



Securities Act (Overseas Companies) Exemption Amendment Notice (No 2) 2004

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).

Contents

<p>1 Title</p> <p>2 Commencement</p> <p>3 Exemption for overseas quoted securities offered to existing security holders</p>		<p>4 New clauses 5A and 5B inserted</p> <p>5A Exemption for securities that vary overseas quoted securities</p> <p>5B Condition of exemption in clause 5A</p>
---	--	---

Notice

1 Title

- (1) This notice is the Securities Act (Overseas Companies) Exemption Amendment Notice (No 2) 2004.
- (2) In this notice, the Securities Act (Overseas Companies) Exemption Notice 2002¹ is called “the principal notice”.

¹ SR 2002/299

2 Commencement

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

3 Exemption for overseas quoted securities offered to existing security holders

Clause 5(1)(b)(ii) of the principal notice is amended by adding, after subparagraph (B), the following subparagraph:

“(C) that confer the right to subscribe for, or will or may, in accordance with the terms of those securities, be converted into, other securities of which that other overseas company is the issuer, and those other securities are of a class that is quoted on a specified exchange; or”.

4 New clauses 5A and 5B inserted

The principal notice is amended by inserting, after clause 5, the following clauses:

“5A Exemption for securities that vary overseas quoted securities

Every overseas company, and every person acting on behalf of that overseas company, is exempt from sections 33(2), 33(3), 37, 37A, 38A, and 51 to 54B of the Act and the Regulations (except regulation 8) in respect of any security that varies the terms or conditions of an existing security of which the overseas company is an issuer if—

- “(a) the existing security is of a class that is quoted on a specified exchange; and
- “(b) the other security does not—
 - “(i) change the issuer of the existing security; or
 - “(ii) extend the time for payment of money due, or to become due, under the existing security by the issuer; or
 - “(iii) decrease the amount of money that is to become due under the existing security by the issuer.

“5B Condition of exemption in clause 5A

The exemption granted by clause 5A is subject to the condition that the offer of the securities to the public in New Zealand is made in compliance with—

- “(a) the law of the country, state, territory, or province in which the stock exchange on which the existing security is quoted is situated; and
- “(b) any code, rules, or other requirements relating to the offer of the security that apply in that country, state, territory, or province.”

Dated at Wellington this 7th day of December 2004.

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

[L.S.]

K. Dunstan,
Member.

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 (Overseas Companies) Exemption Notice 2002 (“the principal notice”) by—

- amending clause 5(1)(b) of the principal notice to allow the exemptions in clause 5 of the principal notice to apply to an overseas company that offers quoted securities to holders of certain unquoted securities in a related overseas company, subject to conditions; and
- inserting a *new clause 5A* that will allow the exemptions contained in the principal notice to apply in respect of variations to quoted securities, subject to conditions.

The Commission considers it appropriate to make the amendment to clause 5(1)(b) of the principal notice because—

- clause 5 of the principal notice already allows the exemptions contained in that clause to apply where quoted securities are to be offered to holders of quoted securities in a related company, therefore allowing New Zealand shareholders in overseas companies to participate in offers arising from reconstructions; and
- the amendment is consistent with this because it allows quoted securities to be offered to holders of unquoted securities in a related company if the securities held in the related company confer the right to subscribe for, or can be converted into, other securities of the related company that are of a class that is quoted on a specified exchange.

The Commissioner considers it appropriate to grant the exemptions contained in *new clause 5A* because—

- clause 6 of the principal notice allows quoted securities to be offered as the whole or any part of the consideration for the

- acquisition or cancellation of securities of which another overseas company is the issuer if those other securities are quoted on a specified exchange; and
- it is consistent with this to allow an overseas company to extend a variation of its securities to holders in New Zealand if the securities that are already held are quoted on a specified exchange.
-

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

Date of notification in *Gazette*: 9 December 2004.

This notice is administered by the Securities Commission.
