



## **Financial Reporting Act (Overseas Issuers) Exemption Amendment Notice (No 2) 2010**

Pursuant to section 35A of the Financial Reporting Act 1993, 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 Financial Reporting Act (Overseas Issuers) Exemption Amendment Notice (No 2) 2010.
- 2 Commencement**  
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Principal notice amended**  
This notice amends the Financial Reporting Act (Overseas Issuers) Exemption Notice 2009.
- 4 Schedule 1 amended**  
Schedule 1 is amended by adding the following item:

Germany	The German Commercial Code (Handelsgesetzbuch) and the German Securities Trading Act (Wertpapierhandelsgesetz)	Generally accepted accounting principles in Germany or international accounting standards (within the meaning of Regulation (EC) No 1606/2002)	Section 37v of the Securities Trading Act (Wertpapierhandelsgesetz)
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Dated at Wellington this 17th day of August 2010.

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

[Seal]

David Mayhew,  
Member.

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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*, amends the Financial Reporting Act (Overseas Issuers) Exemption Notice 2009 (the **principal notice**), by adding Germany to the list of specified jurisdictions.

The Securities Commission (the **Commission**) considers it appropriate to grant the exemptions because—

- German issuers are subject to the same considerations and issues facing the Netherlands, United States of America, and United Kingdom issuers (who are already included in the principal notice):

- the effect of the exemptions is to allow issuers incorporated in Germany that offer securities under certain exemption notices under the Securities Act 1978 (the **1978 Act**) to provide financial statements that they are required to prepare under the financial reporting requirements of Germany. The principal differences in financial statements provided by issuers relying on the exemptions are that—
  - the directors of a German issuer will prepare and register consolidated financial statements only; and
  - financial statements will comply with the requirements set out in German legislation and will comply with generally accepted accounting practice in Germany rather than generally accepted accounting practice in New Zealand; and
  - financial statements will be audited in accordance with the requirements set out in German legislation and the auditor's report will provide the information required by German legislation instead of the Financial Reporting Act 1993:
- the Commission has had regard to the financial reporting and auditing requirements that must be complied with by German issuers and considers that the financial reporting obligations under the laws of Germany would provide New Zealand securities holders with adequate financial information about companies in which they invest and that Germany has adequate regulatory and enforcement mechanisms in this regard. The exemptions are limited to issuers that must comply with the financial and audit requirements set out in the German Commercial Code (Handelsgesetzbuch) and the German Securities Trading Act (Wertpapierhandelsgesetz):
- German issuers are required under the laws of Germany to publish audited financial statements prepared in accordance with international financial reporting standards that have been endorsed by the European Union (**EU IFRS**). The Commission is satisfied that the consolidated financial statements prepared under EU IFRS provide sufficient information to avoid any detriment to subscribers who invest in these issuers.

- there will be no significant detriment to subscribers because the exemptions apply only to subscribers for offers of securities made in reliance on certain exemption notices under the 1978 Act. Those notices allow overseas issuers to provide offer documents that comply with overseas requirements (including in relation to financial statements). Therefore the financial disclosure provided under the exemptions is consistent with the initial offer documents provided to the subscribers:
- there will be no detriment to subscribers as a result of this amendment, because the notice being amended (the Financial Reporting Act (Overseas Issuers) Exemption Notice 2009) includes a condition that the specified financial statements are accompanied by a report by an approved auditor who is qualified under the law of the jurisdiction in which the exempt issuer is incorporated. The Commission has had regard to the audit requirements of Germany:
- the exemptions address the particular difficulties experienced by German issuers that issue securities in New Zealand. The exemptions are not broader than what is reasonably necessary to address these difficulties and still require that group financial statements be filed in New Zealand.

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

Date of notification in *Gazette*: 19 August 2010.

This notice is administered by the Securities Commission.

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