

# Consultation Paper: Request for Feedback – Class exemption review

**10 April 2012**

## About this consultation paper

In this paper we consult on the review the Financial Markets Authority (FMA, or we) are undertaking on 44 class exemption notices expiring between June and November 2012. The bulk of these expire on 30 September 2012.

## Why are we issuing this consultation paper?

FMA has the ability to grant exemptions from various provisions of the Securities Act 1978, Financial Reporting Act 1993, Securities Markets Act 1988, Financial Advisers Act 2008 and regulations made under those Acts. We recognise that the solutions to regulatory compliance issues provided by exemptions must be both pragmatic and principled, so that they can most effectively support market activity by promoting and facilitating fair, efficient and transparent investment markets in which the benefits of regulation are proportionate to the costs.

FMA is keen to work with all stakeholders including market participants, investors, and advisers, and representatives to see that the exemptions it grants work together with the legislative regime provided by these Acts and Regulations to meet these goals. We therefore seek submissions on the expiring exemptions from all stakeholders to assist with this review process.

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## Exemptions granted by FMA

1. FMA's main objective is to promote and facilitate the development of fair, efficient, and transparent financial markets.
2. Our power to grant exemptions to issuers from various provisions of the Securities Act, Securities Markets Act and Financial Reporting Act is an important tool we use to achieve this objective. When we exercise our exemption power we look to facilitate the development of New Zealand's capital markets, while balancing the need to ensure investors are fully informed. We carefully consider the costs the terms of any exemptions might have for issuers, and we appreciate that these costs will in most cases ultimately be paid for by investors.
3. This review provides us with the opportunity to work with stakeholders including market participants, investors, and advisers, and representatives to see that the exemptions subject to this review meet these goals. We encourage all stakeholders to provide submissions.
4. More generally market participants, their advisers and representatives can contact us at any time to discuss inefficiencies or difficulties they encounter in complying with the legislative regimes prescribed by these Acts and Regulations made under them. When considering how to address these problems we encourage market participants to think about the scope of our exemption power, and whether we may be able to assist with an appropriate solution. We are always interested in hearing from the market participants with proposals for pragmatic solutions.

## Class exemption notices expiring

5. The following 44 class exemption notices expire this year. 42 provide exemptions from provisions of the Securities Act 1978. 2 provide exemptions from provisions of the Financial Reporting Act for overseas issuers.
6. You can read the notices, and the attached statement of reasons, on the New Zealand legislation website: [www.legislation.govt.nz](http://www.legislation.govt.nz). Locate any notice by searching the 'regulations' using one or two key words from the title of the notice.
7. We also attach at **Appendix 1** a table containing a brief summary of the key effects and key reasons of each of the notices. The table does not comprehensively summarise all of the exemptions and all of the conditions, so do ensure you consider the full notice available on the New Zealand legislation website if you want to rely on the notice, or analyse the notice to make submissions.

	Notice	SR number	Expiry
1.	Financial Reporting Act (Overseas Companies)	2007/275	30 June 2012
2.	Securities Act (Registered Banks Futures Contracts)	2007/151	31 July 2012
3.	Financial Reporting Act (Overseas Issuers)	2009/2	30 September 2012
4.	Securities Act (Advertisements Containing	2002/294	30 September 2012

