



Securities Act (PGG Wrightson Finance 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 (PGG Wrightson Finance 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 31 December 2011.

4 Interpretation

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

Act means the Securities Act 1978

bond offer means the bond offer by PGG Wrightson contained in a combined prospectus and investment statement offer document dated 17 November 2008

bondholders means the persons registered as the holders of the bonds

bonds means the bonds allotted by PGG Wrightson on 23 December 2008 under the bond offer

Crown guarantee has the same meaning as in clause 4(1) of the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010

extended guarantee means the Crown guarantee given to PGG Wrightson on 1 April 2010 under the Crown Retail Deposit Guarantee Scheme Act 2009

original guarantee means the Crown guarantees given to PGG Wrightson under the New Zealand deposit guarantee scheme announced by or on behalf of the Crown on or about 12 October 2008 relating to guarantees given by the Minister of Finance on behalf of the Crown for certain financial institutions under section 65ZD of the Public Finance Act 1989

PGG Wrightson means PGG Wrightson Finance Limited

principal amount has the meaning given to that term in the terms and conditions of the bonds set out in the trust deed

proposal means the proposal by PGG Wrightson to vary the terms and conditions of the bonds (in particular, those relating to the term extension option contained in the bond offer) by way of an amendment to the trust deed

prospectus means the short form prospectus to be prepared by PGG Wrightson for the proposal

Regulations means the Securities Regulations 2009

specified security has the same meaning as in clause 4(1) of the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010

trust deed means the trust deed dated 21 April 2005 (as amended) between PGG Wrightson and the trustee relating to the bonds

trustee means New Zealand Permanent Trustees Limited.

- (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 37A(1)(a) of Act

PGG Wrightson and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of the proposal.

6 Exemption from clause 9 of Schedule 8 of Regulations

PGG Wrightson and every person acting on its behalf are exempted from clause 9 of Schedule 8 of the Regulations in respect of the prospectus.

7 Exemption from Securities (Moratorium) Regulations 2009

PGG Wrightson and every person acting on its behalf are exempted from the Securities (Moratorium) Regulations 2009 in respect of the proposal.

8 Conditions of exemptions in clauses 5, 6, and 7

The exemptions in clauses 5, 6, and 7 are subject to the conditions that—

- (a) PGG Wrightson registers the prospectus; and
- (b) the prospectus complies with the relevant requirements for a short form prospectus for debt securities set out in the Act and the Regulations; and

- (c) the prospectus also includes the information set out in the Schedule of this notice; and
- (d) the prospectus accompanies every notice of meeting sent to New Zealand bondholders in relation to the proposal.

9 Exemption from regulations 24 and 25 of Regulations

PGG Wrightson and every person acting on its behalf are exempted from regulations 24 and 25 of the Regulations in respect of an advertisement for the proposal that refers to the Crown guarantee.

10 Conditions of exemption in clause 9

The exemption in clause 9 is subject to the conditions that—

- (a) PGG Wrightson complies with the conditions in clause 6(1) of the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010 (apart from clause 6(1)(d)(ii)); and
- (b) any information or statement contained in the advertisement concerning the Crown guarantee is limited to—
 - (i) a description of the differences between the original guarantee and the extended guarantee to the extent that those differences are relevant to the bondholders' decision to vote for or against the proposal; and
 - (ii) a description of the consequences of the extended guarantee, as compared with the original guarantee, for bondholders who hold (in aggregate) more than \$250,000 worth of bonds and other specified securities of PGG Wrightson; and
 - (iii) any other information or statement that is necessary to avoid misleading or confusing investors about the application of the Crown guarantee (whether for PGG Wrightson, the bonds, or the proposal).

11 Exemption from clause 2(2) and (3) of Schedule 8 of Regulations

PGG Wrightson and every person acting on its behalf are exempted from clause 2(2) and (3) of Schedule 8 of the Regulations in respect of a reference in the prospectus to the Crown guarantee.

