Reprint
as at 1 December 2014

Securities Amendment Regulations (No 2) 2014

(LI 2014/339)

Securities Amendment Regulations (No 2) 2014: revoked, on 1 December 2014, pursuant to section 5(o) of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of November 2014

Present:
His Excellency the Governor-General in Council

Pursuant to sections 70 and 70AA of the Securities Act 1978, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 70(3) of that Act, makes the following regulations.

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.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

1 Title

These regulations are the Securities Amendment Regulations (No 2) 2014.

2 Commencement

These regulations come into force on the close of 30 November 2014.

3 Principal regulations

These regulations amend the Securities Regulations 2009 (the **principal regulations**).

4 Regulation 4 amended (Interpretation)

(1) In regulation 4(1), definition of **accounting period**, replace "section 2(1) of the Financial Reporting Act 1993" with "section 5(1) of the Financial Reporting Act 2013".

(2) In regulation 4(1), replace the definition of **balance date** with:

"**balance date** has the same meaning as in section 41 of the Financial Reporting Act 2013 (applied as if references to a specified entity or entity were references to an issuing group, a borrowing group, a group, a body corporate, a business, or a scheme, as the case may be)".

(3) In regulation 4(1), definition of **FRS-42**, replace "has been approved under the Financial Reporting Act 1993" with "has effect under the Financial Reporting Act 2013".

(4) In regulation 4(1), definition of **FRS-43**, replace "has been approved under the Financial Reporting Act 1993" with "has effect under the Financial Reporting Act 2013".

(5) In regulation 4(1), replace the definition of **generally accepted accounting practice** with:

"**generally accepted accounting practice** means generally accepted accounting practice within the meaning of either of the following:

"(a) section 3 of the Financial Reporting Act 1993 as in force before its repeal (applied as if references to an entity were references to an issuing group, a borrowing group, a group, a body corporate, a business, or a scheme, as the case may be):

"(b) section 8 of the Financial Reporting Act 2013".

(6) In regulation 4(1), definition of **holding company**, paragraph (b), replace "section 27(3) of the Financial Reporting Act 1993" with "section 19 of the Financial Reporting Act 2013".

(7) In regulation 4(1), definition of **NZ IAS 34**, replace "has been approved under the Financial Reporting Act 1993" with "has effect under the Financial Reporting Act 2013".

(8) In regulation 4(1), revoke the definitions of **listed**, **public issuer**, **registered exchange**, and **registered market**.

(9) In regulation 4(1), definition of **subsidiary**, replace "section 2(1) of the Financial Reporting Act 1993" with "section 5(1) of the Financial Reporting Act 2013".

(10) In regulation 4(1), insert in their appropriate alphabetical order:

"**licensed market**—

"(a) has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013; and

"(b) includes, in respect of any action, event, or circumstances occurring or existing before 1 December 2014, a registered market within the meaning of section 2(1) of the Securities Markets Act 1988 (as in force immediately before that date)

"**licensed market operator**—

"(a) has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013; and

"(b) includes, in respect of any action, event, or circumstances occurring or existing before 1 December 2014, a registered exchange within the meaning of section 2(1) of the Securities Markets Act 1988 (as in force immediately before that date)

"**listed**—

"(a) has the same meaning as quoted (as defined in section 6(1) of the Financial Markets Conduct Act 2013); and

"(b) includes, in respect of any action, event, or circumstances occurring or existing before 1 December 2014, listed within the meaning of section 2(1) of the Securities Markets Act 1988 (as in force immediately before that date)

"**listed issuer**—

"(a) has the same meaning as in section 6(1) of the Financial Markets Conduct Act 2013; and

"(b) includes, in respect of any action, event, or circumstances occurring or existing before 1 December 2014, a public issuer within the meaning of section 2(1) of the Securities Markets Act 1988 (as in force immediately before that date)".

(11) In regulation 4(6), delete "issued or approved under the Financial Reporting Act 1993".

5 Regulation 4A replaced (References to Financial Reporting Act 1993)

Replace regulation 4A with:

"**4A Financial Reporting Act 1993 continues to apply despite repeal**

"(1) The Financial Reporting Act 1993 continues to apply as if it had not been repealed by the Financial Reporting Act 2013 for the purposes of any provision of these regulations that refers to the Financial Reporting Act 1993.

"(2) *See* sections 55 and 56 of the Financial Reporting Act 2013 (which are transitional provisions relating to the continuing application of the Financial Reporting Act 1993).

"**4B Financial statements may be prepared in accordance with GAAP under Financial Reporting Act 2013**

"(1) If these regulations require or permit financial statements for an issuing group, a borrowing group, a group, a body corporate, a business, or a scheme to comply with, and be registered under, the Financial Reporting Act 1993 (or to be prepared and audited as if they were to be registered under that Act) or otherwise make a similar reference to financial statements, the financial statements may be financial statements that are—

"(a) prepared in accordance with generally accepted accounting practice (within the meaning of section 8 of the Financial Reporting Act 2013); and

"(b) audited by a qualified auditor in accordance with applicable auditing and assurance standards (within the meaning of section 5 of the Financial Reporting Act 2013).

