

Reprint
as at 1 October 2016



Securities Act (NZX–NZAX Market) Exemption Notice 2011

(SR 2011/338)

Securities Act (NZX–NZAX Market) Exemption Notice 2011: expired, on the close of 30 September 2016, by clause 3.

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).

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Matters required to be contained in registered prospectus

Notice

1 Title

This notice is the Securities Act (NZX–NZAX Market) 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 30 September 2011.

3 Expiry

This notice expires on the close of 30 September 2016.

4 Interpretation

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

Act means the Securities Act 1978

financial statements has the meaning set out in section 8 of the Financial Reporting Act 1993

NZAX issuer means a company that has entered into a listing agreement with NZX for listing on the NZAX Market

NZAX issuer's Internet site, in relation to an NZAX issuer, means the Internet site maintained by the NZAX issuer

NZAX issuer's NZX webpage, in relation to an NZAX issuer, means the Internet webpage for the NZAX issuer that is located on NZX's Internet site

NZAX listing rules means NZX's listing rules that apply to NZAX issuers and the NZAX Market and that are listing rules for the purposes of section 36H of the Securities Markets Act 1988

NZAX Market means the securities market operated by NZX under that name

NZCDC means New Zealand Clearing and Depository Corporation Limited

NZCDC settlement system means the settlement system that is—

- (a) owned by, and operated and managed by or on behalf of, NZCDC; and
- (b) declared to be a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989

NZX means NZX Limited

Regulations means the Securities Regulations 2009.

- (2) Any term or expression that is defined in the Act, the Securities Markets Act 1988, or the Regulations and used, but not defined, in this notice has the same meaning as in the Act, the Securities Markets Act 1988, or the Regulations.

5 Exemptions

- (1) Every NZAX issuer, every holder of securities previously allotted by an NZAX issuer, and every person acting on behalf of either or both of them is exempted from section 34(2)(a) of the Act and regulation 5(1)(a) of the Regulations in respect of equity securities of the NZAX issuer.
- (2) Every NZAX issuer, every holder of securities previously allotted by an NZAX issuer, and every person acting on behalf of either or both of them is exempted

from section 37A(1)(a) of the Act in respect of equity securities of the NZAX issuer.

- (3) Every NZAX issuer, every holder of securities previously allotted by an NZAX issuer, and every person acting on behalf of either or both of them is exempted from section 37A(1)(c) of the Act in respect of equity securities of the NZAX issuer.

6 Conditions that apply to exemptions in clause 5(1) and (2)

- (1) The exemptions in clause 5(1) and (2) are subject to the conditions that—
 - (a) the registered prospectus relating to the offer contains all the information, statements, and other matters required by the Schedule; and
 - (b) all information, statements, and other matters specified under an italicised question set out in the Schedule that are required to be contained in a registered prospectus must be set out together in the registered prospectus under that question.
- (2) However, despite subclause (1),—
 - (a) in the case of an offer of previously allotted securities to which section 6(2) or (3) of the Act applies, nothing in the Schedule requires the registered prospectus to contain information about a holder of previously allotted securities as an issuer of equity securities if the prospectus contains—
 - (i) a statement to the effect that the holder of previously allotted securities offered under the prospectus is an issuer of equity securities and has obligations as an issuer under the Act, the Regulations, and this notice; and
 - (ii) any information about the holder of previously allotted securities as offeror that, but for this paragraph, would be required in the registered prospectus under clause 30 of the Schedule; and
 - (b) if a matter specified in the Schedule is not applicable to the securities to which the registered prospectus relates, the registered prospectus is not required to refer to that matter and, in particular, is not required to state that the matter is not applicable; and
 - (c) if the Schedule specifies any information, statement, certificate, or other matter relating to an issuing group, a borrowing group, a group, a body corporate, a business, or a scheme for a stated period, the information, statement, certificate, or other matter need not relate to any part of the stated period during which no part of the group, body corporate, business, or scheme was in existence.

7 Condition that applies only to exemption in clause 5(2)

The exemption in clause 5(2) is subject to the condition that the securities must not be allotted to a subscriber for the equity securities unless the subscriber re-

ceived, before subscribing, a copy of the registered prospectus relating to the offer.

