



**SECURITIES ACT (ANZ BANKING GROUP (NEW ZEALAND)  
LIMITED) EXEMPTION NOTICE 1998**

PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

ANALYSIS

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NOTICE

**1. Title, commencement, and expiry**—(1) This notice may be cited as the Securities Act (ANZ Banking Group (New Zealand) Limited) Exemption Notice 1998.

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

(3) This notice expires on the close of 31 July 2000.

**2. Interpretation**—(1) In this notice, unless the context otherwise requires,—

“Act” means the Securities Amendment Act 1988:

“ANZ group” means ANZ Banking Group (New Zealand) Limited; and includes a subsidiary of that company:

“Counterparty” in relation to an equity swap financing transaction, means a party to the transaction that is not a member of the ANZ group or a holding company of ANZ Banking Group (New Zealand) Limited.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act, has the meaning given to it by the Act.

**3. Meaning of “equity swap financing transaction”**—In this notice, “equity swap financing transaction” means a transaction that consists of the following elements:

- (a) The transaction is a structured financing arrangement in the nature of an equity swap the terms and conditions of which are contained in documents under the International Swaps and Derivatives Association Inc. standard Master Agreement or in

other documents having substantially the same effect as that agreement:

- (b) At the beginning of the transaction a member of the ANZ group pays to the counterparty an amount as consideration for the counterparty arranging for the transfer of equity securities of a public issuer to the member of the ANZ group:
- (c) At the end of the transaction, the member of the ANZ group must, or the counterparty may require the member to, transfer to the counterparty equity securities that are identical to those referred to in paragraph (b).

**4. Exemption from sections 20 and 21 of Securities Amendment Act 1988**—(1) This clause applies to—

- (a) A member of the ANZ group:
  - (b) A company that has a relevant interest in the voting securities referred to in subclause (2) as a result both of a member of the ANZ group being a party to an equity swap financing agreement and the application of section 5 (3) of the Act:
  - (c) Every person who acts on behalf of a person referred to in paragraph (a) or paragraph (b).
- (2) Every person to whom this clause applies is exempt from sections 20 and 21 of the Act in respect of a relevant interest in the voting securities of a public issuer that the person has as a result of the entering into of an equity swap financing transaction.

**5. Conditions**—The exemption is subject to the conditions that—

- (a) The counterparty has a relevant interest in the securities throughout the term of the transaction; and
- (b) If voting rights attaching to the securities held by the member of the ANZ group may be exercised by a person other than the member or the chairperson of the public issuer acting under a proxy given by the member, or the member knows or believes that the counterparty or an associated person of the counterparty is a substantial security holder in the public issuer, the member gives the public issuer and any stock exchange on which the securities of the public issuer are listed a notice containing the information required in form 1 in the Schedule of the Securities (Substantial Security Holders) Regulations 1997 but modified so as to state:
  - (i) The number of voting securities of the public issuer held by the member; and
  - (ii) The name and address of the person who may exercise the voting rights attaching to the securities; and
  - (iii) The name and address of the counterparty and of every associated person who the member believes has a relevant interest in the securities.

Dated at Wellington this 12th day of August 1998.

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

[L.S.]

E. H. ABERNETHY,  
Chairman.

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EXPLANATORY NOTE

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 July 2000.

The notice exempts ANZ Banking Group (New Zealand) Limited, its subsidiaries, and related companies from sections 20 and 21 of the Securities Amendment Act 1988. Those sections relate to the disclosure by persons having interests in 5% or more of the voting shares of a public issuer of those interests or of changes in those interests.

The exemption applies to interests in voting shares acquired as a result of the bank or a subsidiary entering into an equity swap financing transaction. The essence of the transaction is that the bank or subsidiary takes an absolute transfer of the voting shares in exchange for providing finance to another party but with an obligation to transfer the shares back to that party at the end of the transaction.

The effect of the exemption is that neither the bank nor the subsidiary or related company will be required to give the public issuer or the stock exchange notice of the interest that it has in the shares.

The transaction differs from other types of financing arrangement in which security (as distinct from an absolute transfer) is taken over the shares. In those cases, a person whose ordinary business consists of lending money or providing financial services may have a statutory exemption under section 6 of the Securities Amendment Act 1988 from having to disclose an interest in voting shares.

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

Date of notification in *Gazette*: 13 August 1998.

This notice is administered in the Securities Commission.