	Investment Advice)		
5.	Securities Act (Amalgamations)	2002/328	30 September 2012
6.	Securities Act (Audiovisual Advertisements)	2002/289	30 September 2012
7.	Securities Act (Australian Issuers)	2002/314	30 September 2012
8.	Securities Act (Authorised Futures Contracts)	2002/295	30 September 2012
9.	Securities Act (Banks)	2002/305	30 September 2012
10.	Securities Act (Bloodstock)	2002/303	30 September 2012
11.	Securities Act (Building Societies)	2002/319	30 September 2012
12.	Securities Act (Certificates for Securities Transferred Electronically)	2003/148	30 September 2012
13.	Securities Act (Commercial Bill Dealers)	2002/297	30 September 2012
14.	Securities Act (Continuous Debt Issues)	2002/296	30 September 2012
15.	Securities Act (Contributory Mortgage Brokers)	1983/187	30 September 2012
16.	Securities Act (Contributory Mortgage Regulations (Solicitors))	1996/13	30 September 2012
17.	Securities Act (Co-operative Companies)	2011/59	30 September 2012
18.	Securities Act (Employee Share Purchase Schemes – Listed Companies)	2011/6	30 September 2012
19.	Securities Act (Employee Share Purchase Schemes – Unlisted Companies)	2011/58	30 September 2012
20.	Securities Act (Equity Warrant Issuers)	2002/317	30 September 2012
21.	Securities Act (Estates and Interests in Australian Land)	2002/290	30 September 2012
22.	Securities Act (Financial Institutions)	2011/62	30 September 2012
23.	Securities Act (French Issuers Employee Share Purchase Schemes)	2010/70	30 September 2012
24.	Securities Act (Friendly Societies)	2011/61	30 September 2012
25.	Securities Act (Group Investment Index Funds)	2002/316	30 September 2012
26.	Securities Act (Life Insurance Companies)	2002/298	30 September 2012
27.	Securities Act (NZX Issuers)	2007/272	30 September 2012
28.	Securities Act (Overseas Companies)	2002/299	30 September 2012
29.	Securities Act (Overseas Employee Share Purchase Schemes)	2002/329	30 September 2012
30.	Securities Act (Overseas Listed Issuers)	2002/326	30 September 2012
31.	Securities Act (Overseas Takeovers by New Zealand Companies)	2002/300	30 September 2012
32.	Securities Act (Real Property Developments)	2007/378	30 September 2012
33.	Securities Act (Real Property Proportionate Ownership Schemes)	2002/315	30 September 2012
34.	Securities Act (Renewals and Variations)	2002/292	30 September 2012
35.	Securities Act (Rights, Options, and Convertible Securities)	2002/318	30 September 2012
36.	Securities Act (Sharebrokers)	1984/333	30 September 2012
37.	Securities Act (Short Form Prospectus)	2009/50	30 September 2012
38.	Securities Act (Stock and Station Agents)	2010/472	30 September 2012
39.	Securities Act (Superannuation Schemes – Summary of Financial Statements)	2006/224	30 September 2012
40.	Securities Act (Takeovers)	2011/63	30 September 2012

41.	Securities Act (Unit Trust Certificates)	2002/302	30 September 2012
42.	Securities Act (Venture Capital Schemes)	2008/218	30 September 2012
43.	Securities Act (Charitable and Religious Purposes)	2003/66	30 November 2012
44.	Securities Act (Industrial and Provident Societies)	2011/60	30 November 2012

## Review underway

8. Law reform envisaged by the Financial Markets Conduct Bill may address some of issues currently addressed these exemptions. However the Bill has only recently been introduced to Parliament, and is yet to go through Select Committee so the content of the new laws are still to be settled. In any event any these class exemptions are likely to be required for a number of years given the timeframe anticipated for settling the new Act, passing relevant regulations, and providing for a transitional period.
9. We are therefore reviewing all of these class notices and propose to complete the review of each before it expires. This will provide a seamless ability for issuers to continue to rely on the notices that are renewed without substantive amendment.
10. Where it is determined an exemption is no longer warranted, or that substantive amendments are required, notice will be given or transitional provisions provided, to give issuers an appropriate opportunity to make any changes necessary to offer document disclosure or conduct procedures.
11. Our process and timeline will vary depending on the significance of issues under consideration. The general timetable we will work to is summarised below.

Date	Actions
10 April 2012	Consultation paper published seeking submissions from market participants, investors, advisers and representatives.
7 May 2012	Written submissions from market participants, investors, advisers and representatives due to FMA.
May 2012	We will analyse the submissions and seek further comments or meet with particular submitters as required to clarify our understanding of the submissions and the implications of proposals raised for consideration.
June - August 2012	Proposals announced on exemptions for information to, and further comment by, market participants, investors, advisers and representatives.
June – August 2012	Opportunities for further comment following release of proposals.