8 Conditions that apply to all exemptions

- (1) The exemptions in clause 5 are subject to the condition that all information released by an NZAX issuer to NZX for disclosure to the market between the date of registration of the registered prospectus and the closing date for the receipt of subscription applications relating to the offer, and that has been approved by NZX for release to the market,—
 - (a) is placed immediately on the NZAX issuer's Internet site and the NZAX issuer's NZX webpage; and
 - (b) is available at all reasonable times during the offer period through the NZAX issuer's Internet site and the NZAX issuer's NZX webpage.
- (2) The exemptions in clause 5 are subject to the condition that every prospectus delivered to the Registrar for registration in accordance with this notice must have endorsed on or attached to the prospectus, or be accompanied by,—
 - (a) in the case of a contract the details of which are required by clause 28 of the Schedule,—
 - (i) a copy of the contract or, if the contract is not in writing, a document giving full particulars of the contract; and
 - (ii) if the contract is wholly or partly in a foreign language, a correct translation of the contract in English; and
 - (b) in each case of the auditor's report referred to in clause 23(4) of the Schedule and any auditor's report prepared in accordance with clause 32(2) of the Schedule,—
 - (i) the signed report; and
 - (ii) a statement, dated not earlier than 7 days before the specified date and signed by the auditor (either in the auditor's name or that of the auditor's firm), that the auditor consents to the report appearing in the registered prospectus in the form in which it appears.
- (3) However, subclause (2)(a) does not apply if a copy of the contract, document giving full particulars of the contract, or translation of the contract, as the case may be, has already been registered by, or filed with, the Registrar.
- (4) The exemptions in clause 5 are subject to the condition that an NZAX issuer must not allot equity securities to the public if the date of allotment would be later than whichever of the following dates is the earlier:
 - (a) 6 months after the specified date:
 - (b) 9 months after the date of the most recent financial statements or interim financial statements referred to in the registered prospectus in accordance with clauses 23 and 24 of the Schedule.

Schedule
Matters required to be contained in registered prospectus

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1 Information on cover of registered prospectus

- (1) A statement in the following form (to be set out on the front cover of the registered prospectus):

“Warning—restricted disclosure

This registered prospectus has been prepared in accordance with the Securities Act (NZX–NZAX Market) Exemption Notice 2011. It may not contain as much information as would ordinarily appear in a registered prospectus prepared in accordance with the requirements of Schedule 1 of the Securities Regulations 2009.

It is strongly recommended that you seek independent professional advice before investing in these securities.

Copies of this registered prospectus, financial statements of [*insert name of NZAX issuer*], and other information about the securities offered and [*insert name of NZAX issuer*] are available—

- (a) on [*insert name of NZAX issuer*]’s NZX webpage [*insert address*]; and
 - (b) on [*insert name of NZAX issuer*]’s Internet site [*insert address*]; and
 - (c) on request from [*insert name of NZAX issuer*], free of charge.”
- (2) Subclause (3) applies if—
- (a) the registered prospectus is the first offer to the public of equity securities of the NZAX issuer; and
 - (b) the NZAX issuer intends, in accordance with clause 13(3) of this schedule, not to include prospective financial statements of the issuing group.

- (3) If this subclause applies, the statement required by subclause (1) must include, after the first paragraph, a statement of the matters described in clause 13(3)(a) of this schedule.

2 Information at front of registered prospectus

A statement in the following form (to be set out at the front of the registered prospectus):

“Important information

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

Choosing an investment

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

Page

What sort of investment is this?

Who is involved in providing it for me?

How much do I pay?

What are the charges?

What returns will I get?

What are my risks?

Can the investment be altered?

How do I cash in my investment?

Who do I contact with inquiries about my investment?

Is there anyone to whom I can complain if I have problems with the investment?

What other information can I obtain about this investment?

The Financial Markets Authority regulates conduct in financial markets

The Financial Markets Authority regulates conduct in New Zealand’s financial markets. The Financial Markets Authority’s main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.

For more information about investing, go to <http://www.fma.govt.nz>

Financial advisers can help you make investment decisions

Using a financial adviser cannot prevent you from losing money, but it should be able to help you make better investment decisions.

Financial advisers are regulated by the Financial Markets Authority to varying levels, depending on the type of adviser and the nature of the services they provide. Some financial advisers are only allowed to provide advice on a limited range of products.

When seeking or receiving financial advice, you should check—

- the type of adviser you are dealing with:
- the services the adviser can provide you with:
- the products the adviser can advise you on.

A financial adviser who provides you with personalised financial adviser services may be required to give you a disclosure statement covering these and other matters. You should ask your adviser about how he or she is paid and any conflicts of interest he or she may have.

