



**THE SECURITIES ACT (AMALGAMATIONS) EXEMPTION
NOTICE 1995**

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 (Amalgamations) Exemption Notice 1995.

(2) This notice shall come 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:

“Designated date” means—

(a) In relation to an amalgamation under Part VA of the Companies Act 1955, a date that is not more than 21 days before the date on which the documents required to be sent to the members of each amalgamating company by section 209c (3) of that Act are sent to those members:

(b) In relation to an amalgamation under Part XIII of the Companies Act 1993, a date that is not more than 21 days before the date on which the documents required to be sent to the shareholders of each amalgamating company by section 221 (3) of that Act are sent to those shareholders:

“The Regulations” means the Securities Regulations 1983.

(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. Companies exempted from compliance with certain provisions of the Securities Act 1978 and the Securities Regulations 1983 in respect of offers of equity securities made pursuant to amalgamations—(1) Subject to subclauses (2) and (3) of this clause, every company and every person acting on its behalf are exempted from compliance with the provisions of sections 33 (1), 37, 37A, and 38 to 43 of the Act and the provisions of the Regulations (except regulation 8) in respect of any offer of equity securities that is, or is to be, made pursuant

to an amalgamation that is to be effected under Part VA of the Companies Act 1955 or Part XIII of the Companies Act 1993, as the case may be.

(2) The exemption granted by subclause (1) of this clause is subject to the condition that the documents required to be sent to the members of each amalgamating company by section 209c (3) of the Companies Act 1955 or to the shareholders of each amalgamating company by section 221 (3) of the Companies Act 1993, as the case may be, are accompanied by:

(a) A copy of—

(i) The most recent audited consolidated balance sheet and audited consolidated profit and loss statement and statement of cash flows of each amalgamating company; or

(ii) Where an amalgamating company has been in existence for less than a year, an audited consolidated balance sheet as at the end of, and an audited consolidated profit and loss statement and statement of cash flows for, the period commencing on the date the amalgamating company commenced business and ending on its first balance date or any stated date that is not more than 4 months before the date on which the amalgamation is proposed to take effect, as the case may be,—

that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements or, where applicable, group financial statements; and

(b) Where the date of allotment of any such equity security would be more than 9 months after the date of the balance sheet of an amalgamating company referred to in paragraph (a) of this subclause, a copy of an interim consolidated balance sheet as at the end of, and an interim consolidated profit and loss statement and statement of cashflows of that amalgamating company for, a period commencing on the day after the date of that balance sheet and ending on a date that is not more than 9 months later, that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements or, where applicable, group financial statements (except that they need not be audited); and

(c) A copy of a forecast consolidated balance sheet in respect of the amalgamated company as at the date on which the amalgamation is proposed to take effect; and

(d) A copy of a forecast consolidated balance sheet in respect of the amalgamated company as at the end of, and a forecast consolidated profit and loss statement and statement of cash flows for, one or more specified future accounting periods of the amalgamated company, in each case prepared as if the amalgamation had already been effected; and

(e) The information required to be contained in a registered prospectus containing an offer of equity securities by the First Schedule (except clauses 8, 10, 11, 19, 22 to 37, 41, and 42) to the Regulations; and

(f) Statements by the directors of each amalgamating company as to whether, after due inquiry by them in relation to the period between the date of the balance sheet referred to in paragraph (a) of this subclause or the interim balance sheet referred to in paragraph (b) of this subclause, as the case may be,

and the designated date, there have, in their opinion, arisen any circumstances that materially adversely affect:

- (i) The trading or profitability of the amalgamating company; or
 - (ii) The value of its assets; or
 - (iii) The ability of the amalgamating company to pay its liabilities due within the next 12 months; and
- (g) Statements by the directors of each amalgamating company that, between the date of the balance sheet referred to in paragraph (a) of this subclause and the designated date, there have been no material changes in the nature of the business of the amalgamating company.

(3) The exemption granted by subclause (1) of this clause is subject to the further condition that the date of allotment of any such equity security is not more than 9 months after the date of the balance sheet referred to in subclause (2) (a) of this clause or any interim balance sheet referred to in subclause (2) (b) of this clause, as the case may be.

(4) The financial statements of an amalgamating company referred to in subclause (2) (a) of this clause do not have to be sent—

- (a) To a member of that amalgamating company (being a company within the meaning of section 2 of the Companies Act 1955) to whom a copy of the most recent financial statements of the amalgamating company laid before the members of the company in accordance with section 152 of that Act or deemed to have been so laid pursuant to section 362 (2) of that Act and all reports required by that Act to be annexed or attached thereto have previously been given or sent; or
- (b) To a shareholder of that amalgamating company (being a company within the meaning of section 2 of the Companies Act 1993) to whom, under section 209 of that Act, a copy of the most recent annual report of the amalgamating company has previously been sent or to whom, under section 210 of that Act, a copy of the most recent financial statements of the amalgamating company has previously been sent, as the case may be.

Dated at Wellington this 5th day of July 1995.

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

[L.S.]

E. H. ABERNETHY,
Chairman.

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*, applies to offers of equity securities that are made as part of an amalgamation under Part VA of the Companies Act 1955 or Part XIII of the Companies Act 1993. The notice exempts companies, subject to conditions, from the requirement of the Securities Act 1978 that such offers must be made by means of a registered prospectus or an authorised advertisement and also exempts companies from compliance with the Securities Regulations 1983 (except regulation 8) in respect of such offers.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 6 July 1995.

This notice is administered in the Securities Commission.