

Reprint
as at 1 April 2013

**Securities Act (Rights, Options, and
Convertible Securities) Exemption
Amendment Notice (No 2) 2007**

(SR 2007/405)

Securities Act (Rights, Options, and Convertible Securities) Exemption
Amendment Notice (No 2) 2007: revoked, on 1 April 2013, pursuant to
clause 15 of the Securities Act (Rights, Options, and Convertible Securities)
Exemption Notice 2013 (SR 2013/65).

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 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.

This notice is administered by the Securities Commission.

14 Conditions of exemption in clause 11 relating to 6
section 37A(1)(b) of Act where no election to
convert available

1 Title

This notice is the Securities Act (Rights, Options, and Convertible Securities) Exemption Amendment Notice (No 2) 2007.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Principal notice amended

This notice amends the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002.

4 Interpretation

- (1) The definition of **NZSE** in clause 4(1) is revoked.
- (2) Clause 4(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**specified securities market** means a securities market operated by New Zealand Exchange Limited or by ASX Limited, a company incorporated in Australia”.

5 Requirements for issuers before exemptions apply

Clause 8(1)(b) is amended by revoking subparagraphs (ii) to (iv) and substituting the following subparagraphs:

- “(ii) equity securities or units (as the case may be) issued by the issuer of the new security were quoted on a specified securities market at the time of the offer and allotment of the convertible security, and also at the time of the offer and allotment of the new security; and
- “(iii) the convertible security was quoted on a specified securities market on allotment, and remains quoted on a specified securities market for the period that it is current; and

“(iv) the new security is quoted on a specified securities market on allotment.”

6 Exemption from section 37A(1)(a) of Act for new securities

(1) The heading to clause 11 is amended by inserting “**and (b)**” after “**section 37A(1)(a)**”.

(2) Clause 11 is amended by revoking subclause (1) and substituting the following subclauses:

“(1) If this clause applies, every person is exempted, in respect of the allotment of new securities under the terms of, or on the exercise by any person of a right conferred by, a convertible security, from—

“(a) section 37A(1)(a) of the Act; and

“(b) section 37A(1)(b) of the Act (so far as it relates to an investment statement relating to the new security).

“(1A) This clause applies if—

“(a) securities that are issued by the issuer of the new security, and are of the same class as the new security,—

“(i) either—

“(A) were quoted on a specified securities market at the time of the offer and allotment of the convertible security; or

“(B) were quoted on a specified securities market after allotment of the convertible security, and had been the subject of an application to be quoted on that specified securities market at the time the convertible security was offered; and

“(ii) are quoted on a specified securities market at the time of the offer and allotment of the new securities; and

“(b) the convertible security—

“(i) either—

“(A) was quoted on a specified securities market at the time it was allotted; or

“(B) was quoted on a specified securities market after it was allotted, and had been the subject of an application to be quoted on

- that specified securities market at the time it was offered; and
- “(ii) remains quoted on a specified securities market for the period that it is current; and
- “(c) the new securities are to be quoted on a specified securities market on allotment.”

7 Conditions of exemption in clause 11

- (1) The heading to clause 12 is amended by adding “**relating to section 37A(1)(a) of Act**”.
- (2) Clause 12 is amended by inserting “from section 37A(1)(a) of the Act” after “clause 11”.

8 New clauses 13 and 14 added

The following clauses are added:

“13 Conditions of exemption in clause 11 relating to section 37A(1)(b) of Act where election to convert available

- “(1) This clause applies if the holder of a convertible security referred to in clause 11(1A)(b) is entitled to elect to convert that security, whether or not the issuer also has rights in relation to the conversion of the security.
- “(2) If this clause applies, the exemption in clause 11 from section 37A(1)(b) of the Act is subject to the following conditions:
- “(a) that the investment statement relating to both the convertible securities and the new securities includes the following:
- “(i) a statement to the effect that changes of circumstance occurring between the date of the allotment of the convertible securities and the conversion date of those securities may have a material effect on the new securities (including their price) or the issuer:
- “(ii) a statement that important information relating to the securities (including their price) and the issuer will be disclosed in accordance with the continuous disclosure provisions of the listing rules of each specified securities market on which the convertible security is quoted:

- “(iii) notice that, between 5 and 10 working days before the earliest date on which the election to convert may be made, a pre-conversion statement
 - “(A) will be provided to the operator of each specified securities market on which the convertible security is quoted, for release to the market; and
 - “(B) will be available on the issuer’s Internet site:
 - “(iv) notice of what the pre-conversion statement will contain, as described in subclause (3):
 - “(v) a statement that holders of the convertible securities should consider the pre-conversion statement, the market price of the new securities, and all other information made available concerning the new securities and the issuer, before an election to convert is made:
- “(b) that the issuer makes a pre-conversion statement that complies with subclause (3) available—
- “(i) to the operator of each specified securities market on which the convertible security is quoted, for release to the market, between 5 and 10 working days before the earliest date on which the election to convert may be made; and
 - “(ii) following its release to the market, on the issuer’s Internet site:
- “(c) that no new securities may be allotted if, at the time of allotment, the investment statement, taken together with the pre-conversion statement, is known by the issuer, or any director of the issuer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances, whenever those adverse circumstances occurred.
- “(3) The pre-conversion statement must include the following, set out in a succinct manner:
- “(a) a statement to the effect that the purpose of the pre-conversion statement is to assist registered holders of convertible securities to decide whether to elect to convert those securities:

- “(b) a description of any adverse circumstances (whenever they occurred) that make the investment statement false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to those circumstances:
- “(c) a description of the effect of any adverse circumstances, to the extent that the effect can be assessed, or, where the effect of the adverse circumstances cannot be assessed, a statement to that effect:
- “(d) a list of any other documents that are, in the opinion of the issuer, relevant to a decision about whether to elect to convert, in which case the documents must either be included in the pre-conversion statement or the pre-conversion statement must clearly indicate where those documents may be viewed and how they may be accessed:
- “(e) a statement by the issuer that the pre-conversion statement is not known by the issuer, or any director of the issuer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.

