



Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010

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 (French Issuers Employee Share Purchase Schemes) Exemption Notice 2010.

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 September 2012.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

1983 Regulations means the Securities Regulations 1983

2009 Regulations means the Securities Regulations 2009

Act means the Securities Act 1978

eligible person means, in relation to a French issuer,—

(a) an employee of the French issuer or of any of its subsidiaries:

(b) a director of the French issuer or of any of its subsidiaries

employee share purchase scheme means—

(a) a scheme established by a French issuer, or by any of its subsidiaries, under which eligible persons may acquire shares, or rights or options to acquire shares, issued by the French issuer; or

(b) a mutual fund established by, or on behalf of, a French issuer or any of its subsidiaries, in which eligible persons may acquire units; or

(c) a scheme established as a regional variation of a scheme referred to in paragraph (a) or a mutual fund established as a regional variation of a mutual fund referred to in paragraph (b) if regional variations are permitted by the scheme or the mutual fund's rules

French issuer means a company that—

(a) is incorporated under the laws of France; and

(b) has its shares quoted on NYSE Euronext Paris

mutual fund means a mutual fund—

(a) established under the laws of France and the requirements of the Autorité des Marchés Financiers; and

(b) that is approved by the Autorité des Marchés Financiers

overseas bank means a bank licensed or otherwise authorised by the central banking authority of an overseas jurisdiction to carry on banking business in that jurisdiction

published financial statements means financial statements that are published, issued, or prepared in accordance with the laws of France

registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

savings scheme security means a debt or participatory security

specified security means a security issued under an employee share purchase scheme

specified subsidiary means, in relation to a French issuer, a company incorporated in New Zealand or France that—

- (a) is a wholly owned subsidiary of the French issuer; and
- (b) offers or issues savings scheme securities in connection with participation in the French issuer's employee share purchase scheme

unit—

- (a) means an interest or right to participate in any capital, assets, earnings, or other property of a mutual fund or a part of a mutual fund; and
- (b) includes any renewal or variation of the terms or conditions of any of those interests or rights.

- (2) Any term or expression that is defined in the Act or the 2009 Regulations and used, but not defined, in this notice has the same meaning as in the Act or the 2009 Regulations.

5 Exemptions for specified securities

- (1) This clause applies to—
 - (a) a French issuer; and
 - (b) a manager acting on behalf of a mutual fund; and
 - (c) a holder of specified securities previously allotted by a French issuer with a view to their being offered for sale to eligible persons; and
 - (d) a person acting on behalf of a person referred to in paragraph (a), (b), or (c).

- (2) Every person to whom this clause applies is exempted from sections 33(3), 37, 37A, 38A, and 51 to 54B of the Act, from the 1983 Regulations (except regulation 8), and from the 2009 Regulations (except regulation 23) in respect of specified securities offered to eligible persons under the French issuer's employee share purchase scheme.

6 Exemptions for savings scheme securities

- (1) This clause applies to—
- (a) a registered bank; and
 - (b) an overseas bank; and
 - (c) a French issuer; and
 - (d) a specified subsidiary; and
 - (e) a person acting on behalf of a person referred to in paragraph (a), (b), (c), or (d).
- (2) Every person to whom this clause applies is exempted from sections 33(2) and (3), 37, 37A, 38A, and 51 to 54B of the Act, from the 1983 Regulations (except regulation 8), and from the 2009 Regulations (except regulation 23) in respect of savings scheme securities offered to eligible persons in connection with participation in the French issuer's employee share purchase scheme.

7 Condition that requires specified securities and savings scheme securities to be allotted only to eligible persons

The exemptions in clauses 5 and 6 are subject to the condition that the specified securities or savings scheme securities (as the case may be) must be allotted only to the following persons:

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

8 Conditions that require other disclosure to be made

- (1) The exemptions in clauses 5 and 6 from sections 37, 37A, 38A, 54A, and 54B of the Act are subject to the condition that the person to whom the offer is made must receive, before

subscribing for the specified securities or the savings scheme securities (as the case may be),—

- (a) an English version or English translation of the following information (which may be in 1 or more documents):
 - (i) the most recent annual report of the French issuer; and
 - (ii) the most recent annual report of the mutual fund (if the employee share purchase scheme involves a mutual fund and an annual report has been prepared for the mutual fund); and
 - (iii) the most recent published financial statements of the French issuer; and
 - (iv) the most recent published financial statements of the mutual fund (if the employee share purchase scheme involves a mutual fund and financial statements have been prepared for the mutual fund); and
 - (v) the current rules of the employee share purchase scheme or a summary of those rules; and
 - (vi) the terms of the offer in New Zealand; or
 - (b) a notice stating—
 - (i) that the information described in paragraph (a) is available on an Internet or intranet site operated by, or on behalf of, the French issuer; and
 - (ii) the address of that Internet or intranet site; and
 - (iii) that the information described in paragraph (a) will be sent, without fee, to the person to whom the offer is made on request, and how and to whom that request may be made.
- (2) The exemptions in clauses 5 and 6 from sections 37, 37A, 38A, 54A, and 54B of the Act are subject to the further condition that the information described in subclause (1)(a) must be received by the Registrar of Companies before the date of allotment of the specified securities or savings scheme securities (as the case may be).

9 Condition that requires specified securities to be offered in France

- (1) The exemptions in clause 5 are subject to the condition that, at the time of the offer, specified securities must also be offered, or must previously have been offered, under the employee share purchase scheme or a parallel scheme, in France.
- (2) In this clause, **parallel scheme** means a scheme—
 - (a) under which eligible persons may acquire specified securities; and
 - (b) that is established under the laws of France; and
 - (c) the terms of which are substantially the same as those of the employee share purchase scheme except to the extent that variations are necessary or desirable to comply with, or to take into account, the laws of the jurisdictions in which specified securities are offered (whether under the parallel scheme or the employee share purchase scheme).

10 Condition that requires savings scheme securities funds be held in separate bank account

The exemptions in clause 6 from section 33(2) of the Act are subject to the condition that the subscriptions received for the savings scheme securities must be held in a bank account that holds only those subscriptions until the specified securities are allotted or the subscriptions disposed of in accordance with the employee share purchase scheme, whichever is the earlier.

11 Revocation

The Securities Act (French Issuers Employee Share Purchase Schemes) Exemption Notice 2005 (SR 2005/113) is revoked.

curities Act 1978, and are based on exemptions contained in the 2002 Exemption Notice.

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

- the situation of employee share purchase schemes established by French issuers is similar to that covered by the 2002 Exemption Notice. The 2002 Exemption Notice recognises that issuers incorporated under the laws of certain jurisdictions, and whose shares are listed on an exchange in certain jurisdictions, are already subject to an appropriate level of regulation in respect of offers of shares to employees. In addition, the cost of producing a prospectus and investment statement to comply with New Zealand law may preclude offers being made to New Zealand employees by French issuers:
- some French issuers are unable to comply with the 2002 Exemption Notice. This is because the offers involve a particular vehicle for offering securities to employees, known as a *Fonds Commun de Placement d'Enterprise*, that is not covered by the 2002 Exemption Notice. However, the Commission is satisfied that the policy of the 2002 Exemption Notice should apply in this case:
- the terms and conditions of this notice are consistent with those of the 2002 Exemption Notice.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 26 March 2010.
This notice is administered by the Securities Commission.
