

**Reprint  
as at 1 December 2016**



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

Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2011: 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 (to which is appended a statement of reasons of the Securities Commission).

**Contents**

	Page
1 Title	2
2 Commencement	2
3 Expiry	2
4 Interpretation	2
5 Exemptions	3
6 Condition that equity securities allotted only to eligible persons	3
7 Condition that registered prospectus contain or be accompanied by financial statements	3
8 Condition that terms of employee share purchase scheme available	4
9 Condition that disclosure obligation information available	4
10 Conditions of exemption from clause 21 of Schedule 1 of Regulations	5
11 Condition of exemption from clause 5(1)(c) of Schedule 13 of Regulations	5
12 Condition of exemption from regulation 30 of Regulations	5
13 Revocation	5
14 Transitional provisions	5

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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 (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2011.

### 2 Commencement

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 30 September 2017.

Clause 3: amended, on 28 September 2012, by clause 3 of the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294).

### 4 Interpretation

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

**Act** means the Securities Act 1978

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

- (a) an employee or a director of the listed company or of any of its subsidiaries; or
- (b) a person who provides personal services (other than as an employee) principally to the listed company or any of its subsidiaries; or
- (c) a relative of a person described in paragraph (a) or (b); or
- (d) a trustee of a trust of which a person described in paragraph (a), (b), or (c) is a beneficiary; or
- (e) a company that is controlled by a person described in paragraph (a), (b), (c), or (d) (within the meaning of subclause (2))

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

**listed company** means—

- (a) a company that is a party to a listing agreement with NZX Limited; or
- (b) NZX Limited

**Regulations** means the Securities Regulations 2009

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

- (2) For the purposes of paragraph (e) of the definition of eligible person, a company is **controlled** by a person if—

- (a) the person has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to more than 50% of the voting securities of the company; or
  - (b) the person controls the composition of the board of the company (within the meaning of section 7 of the Companies Act 1993, which, for this purpose, is applied with all necessary modifications).
- (3) 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.

## **5 Exemptions**

Every listed company, every subsidiary of a listed company, every trustee of a listed company's employee share purchase scheme, and every person acting on behalf of any or all of them are exempted from the following provisions in respect of specified equity securities:

- (a) section 37A(1)(c) of the Act; and
- (b) clauses 4 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the Regulations; and
- (c) clause 21 of Schedule 1 of the Regulations, 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 a person to whom the offer is made; and
- (d) clause 5(1)(c) of Schedule 13 of the Regulations; and
- (e) regulation 30 of the Regulations, in relation to advertisements containing information personal to a person to whom the advertisement is distributed.

## **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(a) is subject to the condition that it is a term of the offer of the specified equity securities that every copy of the registered pros-

pectus sent to a person under section 54B of the Act will contain, or be accompanied by,—

- (a) the latest financial statements for the group that comply with, and have been registered under, the Financial Reporting Act 1993; or
- (b) if no financial statements for the group have been registered under the Financial Reporting Act 1993, financial statements for the group prepared and audited as if they were to be registered under that Act for—
  - (i) the most recently completed accounting period in respect of which the financial statements have been prepared; or
  - (ii) if the listed company has not completed its first accounting period, the period from the date of commencement of business and ending on a stated date that is not more than 4 months before the specified date.

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

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 description of how a person who is able to acquire securities under the employee share purchase scheme may, free of charge, inspect, or obtain a copy of, the terms of the employee share purchase scheme.

#### **9 Condition that disclosure obligation information available**

The exemptions in clause 5 are subject to the condition that the investment statement and the registered prospectus relating to the specified equity securities contains, or is accompanied by,—

- (a) a statement to the effect that—
  - (i) the specified equity securities, or the ordinary shares in the listed company that relate to the specified equity securities, are quoted or have been accepted for quotation (as the case may be) on a securities market operated by NZX Limited; and
  - (ii) the listed company is subject to a disclosure obligation that requires it to notify certain material information to NZX Limited for the purpose of that information being made available to participants in that securities market; and
- (b) a description of how a person who is able to acquire securities under the employee share purchase scheme may obtain that material information.

**10 Conditions of exemption from clause 21 of Schedule 1 of Regulations**

- (1) The exemption in clause 5(c) is subject to the further condition that, before a person subscribes for specified equity securities, the listed company provides the person with a document containing the information that would, but for this exemption, be required by clause 21 of Schedule 1 of the Regulations to be contained in the registered prospectus.
- (2) Subclause (1) does not require a document provided to a person under subclause (1) to contain information personal to any other person.

