



**SECURITIES ACT (RIGHTS, OPTIONS, AND CONVERTIBLE
SECURITIES) EXEMPTION NOTICE 1997**

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

NOTICE

1. Title, commencement, and expiry—(1) This notice may be cited as the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 1997.

(2) This notice comes into force on 1 October 1997.

(3) This notice expires on the close of 30 September 2002.

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

“Act” means the Securities Act 1978:

“Registered holder” means the person shown as the holder of the security in the register of securities kept by the issuer in accordance with section 51 of the Act:

“Regulations” means the Securities Regulations 1983:

“Share warrant” means a warrant stating that the bearer of the warrant is entitled to the shares specified in the warrant, being shares in respect of which no amount is payable to the issuer of the shares.

(2) In this notice, a reference to an option, share warrant, convertible note, or preference share includes a reference to a security that is in the nature of an option, share warrant, convertible note, or preference share.

(3) 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. Exemption relating to options, share warrants, convertible notes, and preference shares—(1) Every person is exempted from sections 37 and 37A of the Act in respect of any equity securities that are, or are to be, allotted pursuant to the terms of, or the exercise by any person of a right conferred by, any option, share warrant, convertible note, or preference share that was allotted before 1 October 1997.

(2) Every person is exempted from section 37 of the Act in respect of any equity securities that are, or are to be, allotted pursuant to the terms of, or the exercise by any person of a right conferred by, any option, share

warrant, convertible note, or preference share that was allotted on or after 1 October 1997.

(3) Except as provided in subclause (4), subclauses (1) and (2) do not apply in respect of any equity securities that are, or are to be, allotted pursuant to the terms of, or the exercise by any person of a right conferred by, an option, share warrant, convertible note, or preference share that has previously been allotted if the issuer of those equity securities will not be the issuer of the previously allotted option, share warrant, convertible note, or preference share.

(4) Subclause (3) does not apply if—

- (a) The issuer of the option, share warrant, convertible note, or preference share was a wholly-owned subsidiary of the issuer of the equity securities at the time the option, share warrant, convertible note, or preference share was offered and allotted and is also a wholly-owned subsidiary of the issuer of the equity securities at the time of the offer and the allotment of the equity securities; and
- (b) Equity securities issued by the issuer of the equity securities were at the time of the offer and allotment of the option, share warrant, convertible note, or preference share, and are also at the time of the offer and allotment of the equity securities, quoted on the New Zealand Stock Exchange; and
- (c) The option, share warrant, convertible note, or preference share was quoted on the New Zealand Stock Exchange upon allotment and remains quoted for the period it is current; and
- (d) The equity securities are to be quoted on the New Zealand Stock Exchange upon allotment.

4. Conditions relating to exemption under clause 3—Each exemption granted by clause 3 is subject to the conditions that—

(a) The option, share warrant, convertible note, or preference share has been allotted under a registered prospectus that contains particulars of all material matters relating to the offer of equity securities; and

(b) Before allotment of the equity securities and before the exercise of any right conferred by the option, share warrant, convertible note or preference share,—

(i) A copy of the most recent audited consolidated statement of financial position and audited consolidated statement of financial performance of the issuing group that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements (or, where applicable, group financial statements) and with the provisions of any other enactment to which the issuer is subject; and

(ii) Where the date of allotment of the equity securities or the date of the exercise of any right conferred by the option, share warrant, convertible note or preference share would be later than 9 months after the date of the statement of financial position referred to in subparagraph (i), a copy of—

(A) An interim consolidated statement of financial position as at the end of, and an interim consolidated statement of financial performance for, a period commencing on the day after the date of the

statement of financial position referred to in subparagraph (i) and ending on a date that is not later than 9 months after that date that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements (or, where applicable, group financial statements) and with the provisions of any other enactment to which the issuer is subject (except in each case that they need not be audited); and

(B) A statement containing a description of the issuing group—

have been sent to every person who was, at the time such financial statements were sent, a registered holder of the same class of option, share warrant, convertible note, or preference share in respect of which the equity securities are allotted or a right is exercised; and

(c) The date of allotment of the equity securities under the terms of, or the exercise of any right conferred by, the option, share warrant, convertible note or preference share, is not more than 9 months after the date of the statement of financial position or interim statement of financial position, as the case may be, referred to in paragraph (b).

