



Securities Act (Overseas Companies) Exemption Notice 2013

Pursuant to sections 70B and 70D 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 (Overseas Companies) Exemption Notice 2013.

2 Commencement

This notice comes into force on 1 April 2013.

3 Revocation of this notice

This notice is revoked on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

associated body corporate means a body corporate that has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to at least 20% but no more than 50% of the voting securities of the body corporate

overseas company has the same meaning as in section 2(1) of the Companies Act 1993; and includes a person named in the Schedule of this notice

quoted securities means securities of which an overseas company is the original allotter and to which either of the following applies:

- (a) the securities are quoted, or have been approved for quotation, on a specified exchange; or
- (b) the overseas company has—
 - (i) made an application for the securities to be quoted on a specified exchange; and
 - (ii) at the time of the offer of the securities to the public in New Zealand, complied with all the requirements of the specified exchange relating to the application with which it must comply at that time

Regulations means the Securities Regulations 2009

related body corporate means a body corporate that is related to another body corporate in either of the following ways:

- (a) the other body is its holding company or subsidiary;
- (b) there is another body corporate to which both bodies are related by virtue of paragraph (a)

specified exchange means a stock exchange in the United Kingdom, the Commonwealth of Australia, Canada, the United States of America, Spain, Hong Kong, or Austria.

- (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.

Exemptions

5 Exemptions for quoted securities offered to existing security holders

- (1) Every overseas company, every holder of securities previously allotted by an overseas company, and every person acting on behalf of that overseas company or that holder is exempted from sections 33(2) and (3), 37, 37A, 38A, and 51 to 54B of the Act and the Regulations (except regulation 23) in respect of any securities of which that overseas company is the issuer if—
 - (a) the securities are quoted securities or it is a term of the offer of the securities that the securities will be quoted on a specified exchange at the time of allotment; and
 - (b) the only members of the public to whom the securities are offered in New Zealand are—
 - (i) persons who, at the time of the offer, are holders of securities of which that overseas company is the issuer; or
 - (ii) persons who, at the time of the offer, are holders of securities of another overseas company that—
 - (A) are quoted securities; or
 - (B) confer the right to subscribe for other securities of which that other overseas company is the issuer, and those other secur-

- ities are of a class that is quoted on a specified exchange; or
- (C) will or may, in accordance with the terms of those securities, be converted into other securities of which that other overseas company is the issuer, and those other securities are of a class that is quoted on a specified exchange; or
- (iii) persons in whose favour an offer to which subparagraph (i) or (ii) applies has been renounced.
- (2) For the purposes of subclause (1)(b)(ii), the other overseas company must be—
- (a) a promoter of the offer of the securities; and
- (b) a company of which the issuer is an associated body corporate or a related body corporate.
- (3) Subclause (1)(b) applies whether or not the offer is renounceable in favour of any other person.

6 Exemptions for securities that vary quoted securities

Every overseas company and every person acting on behalf an overseas company is exempted from sections 33(2) and (3), 37, 37A, 38A, and 51 to 54B of the Act and the Regulations (except regulation 23) in respect of any security (the **variation security**) that varies the terms or conditions of an existing security of which the overseas company is an issuer, if the existing security is a quoted security and the variation security does not—

- (a) change the issuer of the existing security; or
- (b) change the terms of the existing security to—
- (i) allow the conversion of the existing security into another security if the issuer of that other security will not be the issuer of the first-mentioned security; or
- (ii) allow the exchange of that existing security for another security if the issuer of that other security will not be the issuer of the first-mentioned security; or
- (iii) confer a present or future right to subscribe for another security if the issuer of that other secur-

ity will not be the issuer of the first-mentioned security; or

- (c) extend the time for payment of money due, or to become due, under the existing security by the issuer; or
- (d) decrease the amount of money that is to become due under the existing security by the issuer.

7 Exemptions for quoted securities offered in exchange for quoted securities

Every overseas company, every holder of securities previously allotted by an overseas company, and every person acting on behalf of either that overseas company or that holder is exempted from sections 33(2) and (3), 37, 37A, 38A, and 51 to 54B of the Act and the Regulations (except regulation 23) in respect of any securities of which that overseas company is the issuer if—

- (a) the securities are quoted securities or it is a term of the offer of the securities that the securities will be quoted on a specified exchange on allotment; and
- (b) the securities—
 - (i) are offered as all or part of the consideration for the acquisition or cancellation of any quoted securities of which another overseas company is the issuer; or
 - (ii) are offered to holders of quoted securities in another overseas company under an arrangement that results in a capital reduction of that overseas company.

