

**Reprint
as at 1 December 2016**



**Securities Act (Equity Warrant Issuers) Exemption
Notice 2012
(SR 2012/292)**

Securities Act (Equity Warrant Issuers) 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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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.

Notice

1 Title

This notice is the Securities Act (Equity Warrant Issuers) Exemption Notice 2012.

2 Commencement

This notice comes into force on 1 October 2012.

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

ASX means ASX Limited, a company incorporated in Australia

audio media means audio accessed from the Internet (for example, audio webcasts and audio podcasts)

audiovisual advertisement means an advertisement that—

- (a) is distributed to any person by means of radio, television, film, audio media, or video media; and
- (b) contains or refers to an offer of equity warrants to the public for subscription; and
- (c) specifies an electronic or other address, telephone number, or Internet site for the purpose of obtaining an investment statement relating to those equity warrants; and
- (d) complies with, or would but for reliance on this notice comply with, all applicable provisions of the Act and the Regulations

covered equity warrant means—

- (a) an equity warrant in accordance with which the warrant issuer has ensured that a number of underlying equity securities (being no less than the number required to enable the warrant issuer to meet its obligation to deliver securities under the equity warrant) are held by a trustee throughout the period of the equity warrant and for the exclusive benefit of the warrant holder; or
- (b) an equity warrant that complies with the fully covered warrant requirements of ASX

equity warrant means a security offered to the public for subscription that—

- (a) confers on the warrant holder the right to acquire, and obliges the warrant issuer to deliver at the option of the warrant holder, equity securities

that, at the time of the offer, belong to a class of securities that is quoted on a recognised market; and

- (b) is issued by a person who—
 - (i) is either a party to a listing agreement with NZX or ASX or approved to be a warrant issuer, for the purpose of issuing fully covered warrants, by ASX; and
 - (ii) is not a related company of the issuer of the underlying equity security; and
- (c) either is quoted on a recognised market or in respect of which an application has been made for quotation on a recognised market and, at the time of the offer, the issuer has complied with all the requirements of NZX or ASX relating to the application with which it is required to comply at that time

market participant has the same meaning as in Rule 1.1 of the NZX Limited Participant Rules

NZX means NZX Limited

offer period means the period during which offers of the equity warrants are made or are open for acceptance by members of the public in New Zealand

overseas offer document has the meaning set out in clause 5

recognised market means a securities market operated by NZX or ASX

Regulations means the Securities Regulations 2009

related company has the same meaning as in section 2(3) of the Companies Act 1993

specified overseas jurisdiction means a jurisdiction specified in the Schedule

trustee means—

- (a) a person that holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 that covers 1 or more classes of debt security; or
- (b) in respect of an overseas offer document, a person empowered by the law of a specified overseas jurisdiction to carry on business as a trustee in respect of offers of securities to members of the public

underlying equity securities, in relation to an equity warrant offered to the public for subscription, means equity securities that, at the time of the offer, belong to a class of securities that is quoted on a recognised market and in respect of which the warrant holder has or will acquire a right or interest on exercise of the equity warrant

video media means video accessed from the Internet (for example, video webcasts and video podcasts)

warrant holder means the holder of an equity warrant

warrant issuer—

- (a) means the issuer of an equity warrant; and
 - (b) includes the person who is required to deliver the underlying equity securities to the warrant holder on the exercise of the equity warrant.
- (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 Meaning of overseas offer document

In this notice, **overseas offer document**, in relation to an offer of equity warrants, means a document—

- (a) that contains an offer of equity warrants; and
- (b) that, with the exception of statements that are included in or that accompany the document under clause 9, is identical to a document that—
 - (i) is lodged or registered under the law of a specified overseas jurisdiction, and that is signed by, or on behalf of, the persons (if any) required by that law to sign that document; or
 - (ii) by virtue of an exemption or declaration by a relevant competent authority, is not required to be lodged or registered under the law of that specified overseas jurisdiction; and
- (c) by means of which it is lawful under the law of that specified overseas jurisdiction to make an offer of those equity warrants to the public.

