

**Reprint
as at 4 March 2016**



**Securities Act (Fletcher Building Limited and Fletcher
Building Industries Limited) Exemption Notice 2011
(SR 2011/32)**

Securities Act (Fletcher Building Limited and Fletcher Building Industries Limited) Exemption Notice 2011: expired, on the close of 3 March 2016, by clause 3.

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).

Contents

	Page
1 Title	1
2 Commencement	2
3 Expiry	2
4 Interpretation	2
5 Exemptions for variation of securities	3
6 Conditions of exemptions in clause 5	3
7 Exemptions for issue of new securities	4
8 Requirements for issuers before exemptions in clause 7 apply	4
9 Conditions of exemptions in clause 7	4

Notice

1 Title

This notice is the Securities Act (Fletcher Building Limited and Fletcher Building Industries Limited) Exemption Notice 2011.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

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 3 March 2016.

4 Interpretation

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

2001 investment statement means the investment statement and prospectus dated and prepared as at 24 January 2001 in connection with the Fletcher Building capital notes

Act means the Securities Act 1978

Fletcher Building capital notes means the unsecured, subordinated capital notes issued by Fletcher Building Limited constituted by the trust deed

Fletcher Building Group or **Group** means Fletcher Building Limited and its subsidiaries

Fletcher Building shares means ordinary shares in Fletcher Building Limited

implementation means the amendment of the trust deed and the subsequent transfer of Fletcher Building Limited's liabilities as issuer under the Fletcher Building capital notes to Fletcher Building Industries Limited, pursuant to the proposal

new security means a Fletcher Building share that is allotted under the terms of, or on the exercise by any person of a right conferred by, the transferred capital notes

notice of meeting means the notice to be sent to the holders of Fletcher Building capital notes in respect of the meeting

meeting means a meeting of the holders of Fletcher Building capital notes convened by Fletcher Building Limited pursuant to the terms of the trust deed to consider and, if thought fit, adopt the proposal

proposal means the proposal to vary the terms and conditions of the Fletcher Building capital notes (including by changing the issuer from Fletcher Building Limited to Fletcher Building Industries Limited) as described in the notice of meeting

Regulations means the Securities Regulations 2009

specified securities market means a securities market operated by NZX Limited or by ASX Limited, a company incorporated in Australia

transferred capital note means a security that varies the terms or conditions of the Fletcher Building capital notes on implementation of the proposal

trust deed means the amended and restated trust deed dated 24 September 2001 between Fletcher Building Limited and the trustee as supplemented by the supplemental trust deed dated 16 March 2009 between Fletcher Building Limited and the trustee

trustee means Perpetual Trust Limited (or any other trustee appointed from time to time as the trustee under the trust deed).

- (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 for variation of securities

Fletcher Building Limited and Fletcher Building Industries Limited, and any person acting on behalf of either or both of them, are exempted from sections 37, 37A, and 54 of the Act in respect of the transferred capital notes.

6 Conditions of exemptions in clause 5

The exemptions in clause 5 are subject to the conditions that—

- (a) the transferred capital notes—
- (i) must have the same conversion rights, election dates, interest rates, and interest payment dates as the Fletcher Building capital notes had before the implementation of the proposal; and
 - (ii) must have the benefit of a subordinated unsecured guarantee by Fletcher Building Limited; and
 - (iii) must have the same ranking against the assets of Fletcher Building Limited as the Fletcher Building capital notes had before the implementation of the proposal; and
- (b) the notice of meeting must have been distributed or sent to the last known address of each of the following persons:
- (i) each person who is, at the time the notice of meeting is distributed or sent, a holder of Fletcher Building capital notes; and
 - (ii) each other person who becomes a holder of Fletcher Building capital notes before the meeting; and
- (c) the notice of meeting must include—
- (i) the terms of the transferred capital notes; and
 - (ii) the purpose and effect of the proposal; and
 - (iii) the steps necessary to bring the proposal into effect; and
 - (iv) particulars of any material differences between the transferred capital notes and the Fletcher Building capital notes; and
 - (v) particulars of any other matters that are material to the proposal.

