



## Securities Markets Act (NZCDC Settlement System) Exemption Notice 2010

Pursuant to section 48(1)(b) of the Securities Markets Act 1988, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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### Notice

- 1 Title**  
This notice is the Securities Markets Act (NZCDC Settlement System) Exemption Notice 2010.
- 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 30 November 2015.

### 4 Interpretation

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

**Act** means the Securities Markets Act 1988

**clearing house** means the central counterparty clearing house operated by NZ Clearing as part of the NZCDC settlement system

**clearing participant** means a participant in the NZCDC settlement system that participates in the clearing house, but does not include NZ Clearing

**C&S Rules** means NZ Clearing's Clearing and Settlement Rules which are part of the rules of the NZCDC settlement system

**depository** means the central product depository operated by NZ Depository as part of the NZCDC settlement system

**depository operating rules** means NZ Depository's Depository Operating Rules which are part of the rules of the NZCDC settlement system

**depository participant** means a participant in the NZCDC settlement system that participates in the depository, but does not include NZ Depository

**NZ Clearing** means New Zealand Clearing Limited, which is a wholly owned subsidiary of NZCDC and the specified operator of, and a participant in, the NZCDC settlement system

**NZ Depository** means New Zealand Depository Limited, which is a wholly owned subsidiary of NZCDC and an operator of, and a participant in, the NZCDC settlement system

**NZCDC** means New Zealand Clearing and Depository Corporation Limited, a wholly owned subsidiary of NZX Limited

**NZCDC settlement system** means the settlement system owned by, and operated and managed by or on behalf of, NZCDC that is declared to be a designated settlement system pursuant to section 156N of the Reserve Bank of New Zealand Act 1989

**NZX's market** means any securities market or futures market that is operated by NZX Limited as a registered exchange or an authorised futures exchange

**securities lending transaction** means a lending transaction as defined in the depository operating rules

**settlement transaction** means a settlement transaction as defined in the C&S Rules

**specified participant** means a person that is both a clearing participant and a depository participant.

- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

#### **5 Exemption for NZ Clearing from sections 22 to 25 of Act**

- (1) NZ Clearing and every person acting on its behalf are exempted from sections 22 to 25 of the Act in respect of any relevant interest in a security that NZ Clearing has as a result of—

- (a) being the central counterparty to a settlement transaction on the clearing house under the C&S Rules; or
- (b) the exercise of its powers and the performance of its functions under the C&S Rules in the ordinary course of its business of operating the clearing house.

- (2) Subclause (1) does not apply to any relevant interest in a security (other than a relevant interest arising in respect of collateral) that is not disposed of by NZ Clearing within 10 business days after the date on which the relevant interest in that security was acquired.

#### **6 Exemption for NZ Depository from sections 22 to 25 of Act**

NZ Depository and every person acting on its behalf are exempted from sections 22 to 25 of the Act in respect of any relevant interest in a security that NZ Depository has as a result of the exercise of its powers and the performance of its functions under the depository operating rules in the ordinary course of its business of operating the depository.

- 7 Exemption for NZCDC from sections 22 to 25 of Act**  
NZCDC and every person acting on its behalf are exempted from sections 22 to 25 of the Act in respect of any relevant interest that NZCDC has in a security in which either or both of NZ Clearing or NZ Depository also have both—
- (a) a relevant interest; and
  - (b) an exemption under clause 5 or 6.
- 8 Exemption for specified participants from sections 22 to 25 of Act**
- (1) Each specified participant and every person acting on behalf of a specified participant are exempted from sections 22 to 25 of the Act in respect of any relevant interest in a security that the specified participant has as a result of both—
    - (a) being a party to a settlement transaction on the clearing house under the C&S Rules; and
    - (b) the performance of its functions in connection with that settlement transaction in the ordinary course of its business as a clearing participant under the C&S Rules or as a depository participant under the depository operating rules.
  - (2) For the purposes of subclause (1), a settlement transaction does not include—
    - (a) a settlement transaction arising from trading activities on NZX's markets where the specified participant acquires or disposes of securities or authorised futures contracts on its own behalf; or
    - (b) a settlement transaction arising from a securities lending transaction.

Dated at Wellington this 31st day of August 2010.

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

[Seal]

J Diplock,  
Chairperson.

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### Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 30 November 2015.

The notice exempts certain persons from the substantial security holders' disclosure obligations found in sections 22 to 25 of the Securities Markets Act 1988 (the **Act**) in respect of certain relevant interests under the new NZCDC settlement system.

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

- the exemptions are consistent with the current policy of the Act, which excludes certain interests in securities from the definition of relevant interest, thereby limiting the scope of the circumstances in which substantial holdings in securities must be disclosed;
  - given the nature and extent to which interests may arise by virtue of the operation of the NZCDC settlement system and the parties that may hold an interest, compliance with the Act in full may otherwise inhibit an informed market;
  - the relevant interests in securities falling within the exemptions arise as a result of the holding and transfer of relevant interests through the operation of NZX's markets and the settlement system.
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**Securities Markets Act (NZCDC Settlement  
System) Exemption Notice 2010**

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2010/302

Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 2 September 2010.  
This notice is administered by the Securities Commission.

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