



FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Securities Act (PSIS Limited) Exemption Notice 2011

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

- Title**
This notice is the Securities Act (PSIS Limited) Exemption Notice 2011.
- Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- Expiry**
This notice expires on the close of 31 August 2016.

4 Interpretation

- (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978

consolidated financial statements means, at any date, either the annual audited consolidated financial statements of the PSIS group or the unaudited interim consolidated financial statements of the PSIS group, whichever is the most recent, prepared in accordance with generally accepted accounting practice

guaranteeing group, in relation to an offer of the specified debt securities, means the group comprising —

- (a) PSIS; and
- (b) all guaranteeing subsidiaries in respect of the periods since they became such subsidiaries

prospectus means the registered prospectus for the offer of the specified debt securities

PSIS means PSIS Limited

PSIS group means, at any time, PSIS and all of its subsidiaries and associates (as determined in accordance with generally accepted accounting practice) at that time

Regulations means the Securities Regulations 2009

relevant date means, —

- (a) for the purposes of clause 10, the date of the statement of the most recent financial position of the PSIS group; and
- (b) for the purposes of clause 14, the date of the consolidated financial statements that are available when the request referred to in clause 14 is made

specified debt securities means debt securities issued by PSIS.

- (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 37A(1)(c) of Act

PSIS and every person acting on its behalf are exempted from section 37A(1)(c) of the Act in respect of specified debt securities.

6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that no allotment of a specified debt security offered to the public by PSIS is made if the date of allotment would be more than,—

- (a) in the case of a prospectus that contains or refers to consolidated financial statements or interim consolidated financial statements under clause 10(1)(c) or (d) and for which no certificate has been registered under section 37A(1A) of the Act, 9 months after the later of—
 - (i) the date of the consolidated statement of financial position contained or referred to in the prospectus; and
 - (ii) the last day of the interim accounting period to which the interim consolidated financial statements relate; or
- (b) in the case of a prospectus that contains or refers to consolidated financial statements under clause 10(1)(c) (but not interim consolidated financial statements) and for which a certificate has been registered under section 37A(1A) of the Act, 9 months after the date of that certificate; or
- (c) in any other case, 6 months after the date of the prospectus.

7 Exemption from section 37A(1A)(d) of Act

PSIS and every person acting on its behalf are exempted from section 37A(1A)(d) of the Act in respect of the specified debt securities.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) a certificate delivered to the Registrar for registration under section 37A(1A) of the Act is accompanied by interim consolidated financial statements of the PSIS group for the 6-month period from the date of the consolidated statement of financial position contained or referred to in the prospectus; and
- (b) those interim consolidated financial statements are prepared in accordance with NZ IAS 34 (but need not be audited).

9 Exemptions from certain requirements relating to financial statements in prospectus

PSIS and every person acting on its behalf are exempted from clauses 8, 9, 16 to 20, and 22 of Schedule 2 of the Regulations in respect of specified debt securities.

10 Conditions of exemptions in clause 9

- (1) The exemptions in clause 9 are subject to the condition that the prospectus contains all of the information, statements and other matters specified in the following that are applicable:

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- (a) clause 8 of Schedule 2 of the Regulations but applied as if the reference to –
 - (i) the group were a reference to the PSIS group; and
 - (ii) the statement of financial position contained or referred to in the prospectus under clause 17 were a reference to the consolidated statement of financial position contained or referred to in the prospectus under paragraph (c) of this subclause; and
 - (iii) any interim financial statements set out in the prospectus under clause 18 were a reference to any interim consolidated financial statements set out in the prospectus under paragraph (d) of this subclause:
- (b) clause 9 of Schedule 2 of the Regulations but applied as if the reference to a statement of financial position contained or referred to in the prospectus under clause 17 were a reference to a consolidated statement of financial position contained or referred to in the prospectus under paragraph (c) of this subclause:
- (c) clause 17 of Schedule 2 of the Regulations but applied as if the references to the group were references to the PSIS group:
- (d) clause 18 of Schedule 2 of the Regulations but applied as if the references to –
 - (i) the group were references to the PSIS group; and
 - (ii) the financial statements contained or referred to in the prospectus under clause 17 were references to the consolidated financial statements contained or referred to in the prospectus under paragraph (c) of this subclause:
- (e) clause 19 of Schedule 2 of the Regulations but applied as if the references to the financial statements for the group referred to in clause 17(1) were references to the consolidated financial statements of the PSIS group that are referred to in the prospectus under paragraph (c) of this subclause:
- (f) clause 20 of Schedule 2 of the Regulations but applied as if the reference to the financial statements referred to in the prospectus under clause 17(1) were references to the consolidated financial statements referred to in the prospectus under paragraph (c) of this subclause:

- (g) clause 22 of Schedule 2 of the Regulations but applied as if the references to –
 - (i) any of the issuer's guaranteeing subsidiaries (in clause 22(1)(c)) were a reference to any of PSIS's subsidiaries; and
 - (ii) the group were references to the PSIS group; and
 - (iii) the financial statements contained or referred to in the prospectus under clause 17 were references to the financial statements contained or referred to in the prospectus under paragraph (c) of this subclause; and
 - (iv) the amounts stated under clauses 8 and 9(2) and (3) were references to the amounts stated under paragraphs (a) and (b) of this subclause.
- (2) The exemptions in clause 9 are subject to further conditions that -
 - (a) the financial statements contained in the prospectus must begin with a prominent explanatory statement in accordance with subclause (4):
 - (b) the prospectus must contain a statement to the effect that the information, statements, and other matters that are contained or referred to in the prospectus under paragraph (10)(1) relate to the PSIS group rather than the guaranteeing group:
 - (c) the prospectus must contain a statement by the directors of PSIS to the effect that, in their opinion and after due enquiry by them, on the relevant date the difference between the aggregate amount of the total assets of the guaranteeing group and the aggregate amount of the total assets of the PSIS group is not more than 20% of the total assets of the PSIS group (measured in accordance with generally accepted accounting practice):
 - (d) the prospectus must contain a statement by the directors of PSIS to the effect that, in their opinion and after due enquiry by them, for the accounting period ending on the relevant date the difference between the aggregate amount of the consolidated profit or loss before interest and tax of the guaranteeing group and the aggregate amount of the consolidated profit or loss before interest and tax of the PSIS group is not more than 15% of the aggregate amount of the consolidated profit or loss before interest and tax of the PSIS group (measured in accordance with generally accepted accounting practice):

- (e) the prospectus must contain a statement by the directors of PSIS to the effect that they consider that the information, statements, and other matters referred to in paragraphs 10(1)(a) to (g) and 10(2)(a) to (d) provide a reasonable basis on which to assess the financial position of the guaranteeing group in relation to the specified debt securities.
- (3) The exemptions in clause 9 are subject to the further condition that, on the specified date and on any date on which a certificate is delivered to the Registrar for registration under section 37A(1A) of the Act in respect of the prospectus, the directors of PSIS, after due enquiry by them, are satisfied that, —
- (a) the difference between the aggregate amount of the total assets of the guaranteeing group and the aggregate amount of the total assets of the PSIS group is not more than 20% of the total assets of the PSIS group (measured in accordance with generally accepted accounting practice); and
 - (b) for the accounting period ending on the relevant date, the difference between the aggregate amount of the consolidated profit or loss before interest and tax of the guaranteeing group and the aggregate amount of the consolidated profit or loss before interest and tax of the PSIS group is not more than 15% of the aggregate amount of the consolidated profit or loss before interest and tax of the PSIS group (measured in accordance with generally accepted accounting practice).
- (4) In clause 10(2)(a) and in clause 14(1)(a), **explanatory statement** means a statement that —
- (a) the financial statements relate to the PSIS group rather than the guaranteeing group; and
 - (b) lists the activities of the members of the guaranteeing group as at the relevant date; and
 - (c) explains that the only material differences between the financial positions of the PSIS group and the guaranteeing group are because of certain interest rate swaps; and
 - (d) explains the nature, function, and net effect of the interest rate swaps and that realisation of the interest rate swaps can result in differences between the financial position of the guaranteeing group and the PSIS group; and
 - (e) explains that the Act and Regulations ordinarily requires a prospectus to contain or refer to guaranteeing group financial statements but that the Financial Markets Authority has granted an exemption allowing PSIS's prospectus to contain or

refer to the PSIS group financial statements with additional information instead; and

- (f) compares key PSIS group and guaranteeing group figures, including those where there are material differences.