August - November	Finalisation of drafting, granting of exemptions before 30 September 2012 or 30 November 2012 (as required).
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12. An adjusted timetable will apply to the small number of notices expiring in June and July.
13. The table at **Appendix 1** outlines some of the key issues that we have already identified for particular consideration in the review process but we welcome feedback on all aspects of the notices.
14. To remain advised of the proposals and progress of review of any particular notice of interest to you:
  - (a) when you provide your submissions on the notices of interest to you clearly identify the notices in relation to which you want to be put on an email list to receive any proposals released;
  - (b) watch the FMA website. Proposals and progress in relation to the review of the notices will be published on the website under 'Help Me Comply' - 'Issuers' - 'Exemptions'.

## Information sought in submissions

15. We invite and encourage all stakeholders to make submissions on the notices under review.
16. We are particularly keen to receive feedback on the questions below.

### Question 1: On which exemptions are you making submissions?

17. Please list each notice on which you want to make submissions, and then answer the following questions in relation to those notices.

### Question 2: Reliance

18. The extent to which you, or your clients or members, rely on the notice/s.
19. We are keen to gain a clear picture of the extent of reliance on each of the notices. Before granting any notice FMA wants to be satisfied there is a need for the exemption. Further, an exemption cannot be broader than is reasonably necessary to address the matters that gave rise to the exemption. A class notice may not be renewed if we do not receive submissions confirming continued reliance on the exemptions in that notice.
20. To gain an understanding of the extent of reliance on the notices we are keen to hear:
  - (a) the number of offers and approximate value of securities offered in reliance on the notice;

- (b) what is the impact of the notice (or its discontinuance) on regulatory compliance costs, in terms of costs to issuers, and opportunities for New Zealand investors? Please provide any data or estimates, for example of cost savings, and opportunities New Zealand investors would miss out on if reliance could not be placed on the notice.

### **Question 3: Support for renewal or revocation**

- 21. Do you support the renewal of the notice/s or not? What are the reasons for your view?

### **Question 4: Amendments proposed**

- 22. If you support the renewal of the notice/s, would you recommend any amendments to it when renewed?
- 23. This might include:
  - (a) exemptions or conditions in the notice you consider are inconsistent with securities or financial reporting law policy, and the amendments you propose as solutions;
  - (b) new exemptions you consider should be granted in the notice, and the conditions to which you consider those exemptions should be subject;
  - (c) impediments to reliance on the notice, and the amendments you propose as solutions;
  - (d) practical difficulties or compliance costs encountered when relying on the notice, and the amendments you propose as solutions.
- 24. In relation to renewal and any amendments you propose please fully explain your reasons. Please particularly explain:
  - (a) why you consider the renewal, and any amendments proposed, are consistent with both the policy of securities or financial reporting law, and the particular policy of the relevant statutory provisions from which the exemption is granted;
  - (b) the impact on market participants including in terms of compliance costs;
  - (c) the impact on investors including in relation to any benefit or detriment to protection of investors interests and information available to investors;
  - (d) why you consider the exemption is no broader than reasonably necessary to address the matters that gave rise to the need for the exemption;
  - (e) any effect on competition in the market.

## Question 5: Significant reviews

25. We have identified that significant review of a number of notices is required. These include:
- exemptions providing relief in relation to real property;
  - exemptions relating to offers of securities for the purpose of reconstructions;
  - exemptions for deposit takers;
  - exemptions that recognise securities offering or financial reporting regimes on the basis of sufficiency of the regimes in foreign jurisdictions.
26. In addition to the brief outline in **Appendix 1** we include further background and seek particular feedback in **Appendices 2 – 5**.
27. Our review, or submissions received, may also identify further notices require substantive review.

## Question 6: Notices identified as likely to be redundant

28. Is there an ongoing need for any of the following notices? Our initial review has identified these notices as redundant. If you consider there remains an ongoing need please explain the reasons for your view.
- Securities Act (Certificates for Securities Transferred Electronically) Exemption Notice 2003 SR 2003/148
  - Securities Act (Life Insurance Companies) Exemption Notice 2002 SR 2002/298
  - Securities Act (NZX Issuers) Exemption Notice 2007 SR 2007/272
  - Securities Act (Superannuation Schemes – Summary of Financial Statements) Exemption Notice 2006 SR 2006/224

## Submission process

29. Please provide us with two versions of your submission: a PDF and a word document.
30. Please send your submission by e-mail only (no posted or delivered versions please) to [exemptions@fma.govt.nz](mailto:exemptions@fma.govt.nz). The e-mail subject line should identify that the email contains a submission on the class exemption review, and who the submission is from, eg 'Submission on Class Exemption Review by [submitter's name]'.
31. The deadline for submissions is 7 May 2012.
32. To complete our review of a particular notice it may be necessary or useful for us to share and discuss a submission with another regulator. In particular we note that all submissions received in relation to notices affecting deposit takers are likely to be shared with the Reserve Bank.

