



Securities Act (Short Form Prospectus) Exemption Notice 2002

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 (Short Form Prospectus) Exemption Notice 2002.
- 2 **Commencement**
This notice comes into force on 1 October 2002.
- 3 **Expiry**
This notice expires on the close of 30 September 2007.
- 4 **Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
 - Act** means the Securities Act 1978
 - convertible securities** has the same meaning as in regulation 4(4) of the Regulations
 - effective date** means, in relation to a borrowing group or an issuing group, the most recent balance date of the group or, if

the issuer has been in existence for less than a year, its first balance date or any stated date that is not more than 4 months before the specified date

group financial statements has the same meaning as in section 9 of the Financial Reporting Act 1993

Regulations means the Securities Regulations 1983.

- (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 for debt securities offered to existing security holders**

Every issuer and every person acting on its behalf are exempted from regulation 4(1)(c) and (d) of the Regulations in respect of any debt securities (not being convertible securities or other securities that may be converted into equity securities) offered by the issuer to persons who, at the time when the offer is made, already hold equity securities, convertible securities, or debt securities of the issuer.

6 **Condition of exemption in clause 5**

The exemption granted by clause 5 is subject to the condition that a copy of the audited group financial statements of the borrowing group as at the effective date, which comply with the provisions of the Financial Reporting Act 1993,—

- (a) has previously been distributed or sent to the persons who were, at the time those group financial statements were distributed or sent, holders of the same class of securities as that held by the persons to whom the offer is made; or
- (b) is attached to, or contained in, every registered prospectus distributed or sent to any person under the Act.

7 **Exemption for equity securities offered to existing security holders**

Every issuer and every person acting on its behalf are exempted from regulation 4(1)(c) of the Regulations in respect of any equity securities offered by the issuer to—

- (a) persons who, at the time when the offer is made, are holders of equity securities or convertible securities of

- the issuer (whether or not the offer is renounceable in favour of any other person); or
- (b) persons in whose favour an offer to which paragraph (a) applies has been renounced.

8 Condition of exemption in clause 7

The exemption granted by clause 7 is subject to the condition that a copy of the audited group financial statements of the issuing group as at the effective date, which comply with the provisions of the Financial Reporting Act 1993,—

- (a) has previously been distributed or sent to the persons who were, at the time those group financial statements were distributed or sent, holders of the same class of securities as that held by the persons to whom the offer is made; or
- (b) is attached to, or contained in, every registered prospectus distributed or sent to any person under the Act.

9 Exemption for convertible securities offered to existing security holders

Every issuer and every person acting on its behalf are exempted from regulation 4(1)(c) and (d) of the Regulations in respect of any convertible securities offered by the issuer to—

- (a) persons who, at the time when the offer is made, are holders of equity securities or convertible securities of the issuer (whether or not the offer is renounceable in favour of any other person); or
- (b) persons in whose favour an offer to which paragraph (a) applies has been renounced.

10 Conditions of exemption in clause 9

- (1) The exemption granted by clause 9 is subject to the condition that a copy of the audited group financial statements of the issuing group as at the effective date, which comply with the provisions of the Financial Reporting Act 1993,—

- (a) has previously been distributed or sent to the persons who were, at the time those group financial statements were distributed or sent, holders of the same class of securities as that held by the persons to whom the offer is made; or

- (b) is attached to, or contained in, every registered prospectus distributed or sent to any person under the Act.
- (2) The exemption granted by clause 9 is subject, in the case of convertible securities guaranteed by guaranteeing subsidiaries of the issuer, to the further conditions that—
 - (a) the registered prospectus is, or the group financial statements are, accompanied by group financial statements that relate to the borrowing group; and
 - (b) that the registered prospectus contains, or is accompanied by, a statement identifying by name—
 - (i) the companies that are members of the borrowing group; and
 - (ii) the companies that are members of the issuing group but that are not members of the borrowing group.

Dated at Wellington this 17th day of September 2002.

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

[L.S.]

J. Diplock,
Chairperson.

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 2002 and expires on 30 September 2007, replaces the Securities Act (Short Form Prospectus) Exemption Notice 1997. The provisions of that notice have been carried forward with no change of substance. However, certain drafting changes have been made to reflect current drafting practice.

Clause 5 applies to debt securities (other than debt securities that are convertible into equity securities) offered to existing holders of equity securities, convertible securities, or debt securities. It will enable issuers to issue a short form prospectus on the basis of group

financial statements of the borrowing group that comply with the Financial Reporting Act 1993 if the financial statements have previously been distributed to holders of the same class of security or are attached to, or contained in, the short form prospectus.

Clause 7 applies to equity securities offered to existing holders of equity securities or convertible securities. It will enable issuers to issue a short form prospectus on the basis of group financial statements of the issuing group that comply with the Financial Reporting Act 1993 if the financial statements have previously been distributed to holders of the same class of security or are attached to, or contained in, the short form prospectus.

Clause 9 applies to convertible securities offered to existing holders of equity securities or convertible securities. It will enable issuers to issue a short form prospectus on the basis of group financial statements of the issuing group that comply with the Financial Reporting Act 1993 if the financial statements have previously been distributed to holders of the same class of security or are attached to, or contained in, the short form prospectus. This exemption is subject to a further condition that if the convertible securities are guaranteed by guaranteeing members of the borrowing group, the short form prospectus or the financial statement of the issuing group must be accompanied by group financial statements of the borrowing group.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 September 2002.
This notice is administered in the Securities Commission.