5. Exemption relating to rights issue—Every person is exempted from section 37A (1) (a) of the Act in respect of any allotment of securities to any subscriber for those securities in whose favour an offer of those securities (being an offer of securities to which regulation 4 (1) (a) of the Regulations applies) has been renounced.

Dated at Wellington this 29th day of September 1997.

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

[L.S.]

M. R. H. WEBB,
Member.

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 1 October 1997 and expires on 30 September 2002, replaces the Securities Act (Rights, Options, and Convertible Securities) Exemption Notice 1995. The notice is required as a result of the coming into force, on 1 October 1997, of new disclosure and other requirements under the Securities Act 1978.

The notice exempts issuers from compliance with—

- (a) The prospectus and investment statement requirements of the Securities Act 1978 in the case of equity securities allotted pursuant to options, warrants, convertible notes, or preference shares allotted before 1 October 1997; and
- (b) The prospectus requirements of that Act in the case of equity securities allotted pursuant to options, warrants, convertible notes, or preference shares allotted on or after 1 October 1997.

For the purposes of the notice, a reference to an option, share warrant, convertible note, or preference share includes a reference to a security that is in the nature of an option, share warrant, convertible note, or preference share. The exemptions are subject to the conditions that—

- (a) The option, share warrant, convertible note, or preference share has been allotted under a registered prospectus that contains particulars of all material matters relating to the offer of equity securities; and
- (b) Before allotment of the equity securities, or before the exercise of any right conferred by the option, share warrant, convertible note or preference share, the issuer has sent to every person who was, at the time, a registered holder of the same class of option, share warrant, convertible note, or preference share:
 - (i) A copy of the most recent audited consolidated statement of financial position and audited consolidated statement of financial performance of the issuing group that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements (or, where applicable, group financial statements) and with the provisions of any other enactment to which the issuer is subject; and
 - (ii) Where the date of allotment of the equity securities, or the date of the exercise of any right conferred by the option, share warrant, convertible note, or preference share, would be later than 9 months after the date of the statement of financial position referred to in subparagraph (i), a copy of—
 - (A) An interim consolidated statement of financial position as at the end of, and an interim consolidated statement of financial performance for, a period commencing on the day after the date of the statement of financial position referred to in subparagraph (i) and ending on a date that is not later than 9 months after that date that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements (or, where applicable, group financial statements) and with the provisions of any other enactment to which the issuer is subject (except in each case that they need not be audited); and
 - (B) A statement containing a description of the issuing group:
- (c) The date of allotment is not later than 9 months after the date of the statement of financial position or interim statement of financial position.

The notice provides that, except in certain cases, the exemptions do not apply in respect of any offer of equity securities that are, or are to be, allotted under the terms of, or the exercise by any person of a right conferred by, any option, share warrant, convertible note, or preference share that has previously been allotted if the issuer of those equity securities will not be the issuer of the previously allotted option, share warrant, convertible note, or preference share.

The notice also exempts issuers from compliance with section 37 (1) (a) of the Act in respect of allotments of securities to subscribers for the securities in whose favour an offer of those securities (being an offer to which regulation 4 (1) (a) of the Securities Regulations 1983 applies) has been renounced. Regulation 4 (1) (a) applies to offers of—

- (a) Equity securities or convertible securities made to persons who already hold equity securities or convertible securities of the issuer, or
- (b) Debt securities (not being convertible securities or other securities that may be converted into equity securities) made to persons who already hold equity securities, convertible securities, or debt securities of the issuer.

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

Date of notification in *Gazette*: 30 September 1997.

This notice is administered in the Securities Commission.