



## Securities Act (Crown Retail Deposit Guarantee 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 (Crown Retail Deposit Guarantee 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 31 December 2011.

### 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

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

**Crown guarantee** means a guarantee given under a deposit guarantee scheme

**deposit guarantee scheme** means—

(a) the New Zealand deposit guarantee scheme announced by or on behalf of the Crown on or about 12 October 2008 relating to guarantees to be given by the Minister of Finance on behalf of the Crown in respect of certain financial institutions under section 65ZD of the Public Finance Act 1989; or

(b) the scheme under which guarantees may be given by a Minister on behalf of the Crown in respect of certain financial institutions under the Crown Retail Deposit Guarantee Scheme Act 2009

**non-bank** means a specified financial institution that is not a bank

**specified financial institution** means a person that is a party to a deed of guarantee entered into under a deposit guaran-

tee scheme under which certain obligations of that person are guaranteed by the Crown

**specified security** means a security in respect of which the Crown has given a guarantee under a deposit guarantee scheme.

- (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 from regulations 9 and 11 of Securities Regulations 1983 and regulations 24 and 25 of Securities Regulations 2009**

Every specified financial institution, and every person acting on its behalf, is exempted, in respect of an advertisement for specified securities that refers to the Crown guarantee, from—

- (a) regulations 9 and 11 of the 1983 regulations; and  
(b) regulations 24 and 25 of the 2009 regulations.

**6 Conditions of exemptions in clause 5**

- (1) The exemptions in clause 5 are subject to the conditions that—
- (a) the advertisement must comply with regulations 9 and 11 of the 1983 regulations or regulations 24 and 25 of the 2009 regulations (as the case may be) in respect of matters other than the reference to the Crown guarantee; and
- (b) the reference to the Crown guarantee in the advertisement must be in the following form: “[*name of specified financial institution*] has a guarantee under a Crown retail deposit guarantee scheme, being a guarantee that expires on [*expiry date*]”; and
- (c) in the case of an advertisement that refers to both specified securities and other securities, the advertisement must contain a statement in the following form: “[*name of class or classes of securities referred to in the advertisement that are not specified securities*] offered by [*name of specified financial institution*] are not covered by the guarantee given under the Crown retail deposit guarantee scheme”; and

- (d) in the case of an advertisement other than an investment statement, any other information contained in the advertisement concerning the Crown guarantee must be limited to—
    - (i) a statement to the effect that further information about the deposit guarantee scheme is available, free of charge and at all reasonable times, on the Internet site maintained by, or on behalf of, the Treasury; and
    - (ii) any other information or statement that is necessary to avoid misleading or confusing investors about the application of the Crown guarantee (whether in respect of the specified financial institution or any securities offered by the specified financial institution); and
  - (e) the advertisement must not contain any information, sound, image, or other matter that is inconsistent with information published about the deposit guarantee scheme under which the Crown guarantee was given on the Internet site maintained by, or on behalf of, the Treasury.
- (2) The following exemptions are subject to the condition that if there is a registered prospectus relating to the specified securities, a memorandum of amendments containing amendments required to update the prospectus as a result of the Crown guarantee must be, or have been, delivered to the Registrar of Companies within the specified period:
- (a) the exemption in clause 5 from regulation 9 of the 1983 regulations;
  - (b) the exemption in clause 5 from regulation 24 of the 2009 regulations to the extent that the exemption is from the requirement that an advertisement must not contain any information, sound, image, or other matter that is inconsistent with any registered prospectus for the securities to which the advertisement relates.
- (3) In subclause (2), **specified period** means,—
- (a) in the case of the Crown guarantee being given under the Crown Retail Deposit Guarantee Scheme Act 2009

- before the commencement of this notice, 5 working days after the commencement of this notice; or
- (b) in any other case, 5 working days after the date on which the specified financial institution becomes, or became, a party to the deed of guarantee entered into in respect of the Crown guarantee.

