



## THE SECURITIES ACT (AUSTRALIAN ISSUERS) EXEMPTION NOTICE 1994

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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 (Australian Issuers) Exemption Notice 1994.

(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:

“Australian issuer” means—

“(a) A company incorporated under the law of a State or Territory of the Commonwealth of Australia or any corresponding previous law:

“(b) A company incorporated in a country other than Australia that is admitted to the official list of the Australian Stock Exchange:

“Lodged” means lodged under the law of a State or Territory of the Commonwealth of Australia; and “lodgment” has a corresponding meaning:

“Registered” means registered under the law of a State or Territory of the Commonwealth of Australia; and “registration” has a corresponding meaning:

“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. Meaning of “Australian prospectus”**—For the purposes of this notice, the term “Australian prospectus” means a document—

(a) That contains—

(i) An offer of equity securities by an Australian issuer, being equity securities of which it is the issuer; or

- (ii) An offer of equity securities that have previously been allotted by an Australian issuer, being an offer by the holder of those securities; and
- (b) That is identical to a document that is lodged or registered under the law of a State or Territory of the Commonwealth of Australia and which is signed by or on behalf of every director or proposed director of the Australian issuer and every promoter; and
- (c) By means of which it is lawful under the law of that State or Territory to make an offer of those equity securities; and
- (d) That contains a statement that—
  - (i) A copy of any material contract referred to in the document; or
  - (ii) If the material contract is not in writing, a copy of any memorandum containing particulars of the contract; or
  - (iii) If an exemption or declaration has been granted by the Australian Securities Commission under section 1084 of the Corporations Law of the Commonwealth of Australia, a copy of any memorandum containing particulars of the material contract prepared pursuant to that exemption or declaration—together with any statement in writing verifying the copy or memorandum, required to be made available for inspection at the registered office of the Australian issuer in accordance with the law of that State or Territory, may be inspected at the office of the Registrar of Companies at Wellington; and
- (e) That contains no statement referring to listing or intended listing on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
- (f) A copy of which has been deposited with the Registrar of Companies at Wellington together with a copy of—
  - (i) The certificate of incorporation of the Australian issuer;
  - (ii) The memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the Australian issuer;
  - (iii) Every document to which paragraph (d) of this clause applies;
  - (iv) Any certificate or other document evidencing lodgment or registration of the document;
  - (v) A certificate signed by the solicitor to the Australian issuer that all the terms and conditions of this notice have been complied with.

**4. Australian issuers and others exempt from compliance with certain provisions of the Securities Act 1978 and the Securities Regulations 1983**—(1) Subject to subclauses (3) and (4) of this clause, every Australian issuer and every person acting on its behalf is exempted from compliance with the provisions of sections 33 (1), 38, and 38A of the Act and regulation 23 of the Regulations in respect of any offer of equity securities of which that Australian issuer is the issuer.

(2) Subject to subclauses (3) and (4) of this clause, every person who is the holder of equity securities that have previously been allotted by an Australian issuer and every person acting on behalf of that holder is exempted from compliance with the provisions of sections 33 (1), 38, and

38A of the Act and regulation 23 of the Regulations in respect of any offer of such securities.

(3) The exemptions granted by subclauses (1) and (2) of this clause are subject to the condition that—

(a) The offer is made in, or accompanied by, an Australian prospectus; or

(b) The offer is made in an advertisement that—

(i) Refers to an Australian prospectus that relates to all the securities referred to in the advertisement and states the date and place of lodgment or registration thereof; and

(ii) States that allotments of the securities shall be made in the manner specified in the Australian prospectus and in the manner prescribed under the law of the State or Territory of the Commonwealth of Australia in accordance with which the Australian prospectus is lodged or registered; and

(iii) Specifies the place or places at which an Australian prospectus may be obtained, or contains a coupon or coupons to be completed by any person who wishes to be sent an Australian prospectus, or both; and

(iv) Contains no statement referring to listing or intended listing of the securities on the New Zealand Stock Exchange other than a statement approved by the New Zealand Stock Exchange; and

(v) Complies with the provisions of the Act and all regulations made under the Act relating to advertisements other than regulation 23 of the Regulations and any provisions compliance with which is exempted pursuant to this notice.