"(2) The financial statements referred to in subclause (1) may be used instead of, or in addition to, financial statements that com-

ply with, and are registered under, the Financial Reporting Act 1993 (or are prepared and audited as if they were to be registered under that Act).

"(3) Subclause (1) permits a prospectus to contain a reference to financial statements prepared and audited as referred to in subclause (1)(a) and (b) only if the prospectus—

"(a) contains a copy of those financial statements (in which case, the prospectus need not specify a date of registration); or

"(b) specifies the date of lodgement of the financial statements under the Financial Markets Conduct Act 2013 (rather than a date of registration).

Examples

ABC Limited is making an offer of shares to the public.

Summary financial statements

Clause 9 of Schedule 1 requires the amounts in summary financial statements in the prospectus to be taken from financial statements for 5 consecutive periods, being financial statements that complied with and were registered under the Financial Reporting Act 1993.

This regulation allows the amounts for any 1 or more of those periods to be taken from financial statements prepared in accordance with generally accepted accounting practice under the Financial Reporting Act 2013.

Annual financial statements

Clause 23 of Schedule 1 requires the prospectus to contain certain information relating to financial statements.

Rather than referring to financial statements for the group or including financial statements for the group prepared and audited as if they were to be registered under the Financial Reporting Act 1993, ABC Limited may refer to or include financial statements prepared in accordance with generally accepted accounting practice under the Financial Reporting Act 2013.

"(4) A reference in these regulations to an auditor's report that is registered under the Financial Reporting Act 1993 includes an auditor's report that is lodged under the Financial Markets Conduct Act 2013.

"(5) A reference in these regulations to financial statements that comply with, and are registered under, the Financial Reporting Act 1993 includes financial statements that comply with, and

are registered under, that Act in accordance with section 55 of the Financial Reporting Act 2013."

6 Cross-heading above regulation 8 amended

In the cross-heading above regulation 8, replace "*public issuers*" with "*listed issuers*".

7 Regulation 8 amended (Simplified disclosure prospectus for public issuers)

In the heading to regulation 8, replace "**public issuers**" with "**listed issuers**".

8 Regulation 9 amended (Simplified disclosure prospectus for offers of securities of same class as listed securities)

In regulation 9(e)(ii), replace "public issuer" with "listed issuer".

9 Regulation 10 amended (Simplified disclosure prospectus for offers of securities that rank equally with, or in priority to, listed securities)

In regulation 10(d)(ii), replace "public issuer" with "listed issuer".

10 Regulation 39 amended (Statements about trading securities on securities markets)

In regulation 39(1)(c), (2), and (4), replace "registered market" with "licensed market".

11 Regulation 44 amended (Information to be disclosed by issuers on request)

In regulation 44(b), after "Financial Reporting Act 1993", insert "or lodged under the Financial Markets Conduct Act 2013".

12 Schedule 1 amended

(1) In Schedule 1, clause 11(1)(c)(i) and (4), replace "public issuer" with "listed issuer" in each place.

(2) In Schedule 1, replace clause 15(1)(a) and (b) with:

"(a) the issuer is a party to a listing agreement with a licensed market operator and that method is the same as the method specified in the listing rules of the relevant licensed market; and

"(b) the prospectus names the licensed market and contains a statement to the effect that the method of appointment, removal, or vacation of office of directors of the issuer is the same as that contained in the listing rules of that licensed market."

(3) In Schedule 1, clause 28(4), delete "under the Financial Reporting Act 1993".

13 Schedule 2 amended

In Schedule 2, clause 22(4), delete "under the Financial Reporting Act 1993".

14 Schedule 3 amended

In Schedule 3, clause 25(4), delete "under the Financial Reporting Act 1993".

15 Schedule 5A amended

In Schedule 5A, clause 6(5), after "Financial Reporting Act 1993", insert "or section 461A of the Financial Markets Conduct Act 2013".

16 Schedule 7 amended

In Schedule 7, clause 6(2)(b), replace "section 2(1) of the Financial Reporting Act 1993" with "section 5(1) of the Financial Reporting Act 2013".

17 Schedule 8 amended

In Schedule 8, clause 8(2)(b), replace "section 2(1) of the Financial Reporting Act 1993" with "section 5(1) of the Financial Reporting Act 2013".

18 Schedule 9 amended

In Schedule 9, clause 8(2)(b), replace "section 2(1) of the Financial Reporting Act 1993" with "section 5(1) of the Financial Reporting Act 2013".

19 Schedule 10 amended

(1) In Schedule 10, clause 1(2), replace "registered exchange for the purpose of that information being made available to participants in the registered market operated by that exchange" with "licensed market operator for the purpose of that information being made available to participants in the licensed market that is operated by that operator".

(2) In Schedule 10, clause 5(3), replace "registered market" with "licensed market".

(3) In Schedule 10, clause 6(1), replace "registered exchange" with "licensed market operator".

(4) In Schedule 10, clause 6(3), replace "registered exchange in accordance with the listing rules for the registered market operated by that exchange" with "licensed market operator in accordance with the listing rules for the licensed market that is operated by that operator".

