

**Reprint
as at 1 December 2016**



Securities Act (Overseas Listed Issuers) Exemption Notice 2002

(SR 2002/326)

Securities Act (Overseas Listed Issuers) Exemption Notice 2002: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

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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 (Overseas Listed Issuers) Exemption Notice 2002.

2 Commencement

This notice comes into force on 1 October 2002.

3 Expiry

This notice expires on the close of 30 September 2017.

Clause 3: amended, on 29 March 2013, by clause 4 of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

4 Application

(1) Nothing in this notice applies in relation to offers or allotments of securities or in relation to securities to which either of the following applies:

- (a) the Securities Act (Overseas Companies) Exemption Notice 2013; or
- (b) any earlier notice that, with or without modification, was replaced by the Securities Act (Overseas Companies) Exemption Notice 2013.

(2) Nothing in this notice applies in respect of any quoted security that—

- (a) will or may be converted into, or exchanged for, another security if the issuer of that other security will not be the issuer of the quoted security; or
- (b) 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 quoted security.

Clause 4(1): replaced, on 29 March 2013, by clause 5 of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

5 Interpretation

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

Act means the Securities Act 1978

lodged means lodged under the law of a specified country

NZX means NZX Limited

NZX market means any securities market operated by NZX

overseas issuer means a company incorporated under the law of any specified country

overseas prospectus, in relation to an overseas issuer, means a document—

- (a) that contains—
 - (i) an offer of quoted securities by an overseas issuer; or

- (ii) an offer of quoted securities that have previously been allotted by an overseas issuer, being an offer by the holder of those securities; and
- (b) that is identical to a document that is lodged or registered under the law of a specified country, if required to be lodged or registered under the law of the specified country, and that is signed by such persons (if any) that are required by that law to sign that document; and
- (c) by means of which it is lawful under the law of that specified country to make an offer of those quoted securities to the public in that specified country; and
- (d) that contains no statement referring to a listing or an intended listing on an NZX market other than a statement that has been approved by NZX

quoted securities, in relation to an overseas issuer, means securities of which that overseas issuer is the original allotter—

- (a) that are quoted, or that have been approved for quotation, on the principal official list of a recognised exchange; or
- (b) in respect of which application has been made to a recognised exchange for quotation on that exchange's principal official list and, at the time of the offer, the overseas issuer has complied with all the requirements of the recognised exchange relating to the application with which it is required to comply at that time

recognised exchange means a stock exchange or stock market referred to in Schedule 1

registered means registered under the law of a specified country

Regulations means the Securities Regulations 2009

specified country means a country, state, territory, province, or place referred to in Schedule 2.

- (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.

Clause 5(1) **NZX**: inserted, on 29 March 2013, by clause 6(1) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 5(1) **NZX market**: inserted, on 29 March 2013, by clause 6(1) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 5(1) **overseas prospectus** paragraph (a): substituted, on 26 October 2006, by clause 4 of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

Clause 5(1) **overseas prospectus** paragraph (d): replaced, on 29 March 2013, by clause 6(2) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 5(1) **Regulations**: amended, on 29 March 2013, by clause 6(3) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

6 Exemption

- (1) Every overseas issuer and every person acting on its behalf are exempted, in respect of any quoted securities of which it is the issuer, from—
 - (a) sections 33(2) and (3), and 37 of the Act; and
 - (b) section 38A of the Act and regulations 25 to 30, 35, 38, and 39 of the Regulations; and
 - (c) sections 51 to 54 of the Act.
- (2) Every person who is the holder of quoted securities that have previously been allotted by an overseas issuer and every person acting on behalf of that holder are exempted, in respect of any such securities, from—
 - (a) sections 33(2) and (3), and 37 of the Act; and
 - (b) section 38A of the Act and regulations 25 to 30, 35, 38, and 39 of the Regulations; and
 - (c) sections 51 to 54 of the Act.
- (3) Subclauses (1)(b) and (2)(b) apply in respect of an overseas prospectus only and not in respect of any investment statement or other advertisement.
- (4) Every overseas issuer and every person referred to in subclause (2) and every person acting on behalf of such an issuer or person are exempted from section 38(a) of the Act to the extent that that provision requires an overseas prospectus to refer to an investment statement.

Clause 6(1)(a): amended, on 26 October 2006, by clause 5(1) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

Clause 6(1)(b): amended, on 29 March 2013, by clause 7(1) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 6(2): substituted, on 26 October 2006, by clause 5(2) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

Clause 6(2)(b): amended, on 29 March 2013, by clause 7(2) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 6(3): substituted, on 26 October 2006, by clause 5(2) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

Clause 6(4): added, on 26 October 2006, by clause 5(2) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

7 Overseas prospectus

The exemptions granted by clause 6, except the exemption from sections 51 to 54, are subject to the conditions that—

- (a) there is an overseas prospectus relating to the quoted securities at the time that offers of the quoted securities are made or are open for acceptance in New Zealand; and
- (b) it is a term of each offer of the quoted securities made in New Zealand that the overseas issuer must, within 5 working days of receiving a request of an offeree for a copy of the overseas prospectus relating to the

quoted securities and without fee, send, or cause to be sent, to that offer—

- (i) a copy of the overseas prospectus; and
- (ii) copies of any documents that, under the law of the specified country concerned, must accompany any copy of the overseas prospectus sent to any person to whom an offer of the quoted securities is made in that specified country.