33. More generally we note we will not treat any part of your submission as confidential unless you specifically request we do so. Submissions will be subject to the Official Information Act 1982. We may make submissions available on our website, may compile a summary of the submissions or draw attention to individual submissions in internal or external reports.
34. If you would like us to withhold any commercially sensitive, confidential or proprietary information included in your submission, please clearly state this in your submission and identify the relevant extracts of information. We will consider any request to have information withheld in accordance with our obligations under the Official Information Act.

## Further information

35. Please contact Natalie Muir, Manager, Exemptions, for any further information about this review.



## **Appendix 1:**

### **Summary of Expiring Notices**

Please refer to the accompanying table which summarises the expiring notices, the key reasons for those notices, and notes key issues we have already identified as requiring consideration in the review of the notices.

## Appendix 2: Exemptions providing relief in relation to real property

### **Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002**

1. This notice puts in place an alternative offer document and conduct regime for offers of participatory securities in contributory schemes involving ownership of undivided interests in real property. Complaints and enquiries received from members of the public and from industry have raised concerns about the sufficiency of disclosure and conduct obligations and the practicality of the regime. Our initial thinking is that clearer investment information disclosure (including highlighting the possibility that further payments may be called for) and oversight by a trustee may be appropriate.
2. This notice will be reviewed on a first principles policy basis by considering to what extent any exemptions from full compliance with the Securities Act participatory securities offer document disclosure and conduct requirements are appropriate, and what alternative conditions should be imposed. We consider a holistic review is necessary to ensure the regime for real property proportionate ownership schemes most efficiently supports market activity, whilst facilitating fair and transparent investments for investors.
3. FMA staff are in the process of developing proposals on the disclosure and conduct obligations that we consider are appropriate. We will consult on these proposals. Submissions received in advance of our proposals being finalised will be considered in developing those initial proposals.

### **Securities Act (Real Property Developments) Exemption Notice 2002**

4. This notice puts in place requirements for securities offered as ancillary features to real estate transactions through which residents in a property development can use communal facilities and be required to contribute to maintenance costs. While the interests are 'securities' in terms of the legislation, they are not offered as 'investments' in the usual sense. The notice contains prescriptive alternative information requirements.
5. There have been instances where property investors, who have raised objections in settling on property transactions, have included securities law non-compliance as one of their reasons. Property vendors have responded by seeking validation of securities in the context of the sale and purchase payment enforcement cases.
6. We consider a first principles policy review of the notice is required to determine the extent of conditions appropriate for these exemptions which in substance relate to standard real estate purchases, rather than investments in securities.
7. We particularly welcome comments on this issue.

## **Securities Act (Estates and Interests in Australian Land) Exemption Notice 2002**

8. This notice largely mirrors, for interests in Australian land, the statutory exemption that applies in section 5(1)(b) of the Securities Act to interests in New Zealand land.
9. It exempts persons who offer securities to the public in the form of freehold or leasehold estates or interest in land in Australia for which the holder is, or on completion of allotment will be, immediately entitled to a certificate, or other instrument, of title. The exemption provided is effectively from all securities law disclosure and compliance requirements except that the prohibition on misleading advertisements continues to apply.
10. The continued application of the prohibition on misleading advertisements is out of step with the statutory exemption for interests in New Zealand land.
11. We propose to consider whether these transactions should be touched at all by securities law. The particular question that arises is whether the exemption should be amended consistently with the current statutory exemption for New Zealand land so that the securities law prohibition on misleading advertising additionally does not apply, and the offers are entirely left for regulation by real estate and fair trading law.
12. FMA does not monitor offers of estates or interests in Australian land. There is risk that the continued application of the securities law prohibition on misleading advertising provides a false indication that FMA does engage in some level of regulatory oversight in relation to these transactions.
13. We seek comments particularly on this issue.