6 Exemptions if there is registered prospectus

Every warrant issuer and every person acting on its behalf are exempted from section 33(2) and (3) of the Act and regulation 5 of the Regulations in respect of any equity warrants to which a registered prospectus relates.

7 Conditions of exemptions in clause 6

The exemptions in clause 6 are subject to the conditions that—

- (a) the issuer of the underlying equity securities is a company that is incorporated in New Zealand or in a specified overseas jurisdiction; and
- (b) the registered prospectus referred to in clause 6 (the **prospectus**) contains all applicable information, statements, and other matters specified in—
 - (i) clauses 15, 16, and 21 of Schedule 1 of the Regulations; and
 - (ii) clauses 1(1) to (3), 2 to 5, 8, 10, 12(b), 13, 19, 20, and 21(c) of Schedule 2 of the Regulations; and
- (c) the prospectus contains the matters specified in clause 6 of Schedule 1 of the Regulations to the extent that any restrictions referred to in that clause are relevant having regard to the terms of the equity warrants; and

- (d) the prospectus states the recognised market on which the equity warrants are quoted or to which an application has been made for quotation; and
- (e) the prospectus includes the following information about the issuer of the underlying equity securities:
 - (i) the jurisdiction and place of incorporation of the issuer; and
 - (ii) the recognised market on which the underlying equity securities are quoted; and
 - (iii) a statement that prospective investors should make their own inquiries regarding the issuer; and
- (f) if the prospectus states or implies that the equity warrants are covered equity warrants,—
 - (i) a trustee has been appointed and both the warrant issuer and the trustee have signed a deed relating to the equity warrants (the **deed**); and
 - (ii) the trustee holds a number of underlying equity securities (being no less than the number required to enable the warrant issuer to meet its obligation to deliver securities under the equity warrants) throughout the period of the equity warrants and for the exclusive benefit of the warrant holders; and
 - (iii) the terms of the deed preclude the warrant issuer or any other person, except the trustee, from exercising control over the transfer or disposal of the underlying equity securities held by the trustee or having a charge over the assets of the trust; and
 - (iv) the prospectus contains a brief description of the principal terms of the deed, including information of the kind specified in clause 14(1)(a), (b), (e), and (3) of Schedule 2 of the Regulations; and
- (g) the prospectus contains—
 - (i) a brief description of the principles and procedures used to calculate the subscription price for the equity warrants; and
 - (ii) a brief summary of the consequences of a lapse or an expiry of an equity warrant, including the circumstances in which a lapse or an expiry may occur; and
 - (iii) a description of any formula for determining the amount payable in respect of equity warrants that have lapsed or expired; and
- (h) if the equity warrants are not covered equity warrants, the most recent audited financial statements of the warrant issuer that are registered under the Financial Reporting Act 1993 are contained in or accompany every copy of the registered prospectus for the equity warrants; and
- (i) if the equity warrants are not covered equity warrants and are not quoted on a securities market operated by NZX, it is a term of the offer that the

- warrant issuer must, within 30 days of the most recent annual financial statements of the warrant issuer being registered under the Financial Reporting Act 1993, send to every warrant holder—
- (i) a copy of those statements; or
 - (ii) summary financial statements in respect of the warrant issuer for the period of those statements (being summary financial statements that comply with clause 8(2) to (4) of Schedule 2 of the Regulations); and
- (j) if the underlying equity securities are quoted on a securities market operated by NZX, the prospectus contains prominent statements that the issuer of the underlying equity securities is a party to a listing agreement with NZX and the issuer's financial statements—
- (i) are expected to be readily available from the issuer or a market participant; and
 - (ii) are filed on a public register at the Companies Office of the Ministry of Business, Innovation, and Employment and available for public inspection (including at www.companies.govt.nz); and
- (k) if the underlying equity securities are not quoted on a securities market operated by NZX, the prospectus contains the following prominent statements:
- (i) that the underlying equity securities are not quoted on a securities market operated by NZX and New Zealand resident investors may not have access to information concerning the issuer of the underlying equity securities or concerning those securities in the same way as investors have in relation to an issuer of underlying equity securities quoted on a securities market operated by NZX; and
 - (ii) that the financial reporting requirements applicable to the issuer of the underlying equity securities may be different from the New Zealand financial reporting requirements and the financial statements may not be readily available to warrant holders; and
- (l) it is a term of the offer that the warrant issuer will, within 5 working days of receiving a request from a warrant holder to do so, send, without fee, to the warrant holder,—
- (i) if the equity warrants are not covered equity warrants and are not quoted on a securities market operated by NZX, a copy of the warrant issuer's most recent audited financial statements and most recent interim financial statements; and
 - (ii) if any of the warrant issuer's obligations under the equity warrants is guaranteed by a third party, a copy of the guarantor's most recent financial statements (being statements that are prepared in ac-

