

Reprint
as at 30 April 2016



**Securities Act (New Zealand Racing Board) Exemption
Notice 2011**
(SR 2011/114)

Securities Act (New Zealand Racing Board) Exemption Notice 2011: expired, on 30 April 2016, 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

1 Title

This notice is the Securities Act (New Zealand Racing Board) Exemption Notice 2011.

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.

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 30 April 2016.

4 Interpretation

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

Act means the Securities Act 1978

betting account means a betting account issued by the Board under the Betting Rules made pursuant to the Racing Act 2003

betting voucher means a betting voucher issued by the Board under the Betting Rules made pursuant to the Racing Act 2003

Board means the New Zealand Racing Board

net amount, in relation to specified debt securities, means an amount equivalent to the face value of all specified debt securities issued by the Board less any amounts paid by the Board for the redemption or cancellation of the specified debt securities

Regulations means the Securities Regulations 2009

Senior Officer means the Chief Executive Officer of the Board or the Chief Financial Officer of the Board (or if that office does not exist, the person who has responsibility for the management of the financial affairs of the Board)

specified debt securities means debt securities that are betting accounts and betting vouchers issued by the Board in favour of security holders.

- (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 from trustee and trust deed requirements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 33(2) of the Act.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) the Board maintains an amount that exceeds the net amount in a separate bank account kept specially for that purpose at a registered bank (as that term is defined in section 2(1) of the Reserve Bank of New Zealand Act 1989); and
- (b) there is a trust deed for the separate bank account that declares the account is to be held on trust for holders of the specified securities and

gives those holders the right to a proportion of the account equal to the value of their specified debt security; and

- (c) it is a term of the offer that the Board is liable to repay the face value of any specified debt securities not later than 1 working day after any demand is made, except in the limited circumstances stated in the Betting Rules available at <http://www.tab.co.nz> and TAB outlets; and
- (d) the Senior Officer provides a monthly certificate to the Board that—
 - (i) certifies that, at the time the certificate is issued, the amount in the bank account referred to in paragraph (a) exceeds the net amount; and
 - (ii) is retained by the Board and available for inspection by holders of specified debt securities.

7 Exemption relating to receipt of investment statements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 37A(1)(a) of the Act.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) every betting voucher includes the statement “This voucher is governed by the Betting Rules available at <http://www.tab.co.nz> and TAB outlets. Subject to conditions, refunds are available.”;
- (b) all hard copy and electronic statements for the betting accounts include the statement “The use of this account (including the right of the account holder to withdraw money from the account) is governed by the Betting Rules available at <http://www.tab.co.nz> and TAB outlets.”

9 Exemptions from certain prospectus requirements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 37A(1)(c) of the Act and clauses 8, 9, 14, 16 to 18, 21, and 22 of Schedule 2 of the Regulations.

10 Conditions of exemptions in clause 9

The exemptions in clause 9 are subject to the conditions that—

- (a) every registered prospectus containing or referring to an offer of the specified debt securities contains, or is accompanied by, a copy of the most recent audited financial statements of the Board that—
 - (i) comply with the Financial Reporting Act 1993; and
 - (ii) have been presented to the House of Representatives in accordance with section 21 of the Racing Act 2003; and
- (b) the Board delivers to the Registrar an annual certificate that—

- (i) refers to the most recent audited financial statements of the Board; and
- (ii) is signed on behalf of the directors by at least 2 directors of the Board; and
- (iii) is dated not later than 6 months after the date of the most recent audited financial statements of the Board; and
- (iv) states that, in the opinion of the directors of the Board after due inquiry by them, the registered prospectus is not, at the date of the certificate, false or misleading in a material particular by failing to refer or give proper emphasis to adverse circumstances; and
- (v) either—
 - (A) states that the information contained in the registered prospectus under clause 13 of Schedule 2 of the Regulations (relating to ranking of securities) is correct; or
 - (B) contains a current statement of the information; and
- (vi) states that the certificates referred to in clause 6(d) have been provided to the Board and has copies of those certificates attached to it.

