



Securities Act (Amalgamations) Exemption Notice 2000

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

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Notice

- 1 Title**
This notice is the Securities Act (Amalgamations) Exemption Notice 2000.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 30 September 2002.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

designated date means a date that is not more than 21 days before the date on which the documents required to be sent to the shareholders of each amalgamating company by section 221(3) of the Companies Act 1993 are sent to those shareholders

Regulations means the Securities Regulations 1983

specified securities means equity securities or debt securities (as the case may be) that are, or are to be, offered under an amalgamation that is to be effected under Part XIII of the Companies Act 1993.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption

Every company and every person acting on its behalf are exempted from sections 37, 37A, and 38A of the Act and the Regulations (except regulation 8) in respect of any specified securities.

6 Condition relating to information in respect of offer

The exemption in clause 5 is subject to the condition that the documents required to be sent to the shareholders of each amalgamating company under section 221(3) of the Companies Act 1993 are accompanied by,—

- (a) in the case of an offer of specified securities that are equity securities, the information required to be contained in a registered prospectus containing an offer of equity securities by the First Schedule of the Regulations (except clauses 8, 10, 11, 19, 22 to 37, 41, and 42); or
- (b) in the case of an offer of specified securities that are debt securities, the information required to be contained in a registered prospectus containing an offer of debt securities by the Second Schedule of the Regulations (except clauses 7, 8, 11, 15 to 30, 35, and 36).

7 Conditions relating to current financial statements

- (1) The exemption in clause 5 is subject to the condition that the documents required to be sent to the shareholders of each

amalgamating company under section 221(3) of the Companies Act 1993 are accompanied by,—

- (a) in the case of an amalgamating company that has not commenced business, a statement that the company has not commenced business, acquired an asset, or incurred a debt; or
 - (b) in the case of an amalgamating company that has commenced business,—
 - (i) either—
 - (A) a copy of the most recent audited consolidated financial statements of each amalgamating company that comply with subclause (2); or
 - (B) where an amalgamating company has been in existence for less than a year, a copy of audited consolidated financial statements that comply with subclause (2) for the period beginning on the date the amalgamating company commenced business and ending on its first balance date or any stated date that is not more than 4 months before the date on which the amalgamation is proposed to take effect; and
 - (ii) where the date of allotment of the specified securities would be more than 9 months after the balance date of the financial statements of an amalgamating company referred to in subparagraph (i), a copy of the interim consolidated financial statements of that amalgamating company that comply with subclause (2) (except that they need not be audited) for a period beginning on the day after that balance date and ending on a date that is not more than 9 months later.
- (2) Financial statements comply with this clause if—
- (a) the statements comply with, and have been registered under, the Financial Reporting Act 1993; or
 - (b) in the case of an amalgamating company that is not an issuer within the meaning of the Financial Reporting Act 1993, and has not prepared financial statements that have been registered under that Act, the statements have

- been prepared to comply with that Act as if they required registration under that Act; or
- (c) in the case of interim consolidated financial statements, they have been prepared to comply with the Financial Reporting Act 1993 as if they required registration under that Act.
- (3) For the purposes of subclause (1)(a), a company has not commenced business by reason only of having entered into a trust deed in respect of debt securities to be offered under the amalgamation, as required by section 33(2)(a) of the Act.

8 When certain financial statements not required to be sent

The financial statements of an amalgamating company referred to in clause 7(1)(b)(i) do not have to be sent to a shareholder of that amalgamating company if—

- (a) a copy of the most recent annual report of the amalgamating company has previously been sent to that shareholder under section 209 of the Companies Act 1993; or
- (b) a copy of the most recent financial statements of the amalgamating company has previously been sent to that shareholder under section 210 of that Act.

9 Conditions relating to forecast financial statements

The exemption in clause 5 is subject to the condition that the documents required to be sent to the shareholders of each amalgamating company under section 221(3) of the Companies Act 1993 are accompanied by a copy of—

- (a) a forecast consolidated statement of financial position in respect of the amalgamated company as at the date on which the amalgamation is proposed to take effect; and
- (b) forecast consolidated financial statements of the amalgamated company for 1 or more future accounting periods of the amalgamated company, in each case prepared as if the amalgamation had already been effected.

10 Conditions relating to directors' statements

The exemption in clause 5 is subject to the condition that the documents required to be sent to the shareholders of each

amalgamating company under section 221(3) of the Companies Act 1993 are accompanied by—

- (a) a statement by the directors of each amalgamating company as to whether, after due inquiry by them in relation to the period between the balance date of the financial statements referred to in clause 7(1)(b)(i) or of the interim financial statements referred to in clause 7(1)(b)(ii) (as the case may be) and the designated date, there have, in their opinion, arisen any circumstances that materially adversely affect—
 - (i) the trading or profitability of the amalgamating company; or
 - (ii) the value of its assets; or
 - (iii) the ability of the amalgamating company to pay its liabilities due within the next 12 months; and
- (b) a statement by the directors of each amalgamating company that, between the balance date of the financial statements referred to in clause 7(1)(b)(i) and the designated date, there have been no material changes in the nature of the business of the amalgamating company.

11 Condition relating to date of allotment

The exemption in clause 5 is subject to the condition that the date of allotment of any specified securities is not more than 9 months after the balance date of the financial statements referred to in clause 7(1)(b)(i) or of any interim financial statements referred to in clause 7(1)(b)(ii) (as the case may be).

12 Revocation

The Securities Act (Amalgamations) Exemption Notice 1997 (SR 1997/213) is revoked.

Dated at Wellington this 4th day of September 2000.

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

[L.S.]

E. H. Abernethy,
Chairman.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on the close of 30 September 2002.

The notice applies to equity securities and debt securities that are offered as part of an amalgamation under Part XIII of the Companies Act 1993. The notice exempts companies, subject to conditions, from the prospectus and investment statement requirements of the Securities Act 1978 and also from the Securities Regulations 1983 (except regulation 8).

This notice replaces the Securities Act (Amalgamations) Exemption Notice 1997.

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

Date of notification in *Gazette*: 7 September 2000.

This notice is administered in the Securities Commission.
