Reprint

as at 1 July 2010

Securities Amendment Regulations 2007

(SR 2007/274)

Securities Amendment Regulations 2007: revoked, on 1 July 2010, pursuant to regulation 48(1) of the Securities Regulations 2009 (SR 2009/230).

Preamble

At Wellington this 17th day of September 2007

Pursuant to section 70(1) of the Securities Act 1978, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and in accordance with a recommendation of the Securities Commission, makes the following regulations.

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Note

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

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

These regulations are administered by the Securities Commission.

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1 Title

These regulations are the Securities Amendment Regulations 2007.

2 Commencement

These regulations come into force on 21 September 2007.

3 Principal regulations amended

These regulations amend the Securities Regulations 1983.

4 Clauses deemed to be contained in trust deeds

(1) Regulation 24 is amended by omitting "The clauses set out in Schedule 5" and substituting "Clauses 1 to 3 of Schedule 5".

(2) Regulation 24 is amended by adding the following subclauses as subclauses (2) and (3):

"(2) In addition, clauses 4 to 11 of Schedule 5 are deemed to be contained in every trust deed referred to in subclause (1) for an issuer that,—

"(a) in the ordinary course of business, continuously offers debt securities to the public for subscription; and

"(b) carries on the business of lending money or providing financial services; and

"(c) is not—

"(i) a building society (within the meaning of section 2(1) of the Building Societies Act 1965); or

"(ii) a credit union (within the meaning of section 2 of the Friendly Societies and Credit Unions Act 1982); or

"(iii) a co-operative company registered under Part 2 or Part 3 of the Co-operative Companies Act 1996."

"(3) Subclause (2) applies whether or not the trust deed was registered before the date on which this regulation comes into force."

5 Schedule 5 amended

(1) Schedule 5 is amended by omitting the table of contents immediately below the heading to Schedule 5 and substituting the following table of contents:

1 Duties of trustee

2 Right of trustee to obtain information

3 Meetings

4 Obligation to provide regular reports and certificate

5 Obligation to keep trustee informed

6 Obligation to audit or review half-yearly financial statements

7 Obligation to provide financial statements to trustee

8 Obligation concerning appointment, etc, of auditors

9 Terms of appointment of auditor

10 Right of trustee to appoint independent auditor

11 Right of trustee to engage expert

(2) Schedule 5 is amended by adding the following clauses:

"**4 Obligation to provide regular reports and certificate**

"(1) The issuer is obliged to provide to the trustee, within 30 days of the end of each month, the monthly management report prepared for the directors of the issuer.

"(2) The issuer is obliged to provide a monthly report to the trustee, in a form required by the trustee and within 30 days of the end of each month, on—

"(a) the liquidity of the issuer; and

"(b) the asset quality of the issuer (including arrears reports, and restructured, impaired, past due, and bad debts); and

"(c) reinvestment rates; and

"(d) any breaches by members of the borrowing group of financial covenants in financing arrangements with third parties.

"(3) The issuer is obliged to provide a certificate to the trustee, at least once in every 3 months, certifying that at all times during the period covered by the report—

"(a) the current prospectus of the issuer has been up to date and not false or misleading in a material particular; and

"(b) the issuer has complied with all provisions of the trust deed.

"(4) Both the report referred to in subclause (2) and the certificate referred to in subclause (3) must be signed by at least 2 directors on behalf of the board of the issuer or, if the issuer has only 1 director, by that director.

"**5 Obligation to keep trustee informed**

"(1) The issuer is obliged to advise the trustee, in advance or as soon as it is known, of—

"(a) every change in ownership of the shares in the issuer that results in a change to the effective control of the issuer; and

"(b) every change of directors of the issuer; and

"(c) significant changes in the senior management of the issuer.

"(2) The issuer is obliged to notify the trustee, in advance, of any major transaction (as defined in the Companies Act 1993), or any related series of transactions that have the effect of a major transaction, entered into by the issuer.

"(3) The issuer is obliged to provide any other reports that the trustee, by written notice, requires the issuer to provide, within

the time (which must be reasonable in the circumstances) specified by the trustee.

"(4) Reports required under subclause (3) may be about any of the matters referred to in clause 4 or this clause, or any other matter relevant to the performance of the trustee's duties, and may include forward-looking reports.

"**6 Obligation to audit or review half-yearly financial statements**

"(1) The issuer is obliged to have the half-yearly financial statements of the borrowing group audited, unless the trustee expressly waives this requirement.

"(2) If the trustee waives the requirement for half-yearly audits, the issuer is obliged instead to have the half-yearly financial statements of the borrowing group reviewed by its auditor.

"**7 Obligation to provide financial statements to trustee**

"(1) The issuer is obliged to provide the trustee with copies of the annual financial statements and half-yearly financial statements of the borrowing group within 3 months of the end of the relevant financial year or half-year.

