

**Reprint  
as at 1 March 2011**



**Securities Act (Employee Share  
Purchase Schemes—Listed  
Companies) Exemption Notice  
2006**

(SR 2006/12)

Securities Act (Employee Share Purchase Schemes—Listed Companies)  
Exemption Notice 2006: revoked, on 1 March 2011, by clause 13 of Securities  
Act (Employee Share Purchase Schemes—Listed Companies) Exemption  
Notice 2011 (SR 2011/6).

Pursuant to the Securities Act 1978, the Securities Commission gives  
the following notice (to which is appended a statement of reasons of  
the Securities Commission).

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989  
have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together  
with other explanatory material about this reprint.

**The Securities Act (Employee Share Purchase Schemes—Listed Companies)  
Exemption Notice 2006 is administered by the Securities Commission.**

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## Notice

### 1 Title

This notice is the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006.

### 2 Commencement

Subject to clause 8(2), this notice comes into force on the day after the date of its notification in the *Gazette*.

### 3 Expiry

This notice expires on the close of 28 February 2011.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**control** has the same meaning as in section OD 1(1) of the Income Tax Act 2004

**eligible person** means, in relation to a listed company,—

- (a) an employee or director of that company or of any of its subsidiaries; or
- (b) a person who provides personal services (other than as an employee) principally to that company or any of its subsidiaries; or
- (c) a relative (as defined in the Act) or a de facto partner of a person described in paragraph (a) or paragraph (b); or

- (d) a trustee for a person described in paragraph (a), (b), or (c); or
- (e) a company that is controlled by a person described in paragraph (a), (b), (c), or (d)

**employee share purchase scheme** means a scheme established by a listed company under which eligible persons may acquire specified equity securities issued by that company

**listed company** means—

- (a) a company that is a party to a listing agreement with New Zealand Exchange Limited and the shares in which are quoted, or have been accepted for quoting, on a securities market operated by New Zealand Exchange Limited; or
- (b) New Zealand Exchange Limited

**Regulations** means the Securities Regulations 1983

**Schedule 1** means Schedule 1 of the Regulations

**Schedule 3D** means Schedule 3D of the Regulations

**specified equity security** means any interest in or right to an ordinary share in a listed company offered under that company's employee share purchase scheme.

- (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 4(1) **control**: inserted, on 22 December 2006, by clause 4(2) of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

Clause 4(1) **eligible person** paragraph (d): amended, on 22 December 2006, by clause 4(1) of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

Clause 4(1) **eligible person** paragraph (e): added, on 22 December 2006, by clause 4(1) of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

Clause 4(1) **Schedule 3D**: inserted, on 22 December 2006, by clause 4(2) of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

## 5 Exemptions

A listed company, any of its subsidiaries, a trustee of that company's employee share purchase scheme, and any person act-

ing on their behalf, are exempted from the following provisions in respect of specified equity securities:

- (a) section 37A(1)(c) of the Act; and
- (b) clauses 1(3) and (4), 4 to 20, 22 to 38, and 40 to 42 of Schedule 1; and
- (c) clause 21 of Schedule 1, to the extent that it requires the registered prospectus to contain the dates, time periods, and price terms relevant to the particular offer under the employee share purchase scheme and information personal to the person to whom the registered prospectus is distributed; and
- (d) clause 5(1)(c) of Schedule 3D; and
- (e) regulation 17 of the Regulations, in relation to advertisements containing information personal to a person to whom the advertisement is distributed.

Clause 5: substituted, on 22 December 2006, by clause 5 of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

## **6 Condition that equity securities allotted only to eligible persons**

The exemptions in clause 5 are subject to the condition that the specified equity securities are allotted only to the following persons:

- (a) persons who are eligible persons at the time of the allotment of the specified equity securities;
- (b) in the case of specified equity securities that are allotted on the exercise of rights or options to acquire shares, persons who are eligible persons at the time of allotment of those rights or options.