11 Exemption from certificate requirements

The Board and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 54 of the Act.

12 Conditions of exemption in clause 11

- (1) The exemption in clause 11 is subject to the conditions that,—
 - (a) immediately after a person subscribes for a specified debt security that is a betting voucher, the Board delivers to that person a physical betting voucher representing that specified debt security; and
 - (b) at all reasonable times, betting account holders can request (via <http://www.tab.co.nz>, telephone, or any serviced retail outlet operated by the Board) a statement that contains the following information:
 - (i) the balance of the betting account; and
 - (ii) records of transactions occurring over—
 - (A) the past 30 days (for requests received on or before the implementation date described in subclause (2)); or
 - (B) the past period of up to 6 months (for requests received during the 6 months that starts on the implementation date described in subclause (2)); or

- (C) the past 6 months (for requests received later than 6 months after the implementation date described in subclause (2)); and
 - (iii) the statement “The use of this account (including the right of the account holder to withdraw money from the account) is governed by the Betting Rules available at <http://www.tab.co.nz> and TAB outlets.”; and
 - (c) the condition described in paragraph (b) is a term of the Board’s General Terms and Conditions for accounts; and
 - (d) at all reasonable times, an electronic statement is available at <http://www.tab.co.nz> to every account holder that includes the information required by paragraph (b)(i) to (iii); and
 - (e) at all reasonable times, betting account holders are able to check the balance of their betting accounts (via <http://www.tab.co.nz>, telephone, text message, or any serviced retail outlet operated by the Board).
- (2) For the purposes of subclause (1)(b)(ii), **implementation date** means the date the Board’s new betting system known as Typhoon is first used by holders of betting accounts.

Dated at Wellington this 21st day of April 2011.

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

[Seal]

D W Mayhew,
Member.

Statement of reasons

This notice, which comes into force on the day after its notification in the *Gazette* and expires on 30 April 2016, exempts the New Zealand Racing Board (the **Board**), subject to conditions, from certain provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **Regulations**) in respect of debt securities known as betting vouchers and betting accounts. Betting vouchers and betting accounts facilitate betting on sports and racing through the Board-run TAB.

The Board is exempted from the requirements—

- to appoint a trustee and have a trust deed:
- to have an investment statement:
- to provide certain statements and information in or with a prospectus:
- to issue certificates evidencing the holding of the betting vouchers or betting accounts.

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

- the nature and features of the betting securities are such that they are not intended to be investment products:
- the conditions of the exemption from the trustee and trust deed provisions of the Act provide protection for investors funds. These protections are that there is a trust deed for a separate bank account that declares the account is to be held on trust for holders of the specified securities and gives those holders the right to a proportion of the account equal to the value of their specified debt security:
- the effect of the conditions of the exemptions is that potential purchasers of betting vouchers and potential depositors into a betting account will be provided with sufficient disclosure to enable them to make informed decisions. Information is to be available in a reduced content prospectus, regularly updated financial statements, the Betting Rules, and online account statements. There is no exemption from the requirements of the Act that information provided must not be misleading:
- betting securities are similar to call debt securities, which have a statutory exemption from the requirement to have an investment statement. Except in limited circumstances, holders of betting accounts and betting vouchers can withdraw their money within 1 day and without fee, similar to holders of call debt securities. This right is brought to the attention of holders by a statement on the betting vouchers and on betting account statements:
- the conditions of the exemption from the requirement for certificates ensures holders of betting accounts and betting vouchers can easily access information about their holdings:
- with these alternative protections in place that are suited to the operation of the Board's activities, full compliance with the Act and Regulations by the Board would not provide material benefit to betting account holders and purchasers of betting vouchers.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 April 2011.

Reprints notes

1 *General*

This is a reprint of the Securities Act (New Zealand Racing Board) Exemption Notice 2011 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 (New Zealand Racing Board) Exemption Notice 2011 (SR 2011/114): clause 3