(4) The exemptions granted by subclauses (1) and (2) of this clause are subject to the further condition that at the same time as offers of the equity securities are made in New Zealand offers of the equity securities are also made in Australia by means of an Australian prospectus.

(5) Every Australian issuer, and every person acting on its behalf is exempted from compliance with the provisions of sections 37 and 37A of the Act and regulation 12 of the Regulations in respect of any offer of equity securities of which that Australian issuer is the issuer made in an Australian prospectus.

(6) Every person who is the holder of equity securities that have been previously allotted by an Australian issuer, and every person acting on behalf of that holder is exempted from compliance with the provisions of sections 37 and 37A of the Act and regulation 12 of the Regulations in respect of any offer of such equity securities made in an Australian prospectus.

(7) Every Australian issuer, and every person acting on its behalf is exempted from compliance with the provisions of regulation 15 of the Regulations (which prohibits an advertisement from containing a profit forecast unless the advertisement refers to a registered prospectus and the profit forecast is also contained in that prospectus) in respect of any offer of equity securities of which that Australian issuer is the issuer made in an—

(a) Australian prospectus; or

(b) Advertisement referred to in subclause (3) (b) of this clause, being an advertisement that refers to an Australian prospectus in which the profit forecast is also contained.

(8) Every person who is the holder of equity securities that have been previously allotted by an Australian issuer, and every person acting on behalf of that holder is exempted from compliance with the provisions of regulation 15 of the Regulations (which prohibits an advertisement from containing a profit forecast unless the advertisement refers to a registered prospectus and the profit forecast is also contained in that prospectus) in respect of any offer of such equity securities made in an—

(a) Australian prospectus; or

(b) Advertisement referred to in subclause (3) (b) of this clause, being an advertisement that refers to an Australian prospectus in which the profit forecast is also contained.

(9) Every Australian issuer that is a company incorporated under the law of a State or Territory of the Commonwealth of Australia or any corresponding previous law, and every person acting on its behalf is exempted from compliance with the provisions of sections 51 to 54 of the Act in respect of any equity securities offered to the public for subscription or purchase by means of an Australian prospectus.

**5. Revocation**—The Securities Act (Australian Issuers) Exemption Notice 1992\* is hereby revoked.

Dated at Wellington this 7th day of September 1994.

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

[L.S.]

P. D. McKENZIE,  
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*, replaces the Securities Act (Australian Issuers) Exemption Notice 1992.

The notice applies to offers by companies incorporated in Australia or incorporated outside Australia but listed on the Australian Stock Exchange of equity securities issued by those companies and also to offers of equity securities that have already been allotted by such companies where the offers are made by the existing holders of the securities. The application of the notice to previously allotted securities is new.

Clause 4 of the notice confers an exemption from the requirement imposed by the Securities Act 1978 that the offers must be made by means of a registered prospectus or an authorised advertisement and is subject to the condition that the offers are made in an Australian prospectus or in an advertisement that complies with clause 4 (3) (b) of the notice.

The exemption is subject to the additional condition that the offers are made in Australia by means of an Australian prospectus at the same time as they are made in New Zealand.

The effect of the exemption is that such offers may be made using a prospectus that complies with Australian law.

The notice also contains new exemptions from regulations 12 and 15 of the Securities Regulations 1983. Regulation 12 relates to statements of assets and regulation 15 relates to profit forecasts.

The notice also exempts companies incorporated in Australia from compliance with the provisions of sections 51 to 54 of the Securities Act 1978 in the case of equity securities offered to the public for subscription or purchase by means of an Australian prospectus.

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

Date of notification in *Gazette*: 8 September 1994.

This notice is administered in the Securities Commission.