Financial advisers must have a complaints process in place and they, or the financial services provider they work for, must belong to a dispute resolution scheme if they provide services to retail clients. So if there is a dispute over an investment, you can ask someone independent to resolve it.

Most financial advisers, or the financial services provider they work for, must also be registered on the financial service providers register. You can search for information about registered financial service providers at <http://www.fspr.govt.nz>

You can also complain to the Financial Markets Authority if you have concerns about the behaviour of a financial adviser.”

What sort of investment is this?

3 Description of securities

- (1) A brief description of the securities being offered.
- (2) The maximum number or amount of the securities being offered.
- (3) All terms of the offer (including the closing date for receipt of subscription applications relating to the offer), and all terms of the securities being offered, not elsewhere set out in the prospectus, other than—
 - (a) any terms implied by law; or
 - (b) any terms set out in a document that—
 - (i) is registered with a public official; and
 - (ii) is available for public inspection; and
 - (iii) is referred to in the prospectus.

Who is involved in providing it to me?

4 Activities

A brief description of the principal activities carried on by the NZAX issuer and an indication of how long the NZAX issuer has been carrying on those activities.

5 Names and addresses

- (1) The following information:
 - (a) the name and address of the NZAX issuer; and
 - (b) the statute or other authority by or under which the NZAX issuer was incorporated; and
 - (c) the date of incorporation; and
 - (d) the date of registration in New Zealand (if that date is different from the date of incorporation); and
 - (e) the registered number (if any); and
 - (f) the place (if any) in New Zealand where a public file relating to the incorporation or registration of the NZAX issuer is kept.
- (2) The name and address of every director of the NZAX issuer.
- (3) In respect of every director of the NZAX issuer who is an employee of the NZAX issuer, or of any subsidiary of the NZAX issuer, the position held by him or her.
- (4) If the NZAX issuer, director of the NZAX issuer, or a promoter has, during the 5 years preceding the specified date, been adjudged bankrupt or insolvent, convicted of a crime involving dishonesty, prohibited from acting as a director of a company, or placed in statutory management, voluntary administration, liquidation, or receivership, a statement to that effect and the name, and any alternative or former name or names, of the NZAX issuer, director, or promoter concerned.
- (5) The names and addresses of any promoters.
- (6) The names of the NZAX issuer's secretary (if any), its auditors, and the securities registrar (if it is not the NZAX issuer), and any other professional advisers (other than employees of the NZAX issuer or of an associated person) or solicitors who have been involved in the preparation of the prospectus.
- (7) The names, addresses, and qualifications of any experts named in the registered prospectus.
- (8) If the offer of securities is underwritten, the name and address of the underwriter.
- (9) In relation to an offer of previously allotted securities to which section 6(2) or (3) of the Act applies,—
 - (a) the name of the offeror of the previously allotted securities; and
 - (b) the address of the offeror's registered office (or, if it does not have a registered office, the offeror's address) in New Zealand; and
 - (c) the net amount of the consideration received or to be received by the issuer in respect of the original allotment of the securities.

6 Subsidiaries and shareholders

- (1) In respect of each subsidiary the amount of whose total tangible assets exceeds 5% of the amount of the total tangible assets of the issuing group,—
 - (a) the name of the subsidiary; and
 - (b) the proportion of its issued capital held by members of the issuing group.
- (2) The names of the persons who are the registered holders of the 10 largest holdings of equity securities of the NZAX issuer at a date not earlier than 30 days before the specified date, and the amounts of their respective holdings.
- (3) A statement as to whether the persons specified under subclause (2) undertake any liability in respect of the securities being offered.

How much do I pay?

7 Moneys payable by subscribers

- (1) The following information relating to the money payable by a subscriber to the NZAX issuer or any associated person in respect of the securities:
 - (a) a description of the sums payable and a statement as to whether the subscriber is required to make those payments:
 - (b) the person to whom, and the manner in which, payments are to be or may be made:
 - (c) if the subscriber is required to make payments on specified dates or at a specified frequency, the payment dates or frequency and the consequences of failing to make the payments.
- (2) If the money, or the minimum or maximum sum of money, referred to in subclause (1) can, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount identified with reference to the security), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (3) If the money, or the minimum or maximum sum of money, referred to in subclause (1) cannot, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount identified with reference to the security), a statement describing any procedure for calculating the amounts of that money during the period the registered prospectus is current.