"(2) The financial statements given to the trustee must be signed by at least 2 directors on behalf of the board of the issuer or, if there is only 1 director, by that director.

"**8 Obligation concerning appointment, etc, of auditors**

"(1) The issuer is obliged to consult with the trustee before recommending the appointment or reappointment of a person as an auditor, and must ensure that any comments of the trustee concerning the proposed auditor are brought to the attention of the person or persons appointing or reappointing the auditor.

"(2) The issuer is obliged to notify the trustee if an auditor resigns from appointment, or declines to accept appointment or reappointment, and must also pass on to the trustee any explanation provided by the auditor for resigning from appointment or declining to accept appointment or reappointment.

"(3) The issuer is obliged to refrain from attempting to prevent a person who has resigned from appointment as an auditor, or

declined to accept appointment or reappointment as an auditor, from offering an explanation, or disclosing to the trustee the reason, for resigning or declining appointment or reappointment.

"**9 Terms of appointment of auditor**

"(1) The issuer is obliged to ensure that the terms set out in subclause (2) are included in the terms of appointment of its auditor, whether the auditor is conducting an audit or a review.

"(2) The terms are as follows:

"(a) that the auditor will report separately to the trustee on any matter, immediately upon becoming aware of it, that is (in the opinion of the auditor)—

"(i) relevant to the exercise of the powers or performance of the duties of the trustee; or

"(ii) likely to call for further investigation by the trustee in the interests of security holders:

"(b) that the auditor will report separately to the trustee on whether, during the period covered by the audit or review, and so far as matters observed in the conduct of the audit or review are concerned,—

"(i) all reports and certificates given by the issuer to the trustee give a true and fair view of the matters to which they relate; and

"(ii) any directors' opinions expressed to the trustee are reasonable:

"(c) that the auditor will confirm its audit opinion for the benefit of the trustee:

"(d) that the auditor will provide the trustee with a copy of the management letter, setting out the material findings of the audit or review, that is provided to the board of the issuer:

"(e) that the auditor will meet with the trustee, without any representative of the issuer being present, to discuss matters arising in the performance of the audit or review and to answer any questions the trustee may have concerning the audit or review.

"**10 Right of trustee to appoint independent auditor**

"(1) The trustee is entitled to appoint an independent auditor to audit the financial statements of the borrowing group if—

"(a) the auditor appointed by the issuer is not, or is not a partner of, an audit firm that—

"(i) has at least 5 partners; and

"(ii) receives at least 20% of its revenue from audit or audit-related work; or

"(b) in the reasonable opinion of the trustee, the auditor appointed by the issuer does not have sufficient experience or capacity to undertake the audit of the issuer.

"(2) The fees and expenses of the independent auditor, which must be reasonable in the circumstances, must be determined by the trustee and paid by the issuer.

"(3) If an independent auditor is appointed, the issuer is obliged to cooperate in permitting the auditor to carry out the audit.

"(4) The trustee must ensure that the terms of the appointment of the auditor include the terms set out in clause 9(2).

"**11 Right of trustee to engage expert**

"(1) The trustee is entitled to engage an expert (such as an auditor, investigating accountant, valuer, or actuary) to assist the trustee to determine the true financial position of the issuer if the trustee considers, on reasonable grounds, that it requires the assistance of the expert.

"(2) If the trustee engages an expert under this clause, the fees and expenses of the expert, which must be reasonable in the circumstances, must be paid by the issuer."

6 Application of clauses 4 to 11 of Schedule 5

The rights, obligations, and requirements set out in clauses 4 to 11 of Schedule 5 of the principal regulations apply from the date on which these regulations come into force, except to the extent that their application is delayed by the following:

(a) the obligation set out in clause 4(2) first applies to information with respect to October 2007:

(b) the obligations set out in clause 6 first apply to an issuer on the first half-yearly balance date following 30 September 2007:

(c) the obligation set out in clause 8(1) applies with respect to an auditor who is appointed or reappointed after 30 September 2007:

(d) the requirement to include the terms set out in clause 9(2) in the terms of appointment of an auditor apply with respect to an auditor who is appointed after 30 September 2007.

Diane Morcom,

Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 20 September 2007.-

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3 List of amendments incorporated in this eprint (most recent first)

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1 General

This is an eprint of the Securities Amendment Regulations 2007. The eprint incorporates all the amendments to the regulations as at 1 July 2010. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the eprint are also included, after the principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about eprints and officialisation, please *see* http://www.pco.parliament.govt.nz/eprints/.

3 List of amendments incorporated in this eprint (most recent first)

Securities Regulations 2009 (SR 2009/230): regulation 48(1)