



# Securities Act (ABN AMRO Equity Derivatives New Zealand Limited) Exemption Notice 2005

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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## Notice

### 1 Title

This notice is the Securities Act (ABN AMRO Equity Derivatives New Zealand Limited) Exemption Notice 2005.

### 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 31 March 2010.

### 4 Interpretation

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

**ABN Equity** means ABN AMRO Equity Derivatives New Zealand Limited

**Act** means the Securities Act 1978

**guarantor** means ABN AMRO Bank N.V., a registered bank under the Reserve Bank of New Zealand Act 1989

**holder** means the holder of a rolling instalment

**loan** means the loan made by ABN Equity to holders in order to purchase the underlying equity securities

**NZX** means the principal equity securities market operated by New Zealand Exchange Limited

**Regulations** means the Securities Regulations 1983

**related company** has the same meaning as in section 2(3) of the Companies Act 1993

**rolling instalment** means an equity security issued by ABN Equity and offered to the public for subscription—

- (a) under which the holder has the right to acquire, and ABN Equity must deliver at the option of the holder, underlying equity securities; and
- (b) under which the holder has a beneficial interest in, and the right to receive distributions under, the underlying equity securities; and
- (c) in respect of which ABN Equity has been approved by New Zealand Exchange Limited as a warrant issuer; and
- (d) in respect of which application has been made for quotation on the NZX

**trustee** means ABNED Nominees New Zealand Limited

**underlying equity securities**, in relation to a rolling instalment, means equity securities that, at the time of the offer of the rolling instalment, belong to a class of securities that is quoted on the NZX and in respect of which the holder has or will acquire a right or interest upon exercise of the rolling instalment.

- (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 Exemption

ABN Equity and every person acting on its behalf are exempted from regulation 3(1) of the Regulations in respect of the rolling instalments.

## **6 Conditions of exemption**

- (1) The exemption in clause 5 is subject to the conditions that—
- (a) ABN Equity has complied, at the time of the offer of the rolling instalments, with all of the requirements of New Zealand Exchange Limited with which it must comply at that time relating to its application for quotation of the rolling instalments on the NZX; and
  - (b) every issuer of the underlying equity securities is a company that is incorporated in New Zealand; and
  - (c) all of the underlying equity securities are quoted on the NZX; and
  - (d) the trustee has been appointed as the trustee in respect of the rolling instalments, and both ABN Equity and the trustee have signed a trust deed relating to the rolling instalments; and
  - (e) the trust deed referred to in paragraph (d) provides that the trustee must hold a number of underlying equity securities (being no less than the number required to enable ABN Equity to meet its obligation to deliver securities under the rolling instalments) throughout the term of the rolling instalments; and
  - (f) the trust deed referred to in paragraph (d) provides that the trustee must hold the securities referred to in paragraph (e) for the exclusive benefit of the holders, except to the extent that the security interest described in paragraph (g) allows otherwise; and
  - (g) the trust deed referred to in paragraph (d) prevents ABN Equity or any other person, except the trustee and the holders, from exercising control over the transfer or disposal of the underlying equity securities, or having a charge over the assets of the trust, other than—
    - (i) as security for the loan; or
    - (ii) on enforcement of the security for the loan; and
  - (h) ABN Equity is not a related company of any issuer of the underlying equity securities.
- (2) The exemption in clause 5 is subject to the conditions that the registered prospectus relating to the rolling instalments—
- (a) contains all applicable information, statements, certificates, and other matters specified in clauses 1(1) to (3), 2, 3, 5, 5A, 8, 14, 15, 17, 19(1)(b), 21, 39, 40, and 41(c)

- of Schedule 1 of the Regulations, and clauses 4 and 12 of Schedule 2 of the Regulations; and
- (b) contains a statement that prospective investors should make their own enquiries regarding the issuers of the underlying equity securities; and
  - (c) contains a summary of the principal terms of the trust deed referred to in subclause (1)(d); and
  - (d) contains a brief description of the principles and procedures used to calculate the subscription price of the rolling instalments; and
  - (e) contains a brief summary of the consequences of a lapse or expiry of a rolling instalment, including the circumstances in which a lapse or expiry may occur; and
  - (f) contains a description of any formula for determining the amount payable in respect of rolling instalments that have lapsed or expired; and
  - (g) states prominently that each issuer of the underlying equity securities is a company listed on the NZX whose financial statements are expected to be readily available from the relevant issuer, a member of the NZX, and the Registrar of Companies; and
  - (h) states that it is a term of the offer that ABN Equity will, within 5 working days of receiving each request of a holder to do so, send, or cause to be sent, without fee, to that holder, a copy of the guarantor's most recent financial statements that comply with the Financial Reporting Act 1993.

Dated at Wellington this 4th day of April 2005.

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

[L.S.]

M. Chen,  
Member.

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### Statement of reasons

This notice, which comes into force on the day after its notification in the *Gazette* and expires on 31 March 2010, exempts ABN AMRO Equity Derivatives New Zealand Limited, subject to conditions, from certain prospectus requirements of the Securities Regulations 1983 in respect of certain securities called rolling instalments.

The Securities Commission considers that it is appropriate to grant the exemption because the exemption is consistent with Commission policy. In particular—

- it is consistent with the policy of the Securities Act (Equity Warrant Issuers) Exemption Notice 2002, which is appropriate as rolling instalments are similar to equity warrants. Exemption policy in this area recognises that the disclosure requirements in the schedules to the Securities Regulations 1983 are not always well suited to securities of this nature; and
- it is consistent with exemption policy in cases where returns on the securities offered are dependent upon the performance of securities issued by a third party, and not on the performance of the offeror of the securities to which the exemption relates. In these circumstances, much of the information that would otherwise be required about the offeror as issuer is likely to be irrelevant and potentially confusing for prospective investors.

The exemption will allow ABN AMRO Equity Derivatives New Zealand Limited to offer rolling instalments to the public under a registered prospectus that contains information tailored to suit the nature of the product, which is intended to result in investors receiving information that is more relevant and useful than some of the information that would be required to be disclosed if the exemption were not granted.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 7 April 2005.

This notice is administered by the Securities Commission.

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