8 Cooling-off period

If there is a cooling-off period in respect of the securities, a statement of the terms on which a subscriber may cancel the securities.

What are the charges?

9 Types of charges

- (1) A statement as to which of the following types of charges are or may be payable to the NZAX issuer or a promoter, or an associated person of the NZAX issuer or promoter, by a subscriber (whether directly or indirectly, including by deduction):
 - (a) entry charges:
 - (b) administration or management charges:
 - (c) expenses or overhead charges:
 - (d) charges or expenses relating to goods or services that the subscriber is required to obtain:
 - (e) early termination charges:
 - (f) switching or sale charges (including the difference between any buying and selling prices for the securities):
 - (g) alteration charges:
 - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by the NZAX issuer to a promoter, an administration manager, or an investment manager or an associated person of the NZAX issuer, promoter, administration manager, or investment manager, being charges that will or may affect the amount of the returns to subscribers.
- (3) A brief description of any practices of the NZAX issuer or any associated person in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of the NZAX issuer or any other person to alter any of the charges applicable to the securities.

10 Amount of charges

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 9(1) of this schedule can, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 9(1) of this schedule cannot, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to ascertain the amount at the time of, and following, the subscription.

*What returns will I get?***11 Returns**

- (1) The following information about the returns to subscribers from the securities:
 - (a) a brief description of the nature of the returns:
 - (b) a brief description of the key factors that determine the returns:
 - (c) a statement as to whether an amount of returns, quantifiable as at the date of the prospectus and enforceable by subscribers, has been promised and, if so, the amount or a description of how that amount can be calculated:
 - (d) a statement as to which of the following (if any) will, or is likely to, affect the returns (in addition to any of the charges referred to in clause 9 of this schedule):
 - (i) taxes or duties:
 - (ii) reserves or retentions.
- (2) The dates on which, or frequency with which, the returns from the securities will be due and paid or, if there are no such dates or frequency or the dates or frequency are unknown, a statement to that effect.
- (3) If payment of all or any of the returns from the securities will or may be withheld until a particular date or for a particular period, a statement to that effect and a brief description of the circumstances that may produce this result.
- (4) The name of the person legally liable to pay the returns.

12 Financing of projects

If the purpose of the offer of securities is expressed as being to provide finance for a particular capital project,—

- (a) a brief description of the project; and
- (b) an indication of the expected financial benefits of the project.

13 Provisions relating to initial flotations and minimum subscription

- (1) In the case of the first offer to the public of equity securities of the issuer,—
 - (a) a brief description of the plans that the directors of the NZAX issuer, and the directors of any other member of the issuing group, have in respect of the issuing group during the year commencing on the specified date, including the sources of finance that will be required for the plans; and
 - (b) a statement as to whether the proceeds of the offer of securities may, despite the stated directors' plans, be applied for any other purpose; and
 - (c) a prospective statement of financial position, a prospective statement of financial performance, and a prospective statement of cash flows for the issuing group in relation to—

- (i) the accounting period ending on the next balance date after the specified date; and
 - (ii) either the accounting period or the interim accounting period that is subsequent to the period referred to in subparagraph (i).
- (2) The prospective financial statements required by subclause (1)(c) must be prepared in accordance with FRS-42.
- (3) However, prospective financial statements are not required under subclause (1)(c) in relation to an accounting period (or interim accounting period) referred to in that paragraph if,—
 - (a) in the opinion of the directors of the NZAX issuer, after due enquiry by them, prospective financial statements for that period would be likely to deceive or mislead with regard to any particular that is material to the offer of securities (for example, because it is not practicable to formulate reasonable assumptions on which to base the statements); and
 - (b) the prospectus contains a statement to this effect together with a statement of the directors' reasons for their opinion.
- (4) In subclauses (1)(c)(ii) and (3), **interim accounting period**, in relation to an NZAX issuer, means a period ending 6 months after the balance date of the NZAX issuer.
- (5) For the purposes of section 37(2) of the Act, the minimum amount that, in the opinion of the directors, must be raised by the issue of the securities in order to provide the sums (or, if any part is to be met in any other manner, the balance of the sums) required to be provided in respect of each of the following matters:
 - (a) the purchase price of any property purchased or to be purchased that is to be met in whole or in part out of the proceeds of the offer:
 - (b) any preliminary expenses payable by the issuer, and any commission payable to any person in consideration of his or her agreeing to subscribe for, or of his or her procuring or agreeing to procure subscriptions for, any of the securities:
 - (c) working capital:
 - (d) the repayment of any money borrowed by the issuer in respect of any of the matters specified in paragraphs (a) to (c).