**7 Exemptions from regulation 17 of Securities Regulations 1983 and regulation 30 of Securities Regulations 2009**

- (1) Every specified financial institution, and every person acting on its behalf, is exempted, in respect of an advertisement for specified securities that refers to the Crown guarantee, from—
- (a) regulation 17(1) of the 1983 regulations; and
- (b) regulation 30(1) of the 2009 regulations.
- (2) However, an exemption in subclause (1) applies only if either—
- (a) the only difference between the advertisement and another advertisement in respect of which a certificate that complies with any of the following has been completed is the reference to the Crown guarantee:
- (i) regulation 17(2) of the 1983 regulations;
- (ii) regulation 30(2) of the 2009 regulations;
- (iii) clause 10 of the Securities Act (Banks) Exemption Notice 2002; or
- (b) regulation 17(3) of the 1983 regulations or regulation 31 of the 2009 regulations would apply if the advertisement did not refer to the Crown guarantee.
- (3) The exemptions in subclause (1) are subject to the condition that,—
- (a) in the case of an advertisement other than an investment statement, the advertisement complies with the conditions in clause 6(1)(b) to (e);
- (b) in the case of an advertisement that is an investment statement, the investment statement must contain, or be accompanied by, the information and statements referred to in clause 9(1)(a).
- (4) Every specified financial institution, and every person acting on its behalf, is exempted, in respect of an advertisement for specified securities that refers to the Crown guarantee, from

- regulation 17(2) of the 1983 regulations and regulation 30(2) of the 2009 regulations to the extent that those provisions require certification that the advertisement does not contain any matter that is inconsistent with,—
- (a) in the case of a bank and an offer to which the 1983 regulations apply, the disclosure statement referred to in the advertisement; or
  - (b) in the case of a bank and an offer to which the 2009 regulations apply, the investment statement or disclosure statement for the securities; or
  - (c) in the case of a non-bank and an offer to which the 1983 regulations apply, the registered prospectus referred to in the advertisement; or
  - (d) in the case of a non-bank and an offer to which the 2009 regulations apply, the investment statement or the registered prospectus for the securities.
- (5) The exemptions in subclause (4) are, in the case of an advertisement other than an investment statement, subject to the condition that the certificate that is completed in respect of the advertisement certifies that the advertisement complies with the conditions in clause 6(1)(b) to (e) and certifies that, in all other respects, the advertisement does not contain any matter that is inconsistent with,—
- (a) in the case of a bank and an offer to which the 1983 regulations apply, the disclosure statement referred to in the advertisement; or
  - (b) in the case of a bank and an offer to which the 2009 regulations apply, the investment statement or disclosure statement for the securities; or
  - (c) in the case of a non-bank and an offer to which the 1983 regulations apply, the registered prospectus for the securities;
  - (d) in the case of a non-bank and an offer to which the 2009 regulations apply,—
    - (i) the registered prospectus for the securities; or
    - (ii) the investment statement for the securities.
- (6) The exemptions in subclause (4) are, in the case of an advertisement that is an investment statement, subject to the condition that the certificate that is completed in respect of the

advertisement certifies that the advertisement contains, or is accompanied by, the information and statements referred to in clause 9(1)(a) and certifies that, in all other respects, the advertisement does not contain any matter that is inconsistent with,—

- (a) in the case of a bank, the disclosure statement referred to in the advertisement or for the securities (as the case may be); or
- (b) in the case of a non-bank, the registered prospectus for the securities.

## **8 Exemptions in respect of certain matters required in registered prospectus**

- (1) Every specified financial institution, and every person acting on its behalf, is exempted, in respect of any registered prospectus that refers to the Crown guarantee, from—
  - (a) clause 4(2) of Schedule 2 of the 1983 regulations; and
  - (b) clause 4(2) of Schedule 2 of the 2009 regulations.
- (2) The exemptions in subclause (1) apply in the case of specified securities that are debt securities and specified securities that are treated as debt securities for the purpose of disclosure under Schedule 2 of the 1983 regulations or Schedule 2 of the 2009 regulations (as the case may be).