“14 Conditions of exemption in clause 11 relating to section 37A(1)(b) of Act where no election to convert available

- “(1) This clause applies if the holder of a convertible security referred to in clause 11(1A)(b) does not have a right to elect to convert that security.
- “(2) If this clause applies, the exemption in clause 11 from section 37A(1)(b) of the Act is subject to the condition that the investment statement relating to both the convertible securities and the new securities includes the following:
 - “(a) a statement to the effect that changes of circumstance occurring between the date of the allotment of the convertible securities and the conversion date of those securities may have a material effect on the new securities (including their price) or the issuer:
 - “(b) a statement that important information relating to the securities (including their price) and the issuer will be disclosed in accordance with the continuous disclosure

provisions of the listing rules of each specified securities market on which the convertible security is quoted:

- “(c) a statement describing the principal risks assumed by holders of the convertible securities:
- “(d) a statement to the effect that holders of the securities have no right to elect to convert:
- “(e) a statement that new securities will or may be allotted (as the case may be) even if, at the time of allotment, there are adverse circumstances that make the investment statement false or misleading in a material particular by reason of failing to refer, or give proper emphasis to, those circumstances.”

Dated at Wellington this 17th day of December 2007.

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

J Diplock,
Chairperson.
[Seal]

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette*, amends the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002 (the **principal notice**).

The amendments largely retain the existing policy but—

- extend the scope of the current exemption from section 37A(1)(a) of the Securities Act 1978 (the **Act**); and
- update the references to the New Zealand Stock Exchange with references to the securities market operated by New Zealand Exchange Limited (**NZX**); and
- amend some current conditions requiring certain securities to be quoted on the New Zealand Stock Exchange to now provide for quotation on a securities market operated by either NZX or Australian Stock Exchange Limited (**ASX**); and

- add a further exemption, from section 37A(1)(b) of the Act (so far as it relates to investment statements), subject to conditions.

The conditions relating to the new exemption from section 37A(1)(b) vary, depending on whether the holder of a convertible security has a right to elect whether to convert the security. For securities that give their holders a right of election, the conditions include that the investment statement must include various warning statements, and that the issuer must make a pre-conversion statement available between 5 and 10 working days before the earliest date on which an election to convert may be made. For securities that do not give their holders a right of election, the conditions require more extensive warnings in the investment statement, but do not require a pre-conversion statement.

Issuers who have properly relied on the principal notice prior to its amendment by this notice will not be affected by the amendments. The Securities Commission considers it is appropriate to amend the notice for the following reasons:

- (a) the extension of the exemption from section 37A(1)(a) of the Act for new securities, to include circumstances where an application for quotation of securities of the same class as the new security has been made at the time of the offer of the convertible security, is consistent with the policy of the Commission in relation to convertible securities. The effect is that the exemption will now apply to initial public offerings where both the convertible securities and securities of the same class as securities into which convertible securities will convert are the subject of an application for quotation at the time of the offer of the convertible securities;
- (b) the extension of the principal notice to permit the convertible security, new security, and securities of the same class as the new security to be quoted on a securities market operated by either NZX or ASX is consistent with the policy of the Commission to reduce compliance costs associated with trans-Tasman offers of securities. The Commission recognises that subscribers of convertible securities will have the benefit of the continuous disclosure regime operated by ASX, which is similar to that operated by NZX. Accordingly, ongoing disclosure will be made of material information relating to the convertible

securities, the securities of the same class as the new security, and the issuer of these securities:

- (c) in granting an exemption from section 37A(1)(b) of the Act for new securities, as that provision applies to investment statements, the Commission recognises that, as a practical matter, the investment statement relating to convertible and new securities may well have become false and misleading at the time of the allotment of the new security. The effect of the exemption is that a new investment statement will not need to be prepared at the time of the allotment of the new security, provided the conditions imposed under this notice are complied with:
- (d) for convertible securities where the holder has no right to elect whether to convert, the Commission considers that disclosure by way of warning prior to subscription for the convertible securities is more useful to subscribers than the provision of a new investment statement at the time of conversion, given that holders cannot elect whether to convert anyway:
- (e) for convertible securities where the holder does have a right to elect to convert, the Commission considers that subscribers will be adequately protected by a combination of warning statements prior to subscription and a pre-conversion statement that identifies (among other things) adverse circumstances that make the investment statement false or misleading by reason of failing to refer, or give proper emphasis, to those circumstances, and the effect of those circumstances.

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Notes**1 General**

This is an eprint of the Securities Act (Rights, Options, and Convertible Securities) Exemption Amendment Notice (No 2) 2007. The eprint incorporates all the amendments to the notice as at 1 April 2013. 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 Act (Rights, Options, and Convertible Securities) Exemption Notice 2013 (SR 2013/65): clause 15
