

**Reprint
as at 1 April 2013**



**Securities Act (Takeovers)
Exemption Notice 2011**

(SR 2011/63)

Securities Act (Takeovers) Exemption Notice 2011: revoked, on 1 April 2013,
by clause 13 of the Securities Act (Takeovers) Exemption Notice 2013 (SR
2013/55).

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).

Contents

	Page
1 Title	2
2 Commencement	2
3 Expiry	3
4 Interpretation	3

Part 1

**Exemptions from prospectus content requirements for
quoted securities**

5 Application of this Part	5
6 Exemption from prospectus content requirements for issuers of quoted equity securities	5
7 Exemption from prospectus content requirements for issuers of quoted debt securities	5
8 Exemption from prospectus content requirements for issuers of quoted units in unit trust	5

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 Financial Markets Authority.

3 Expiry

This notice expires on the close of 31 March 2013.

Clause 3: 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

annual report means the annual report and financial statements (including the auditor's report on those financial statements) that the issuer is required by the listing rules to make available to holders of securities of the issuer that are quoted on an NZX market

Code means the Takeovers Code under the Takeovers Act 1993

code offer—

- (a) means a full offer or a partial offer for voting securities of a target company made—
 - (i) in accordance with the Code; or
 - (ii) if the offer is being made in reliance upon an exemption granted under section 45 of the Takeovers Act 1993, in accordance with the terms and conditions of the exemption and the applicable provisions of the Code from which there is no exemption; and
- (b) includes an acquisition of voting securities in a target company under Part 7 of the Code

full offer has the same meaning as in rule 3(1) of the Code

half-yearly report means the half-yearly report and financial statements (including the auditor's report on those financial statements, if any) that the issuer is required by the listing rules to make available to holders of securities of the issuer that are quoted on an NZX market

interim report means any interim report and interim financial statements (including the auditor's report on those financial statements, if any) that the issuer has made available to holders of securities of the issuer that are quoted on an NZX market (other than the half-yearly report)

listed company means a company that is a party to a listing agreement with NZX Limited

listed unit trust means a unit trust if the manager of that trust is a party to a listing agreement with NZX Limited under which the units in the trust are, or are to be, quoted

listing rules means,—

- (a) in the case of securities quoted on the main board equity security market or the debt security market operated by NZX Limited, the NZX Limited NZSX/NZDX Listing Rules;
- (b) in the case of securities quoted on the alternative market operated by NZX Limited, the NZX Limited NZAX Listing Rules

NZX market means any securities market operated by NZX Limited

offer document has the same meaning as in rule 3(1) of the Code

offeror means a person who makes a code offer

partial offer has the same meaning as in rule 3(1) of the Code

quoted securities means equity securities, debt securities, or units in a unit trust that—

- (a) are issued by a listed company or by a manager of a listed unit trust; and
- (b) have been quoted on an NZX market continuously for at least 12 months before the making of a code offer or belong, or will when issued belong, to a class of equity securities, debt securities, or units in a unit trust that has been quoted on an NZX market continuously for at least 12 months before the making of a code offer; and
- (c) are offered as consideration or part consideration for a code offer

Regulations means the Securities Regulations 2009

takeover notice has the same meaning as in rule 3(1) of the Code

target company has the same meaning as in rule 3(1) of the Code

unquoted securities means equity securities, debt securities, or units in a unit trust, other than quoted securities, that are offered as consideration or part consideration for a code offer **voting security** has the same meaning as in rule 3(1) of the Code.

- (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.

Part 1

Exemptions from prospectus content requirements for quoted securities

5 Application of this Part

This Part applies to quoted securities.

6 Exemption from prospectus content requirements for issuers of quoted equity securities

Every issuer and every person acting on its behalf are exempted from regulation 5(1)(a) of the Regulations in the case of quoted securities that are equity securities.

7 Exemption from prospectus content requirements for issuers of quoted debt securities

Every issuer and every person acting on its behalf are exempted from regulation 5(1)(b) of the Regulations in the case of quoted securities that are debt securities.

8 Exemption from prospectus content requirements for issuers of quoted units in unit trust

Every issuer and every person acting on its behalf are exempted from regulation 5(1)(d) of the Regulations in the case of quoted securities that are units in a unit trust.