**11 Condition of exemption from clause 5(1)(c) of Schedule 13 of Regulations**

The exemption in clause 5(d) is subject to the further condition that, before a person subscribes for specified equity securities, the listed company provides the person with a document containing the information required by clause 5(1)(c) of Schedule 13 of the Regulations.

**12 Condition of exemption from regulation 30 of Regulations**

The exemption in clause 5(e) is subject to the further condition that the listed company has complied with regulation 30 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.

**13 Revocation**

The Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006 (SR 2006/12) is revoked on the close of 28 February 2011.

**14 Transitional provisions**

- (1) The exemption in clause 5(a) from section 37A(1)(c) of the Act does not apply to a prospectus that was registered before the commencement of this notice.
- (2) If, before 1 July 2010, a listed company offered specified equity securities in reliance on the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006 under a prospectus that was registered before that date, the listed company may continue to rely on that notice in respect of securities offered under that prospectus (as if that notice continued in force after 28 February 2011).
- (3) If, on or before 28 February 2011, a listed company offered specified equity securities in reliance on the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2010 under a prospectus that is registered on or before that date, the listed company may continue to rely on those notices in respect of securities offered under that prospectus (as if both of those notices continued in force after 28 February 2011).
- (4) However, subclauses (2) and (3)—

- (a) cease to apply to a prospectus on an amendment being made to the prospectus for the purpose of preventing it from being false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
- (b) cease to apply to a prospectus if an investment statement relating to the specified equity securities is distributed by, or on behalf of, the listed company after 31 October 2011 that does not comply with clause 9; and
- (c) apply after 31 October 2011 to a prospectus only if the prospectus is amended so that it contains the statement and description referred to in clause 9.

Clause 14(2): amended, on 25 March 2011, by clause 17(2) of the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 (SR 2011/58).

Clause 14(3): amended, on 25 March 2011, by clause 17(3) of the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 (SR 2011/58).

Clause 14(4)(b): amended, on 22 April 2011, by clause 4 of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2011 (SR 2011/107).

Clause 14(4)(c): amended, on 25 March 2011, by clause 17(4) of the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 (SR 2011/58).

Dated at Wellington this 21st day of February 2011.

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

[Seal]

J Diplock,  
Chairperson.

### **Statement of reasons**

**Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012
- Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2011

- Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2012. It replaces the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006 (the **2006 notice**).

This notice is on substantially the same terms as the 2006 notice. However,—

- the notice relates to the Securities Regulations 2009 (rather than the Securities Regulations 1983); and
- a new condition has been added to require the investment statement and the registered prospectus to refer to the listed company's disclosure obligations.

This notice exempts listed companies (subject to conditions) in respect of equity securities issued by those companies that are offered under employee share purchase schemes from section 37A(1)(c) of the Securities Act 1978 (the **Act**) and from various prospectus content requirements in Schedule 1 of the Securities Regulations 2009 (the **2009 regulations**). The effect is to allow listed companies to use an evergreen short form prospectus.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- the Commission recognises the desirability of encouraging employee participation in a company that an employee works for through share ownership. It also recognises the information publicly available to employees who are prospective investors in listed companies, and the ability of employees to sell their shares on an established market (including if they leave employment with the company). In these circumstances, the exemptions in this notice lower compliance costs for listed companies that operate ongoing employee share purchase schemes, while ensuring that sufficient information is provided to employees to make informed decisions about participation in these schemes; and
- issuers may provide eligible persons with personalised offer documents. This recognises that the details of the offers may differ from one employee to the next, particularly in respect of schemes that provide performance-based incentives; and
- the transitional provisions reduce the compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2006 notice. These issuers may continue to offer and allot securities under an existing registered prospectus unless the prospectus needs to be amended to prevent it from being false or misleading in a material particular (*see* section 37A(1)(b) of the Act). In addition, the transitional provisions can be relied on after 30 June 2011 only if the prospectus and investment statement have been amended to meet the disclosure requirements of clause 9.

**Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012
- Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2011
- Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 24 February 2011.

## **Reprints notes**

### **1    *General***

This is a reprint of the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2011 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 (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294): clause 3

Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Amendment Notice 2011 (SR 2011/107)

Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 (SR 2011/58): clause 17