cordance with generally accepted accounting practice or any relevant overseas financial reporting requirements).

8 Exemption if there is overseas offer document

- (1) Every warrant issuer and every person acting on its behalf are exempted, in respect of any equity warrants to which an overseas offer document relates, from—
 - (a) sections 33(2) and (3), 37, and 38A of the Act; and
 - (b) regulations 25 to 35, 38, and 39 of the Regulations.
- (2) Subclause (1)(b) applies in respect of an overseas offer document only, and not in respect of any investment statement or other advertisement.

9 Conditions of exemptions in clause 8

The exemptions in clause 8 are subject to the conditions that—

- (a) there is an overseas offer document relating to the equity warrants during the offer period; and
- (b) the overseas offer document contains no statement referring to quotation or intended quotation of the equity warrants on a securities market operated by NZX other than a statement that has been approved by NZX; and
- (c) it is a term of the offer that the warrant issuer will, within 5 working days of receiving a request from a warrant holder or a prospective investor to do so, send, without fee, to the warrant holder or prospective investor—
 - (i) a copy of the overseas offer document; and
 - (ii) if the equity warrants are not covered equity warrants and are not quoted or about to be quoted on a securities market operated by NZX, a copy of the most recent financial statements of the warrant issuer; and
 - (iii) if the performance by the warrant issuer of its obligations in regard to the equity warrants is guaranteed by a third party and a request has been made during the offer period, a copy of the guarantor's most recent financial statements that comply with the financial reporting requirements applying in the specified overseas jurisdiction; and
- (d) each of the warrant issuer and the issuer of the underlying equity securities is incorporated in New Zealand or in a specified overseas jurisdiction; and
- (e) the issuer of the underlying equity securities is a party to a listing agreement with NZX or ASX and the underlying equity securities are quoted on a recognised market; and
- (f) the investment statement for the equity warrants—

- (i) refers to the overseas offer document; and
- (ii) states that allotments of the equity warrants will be made in the manner (which is specified in the overseas offer document) prescribed under the law of the specified overseas jurisdiction in which the overseas offer document is lodged or registered (or would be lodged or registered but for an exemption or declaration by a relevant competent authority under the law of the specified overseas jurisdiction concerned); and
- (iii) specifies a telephone number, address, or Internet site for the purpose of obtaining a copy of the overseas offer document, and states that any person to whom the equity warrants are offered may request a copy of the overseas offer document from the warrant issuer; and
- (iv) contains no statement referring to quotation or intended quotation on a securities market operated by NZX other than a statement approved by NZX; and
- (v) states that the documents referred to in clause 10 are filed on a public register at the Companies Office of the Ministry of Business, Innovation, and Employment and available for public inspection (including at www.companies.govt.nz); and
- (vi) states that the tax position in New Zealand applying in relation to the equity warrants may be different from the position applying in a specified overseas jurisdiction, and that the investor should seek independent tax advice before subscribing for an equity warrant; and
- (vii) states that investing in the equity warrants may carry with it a currency exchange risk; and
- (viii) states that the financial reporting requirements applying in New Zealand and those applying to the warrant issuer may be different, and the financial statements of the warrant issuer may not be compatible in all respects with financial statements prepared in accordance with generally accepted accounting practice in New Zealand; and
- (ix) states that any offer and allotment of equity warrants will be governed by the overseas offer document and will be made in accordance with the law of the specified overseas jurisdiction concerned; and
- (x) states that the warrant issuer may not be subject in all respects to New Zealand law; and
- (xi) states that the overseas offer document has not been registered in New Zealand under, and in accordance with, New Zealand law and may not contain all the information that a New Zealand regis-

