



## Securities Act (NZX—Share and Unit Purchase Plans) Exemption Notice 2010

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

- 1 **Title**  
This notice is the Securities Act (NZX—Share and Unit Purchase Plans) Exemption Notice 2010.
  
- 2 **Commencement**  
This notice comes into force on 1 November 2010.

### 3 Expiry

This notice expires on the close of 31 October 2015.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**custodian** means a holder of securities of the same class as the specified securities—

(a) that—

(i) is a trustee corporation or a nominee company; and

(ii) holds those securities by reason only of acting for another person in the ordinary course of business of that trustee corporation or nominee company; or

(b) that holds those securities by reason only that the person is a bare trustee of a trust to which the securities are subject

**NZX issuer** means—

(a) a person that is listed on a securities market operated by NZX Limited; or

(b) the manager of a unit trust that is listed on a securities market operated by NZX Limited

**private placement** means the placement of securities of the same class as the specified securities to persons who are not members of the public in terms of section 3(2)(a) of the Act

**Regulations** means the Securities Regulations 2009

**SDP prohibition order** means a prohibition order made by the Commission under section 44AE of the Act that prohibits an issuer from using a simplified disclosure prospectus

**share purchase plan** means a share purchase plan that complies with clause 5

**specified securities** means—

(a) equity securities that are to be—

(i) issued by an NZX issuer under a share purchase plan to existing holders of securities issued by the NZX issuer; and

- (ii) listed on a securities market operated by NZX Limited; or
- (b) units in a unit trust that are to be—
  - (i) issued by an NZX issuer that is a manager of a unit trust under a unit purchase plan to existing holders of units in that unit trust; and
  - (ii) listed on a securities market operated by NZX Limited

**subscription price** means the subscription price for the specified securities

**unit purchase plan** means a unit purchase plan that complies with clause 5.

- (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 Requirements for share purchase plan and unit purchase plan**

- (1) For the purposes of this notice, a share purchase plan and a unit purchase plan must comply with the following requirements:
  - (a) the right to subscribe for the specified securities must be offered to all security holders holding securities of the same class as the specified securities, except a security holder in a jurisdiction outside New Zealand who is excluded by the NZX issuer to avoid a risk of breaching the law in that jurisdiction; and
  - (b) the right to subscribe for the specified securities must be offered on the same terms and conditions to all the security holders to whom the offer is made; and
  - (c) the right to subscribe for the specified securities must not be renounceable; and
  - (d) the specified securities issued under the share purchase plan or the unit purchase plan to security holders of the same class must enjoy the same rights—
    - (i) as each other; and
    - (ii) as the securities that qualify a security holder to subscribe for the specified securities; and
  - (e) the subscription price must be equal to or less than the lower of the following:

- (i) the average end of day market price of securities of the same class as the specified securities during a period specified in the share purchase plan or the unit purchase plan that falls within the period of 30 days immediately before either—
      - (A) the date of the offer to subscribe for the specified securities; or
      - (B) the date of the issue of the specified securities;
    - (ii) the lowest price paid by investors in a private placement (if the offer under the share purchase plan or the unit purchase plan is made at the same time as, or within 30 days after, a private placement); and
  - (f) the subscription price must be fixed before allotment of the specified securities; and
  - (g) the subscription price must be disclosed in accordance with clause 9(2) before allotment of the specified securities; and
  - (h) in any 12-month period, the total issue price of the specified securities issued to a security holder must not be more than \$15,000.
- (2) Despite subclause (1)(h), the NZX issuer may issue to a custodian in any 12-month period specified securities the total issue price of which is more than \$15,000 if—
  - (a) the custodian certifies the following in writing to the NZX issuer:
    - (i) that the custodian holds securities of the same class as the specified securities directly or indirectly as a custodian for beneficial owners; and
    - (ii) the number of those beneficial owners; and
    - (iii) in respect of each of the beneficial owners, how many specified securities the beneficial owner, or its agent, has instructed the custodian to accept on behalf of that beneficial owner; and
    - (iv) that the custodian undertakes not to accept on behalf of any of those beneficial owners for which it acts directly or indirectly as a custodian, in any 12-month period, specified securities in any one

NZX issuer, the total issue price of which is more than \$15,000; and

- (b) the NZX issuer is reasonably satisfied that in any 12-month period the total issue price of the specified securities issued to any beneficial owner is not more than \$15,000, whether those specified securities are issued—
  - (i) through a custodian; or
  - (ii) if the beneficial owner is also a security holder, in the beneficial owner's own right as a security holder.

**6 Exemption from sections 37 and 37A of Act and Regulations (except regulation 23)**

Every NZX issuer and every person acting on its behalf are exempted from sections 37 and 37A of the Act and the Regulations (except regulation 23) in respect of the specified securities.

**7 Exemptions do not apply if trading in any securities of NZX issuer has been suspended for 5 trading days or more within previous 12 months**

Clause 6 does not apply in respect of any securities of an NZX issuer if, at any time within the 12-month period before the offer is first made under the share purchase plan or the unit purchase plan, trading in any securities of the NZX issuer on a securities market operated by NZX Limited has been suspended for a total period of 5 trading days or more (whether the trading has been suspended on 1 or more occasions).