(5) In Schedule 10, clause 6(4), replace the definition of **disclosed information** with:

"**disclosed information** means information, notified by the issuer to a licensed market operator in accordance with the listing rules for the licensed market that is operated by that operator, that is material to the offer of securities and that is notified on or after the date on which the latest financial statements have been notified by the issuer to the operator in accordance with those listing rules".

(6) In Schedule 10, replace clause 7(2) with:

"(2) The date on which the latest financial statements referred to in subclause (1) have been notified by the issuer to a licensed market operator in accordance with the listing rules for the licensed market that is operated by that operator."

(7) In Schedule 10, replace clause 8(1)(c) with:

"(c) those statements have been notified by the issuer to a licensed market operator in accordance with the listing rules of the relevant licensed market."

(8) In Schedule 10, clause 8(3)(a), replace "registered exchange" with "licensed market operator".

20 Schedule 11 amended

(1) In Schedule 11, clause 1(2), replace "registered exchange for the purpose of that information being made available to participants in the registered market operated by that exchange" with "licensed market operator for the purpose of that information being made available to participants in the licensed market that is operated by that operator".

(2) In Schedule 11, clause 14(1), replace "registered exchange" with "licensed market operator".

(3) In Schedule 11, replace clause 14(3) with:

"(3) In this clause, **disclosed information** means information, notified by the issuer to a licensed market operator in accordance with the listing rules for the licensed market that is operated by that operator, that is material to the offer of securities."

(4) In Schedule 11, replace clause 15(2) with:

"(2) The date on which the latest financial statements referred to in subclause (1) have been notified by the issuer to a licensed market operator in accordance with the listing rules for the licensed market that is operated by that operator."

(5) In Schedule 11, replace clause 16(1)(c) with:

"(c) those statements have been notified by the issuer to a licensed market operator in accordance with the listing rules of the relevant licensed market."

(6) In Schedule 11, clause 16(3)(a), replace "registered exchange" with "licensed market operator".

21 Schedule 12 amended

(1) In Schedule 12, clause 1(2), replace "registered exchange for the purpose of that information being made available to participants in the registered market operated by that exchange" with "licensed market operator for the purpose of that informa-

tion being made available to participants in the licensed market that is operated by that operator".

(2) In Schedule 12, clause 15(1), replace "registered exchange" with "licensed market operator".

(3) In Schedule 12, replace clause 15(3) with:

"(3) In this clause, **disclosed information** means information, notified by the issuer to a licensed market operator in accordance with the listing rules for the licensed market that is operated by that operator, that is material to the offer of securities."

(4) In Schedule 12, replace clause 16(2) with:

"(2) The date on which the latest financial statements referred to in subclause (1) have been notified by the issuer to a licensed market operator in accordance with the listing rules for the licensed market that is operated by that operator."

(5) In Schedule 12, replace clause 17(1)(c) with:

"(c) those statements have been notified by the issuer to a licensed market operator in accordance with the listing rules of the relevant licensed market."

(6) In Schedule 12, clause 17(3)(a), replace "registered exchange" with "licensed market operator".

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 30 November 2014, amend the Securities Regulations 2009 (the **2009 regulations**).

The 2009 regulations contain various references to financial statements that comply with, and are registered under, the Financial Reporting Act 1993 (the **1993 Act**). The 1993 Act was repealed on 1 April 2014 by the Financial Reporting Act 2013 (the **2013 Act**).

Under a transitional provision in section 55 of the 2013 Act, the 1993 Act continues to apply to issuers. Generally speaking, the 1993 Act will cease to apply to an issuer when the issuer becomes an FMC reporting entity under section 451 of the Financial Markets Conduct Act 2013 (the **FMCA**) and is required to prepare financial statements under that Act. *See also* clause 20 of Schedule 4 of the FMCA (which provides for issuers to become FMC reporting entities).

The main effect of the amendments is to—

- provide for the 1993 Act to continue to apply despite its repeal for the purposes of the 2009 regulations; and
- allow requirements in the 2009 regulations relating to financial statements to be satisfied by preparing financial statements in accordance with generally accepted accounting practice as defined in the 2013 Act.

The amendments also replace references to public issuers, registered markets, and registered exchanges with references to listed issuers, licensed markets, and licensed market operators respectively (although concepts under the Securities Markets Act 1988 continue to be relevant in respect of actions, events, or circumstances occurring or existing before 1 December 2014).

The 2009 regulations will continue to be relevant even after those regulations are revoked on 1 December 2014 (when the main substantive parts of the FMCA come into force). Under Part 1 of Schedule 4 of the FMCA, the Securities Act 1978 and the 2009 regulations may continue to apply to an offer of securities up until the date that is 2 years after those main substantive parts come into force. The changes to the 2009 regulations ensure that these regulations can continue to be used during this transitional period.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 4 November 2014.

Reprints notes

1 General

This is a reprint of the Securities Amendment Regulations (No 2) 2014 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

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 (Repeals and Amendments) Act 2013 (2013 No 70): section 5(o)

Wellington, New Zealand:
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