## **9 Conditions of exemptions in clause 8**

- (1) The exemptions in clause 8 are subject to the conditions that—
  - (a) the registered prospectus for the specified securities must contain the following information and statements:
    - (i) a statement that “[*name of specified financial institution*] has a guarantee under a Crown retail deposit guarantee scheme, being a guarantee that expires on [*expiry date*]”; and
    - (ii) a statement to the effect that further information about the deposit guarantee scheme is available, free of charge and at all reasonable times, on the Internet site maintained by, or on behalf of, the Treasury; and
    - (iii) a statement to the effect that the most recent audited statement of financial position of the Crown

- is available, free of charge and at all reasonable times, on the Internet site maintained by, or on behalf of, the Treasury; and
- (iv) in the case of a prospectus that relates to both specified securities and other securities, a statement in the following form: “[*name of class or classes of securities that the prospectus relates to that are not specified securities*] offered by [*name of specified financial institution*] are not covered by the guarantee given under the Crown retail deposit guarantee scheme”; and
  - (v) any other information or statement that is necessary to avoid misleading or confusing investors about the application of the Crown guarantee (whether in respect of the specified financial institution or any securities offered by the specified financial institution); and
- (b) the registered prospectus must not contain any information, sound, image, or other matter that is inconsistent with information published about the deposit guarantee scheme under which the Crown guarantee was given on the Internet site maintained by, or on behalf of, the Treasury.
- (2) For the purposes of the application of subclause (1)(a) under clauses 7(3)(b) and (6) and 11 in respect of an investment statement, the references to a prospectus must be read as a reference to the investment statement.

## **10 Exemptions from other provisions of Act, Securities Regulations 1983, and Securities Regulations 2009**

Every specified financial institution, and every person acting on its behalf, is exempted, in respect of specified securities, from—

- (a) regulation 7A(4) of the 1983 regulations and regulation 21 of the 2009 regulations in respect of information that must be disclosed in an investment statement about the deposit guarantee scheme under which the Crown guarantee was given; and

- (b) clause 10 of Schedule 3D of the 1983 regulations and clause 10 of Schedule 13 of the 2009 regulations to the extent that those provisions require information about the Crown guarantee; and
- (c) clause 20 of Schedule 3D of the 1983 regulations and clause 20 of Schedule 13 of the 2009 regulations to the extent that those provisions require the investment statement for those securities to state that financial statements of the Crown are available on request from the specified financial institution; and
- (d) section 54B(1) of the Act to the extent that the provision requires the specified financial institution, on request, to send, or cause to be sent, to a security holder the financial statements of the Crown.

#### **11 Condition of exemptions in clause 10**

The exemptions in clause 10 are subject to the condition that any investment statement for the specified securities that is distributed during a time when the specified financial institution is relying on any of those exemptions must contain, or be accompanied by, the information and statements referred to in clause 9(1)(a).

#### **12 Consequential amendments to Securities Act (Audiovisual Advertisements) Exemption Notice 2002**

- (1) This clause amends the Securities Act (Audiovisual Advertisements) Exemption Notice 2002.
- (2) Clause 5(d) is amended by inserting “or the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010” after “2008”.
- (3) Clause 7 is amended by revoking subclause (2) and substituting the following subclause:
  - “(2) If the advertisement refers to a Crown guarantee—
    - “(a) within the meaning of the Securities Act (New Zealand Deposit Guarantee Scheme) Exemption Notice 2008 and the issuer is relying on that notice, the exemptions in clause 6 are also subject to the conditions set out in clause 6(b) to (e) of that notice:

“(b) within the meaning of the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010 and the issuer is relying on that notice, the exemptions in clause 6 are also subject to the conditions set out in clause 6(1)(b) to (e) of that notice.”

