

Reprint
as at 1 December 2016



**Securities Act (Short Form Prospectus) Exemption Notice
2009**
(SR 2009/50)

Securities Act (Short Form Prospectus) Exemption Notice 2009: 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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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.

Notice

1 Title

This notice is the Securities Act (Short Form Prospectus) Exemption Notice 2009.

2 Commencement

This notice comes into force on its notification in the *Gazette*.

3 Expiry

- (1) Clauses 5 to 10 and 11(1) expire on the close of 31 December 2011.
- (2) The rest of this notice expires on 30 September 2017.

Clause 3: substituted, on 11 December 2009, by clause 4 of the Securities Act (Short Form Prospectus) Exemption Amendment Notice 2009 (SR 2009/382).

Clause 3(2): amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

4 Interpretation

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

Act means the Securities Act 1978

Regulations means the Securities Regulations 2009.

- (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): replaced, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

5 Exemption from regulation 4(1)(c) and (d) of Regulations for securities offered to existing security holders

[Expired]

Clause 5: expired, on 1 January 2012, by clause 3(1).

6 Conditions of exemption in clause 5

[Expired]

Clause 6: expired, on 1 January 2012, by clause 3(1).

7 Exemption from regulation 4(2)(e) of Regulations

[Expired]

Clause 7: expired, on 1 January 2012, by clause 3(1).

8 Conditions of exemption in clause 7

[Expired]

Clause 8: expired, on 1 January 2012, by clause 3(1).

9 Exemption from regulation 4(3)(b) of Regulations

[Expired]

Clause 9: expired, on 1 January 2012, by clause 3(1).

10 Condition of exemption in clause 9

[Expired]

Clause 10: expired, on 1 January 2012, by clause 3(1).

11 Exemptions from section 34(2)(a) of Act

(1) *[Expired]*

(2) Every issuer and every person acting on its behalf are exempted from section 34(2)(a) of the Act in respect of any registered prospectus issued under regulation 6 of the Regulations that is distributed by or on behalf of that issuer.

Clause 11 heading: amended, on 11 December 2009, by clause 5(1) of the Securities Act (Short Form Prospectus) Exemption Amendment Notice 2009 (SR 2009/382).

Clause 11(1): expired, on 1 January 2012, by clause 3(1).

Clause 11(2): added, on 11 December 2009, by clause 5(2) of the Securities Act (Short Form Prospectus) Exemption Amendment Notice 2009 (SR 2009/382).

Clause 11(2): amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

12 Revocation

The Securities Act (Short Form Prospectus) Exemption Notice 2002 (SR 2002/301) is consequentially revoked.

Dated at Wellington this 20th day of March 2009.

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 reasons appended to the:

- **Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012**
- **Securities Act (Short Form Prospectus) Exemption Amendment Notice 2009.**

This notice, which comes into force on its notification in the *Gazette*, replaces with amendments the Securities Act (Short Form Prospectus) Exemption Notice 2002 (the **2002 notice**). The new exemption notice retains the existing exemptions in the 2002 notice on the existing conditions. The principal differences between the 2002 notice and the new exemption notice are as follows:

- the new exemption notice enables companies that have relied on the notice provisions in section 209 of the Companies Act 1993 to use the new exemption notice. Section 209 of the Companies Act 1993 (as replaced in June 2007) allows companies to send shareholders a notice advising of the availability of annual reports, rather than having to send a copy of the annual report itself. The new exemption notice allows issuers to use a short form prospectus if the prospectus contains that notice of availability, instead of sending financial statements to shareholders:
- the conditions of the new exemption notice in respect of offers of guaranteed convertible securities differ slightly, to require the financial statements that are disclosed to comply with generally accepted accounting practice:
- the new exemption notice also provides that compliance with NZ IAS 34 in respect of interim financial statements is sufficient compliance with the requirements of the Financial Reporting Act 1993 for the purposes of short form prospectuses.

The Securities Commission considers that it is appropriate to replace with amendments the 2002 notice because—

- regulation 4 of the Securities Regulations 1983 allows for a short form prospectus to be used for an offer of equity, debt, or convertible securities made to a person who already holds securities of the issuer, so long as certain recent financial statements have been sent to shareholders:
- in June 2007, amendments to section 209 of the Companies Act 1993 (which prescribes the obligations of the board of a company to make available to shareholders an annual report containing the financial statements of the company) took effect. Before this, the board was obliged to send an annual report to shareholders not less than 20 working days before the annual meeting of shareholders. The amendment gave boards the option instead to send shareholders a notice advising them of their right to receive an annual report:

- the new exemption notice allows companies relying on the amended provision of the Companies Act 1993 to use a short form prospectus where they have elected to make the annual report containing certain financial statements available to shareholders by providing a notice under the amended provisions of the Companies Act 1993. The policy underlying the short form prospectus provisions of the Securities Regulations 1983 is that a short form prospectus should be available for companies if the most recent annual report has been made available in accordance with the Companies Act 1993. The new exemption notice is consistent with that policy and ensures that companies are not penalised when they make an offer, in terms of securities law compliance costs, if they opt to take advantage of the annual report notice provisions permitted under the Companies Act 1993. The conditions of the new exemption notice require companies to have already provided, or concurrently provide, the relevant financial statements, or to refer prospective investors to their right to receive the relevant financial statements, free of charge:
- regulation 4 recognises that a reduced level of information is appropriate for offers of securities to prospective investors who already hold securities in the issuer. It enables issuers to make offers to these existing investors on the basis of reduced disclosure and accordingly lower offer costs. For these prospective investors, who are already familiar with the issuer, the financial information provided by interim financial statements compliant with NZ IAS 34 is sufficient to assist in an informed investment decision.

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

- **Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012**
- **Securities Act (Short Form Prospectus) Exemption Amendment Notice 2009.**

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 23 March 2009.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Short Form Prospectus) Exemption Notice 2009 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 (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294): clause 3

Securities Act (Short Form Prospectus) Exemption Amendment Notice 2009 (SR 2009/382)