## Appendix 3:

# Exemptions relating to offers of securities for the purpose of reconstructions

1. A number of notices aim to provide efficiencies for corporate reconstructions where investors may already be familiar with the issuer or the investment, and where alternative regimes may regulate the information investors receive. These include the following notices:
  - **Securities Act (Amalgamations) Exemption Notice 2002**
  - **Securities Act (Takeovers) Exemption Notice 2002**
  - **Securities Act (Renewals and Variations) Exemption Notice 2001**
2. Review is required to ensure the requirements in the exemption notices appropriately support the primary regime requirements - overall ensuring clarity and conciseness of the required information package in a manner consistent with securities law policy.
3. Further, one aspect of the **Securities Act (Co-operative Companies) Exemption Notice 2002** raises a related issue - namely the appropriate information requirements for co-operative companies proposing an IPO that involves the purchase of another business. The co-operative companies notice provides for a reduced content prospectus. We propose to review the notice to ensure appropriate information disclosure is required about significant assets or subsidiaries proposed to be acquired.
4. Comments are particularly sought on these issues.

## Appendix 4:

### Exemptions for deposit takers

1. All notices giving exemptions to deposit takers, and in particular giving any deposit taker an exemption from the trust deed and trustee requirements where these would otherwise apply, require review in light of the new prudential regulatory requirements on deposit takers prescribed by the Reserve Bank of New Zealand Act 1989 (Reserve Bank Act).
2. Many of the prudential regulatory requirements in the Reserve Bank Act rely on the trust deed and trustee regime imposed by the Securities Act. It is important that any exemptions from the securities law requirements do not conflict with prudential regulatory requirements.
3. We therefore propose to consider the exemptions, the conditions, and thresholds where the exemptions apply, in terms of both securities law policy, and in conjunction with the Reserve Bank, the policy behind the prudential supervisory regime of the Reserve Bank Act.
4. We also propose to particularly consider the treatment of debt like instruments offered by Building Societies. What is the real nature of these instruments, and how should they be treated?
5. We invite submissions in particular on these issues. Submissions received will be considered as we determine our initial proposals on the exemptions for deposit takers. After we have had an opportunity to finalise our initial proposals, including by consultation with the Reserve Bank, we will publish these for further comments by effected deposit takers.

## Appendix 5: Exemptions that recognise overseas securities offerings regimes or overseas financial reporting regimes

### Securities Act and Financial Reporting Act exemptions recognising regimes in various jurisdictions

#### Securities Act

1. The following three Securities Act class notices provide exemptions for overseas issuers on the basis of recognition of the adequacy of the securities offering regimes in various overseas jurisdictions:

- **Securities Act (Overseas Companies) Exemption Notice 2002**
- **Securities Act (Overseas Listed Issuers) Exemption Notice 2002**
- **Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002**

2. In summary, the effect of each of these notices is as follows:

- (a) **Securities Act (Overseas Companies) Exemption Notice 2002:** This notice exempts offers of securities by overseas companies from most requirements of the Securities Act and Regulations including the prospectus, investment statement, trustee and statutory supervisor provisions. The notice applies to offers by overseas companies of securities quoted on a stock exchange in the UK, Australia, Canada, the US, Spain or Hong Kong. It also extends to offers by the holders of quoted securities previously allotted by overseas companies. Offers may only be made to members of the public in New Zealand that are existing security holders in that overseas company, and holders of securities in a related or associated overseas company that is a promoter of the offer, or persons in whose favour an offer is renounced.

The notice also provides the same substantial exemptions to offers of securities that vary existing quoted securities of an overseas company; offers of an overseas company's quoted securities in consideration for the acquisition or cancellation of securities of another overseas company or under a capital reduction arrangement. In these cases the offers must comply with the requirements of the jurisdiction in which the securities are quoted.

- (b) **Securities Act (Overseas Listed Issuers) Exemption Notice 2002:** This notice allows issuers from England, Wales, Scotland, Northern Ireland, the US, or any US state to offer their quoted securities in New Zealand using their home prospectus and a New Zealand securities law compliant investment statement. For an offer of debt or participatory securities there is no need to appoint a trustee or statutory supervisor. Exemptions are also given from ongoing obligations relating to register, accounting records, audits and securities certificates. The exemption also extends to offers by

the holders of previously allotted quoted securities of an overseas issuer. The securities offered must be quoted on the principal official list of the London, NASDAQ or New York exchanges. The offer must also be open in the home jurisdiction.