11 Exemption from certain requirements relating to advertisements

PSIS and every person acting on its behalf are exempted from regulation 26 of the Regulations with respect to advertisements for the specified debt securities.

12 Conditions of exemption in clause 11

The exemption in clause 11 is subject to the following conditions:

- (a) every advertisement for the specified debt securities that states the amount of assets, or net assets, of any person must comply with regulation 26 of the Regulations applied as if references to the borrowing group or group were references to the PSIS group:
- (b) every advertisement for the specified debt securities that states the amount of assets, or net assets, of any person must —
 - (i) contain a statement to the effect that the amount of the net assets, or the amounts of the total assets and total liabilities, stated in the advertisement refers to the amount of the net assets, or the amounts of the total assets and total liabilities, of the PSIS group rather than the guaranteeing group; and
 - (ii) refer to this notice and contain a statement to the effect that more information on the exemptions in this notice is set out in the prospectus.

13 Exemption from certain requirements relating to requests under section 54B(1) of Act

PSIS and every person acting on its behalf are exempted from section 54B(1) of the Act to the extent that that provision requires PSIS to provide, at the request of a holder of specified debt securities, the documents referred to in regulation 44(d)(ii) of the Regulations.

14 Conditions of exemption in clause 13

- (1) The exemption in clause 13 is subject to the condition that PSIS must, after receiving a request from a holder of specified debt securities for a copy of any documents referred to in regulation 44(d)(ii) of the Regulations, send to the holder —

- (a) a copy of the consolidated financial statements that contains —
 - (i) a prominent explanatory statement at the beginning in accordance with clause 10(4); and
 - (ii) all documents required by any enactment or rule of law to be incorporated in, be attached to, or accompany those financial statements; and
 - (b) a statement by the directors of PSIS to the effect that, in their opinion and after due enquiry by them, on the relevant date the difference between the aggregate amount of the total assets of the guaranteeing group and the aggregate amount of the total assets of the PSIS group is not more than 20% of the total assets of the PSIS group (measured in accordance with generally accepted accounting practice); and
 - (c) a statement by the directors of PSIS to the effect that, in their opinion and after due enquiry by them, for the accounting period ending on the relevant date the difference between the aggregate amount of the consolidated profit or loss before interest and tax of the guaranteeing group and the aggregate amount of the consolidated profit or loss before interest and tax of the PSIS group is not more than 15% of the aggregate amount of the consolidated profit or loss before interest and tax of the PSIS group (measured in accordance with generally accepted accounting practice); and
 - (d) a statement by the directors of PSIS to the effect that they consider that the information, statements, and other matters referred to in paragraphs (a) to (c) provide a reasonable basis on which to assess the financial position of the guaranteeing group in relation to the specified debt securities.
- (2) The exemption in clause 13 is subject to the further condition that, on the date the consolidated financial statements and other documents referred to in subclause (1) are sent to the holder of specified debt securities, the directors of PSIS, after due enquiry by them, are satisfied that,—
- (a) the difference between the aggregate amount of the total assets of the guaranteeing group and the aggregate amount of the total assets of the PSIS group is not more than 20% of the total assets of the PSIS group (measured in accordance with generally accepted accounting practice); and
 - (b) for the accounting period ending on the relevant date, the difference between the aggregate amount of the consolidated profit or loss before interest and tax of the guaranteeing group and the aggregate amount of the consolidated profit or

loss before interest and tax of the PSIS group is not more than 15% of the aggregate amount of the consolidated profit or loss before interest and tax of the PSIS group (measured in accordance with generally accepted accounting practice).

