



## Securities Act (Endace Limited) Exemption 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**  
This notice is the Securities Act (Endace Limited) Exemption Notice 2005.
- 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 30 July 2010.
- 4 Interpretation**
  - (1) In this notice, unless the context otherwise requires,—  
**Act** means the Securities Act 1978  
**AIM Market** means the AIM Market of the London Stock Exchange plc

**eligible person** means, in relation to Endace,—

- (a) an employee or director of Endace or any of its subsidiaries;
- (b) a person who provides personal services (other than as an employee) principally to Endace or any of its subsidiaries

**employee share purchase scheme** means a scheme established by Endace and existing at the date of this notice (subject to such modifications as may be made from time to time) under which eligible persons may acquire specified equity securities

**Endace** means Endace Limited

**Regulations** means the Securities Regulations 1983

**specified equity securities** means ordinary shares, or rights or options to acquire ordinary shares, issued by Endace under its employee share purchase scheme.

- (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 Exemptions

Endace and any person acting on its behalf are exempted from the following provisions in respect of specified equity securities:

- (a) section 37A(1)(c) of the Act; and
- (b) regulation 23 of the Regulations; and
- (c) clauses 4 to 20, 22 to 38, and 40 to 42 of Schedule 1 of the Regulations.

## 6 Condition that Endace admitted to AIM Market

The exemptions in clause 5 are subject to the condition that Endace's shares have been and remain admitted to trading on the AIM Market.

## 7 Condition that specified equity securities allotted only to eligible persons

The exemptions in clause 5 are subject to the condition that the specified equity securities are allotted only to the following persons:

- (a) persons who are eligible persons at the time of allotment of the specified equity securities;
- (b) in the case of specified equity securities that are allotted on the exercise of rights or options to acquire shares, persons who are eligible persons at the time of allotment of those rights or options.

## **8 Conditions relating to provision of certain information**

- (1) The exemption in clause 5(a) is subject to the condition that it is a term of the offer of specified equity securities that every copy of the registered prospectus sent to a person under section 54B of the Act will contain or be accompanied by the most recent audited consolidated financial statements of the issuing group that comply with the Financial Reporting Act 1993.
- (2) The exemption in clause 5(b) is subject to the condition that—
  - (a) every registered prospectus or investment statement in respect of the specified equity securities contains a statement advising that Endace's shares have been admitted to trading on the AIM Market; and
  - (b) the statement described in paragraph (a) is in a form that complies with any requirements of the AIM Market and the laws of the United Kingdom.

Dated at Wellington this 26th day of July 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 comes into force on the day after the date of its notification in the *Gazette* and expires on 30 July 2010.

This notice exempts, subject to conditions, Endace Limited (**Endace**) in respect of equity securities issued by Endace that are

offered under its employee share purchase scheme. The exemptions are from section 37A(1)(c) of the Securities Act 1978, regulation 23 of the Securities Regulations 1983, and clauses 4 to 20, 22 to 38, and 40 to 42 of Schedule 1 of those regulations. The exemptions enable Endace to use an investment statement and an evergreen short-form prospectus when offering participation in its employee share purchase scheme to its employees and other eligible persons.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- Endace, a New Zealand incorporated company, cannot take advantage of the Commission's class exemption for New Zealand listed issuers in offering its employee share purchase scheme to employees in New Zealand because it is not listed on a securities market operated by New Zealand Exchange Limited (NZX). Endace is admitted to the AIM Market of the London Stock Exchange plc (**AIM Market**). The Commission considers that Endace should be able to take advantage of the same exemptions available to NZX listed issuers because Endace is subject to appropriate ongoing disclosure obligations by virtue of its AIM Market admission, and an available market and liquidity exists for employees to be able to price and sell their shares:
- the statements usually required under regulation 23 of the Securities Regulations 1983 regarding listing of securities on a registered exchange's market cannot properly be made by Endace. A condition of the exemptions requires Endace to make an alternative statement regarding its admission to the AIM Market:
- Endace's employee share purchase scheme is a share option scheme and the exemptions enable Endace to allot securities to its former employees on the exercise of options granted to them while they were employees.

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

Date of notification in *Gazette*: 28 July 2005.

This notice is administered by the Securities Commission.

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