

**Reprint
as at 1 December 2016**



Securities Act (Unit Trust Certificates) Exemption Notice 2012

(SR 2012/295)

Securities Act (Unit Trust Certificates) Exemption Notice 2012: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

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 (Unit Trust Certificates) Exemption Notice 2012.

2 Commencement

This notice comes into force on 1 October 2012.

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.

3 Expiry

This notice expires on the close of 30 September 2017.

4 Interpretation

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

Act means the Securities Act 1978

confirmation document, in relation to a unit holder, means a document that properly evidences the nature and ownership of the units of the unit holder issued as part of the continuous issue

continuous issue, in relation to a continuous issuer, means an issue of units of a kind that are continuously offered by the continuous issuer to the public for subscription

continuous issuer means an issuer who in the ordinary course of its business continuously offers units to the public for subscription

Regulations means the Securities Regulations 2009

unit holder means a holder of units issued as part of a continuous issue.

- (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 section 54 of Act

Every continuous issuer is exempted from section 54 of the Act in respect of any continuous issue of the continuous issuer.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the condition that the continuous issuer must send, without fee, to a unit holder a confirmation document within 5 working days after receiving a request for the document from the unit holder.
- (2) The exemption in clause 5 is subject to the further condition that the continuous issuer must send, without fee, to a unit holder, at least once every 6 months,—
- (a) a confirmation document; or
 - (b) a notice containing the statements specified in subclause (3).
- (3) The notice referred to in subclause (2)(b) must contain—
- (a) a statement to the effect that the unit holder has the right to receive from the continuous issuer, without fee, a confirmation document if the unit holder makes a request to the continuous issuer to receive the document; and
 - (b) a statement to the effect that the unit holder may obtain a copy of the confirmation document by electronic means; and

- (c) a statement as to how the unit holder may obtain a copy of the confirmation document by electronic means (for example, from a specified Internet address).
- (4) If the continuous issuer has sent a notice to a unit holder under subclause (2)(b), the exemption in clause 5 is subject to the further conditions that—
 - (a) the continuous issuer must, after it receives a request from the unit holder for a confirmation document under subclause (1),—
 - (i) comply with the request under subclause (1); and
 - (ii) treat the request as a request for the continuous issuer to send to the unit holder at least once every 6 months a confirmation document under subclause (2)(a) (instead of a notice under subclause (2)(b)); and
 - (iii) send to the unit holder at least once every 6 months a confirmation document under subclause (2)(a) until the unit holder revokes the request by notice to the continuous issuer; and
 - (b) the continuous issuer must ensure that—
 - (i) a copy of the confirmation document is available in the manner described in subclause (3)(c) at all reasonable times during the period beginning on the date that the notice is sent to the unit holder and ending on the date that the continuous issuer next sends a confirmation document or notice to the unit holder under subclause (2); and
 - (ii) the manner of obtaining the confirmation document described in the notice under subclause (3)(c) allows the copy of the confirmation document to be printed or saved so as to be usable for subsequent reference.

Dated at Wellington this 24th day of September 2012.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 October 2012 and expires on 30 September 2017, replaces the Securities Act (Unit Trust Certificates) Exemption Notice 2002 (the **2002 notice**).

The notice exempts, subject to conditions, issuers who in the ordinary course of their business continuously offer units in a unit trust to the public from the provision of the Securities Act 1978 relating to the issue of certificates evidencing securities.

The provisions of the 2002 notice have been carried forward with little change of substance. However, changes have been made to allow issuers to send a notice that makes information about the units of a unit holder available by electronic means.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978, considers it appropriate to grant the exemption because—

- the exemption in the 2002 notice from the securities certificate requirements recognises the significant cost of, and unhelpful information provided by, the regular receipt of securities certificates in the case of securities issued on a continuous basis. In these circumstances, periodic consolidated statements are both more cost effective and more informative:
- the exemption has been in place for a number of years and the policy reasons for it remain valid and relevant. While the changes introduced by the Securities Regulations 2009 have reduced costs of issuers, and improved information for investors, they have not attempted to tailor disclosure and conduct requirements to the extensive range of circumstances to which securities law requirements apply. Accordingly, the exemption continues to be required and remains appropriate in light of the policy of the 2002 notice and is continued in this notice on substantially the same basis:
- the change to enable delivery of securities confirmation information by notice to the investors of where this information can be accessed on the Internet recognises the increased use by issuers and investors of Internet-based communications:
- given the limited application of the notice to granting relief only to continuous issuers from the securities certificate requirement, and the conditions imposing alternative workable obligations that meet subscribers' need to have up-to-date information about their securities holdings, the Financial Markets Authority considers that the exemption will not cause significant detriment to subscribers and that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 September 2012.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Unit Trust Certificates) Exemption Notice 2012 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*

Financial Markets Conduct Regulations 2014 (LI 2014/326): Schedule 1 clause 26