



Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2016

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

- 1 Title**
This notice is the Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2016.
- 2 Commencement**
This notice comes into force on 1 December 2016.
- 3 Revocation**
This notice is revoked on the close of 30 November 2021.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Financial Markets Conduct Act 2013

effective date has the same meaning as in clause 16(1) of Schedule 4 of the Act

Regulations means the Financial Markets Conduct Regulations 2014

Securities Act notice means the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 and any earlier notice that, with or without modification, was replaced by or corresponded to that notice.

- (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 Exemptions for products previously offered in reliance on Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011

- (1) Every issuer is exempted from subpart 4 of Part 3, Part 4, and clause 30(1) of Schedule 4 of the Act in respect of any financial products if the offer of the financial products was made in reliance on the Securities Act notice.
- (2) Every issuer is exempted from Part 7 of the Act if that issuer would be treated as being an FMC reporting entity only by virtue of having issued financial products to which subclause (1) applies.
- (3) An exemption granted under subclause (2) applies to the following accounting periods of an issuer:
 - (a) an accounting period of the issuer that commences before the exemption is granted if the exemption is granted before the financial statements or group financial statements for that period would, but for the exemption contained in subclause (2), be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
 - (b) subsequent accounting periods.

6 Conditions of exemptions

- (1) The exemptions in clause 5 are subject to the condition that the issuer must, no later than 3 months after the effective date, send a notice containing the information in subclause (2) to every person who is, on the date that the notice is sent, the holder of a financial product referred to in clause 5(1) by delivering it or sending it to the holder's last known address.
- (2) The written notice must contain the following information:
 - (a) the effective date for the financial products; and
 - (b) the issuer's name and address; and
 - (c) a statement in the following form:

“Shares in [*name of company*] (the **company**) were offered to shareholders under the Securities Act 1978 (the **Securities Act**) in reliance on the [*insert name of exemption notice*] (the **Securities Act notice**).

The Securities Act notice exempted the company from the standard obligations that normally applied when shares were offered to the public (such as content requirements for the prospectus given to investors before they invested). Conditions under the exemption notice required the company to comply with certain alternative requirements.

After the effective date, the Securities Act regime will cease to apply and the shares will instead be subject to the Financial Markets Conduct Act 2013 (the **FMC Act**), in particular, the fair dealing provisions of the FMC Act. However, a new exemption notice called the Financial Markets Conduct (Employee Share Purchase Scheme Shares Offered under Securities Act 1978) Exemption Notice 2016 (the **FMC Act notice**) will apply. The effect of the FMC Act notice is that the standard regime of the FMC Act relating to disclosure, governance, financial reporting, and auditing will not apply to these shares. Instead, consistent with the treatment of financial products offered through some employee share purchase schemes under the FMC Act, these products may be subject to the more limited financial reporting and auditing requirements of the Companies Act 1993.

If you would like any further information, please contact [*insert contact details of company*].”

Dated at Auckland this 18th day of November 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 1 December 2016 and is revoked on the close of 30 November 2021.

This notice relates to certain shares that were offered through a New Zealand company’s employee share purchase scheme in reliance on the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 or any earlier notice that, with or without modifications, was replaced by or corresponded to that notice (the **Securities Act notice**).

On and from 1 December 2016 (or earlier if the issuer so elected), certain ongoing and transitional obligations of the Financial Markets Conducts Act 2013 (the **FMC**

Act) will apply to the shares, ie, subpart 4 of Part 3 of the FMC Act (ongoing disclosure), Part 4 of the FMC Act (governance of financial products), Part 7 of the FMC Act (financial reporting and audit), clause 30 of Schedule 4 of the FMC Act, any regulations made for the purposes of subpart 4 of Part 3, Part 4, or Part 7 of the FMC Act, and any other provision of the FMC Act relating to the enforcement, application, or effect of subpart 4 of Part 3, Part 4, or Part 7 of that Act.

This notice exempts the companies from these ongoing requirements in respect of these shares. Companies relying on this notice may still be required to comply with the more limited financial reporting and auditing requirements of the Companies Act 1993. The effect of this exemption is to better align the requirements relating to these previously offered securities with the requirements that apply to securities offered in reliance on the exclusion for employee share purchase schemes in clause 8 of Schedule 1 of the FMC Act.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the FMC Act, considers it appropriate to grant the exemptions because—

- the exemptions provide for securities previously offered through employee share purchase schemes under the Securities Act 1978 to be treated more consistently with securities offered through employee share purchase schemes under the FMC Act. Without these exemptions, unlisted New Zealand companies that have previously offered securities through employee share purchase schemes would incur significantly higher compliance costs than unlisted New Zealand companies offering financial products under the FMC Act:
- the exemptions strike a balance between lowering compliance costs for companies that have previously offered securities through employee share purchase schemes and providing sufficient information in financial reporting for employees to make informed decisions about the securities offered through these schemes. Consistent with the policy for the exclusion for employee share purchase schemes in clause 8 of Schedule 1 of the FMC Act, the FMA considers that the reduced compliance requirements provided by the exemptions are appropriate in light of the nature of the relationship between the company and its employees, and the desirability of encouraging participation in employee share purchase schemes by reducing unnecessary compliance costs and providing for more tailored content:
- given the comprehensive relief provided to these issuers under this exemption, the requirement to notify employees that the FMC Act will apply after the shares transition to the new regime would be both misleading and confusing, and therefore that notice should be tailored to take into account the effect of this exemption:
- for these reasons, the exemptions are desirable in order to promote the purposes of the FMC Act, specifically avoiding unnecessary compliance costs:

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Statement of reasons

- the exemptions are limited to securities previously offered through employee share purchase schemes in reliance on the Securities Act notice by unlisted companies incorporated in New Zealand. Further, companies relying on the exemptions will still need to comply with the financial reporting and auditing requirements imposed by the Companies Act 1993. As such, the FMA is satisfied that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 24 November 2016.

This notice is administered by the Financial Markets Authority.