**8 Exemptions do not apply if NZX issuer is subject to SDP prohibition order that is in force**

Clause 6 does not apply in respect of any securities of an NZX issuer if, at the time of the offer, the NZX issuer is subject to an SDP prohibition order that is in force.

**9 Conditions of exemptions**

- (1) The exemptions in clause 6 are subject to the condition that a person who subscribes for specified securities under a share

purchase plan or a unit purchase plan must, before subscribing, have received a document that—

- (a) is signed by each of the directors of the NZX issuer or his or her agent authorised in writing; and
  - (b) contains the offer to subscribe for specified securities under the share purchase plan or the unit purchase plan; and
  - (c) describes the procedure for fixing the subscription price; and
  - (d) specifies the subscription price if the subscription price was fixed before the document is sent to the person; and
  - (e) states when the subscription price was or will be fixed; and
  - (f) describes when and how payment of subscription moneys is to be made; and
  - (g) describes the relationship between the subscription price and the market price of the specified securities; and
  - (h) warns that the market price of the specified securities may change between the date of the offer and the date when the specified securities are allotted, and describes the effect this would have on the price or value of the specified securities that a subscriber would receive; and
  - (i) states that a subscriber may obtain from the NZX issuer free of charge,—
    - (i) in the case of an NZX issuer that is not the manager of a unit trust, the NZX issuer's most recent annual report and financial statements; and
    - (ii) in the case of an NZX issuer that is the manager of a unit trust, the most recent annual report and financial statements of the unit trust.
- (2) The exemptions in clause 6 are subject to the condition that,—
- (a) in the case of the subscription price being fixed before the document referred to in subclause (1) is sent, the NZX issuer must, as soon as practicable after the document is sent, supply to NZX Limited a statement that complies with subclause (3) for the purpose of that statement being made available to participants in the se-

- curities market operated by NZX Limited on which the specified securities are listed; or
- (b) in any other case, the NZX issuer must, as soon as practicable after the subscription price has been fixed, supply to NZX Limited a statement that complies with subclause (3) for the purpose of that statement being made available to participants in the securities market operated by NZX Limited on which the specified securities are listed.
- (3) For the purposes of subclause (2), the statement must—
- (a) specify the subscription price; and
  - (b) be signed by each of the directors of the NZX issuer or his or her agent authorised in writing; and
  - (c) certify that when the subscription price was fixed the NZX issuer had no information not publicly available that would, or would be likely to, have a material effect on the market price of the specified securities if the information were publicly available.
- (4) The exemptions in clause 6 are subject to the condition that the NZX issuer must not allot the specified securities if, when the subscription price was fixed, the NZX issuer had information not publicly available that would, or would be likely to, have a material effect on the market price of the specified securities if the information were publicly available.

Dated at Wellington this 26th day of October 2010.

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

[Seal]

J Diplock,  
Chairperson.

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### Statement of reasons

This notice comes into force on 1 November 2010 and expires on 31 October 2015.

The notice applies to the offer of specified securities by a person listed on a securities market operated by NZX Limited (an **NZX issuer**) under a qualifying share purchase plan or unit purchase plan. It exempts the NZX issuer, subject to conditions, from sections 37 and 37A of the Securities Act 1978 and from the Securities Regulations 2009 (other than regulation 23). One of the conditions of the exemptions is that the NZX issuer must provide investors with an offer document that contains details of the share purchase plan or the unit purchase plan.

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

- the exemption notice exempts NZX issuers from the need to produce a registered prospectus and investment statement in respect of shares and units in a unit trust offered under share and unit purchase plans only in respect of persons who already hold securities of the issuer of the same kind being offered. The notice recognises that existing holders of the issuer's securities will have access to key relevant information about the issuer, including through an NZX issuer's continuous disclosure requirements under the Securities Markets Act 1988 and the NZX Listing Rules;
- the exemptions are limited in the amount that can be raised from a share or unit holder in any year, so that any significant

fund-raising will not be able to rely on this exemption notice. Custodians are able to accept, on behalf of beneficial owners, securities with a total issue price greater than the maximum individual amount permitted under the notice subject to certain requirements, including that custodians must certify that no beneficial owner will receive more than the individual limit permitted and that issuers are also reasonably satisfied that no beneficial owner will receive more than the maximum allowed amount of shares in any 12-month period:

- the conditions of the exemption reduce the cost associated with a share and unit purchase plan and allow existing security holders to obtain securities at a discounted price while providing them with protection by requiring the provision of alternative disclosure and by preventing the allotment of securities under the notice if an issuer has any undisclosed information that would be likely to have a material effect on the price of the securities:
- the changes to the application of the exemption notice since the last corresponding class exemption notice was granted in 2005 increase protection for investors, so that any NZX issuer that is subject to a simplified disclosure prospectus prohibition order will not be able to rely on the notice. Instead, the issuer will be required to apply for an individual exemption, allowing the Commission to assess the reasons for the non-compliance and whether, at the time of the intended offer, the market appears to be fully informed about the affairs of the issuer:
- the new exemptions from all of the provisions of the Securities Regulations 2009 (except regulation 23) have the same effect as the existing exemptions granted in respect of all of the Securities Regulations 1983 (except regulation 8).

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 28 October 2010.  
This notice is administered by the Securities Commission.

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