12 Conditions of exemption in clause 11

The exemption in clause 11 is subject to the conditions that—

- (a) PGG Wrightson complies with the conditions in clause 9(1) of the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010 (apart from clause 9(1)(a)(v)); and
 - (b) any information or statement contained in the prospectus concerning the Crown guarantee is limited to—
 - (i) a description of the differences between the original guarantee and the extended guarantee to the extent that those differences are relevant to the bondholders' decision to vote for or against the proposal; and
 - (ii) a description of the consequences of the extended guarantee, as compared with the original guarantee, for bondholders who hold (in aggregate) more than \$250,000 worth of bonds and other specified securities of PGG Wrightson; and
 - (iii) any other information or statement that is necessary to avoid misleading or confusing investors about the application of the Crown guarantee (whether for PGG Wrightson, the bonds, or the proposal).
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Schedule

Content of prospectus

cl 8(c)

1 Important notice to bondholders

On the page immediately following the title page under the heading “Important Information”, statements to the effect that—

- (a) the information contained in the prospectus is required under the Act and the terms of an exemption granted by the Securities Commission;
- (b) the proposal has consequences, alters the rights of bondholders, and may result in the maturity date of the bonds being extended by up to 12 months;
- (c) the prospectus, together with the trust deed and other documents available to bondholders, outlines the bondholders’ rights in relation to the proposal;
- (d) bondholders should read all documents carefully, ask questions, and seek professional advice from an adviser before voting for or against the proposal.

2 Index of important matters

- (1) After the information required by clause 1, an index of important matters stating the clause headings included in this schedule and the page number on which the information required by each clause of this schedule can be found.
- (2) This clause need not be included in the index of important matters.

3 Description of the proposal

A balanced description of the proposal and its effect.

4 Statement of reasons for proposal

A statement by the directors of PGG Wrightson of the reasons why the proposal is being put to the bondholders.

5 Crown guarantee

A description of the differences between the original guarantee and the extended guarantee to the extent that those differences

are relevant to the bondholders' decision to vote for or against the proposal.

6 Voting on proposal

- (1) A description of the voting requirements of the trust deed to approve the proposal.
- (2) A statement to the effect that if 75% of the bondholders present (whether in person or by proxy) and voting at a meeting of bondholders vote in favour of the proposal, the proposal is approved and binds all bondholders.

7 Statement concerning exercise of term extension option

A statement by the directors of PGG Wrightson identifying the circumstances that will influence their decision on whether to exercise the term extension option (if the proposal is first approved in accordance with the requirements in the trust deed).

8 Sale of bonds

A description of how the bondholders can sell their bonds.

9 Bondholders holding more than \$250,000 worth of bonds and other specified securities of PGG Wrightson

A separate section for bondholders who hold (in aggregate) more than \$250,000 worth of bonds and other specified securities of PGG Wrightson, which must include—

- (a) details of the effect of the proposal on those bondholders:
- (b) a description of the differences between the original guarantee and the extended guarantee to the extent that those differences are relevant to those bondholders' decision to vote for or against the proposal, and a description of the consequences of the extended guarantee, when compared with the original guarantee, for those bondholders:
- (c) details of the consequences for those bondholders if 75% of the bondholders present (whether in person or by proxy) and voting at a meeting of bondholders vote in favour of the proposal:

- (d) for those bondholders who wish to sell their bonds so as to reduce the aggregate amount of bonds and other specified securities of PGG Wrightson that they hold to less than \$250,000 (**excess bonds**),—
 - (i) details of the put option that forms part of the proposal in accordance with which PGG Wrightson (or its nominee) will buy the excess bonds at face value; and
 - (ii) the arrangements and measures that are in place to enable them to do so.

10 Risks relating to bonds

- (1) A brief description of the principal risks of—
 - (a) the principal of the bonds not being received in full by a bondholder upon the maturity date of the bonds; and
 - (b) a bondholder not receiving the returns promised in respect of the bonds.
- (2) If it is reasonably foreseeable that, on termination of any bond at any time, a bondholder will have received, in total, less than the amount paid to PGG Wrightson for the bond, a statement to this effect and a brief description of circumstances that may produce that result.
- (3) A statement as to whether bondholders will or may be liable to pay money to any person as a result of the insolvency of PGG Wrightson and, if so, a brief description of the liability.

11 Whom can bondholders contact with inquiries about proposal and bonds?

The names or descriptions of officers, employees, or agents of PGG Wrightson to whom inquiries about the proposal and the bonds can be made, and the contact details of those people (which must include an address and a business telephone number).

12 To whom can bondholders complain if they have problems after proposal is accepted?

- (1) The names or descriptions of officers, employees, or agents of PGG Wrightson to whom complaints about the bonds, if the proposal is accepted, can be made and the contact details of

those people (which must include an address and a business telephone number).

- (2) A statement to the effect that complaints about the bonds, if the proposal is accepted, can be made to the trustee or an industry body and the contact details of those people (which must include an address and a business telephone number).

