



Securities Act (Macquarie Companies) Exemption Notice 2003

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

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Notice

- 1 Title**
This notice is the Securities Act (Macquarie Companies) Exemption Notice 2003.
- 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 31 August 2008.
- 4 Interpretation**
- (1) In this notice, unless the context otherwise requires,—
- Act** means the Securities Act 1978
- Australian prospectus** means a document—
- (a) that contains an offer of specified equity securities; and

- (b) that is identical to a document that is lodged or registered under the laws of Australia and that is signed by, or on behalf of, the persons (if any) that are required by that law to sign that document; and
- (c) by means of which it is lawful under the laws of Australia to make an offer of specified equity securities to the public in Australia

company means a company—

- (a) that is registered as a mutual fund company under the Bermuda Companies Act 1981; and
- (b) that is registered in Australia as a foreign company under the Corporations Act 2001; and
- (c) all of the non-redeemable equity securities of which are, at the time of the offer of the specified equity securities in New Zealand, held by either or both of the following:
 - (i) Macquarie Treasury Management Limited, a company registered in Bermuda;
 - (ii) Apollo (Bermuda) Trust, a trust established by declaration of trust dated 6 April 2001 under the laws of Bermuda

Corporations Act 2001 means the Corporations Act 2001 of the Commonwealth of Australia

lodged means lodged under the laws of Australia

registered means registered under the laws of Australia

Regulations means the Securities Regulations 1983

specified equity securities means redeemable shares in the company that is making the offer.

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

5 Exemptions

- (1) Every company and every person acting on its behalf are exempted, in respect of any specified equity securities, from—
 - (a) section 37 of the Act; and
 - (b) section 38(a) of the Act to the extent that it requires an Australian prospectus to refer to an investment statement; and

- (c) section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and
 - (d) sections 51 to 54 of the Act.
- (2) Subclause (1)(c) applies only in respect of an Australian prospectus, and not in respect of any investment statement or other advertisement.

6 Conditions about Australian prospectus

The exemptions in clause 5(1)(a) and (c) are subject to the conditions that—

- (a) there is an Australian prospectus relating to the specified equity securities at the time that offers of the securities are made or are open for acceptance in New Zealand; and
- (b) the Australian prospectus contains no statement referring to listing or intended listing of the specified equity securities on any registered exchange other than a statement to the effect that listing of the securities is not being sought; and
- (c) it is a term of each offer of the specified equity securities made in New Zealand that the company will, within 5 working days of receiving a request of an offeree for a copy of the Australian prospectus relating to the specified equity securities, without fee, send, or cause to be sent, to that offeree—
 - (i) a copy of the Australian prospectus; and
 - (ii) copies of any documents that, under the laws of Australia, must accompany a copy of the Australian prospectus sent to any person to whom an offer of the specified equity securities is made in Australia; and
 - (iii) a copy of any document, or part of a document, lodged or registered with the Australian Securities and Investments Commission that is referred to in the Australian prospectus and that is taken to be included in that prospectus under the Corporations Act 2001.

7 Condition about documents to be received by Registrar of Companies

The exemptions in clause 5(1)(a) and (c) are subject to the further condition that a copy of each of the following documents has been received by the Registrar of Companies:

- (a) the Australian prospectus relating to the specified equity securities:
- (b) any document, or part of any document, lodged or registered with the Australian Securities and Investments Commission that is referred to in that prospectus and is taken to be included in that prospectus under the Corporations Act 2001:
- (c) any exemption granted by the Australian Securities and Investments Commission that relates to the offer of the specified equity securities:
- (d) any document evidencing lodgement or registration of the Australian prospectus:
- (e) the certificate of incorporation of the company:
- (f) any document evidencing registration of the company in Australia as a foreign company under the Corporations Act 2001:
- (g) the memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the company.

8 Conditions about investment statements

(1) The exemptions in clause 5(1)(a) and (c) are subject to the further conditions that any investment statement that relates to the specified equity securities—

- (a) includes, to the extent appropriate, information or statements to the following effect:
 - (i) that allotments of the specified equity securities must be made in the manner specified in the Australian prospectus and in the manner prescribed under the laws of Australia; and
 - (ii) information describing how returns to New Zealand investors are likely to be affected by New Zealand taxation rules and how these returns may differ from the returns for Australian investors described in the Australian prospectus; and

