

**Reprint
as at 1 November 2014**



**Securities Act (Cash and Term
Portfolio Investment Entities)
Exemption Notice 2009**

(SR 2009/302)

Securities Act (Cash and Term Portfolio Investment Entities) Exemption Notice
2009: expired, on 1 November 2014, 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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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 (Cash and Term Portfolio Investment Entities) Exemption Notice 2009.

2 Commencement

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

3 Expiry

This notice expires on the close of 31 October 2014.

4 Interpretation

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

Act means the Securities Act 1978

address means a postal or electronic address; and includes a post office box address, document exchange box number, fax number, and an email address

PIE call fund means a specified PIE in respect of which,—

- (a) under the terms of the offer of the specified units, a security holder has a right to withdraw the unit price of the units in full at any time, subject only to the following rights and requirements to the extent that they are described in the investment statement for the PIE call fund:
- (i) the right of the specified issuer to suspend withdrawals if the withdrawal would prejudice the interests of unit holders in the PIE call fund as a whole or would threaten the PIE call fund's eligibility as a portfolio tax rate entity as defined in section YA 1 of the Income Tax Act 2007:
 - (ii) the right of the specified issuer to use some or all of the unit price to meet any amounts that are owing by the unit holder to the specified bank:
 - (iii) the right of the specified issuer, on a demand for withdrawal of the unit price, to pay less than the unit price in full because of any default or im-

pairment of debt securities of the specified bank in which the specified PIE invests:

- (iv) a requirement to maintain a minimum account balance;
 - (v) the right of the specified issuer to withhold payment if the consideration for the units has not been received or cleared;
 - (vi) a requirement to withdraw a minimum amount; and
- (b) no fee or other amount is payable as a result of the unit price not having been held by the specified issuer for a particular period of time

PIE call fund unit means a unit in a PIE call fund

registered bank parent means a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989 that is the parent company of a specified issuer

Regulations means the Securities Regulations 2009

specified bank means—

- (a) the specified issuer's registered bank parent; or
- (b) a related company of the specified issuer's registered bank parent that is also a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989

specified issuer means an issuer, in respect of 1 or more specified PIEs, that—

- (a) is a wholly owned subsidiary of its registered bank parent; and
- (b) is controlled by its registered bank parent within the meaning of section 7 of the Companies Act 1993 (which for the purposes of this paragraph is to be read with the necessary modifications); and
- (c) in the ordinary course of its business continuously offers specified units to the public for subscription

specified PIE means a unit trust or group investment fund—

- (a) that is a portfolio tax rate entity as defined in section YA 1 of the Income Tax Act 2007; and

- (b) in respect of which all of the money received from the public by way of subscriptions for specified units is invested in debt securities issued by a specified bank

specified term unit means a specified unit that has—

- (a) a fixed term; and
- (b) a fixed principal amount; and
- (c) a potential penalty if the unit price is withdrawn before a maturity date

specified unit means a unit in a specified PIE.

- (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.

5 Exemption relating to receipt of investment statements

The specified issuer and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of any specified units.

6 Conditions of exemption in clause 5: specified term units

The exemption in clause 5 in respect of specified term units is subject to the conditions that—

- (a) the specified issuer or any person acting on its behalf must send an investment statement relating to the specified term units, at least 3 working days before the subscriber subscribes for the specified term units, to the holder of the specified term units at—
 - (i) an address specified by the subscriber for this purpose; or
 - (ii) the last address of the subscriber known to the specified issuer; and
- (b) if an investment statement relating to the specified term units is sent by fax, the fax machine has generated a record of the successful transmission of the investment statement to the fax machine of the recipient; and
- (c) if an investment statement relating to the specified term units is sent by other electronic means, the information system used to transmit the investment statement has not generated a record that the investment statement has failed to be transmitted.

7 Conditions of exemption in clause 5: PIE call fund units

The exemption in clause 5 in respect of PIE call fund units is subject to the conditions that—

- (a) every subscriber must have received an investment statement relating to the PIE call fund units before first subscribing for any PIE call fund units; and
- (b) the specified issuer or any person acting on its behalf must send an updated investment statement relating to the PIE call fund units, within 14 days of any material change to the investment statement, to each holder of units in the PIE call fund at—
 - (i) an address specified by the subscriber for this purpose; or
 - (ii) the last address of the subscriber known to the specified issuer; and
- (c) if an investment statement relating to the PIE call fund units is sent by fax, the fax machine has generated a record of the successful transmission of the investment statement to the fax machine of the recipient; and
- (d) if an investment statement relating to the PIE call fund units is sent by other electronic means, the information system used to transmit the investment statement has not generated a record that the investment statement has failed to be transmitted.

8 Exemption from register requirements

- (1) The specified issuer is exempted from section 52(1) and (3) of the Act in respect of the register kept by the specified issuer under section 51(1)(d) of the Act, in so far as that register relates to specified units.
- (2) The exemption from section 52(1) of the Act is subject to the condition that every register of securities kept under section 51(1)(d) of the Act by the specified issuer in respect of the specified units must be, except when duly closed (but subject to any reasonable restrictions that the specified issuer may impose, so that not less than 2 hours in each day must be allowed for inspection), open to the inspection, without fee, of any holder of specified units in respect of that holder's specified units entered on the register.

- (3) The exemption from section 52(3) of the Act is subject to the condition that, on payment by a holder of specified units of the fee prescribed for the purposes of section 52(4) of the Act, the specified issuer or a person acting on its behalf must provide to the holder a copy of that part of the register kept under section 51(1)(d) of the Act that relates to specified units of that holder.

9 Exemption from certificate requirements

- (1) The specified issuer is exempted from section 54 of the Act in respect of specified units.
- (2) The exemption in subclause (1) is subject to the condition that the specified issuer must send, or cause to be sent, to a holder of specified units a written statement that properly evidences the nature and ownership of those specified units—
- (a) within 14 days of a request by the holder of the specified units, in which case no fee for the statement must be payable by the holder; and
 - (b) at a frequency consistent with (and no less favourable than) the frequency with which such statements are sent to the holders of corresponding debt securities issued by the specified bank in which the specified issuer invests.

Dated at Wellington this 7th day of October 2009.

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

[Seal]

N O Todd,
Member.

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 October 2014, grants exemptions in respect of certain units issued by certain issuers in portfolio tax rate entities, namely call fund units and term units (together the **PIE funds**).

The exemptions relate to receipt of investment statements and register and certificate requirements. The exemptions in respect of investment statements follow the exemptions granted in the Securities Act (Continuous Debt Issues) Exemption Notice 2002, except that the conditions of the exemptions in this notice in respect of units in the PIE call fund are new. The exemptions in respect of register and certificate requirements follow the exemptions and conditions in the Securities Act (Continuous Debt Issues) Exemption Notice 2002.

The Commission considers it appropriate to grant these exemptions, subject to conditions, because the PIE funds offered by subsidiaries of registered banks are unit trust or group investment funds that have been developed to provide investors with products that have the key features of on-call and term debt securities, but with the tax advantages associated with portfolio investment entity securities. To this end, the products are very similar in operation to certain debt securities offered by issuers of call debt securities and continuous issuers of other debt securities, and should be treated similarly for regulatory purposes, so far as the matters covered by these exemptions are concerned. This reduces costs for the issuer and is not detrimental to investors, because the exemptions' conditions limit the exemptions to securities that operationally mirror call and other continuously issued debt securities offered by registered banks.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 8 October 2009.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Cash and Term Portfolio Investment Entities) 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*

Securities Act (Cash and Term Portfolio Investment Entities) Exemption Notice 2009 (SR 2009/302): clause 3
