



Securities Act (Endace 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 (Endace 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 27 August 2015.

4 Interpretation

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

Act means the Securities Act 1978

AIM means the Alternative Investment Market of the London Stock Exchange plc

eligible person has the same meaning as in the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006 (or in any notice that replaces it), as if Endace were a listed company

employee share purchase scheme means a scheme established by Endace, and existing at the date of this notice (subject to such modifications as may be made from time to time), under which certain persons are entitled to acquire specified equity securities

entitled person means an eligible person who is entitled to acquire specified equity securities

Endace means Endace Limited

Regulations means the Securities Regulations 2009

specified equity securities means ordinary shares, or rights or options to acquire ordinary shares, issued by Endace under its employee share purchase scheme.

- (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 Exemptions

Endace and every person acting on its behalf are exempted from the following provisions in respect of specified equity securities:

- (a) section 37A(1)(c) of the Act:
- (b) regulation 39 of the Regulations:
- (c) regulation 5(1)(a) of the Regulations, to the extent that it requires the prospectus to contain the information, statements, and other matters in—
 - (i) clauses 4 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the Regulations; and

- (ii) clause 21 of Schedule 1 of the Regulations, to the extent that it requires the registered prospectus to contain—
 - (A) the dates, time periods, and price terms relevant to the particular offer under the employee share purchase scheme; and
 - (B) information personal to the person to whom the registered prospectus is distributed:
- (d) regulation 19 of the Regulations, to the extent that it requires the investment statement to contain the matters in clause 5(1)(c) of Schedule 13 of the Regulations.

6 Conditions applying to all exemptions

The exemptions in clause 5 are subject to the following conditions:

- (a) that Endace's shares have been and remain admitted to trading on the AIM:
- (b) that the specified equity securities are allotted only to the following persons:
 - (i) persons who are entitled persons at the time of allotment of the specified equity securities:
 - (ii) in the case of specified equity securities that are allotted on the exercise of rights or options to acquire shares, persons who are entitled persons at the time of allotment of those rights or options.

7 Further condition of exemption in clause 5(a)

The exemption in clause 5(a) is subject to the further condition that it is a term of the offer of specified equity securities that every copy of the registered prospectus sent to a person under section 54B of the Act contains or is accompanied by the most recent audited consolidated financial statements of the issuing group that comply with the Financial Reporting Act 1993.

8 Further condition of exemption in clause 5(b)

The exemption in clause 5(b) is subject to the further condition that—

- (a) every registered prospectus or investment statement in respect of the specified equity securities contains a statement advising that Endace's shares have been admitted to trading on the AIM; and
- (b) the statement described in paragraph (a) is in a form that complies with any requirements of the AIM and the laws of the United Kingdom.

9 Further condition of exemption in clause 5(c)(ii)

The exemption in clause 5(c)(ii) is subject to the further condition that, before an entitled person subscribes for specified equity securities, the person is provided with a separate document setting out the information referred to in clause 5(c)(ii)(A) and (B).

10 Further condition of exemption in clause 5(d)

The exemption in clause 5(d) is subject to the further condition that, if an entitled person who subscribes for specified securities will be required to make payment on specified dates or at a specified frequency, the person is provided, before subscribing for the specified equity securities, with a separate document that sets out the payment dates or frequency and the consequences of failing to make the payments.

Dated at Wellington this 24th day of August 2010.

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

[Seal]

N O Todd,
Member.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 27 August 2015. It updates and repeats exemptions contained in the Securities Act (Endace Limited) Exemption Notice 2005 (now expired) and includes 2 further exemptions that reflect exemptions in the Securities Act (Employee Share Purchase Schemes—Listed Companies) Exemption Notice 2006.

The notice exempts, subject to conditions, Endace Limited (**Endace**) in respect of equity securities issued by Endace that are offered under its employee share purchase scheme. The exemptions enable Endace to use an investment statement and an evergreen short-form prospectus when offering participation in its employee share purchase scheme to its employees and other eligible persons.

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

- Endace, a New Zealand incorporated company, cannot take advantage of the Commission's class exemption for New Zealand listed issuers in offering its employee share purchase scheme to employees in New Zealand because it is not listed on a securities market operated by New Zealand Exchange Limited (**NZX**). Instead, Endace's shares are admitted to trading on the Alternative Investment Market of the London Stock Exchange plc (**AIM**). The Commission considers that Endace should be able to take advantage of the same exemptions available to NZX-listed issuers because Endace is subject to appropriate ongoing disclosure obligations by virtue of its

AIM admission, and an available market and liquidity exist for employees to be able to price and sell their shares:

- The exemption reproduces the provisions of an expired notice, with changes necessary to refer to the Securities Regulations 2009:
- The exemption extends the class of persons to whom shares may be offered under the exemption by referring to eligible persons as defined in the Securities Act (Employee Share Purchase Scheme—Listed Companies) Exemption Notice 2006, and makes other changes intended to achieve consistency with that notice.

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