seek advice from a Community Law Centre or Citizens Advice Bureau.

Offer price compared with market price/with fair estimate of value*

*Select one.

Offer price: \$*[specify in bold the amount referred to in regulation 9(1)(a)(i) or (b)(i)]* per *[name of security]*

Market price/Fair estimate of value*: \$*[specify in bold the amount referred to in regulation 9(1)(a)(ii) or (b)(ii)]* per *[name of security]*

Form—*continued*

Total offer price: \$[specify in bold the amount referred to in regulation 9(1)(a)(iii) or (b)(iii)] for [number] [name of securities]

Total market price/Total fair estimate of value*: \$[specify in bold the amount referred to in regulation 9(1)(a)(iv) or (b)(iv)] for [number] [name of securities]

*Select one.

Note: The information relating to prices and values to be disclosed above relates to the information that must be contained in the disclosure document under regulation 9(1)(a)(i) to (iv) or (b)(i) to (iv) (if those provisions apply).

Total offer price: \$[specify in bold the amount referred to in regulation 9(1)(c)(i)] for [describe power to dispose, interest, or right to be acquired] in respect of [number] [name of securities]

Total fair estimate of value: \$[specify in bold the amount referred to in regulation 9(1)(c)(ii)] for [describe power to dispose, interest, or right to be acquired] in respect of [number] [name of securities]

Note: The information relating to prices and values to be disclosed above relates to the information that must be contained in the disclosure document under regulation 9(1)(c)(i) and (ii) (if those provisions apply).

*The market price specified above is the market price of the [name of security] as at [specify date not earlier than 10 working days before the offer date] on [specify the securities market on which the securities are listed], which is operated by [name of relevant registered exchange].

*Include this paragraph if regulation 9(1)(a) applies.

*You can check the current market price for [name of security] on NZX Limited's Internet site at www.nzx.com or in newspapers. The stock code for [name of issuer] is [unique identification code issued by the relevant registered exchange].

*Include this paragraph if regulation 9(1)(a) applies. If the relevant registered exchange is not NZX Limited, the references to NZX Limited and its Internet site must be replaced with references to the relevant registered exchange and its Internet site.

Form—*continued*

*The estimates of value specified above are fair estimates of the value as at [*specify date not earlier than 10 working days before the offer date*]. The estimates are based on [*set out the basis for making the estimates (including the main assumptions on which the estimates are based)*].

*Include this paragraph if regulation 9(1)(b) or (c) applies.

*The estimates have been reviewed by an independent third party acting in his or her professional capacity (and his or her name is [*full name*]).

or

*The estimates are only in the opinion of [*full name of offeror*] (and have not been reviewed by an independent third party).

*Include the applicable paragraph if regulation 9(1)(b) or (c) applies.

You can find out how much your investment is likely to be worth from an authorised financial adviser, the company or other entity that offers the investment, or (if the company or other entity you invested in is in receivership) from the receivers. Receivers' reports can give a good indication of how much you are likely to receive for your investment. You can find copies of the receivers' reports by searching under the company's name on the Companies Office Internet site www.business.govt.nz/companies/

The offer to you must remain open for a minimum of 30 days from the date of the offer. You have time to think about whether or not to accept the offer.

Terms of payment

[*Include the information and statements required by regulation 9(1)(d) and (3).*]

Key dates

Date of the offer: [*specify date of unsolicited offer*]

Expiry date of the offer: [*specify expiry date of unsolicited offer*]

Form—*continued***Right to cancel**

If you accept the offer but then change your mind, you have the legal right to cancel the agreement under the Securities Markets (Unsolicited Offers) Regulations 2012 (provided you do so within the time frames referred to below). To cancel the agreement, you must—

- do both of the following:
 - write to or email the offeror (*see* the offeror details below) and state that you want to cancel or withdraw from the agreement. You must do this within 10 working days after the date on which you accepted the offer; and
 - repay to the offeror the amount paid by the offeror to you under the agreement (if any). You must do this within 20 working days after the date on which you accepted the offer; or
- repay to the offeror the amount paid by the offeror to you under the agreement within 10 working days after the date on which you accepted the offer.

Note: A **working day** is a day of the week other than—

- a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, Queen’s Birthday, and Labour Day; and
- a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- if 1 January falls on a Friday, the following Monday or, if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday.

Offeror details

[Specify full name of offeror, postal address of offeror, and email address of offeror.]

Further important information

The Financial Markets Authority (the **FMA**) regulates New Zealand’s financial markets, which includes monitoring and enforcing compliance with the law relating to unsolicited offers. The FMA’s main objective is to promote fair, efficient, and transparent

Form—*continued*

financial markets. Further guidance for investors, including in relation to unsolicited offers and on how to find an authorised financial adviser, is available on the FMA's Internet site www.fma.govt.nz

r 9(1)(d)(iii), (3)(e)

Schedule 2
Statement in disclosure document if
payment to be made more than 90 days
after date of offer

Part 1

Statement in disclosure document

If you accept this offer, you will be paid by a single payment on [date].* If you accept this offer, you will be paid in [number] instalments over [time period].*

*Select one.

If you are receiving a payment in the future/payments over a period of time*, you are taking the risk that the offeror will become insolvent or might otherwise not be able to pay you. You will also lose the right to receive dividends or other distributions during the payment period, because you will no longer own the investment.

*Select one.

Money loses value over time. In this case, the value of the payment/payments* being offered to you is approximately the same as being paid a single amount of \$[amount calculated in accordance with clause 1 of Part 2] today. \$[amount calculated in accordance with clause 1 of Part 2] represents the present-day value of the payment/payments*.