14 **Guarantee of securities**

If there is a guarantor of the securities, the following information:

- (a) the name of the guarantor:
- (b) the nature and amount of the guarantee:
- (c) whether the guarantee is subject to conditions and, if so, the principal conditions:

- (d) whether the guarantee is secured by a mortgage or other charge and, if so, the nature and amount of the charge:
- (e) if the guarantor and the NZAX issuer are associated persons, a statement to that effect and the nature of the relationship.

What are my risks?

15 Risks

- (1) A brief description of the principal risks of—
 - (a) the money paid by a subscriber not being recovered in full by the subscriber:
 - (b) a subscriber not receiving the returns referred to in clause 11 of this schedule:
 - (c) a subscriber being required to pay more money in respect of a security than that disclosed in clause 7 or 16 of this schedule.
- (2) A statement as to the trading prospects of the issuing group, together with any material information that may be relevant to those prospects, including a description of all special trade factors and risks that—
 - (a) are not mentioned elsewhere in the registered prospectus; and
 - (b) are not likely to be known or anticipated by the general public; and
 - (c) could materially affect the prospects of the issuing group.
- (3) If it is reasonably foreseeable that, on termination of any security at any time, a subscriber will have received, in total, less than the amount paid to the NZAX issuer or an associated person for the security, a statement to this effect and a brief description of the circumstances that may produce this result.

16 Consequences of insolvency

- (1) A statement as to whether subscribers will or may be liable to pay money to any person as a result of the insolvency of the NZAX issuer and, if so, a brief description of the liability.
- (2) A brief description of any claims on the assets of the NZAX issuer that will or may rank ahead of claims of subscribers in the event of the NZAX issuer being put into liquidation.
- (3) A brief description of any claims on the assets of the NZAX issuer that will or may rank equally with the claims of subscribers in the event of the NZAX issuer being put into liquidation.

17 NZAX listing

- (1) Any statement approved by the market operator for the purposes of regulation 39(3) of the Regulations.

- (2) At the time of the commencement of this notice, the following statement was approved by the market operator for the purposes of regulation 39(3) of the Regulations:

“The securities offered in this prospectus are listed, or intended to be listed, on the NZX’s NZAX market. The NZAX market differs from the NZSX market, also operated by NZX, in the following key respects:

- there are reduced criteria for listing on NZAX—there is no requirement for 25% of the securities of an NZAX issuer to be widely held and no minimum value requirement for NZAX listings as apply to NZSX listings. While an NZSX issuer must have 500 shareholders, an NZAX issuer needs only 50 shareholders:
- an NZAX issuer requires an NZX sponsor in order to list on the NZAX market, whereas NZSX companies require an organising participant:
- greater flexibility is accorded by the NZAX listing rules to NZAX issuers seeking to raise capital, buy back securities, and undertake major transactions. The NZAX listing rules provide NZAX issuers with an option to undertake these activities, without seeking shareholder consent, by making an announcement to the market that discloses fully the transaction before that transaction becomes final:
- the materiality threshold for related party transactions in the NZAX listing rules is higher than the threshold in the NZSX listing rules. This means that an NZAX issuer may enter into (proportionally) more substantial transactions with related parties before being required to seek shareholder approval for those transactions:
- the corporate governance standards for NZAX issuers do not contain all the matters provided for in the corporate governance standards for NZSX issuers.

”

Can the investment be altered?

18 Alteration of securities

- (1) A brief description of any right of a subscriber, the NZAX issuer, or any other person to—
- (a) alter the amount of moneys payable by a subscriber, including a brief description of any continuing obligation of the subscriber to pay that amount; or
 - (b) otherwise alter the terms of any security.
- (2) If any charges are payable by a subscriber on any of those alterations, a reference to the information given under clause 9(1)(g) of this schedule.

How do I cash in my investment?

19 Early termination

- (1) A brief description of any right of the NZAX issuer, a subscriber, or any other person to terminate, cancel, surrender, or otherwise make or obtain payment of the returns from the securities, otherwise than as described in clause 11 of this schedule.
- (2) If any charges are payable by a subscriber on any such payment, a reference to the information given under clause 9(1)(e) or (f) of this schedule.

Who do I contact with inquiries about my investment?

20 Inquiries about securities

The names or descriptions of officers, employees, or agents of the NZAX issuer to whom inquiries about the securities can be made, and the contact details of those people (which must include an address and a business telephone number).

