

**Reprint
as at 1 October 2011**



**Securities Act (Directors’
Certificates—Collective Investment
Schemes) Exemption Notice 2009**

(SR 2009/417)

Securities Act (Directors’ Certificates—Collective Investment Schemes)
Exemption Notice 2009: expired, on 1 October 2011, 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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Notice

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This notice is administered by the Securities Commission.

1 Title

This notice is the Securities Act (Directors' Certificates—Collective Investment Schemes) 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 30 September 2011.

4 Interpretation

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

Act means the Securities Act 1978

other arrangement means an arrangement or scheme—

- (a) that—
 - (i) involves the issue of participatory securities; or
 - (ii) is a unit trust; or
 - (iii) is a superannuation scheme; and
- (b) the securities of which are not quoted on a securities market operated by a registered exchange; and
- (c) the securities of which are not quoted on a securities market operated by an overseas stock exchange

prospectus means the registered prospectus relating to the specified securities

Regulations means the Securities Regulations 2009

specified scheme means an arrangement or scheme if—

- (a) the arrangement or scheme—
 - (i) involves the issue of participatory securities; or
 - (ii) is a unit trust; or
 - (iii) is a superannuation scheme; and
- (b) all directors of the issuer are of the opinion (after due enquiry) that—
 - (i) the non-cash assets of the arrangement or scheme (other than non-cash assets that are interests in other arrangements) are sufficiently liquid to allow a reasonably reliable value for the non-cash

- assets of the arrangement or scheme to be calculated; and
- (ii) at least 80% of the non-cash assets of the arrangement or scheme (other than non-cash assets that are interests in other arrangements) are, in the ordinary course of business, readily realisable within 5 working days; and
- (c) the arrangement or scheme does not hold more than 10% of the equity securities of any 1 issuer; and
- (d) in the case of an arrangement or scheme that invests in 1 or more other arrangements,—
- (i) the subscription prices for the securities issued in relation to the other arrangements are calculated by reference to the value of the assets of the other arrangements and are set on at least a weekly basis; and
 - (ii) none of the other arrangements hold more than 10% of the equity securities of any 1 issuer; and
 - (iii) all directors of the issuer are of the opinion (after due enquiry) that the non-cash assets of the other arrangements are sufficiently liquid to allow a reasonably reliable value for the non-cash assets of the arrangement or scheme to be calculated

specified security means a security issued in relation to a specified scheme.

- (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 Application where prospectus relates to 2 or more types of securities

- (1) This clause applies if a prospectus relates to 2 or more types of securities.
- (2) Nothing in this notice prevents the issuer from doing either or both of the following:
- (a) complying with section 37A(1A) of the Act in respect of any of those types of securities:

- (b) relying on the exemption in clause 6 in respect of any or all of the specified schemes that the prospectus relates to.

6 Exemption from section 37A(1A)(c)(i) of Act

Every issuer of specified securities, and every person acting on its behalf, is exempted, in respect of specified securities, from section 37A(1A)(c)(i) of the Act.

7 Conditions of exemption in clause 6

- (1) The exemption in clause 6 is subject to the conditions that—
 - (a) the issuer must have delivered—
 - (i) to the Registrar for registration a certificate that complies with section 37A(1A) of the Act (apart from the requirement in paragraph (c)(i) of that subsection) and subclause (3); and
 - (ii) a copy of the certificate to the Commission together with a copy of the interim financial statements referred to in paragraph (c); and
 - (b) during the period in which the issuer relies on the exemption, the issuer must make the following available on the issuer's Internet site at all reasonable times (including on any page on that site on which the current subscription price for the specified securities is displayed):
 - (i) the statements contained in the certificate;
 - (ii) a copy of the interim financial statements referred to in paragraph (c); and
 - (c) the certificate that is delivered for registration under paragraph (a) must be accompanied by interim financial statements for the specified scheme for a period from the date of the statement of financial position for the scheme contained or referred to in the prospectus, being statements prepared in accordance with subclause (4); and
 - (d) no allotment of a specified security offered to the public for subscription may be made in reliance upon the exemption if the date of allotment would be more than 9 months after the date of the interim statement of finan-

- cial position that accompanies the certificate in accordance with paragraph (c).
- (2) Subclause (1)(b) ceases to apply after the issuer ceases to rely on the exemption in clause 6.
- (3) The certificate must contain the following statements in respect of the specified scheme:
- (a) a statement to the effect that the value of the net assets of the scheme has reduced from that shown in the statement of financial position contained or referred to in the prospectus and that the reduction is mainly due to (as is applicable)—
 - (i) a decline in market prices of those assets; or
 - (ii) a significant amount of investor redemptions; or
 - (iii) both a decline in market prices of those assets and a significant amount of investor redemptions:
 - (b) a statement that, in the opinion of all directors of the issuer after due enquiry by them, the prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances:
 - (c) a statement to the effect that—
 - (i) interim financial statements have been registered and are available on the issuer's Internet site; and
 - (ii) investors should review those financial statements to understand the updated financial position of the scheme.
- (4) The interim financial statements must be prepared in accordance with,—
- (a) in the case of an offer to which the Securities Regulations 1983 apply, either—
 - (i) NZ IAS 34 (except that instead of complying with the requirement relating to comparative financial information, such comparative information may be prepared on the basis of a comparison with the most recent audited financial statements); or
 - (ii) the Securities Regulations 1983 as if they were required to be contained or referred to in the prospectus (except that they need not be audited,

and instead of complying with the requirement relating to comparative financial information, such comparative information may be prepared on the basis of a comparison with the most recent audited financial statements):

- (b) in the case of an offer to which the Regulations apply, NZ IAS 34 (except that instead of complying with the requirement relating to comparative financial information, such comparative information may be prepared on the basis of a comparison with the most recent audited financial statements).

Dated at Wellington this 15th day of December 2009.

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

[Seal]

C A N Beyer,
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 30 September 2011, exempts, subject to conditions, the issuers of certain collective investment schemes from section 37A(1A)(c)(i) of the Securities Act 1978. The notice relates to the certificate that may be registered that allows the date of allotment of securities to be more than 9 months after the date of the statement of financial position referred to in the prospectus. Section 37A(1A)(c)(i) requires the directors of the issuer to state

in the certificate that the financial position shown in the statement of financial position has not materially and adversely changed during the period from the date of the statement of financial position to the date of the certificate.

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

- the exemptions will provide relief to issuers of collective investment schemes from the requirement to register a new prospectus in circumstances where the existing prospectus is not otherwise false or misleading and the issuer is prepared for the potential occurrence of market volatility by being ready to register interim financial statements; and
- the exemptions are similar to exemptions granted in the Securities Act (Directors' Certificates—Collective Investment Schemes) Exemption Notice 2008 (the **2008 notice**); and
- as was recognised in the 2008 notice, once interim financial statements, and the certification required by directors, are registered, the prospectus will be accompanied by financial information that is needed by investors to assess the ongoing circumstances of the scheme. A requirement at that point to immediately register a new prospectus would impose costs that would not be justified by the benefits of a new prospectus.

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Notes**1 General**

This is a reprint of the Securities Act (Directors' Certificates—Collective Investment Schemes) Exemption Notice 2009. The reprint incorporates all the amendments to the notice as at 1 October 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Securities Act (Directors' Certificates—Collective Investment Schemes) Exemption Notice 2009 (SR 2009/417): clause 3
