



Securities Act (Banks) Exemption Notice 2002

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

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Notice

- 1 Title**
This notice is the Securities Act (Banks) Exemption Notice 2002.
- 2 Commencement**
This notice comes into force on 1 October 2002.
- 3 Expiry**
This notice expires on the close of 30 September 2007.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

address means a postal or electronic address; and includes a Post Office box address, document exchange box number, fax number, and email address

bank means a registered bank within the meaning of section 2(1) of the Reserve Bank of New Zealand Act 1989

New Zealand division, in relation to an overseas bank, means the business of the bank carried on in or from New Zealand

overseas bank means a bank that is an overseas person licensed or authorised by the central banking authority of a country other than New Zealand to carry on banking business in that country

overseas person means—

- (a) a body corporate incorporated outside New Zealand;
- (b) an unincorporated body having its head office or principal place of business outside New Zealand

Regulations means the Securities Regulations 1983.

- (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 from section 37A(1)(a) of Act

Every bank and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of any debt securities offered by the bank and of which the bank is the issuer.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that the bank must not allot a debt security unless the bank or any person acting on its behalf has sent an investment statement relating to the debt security, at least 3 working days before the subscriber subscribes for the debt security, to—
 - (a) an address specified by the subscriber for this purpose;
or
 - (b) the last address of the subscriber known to the bank.
- (2) The exemption in clause 5 is subject to the further condition that, if an investment statement relating to the debt security is sent by—

- (a) fax, the fax machine has generated a record of the transmission of the investment statement to the fax machine of the recipient; or
- (b) other electronic means, the machine used to transmit the investment statement has not generated a record that the investment statement has failed to be transmitted.

7 Exemption from regulation 14(1) of Regulations

Every bank and every person acting on its behalf are exempted from regulation 14(1) of the Regulations in respect of any debt securities offered by the bank and of which the bank is the issuer.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject, in the case of a bank other than an overseas bank, to the condition that the aggregate amount of any debt securities that are secured by a mortgage or charge created by the bank over any of its assets and that rank or that will rank, after the allotment of the debt securities referred to in clause 7, in priority to those debt securities is not material in the context of the bank's overall business.
- (2) The exemption in clause 7 is subject, in the case of an overseas bank, to the condition that the aggregate amount of any debt securities that are secured by a mortgage or charge created by the overseas bank over any of the assets of the bank relating to its New Zealand division and that rank or that will rank, after the allotment of the debt securities referred to in clause 7, in priority to those debt securities is not material in the context of the overseas bank's New Zealand division.

9 Exemption from regulation 17 of Regulations

Every bank that, and every other person who, distributes an investment statement or other advertisement to the public relating to debt securities of which the bank is the issuer are exempted from regulation 17 of the Regulations in respect of the distribution of that advertisement.

10 Conditions of exemption in clause 9

- (1) The exemption in clause 9 is subject to the condition that the bank, at the time that the advertisement is distributed to the public, has completed a certificate relating to the advertisement that complies with subclause (2).
- (2) That certificate must be in the form set out in the Fourth Schedule of the Regulations and must be signed by 2 persons, being—
 - (a) directors of the bank; or
 - (b) executive officers of the bank authorised by the directors of the bank to sign those certificates; or
 - (c) a director and an executive officer of the bank who is authorised by the directors of the bank to sign those certificates.
- (3) The exemption in clause 9 is, in the case of a bank, subject to the condition that the bank holds the certificate for at least 12 months from the date of the last distribution of the advertisement to which it relates.
- (4) Nothing in clause 9 and subclauses (1) to (3) of this clause limits or affects regulation 17(3) of the Regulations except that, in the case of an advertisement for which a certificate has been completed in accordance with this clause, the reference in regulation 17(3)(c) of the Regulations to subclause (2) of that regulation must be read as a reference to subclause (2) of this clause.

11 Exemption from clauses 16 and 17(1) of Schedule 3D of Regulations

Every bank and every person acting on its behalf are exempted from clauses 16 and 17(1) of Schedule 3D of the Regulations in respect of any debt securities of which the bank is the issuer.

12 Condition of exemption in clause 11

The exemption in clause 11 is subject to the condition that each investment statement for the debt securities contains—

- (a) a statement to the effect that enquiries and complaints about the debt securities can be made at any branch of the bank; and

- (b) descriptions of the officers or employees at branches of the bank to whom enquiries or complaints can be made.

13 Application of Act and Regulations to overseas banks limited to New Zealand business

- (1) Every overseas bank and every person acting on its behalf are exempted from the provisions of the Act and the Regulations in so far as those provisions require any investment statement or other advertisement that relates to debt securities of which the overseas bank is the issuer to contain information, statements, or other matters that do not relate to the New Zealand division of the overseas bank.
- (2) For the purposes of subclause (1),—
 - (a) the New Zealand division of an overseas bank must be treated as the only business carried on by the bank; and
 - (b) the property, rights, assets, and liabilities relating to the New Zealand division must be treated as the only property, rights, assets, and liabilities of the overseas bank.

Dated at Wellington this 17th day of September 2002.

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

[L.S.]

J. Diplock,
Chairperson.

Explanatory note

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

This notice comes into force on 1 October 2002 and expires on 30 September 2007. It replaces the Securities Act (Banks) Exemption Notice 1997. The provisions of that notice have been carried forward with no change of substance, except that the term **overseas bank** is now defined in the notice itself and the Schedule of named overseas banks has been omitted. Certain drafting changes have been made to reflect current drafting practice.

The notice exempts registered banks from various provisions of the Securities Act 1978 and the Securities Regulations 1983 relating to investment statements and other advertisements for debt securities.

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

Date of notification in *Gazette*: 19 September 2002.

This notice is administered in the Securities Commission.