Is there anyone to whom I can complain if I have problems with the investment?

21 Complaints about securities

- (1) The names or descriptions of officers, employees, or agents of the NZAX issuer to whom complaints about the securities can be made, and the contact details of those people (which must include an address and a business telephone number).
- (2) A statement that a complaint about the securities or the NZAX issuer may be made directly to NZX, and the contact details of NZX for the purpose of making a complaint (which must include an address and a business telephone number).
- (3) A statement as to whether complaints about the securities can be made to an approved dispute resolution scheme and, if so, the contact details of the scheme (which must include an address and a business telephone number).

What other information can I obtain about this investment?

22 Financial statements requirements apply only if NZAX issuer has commenced business

- (1) Clauses 23 and 24 of this schedule apply only if, before the specified date, the NZAX issuer has commenced business and—
 - (a) has acquired an asset; or
 - (b) has incurred a debt.

- (2) If clause 23 of this schedule applies, financial statements for the NZAX issuer must be contained or referred to in the prospectus in accordance with that clause.

23 Financial statements

- (1) A reference to the latest financial statements for the NZAX issuer that comply with, and have been registered under, the Financial Reporting Act 1993, the accounting period covered by those statements, and the date of registration.
- (2) If the NZAX issuer so wishes, the latest financial statements referred to in sub-clause (1).
- (3) If no financial statements for the NZAX issuer have been registered under the Financial Reporting Act 1993, financial statements for the NZAX issuer prepared and audited as if they were to be registered under that Act for—
- (a) the most recently completed accounting period in respect of which the financial statements have been prepared; or
 - (b) if the NZAX issuer has not completed its first accounting period, the period from the date of commencement of business and ending on a stated date that is not more than 4 months before the specified date.
- (4) A statement to the effect that copies of the financial statements, together with an auditor's report in respect of the financial statements that complies with the requirements of section 16 of the Financial Reporting Act 1993, are available—
- (a) on request from the NZAX issuer, free of charge; and
 - (b) on the NZAX issuer's Internet site; and
 - (c) on the NZAX issuer's NZX webpage.

24 Additional interim financial statements

- (1) If the directors of the NZAX issuer consider it necessary or desirable (after having regard to clause 8(4) of this notice), interim financial statements that comply with the Financial Reporting Act 1993 (except that they need not be audited) for the issuing group.
- (2) If interim financial statements are included, the following statements for the group:
- (a) an interim statement of financial performance; and
 - (b) an interim statement of cash flows; and
 - (c) statements as to—
 - (i) all material changes (if any) in matters contained in the interim financial statements from the matters contained in the financial statements contained or referred to in the prospectus under clause 23 of this schedule; and

- (ii) all transactions (if any) that are material related party transactions under generally accepted accounting practice and that were entered into or were being performed in the period of the interim financial statements.
- (3) A statement to the effect that copies of the interim financial statements are available—
 - (a) on request from the NZAX issuer, free of charge; and
 - (b) on the NZAX issuer’s Internet site; and
 - (c) on the NZAX issuer’s NZX webpage.
- (4) A statement that the following documents are available on request from the NZAX issuer, free of charge, and on the NZAX issuer’s Internet site and the NZAX issuer’s NZX webpage:
 - (a) the annual reports completed by the NZAX issuer in each of the 5 consecutive years before the date of the financial statements referred to in clause 23(1) of this schedule; or
 - (b) the financial statements prepared by the NZAX issuer in accordance with the requirements of the Financial Reporting Act 1993 for each of the 5 consecutive accounting periods before the date of the financial statements referred to in clause 23(1) of this schedule.
- (5) The interim financial statements must be prepared—
 - (a) in accordance with NZ IAS 34 (but need not be audited); and
 - (b) for the period from the date of the financial statements contained or referred to in the prospectus under clause 23 of this schedule and ending on a stated date that is not more than 9 months after the date of those financial statements.