- (iii) that, despite the information provided under subparagraph (ii), investors should satisfy themselves as to the tax implications of investing in the specified equity securities; and
 - (iv) that investing in the securities of the company may carry with it a currency exchange risk; and
 - (v) that the financial reporting requirements applying in New Zealand and those applying to the company may be different and the financial statements of the company may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
 - (vi) that the company may not be subject in all respects to New Zealand law; and
 - (vii) that, although a copy of the Australian prospectus and other documents have been received by the Registrar of Companies, the Australian prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand prospectus is required to contain; and
 - (viii) the general nature and effect of any exemption, order, or declaration that may have been granted by the Australian Securities and Investments Commission in respect of the offer of the specified equity securities; and
- (b) includes information or statements to the following effect, under the heading “Agreement as to Jurisdiction”:
- (i) that, in respect of a dispute concerning the contract for the specified equity securities, the company—
 - (A) agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - (B) has instructed the New Zealand agent for service referred to in subparagraph (iii) to accept service on the company’s behalf; and
 - (C) agrees that this statement is an agreement with each investor for the purposes of

section 389(1)(e) of the Companies Act 1993; and

- (ii) that, despite the statements referred to in subparagraph (i), the contract in respect of the specified equity securities may not always be enforceable in New Zealand courts; and
 - (iii) the name and address of a person in New Zealand who has been appointed by the company to accept service in New Zealand of any document on its behalf; and
- (c) contains no statement referring to listing or intended listing of the specified equity securities on any securities market operated by New Zealand Exchange Limited other than a statement approved by New Zealand Exchange Limited or a statement to the effect that listing of the specified equity securities is not being sought; and
- (d) refers to the Australian prospectus wherever the Act or Regulations requires an investment statement to refer to a registered prospectus.
- (2) The conditions in subclause (1) are not breached if there are differences between the information required to be in the investment statement under that subclause and the information presented in that investment statement, but the differences are immaterial.

9 Condition about offers to be made in Australia at same time

The exemptions in clause 5(1)(a) and (c) are subject to the further condition that, at the same time as offers of the specified equity securities are made or are open for acceptance in New Zealand, offers of the specified equity securities are also made or are open for acceptance in Australia in accordance with the laws of Australia.

10 Further conditions

The exemptions in clause 5(1) are subject to the further conditions that—

- (a) every investment statement that contains an offer of specified equity securities by the company contains a statement that the company will, without fee, make

- available or provide to the company's shareholders in New Zealand—
- (i) every annual report of the company, including audited annual accounts and the quarterly reports provided to the company's shareholders in Australia; and
 - (ii) the date of, names of the parties to, and general nature of any material contract (excluding a contract entered into in the ordinary course of business) entered into by the company during the last financial year; and
 - (iii) all the information required under Australian law to be disclosed in Australia to the company's shareholders; and
 - (iv) all other documents required under Australian law to be lodged or registered with the Australian Securities and Investments Commission and made available to Australian shareholders by companies registered in Australia as overseas companies; and
 - (v) monthly information regarding the net asset value of the specified equity securities; and
 - (vi) a facility enabling shareholders to obtain information regarding the net asset value of the specified equity securities, the funds investment strategy of the company, details of any scheme for the protection of investors' capital, and the amount protected; and
 - (vii) access to a copy of a register of shareholders of the company for inspection during normal office hours; and
- (b) every investment statement that contains an offer of specified equity securities by the company contains—
- (i) a statement of how the company will make available or provide the information referred to in paragraph (a)(i) to (v) and the facility referred to in paragraph (a)(vi); and
 - (ii) the address of an office in New Zealand from which the information referred to in paragraph (a)(i) to (v) may be obtained; and

- (c) the Australian prospectus within which an offer of the specified equity securities is made in New Zealand contains, or is accompanied by a document that contains,—
- (i) the incorporation details of the company; and
 - (ii) the address of the office in New Zealand at which a copy of the share register of the company may be inspected; and
- (d) the Registrar of Companies has received a copy of each of the following documents:
- (i) a copy of the memorandum of appointment of the company's New Zealand agent for service; and
 - (ii) information about the officers of the company, including their names and addresses.

Dated at Wellington this 24th day of September 2003.

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

[L.S.]

J. Diplock,
Chairperson.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 August 2008.

The notice relates to redeemable equity securities in companies all of the non-redeemable equity securities of which are held by either or both of the following:

- Macquarie Treasury Management Limited, a company registered in Bermuda;
- Apollo (Bermuda) Trust, a trust established under the laws of Bermuda.

Offers of the securities will be made in prospectuses that comply with Australian law.

The exemptions and the conditions on which they are granted are similar to those contained in the Securities Act (Australian Issuers) Exemption Notice 2002 (SR 2002/314).

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 25 September 2003.
This notice is administered in the Securities Commission.
