



Securities Act (Prime Infrastructure Networks (New Zealand) Limited) Exemption Notice 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).

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Notice

1 Title

This notice is the Securities Act (Prime Infrastructure Networks (New Zealand) Limited) Exemption Notice 2004.

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 August 2009.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

ASIC means the Australian Securities and Investments Commission

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

Corporations Act means the Corporations Act 2001 of the Commonwealth of Australia

new stapled securities means stapled securities into which the specified convertible notes may convert

NZDX means the debt security market operated by NZX

NZX means New Zealand Exchange Limited

Prime Infrastructure means the investment vehicle, comprising Prime Management and Prime Trust, known as Prime Infrastructure

Prime Management means Prime Infrastructure Management Limited, a company incorporated in Australia

Prime Networks means Prime Infrastructure Networks (New Zealand) Limited, an indirect wholly-owned subsidiary of Prime Management

Prime share means an ordinary share in Prime Management

Prime Trust means Prime Infrastructure Trust, a registered managed investment scheme

Prime unit means a unit in Prime Trust

registered managed investment scheme means a managed investment scheme that is registered with ASIC under section 601EB of the Corporations Act

Regulations means the Securities Regulations 1983

responsible entity means the responsible entity (as defined in section 9 of the Corporations Act) for Prime Trust

specified convertible notes means convertible note debt securities that—

- (a) are to be issued by Prime Networks to certain accepting offerees of the takeover offer; and
- (b) are convertible into new stapled securities at the time, and on the terms and conditions, set out in the takeover offer

stapled security means a stapled security, consisting of 1 Prime share and 1 Prime unit, issued by Prime Infrastructure

takeover offer means the takeover offer to be made by Prime Networks in or about August or September 2004 under the Takeovers Act 1993 and the Code to purchase all the ordinary shares and unsecured subordinated capital bonds in Powerco Limited, as varied from time to time in accordance with that Act and the Code.

- (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 33(3) of Act

Prime Networks, the responsible entity, and every person acting on behalf of any or all of them, are exempted from section 33(3) of the Act in respect of any Prime units to be allotted under the terms of issue of the specified convertible notes.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) a copy of each of the following documents has been received by the Registrar of Companies:
- (i) the licence of the responsible entity granted under the Corporations Act; and
 - (ii) Prime Trust's constitutional documents; and
 - (iii) evidence of registration of Prime Trust as a registered managed investment scheme with ASIC; and
 - (iv) the compliance plan for Prime Trust required under Australian law; and
- (b) Prime Trust is a registered managed investment scheme at all times until after the allotment of the last new stapled securities to be allotted.

7 Exemptions from sections 37, 37A, and 51 to 54 of Act

Prime Management, Prime Networks, the responsible entity, and every person acting on behalf of any or all of them, are exempted, in respect of any new stapled securities to be allotted under the terms of issue of the specified convertible notes, from—

- (a) section 37 of the Act; and

- (b) section 37A of the Act, to the extent that it would otherwise require Prime Management and Prime Trust to prepare an investment statement in relation to the new stapled securities; and
- (c) sections 51 to 54 of the Act.

8 Conditions of exemptions in clause 7

The exemptions in clause 7 are subject to the conditions that—

- (a) Prime Networks is, whether directly or indirectly, a wholly-owned subsidiary of Prime Management at the time of the offer and allotment of the specified convertible notes, and also at the time of the allotment of new stapled securities; and
- (b) Prime Infrastructure is, both at the time of allotment of the specified convertible notes and also at the time of allotment of the new stapled securities, listed on NZX as an **overseas listed issuer** (as defined in the NZX Listing Rules); and
- (c) the specified convertible notes are quoted on NZDX on allotment and remain quoted for the period that they are current; and
- (d) the specified convertible notes are issued under an investment statement that relates to both the specified convertible notes and the new stapled securities; and
- (e) the specified convertible notes are allotted under a registered prospectus that contains particulars of all material matters relating to the offer of new stapled securities; and
- (f) before allotment of any new stapled securities and before the exercise of any conversion right conferred by the specified convertible notes, the following documents have been sent to every person who was, at the time the financial statements are sent, a registered holder of specified convertible notes in respect of which new stapled securities are to be allotted or a conversion right may be exercised:
 - (i) a copy of the most recent audited financial statements of Prime Infrastructure that comply with section 11(3) of the Financial Reporting Act 1993

- and with the provisions of other laws to which Prime Infrastructure is subject; and
- (ii) if the date of allotment of any new stapled securities or the date of the exercise of any conversion right conferred by the specified convertible notes would be later than 9 months after the date of the financial statements referred to above, interim financial statements for a period beginning on the day after the date of the financial statements referred to above and ending on a date that is not later than 9 months after that date, that comply with section 11(3) of the Financial Reporting Act 1993 and with the provisions of any other laws to which Prime Infrastructure is subject, except that these statements need not be audited; and
 - (g) the date of allotment of any new stapled securities under the terms of, or the date of the exercise of a conversion right under, any specified convertible notes is not more than 9 months after the date of the financial statements or interim financial statements, as the case may be, referred to in paragraph (f).

9 Exemption from regulation 23 of Regulations

Prime Management, Prime Networks, the responsible entity, and every person acting on behalf of any or all of them, are exempted from regulation 23 of the Regulations in respect of the specified convertible notes and any new stapled securities to be allotted under the terms of issue of the specified convertible notes.

10 Condition of exemption in clause 9

The exemption in clause 9 is subject to the condition that any registered prospectus or advertisement for the specified convertible notes or the new stapled securities contains no statement referring to listing or intended listing of the specified convertible notes or the new stapled securities on a market operated by NZX other than a statement that has been approved by NZX.

Dated at Wellington this 17th day of August 2004.

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

[L.S.]

F. R. S. Clouston,
Member.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 August 2009, exempts Prime Infrastructure Networks (New Zealand) Limited (**Prime Networks**) and various other parties, subject to conditions, from sections 33(3), 37, 37A, and 51 to 54 of the Securities Act 1978 (the **Act**) and from regulation 23 of the Securities Regulations 1983 (the **Regulations**). The exemptions relate to the offer, as part of a take-over bid by Prime Networks for shares and securities in Powerco Limited, of specified convertible notes (the **notes**) that are convertible into stapled securities (the **stapled securities**) under the terms of issue of the notes.

The Commission considers that it is appropriate to grant the exemptions for the following reasons:

- the exemption from section 33(3) of the Act recognises that Australian law requires a registered managed investment scheme to have a responsible entity and provides relief from the need for a statutory supervisor and deed of participation for the units that form part of the stapled securities;
- the exemptions from sections 37 and 37A of the Act in respect of the stapled securities are consistent with the policy of the Commission in respect of convertible securities, which is to exempt issuers from the requirement to have a registered prospectus and investment statement for the allotment of the securities underlying the convertible securities provided that, at the time of the offer of the initial securities, investors are given all information material to the offer of the underlying securities;
- the exemptions from sections 51 to 54 of the Act provide relief from certain requirements of the Act concerning the

keeping of registers and accounting records and the sending of certificates to security holders in respect of the stapled securities in recognition of equivalent requirements on issuers under Australian law:

- the intention is to list the notes and stapled securities on NZX markets if the takeover bid is successful. Strict compliance with regulation 23 of the Regulations would not permit this to be explained fully. The information is useful to investors, and the condition in clause 10 requires that the statement be approved by NZX.
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Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 August 2004.
This notice is administered by the Securities Commission.