## **7 Condition that registered prospectus contain or be accompanied by financial statements**

The exemption in clause 5 from section 37A(1)(c) of the Act is subject to the condition that it is a term of the offer of the specified equity securities that every copy of the registered prospectus sent to a person under section 54B of the Act will contain or be accompanied by the most recent audited consolidated fi-

financial statements of the issuing group that comply with the Financial Reporting Act 1993.

**8 Condition that terms of employee share purchase scheme available**

- (1) The exemptions in clause 5 are subject to the condition that the investment statement relating to the specified equity securities contains or is accompanied by—
  - (a) a brief description of the terms of the employee share purchase scheme; and
  - (b) a statement of the place or places where the terms of the employee share purchase scheme are available free of charge to a person who is able to acquire securities under the scheme.
- (2) Subclause (1) comes into force 2 months after notification of this notice in the *Gazette*.

**9 Condition of exemptions from clause 1(3) and (4) of Schedule 1**

The exemptions in clause 5 from clause 1(3) and (4) of Schedule 1 are subject to the condition that the registered prospectus states the formula or method by which the price or consideration for the specified equity securities will be determined.

**9A Conditions of exemption from clause 21 of Schedule 1**

The exemption in clause 5 from clause 21 of Schedule 1 is subject to the further conditions that—

- (a) a document is given to every person who is offered specified equity securities under the employee share purchase scheme that contains any information that would but for this exemption be required by clause 21 of Schedule 1 to be contained in the registered prospectus; and
- (b) the registered prospectus contains all other terms of the offer and of the specified equity securities except—
  - (i) those implied by law; or
  - (ii) those set out in the document that is registered with a public official and is available for inspection and referred to in the registered prospectus.

Clause 9A: inserted, on 22 December 2006, by clause 6 of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

**9B Condition of exemption from clause 5(1)(c) of Schedule 3D**

The exemption in clause 5 from clause 5(1)(c) of Schedule 3D is subject to the further condition that a document containing the information required by clause 5(1)(c) of Schedule 3D is given to every person to whom the specified equity securities are offered under the employee share purchase scheme.

Clause 9B: inserted, on 22 December 2006, by clause 6 of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

**9C Condition of exemption from regulation 17 of Regulations**

The exemption in clause 5 from regulation 17 of the Regulations is subject to the further condition that the listed company has complied with regulation 17 of the Regulations in relation to another advertisement and the only difference between the 2 advertisements is information personal to a person to whom the advertisement is distributed.

Clause 9C: inserted, on 22 December 2006, by clause 6 of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

**10 Revocation**

The Securities Act (Employee Share Purchase Schemes) Exemption Notice 2002 is revoked.

Dated at Wellington this 7th day of February 2006.

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

[Seal]

N O Todd,  
Member.

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### Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* (except for *clause 8(1)*, which comes into force 2 months after notification) and expires on 28 February 2011. It replaces the Securities Act (Employee Share Purchase Schemes) Exemption Notice 2002 (the **old notice**), which is revoked. This notice largely reproduces the provisions of the old notice in relation to listed companies, with some changes, some of which are stylistic only. Substantive changes include the addition of an exemption from clause 1(3) and (4) of Schedule 1 of the Securities Regulations 1983, and the addition of a further condition relating to the exemptions in *clause 5* of the notice.

The Securities Commission considers that it is appropriate to grant a class exemption for listed companies' employee share purchase schemes because—

- the exemptions remain useful and relevant to listed companies with employee share purchase schemes and there is continued reliance on them:
- unlisted companies with employee share purchase schemes and the trustees seeking similar exemptions are now specifically provided for in the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2005 which imposes conditions appropriate for unlisted companies:
- the exemption extends the classes of persons to whom shares may be offered under the exemption and makes other changes intended to achieve consistency with the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2005.

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**Notes****1 General**

This is a reprint of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006. The reprint incorporates all the amendments to the notice as at 1 March 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

## **5** *List of amendments incorporated in this reprint (most recent first)*

Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2011 (SR 2011/6): clause 13

Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2006 (SR 2006/385).

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