**13 Consequential amendment to Securities Act (Banks)  
Exemption Notice 2002**

- (1) This clause amends the Securities Act (Banks) Exemption Notice 2002.
- (2) Clause 10 is amended by revoking subclause (2A) and substituting the following subclause:

“(2A) Despite subclauses (1) and (2), if the advertisement refers to a Crown guarantee, the bank is relying on the Securities Act (New Zealand Deposit Guarantee Scheme) Exemption Notice 2008 (the **2008 notice**) or the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010 (the **2010 notice**), and the certificate that relates to the advertisement complies with the condition in clause 7(5) of the 2008 notice or clause 7(5) or (6) of the 2010 notice, the certificate does not need to be in the form set out in Schedule 4 of the Regulations to the extent that the form requires certification that the advertisement does not contain any matter that is inconsistent with the disclosure statement referred to in the advertisement.”

**14 Securities Act (New Zealand Deposit Guarantee Scheme)  
Exemption Notice 2008 revoked**

The Securities Act (New Zealand Deposit Guarantee Scheme) Exemption Notice 2008 (SR 2008/388) is revoked.

**15 Transitional provision**

- (1) This clause applies to any specified security (within the meaning of the Securities Act (New Zealand Deposit Guarantee Scheme) Exemption Notice 2008) offered to the public in a registered prospectus, or under a disclosure statement, dated on or before the date on which this notice comes into force.

- (2) An offer and allotment of a security to which this clause applies may, until 12 October 2010, be made in accordance with either—
- (a) this notice; or
  - (b) the Securities Act (New Zealand Deposit Guarantee Scheme) Exemption Notice 2008 as in force immediately before that notice was revoked as if that notice had not been revoked.
- (3) An advertisement for a security to which this clause applies may be distributed on or before 12 October 2010 in accordance with either—
- (a) this notice; or
  - (b) the Securities Act (New Zealand Deposit Guarantee Scheme) Exemption Notice 2008 as in force immediately before that notice was revoked as if that notice had not been revoked.

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.

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### 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 December 2011, replaces the Securities Act (New Zealand Deposit Guarantee Scheme) Exemption Notice 2008 (the **2008 notice**).

This notice exempts financial institutions that are a party to a deed of guarantee entered into with the Crown under a Crown retail deposit guarantee scheme from certain provisions of the Securities Act 1978, the Securities Regulations 1983, and the Securities Regulations 2009 in order to facilitate the operation of that deposit guarantee scheme.

The main differences between this notice and the 2008 notice are as follows:

- this notice expires on 31 December 2011 (rather than 12 October 2010);
- this notice applies to guarantees given under the Crown Retail Deposit Guarantee Scheme Act 2009 as well as guarantees under the New Zealand deposit guarantee scheme;
- this notice includes exemptions from the Securities Regulations 2009 that are equivalent to the exemptions from the Securities Regulations 1983 that were contained in the 2008 notice; and
- this notice contains a number of technical changes to clarify the operation of the notice.

The Securities Commission considers that the exemptions are appropriate because the New Zealand Deposit Guarantee Scheme was put in place to maintain public confidence in New Zealand's financial system and to maintain the confidence of general public depositors in relevant New Zealand financial institutions. The Crown Retail Deposit Guarantee Scheme Act 2009 was passed to provide a mechanism for providing extended guarantees to certain financial institutions to maintain public confidence in those institutions and in New Zealand financial institutions more generally. Securities law contains specific rules concerning advertising and disclosure of guarantees. The exemptions in this notice facilitate prompt and simple disclosure to investors about any issuer's coverage under the schemes. The exemptions also encourage the delivery of standardised information about the schemes in order to avoid investor confusion about the schemes and the application of a Crown guarantee to any issuer. The

conditions of exemption require the issuers to advise investors about their coverage under the schemes, refer investors to an authoritative source of information about the schemes, and prevent descriptions of the schemes that are inconsistent with official descriptions.

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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.

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