8 Exemptions for quoted securities that will be exchanged for quoted securities on allotment

- (1) Every overseas company, every holder of securities previously allotted by that overseas company, and every person acting on behalf of either that overseas company or that holder is exempted from sections 33(2) and (3), 37, 37A, 38A, and 51 to 54B of the Act and the Regulations (except regulation 23) in respect of any securities of which that overseas company is the issuer if—

- (a) the securities—

- (i) are offered as all or part of the consideration for the acquisition or cancellation of any quoted securities of which another overseas company is the issuer; or
 - (ii) are offered to holders of quoted securities in another overseas company under an arrangement that results in a capital reduction of that overseas company; and
 - (b) under the terms of the offer, the securities will immediately on allotment be—
 - (i) exchanged for other quoted securities of which the overseas company or another overseas company is the issuer; or
 - (ii) exchanged for other securities of which the overseas company or another overseas company is the issuer, and it is a term of the offer that those other securities will be quoted on a specified exchange on allotment; or
 - (iii) cancelled, and in consideration of the cancellation, the subscribers will be issued other quoted securities of which the overseas company or another overseas company is the issuer; or
 - (iv) cancelled, and in consideration of the cancellation, the subscribers will be issued other securities of which the overseas company or another overseas company is the issuer, and it is a term of the offer that those other securities will be quoted on a specified exchange on allotment.
- (2) For the purpose of any of subclause (1)(b)(i) to (iv), the other overseas company must be—
- (a) a promoter of the offer of the securities; and
 - (b) a company of which the issuer is an associated body corporate or a related body corporate.

Conditions of exemptions

9 Condition of exemptions in clauses 5 and 7

- (1) The exemptions in clauses 5 and 7 are subject to the condition that it is a term of the offer that the offer of the securities to the public in New Zealand is made in compliance with—

- (a) the law of the country, State, territory, or province where the relevant stock exchange is situated; and
 - (b) any code, rules, or other requirements relating to the offer of those securities that apply in that country, State, territory, or province.
- (2) In clause (1)(a), **relevant stock exchange** means the stock exchange—
- (a) on which the securities are quoted; or
 - (b) in respect of which the securities have been approved for quotation; or
 - (c) in respect of which an application has been made for the securities to be quoted; or
 - (d) on which the securities will, on allotment, be quoted.

10 Condition of exemptions in clause 6

- (1) The exemptions in clause 6 are subject to the condition that it is a term of the offer that the offer of the securities to the public in New Zealand is made in compliance with—
- (a) the law of the country, State, territory, or province where the relevant stock exchange is situated; and
 - (b) any code, rules, or other requirements relating to the offer of the security that apply to the country, State, territory, or province referred to in paragraph (a).
- (2) In clause (1)(a), **relevant stock exchange** means the stock exchange—
- (a) on which the securities are quoted; or
 - (b) in respect of which the securities have been approved for quotation; or
 - (c) in respect of which an application has been made for the securities to be quoted.

11 Condition of exemptions in clause 8

- (1) The exemptions in clause 8 are subject to the condition that it is a term of the offer that the offer of the securities to the public in New Zealand is made in compliance with—
- (a) the law of the country, State, territory, or province where the relevant stock exchange is situated; and

- (b) any code, rules, or other requirements relating to the offer of those securities applying in that country, State, territory, or province.
- (2) In subclause (1)(a), **relevant stock exchange** means the stock exchange—
- (a) on which the other securities (**other securities**) or other quoted securities referred to in clause 8(1)(b) are quoted; or
 - (b) in respect of which the other securities have been approved for quotation; or
 - (c) in respect of which an application has been made for the other securities to be quoted; or
 - (d) on which the other securities will, on allotment, be quoted.

Application to convertible securities

12 Application to convertible securities

- (1) The exemptions in clauses 5 and 7 do not apply in respect of any security that—
- (a) will or may, in accordance with the terms of the security, be converted into another security if the issuer of that other security will not be the issuer of the first-mentioned security; or
 - (b) will or may, in accordance with the terms of the security, be exchanged for another security if the issuer of that other security will not be the issuer of the first-mentioned security; or
 - (c) confers a present or future right to subscribe for another security if the issuer of that other security will not be the issuer of the first-mentioned security.
- (2) The exemptions in clause 8 do not apply in respect of any other security or other quoted security referred to in clause 8(1)(b) that—
- (a) will or may, in accordance with the terms of the security, be converted into another security if the issuer of that other security will not be the issuer of the first-mentioned security; or

- (b) will or may, in accordance with the terms of the security, be exchanged for another security if the issuer of that other security will not be the issuer of the first-mentioned security; or
- (c) confers a present or future right to subscribe for another security if the issuer of that other security will not be the issuer of the first-mentioned security.