- tered prospectus containing an offer of equity warrants is required to contain; and
- (xii) states the general nature and effect of any exemption, order, or declaration that may have been granted by a relevant competent authority in respect of the offer of equity warrants under the law of a specified overseas jurisdiction; and
 - (xiii) if the equity warrants are not quoted on a securities market operated by NZX, states that New Zealand resident investors may not have access to information concerning the warrant issuer in the same way as investors have in relation to an issuer that is a party to a listing agreement with NZX; and
 - (xiv) if the underlying equity securities are not quoted on a securities market operated by NZX, states that New Zealand resident investors may not have access to information concerning the underlying equity securities in the same way as investors have in relation to underlying equity securities that are quoted on a securities market operated by NZX; and
 - (xv) refers to the overseas offer document wherever the Act or Regulations require an investment statement to refer to a registered prospectus (despite clauses 1(4) and 18(2)(a) of Schedule 13 of the Regulations); and
- (g) the investment statement for the equity warrants includes information or statements to the following effect, under the heading “Agreement as to Jurisdiction”:
- (i) that, in respect of a dispute concerning the contract for the equity warrants, the warrant issuer—
 - (A) agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - (B) has instructed the New Zealand agent for service referred to in subparagraph (ii) to accept service of documents on its behalf; and
 - (C) agrees that this statement is an agreement with each investor for the purposes of section 389(1)(e) of the Companies Act 1993; and
 - (ii) the name and address of a person in New Zealand who has been appointed by the warrant issuer to accept service in New Zealand of any documents on its behalf; and
 - (iii) that, despite the statements referred to in subparagraph (i), the contract in respect of the equity warrants may not always be enforceable in New Zealand courts; and

- (h) at all times during the offer period, offers of the equity warrants are also made or are also open for acceptance in the specified overseas jurisdiction concerned in accordance with the law of that jurisdiction; and
- (i) if the overseas offer document states or implies that the equity warrants to which it relates are covered equity warrants,—
 - (i) either of the following circumstances applies:
 - (A) in the case of an equity warrant that is a fully covered warrant that complies with the fully covered warrant requirements of ASX, the warrant issuer has complied, and continues to comply, with those requirements;
 - (B) in any other case, a trustee has been appointed in respect of the equity warrants and is required to hold, for the exclusive benefit of the warrant holders and throughout the period of the equity warrants, a number of underlying equity securities, being no less than the number required to enable the warrant issuer to meet its obligation to deliver securities under the equity warrants; and
 - (ii) the overseas offer document or the investment statement for the equity warrants contains a brief description of—
 - (A) the principal terms of the deed or other document under which the trustee is appointed (if any), including information of the kind specified in clause 14(1)(a), (b), (e), and (3) of Schedule 2 of the Regulations; and
 - (B) the cover arrangement; and
- (j) if the warrant issuer is not a party to a listing agreement with at least 1 of NZX or ASX, it is a term of the offer that the warrant issuer must continue to meet all the terms of its approval to be a warrant issuer (as set by NZX or ASX) during the offer period.

10 Documents to be received by Registrar of Financial Service Providers

The exemptions in clause 8 are subject to the further condition that the Registrar has received a copy of each of the following documents:

- (a) the overseas offer document referred to in clause 9(a); and
- (b) the certificate of incorporation of the warrant issuer; and
- (c) the documents or instruments constituting or defining the constitution of the warrant issuer; and
- (d) any material contract referred to in the overseas offer document, or,—
 - (i) if the contract is not in writing, a copy of a document containing particulars of the contract; or

- (ii) if an exemption or declaration has been granted by a relevant competent authority under the law of the specified overseas jurisdiction concerned, a copy of a document containing particulars of the material contract prepared under that exemption or declaration; and
- (e) if the equity warrants are covered equity warrants, the deed or other document under which the trustee in respect of the covered equity warrants is appointed (if any); and
- (f) a certificate or other document evidencing lodgement or registration of the overseas offer document with a relevant competent authority or evidencing any exemption or declaration by a relevant competent authority referred to in clause 5(b)(ii).