25 Acquisition of business or subsidiary

- (1) This clause does not apply in respect of a business, subsidiary, or body corporate if the consideration paid or payable, or proposed to be paid, for the acquisition of the business, subsidiary, or body corporate is not more than one-fifth of the amount of the total tangible assets shown in the statement of financial position referred to in accordance with clause 23(1) of this schedule.
- (2) If a member of the issuing group acquired a business, or a member of the issuing group became a subsidiary of the NZAX issuer, at any time in the 2 years preceding the specified date, the following information and statements:
 - (a) the name of the member:
 - (b) a brief description of the activities of the business, or of the business carried on by the subsidiary, in the course of the period that began 5 years before the specified date and ended on the date on which the business was acquired, or the member became a subsidiary, as the case may be:

- (c) if the registered prospectus does not refer to financial statements in accordance with clause 23(1) of this schedule, the information referred to in subclauses (3)(b) and (d) or (e).
- (3) If a member of the issuing group acquired a business, or became a subsidiary of the NZAX issuer, at any time in the specified period, or if the prospectus contains a statement to the effect that a member of the issuing group intends to acquire a business or to acquire equity securities that will result in a body corporate becoming a subsidiary of the NZAX issuer, the following information and statements:
 - (a) the name of the member of the issuing group:
 - (b) the amount of the consideration paid or payable, or proposed to be paid, for the business, subsidiary, or body corporate:
 - (c) a brief description of the business, or of the business carried on by the subsidiary or body corporate, in the course of the 5 years before the specified date:
 - (d) if the business, subsidiary, or body corporate has prepared financial statements in accordance with the Financial Reporting Act 1993, a statement that copies of the financial statements, or copies of the annual reports prepared in accordance with the requirements of the Companies Act 1993, for the 5 most recent accounting periods of the business, subsidiary, or body corporate are available—
 - (i) on request from the NZAX issuer, free of charge; and
 - (ii) on the NZAX issuer’s Internet site; and
 - (iii) on the NZAX issuer’s NZX webpage:
 - (e) if the business, subsidiary, or body corporate has not prepared financial statements in accordance with the Financial Reporting Act 1993, a statement to the effect that the following documents are available on request from the NZAX issuer, free of charge, and on the NZAX issuer’s Internet site and the NZAX issuer’s NZX webpage:
 - (i) pro forma financial statements that have been prepared for the business, subsidiary, or body corporate for 1 accounting period ending not more than 4 months before the specified date, on as similar a basis as possible to those that would have been prepared had the business, subsidiary, or body corporate been a reporting entity for the purposes of the Financial Reporting Act 1993; and
 - (ii) a statement of the basis of the preparation of the pro forma financial statements referred to in subparagraph (i), the key assumptions used in preparing those statements, and the source of the information on which those statements were based.

- (4) In subclause (3), **specified period** means the period between the date of the financial statements referred to in accordance with clause 23(1) of this schedule and the specified date.

26 Places of inspection of documents

The times and places in New Zealand where the following documents or copies of the following documents (and, if they are wholly or partly in a foreign language, a correct translation of the documents in English) may, on payment of any fee, be inspected by a person who so requests:

- (a) the constitution or other documents or instruments constituting or defining the constitution of the NZAX issuer:
- (b) the financial statements referred to in clause 23(1) of this schedule:
- (c) any material contract disclosed under clause 28 of this schedule:
- (d) if the NZAX issuer was incorporated outside New Zealand, the statute or other authority by or under which the NZAX issuer was incorporated.

27 Interested persons

- (1) If any specified person is entitled to remuneration for services (other than directors' fees), or to recover expenses, in respect of the NZAX issuer or any of its subsidiaries, particulars of—
- (a) the nature of the services or expenses; and
 - (b) if remuneration or expense recovery is from the NZAX issuer or any subsidiary of the NZAX issuer, whether the amount of remuneration or expenses is limited and, if so, the limits.
- (2) Particulars of any direct or indirect material interest in the NZAX issuer or any of its subsidiaries, or in any contract or arrangement entered into on behalf of or in respect of the NZAX issuer or any of its subsidiaries, that—
- (a) any specified person has, or has had at any time during the 5 years preceding the specified date; and
 - (b) is material to either or both of the person who has the interest and the NZAX issuer or any of its subsidiaries.
- (3) If more than 10% of the value of the assets of the NZAX issuer (calculated in accordance with generally accepted accounting practice) was, at any time during the 2 years preceding the specified date, represented directly or indirectly by any securities of which any associated person of the NZAX issuer, any promoter of the securities being offered, or any associated person of a promoter was the NZAX issuer, a description of those securities.
- (4) In this clause, **specified person** means—
- (a) a director or proposed director of the NZAX issuer, a promoter of the securities being offered, or an associated person of any of them; and

- (b) in the case of an offer of previously allotted securities referred to in section 6(2) or (3) of the Act, the offeror, the securities holder at the time of the offer, and an associated person of either of them.

