

Securities Act (Auckland Transport) Exemption Notice 2011

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- 1 Title**
This notice is the Securities Act (Auckland Transport) Exemption Notice 2011.
- 2 Commencement**
This notice comes into force on 25 November 2011.
- 3 Expiry**
This notice expires on the close of 31 October 2016.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978

Auckland Transport means Auckland Transport, a body corporate established under the Local Government (Auckland Council) Act 2009



Cards means the Auckland integrated fare system cards issued by Auckland Transport, and includes any renewal or variation of those cards in accordance with the terms of use

net amount, in relation to specified debt securities, means an amount equivalent to the face value of all specified debt securities issued by Auckland Transport less any amounts that have been cancelled, redeemed, or forfeited in accordance with the terms of use

Regulations means the Securities Regulations 2009

specified debt securities means debt securities that are stored value credits held on the Cards issued by Auckland Transport in favour of security holders, which Auckland Transport is liable to repay to security holders in accordance with the terms of use (and does not include value held on the Cards as purchased period travel passes and purchased pre-paid rides which Auckland Transport is not liable to repay to security holders in accordance with the terms of use)

terms of use means the terms of use in relation to the Cards issued by Auckland Transport available on Auckland Transport's website.

- (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 trustee and trust deed requirements

Auckland Transport and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 33(2) of the Act.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) Auckland Transport maintains an amount that exceeds the net amount in a separate bank account kept specially for holding amounts deposited onto the Cards (including the specified debt securities) at a registered bank (as that term is defined in section 2(1) of the Reserve Bank of New Zealand Act 1989); and
- (b) it is a term of the terms of use that the net amount of the separate bank account is held on trust for holders of the specified debt securities, and the security holders have a right to a proportion of the account equal to the value of their specified debt securities, and the bank where the account is maintained has been given written notice of the status of the account as a trust account for the security holders; and
- (c) it is a term of offer that Auckland Transport is liable to repay the face value of any of the specified debt securities upon

request by any security holder within any period required in the terms of use, except in the limited circumstances stated in the terms of use.

7 Exemption relating to receipt of investment statements

Auckland Transport and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 37A(1)(a) of the Act.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) at all reasonable times, the terms of use are available free of charge on Auckland Transport's website;
- (b) every Card has printed on it a statement to the effect that by using the Cards, cardholders agree to the terms of use and refund conditions, which can be accessed on Auckland Transport's website; and
- (c) the terms of use refer to where cardholders can read the registered prospectus, the latest financial statements of Auckland Transport, and the annual certificates (referred to in clause 10(b)).

9 Exemptions from certain prospectus requirements

Auckland Transport and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 37A(1)(c) of the Act and clauses 8, 9, 14, 16 to 18, 21, and 22 of Schedule 2 of the Regulations.

10 Conditions of exemptions in clause 9

The exemptions in clause 9 are subject to the conditions that—

- (a) every registered prospectus containing or referring to an offer of the specified debt securities contains, or is accompanied by, a copy of the most recent audited financial statements of Auckland Transport that comply with the Local Government Act 2002 and the Financial Reporting Act 1993; and
- (b) Auckland Transport delivers to the Registrar an annual certificate that—
 - (i) refers to the most recent audited financial statements of Auckland Transport; and
 - (ii) is signed on behalf of the directors by at least 2 directors of Auckland Transport; and

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- (iii) is dated not later than 4 months after the date of the most recent audited financial statements of Auckland Transport; and
- (iv) states that, in the opinion of the directors of Auckland Transport after due inquiry by them, the registered prospectus is not, at the date of the certificate, false or misleading in a material particular by failing to refer or give proper emphasis to adverse circumstances; and
- (v) either—
 - (A) states that the information contained in the registered prospectus under clause 13 of Schedule 2 of the Regulations (relating to ranking of securities) is correct; or
 - (B) contains a current statement of the information specified in clause 13 of Schedule 2 of the Regulations.

11 Exemption from certificate requirements

Auckland Transport and every person acting on its behalf are, in respect of the specified debt securities, exempted from section 54 of the Act.

12 Conditions of exemption in clause 11

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

- (a) immediately after a person deposits funds to subscribe for specified debt securities, Auckland Transport updates the Card balance to reflect that deposit; and
- (b) at all reasonable times, holders of the specified debt securities are able to check the balance of their Cards (via Auckland Transport's website or at any participating retailers and ticket outlets); and
- (c) at all reasonable times, holders of the specified debt securities are able to obtain a transaction history for the Cards for the preceding 3 months (via Auckland Transport's website); and
- (d) the conditions described in paragraphs (a) to (c) are terms of the terms of use.



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Dated at Wellington this 24th day of November 2011



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 25 November 2011 and expires on 31 October 2016, exempts Auckland Transport, subject to conditions, from certain provisions of the Securities Act 1978 (Act) and the Securities Regulations 2009 in respect of debt securities which are stored value credits on cards issued by Auckland Transport.

Auckland Transport is exempted from the requirements—

- to appoint a trustee and have a trust deed;
- to have an investment statement;
- to provide certain information in a prospectus; and
- to issue certificates evidencing the holding of debt securities.

The Financial Markets Authority (FMA), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant these exemptions because—

- the nature and features of the debt securities stored on the cards are such that they are not investment products in the usual sense, rather they provide a means of paying for services;
- the conditions of the exemption from the trustee and trust deed provisions of the Act provide protection for subscribers' funds. These protections are that there is required to be a special bank account that holds an amount in excess of the outstanding stored value credits deposited on the cards which are refundable. The refundable amount held in the special bank account must be held on trust for the subscribers who have the right to a proportion of the account equal to the amount repayable to them and Auckland Transport is required to repay those funds within any period required in the terms of use, except in the limited circumstances stated in the terms of use:

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- subscribers will be provided with sufficient disclosure to enable them to make informed decisions. This information must be available in a reduced content prospectus, regularly updated financial statements, and the cards' terms of use (available on Auckland Transport's website):
 - the conditions of the exemption from the requirement for certificates requires subscribers to be able to easily access information about their card balance and recent transactions:
 - in light of the limited application of the exemptions to stored value credits on cards issued by Auckland Transport, and these alternative protections suited to the nature and operation of the cards, FMA considers that the exemptions will not cause significant detriment to subscribers, and that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.
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