11 Exemption for audiovisual advertisements

Every warrant issuer and every person acting on its behalf are exempted from regulations 25(1)(a) and (b) and 27(1) of the Regulations in the case of any audiovisual advertisement.

12 Transitional provision

- (1) If, on or before 30 September 2012, a warrant issuer offers equity warrants in reliance on the 2002 notice and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2009 under a prospectus or an overseas offer document that is registered on or before that date, the warrant issuer may continue to rely on those notices in respect of equity warrants offered under that prospectus or overseas offer document (as if those notices continued in force after 30 September 2012).
- (2) In this clause,—
 - (a) **2002 notice** means the Securities Act (Equity Warrant Issuers) Exemption Notice 2002;
 - (b) **equity warrant, overseas offer document, and warrant issuer** have the same meanings as in the 2002 notice;
 - (c) **registered**, in the case of an overseas offer document, means—
 - (i) lodged or registered under the law of a specified overseas jurisdiction; or
 - (ii) if, by virtue of an exemption or declaration by a relevant competent authority, the document is not required to be lodged or registered, issued or completed in accordance with the exemption or declaration.

Schedule

Specified overseas jurisdictions

cl 4(1)

Australia
England
Wales
Scotland
Northern Ireland
Germany

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 (Equity Warrant Issuers) Exemption Notice 2002 (the **2002 notice**).

This notice is on substantially the same terms as the 2002 notice. However, the notice relates to the Securities Regulations 2009 (rather than the Securities Regulations 1983).

The notice exempts issuers of warrants (**warrant issuers**) from the following provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **2009 regulations**) where there is a registered prospectus:

- section 33(2) and (3) of the Act (which relate to the requirement to appoint a trustee (for debt securities) or a statutory supervisor (for participatory securities));
- regulation 5 of the Regulations (which relates to the content of the prospectus).

If there is an overseas offer document, the warrant issuer is exempted from the following provisions of the Act and the 2009 regulations:

- section 33(2) and (3) of the Act;
- sections 37 and 38A of the Act (which require a registered prospectus for the offer and contain a restriction on statements made by an expert in an advertisement):

- regulations 25 to 35, 38, and 39 of the Regulations (which contain various requirements relating to the content of advertisements).

There is also, in respect of audiovisual advertisements, an exemption from regulations 25(1)(a) and (b) and 27(1) of the 2009 regulations (which relate to the disclosure of guarantees and the security for debt securities).

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

- the standard application of the trustee and statutory supervisor investor protection mechanisms of the Act is not best suited to offers of equity warrants and other derivatives. Similarly, the disclosure requirements in the 2009 regulations are not easily applied to provide meaningful information to investors in equity warrants and other derivatives. This notice is designed to put in place appropriate mechanisms for investor protection and tailor the disclosure requirements for these products to best inform investors by providing key information about both the warrant issuer and the issuer of the underlying shares:
- the provision for the use of overseas offer documents from specified jurisdictions as an alternative to a registered prospectus avoids imposing unnecessary compliance costs:
- the notice continues exemptions from provisions of the Act previously provided in the 2002 notice, and 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 equity warrant issuers to which the exemptions apply 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 will reduce costs for issuers and improve information for investors, they do not attempt to tailor disclosure requirements specifically for all of the vast range of circumstances to which securities law requirements apply. Accordingly, exemptions from the equivalent provisions continue to be required and remain appropriate in light of the policy in the 2002 notice:
- the trustee requirement in the notice has been updated to reflect the coming into force of the Securities Trustees and Statutory Supervisors Act 2011:
- the transitional provisions reduce the short-term compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2002 notice.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Equity Warrant Issuers) 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