

**Reprint
as at 1 December 2016**



**Securities Act (Advertisements Containing Financial
Advice) Exemption Notice 2012**

(SR 2012/286)

Securities Act (Advertisements Containing Financial Advice) Exemption Notice 2012: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

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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Notice

1 Title

This notice is the Securities Act (Advertisements Containing Financial Advice) Exemption Notice 2012.

2 Commencement

This notice comes into force on 1 October 2012.

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.

3 Expiry

This notice expires on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

agent, in relation to an issuer or a related body corporate of an issuer, includes a nominated representative (within the meaning of the Financial Advisers Act 2008) or a contractor of the issuer or related body corporate

financial advice has the same meaning as in section 10 of the Financial Advisers Act 2008

financial adviser service has the same meaning as in section 9 of the Financial Advisers Act 2008

Regulations means the Securities Regulations 2009

related has the same meaning as in section 5B(2) of the Securities Markets Act 1988.

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

5 Application

This notice applies to an advertisement that—

- (a) is distributed to a person who is a customer or client of the issuer or of a related body corporate of the issuer; and
- (b) contains financial advice about the offer of the securities together with financial information, or other information, that is personal to the person to whom the advertisement is distributed; and
- (c) is prepared by an employee or agent of the issuer, or by an employee or agent of a related body corporate of the issuer, whose job or role involves providing financial adviser services to customers or clients of the issuer or of related bodies corporate of the issuer.

6 Exemption

Every issuer and every person acting on its behalf are exempted from regulation 30 of the Regulations in respect of the distribution of any advertisement to which this notice applies.

7 Conditions

The exemption is subject to the conditions that—

- (a) the information, statements, certificates, and other matters contained in the advertisement, except for the financial advice about the offer of the

securities and financial or other information that is personal to the person to whom the advertisement is distributed, are also contained in—

- (i) a current registered prospectus or, if the issuer is a registered bank, a current disclosure statement, relating to the offer of the securities; or
 - (ii) an investment statement or other authorised advertisement relating to the offer of the securities that complies with regulation 30 of the Regulations; and
- (b) the advertisement is distributed to the person referred to in clause 5(a) (the **customer or client**) by a person who is permitted to provide financial adviser services under the Financial Advisers Act 2008 to the customer or client in relation to the securities being offered (including as a result of an exemption by or under that Act).

Dated at Wellington this 24th day of September 2012.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 October 2012 and expires on 30 September 2017, replaces the Securities Act (Advertisements Containing Investment Advice) Exemption Notice 2002. The provisions of that notice have been carried forward with little change of substance. However, changes have been made to—

- take into account the Financial Advisers Act 2008; and
- refer to the Securities Regulations 2009 (rather than the Securities Regulations 1983); and
- remove a condition relating to prospective financial information. This condition is now redundant as a result of changes made by the Securities Regulations 2009.

This notice exempts issuers, subject to conditions, from regulation 30 of the Securities Regulations 2009 in the case of advertisements for securities containing financial advice that is customer-specific or client-specific (the **financial advice**). Regulation 30 prohibits the distribution of an advertisement containing an offer of securities unless a certificate that complies with that regulation has been completed at the time the advertisement is distributed.

This notice will enable financial institutions and other issuers of securities to give financial advice involving offers of securities issued by them, or by related bodies cor-

porate, that is based on personal information about those customers or clients without the need for a certificate under regulation 30.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978, considers it appropriate to grant the exemption because—

- all of the information in the advertisement (other than the financial advice and personal information) must also be contained in a registered prospectus (or a registered bank's disclosure statement), or in an investment statement or another authorised advertisement for which there is a certificate under regulation 30 of the Securities Regulations 2009. The advertisement must be distributed by a person who is permitted to provide financial adviser services under the Financial Advisers Act 2008. Despite minor changes introduced by the Securities Regulations 2009 to advertising certificate requirements, a certificate is still required for every advertisement (within the meaning of the Securities Act 1978) unless an exemption is granted. In these circumstances, this notice removes unduly burdensome advertising certificate requirements where the information in an advertisement has already been subject to appropriate controls; and
- changes made in this notice also recognise the relevance of the Financial Advisers Act 2008 to advertisements in which personal financial advice is given; and
- given that the exemption only applies to advertisements that are subject to these appropriate alternative controls, the Financial Markets Authority considers that the exemption will not cause significant detriment to subscribers and that it is not broader than is reasonably necessary to address the matter that gave rise to the exemption.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 September 2012.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Advertisements Containing Financial Advice) Exemption Notice 2012 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*

Financial Markets Conduct Regulations 2014 (LI 2014/326): Schedule 1 clause 26