- (c) **Securities Act (Overseas Employee Share Purchase Schemes) Exemption Notice 2002:** This notice allows overseas issuers incorporated and listed in one of a number of identified specified jurisdictions to offer securities in New Zealand to employees and directors under an overseas employee share purchase scheme without a registered prospectus or investment statement and without complying with trustee or statutory supervisor provisions. The exemption applies to the offer of specified securities under an overseas employee share purchase scheme and also to the offer of savings scheme securities made in connection with such a scheme.

3. In addition to a general review of these notices we invite submissions on any additional overseas regimes submitters consider should be recognised in these notices.
4. Matters that will be relevant to assessing whether an additional jurisdiction should be recognised in these Securities Act notices, and which should be comprehensively addressed by any submitter that proposes the addition of a further jurisdiction, include:
- (a) Does the jurisdiction have in place a regulatory framework for stock exchanges and offers of securities to the public that is broadly comparable to the New Zealand regime? Relevant matters include:
- (i) Who is the regulator in the jurisdiction and what are its powers and functions?
- (ii) What are the requirements of the jurisdiction that must be met before securities are offered to the public and how do these compare to the requirements under New Zealand law? Do the laws of the relevant jurisdiction require disclosure of information for investors to an extent broadly comparable with New Zealand law?
- (b) To what extent is there a framework in place for multilateral co-operation by the relevant regulatory authority in the foreign jurisdiction? Is the relevant jurisdiction a member of the International Organisation of Securities Commissions ('IOSCO') and is it a signatory to the IOSCO Multilateral Memorandum of Understanding concerning consultation, cooperation and exchange of information?
- (c) Is the exchange in the relevant jurisdiction a member of a relevant international organisation such as the World Federation of Exchanges or the Federation of European Stock Exchanges? Is it a 'recognised stock exchange' under the NZSX/NZDX listing rules? Is it internationally significant?

## Financial Reporting Act

5. The following two notices provide exemptions from Financial Reporting Act obligations by overseas issuers on the basis of recognition of various identified overseas financial reporting regimes:
  - **Financial Reporting Act (Overseas Companies) Exemption Notice 2007**
  - **Financial Reporting Act (Overseas Issuers) Exemption Notice 2009**
6. In summary, the effect of each of these notices is as follows:
  - (a) **Financial Reporting Act (Overseas Companies) Exemption Notice 2007:** This notice applies to the directors of US, UK and Australian issuers who offer securities in New Zealand under the Securities Act (Overseas Companies) Notice or corresponding notices. The directors are given relief from the preparation, content, auditing and filing requirements of the Financial Reporting Act. These exemptions are subject to the condition that the issuer complies with the financial reporting obligations and GAAP in their own jurisdiction. Further information and explanations must be added to the issuer's financial statements where necessary to ensure that those statements present a true and fair view.
  - (b) **Financial Reporting Act (Overseas Issuers) Exemption Notice 2009:** This notice applies to directors of issuers incorporated in France, Germany, Ireland, the Netherlands, US or UK who offer securities in New Zealand under the Securities Act (Overseas Employee Share Purchase Schemes) Notice, the Securities Act (Overseas Listed Issuers) Notice, and two other notices both of which relate to particular overseas employee share purchase schemes. Directors are given relief from the preparation, content, auditing and filing requirements of the Financial Reporting Act. Directors must instead register group financial statements in New Zealand that comply with the content and audit requirements of their home jurisdiction.
7. In addition to a general review of these notices we invite submissions on any additional overseas regimes submitters consider should be recognised in these notices.
8. Matters that will be relevant to assessing whether an additional jurisdiction should be recognised in these Financial Reporting Act notices, and which should be comprehensively addressed by any submitter that proposes the addition of a further jurisdiction, include:
  - (a) The financial reporting requirements in force in the foreign jurisdiction and their legal standing and enforceability. How do all of these requirements compare with the New Zealand financial reporting requirements, their legal standing, and enforceability?
  - (b) Whether under section 14 of the Financial Reporting Act the Registrar has previously accepted financial statements that comply with the laws of the foreign jurisdiction on the basis that the requirements of that law are substantially the same as those in the Financial Reporting Act.



