

Securities Markets Act (NZX - New Market) Exemption Notice 2014

Pursuant to section 36E of the Securities Markets Act 1988, the Minister of Commerce gives the following notice.

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Notice

- Title**
This notice is the Securities Markets Act (NZX - New Market) Exemption Notice 2014.
- Commencement**
This notice comes into force on 15 July 2014.
- Interpretation**
In this notice, unless the context otherwise requires,—
Act means the Securities Markets Act 1988
financial product has the meaning set out in section 7 of the Financial Markets Conduct Act 2013
group means the new market issuer and its subsidiaries
listing, in relation to a new market issuer, means the financial products of the issuer are able to be traded on the new market (for the avoidance of doubt, any suspension in trading of a new market issuer's financial products does not affect listing of the new market issuer)
new market advisor means a person that is accredited as a new market advisor under the new market rules

new market issuer means a person that is a party to a listing agreement with NZX in relation to the new market

new market rules means the market rules for the new market

new market means the securities market operated, or to be operated, by NZX after the date of this notice that is targeted at small and medium-sized enterprises

NZX Main Board means the securities market operated by NZX under that name

NZX means NZX Limited

quarter means a period ending 31 March, 30 June, 30 September, or 31 December

retail investor has the meaning set out in clause 35 of Schedule 1 of the Financial Markets Conduct Act 2013.

4 Purpose

The purpose of this notice is to enable NZX to operate a market with market rules that contain disclosure requirements, as alternative disclosure obligations to the continuous disclosure provisions of the market rules for the NZX Main Board, that—

- (a) take account of the needs of small and medium-sized enterprises for predictable and lower cost disclosure requirements; and
- (b) take account of the needs of investors for regular and understandable information that assists them to effectively monitor the performance of issuers; and
- (c) do not give rise to unacceptable risks of—
 - (i) losses to investors from market inefficiency or market misconduct; or
 - (ii) loss of confidence in the market.

5 Exemption

The new market is exempted from section 36L(1)(b) of the Act.

6 Conditions that apply to exemption in clause 5

(1) The exemption in clause 5 is subject to the condition that the FMA is satisfied —

- (a) that the new market is principally designed for, and clearly targeted at, small and medium-sized enterprises and that there are adequate arrangements to ensure—
 - (i) that it is clearly distinguished from other markets operated by NZX; and
 - (ii) that, before approving an applicant for listing on the new market, NZX has regard to whether or not that applicant is an enterprise for which the market is

- designed if that applicant has previously been listed on another equity securities market operated by NZX; and
- (b) that the new market has adequate arrangements to ensure that, before a retail investor first acquires a financial product on the new market, the retail investor has—
 - (i) been given an adequate risk warning regarding the nature of the new market, the fact that there are more limited rules for disclosure of price-sensitive information on this market than on the NZX Main Board, and of the consequences this may have for investors; and
 - (ii) confirmed that they understand the risk warning; and
 - (c) that the new market rules contain provisions that, together with guidance issued by NZX, adequately give effect to the alternative disclosure regime described in the schedule (**alternative disclosure provisions**); and
 - (d) that NZX has adequate arrangements in place to undertake a review of the extent to which the operation of the new market under the alternative disclosure provisions has met the purpose of this notice over the 24-month period since registration of the market (for the purpose of providing a report to the FMA and the Minister within 3 months after the end of that period).
- (2) The FMA must, in considering whether it is satisfied under subclause (1), have regard to the purpose of this notice.

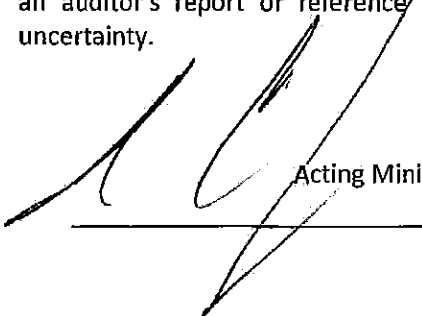
Schedule

The alternative disclosure provisions must contain requirements for-

- (a) the setting and disclosure to the market by a new market issuer of metrics for measuring and reporting on the performance of its business and targets for those metrics:
- (b) ensuring that directors of the issuer confirm to the market that they are satisfied that those metrics will result in understandable reporting for investors that covers the most significant factors by which the performance of the business should be assessed and monitored:
- (c) the new market advisor to confirm to NZX that the metrics selected are suitable before the new market issuer lists and for the new market issuer to continue to consult the new market advisor on the selection and continued suitability of those metrics while the new market advisor is appointed:

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- (d) the new market issuer to continue to set, and review at least annually, its metrics and targets for those metrics:
- (e) NZX to review and approve—
 - (i) the metrics before approving the new market issuer for listing; and
 - (ii) any subsequent change to the metrics by the new market issuer:
- (f) quarterly disclosures about changes and developments for the business of the new market issuer and of its performance against the targets for the metrics:
- (g) immediate disclosure of specified events relating to the following matters as they arise:
 - (i) a variance, or likely variance, of more than 10% from a target for a metric:
 - (ii) decisions affecting the number or terms of equity securities on issue:
 - (iii) decisions on changing the constitution:
 - (iv) decisions on dividends and distributions:
 - (v) changes to directors, officers, or auditor of the new market issuer:
 - (vi) proposals to enter into (or change or complete) significant transactions (including an essential change to the nature of the business) and related party transactions:
 - (vii) changes to the new market issuer's name or share registry details:
 - (viii) communications to a class of investors and results of investor votes:
 - (ix) significant legal or disciplinary proceedings being brought by or against the new market issuer:
 - (x) events or matters that indicate a significant change in the creditworthiness of the new market issuer:
 - (xi) changes to the new market issuer's balance dates or other period for reporting:
 - (xii) material adjustments to the new market issuer's or its group's financial statements or a previous disclosure on those financial statements, or any qualification of an auditor's report or reference to a fundamental uncertainty.



Steven Joyce
Acting Minister of Commerce.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on 15 July 2014 is granted under section 36E of the Securities Markets Act 1988 (the **Act**).

This notice exempts the new market to be operated by NZX for small and medium sized enterprises from the requirement to have full continuous disclosure in its market rules before FMA can approve those rules under section 36L of the Act. Instead, the market must have an alternative form of “prescribed” continuous disclosure. Although the obligations to disclose will be more prescribed, it is intended that this will be enforced by FMA in the same way as full continuous disclosure.

The key alternative disclosure obligations to be contained in the market rules for the new market are-

- obligations for issuers on the new market to set key operating metrics and targets for those metrics, and requirements designed to ensure these metrics are suitable to result in understandable and useful reporting for investors
- quarterly business updates, including reporting on the performance of the business against the targets for its key operating metrics
- immediate event disclosure obligations for events set in the market rules, which must include a variance of 10% or more from the targets for an issuer’s key operating metrics.

In addition, the notice requires NZX to clearly target the market at small and medium-sized enterprises and take steps to differentiate it from, and ensure it does not detract from, its other markets. These conditions, together with requirements for investors to be given risk warnings, are aimed at mitigating any risks to investor confidence from the alternative disclosure regime. The operation of the new market under the alternative disclosure provisions will be reviewed after 2 years to assess the extent to which it has met the purposes of the notice as set out in clause 4.

