

**Reprint
as at 1 December 2016**



**Securities Act (Continuous Debt Issues) Exemption Notice
2012**

(SR 2012/291)

Securities Act (Continuous Debt Issues) 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 (Continuous Debt Issues) Exemption Notice 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.

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

confirmation document, in relation to a security holder, means a document that properly evidences the nature and ownership of the debt securities of the security holder issued as part of the continuous debt issue

continuous debt issue, in relation to a continuous issuer, means an issue of debt securities of a kind that are continuously offered by the continuous issuer to the public for subscription

continuous issuer means an issuer that in the ordinary course of its business continuously offers debt securities to the public for subscription

electronic address includes a fax number or an email address

postal address includes a post office box address or a document exchange box number

Regulations means the Securities Regulations 2009

security holder means a holder of debt securities issued as part of a continuous debt issue.

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

5 Exemption relating to receipt of investment statements

Every continuous issuer and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of any continuous debt issue of the continuous issuer.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that the continuous issuer must not allot a debt security that is part of a continuous debt issue unless the continuous issuer or any person acting on its behalf has sent an investment statement relating to the debt security,—

(a) at least 3 working days before the subscriber subscribes for the debt security, to—

(i) a postal address specified by the subscriber for that purpose; or

- (ii) the last postal address of the subscriber that is known to the continuous debt issuer; or
 - (b) at least 2 days before the subscriber subscribes for the debt security, to an electronic address specified by the subscriber for that purpose.
- (2) The exemption in clause 5 is subject to the further condition that, if an investment statement relating to the continuous debt issue is—
 - (a) sent by fax, the sender's fax machine has generated a record of the transmission of the investment statement to the fax machine of the recipient; or
 - (b) sent by other electronic means, the machine used to transmit the investment statement has not generated a record that the investment statement has failed to be transmitted.

7 Exemption from register requirements

Every continuous issuer is exempted from section 52(1) and (3) of the Act in respect of the register kept by the continuous issuer under section 51(1)(b) of the Act, in so far as that register relates to continuous debt issues.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 from section 52(1) of the Act is subject to the condition that every register of securities kept under section 51(1)(b) of the Act by the continuous issuer is, except when duly closed (but subject to any reasonable restrictions that the continuous issuer may impose, so that not less than 2 hours in each day must be allowed for inspection), open to the inspection of any security holder in respect of the securities of that security holder entered on the register, without fee.
- (2) The exemption in clause 7 from section 52(3) of the Act is subject to the condition that, on payment by a security holder of the fee prescribed for the purposes of section 52(4) of the Act, the continuous issuer must provide to the security holder a copy of that part of the register kept under section 51(1)(b) of the Act that relates to securities of that security holder.

9 Exemption from certificate requirements

Every continuous issuer is exempted from section 54 of the Act in respect of any continuous debt issue of the continuous issuer.

10 Conditions of exemption in clause 9

- (1) The exemption in clause 9 is subject to the condition that the continuous issuer must send, without fee, to a security holder a confirmation document within 5 working days after receiving a request for the document from the security holder.

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- (2) The exemption in clause 9 is subject to the further condition that the continuous issuer must send, without fee, to a security holder, at least once every 6 months,—
- (a) a confirmation document; or
 - (b) a notice containing the statements specified in subclause (3).
- (3) The notice referred to in subclause (2)(b) must contain—
- (a) a statement to the effect that the security holder has the right to receive from the continuous issuer, without fee, a confirmation document if the security holder makes a request to the continuous issuer to receive the document; and
 - (b) a statement to the effect that the security holder may obtain a copy of the confirmation document by electronic means; and
 - (c) a statement as to how the security holder may obtain a copy of the confirmation document by electronic means (for example, from a specified Internet address).
- (4) If the continuous issuer has sent a notice to a security holder under subclause (2)(b), the exemption in clause 9 is subject to the further conditions that—
- (a) the continuous issuer must, after it receives a request from the security holder for a confirmation document under subclause (1),—
 - (i) comply with the request under subclause (1); and
 - (ii) treat the request as a request for the continuous issuer to send to the security holder at least once every 6 months a confirmation document under subclause (2)(a) (instead of a notice under subclause (2)(b)); and
 - (iii) send to the security holder at least once every 6 months a confirmation document under subclause (2)(a) until the security holder revokes the request by notice to the continuous issuer; and
 - (b) the continuous issuer must ensure that—
 - (i) a copy of the confirmation document is available in the manner described in subclause (3)(c) at all reasonable times during the period beginning on the date that the notice is sent to the security holder and ending on the date that the continuous issuer next sends a confirmation document or notice to the security holder under subclause (2); and
 - (ii) the manner of obtaining the confirmation document described in the notice under subclause (3)(c) allows the copy of the confirmation document to be printed or saved so as to be usable for subsequent reference.

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 (Continuous Debt Issues) Exemption Notice 2002 (the **2002 notice**).

The notice exempts, subject to conditions, issuers who, in the ordinary course of their business, continuously offer debt securities to the public from—

- the requirement in section 37A(1)(a) of the Securities Act 1978 (the **Act**) that, before the allotment of a security, the subscriber must have received an investment statement; and
- the requirement in section 54 of the Act to issue a certificate or other document that properly evidences the nature, ownership, terms, and conditions of a security (**confirmation information**); and
- certain other provisions of the Act relating to the inspection of registers.

The provisions of the 2002 notice have been carried forward with little change of substance. However, changes have been made to—

- reduce the period during which a continuous debt issuer may not allot a debt security to 2 days (rather than the current 3 working days) if the investment statement is sent to an electronic address specified by the subscriber for that purpose; and
- modify the conditions relating to the exemption from section 54 of the Act to allow issuers to send a notice making confirmation information available by electronic means; and
- refer to the Securities Regulations 2009 (rather than the Securities Regulations 1983).

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

- the exemption in the 2002 notice from the requirement to ensure that a subscriber receives an investment statement before subscription recognises that this obligation would impose a disproportionate burden on continuous debt issuers. In this regard, the Financial Markets Authority has taken into account the significant number of investment statements sent and the alternative conditions imposed by the 2002 notice that meet investors' needs;
- the exemption in the 2002 notice from the securities certificate requirements recognise the significant cost of, and unhelpful information provided by, the

regular receipt of securities certificates in the case of securities issued on a continuous basis. In these circumstances, periodic consolidated statements are both more cost-effective and more informative:

- the exemption in the 2002 notice from the register inspection requirements recognise the privacy concerns associated with allowing third parties to inspect registers containing details of funds that subscribers have on deposit:
- each of these exemptions has been in place for a number of years and the policy reasons for each remain valid and relevant. While the changes introduced by the Securities Regulations 2009 have reduced costs of issuers, and improved information for investors, they have not attempted to tailor disclosure and conduct requirements to the extensive range of circumstances to which securities law requirements apply. Accordingly, these exemptions continue to be required and remain appropriate in light of the policy of the 2002 notice and are continued in this notice on substantially the same basis:
- the reduced period of delay that this notice permits between sending the investment statement and allotment of securities recognises the increased use by issuers and investors of Internet-based communications that enable information to be delivered at greater speed:
- the change to enable delivery of securities confirmation information by notice to the investors of where this information can be accessed on the Internet recognises the increased use by issuers and investors of Internet-based communications:
- given the limited application of the notice to compliance requirements that impose an unduly onerous burden on continuous debt issuers, and the conditions imposing alternative workable obligations that meet subscribers' needs, the Financial Markets Authority considers that the exemptions will not cause significant detriment to subscribers and that they are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

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 (Continuous Debt Issues) 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