- (c) Why you consider that the additional cost that would be associated with preparing information which meets the full requirements of the Financial Reporting Act would outweigh the benefits that would be achieved by having that information available for investors.
- (d) The requirements in the foreign jurisdiction relating to the regulation and oversight of auditors and their legal standing and enforceability.
- (e) The ease with which New Zealand authorities could obtain co-operation from the relevant regulatory authorities in the foreign jurisdiction in any investigation.

## Appendix 5 (cont): Exemptions that recognise overseas securities offerings regimes or overseas financial reporting regimes

### Securities Act Exemption for Australian Issuers

9. The Securities Act (Australian Issuers) Exemption Notice 2002 (Australian Issuers Notice) applies to all companies incorporated in Australia, whether or not listed, and all companies listed, or which have applied for listing, on the Australian Stock Exchange, including if the company is incorporated in New Zealand where the Australian Stock Exchange has primary jurisdiction for the listing requirements for the company and the quotation of its securities.
10. The notice allows these Australian issuers, subject to conditions, to use an Australian prospectus for an offer of equity or debt securities in New Zealand. The exemption also allows Australian issuers to use an Australian trustee and trust deed for offers of debt securities in New Zealand.
11. An investment statement is still required and there must be a current Australian prospectus and the offer must be open in Australia at the same time it is open in New Zealand. The exemption requires the investment statement to contain warnings about applicable law, currency risk, tax implications, and financial reporting and disclosure differences. The investment statement must also contain a statement that the issuer agrees to submit to the non-exclusive jurisdiction of New Zealand courts in the event of any dispute about the investment contract, and must name a New Zealand agent for service.
12. In June 2008 the Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2008 SR 2008/153 ('MRSO') came into force. In general, the Securities Act and MRSO provide a comprehensive regulatory regime for the offer of securities by Australian issuers in New Zealand. In these circumstances we consider that exemptions in the Australian Issuers Notice should be retained only where an offer by an Australian issuer is not adequately covered by MRSO or there would be excessive compliance costs in relying on that regulatory regime. We recognise that issuers who may have still been relying on the Australian Issuers Notice will incur some compliance costs arising from the requirements to put in place new compliance procedures but consider that the ongoing compliance costs will not be materially greater than under the Australian Issuers Notice.
13. The Australian Issuers Notice is not therefore required in its current form. However we are keen to identify any exemptions not available under MRSO where the remains appropriate securities law policy justification for those exemptions.
14. To assist with this consideration we seek comments from submitters on:
  - (a) any circumstances where issuers are not able to rely on MRSO but can rely on the Australian Issuers Notice?

- (b) whether, in view of the policy preference to rely on MRSO where this is possible, there are any exemptions available in the Australian Issuers Notice which should be retained because reliance on MRSO would cause any undue compliance burden in a particular circumstance?
15. We are aware of one particular circumstance where the Australian Issuers Notice enables a broader scope of exemption than available under MRSO. This is in relation to the offer of securities in New Zealand made in the context of some reconstructions undertaken in accordance with the Corporations Act 2001 (Aust). These offers are not able to be made in reliance on MRSO where the offer is not a 'regulated offer' in terms of MRSO because it does not require a 'disclosure document', 'product disclosure statement' or a similar offer document recognised under Australian securities legislation. Issuers in these circumstances can however rely on the Australian Issuers Notice where the disclosure document meets the broader definition of 'Australian prospectus' in that notice. Additionally we have previously granted specific exemptions in these cases to also provide relief from the New Zealand investment statement requirement. This relief is not available under the Australian Issuers Notice.
16. In addition to the comments sought at paragraph 14 above we particularly seek submissions on any interest in a class exemption for Australian issuers offering securities in New Zealand in the context of a reconstruction. If you consider an exemption should be granted to provide relief in these circumstances please provide your comments on the extent of exemption and conditions considered appropriate in terms of securities law policy, and the general policy of the mutual recognition of trans-Tasman offers of securities.