Miscellaneous

13 Revocation

The Securities Act (Overseas Companies) Exemption Notice 2002 (SR 2002/299) is revoked on the close of 31 March 2013.

14 Transitional provision

If, before or on 31 March 2013, an overseas company offers securities in reliance on the Securities Act (Overseas Companies) Exemption Notice 2002 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2009, the overseas company may continue to rely on those notices in respect of those securities (as if those notices continued in force after 31 March 2013).

Schedule

cl 4(1)

Additional overseas companies

AGL Energy Limited
Westpac Banking Corporation

Dated at Wellington this 26th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 April 2013 and is revoked on the close of 30 September 2017, replaces the Securities Act (Overseas Companies) Exemption Notice 2002 (the **2002 notice**). The notice exempts, subject to conditions, overseas companies who issue quoted securities to existing security holders in New Zealand from—

- the requirements in section 33(2) of the Securities Act 1978 (the **Act**) that no debt security may be offered to the public unless the issuer has appointed a trustee and registered a signed trust deed that complies with the Act and the Securities Regulations 2009 (the **regulations**):
- the requirements in section 33(3) of the Act that no participatory security may be offered to the public unless the issuer has appointed a statutory supervisor and registered a deed of participation that complies with the Act and the regulations:
- the requirements of section 37 of the Act that securities offered to the public for subscription may not be allotted unless at the time of the subscription for the security there was a registered prospectus in relation to the security:
- the requirements in section 37A of the Act in relation to the provision of investment statements, the prohibition on false or misleading statements in investment statements and prospectuses, and the date of allotment:
- the requirements of section 38A of the Act in relation to statements in advertisements by experts:
- the requirements in sections 51 to 54B of the Act in relation to registers of securities, accounting records, financial statements, security certificates, and the disclosure of information to investors:
- the regulations (except regulation 23):

The provisions of the 2002 notice are carried forward with the following amendments:

- Austria is included in the definition of **specified exchange** as an additional jurisdiction:
- the following types of offers are permitted:
 - an offer of unquoted interim securities, in consideration for the acquisition of the quoted securities of another

overseas issuer, where those interim securities will be exchanged on allotment for securities that are quoted:

- an offer of unquoted securities where it is a term of the offer that those securities will be quoted on a specified exchange at the time of allotment:
- the conditions of the notice are amended so that all exemptions are conditional on the offer being made in compliance with the laws and other requirements of the jurisdiction in which the relevant securities are quoted:
- references to the Securities Regulations 1983 are replaced with equivalent references to the Securities Regulations 2009:
- the name of one of the additional overseas companies in the Schedule is updated.

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—

- this notice applies only to offers made to people who already hold shares in overseas companies listed on exchanges in relatively familiar jurisdictions, and who can be taken to have assumed the degree of risk that might accompany overseas investment. This notice cannot be used for an offer of securities to the general public. It allows New Zealanders who are shareholders in overseas companies to participate in rights offers and offers arising from reconstructions that might otherwise not be extended to shareholders in this country due to the cost of compliance:
- the notice recognises the adequacy of the regulation of securities offerings in certain overseas jurisdictions. Regulation in such jurisdictions generally has the following characteristics:
 - the laws of the jurisdiction require disclosure of information for investors to an extent broadly comparable with New Zealand securities law:
 - the regulatory body in the jurisdiction is an ordinary member of the International Organization of Securities Commissions (**IOSCO**) and a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information:

- the jurisdiction is a member of the World Federation of Exchanges and the Federation of European Securities Exchanges:
 - it is consistent with the policy of the notice for the exemption for offers of shares quoted on a specified exchange as consideration for the acquisition or cancellation of shares in another overseas company also to apply to offers of unquoted securities where subscribers will receive securities which are quoted on a specified overseas exchange in exchange for those securities on allotment:
 - amending the notice so that the exemptions apply to offers of securities where it is a term of the offer that those securities will be quoted at the time of allotment is appropriate in view of the different process for quotation in some overseas jurisdictions which means that a listing application cannot always be made for securities before an offer is made:
 - additional conditions that an offer of overseas quoted securities to existing security holders complies with the laws of the jurisdiction where the exchange on which the securities are quoted is situated and that the exemptions do not apply to securities that can be converted into or exchanged for the securities of another issuer are consistent with the policy of the notice that the overseas company who issued the securities is subject to an equivalent statutory regime under the laws of a reputable home jurisdiction:
 - the exemptions under the notice have been in place a number of years and the policy reasons for the notice remain valid and relevant. Consultation with market participants demonstrates continued reliance on these exemptions:
 - in consideration of the matters noted above, the Financial Markets Authority considers that the exemptions will not cause significant detriment to subscribers, and that they are not broader than reasonably necessary to address the matters that gave rise to the exemptions.
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