- (3) The exemption in clause 13 is subject to the further condition that, when sending consolidated financial statements and other documents under subclause (1), PSIS—
- (a) must not require payment of any fee; and
 - (b) must send the consolidated financial statements and other documents to the security holder as soon as practicable but, in any event, within 5 working days of receiving the request.

Dated at Wellington this *28th* day of *AUGUST* 2011


Sean Hughes
Chief Executive
Financial Markets Authority

Statement of reasons

This notice comes into force on the day after its notification in the *Gazette* and expires on 31 August 2016.

This notice exempts PSIS Limited (**PSIS**) in relation to debt securities issued by PSIS and guaranteed by a guaranteeing group comprising of PSIS and some (but not all) of its subsidiaries. The notice exempts PSIS, subject to conditions, from certain requirements relating to references to the guaranteeing group in—

- information contained in the registered prospectus for an offer of the debt securities; and
- advertisements for the debt securities; and
- information provided to holders of the debt securities who request it.

Normally, information and advertisements must refer to information about the guaranteeing group. The exemptions enable PSIS to instead provide information about PSIS and all of its subsidiaries (the **PSIS group**).

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

- PSIS is a co-operative company. Debt security holders of PSIS are also members and shareholders of PSIS:
- Schedule 2 of the Securities Regulations 2009 requires the financial statements included in a registered prospectus for debt securities to be for the “group”. Under the Regulations “group” means the guaranteeing group. The financial statements that PSIS prepares and registers in terms of the Financial Reporting Act 1993 (the FRA) are not for the guaranteeing group but are for the “consolidated group”. The “consolidated group” comprises the guaranteeing group plus non-guaranteeing subsidiaries. Without an exemption PSIS would be required to prepare guaranteeing group financial statements for inclusion in its prospectus that differ from the group financial statements it is required to prepare and register under the FRA:
- a class exemption for financial institutions, the Securities Act (Financial Institutions) Exemption Notice 2011, allows financial institutions to consolidate non-guaranteeing subsidiary financial statements into the guaranteeing group financial statements for the purposes of Schedule 2 of the Securities Regulations 2009 provided the non-guaranteeing subsidiaries are not significant and the criteria mentioned in the class exemption are met. As a result of the predecessor class exemption, Securities Act (Financial Institutions) Exemption Notice 2007, PSIS’s prospectuses for debt securities have, in some years, contained guaranteeing group financial statements that include non-guaranteeing subsidiaries, and in other years excluded the non-guaranteeing subsidiaries:
- providing investors with 2 sets of financial statements prepared on a different basis (the FRA and on the Securities Act 1978) is likely to confuse investors and prospective investors. Preparing 2 separate sets of financial statements also imposes significant costs:
- the conditions of the exemptions ensure that prospective investors and security holders are informed that the financial statements included in the prospectus are of the PSIS group and not of the guaranteeing group:
- the conditions of the exemptions impose a 20% variation threshold between the assets of the PSIS group and that of the guaranteeing group:
- the conditions of the exemptions also impose a 15% variation threshold between the earnings (before interest and tax) of the PSIS group and that of the guaranteeing group in view of the material differences between the financial statements of the PSIS group and

those of the guaranteeing group relating only to interest rate swap transactions, which is a single type of transaction entered into by a non-guaranteeing subsidiary:

- the conditions also require information explaining that the only material differences between the 2 financial statements relate to the interest rate swaps, and to include information about the nature and effect of the swaps and a comparison of some of the key PSIS group and guaranteeing group figures:
 - when a request is received for information, the conditions of the exemptions require the directors of PSIS to be satisfied that the assets and earnings of the guaranteeing group are within the variations permitted at the time the information is sent to the security holder:
 - it is appropriate that any statements about assets or net assets that are made in advertisements for debt securities align with the financial information contained in the prospectuses for those securities:
 - the conditions ensure that prospective investors and security holders will not be materially disadvantaged in assessing the ability of the guaranteeing group to meet the obligations due under the debt securities. FMA is therefore satisfied that the exemptions will not cause significant detriment to subscribers nor that the exemptions are broader than reasonably necessary to address the matters that gave rise to the exemptions.
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