



Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 15th day of December 2003

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 49 of the Securities Markets Act 1988, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce (made after consulting with the Securities Commission), makes the following regulations.

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Regulations

1 Title

These regulations are the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003.

2 Commencement

These regulations come into force on 1 March 2004.

3 Interpretation

In these regulations, unless the context otherwise requires,—
Act means the Securities Markets Act 1988

board of directors means directors numbering not less than the required quorum acting together as a board of directors of a public issuer, or any body or group occupying a position in a public issuer that is comparable with that of a board of directors, including (without limitation) the partners of a partnership

disclosure notice means—

- (a) a notice in the form set out in the Schedule; or
- (b) a notice that meets the requirements of regulation 17

security means a security (as defined in section 2(1) of the Act) of a public issuer or a related body corporate.

Definition of officer for disclosure purposes

4 Persons who are not officers

- (1) In this regulation, **excluded person** means a person who does not—
- (a) report directly to—
 - (i) a board of directors; or
 - (ii) the sole director of a public issuer if the public issuer has only 1 director; or
 - (b) report directly to a person (referred to in this regulation as **person A**) who reports directly to—
 - (i) a board of directors; or
 - (ii) the sole director of a public issuer if the public issuer has only 1 director; or
 - (c) report directly to a person who reports directly to person A; or
 - (d) manage a principal business unit, division, or function of a public issuer.
- (2) No excluded person is an officer for the purposes of the Act.

Form and method of disclosure of relevant interests

5 Directors and officers must complete disclosure notice

A director or officer of a public issuer who must make a disclosure under section 19T of the Act must complete a disclosure notice.

6 Information required to be given in disclosure notice

Every disclosure notice must contain—

- (a) the information required by that notice; and
- (b) the information required by regulations 7 to 13.

7 Nature of relevant interests and name in which security is registered

Every disclosure notice must contain the following information:

- (a) the nature of the relevant interest the director or officer has or had in a security and the circumstances in which the relevant interest arose, including (without limitation) the details of any trust, agreement, arrangement, or understanding relating to the security (whether or not

the director or officer is a party to it) under which, or by virtue of which, the director or officer may at any time have the power to exercise, or have the power to control the exercise of, any right to vote attached to the security; and

- (b) the name of the registered holder of the security to which the relevant interest relates or related.

8 Number, class, and type of securities

Every disclosure notice must contain details of the number, class, and type of securities to which the relevant interest relates or related.

9 Date of disclosure obligation or acquisition or disposal of relevant interest

Every disclosure notice must specify the date upon which—

- (a) the disclosure obligation in relation to the relevant interest in a security became applicable under section 19T(1) of the Act; or
- (b) the acquisition or disposal of the relevant interest in a security occurred.

10 Consideration for relevant interest

- (1) Subject to subclause (2), every disclosure notice must contain details of the consideration, expressed in New Zealand dollars, paid or received for the acquisition or disposal of the relevant interest in a security.
- (2) Consideration that is not easily converted into or expressed in New Zealand dollars must be described.

11 Description of acquisition or disposal of relevant interest

- (1) Every disclosure notice must—
 - (a) contain a description of the nature or type of transaction; and
 - (b) specify whether the security to which the relevant interest relates or related was acquired or disposed of under the transaction.

- (2) For the purposes of subclause (1) and regulation 12, **transaction** means the arrangement pursuant to which, or the circumstances in which, the acquisition or disposal of the security to which the relevant interest relates or related took place, and includes (without limitation)—
- (a) an on-market trade;
 - (b) an off-market trade;
 - (c) an exercise of options;
 - (d) an issue of securities under a dividend reinvestment plan;
 - (e) participation in a buy-back scheme.

12 Aggregation of multiple transactions in disclosure notice

- (1) Multiple acquisitions or multiple disposals (but not both) of relevant interests in securities may be disclosed in 1 disclosure notice provided that all of the acquisitions or all of the disposals disclosed in a disclosure notice—
- (a) took place under the same type of transaction; and
 - (b) are in relation to the same type (as described in section 5 of the Act) of relevant interest in securities; and
 - (c) took place within the 5 trading day disclosure period in section 19T(2) of the Act.
- (2) A director or officer who discloses multiple acquisitions or multiple disposals of relevant interests in securities in accordance with subclause (1) must state, in the disclosure notice, the number of transactions that the disclosure notice relates to.