9 Conditions

The exemptions in this Part are subject to the conditions that—

- (a) the registered prospectus for the offer of the quoted securities contains the following information or is accompanied by the following documents:
 - (i) the name of the issuer and, if the issuer and the offeror are different persons, the relationship of the issuer to the offeror;
 - (ii) the material terms and conditions of the quoted securities;
 - (iii) a statement that a copy of the most recent annual report of the issuer is available on request;
 - (iv) a copy of the most recent half-yearly report of the issuer relating to a period after the annual report referred to in subparagraph (iii) (if any);
 - (v) a copy of the most recent interim report of the issuer relating to a period after the annual report referred to in subparagraph (iii) (if any) or, if a copy of a half-yearly report has been disclosed under subparagraph (iv), a copy of any interim report of the issuer relating to a period after that half-yearly report (if any);
 - (vi) any other information that could reasonably be expected to be material to the making of a decision by the target company's shareholders to accept or reject the code offer or, if there is no such information, a statement to that effect; and
- (b) the registered prospectus for the offer of the quoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

Part 2

Exemption from certain prospectus content requirements for unquoted securities

10 Application of this Part

This Part applies to unquoted securities.

11 Exemption from certain prospectus content requirements for issuers of unquoted equity securities

Every issuer and every person acting on its behalf are exempted from the following provisions of Schedule 1 of the Regulations in the case of unquoted securities that are equity securities:

- (a) clauses 1(4), 2(a) and (b), and 11(1)(b):
- (b) clause 12(3) to the extent that that subclause relates to the target company.

12 Conditions

- (1) The exemption from clause 1(4) of Schedule 1 of the Regulations is subject to the condition that the registered prospectus for the unquoted securities contains the following statement:
“Information about the price or other consideration to be paid or provided for the securities is contained in [*specify clause or paragraph reference*] of the takeover offer document for this offer.”
- (2) The exemption from clause 11(1)(b) of Schedule 1 of the Regulations is, if the issuer is also the offeror, subject to the condition that the registered prospectus for the securities contains a statement of—
 - (a) the expected effect on the operations of the target company of the acquisition by the issuer of securities in the target company resulting from the proposed code offer; and
 - (b) the plans of the directors of the issuer for the target company.
- (3) The exemption from clause 12(3) of Schedule 1 of the Regulations is subject to the condition that the registered prospectus for the unquoted securities—
 - (a) contains all the information required under clause 12(3)(a) to (f) of that schedule relating to the target company that is within the knowledge, possession, or control of the issuer and that is not already contained in the offer document; and
 - (b) specifies the information required under clause 12(3)(a) to (f) of that schedule relating to the target company

- that is contained in the offer document together with cross-references; and
- (c) specifies the information required under clause 12(3)(a) to (f) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.
- (4) The exemptions from clauses 1(4), 2(a) and (b), 11(1)(b), and 12(3) of Schedule 1 of the Regulations are subject to the condition that the registered prospectus for the offer of unquoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

13 Exemption from certain prospectus content requirements for issuers of unquoted debt securities

Every issuer and every person acting on its behalf are exempted from the following provisions of Schedule 2 of the Regulations in the case of unquoted securities that are debt securities:

- (a) clauses 1(4) and 2(a) and (b):
- (b) clause 9(3) to the extent that that subclause relates to the target company.

14 Conditions

- (1) The exemption from clause 1(4) of Schedule 2 of the Regulations is subject to the condition that the registered prospectus for the unquoted securities contains the following statement:
“Information about the price or other consideration to be paid or provided for the securities is contained in [*specify clause or paragraph reference*] of the takeover offer document for this offer.”
- (2) The exemption from clause 9(3) of Schedule 2 of the Regulations is subject to the conditions that the registered prospectus for the unquoted securities—
 - (a) contains all the information required under clause 9(3)(a) to (f) of that schedule relating to the target company that is within the knowledge, possession, or control of the issuer and that is not already contained in the offer document; and

- (b) specifies the information required under clause 9(3)(a) to (f) of that schedule relating to the target company that is contained in the offer document together with cross-references; and
 - (c) specifies the information required under clause 9(3)(a) to (f) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.
- (3) The exemptions from clauses 1(4), 2(a) and (b), and 9(3) of Schedule 2 of the Regulations are subject to the condition that the registered prospectus for the offer of unquoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

15 Exemption from certain prospectus content requirements for issuers of unquoted units in unit trust

Every issuer and every person acting on its behalf are exempted from the following provisions of Schedule 4 of the Regulations in the case of unquoted securities that are units in a unit trust:

- (a) clause 1(6);
- (b) clause 11(3) to the extent that that subclause relates to the target company.