*Select one.

New Zealand securities legislation sets out a method for calculating the present-day value of the offer, using the rate of interest of [interest rate that is prescribed for the purposes of section 87(3) of the Judicature Act 1908].

You can assess this offer by comparing the present-day value of the payment/payments* referred to above with the total current value of your securities/the power to dispose of your securities/the interests in or rights attaching to your securities* (\$[amount specified in clause 2 of Part 2]).

*Select one.

In general, if the present-day value of the payment/payments* being offered is less than the current value of your securities/the power to

Part 1—*continued*

dispose of your securities/the interests in or rights attaching to your securities*, then this offer may not be fair to you.

*Select one.

Part 2

Amounts to be referred to in statement

1 Total present-day value

The total present-day value of the payment or payments being offered is the amount calculated in accordance with the following formula:

$$\sum_{p=1}^n \frac{R_p}{(1+i)^{tp}}$$

where—

n is the number of payments to be made

R_p is the amount of payment number p , where each payment is assigned a number from 1 to n

i is the rate prescribed, on the date of the offer, for the purposes of section 87(3) of the Judicature Act 1908 (expressed as a decimal) divided by 12

tp is the number of whole months between the date of offer and the date that the payment is due.

Example 1: Offer of single payment

A makes an offer to B on 1 January.

A's offer involves a payment of \$1,000 on 1 November. This is 10 whole months after the date of the offer, therefore variable tp is 10.

On the date of the offer, the Judicature (Prescribed Rate of Interest) Order 2011 prescribes 5% per year for the purposes of section 87(3) of the Judicature Act 1908. Accordingly, the variable i in the formula is 0.0041667 (0.05 divided by 12).

The present-day value of this payment is \$959.27.

Part 2—*continued***Example 2: Offer of payments in instalments**

A makes an offer to B on 1 January.

A's offer involves a payment of \$300 on 15 March, a further payment of \$300 on 1 June, and a final payment of \$400 on 1 November.

On the date of the offer, the Judicature (Prescribed Rate of Interest) Order 2011 prescribes 5% per year for the purposes of section 87(3) of the Judicature Act 1908. Accordingly, the variable i in the formula is 0.0041667 (0.05 divided by 12).

In the case of the 15 March payment, the number of whole months between the date of the offer and the date that the payment is due is 2 (which is variable tp for this payment). The present-day value of this payment is \$297.52.

In the case of the 1 June payment, the number of whole months between the date of the offer and the date that the payment is due is 5 (which is variable tp for this payment). The present-day value of this payment is \$293.83.

In the case of the 1 November payment, the number of whole months between the date of the offer and the date that the payment is due is 10 (which is variable tp for this payment). The present-day value of this payment is \$383.71.

The total present-day value of the payments is \$975.06 (\$297.52 + \$293.83 + \$383.71).

2 Total current value

The total current value is, in the case of an unsolicited offer to acquire—

- (a) listed securities, the amount referred to in regulation 9(1)(a)(iv):
- (b) non-listed securities, the amount referred to in regulation 9(1)(b)(iv):
- (c) a power to dispose of securities or to acquire other interests in or rights attaching to securities, the amount referred to in regulation 9(1)(c)(ii).

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 December 2012, set out rules for unsolicited offers. Generally speaking, an unsolicited offer is an offer to acquire a security made by a person (**A**) to another person (**B**) where the offer is unsolicited by B and is not made on a registered market, is not a takeover offer under the takeovers code, and is not a buy-back by a company of its own shares.

The term offer is defined broadly in section 48DA(2)(b) of the Securities Markets Act 1988 as including invitations or proposals for a person to make an offer.

These regulations have the objective of preventing unfair practices in the making of unsolicited offers.

The regulations—

- provide for the application of the regulations. The regulations apply to unsolicited offers relating to listed securities or securities that have been offered to the public where the offeror (or an associate) has made, or intends to make, offers on the same, or substantially similar, terms to 20 or more other persons:
- require the offeror to notify the issuer that an offer will be made:
- require the unsolicited offer to be made in a document containing certain information and statements that is given to the offeree. The document ensures that offerees are fully informed of—
 - the current market price of a listed security or, for a non-listed security, a fair estimate of the value of the security and the basis for making that estimate; and
 - the material terms of the offer and their effect; and
 - any warnings issued by the FMA; and
 - their right to cancel the agreement:

- prohibit false, misleading, or confusing offer documentation and misleading or deceptive conduct:
- provide for a minimum offer period of 30 days:
- provide for a 10-working-day cooling-off period within which an offeree can cancel an agreement that results from an unsolicited offer:
- prohibit persons from inviting others to make an offer to sell a security in circumstances in which, if the invitation were an offer to acquire the security, it would be an unsolicited offer to which these regulations would apply.

Various obligations under the regulations are specified as being unsolicited offer obligations. If a person has acted, is acting, or intends to act in contravention of an unsolicited offer obligation, the Financial Markets Authority may make certain orders under sections 42EA and 42EB of the Securities Markets Act 1988. In addition, certain civil remedies are available under subpart 3 of Part 5 of that Act in the event of a contravention (including a pecuniary penalty and a compensatory order).

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 1 November 2012.

Reprints notes

1 *General*

This is a reprint of the Securities Markets (Unsolicited Offers) Regulations 2012 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

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 (Repeals and Amendments) Act 2013 (2013 No 70): section 5(l)