7 Exemptions for issue of new securities

Fletcher Building Limited and Fletcher Building Industries Limited, and any person acting on behalf of either or both of them, are exempted in respect of the new securities from—

- (a) sections 37 and 37A(1)(a) of the Act; and
- (b) section 37A(1)(b) of the Act (so far as it relates to the 2001 investment statement).

8 Requirements for issuers before exemptions in clause 7 apply

Clause 7 applies only if the following requirements are met:

- (a) Fletcher Building Industries Limited is a wholly owned subsidiary of Fletcher Building Limited at the time of the implementation of the proposal and also at the time of the offer and the allotment of the new security; and
- (b) Fletcher Building shares are quoted on a specified securities market at the time of the implementation of the proposal, and also at the time of the offer and allotment of the new security; and
- (c) the transferred capital notes are quoted on a specified securities market at the time of the implementation of the proposal and remain quoted on a specified securities market for the period that they are current; and
- (d) the new securities are quoted on a specified securities market on allotment.

9 Conditions of exemptions in clause 7

(1) The exemptions in clause 7 are subject to the conditions that—

- (a) before allotment of the new security and before the exercise of any right conferred by the transferred capital notes, the following documents must have been sent to every person who is, at the time the financial statements are sent, a registered holder of the transferred capital notes which are eligible for conversion:
 - (i) copies of the most recent audited consolidated statement of financial position and audited consolidated statement of financial performance of the Fletcher Building Group that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements (or, if applicable, group financial statements) and with the provisions of any other enactment to which Fletcher Building Limited is subject; and
 - (ii) if the date of allotment of the new security or the date of the exercise of any right conferred by the transferred capital notes would be later than 9 months after the date of the statement of financial position referred to in subparagraph (i),—

- (A) an interim consolidated statement of financial position as at the end of, and an interim consolidated statement of financial performance for, a period commencing on the day after the date of the statement of financial position referred to in subparagraph (i) and ending on a date that is not later than 9 months after that date that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements (or, if applicable, group financial statements) and with the provisions of any other enactment to which Fletcher Building Limited is subject (except in each case that they need not be audited); and
- (B) a statement containing a description of the Fletcher Building Group; and
- (b) the date of the allotment of the new security under the terms of, or the exercise by any person of any right conferred by, the transferred capital notes must be not more than 9 months after the date of the statement of financial position or interim statement of financial position, as the case may be, referred to in paragraph (a); and
- (c) the notice of meeting must—
 - (i) contain particulars of all material matters relating to the offer of the new security; and
 - (ii) state clearly that Fletcher Building Industries Limited may vary the terms of conversion; and
 - (iii) state what steps Fletcher Building Industries Limited will take, before an election to convert is made, to inform holders of transferred capital notes of the terms of conversion; and
 - (iv) include a statement to the effect that changes of circumstance occurring between the date of the implementation of the proposal and the conversion date of the transferred capital notes may have a material effect on the new securities (including their price) or Fletcher Building Limited; and
 - (v) include a statement that important information relating to the new securities (including their price) and Fletcher Building Limited will be disclosed in accordance with the continuous disclosure provisions of the listing rules of each specified securities market on which the transferred capital notes are quoted; and
 - (vi) give notice that, between 5 and 10 working days before the earliest date on which the election to convert may be made, a pre-conversion statement—
 - (A) will be provided to the operator of each specified securities market on which the transferred capital notes are quoted, for release to the market; and

