



# **Securities Act (OM-IP Companies) Exemption Amendment 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**

- (1) This notice is the Securities Act (OM-IP Companies) Exemption Amendment Notice 2005.
- (2) In this notice, the Securities Act (OM-IP Companies) Exemption Notice 2004<sup>1</sup> is called “the principal notice”.

<sup>1</sup> SR 2004/474

### **2 Commencement**

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

### **3 Interpretation**

- (1) Clause 4(1) of the principal notice is amended by revoking paragraph (b) of the definition of **Australian prospectus**, and substituting the following paragraph:

“(b) that is either—

- “(i) a prospectus within the meaning of section 9 of the Corporations Act 2001; or
- “(ii) a document that is identical to a document that is lodged or registered under the laws of Australia and that is signed by, or on behalf of, the persons

(if any) that are required by that law to sign that document; and”.

- (2) Clause 4(1) of the principal notice is amended by revoking the definition of **specified equity securities**, and substituting the following definition:

**“specified equity securities** means redeemable shares in an OM-IP company, and includes any renewal or variation of the terms or conditions of a redeemable share in an OM-IP company.”

#### **4 Further conditions**

- (1) Clause 10(a) of the principal notice is amended by revoking subparagraphs (iv) to (vi).
- (2) Clause 10 of the principal notice is amended by inserting, after paragraph (a), the following paragraphs:
- “(ab) every investment statement that contains an offer of specified equity securities by an OM-IP company, or a document that accompanies it and is referred to in it, contains a statement as to whether or not there is a guarantor of the obligations of the OM-IP company in respect of the offer of specified equity securities by the OM-IP company; and
- “(ac) if there is such a guarantor, the Australian prospectus and every investment statement that contains an offer of specified equity securities by the OM-IP company, or a document that accompanies each of them and is referred to in them, contains a statement that the OM-IP company will make available or provide to the company’s shareholders in New Zealand,—
- “(i) the annual guarantee notices, stating the current amount of the guarantee provided by the guarantor of the obligations of the OM-IP company in respect of the offer of specified equity securities by the OM-IP company; and
- “(ii) a statement of the incorporation details of the guarantor; and
- “(iii) a statement of the registration details of the guarantor either as a bank that is licensed or otherwise authorised by the central banking authority of a country, State, or territory other than New

Zealand to carry on the business of banking in that country, State, or territory or as a registered bank (within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989); and”.

Dated at Wellington this 11th day of April 2005.

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

[L.S.]

C. A. N. Beyer,  
Member.

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### **Statement of reasons**

This notice, which comes into force on the day after the date of its notification in the *Gazette*, amends the Securities Act (OM-IP Companies) Exemption Notice 2004 so that—

- the existing exemption in that notice from the requirement to register a New Zealand prospectus for offers of redeemable shares in OM-IP companies can also be used for renewals or variations of those shares; and
- it is not a condition of the exemption that there must be a guarantor of the obligations of the OM-IP company in respect of the redeemable shares.

The Securities Commission considers that it is appropriate to exempt any renewal or variation of the terms of redeemable shares in an OM-IP company from the requirement to register a New Zealand prospectus because—

- any offer of renewal or variation of the terms of a redeemable share in an OM-IP company will be made in compliance with the laws of Australia;
- New Zealand investors will be issued a New Zealand investment statement prepared in relation to any offer of renewal or variation of the terms of a redeemable share in an OM-IP company;

- New Zealand investors will be able to receive on request an Australian offer document, which provides further information regarding any renewal or variation of the terms of a redeemable share in an OM-IP company;
- an OM-IP company will need to comply with the disclosure and filing requirements under the conditions of the existing exemption notice;
- the amendments are consistent with the exemptions contained in the Securities Act (Australian Issuers) Exemption Notice 2002 (SR 2002/314), which allows for extensions or renewals of securities offered to investors.

The Securities Commission considers that it is appropriate to clarify that the conditions applying to bank guarantees only apply if a bank guarantee is offered as part of the product because—

- an OM-IP company will need to comply with the disclosure requirements under Australian law in respect of an offer of redeemable shares;
- an OM-IP company will further need to comply with the disclosure and filing requirements under the conditions of the existing exemption notice;
- at the time of deciding whether to accept the offer, shareholders will be given adequate information to assess the risks of investing in an offer which does not provide a bank guarantee of the obligations of an OM-IP company;
- the amendments are consistent with the exemptions in the Securities Act (Australian Issuers) Exemption Notice 2002, which does not require a company offering securities to provide a bank guarantee of the obligations of that company.

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

Date of notification in *Gazette*: 14 April 2005.

This notice is administered by the Securities Commission.

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