13 Date of last disclosure of relevant interest

If a disclosure has been made in relation to a relevant interest in a security by a director or officer under these regulations, the next disclosure notice given by that director or officer in relation to that relevant interest must state the date of the most recent disclosure made by that director or officer in relation to that relevant interest.

14 Disclosure notice must be signed

Every disclosure notice must be signed by the director or officer giving the notice.

15 Persons to whom disclosure notice must be given

Every director or officer who must complete a disclosure notice under regulation 5 must—

- (a) give the disclosure notice to the registered exchange with which the public issuer is listed; and
- (b) give the disclosure notice to the public issuer to enable the public issuer to enter it in the public issuer's interests register.

16 Method by which disclosure notice must be given

(1) Every disclosure notice must be—

- (a) delivered or posted to the address of the person to whom the notice is given; or
- (b) given by facsimile; or
- (c) given by other electronic means to which the registered exchange with which the public issuer is listed has given its consent (in the case of a notice given to a registered exchange); or
- (d) given by other electronic means to which the public issuer has given its consent (in the case of a notice given to a public issuer).

(2) A disclosure notice given by facsimile is, in the absence of proof to the contrary, to be treated as having been given if the facsimile machine or computer generated a record of the transmission of the notice to the facsimile machine or computer of the recipient.

(3) A disclosure notice given by other electronic means is, in the absence of proof to the contrary, to be treated as having been given if an acknowledgement of receipt has been received by the person who gave the disclosure notice.

17 Deviations from, and electronic form of, disclosure notice

A disclosure notice displayed on the Internet by a public issuer or a registered exchange for completion by a director or officer of a public issuer does not have to be set out in the same format or layout as the notice set out in the Schedule, but it must—

- (a) be clearly and prominently displayed on the relevant Internet web page; and

- (b) be in a font size that is easily readable; and
- (c) use the same words as the notice set out in the Schedule;
and
- (d) not be misleading in any way.

Exemptions to directors' and officers' disclosure regime

18 Exemption from 5 trading day requirement for ongoing offers

- (1) A director or officer who acquires or disposes of a relevant interest in a security does not have to disclose that fact within 5 trading days of the acquisition or disposal (in accordance with section 19T of the Act) if the relevant interest arises from a security that is acquired or disposed of under an ongoing offer.
- (2) Subject to subclause (3), a director or officer who acquires or disposes of relevant interests to which subclause (1) applies must disclose that fact—
 - (a) within 5 trading days of the last day of the ongoing offer; and
 - (b) in the case of an ongoing offer that is open for acceptance for a period of more than 30 days, once in every month (but at least 21 days after the date of the last disclosure) in which an acquisition or disposal of relevant interests takes place; and
 - (c) other than as stated in paragraphs (a) and (b) and subclause (4), in accordance with the Act and these regulations.
- (3) A director or officer who makes a disclosure in accordance with subclause (2)(a) does not have to comply with subclause (2)(b) for the month within which the disclosure is made in accordance with subclause (2)(a).
- (4) Subject to subclauses (2)(a) and (b) and (5), all of the relevant interests in securities that have been acquired or that have been disposed of by a director or officer under the ongoing offer may be disclosed in 1 disclosure notice in accordance with regulation 12.
- (5) Regulation 12(1)(c) does not apply to the disclosure of a multiple acquisition or a multiple disposal of relevant interests in securities under subclause (4).

- (6) A director or officer who acquires or disposes of a relevant interest in a security during the period of the ongoing offer, but not under the ongoing offer, must disclose that fact in accordance with the Act and these regulations.
- (7) For the purposes of this regulation, **ongoing offer** means an offer (including, without limitation, under a buy-back or a dividend reinvestment scheme) to all existing shareholders on an equal basis with an open period of acceptance.

19 Exemption for relevant interests that are merely technical interests

- (1) A director or officer who has, or who acquires or disposes of, a relevant interest in a security does not have to disclose that fact under section 19T of the Act if that interest is a technical interest.
- (2) For the purposes of subclause (1), **technical interest** means a relevant interest in a security that arises—
 - (a) because the ordinary business of the director or officer who has the relevant interest consists of, or includes, the lending of money or the provision of financial services, or both, and that director or officer has the relevant interest only as a security given for the purposes of a transaction entered into in the ordinary course of the business of that director or officer; or
 - (b) only by reason of the director or officer acting for another person to acquire or dispose of the security to which the relevant interest relates or related on behalf of that person in the ordinary course of business of a sharebroker, and that director or officer is authorised to undertake trading activities on a registered exchange's market; or
 - (c) solely by reason of the director or officer being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of a public issuer and the instrument of that director's or officer's appointment is deposited with the public issuer not less than 48 hours before the meeting; or
 - (d) only because the director or officer is a bare trustee of a trust to which the security to which the relevant interest relates or related is subject.

