



Securities Act (NZX Limited) 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 (NZX Limited) 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 April 2015.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
- 2009 Regulations** means the Securities Regulations 2009
- Act** means the Securities Act 1978
- NZX** means—
- (a) NZX Limited; and
 - (b) every wholly owned subsidiary of NZX Limited
- NZX market** means a securities market operated by NZX Limited
- Special Division** means the division of the NZ Markets Disciplinary Tribunal known by that name that is constituted under rule 3.2.1 of the NZ Markets Disciplinary Tribunal Rules.
- (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 Exemption from regulation 23 of 1983 Regulations

NZX and every person acting on its behalf are exempted from regulation 23 of the Securities Regulations 1983 in respect of securities issued by NZX.

6 Condition of exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that the registered prospectus and any advertisement relating to the securities must contain the statement required by this clause.
- (2) If the securities are of a new class and the registered prospectus or advertisement refers to an application to list them on an NZX market, the statement required by this clause is—
- “Application has been made to the Special Division that regulates NZX for permission to list the securities being offered. The listing requirements of NZX that can be complied with on or before the date of the [*prospectus or distribution of the advertisement*] have been duly complied with. However, the Special Division accepts no responsibility for any statement in this [*prospectus or advertisement*].”
- (3) If the securities are of a class that is already listed on an NZX market and the registered prospectus or advertisement refers

to the securities being listed on the NZX market, the statement required by this clause is—

“The securities have been accepted for listing by the Special Division that regulates NZX and will be quoted upon completion of allotment procedures. However, the Special Division accepts no responsibility for any statement in this [*prospectus or advertisement*].”

- (4) If it is not intended that the securities will be listed on an NZX market, the statement required by this clause is a statement to the effect that listing of the securities on an NZX market is not being sought.

7 Exemption from regulation 39 of 2009 Regulations

NZX and every person acting on its behalf are exempted from regulation 39 of the 2009 Regulations in respect of securities issued by NZX if—

- (a) the securities are or will be listed on an NZX market; or
- (b) an application to list the securities on an NZX market has been made, but has not yet been determined.

8 Condition of exemption in clause 7

The exemption in clause 7 is subject to the condition that the registered prospectus and any advertisement relating to the securities must either—

- (a) contain a statement about listing the securities or the application that is approved by the Special Division; or
- (b) contain no statement nor otherwise imply that—
 - (i) the securities are or will be listed on a securities market; or
 - (ii) an application has been or will be made to list the securities on a securities market.

Dated at Wellington this 18th day of May 2010.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 April 2015, exempts NZX Limited and its subsidiaries, subject to conditions, from regulation 23 of the Securities Regulations 1983 in respect of securities offered by the companies. The effect of the exemption is that references in registered prospectuses and advertisements to applications for listing on a securities market operated by NZX Limited (an **NZX market**) must be accompanied by a statement to the same effect as the statement required by regulation 23(2) or (3) of those regulations, but modified where appropriate by references to the Special Division of the NZ Markets Disciplinary Tribunal that regulates NZX Limited. This notice also exempts NZX Limited and its subsidiaries, subject to conditions, from regulation 39 of the Securities Regulations 2009 in respect of securities offered by the companies that are intended to be listed on an NZX market. The effect of the exemption is that registered prospectuses and advertisements must contain either a statement about listing or an application for listing that is approved by the Special Division or no statement about listing.

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

- (a) as an issuer, NZX Limited cannot make the statement required by regulation 23(2) or (3) of the Securities Regulations 1983 that it accepts no responsibility for any statement in the prospectus or advertisement relating to its securities, since, in law, it is responsible for those statements; and

- (b) it is inappropriate that NZX Limited, as the operator of NZX markets, approve statements referring to the listing on NZX markets, or applications for such listing, of its own securities. Because the Special Division is the entity responsible for applications made by NZX Limited to quote its securities on NZX markets, and the approval of any offer document in respect of the offer of securities that are intended to be quoted on NZX markets, it is appropriate that the Special Division be required to approve any statement referring to the listing of the securities on NZX markets or the application.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 20 May 2010.
This notice is administered by the Securities Commission.