28 Material contracts

In relation to every material contract entered into by any member of the issuing group at any time in the 2 years before the specified date (not being a contract entered into in the ordinary course of business of the member),—

- (a) its date; and
- (b) the names of the parties to it; and
- (c) its general nature.

29 Pending proceedings

A brief description of any legal proceedings or arbitrations that—

- (a) are pending at the specified date; and
- (b) may have a material adverse effect on the issuing group.

30 Other material matters

Particulars of any material matters relating to the offer of securities (other than matters elsewhere set out in the prospectus or in the financial statements referred to in the prospectus under clause 23, 24, or 25 of this schedule, and contracts entered into in the ordinary course of business of a member of the issuing group).

31 Directors' statement

A statement by the directors of the NZAX issuer as to whether, in their opinion, after due enquiry by them, any of the following has materially and adversely changed during the period between the date of the latest financial statements contained or referred to in the prospectus and the specified date:

- (a) the trading or profitability of the issuing group;
- (b) the value of the issuing group's assets;
- (c) the ability of the issuing group to pay its liabilities due within the next 12 months.

32 Prospective financial information

- (1) This clause applies if the registered prospectus contains prospective financial information.
- (2) A copy of a report by a qualified auditor, signed by the auditor (either in his or her own name or that of the auditor's firm), stating—
 - (a) the work done by the auditor; and
 - (b) the scope and limitations of the audit; and

- (c) the existence of any relationship (other than that of auditor) that the auditor has with, or any interests that the auditor has in, the NZAX issuer or any of its subsidiaries.
- (3) The auditor’s report must contain a statement in the following form:
- “In our (*or my*) opinion, the prospective financial information, so far as the accounting policies and calculations are concerned, has been properly compiled on the footing of the assumptions made or adopted by the NZAX issuer set out on [*specify pages*] of this prospectus and is presented on a basis consistent with the accounting policies normally adopted by the NZAX issuer (*or group*).”

33 Annual information

A statement of the type of information (if any) that is required to be, or otherwise will be, given annually to subscribers by the NZAX issuer.

34 On request information

A statement—

- (a) describing the type of information relating to the NZAX issuer or the securities being offered that is required to be, or otherwise will be, available on request from the NZAX issuer; and
- (b) explaining how the request should be made; and
- (c) as to whether any charge may be made for the information and the amount of the charge.

Dated at Wellington this 26th day of September 2011.

Sean Hughes,
Chief Executive.

Statement of reasons

This notice comes into force on 30 September 2011 and will expire on the close of 30 September 2016. It replaces the Securities Act (NZX–NZAX Market) Exemption Notice 2005 (the **2005 notice**), which expired on 1 June 2010. The 2005 notice exempted an issuer listed on the NZAX Market (a securities market operated by NZX Limited), subject to conditions, from sections 34(2)(a) and 37A(1)(a) and (c) of the Securities Act 1978 (the **Act**), and regulations 3(1) and 23 of the Securities Regulations 1983. The effect of the 2005 notice was to exempt NZAX issuers from the requirement to provide an investment statement to prospective investors before they subscribe for the securities, including in respect of previously allotted securities, and in-

stead to require NZAX issuers to register a prospectus with an alternative schedule of contents.

This notice carries forward the effect of the 2005 notice, with a number of minor changes to reflect the introduction of the Securities Regulations 2009, more accurately reflect the way information is displayed by NZAX issuers, and provide for transitional arrangements.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to carry forward the provisions of the 2005 notice and to make the changes contained in this notice because—

- granting the exemptions sought will enable NZAX issuers proposing to offer securities to the public to continue to rely on exemptions of the nature of those provided historically;
- the exemptions will not cause significant detriment to subscribers. Reducing regulatory compliance costs for NZAX issuers will allow, potentially, greater return to investors while the conditions of the exemptions require alternative and appropriate disclosure for investors in equity securities;
- the exemptions are not broader than what is reasonably necessary to address the matters that gave rise to the exemptions because they only apply to NZAX issuers in relation to offers of equity securities to the public, and only provide exemptions to the extent appropriate to reduce regulatory compliance costs while requiring the provision of relevant information in an appropriate alternative manner.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 29 September 2011.

Reprints notes

1 *General*

This is a reprint of the Securities Act (NZX–NZAX Market) 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 (NZX–NZAX Market) Exemption Notice 2011 (SR 2011/338): clause 3