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- (B) will be available on Fletcher Building Limited's Internet site; and
 - (vii) give notice of what the pre-conversion statement will contain, as described in subclause (2); and
 - (viii) include a statement that holders of the transferred capital notes should consider the pre-conversion statement, the market price of the new securities, and all other information made available concerning the new securities and Fletcher Building Limited, before an election to convert is made; and
- (d) Fletcher Building Limited and Fletcher Building Industries Limited must make a pre-conversion statement that complies with subclause (2) available—
- (i) to the operator of each specified securities market on which the transferred capital notes are quoted, for release to the market, between 5 and 10 working days before the earliest date on which the election to convert may be made; and
 - (ii) following its release to the market, on Fletcher Building Limited's Internet site; and
- (e) no new securities may be allotted if, at the time of allotment, the notice of meeting and the 2001 investment statement, taken together with the pre-conversion statement, are known by Fletcher Building Limited, or any director of Fletcher Building Limited, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances, whenever those adverse circumstances occurred.
- (2) The pre-conversion statement must include the following, set out in a succinct manner:
- (a) a statement to the effect that the purpose of the pre-conversion statement is to assist registered holders of transferred capital notes to decide whether to elect to convert those securities; and
 - (b) a description of any adverse circumstances (whenever they occurred) that make the notice of meeting, or the 2001 investment statement, false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to those circumstances; and
 - (c) a description of the effect of any adverse circumstances, to the extent that the effect can be assessed or, where the effect of the adverse circumstances cannot be assessed, a statement to that effect; and
 - (d) a list of any other documents that are, in the opinion of Fletcher Building Limited, relevant to a decision about whether to elect to convert, in which case the documents must either be included in the pre-conversion

statement or the pre-conversion statement must clearly indicate where those documents may be viewed and how they may be accessed; and

- (e) a statement by Fletcher Building Limited that the pre-conversion statement is not known by Fletcher Building Limited, or any director of Fletcher Building Limited, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances.

Dated at Wellington this 1st day of March 2011.

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

[Seal]

D W Mayhew,
Member.

Statement of reasons

This notice comes into force on the day after its notification in the *Gazette* and expires on 3 March 2016. The notice relates to an offer to be made by Fletcher Building Group to consolidate its 2 capital notes programmes into one issuer, Fletcher Building Industries Limited. The proposal will require approval by the holders of Fletcher Building capital notes by extraordinary resolution.

The exemptions in this notice are based on certain clauses of the Securities Act (Renewals and Variations) Exemption Notice 2002 and the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002.

Clause 5 exempts Fletcher Building Limited and Fletcher Building Industries Limited from sections 37, 37A, and 54 of the Securities Act 1978 in the case of the transferred capital notes (which vary the terms of the Fletcher Building capital notes). The exemptions will enable Fletcher Building Limited to transfer its liabilities as issuer of the Fletcher Building capital notes to Fletcher Building Industries Limited without a registered prospectus, investment statement, or certificates of securities. The conditions of exemption are set out in *clause 6*.

Clause 7 exempts Fletcher Building Limited and Fletcher Building Industries Limited from sections 37, 37A(1)(a), and 37A(1)(b) of the Securities Act 1978 in relation to

any Fletcher Building shares issued upon conversion of the transferred capital notes. The conditions of this exemption are set out in *clauses 8 and 9*.

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

- the offer cannot be made under the Securities Act (Renewals and Variations) Exemption Notice 2002 because the proposal will result in a change of issuer of the transferred capital notes:
- however, the Commission is satisfied that the disclosure required to be given under the exemption is sufficient to allow investors to make an informed decision given that—
 - Fletcher Building Industries Limited is a wholly owned subsidiary of Fletcher Building Limited:
 - the transferred capital notes must, upon implementation of the proposal, have the same conversion rights, election dates, interest rates, and interest dates as the Fletcher Building capital notes:
 - the transferred capital notes must be guaranteed by Fletcher Building Limited (the original issuer), and have the same ranking against the assets of Fletcher Building as the Fletcher Building capital notes had before the implementation of the proposal:
- material differences between the notes will need to be disclosed in the notice of meeting given to investors:
- before the issue of Fletcher Building Limited shares on conversion of the transferred capital notes, note holders will receive disclosures equivalent to those required by the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 2002.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 3 March 2011.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Fletcher Building Limited and Fletcher Building Industries Limited) Exemption Notice 2011 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Securities Act (Fletcher Building Limited and Fletcher Building Industries Limited) Exemption Notice 2011 (SR 2011/32): clause 3