16 Conditions

- (1) The exemption from clause 1(6) of Schedule 4 of the Regulations is subject to the condition that the registered prospectus for the unquoted securities contains the following statement:
- “Information about the price or other consideration to be paid or provided for the securities is contained in [*specify clause or paragraph reference*] of the takeover offer document for this offer.”
- (2) The exemption from clause 11(3) of Schedule 4 of the Regulations is subject to the conditions that the registered prospectus for the unquoted securities—
- (a) contains all the information required under clause 11(3)(a) to (d) of that schedule relating to the target company that is within the knowledge, possession, or

- control of the issuer and that is not already contained in the offer document; and
- (b) specifies the information required under clause 11(3)(a) to (d) of that schedule relating to the target company that is contained in the offer document together with cross-references; and
 - (c) specifies the information required under clause 11(3)(a) to (d) of that schedule relating to the target company that is not contained in the registered prospectus or the offer document and states the reasons for not including that information in those documents.
- (3) The exemptions from clauses 1(6) and 11(3) of Schedule 4 of the Regulations are subject to the condition that the registered prospectus for the offer of unquoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

Part 3
Exemption from clauses 1 and 5 of
Schedule 13 of Securities Regulations
2009 for quoted and unquoted securities

17 Application of this Part

This Part applies to offers of quoted securities and unquoted securities.

18 Exemption from clauses 1(1) and 5 of Schedule 13 of Regulations for issuers of quoted and unquoted securities

- (1) Every issuer and every person acting on its behalf are exempted, in the case of quoted securities or unquoted securities, from the requirement to include in an investment statement in the list of questions referred to in clause 1(1) of Schedule 13 of the Regulations, the question “*How much do I pay?*”.
- (2) Every issuer and every person acting on its behalf are exempted, in the case of quoted securities or unquoted securities, from clause 5 of Schedule 13 of the Regulations and the italicised question above that clause.

19 Conditions

- (1) The exemption in clause 18(1) is subject to the condition that, in place of the question “*How much do I pay?*”, the investment statement includes the question “*What will this cost me?*”.
- (2) The exemption in clause 18(2) is subject to the condition that the investment statement—
 - (a) contains a brief description of the terms of exchange of the quoted securities or unquoted securities and the securities in the target company under offer;
 - (b) states the proportion of voting securities of the shareholders in the target company that the offeror wishes to acquire;
 - (c) states the number of quoted securities or unquoted securities offered as consideration for securities in the target company, expressed as a ratio;
 - (d) states the amount of any cash sum offered as consideration for each target company security under offer;
 - (e) describes how a holder of securities in the target company may accept the code offer.
- (3) The exemptions in clause 18 are subject to the condition that the investment statement for the offer of quoted or unquoted securities accompanies the takeover notice when it is provided to the target company under rule 41 of the Code.

Part 4

Revocation and transitional provisions

**20 Securities Act (Takeovers) Exemption Notice 2001
revoked**

The Securities Act (Takeovers) Exemption Notice 2001 (SR 2001/217) is revoked on the close of 31 March 2011.

21 Transitional provisions

- (1) If, before 1 July 2010, an issuer offered quoted securities or unquoted securities in reliance on the Securities Act (Takeovers) Exemption Notice 2001 under a prospectus that was registered before that date, the issuer may continue to rely on that notice in respect of securities offered under that prospectus (as if that notice continued in force after 31 March 2011).

- (2) If, on or before 31 March 2011, an issuer offered quoted securities or unquoted securities in reliance on the Securities Act (Takeovers) Exemption Notice 2001 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2010 under a prospectus that is registered on or before that date, the issuer may continue to rely on those notices in respect of securities offered under that prospectus (as if those notices continued in force after 31 March 2011).

Dated at Wellington this 22nd day of March 2011.

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**

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2012, replaces the Securities Act (Takeovers) Exemption Notice 2001 (the **2001 notice**).

This notice is on substantially the same terms as the 2001 notice. However, the notice relates to the Securities Regulations 2009 (rather than the Securities Regulations 1983).

The notice exempts issuers of quoted and unquoted equity and debt securities and units in a unit trust offered as consideration or part of the consideration for a takeover under the Takeovers Code from compliance with provisions of the Securities Regulations 2009 (the **2009 regulations**).

The notice applies to full and partial offers under the Takeovers Code and to compulsory acquisitions under Part 7 of the Code. This notice clarifies that where the offer is made in reliance on an exemption granted under section 45 of the Takeovers Act 1993, the offer must be made in accordance with the terms and conditions of the exemption and the provisions of the Code from which there is no exemption.

