



**SECURITIES ACT (LISTED AUSTRALIAN ISSUERS EMPLOYEE
SHARE SCHEMES) EXEMPTION NOTICE 1997**

PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

NOTICE

1. Title and commencement—(1) This notice may be cited as the Securities Act (Listed Australian Issuers Employee Share Schemes) Exemption Notice 1997.

(2) This notice comes into force on the day after the date of its notification in the *Gazette*.

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

“The Act” means the Securities Act 1978:

“Associated body corporate”, in relation to an Australian issuer, means—

(a) A holding company of the Australian issuer:

(b) A subsidiary of the Australian issuer:

(c) A subsidiary of a holding company of the Australian issuer:

“Australian issuer” means a company—

(a) That is incorporated under the law of a State or Territory of Australia or any corresponding previous law; and

(b) That is listed on the Australian Stock Exchange:

“Eligible persons” means—

(a) Directors and employees of an Australian issuer or associated body corporate:

(b) Persons providing personal services (otherwise than as employees) principally to an Australian issuer or associated body corporate:

“Employee share scheme”, in relation to an Australian issuer, means a scheme for the acquisition of specified securities by eligible persons and—

(a) For which a prospectus is not required, by reason of section 1017 of the Corporations Law, to be lodged or registered; or

(b) To which an exemption from the requirement to lodge or register a prospectus granted by the Australian Securities Commission under section 1084 of the Corporations Law applies:

“The Regulations” means the Securities Regulations 1983:

“Specified security” means—

(a) A share in the share capital of an Australian issuer; and includes an option or right to acquire any such share:

(b) An interest in, or right under a trust to, a share or an option or right to acquire a share in the share capital of an Australian issuer:

“Trustee”, in relation to an offer of specified securities, means the trustee of an employee share scheme, if the scheme has a trustee.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.

3. Listed Australian issuers exempted from sections 33, 37, and 37A of the Securities Act 1978 and the Securities Regulations 1983 (except regulation 8) in respect of offers of certain securities—

(1) Every Australian issuer, trustee, and every person acting on their behalf are exempted from compliance with sections 33, 37, and 37A of the Act and the Securities Regulations 1983 (except regulation 8) in respect of any offer of specified securities made under an employee share scheme to any person who is, when the offer is made, an eligible person.

(2) The exemption granted by subclause (1) is subject to the following conditions:

(a) That, before subscription for the specified securities, the Australian issuer or trustee has delivered to the person to whom the offer is made a copy of—

(i) The offer document relating to the specified securities; and

(ii) The rules of the employee share scheme under which the offer is made or a summary of those rules:

(b) That the offer is, in substance, the same as the offers of specified securities made in Australia under the employee share scheme:

(c) That offers of the specified securities are made in both Australia and New Zealand under the employee share scheme at the same time:

(d) That offers of specified securities are made in Australia under the employee share scheme only to eligible persons:

(e) That, not later than the date of allotment of the securities, the Australian issuer has deposited with the Registrar of Companies at Wellington a copy of—

(i) The offer document relating to the specified securities; and

(ii) The rules of the employee share scheme under which the offer is made.

(3) If the specified securities are not of, or do not relate to, a class of securities that are quoted on the Australian Stock Exchange, the exemption granted by subclause (1) is subject to the further following conditions:

(a) That, before the offer is made, an application has been made for the specified securities to be listed for quotation on the Australian Stock Exchange; and

- (b) That, before allotting the specified securities, the Australian issuer has complied with all the requirements of the Australian Stock Exchange relating to the application which it is required to comply with by the time of allotment.

4. Listed Australian issuers exempted from sections 51 to 54 of the Securities Act 1978 in respect of certain securities—Every Australian issuer, trustee, and every person acting on their behalf are exempted from sections 51 to 54 of the Act in respect of specified securities.

5. Revocation—The Securities Act (Listed Australian Issuers Employee Share Schemes) Exemption Notice 1994* is revoked.

Dated at Wellington this 10th day of September 1997.

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

[L.S.]

E. H. ABERNETHY,
Chairman.

*S.R. 1994/251

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 the day after the date of its notification in the *Gazette*, replaces the Securities Act (Listed Australian Issuers Employee Share Schemes) Exemption Notice 1994.

The notice exempts companies incorporated in Australia and listed on the Australian Stock Exchange, subject to conditions, from compliance with certain provisions of Part II of the Securities Act 1978 and with the Securities Regulations 1983 (except regulation 8) in the case of offers of securities to eligible persons. Eligible persons are directors and employees of the Australian company or its associated companies and persons providing personal services (other than as employees) to the Australian company or its associated companies. The notice applies to offers of—

- (a) Shares in the Australian issuer and options or rights to acquire shares:
- (b) Interests in, and rights under a trust to, shares or options or rights to acquire shares in the Australian issuer.

This notice differs from the Securities Act (Listed Australian Issuers Employee Share Schemes) Exemption Notice 1994 in 4 ways.

First, the 1994 notice granted an exemption from Part II of the Securities Act 1978. This notice grants an exemption from sections 33, 37, 37A, and 51 to 54 of that Act and the Securities Regulations 1983 (except regulation 8).

Second, the 1994 notice applied to offers of securities to which an exemption granted by the Australian Securities Commission under section 1084 of the Corporations Law applied. This notice also applies to offers of securities under employee share schemes for which a prospectus is not required in Australia.

Third, the 1994 notice applied to shares quoted on the Australian Stock Exchange and to interests in, and rights under trusts to, shares quoted on the Australian Stock Exchange. This notice also applies to shares and interests in, and rights under trusts to, shares that are not

quoted on the Australian Stock Exchange. But that is so only if, before the offer is made, application has been made to quote the shares on the Exchange and, before allotment, the issuer has complied with the requirements of the Exchange relating to the application which it is required to comply with by the time of allotment.

Fourth, it is a condition of the exemption in the 1994 notice that offers of the securities are made in Australia on the same terms and conditions. This notice requires that the offers are, in substance, the same as the offers made in Australia.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 11 September 1997.
This notice is administered in the Securities Commission.