Clause 7: amended, on 26 October 2006, by clause 6 of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

8 Documents to be received by Registrar

The exemptions granted by clause 6, except the exemption from sections 51 to 54, are subject to the further condition that a copy of each of the following documents has been received by the Registrar:

- (a) the overseas prospectus relating to the quoted securities concerned;
- (b) the certificate of incorporation of the overseas issuer;
- (c) the memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the overseas issuer;
- (d) any trust deed relating to the quoted securities;
- (e) any certificate or other document evidencing lodgement or registration of the overseas prospectus;
- (f) a copy of any material contract that has been lodged or registered with the overseas prospectus or,—
 - (i) if any of those material contracts are not in writing, a copy of any memorandum that has been lodged or registered and that contains particulars of the contract; or
 - (ii) if an exemption, order, or declaration has been granted by a competent authority in respect of the quoted securities, a copy of that exemption, order, or declaration.

Clause 8 heading: amended, on 29 March 2013, by clause 8(1) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 8: amended, on 29 March 2013, by clause 8(2) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 8: amended, on 26 October 2006, by clause 7 of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

9 Investment statements

- (1) The exemptions granted by clause 6, except the exemption from sections 51 to 54, are subject to the further condition that any investment statement that relates to the quoted securities concerned—
 - (a) includes, to the extent appropriate, statements to the following effect:

- (i) that allotments of the quoted securities must be made in the manner specified in the overseas prospectus and in the manner prescribed by the law of the specified country concerned; and
 - (ii) that investors should satisfy themselves as to the tax implications of investing in the quoted securities; and
 - (iii) that investing in the securities of overseas issuers carries with it a currency exchange risk; and
 - (iv) that the financial reporting requirements applying in New Zealand and those applying to the overseas issuer may be different and the financial statements of the overseas issuer may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
 - (v) that the overseas issuer may not be subject in all respects to New Zealand law; and
 - (vi) that, although a copy of the overseas prospectus and other documents have been received by the Registrar, the overseas prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and
 - (vii) that it is not a condition of this notice that the overseas issuer be listed on an NZX market and that, if the overseas issuer is not listed on an NZX market, New Zealand resident investors may not have access to information concerning the overseas issuer in the same way as they would have in relation to an issuer listed on an NZX market; and
 - (viii) that it is not a condition of this notice that the overseas issuer be listed on the New Zealand Stock Exchange and that, if the overseas issuer is not listed on the New Zealand Stock Exchange, New Zealand resident investors may not have access to information concerning the overseas issuer in the same way as they would have in relation to an issuer listed on the New Zealand Stock Exchange; and
- (b) 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 quoted securities, the overseas 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 (iii) to accept service on the issuer’s 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) that, despite the statements referred to in subparagraph (i), the contract in respect of the quoted securities may not always be enforceable in New Zealand courts; and
 - (iii) includes the name and address of a person in New Zealand who has been appointed by the overseas issuer to accept service in New Zealand of any document on its behalf; and
 - (c) contains no statement referring to a listing or intended listing on an NZX market other than a statement that has been approved by NZX; and
 - (d) refers to the overseas prospectus wherever the Act or Regulations requires an investment statement to refer to a registered prospectus.
- (2) The conditions in subclause (1) are not breached if there are differences between the information required to be in the investment statement under that subclause and the information presented in that investment statement, but the differences are immaterial.

Clause 9(1): amended, on 26 October 2006, by clause 8 of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

Clause 9(1)(a)(vi): amended, on 29 March 2013, by clause 9(1) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 9(1)(a)(vii): replaced, on 29 March 2013, by clause 9(2) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

Clause 9(1)(c): replaced, on 29 March 2013, by clause 9(3) of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67).

10 Offers to be made in specified country at same time

The exemptions granted by clause 6, except the exemption from sections 51 to 54, are subject to the further condition that at the same time as offers of the quoted securities are made or are open for acceptance in New Zealand offers of the quoted securities are also made or are also open for acceptance in the specified country concerned in accordance with the law of that specified country.

Clause 10: amended, on 26 October 2006, by clause 9 of the Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330).

Schedule 1
Recognised exchanges

cl 5(1)

London Stock Exchange
Nasdaq National Market
New York Stock Exchange

Schedule 2
Specified countries

cl 5(1)

England
Wales
Scotland
Northern Ireland
United States of America
A State of the United States of America

Dated at Wellington this 27th day of September 2002.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

L A J Kavanagh,
Member.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 30 September 2002.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Overseas Listed Issuers) Exemption Notice 2002 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

Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2013 (SR 2013/67)

Securities Act (Overseas Listed Issuers) Exemption Amendment Notice 2006 (SR 2006/330)