



Securities Act (Equity Warrant Issuers) Exemption Amendment Notice 2007

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

- 1 Title**
This notice is the Securities Act (Equity Warrant Issuers) Exemption Amendment Notice 2007.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Principal notice amended**
This notice amends the Securities Act (Equity Warrant Issuers) Exemption Notice 2002.

4 Expiry

Clause 3 is amended by omitting “2007” and substituting “2012”.

5 Interpretation

Clause 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**broker** means any NZX Firm (as defined in Rule 1.1 of the New Zealand Exchange Limited Participant Rules)

“**NZX** means New Zealand Exchange Limited”.

6 Meaning of overseas offer document

Clause 5 is amended by revoking paragraph (d) and substituting the following paragraph:

“(d) that contains no statement referring to a quotation or intended quotation on a securities market operated by NZX other than a statement that has been approved by NZX.”

7 Exemption if there is registered prospectus

Clause 6 is amended by omitting “sections 33(2) and (3) and 37A(2)” and substituting “section 33(2) and (3)”.

8 Conditions of exemption in clause 6

Clause 7 is amended by revoking paragraphs (i) to (l) and substituting the following paragraphs:

“(i) if the equity warrants are not covered equity warrants and are not quoted on a securities market operated by NZX, the warrant issuer has, within 30 days of the most recent annual financial statements of the warrant issuer being released, sent to every warrant holder either a copy of those statements or a brief summary containing the information prescribed in clause 7 of Schedule 2 of the Regulations as if the equity warrants were debt securities; and

“(j) if the underlying equity securities are quoted on a securities market operated by NZX, the registered prospectus contains a prominent statement that the issuer of the underlying equity securities is a company listed on a securities market operated by NZX whose financial

- statements are expected to be readily available from the issuer, a broker, and the Registrar of Companies; and
- “(k) if the underlying equity securities are not quoted on a securities market operated by NZX, the registered prospectus contains the following prominent statements:
- “(i) that the underlying equity securities are not quoted on a securities market operated by NZX and New Zealand resident investors may not have access to information concerning the issuer of the underlying equity securities or concerning the underlying equity securities in the same way as investors have in relation to an issuer of underlying equity securities quoted on a securities market operated by NZX; and
- “(ii) that the financial reporting requirements applicable to the issuer of the underlying equity securities may be different from the New Zealand financial reporting requirements and the financial statements may not be readily available to warrant holders; and
- “(l) the warrant issuer has, within 5 working days of receiving each request of a warrant holder to do so, sent, or caused to be sent, without fee, to that warrant holder,—
- “(i) if the equity warrants are not covered equity warrants and are not quoted on a securities market operated by NZX, a copy of the warrant issuer’s most recent audited financial statements and interim financial statements; and
- “(ii) if any of the warrant issuer’s obligations under the equity warrants is guaranteed by a third party, a copy of the guarantor’s most recent financial statements that comply with the Financial Reporting Act 1993 (or any relevant overseas financial reporting requirements).”

9 Exemption if there is overseas offer document

Clause 8(a) is amended by omitting “37A(2),”.

10 Conditions of exemption in clause 8

- (1) Clause 9(1) is amended by revoking paragraph (b) and substituting the following paragraph:

- “(b) the overseas offer document contains no statement referring to quotation or intended quotation of the equity warrants on a securities market operated by NZX other than a statement that has been approved by NZX; and”.
- (2) Clause 9(1)(c) is amended by revoking subparagraph (ii) and substituting the following subparagraph:
- “(ii) if the equity warrants are not covered equity warrants and are not quoted or about to be quoted on a securities market operated by NZX, a copy of the most recent financial statements of the warrant issuer; and”.
- (3) Clause 9(1)(f) is amended by revoking subparagraph (iv) and substituting the following subparagraph:
- “(iv) contains no statement referring to quotation or intended quotation on a securities market operated by NZX other than a statement approved by NZX; and”.
- (4) Clause 9(1)(f) is amended by revoking subparagraphs (xiii) and (xiv) and substituting the following subparagraphs:
- “(xiii) if the equity warrants are not quoted on a securities market operated by NZX, states that New Zealand resident investors may not have access to information concerning the warrant issuer in the same way as investors have in relation to an issuer listed on a securities market operated by NZX; and
- “(xiv) if the underlying equity securities are not quoted on a securities market operated by NZX, states that New Zealand resident investors may not have access to information concerning the underlying equity securities in the same way as investors have in relation to underlying equity securities that are quoted on a securities market operated by NZX; and”.

11 Schedule 1 amended

Schedule 1 is amended by omitting the item relating to New Zealand Stock Exchange and substituting the following item:
“A securities market operated by NZX”.

Dated at Wellington this 18th day of September 2007.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette*, amends the Securities Act (Equity Warrant Issuers) Exemption Notice 2002 (the **principal notice**) to—

- extend the term for 5 years; and
- omit references to section 37A(2) of the Securities Act 1978 (which has been repealed); and
- update references to the New Zealand Stock Exchange to refer to a securities market operated by New Zealand Exchange Limited.

The Securities Commission considers that the amendments are appropriate because—

- the principal notice is a class exemption that was introduced to reduce compliance costs for issuers of equity warrants and to address rigidities in the application of the law to those securities. The exemption has been in place for a number of years, and consultation by the Commission demonstrates support from market participants for the retention of the exemption;
- the amendments update the principal notice to reflect changes that have occurred since the class notice was granted.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 20 September 2007.
This notice is administered by the Securities Commission.