The exemptions differ depending on whether the securities are quoted on a securities market operated by NZX Limited or unquoted securities.

Part 1 of the notice applies to quoted equity and debt securities and quoted units in a unit trust. It exempts issuers, subject to the conditions, from the prospectus content requirements in Schedules 1, 2, and 4 of the 2009 regulations.

Part 2 of the notice applies to unquoted equity and debt securities and unquoted units in a unit trust. It exempts issuers, subject to the conditions, from particular prospectus content requirements in Schedules 1, 2, and 4 of the 2009 regulations.

Part 3 of the notice relates to both quoted and unquoted equity securities, debt securities, and units in a unit trust. It exempts issuers from clauses 1(1) and 5 of Schedule 13 of the 2009 regulations. Schedule 13 sets out the information that must be included in an investment statement for an offer of securities. The exemption relates to disclosures concerning how much the subscriber must pay for the securities. The Securities Commission considers that it is appropriate to grant the exemptions because,—

- if a takeover bid under the Takeovers Code involves the offer of securities as all, or part, of the consideration, there is some overlap between the information required to be disclosed by the 2009 regulations and the Takeovers Code. The exemptions reduce compliance costs by reducing this overlap of informa-

tion by exempting an issuer from compliance with some disclosure requirements prescribed by the 2009 regulations where that information is required to be provided under the Takeovers Code or is publicly available in any event:

- the notice divides securities into 2 classes, those quoted on a securities market operated by NZX Limited for at least 12 months (**quoted securities**) and other securities (**unquoted securities**). Exemptions from the usual prospectus content requirements are appropriate where quoted securities are offered as consideration, or part consideration, for a code offer. This is because subscribers are sufficiently informed by the information prescribed by the Takeovers Code for inclusion in the takeover notice, publicly available information about the securities, and information required to be disclosed by conditions to the exemptions. The minimum listing period defined for quoted securities ensures a base level of information will be available. Exemptions from some, but not all, of the usual prospectus content requirements are appropriate where unquoted securities are offered on the basis of the information which is available in the takeover notice:
- in the circumstances that the securities being offered are the consideration for the acquisition by the issuer of the target company's securities, it is more useful for prospective subscribers to receive information in the investment statement to explain the terms of the exchange of securities proposed, the consideration ratio, the proportion of target company securities the offeror wishes to acquire, any cash sum offered, and how to accept the offer, rather than the usually required information about how much the subscriber must pay:
- this notice provides for existing exemptions from provisions of the Securities Regulations 1983 to be provided in respect of equivalent provisions of the 2009 regulations (with the effect that companies will be able to continue to rely on those exemptions in respect of offers of securities under the 2009 regulations). While the changes in the 2009 regulations reduce costs for issuers and improve information for investors, they do not attempt to tailor disclosure requirements specifically for all the circumstances to which securities law requirements apply. Exemptions from equivalent provisions of the 2009 regulations

continue to be useful, and remain appropriate in light of the policy of the 2001 notice. An exception is the exemption from certain requirements relating to the prospective statement of cash flows and its corresponding conditions. This exemption and the corresponding conditions are now redundant in light of changes to the regulatory provisions relating to prospective financial statements:

- the transitional provisions reduce the short term compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2001 notice. These issuers may continue to rely on the 2001 notice in respect of securities offered under an existing registered prospectus.

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**

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 24 March 2011.

Securities Act (Takeovers) Exemption Notice 2013

(SR 2013/55)

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

1 Title

This notice is the Securities Act (Takeovers) Exemption Notice 2013.

2 Commencement

This notice comes into force on 1 April 2013.

14 Transitional provisions

- (1) If, before 1 April 2013, an issuer offered quoted securities or unquoted securities in reliance on the Securities Act (Takeovers) Exemption Notice 2011 under a prospectus that was registered before that date, the issuer may continue to rely on that notice in respect of securities offered under that prospectus (as if that notice continued in force after 31 March 2013).
- (2) In this clause, **quoted securities** and **unquoted securities** have the same meanings as in the Securities Act (Takeovers) Exemption Notice 2011.

Dated at Wellington this 25th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes**1 General**

This is a reprint of the Securities Act (Takeovers) Exemption Notice 2011. The reprint incorporates all the amendments to the notice as at 1 April 2013, 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 (Takeovers) Exemption Notice 2013 (SR 2013/55): clause 13
Securities Act (Extension of Term, Amendment, and Transitional Provision)
Exemption Notice 2012 (SR 2012/294): clause 3