13 What other information is available to bondholders?

A statement—

- (a) to the effect that other information about PGG Wrightson, the bonds, and the proposal is contained or referred to in the prospectus, the trust deed, and financial statements of, or relating to, PGG Wrightson, the bonds, or the proposal; and
- (b) describing where a copy of the prospectus, the trust deed, and the most recent financial statements of, or relating to, PGG Wrightson, the bonds, or the proposal, can be obtained free of charge; and
- (c) to the effect that the prospectus, trust deed, financial statements, and other documents of, or relating to, PGG Wrightson, the bonds, or the proposal are filed on a public register at the Companies Office of the Ministry of Economic Development and available for public inspection (including at <http://www.companies.govt.nz>).

14 Periodic information

A statement of the type of information that is required to be, or otherwise will be, given periodically to bondholders by PGG Wrightson.

15 On-request information

A statement—

- (a) describing the type of information relating to PGG Wrightson, the bonds, or the proposal that is required to be, or otherwise will be, available on request from PGG Wrightson; and
- (b) explaining how the request should be made; and
- (c) as to whether any charge may be made for the information and the amount of the charge.

16 Directors' statement

A statement by the directors of PGG Wrightson as to whether, in their opinion, after due inquiry by them, any of the following has materially and adversely changed during the period between the date of the latest statement of financial position of PGG Wrightson attached to, contained in, or referred to in the prospectus in accordance with regulation 6 of the Regulations and the specified date:

- (a) the trading or profitability of PGG Wrightson:
- (b) the value of its assets:
- (c) the ability of PGG Wrightson to pay its liabilities due within the next 12 months:
- (d) the ability of PGG Wrightson to repay the bonds upon their maturity date.

Dated at Wellington this 6th day of July 2010.

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

[Seal]

David Mayhew,
Member.

Statement of reasons

This notice, which comes into force on the day after its notification in the *Gazette* and expires on 31 December 2011, exempts PGG Wrightson Finance Limited (**PGG Wrightson**) from section 37A(1)(a) of the Securities Act 1978 (the **Act**), regulations 24 and 25 and clauses 2(2), 2(3), and 9 of Schedule 8 of the Securities Regulations 2009 (the

Regulations), and the Securities (Moratorium) Regulations 2009. The exemptions are all subject to conditions.

The exemptions concern bonds that were allotted by PGG Wrightson on 23 December 2008 and a proposal by PGG Wrightson to vary the terms and conditions of the bonds. The exemptions are granted in order to provide for the appropriate disclosure of all material matters about the proposal to bondholders.

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

- the bonds offered by PGG Wrightson are subject to an extension option exercisable by PGG Wrightson on the condition that the Crown guarantee is extended for a period greater than the term extension period and on terms that are at least as favourable as those contained in the New Zealand deposit guarantee scheme:
- the extended Crown guarantee received under the Crown retail deposit guarantee scheme for the bonds is not on terms that are at least as favourable to all bondholders as the original Crown guarantee. The term extension option therefore cannot be exercised without amendment to the terms of bonds to refer to the extended Crown guarantee:
- a proposal to vary the terms of an existing debt security that extends the time for payment of the principal amount or other returns would mean that, technically, PGG Wrightson must comply with the Securities (Moratorium) Regulations 2009 even though it is not in moratorium (in the ordinary meaning of the word):
- the Act enables offers of securities to existing holders of securities to be made by way of a short form prospectus and investment statement that complies with the Act and the Regulations. The conditions of exemption ensure that bondholders are instead provided with a short form prospectus that complies with the Act and the Regulations and that the short form prospectus includes additional information relevant to bondholders considering whether or not to accept the variation proposal rather than documents that comply with the Securities (Moratorium) Regulations 2009:

- the conditions ensure that PGG Wrightson provides bondholders affected by changes in the terms of the Crown guarantee with a put option should bondholders wish to redeem any bonds that are in excess of \$250,000 worth of bonds and other specified securities of PGG Wrightson held by them:
- exemptions similar to that granted by the Securities Commission in terms of the Securities Act (Crown Retail Deposit Guarantee Schemes) Exemption Notice 2010 remain applicable to PGG Wrightson. The exemptions granted carry forward those exemptions subject to modifications permitting further disclosures regarding the differences between the Crown guarantee under the original guarantee and that under the extended guarantee.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 8 July 2010.
This notice is administered by the Securities Commission.
