ANALYSIS

1993, No. 120

An Act to amend the Securities Act 1978

[*28 September 1993*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Securities Amendment Act 1993, and shall be read together with and deemed part of the Securities Act 1978 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the 28th day after the date on which it receives the Royal assent.

(3) Section 2 of this Act shall come into force on the 1st day of July 1994.

2. New sections substituted—(1) The principal Act is hereby amended by repealing section 6 (as amended by section 6 of the Securities Amendment Act 1982), and substituting the following sections:

"6. **Previously allotted securities**—(1) Subject to this section, nothing in sections 33, 34, 37 to 44, and 44B to 59 of this Act shall apply in respect of a security that has previously been allotted.

"(2) All the provisions of this Act shall apply in respect of a security that has previously been allotted (whether in New Zealand or elsewhere) if the security was originally allotted with a view to its being offered for sale to the public in New Zealand

and the security has not previously been offered for sale to the public in New Zealand.

"(3) All the provisions of this Act shall apply in respect of an equity security or a security convertible into an equity security if the holder or offeror, not being the original allotter, offers the security for sale to the public in New Zealand and the original allotter advises, encourages, or knowingly assists the holder or offeror in connection with the offer or sale of the security.

"(4) Nothing in subsection (3) of this section applies in respect of—

"(a) An offer by the holder of a security, being an offer of the security to the public, that is made only to persons who, at the time of the offer, are holders of securities of the original allotter under terms of the articles of association or the constitution of the original allotter that require the offer to be made to those persons; or

"(b) An offer by the holder of a security, being an offer of the security to the public, where the aggregate amount received by the holder, or persons associated with the holder, pursuant to offers of such securities to the public for subscription does not exceed $200,000 in any period of 12 months; or

"(c) An offer by the holder of a security that is made—

"(i) To not more than 6 members of the public; or

"(ii) If the offer is made to more than 6 members of the public, the offer is made with a view to its being accepted by not more than 6 members of the public.

"(5) For the purposes of subsection (2) of this section, unless the contrary is proved, a security shall be deemed to have been allotted with a view to its being offered for sale to the public if it is shown—

"(a) That an offer of the security for sale to the public was made within 6 months after the allotment; or

"(b) That, at the date when the offer was made, the consideration to be received by the allotter in respect of the security had not been received.

"(6) For the purposes of subsection (4) (c) of this section, unless the contrary is proved, an offer shall be deemed to have been made with a view to its being accepted by more than 6 members of the public if, within the period of 12 months immediately following the making of the offer, more than 6 persons acquire an interest, whether direct or indirect, in

securities of the same class offered to the public for subscription by the holder.

"(7) Notwithstanding anything in section 2 of this Act, in this Act, unless the context otherwise requires, in relation to a security to which subsection (2) or subsection (3) of this section applies, the term 'issuer' means the original allotter of the security, and, except for the purposes of sections 51 to 54 of this Act, also includes the offeror of the security.

"6A. **Term implied in certain offers of previously allotted securities**—It is an implied term of every offer of a security that has previously been allotted, not being a security to which subsection (2) or subsection (3) of section 6 of this Act applies, that, except to the extent disclosed for the purposes of the offer of the security, the offeror has no information in relation to the original allotter that is not publicly available and that would, or would be likely to, affect materially the price of the security if it were publicly available."

(2) Section 6 of the Securities Amendment Act 1982 is hereby consequentially repealed.

3. Securities Amendment Act 1988 amended—Section 2 of the Securities Amendment Act 1988 is hereby amended by repealing the definition of the term "public issuer", and substituting the following definition:

" 'Public issuer' means—

"(a) A person who is a party to a listing agreement with a stock exchange:

"(b) A person who was previously a party to a listing agreement with a stock exchange, in respect of any action or event or circumstance to which this Act applied while the person was a party to a listing agreement with a stock exchange:".

This Act is administered in the Department of Justice.