

**Reprint
as at 1 December 2016**



**Securities Act (Renewals and Variations) Exemption
Notice 2013
(SR 2013/53)**

Securities Act (Renewals and Variations) Exemption Notice 2013: revoked, on 1 December 2016,
pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

1 Title

This notice is the Securities Act (Renewals and Variations) Exemption Notice 2013.

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.

2 Commencement

This notice comes into force on 1 April 2013.

3 Revocation

This notice is revoked on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

Regulations means the Securities Regulations 2009.

- (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.

5 Exemptions for variation of securities

- (1) Every person is exempted from sections 33(2) and (3) and 51 to 53E of the Act, in respect of any security that varies the terms or conditions of an existing security, to the extent that compliance with those subsections or sections was not required in respect of the original offer of the existing security.
- (2) Every person is exempted from sections 37, 37A, and 54 of the Act, in respect of any security that varies the terms or conditions of an existing security, unless the security—
- (a) extends the time for payment of money due, or to become due, under the existing security by the issuer; or
 - (b) changes the issuer of the existing security.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the condition that a written statement containing the information set out in subclause (2) has been sent to the last known address of each person who is, at the time the statement is sent, a holder of the security that is to be varied.
- (2) The written statement must state—
- (a) the terms of the proposed variation; and
 - (b) the purpose and effect of the proposed variation; and
 - (c) the steps necessary to bring the proposed variation into effect; and
 - (d) particulars of any other matters that are material to the proposed variation.

7 Exemption for renewal of securities

Every person is exempted from sections 37(3), 37A(1)(a), and 54 of the Act in respect of any security that—

- (a) renews an existing security; or
- (b) varies the terms or conditions of an existing security by extending the time for payment of money due, or to become due, under that security by the issuer.

8 Notice does not apply to moratorium proposals

- (1) Nothing in this notice gives an exemption from any provisions of section 37 or 37A of the Act in respect of any moratorium proposal.
- (2) In this clause, **moratorium proposal** means an offer of any debt security that is, in substance, a variation of the terms or conditions of an existing debt security that extends the time for payment of the principal amount or any other returns, or reduces or cancels the principal amount or any other returns, that are due, or to become due, under that existing debt security.

9 Revocation of Securities Act (Renewals and Variations) Exemption Notice 2002

The Securities Act (Renewals and Variations) Exemption Notice 2002 (SR 2002/292) is revoked.

Dated at Wellington this 25th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 April 2013 and is revoked on 30 September 2017, replaces the Securities Act (Renewals and Variations) Exemption Notice 2002 (the **2002 notice**). This notice retains the existing exemptions in the 2002 notice, but also provides additional exemptions from sections 33(3) and 51 to 53E of the Securities Act 1978 (the **Act**).

This notice provides exemptions for variations of existing securities from—

- section 33(2) and (3) of the Act (which relate to the requirement to appoint a trustee or statutory supervisor) and from sections 51 to 53E of the Act (which provide for registers of securities, accounting records, and audits of financial statements). The exemptions apply only to the extent that compliance with the relevant provision was not required for the original offer of the existing security;
- sections 37, 37A, and 54 of the Act (which contain registered prospectus, investment statement, and security certificate requirements). These exemptions

do not apply to variations that extend the due date for payment under the security or change the issuer.

A condition of these exemptions is that a statement about the variation be sent to holders of the existing securities.

In addition, the notice provides exemptions from sections 37(3), 37A(1)(a), and 54 of the Act (which relate to requirements to obtain a subscription authorisation from, and give an investment statement and security certificate to, the subscriber) for renewals of securities and variations that extend the due date for payment under the security.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemption because—

- the 2002 notice has been in place for a number of years and the policy reasons for the notice remain valid and relevant. Consultation with market participants by FMA demonstrates continued reliance on the exemptions in this notice:
- there is no policy difference between the requirement for a trustee and a trust deed for a debt security (from which an exemption is provided in the 2002 notice) and the requirement for a statutory supervisor and a deed of participation for a participatory security. It is appropriate to grant exemptions from these requirements, and the requirements for registers of securities, accounting records, and audits of financial statements, where there was an exemption for the existing security on the basis that if there were good policy reasons to grant exemptions from those requirements in respect of the existing security, those same policy reasons continue to justify the same exemptions for a variation of the existing security:
- in the absence of the exemptions provided by the notice, issuers would be required to comply with the full disclosure requirements of the Act in the case of the offer of a variation of an existing security. The notice reduces compliance costs for issuers of securities upon the renewal or variation of a security while providing adequate disclosure of all material information that holders of securities require to understand the proposed renewal or variation. FMA is satisfied that this information is sufficient to avoid significant detriment to the holders of the affected securities:
- FMA is also satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that give rise to the exemption. The notice only provides exemptions in relation to variations to securities that are unlikely to materially adversely affect security holders and to the extent appropriate to reduce compliance costs while requiring the provision of relevant information in an appropriate alternative manner.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Renewals and Variations) Exemption Notice 2013 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