- (3) For the purposes of subclause (2)(d), a trustee may be a bare trustee despite the fact that he or she is entitled as a trustee to be remunerated out of the income or property of the trust.

20 Exemption from 5 trading day requirement for employee share schemes

- (1) A director or officer who acquires or disposes of a relevant interest in a security does not have to disclose that fact within 5 trading days of the acquisition or disposal (in accordance with section 19T of the Act) if the relevant interest arises from a security that is acquired or disposed of under an employee share scheme.
- (2) A director or officer who acquires or disposes of a relevant interest to which subclause (1) applies must disclose that fact—
- (a) once in every month (but at least 21 days after the date of the last disclosure) during the period of time that the director or officer has the relevant interest; and
 - (b) other than as stated in paragraph (a) and subclause (3), in accordance with the Act and these regulations.
- (3) Subject to subclauses (2)(a) and (4), all of the relevant interests in securities that have been acquired or that have been disposed of by a director or officer under the employee share scheme may be disclosed in 1 disclosure notice in accordance with regulation 12.
- (4) Regulation 12(1)(c) does not apply to the disclosure of a multiple acquisition or a multiple disposal of relevant interests in securities under subclause (3).
- (5) A director or officer who acquires or disposes of a relevant interest in a security during the period of the employee share scheme, but not under the employee share scheme, must disclose that fact in accordance with the Act and these regulations.
- (6) For the purposes of this regulation, **employee share scheme** means a scheme established by a public issuer or a related body corporate under which a director, officer, manager, or employee of that public issuer or related body corporate may acquire securities.

21 Exemption for directors or officers who file substantial security holder notice

A director or officer who has, or who acquires or disposes of, a relevant interest in a security does not have to disclose that fact under section 19T of the Act if, in relation to that relevant interest,—

- (a) the director or officer must give notice in accordance with section 20 of the Act that he or she is a substantial security holder in the public issuer of the security to which the relevant interest relates or related; and
 - (b) the director or officer gives notice in accordance with section 20 of the Act that he or she is a substantial security holder in the public issuer; and
 - (c) it is stated upon the notice given in accordance with section 20 of the Act that the director or officer is a director or officer of the public issuer.
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Schedule Disclosure notice

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Disclosure of directors' and officers' relevant interests

Section 19T, Securities Markets Act 1988

A Preliminary

1	Name			
2	Name of issuer or related body corporate			
3	Position you hold in the issuer or related body corporate			
4	Date of last disclosure (as required by regulation 13)		5	Date of this disclosure

B Nature of relevant interest

1	Name of registered holder(s) of security (as required by regulation 7(b))			
2	Class and type of security (as required by regulation 8)			
3	Nature of relevant interest in security (as required by regulation 7(a))			

C Transaction

1	Date(s) of change (as required by regulation 9)		2	Number of transactions (as required by regulation 12(2))
3	Number of securities held prior (as required by regulations 8 and 11(1)(b))		4	Number of securities held now (as required by regulations 8 and 11(1)(b))
5	Nature of transaction (as required by regulation 11)			
6	Consideration (as required by regulation 10)			
Signature (as required by regulation 14)				

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations are made under the Securities Markets Act 1988 (the **Act**). They come into force on 1 March 2004. On that date (by a separate Order in Council), subpart 2 of Part 2 of the Act (relating to the disclosure of relevant interests by the directors and officers of public issuers) is brought into force.

These regulations specify the persons who are not officers for the purposes of the Act and who are therefore not required to disclose relevant interests in securities under Part 2 of the Act.

These regulations also—

- prescribe the form in which directors or officers must describe certain information about relevant interests that the directors or officers hold in securities; and
- specify the manner and form in which that disclosure must be made.

Finally, 4 exemptions to the directors' and officers' disclosure regime in the Act are established. These exemptions concern situations where the Act requires disclosure, but in reality, disclosure in these situations would not convey any useful information to the securities market or would be unduly onerous.

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

Date of notification in *Gazette*: 18 December 2003.

These regulations are administered in the Ministry of Economic Development.
