



## Securities Act (Australian Issuers) Exemption Amendment Notice 2004

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).

### Contents

1	Title	3	Interpretation
2	Commencement	4	Investment statements

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### Notice

#### 1 Title

- (1) This notice is the Securities Act (Australian Issuers) Exemption Amendment Notice 2004.
- (2) In this notice, the Securities Act (Australian Issuers) Exemption Notice 2002<sup>1</sup> is called “the principal notice”.

<sup>1</sup> SR 2002/314

#### 2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

#### 3 Interpretation

Clause 4(1) of the principal notice is amended by inserting, after paragraph (c) of the definition of **Australian issuer**, the following paragraphs:

“(ca) a company incorporated in New Zealand—

“(i) that is admitted to the official list of the Australian Stock Exchange; and

“(ii) in relation to which the Australian Stock Exchange has primary jurisdiction for the listing

requirements for the company and the quotation of its securities:

“(cb) a company incorporated in New Zealand—

“(i) that—

“(A) has applied to be admitted to the official list of the Australian Stock Exchange; or

“(B) has stated or implied in the Australian prospectus relating to the equity securities or debt securities that the securities that are to be offered are to be quoted on the Australian Stock Exchange (for the purposes of section 724(1)(b) of the Corporations Act 2001 of the Commonwealth of Australia); and

“(ii) in relation to which the Australian Stock Exchange will have primary jurisdiction for the listing requirements for the company and the quotation of its securities after the company is admitted to the official list of the Australian Stock Exchange:”.

#### **4 Investment statements**

Clause 9 of the principal notice is amended by adding the following subclauses:

“(3) The condition in subclause (1)(b) does not apply to an Australian issuer that is a company incorporated in New Zealand.

“(4) The exemptions granted by clause 5(1)(b) and (c) and (2)(b) and (c) are, in the case of an Australian issuer that is a company incorporated in New Zealand, subject to the further condition that any investment statement that relates to the equity securities or debt securities concerned includes information or statements to the following effect, under the heading ‘Agreement as to Jurisdiction’:

“(a) that, in respect of a dispute concerning the contract for the equity securities or debt securities, the Australian issuer agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and

“(b) that, despite the statement referred to in paragraph (a), the contract in respect of the securities may not always be enforceable in New Zealand courts.”

Dated at Wellington this 22nd day of October 2004.

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

[L.S.]

J. Diplock,  
Chairperson.

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### 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 (Australian Issuers) Exemption Notice 2002 (“the principal notice”). The effect of the amendment is that a New Zealand company can now rely on the exemptions in the principal notice as an Australian issuer if—

- the company has been admitted, or has applied to be admitted, to the official list of the Australian Stock Exchange or has stated or implied in the Australian prospectus that the securities that are to be offered are to be quoted on the Australian Stock Exchange (for the purposes of section 724(1)(b) of the Corporations Act 2001 of the Commonwealth of Australia); and
- the Australian Stock Exchange has, or will have, primary jurisdiction for the company’s listing requirements and the quotation of the company’s securities.

A consequential amendment has been made to the condition in the principal notice that relates to the inclusion of information or statements under the heading “Agreement as to Jurisdiction” in the investment statement.

The Securities Commission considers that the amendment is appropriate because—

- the principal notice is intended to allow offers of equity and debt securities made under Australian law to be extended to New Zealand investors. The principal notice applies to issuers who are subject to regulatory oversight in Australia by reason either of being incorporated in Australia or being listed on the Australian Stock Exchange. Issuers incorporated in New Zealand with a primary listing on the Australian Stock

- Exchange are subject to the same degree of regulatory oversight as other overseas issuers listed on that exchange; and
- issuers using the principal notice must prepare an investment statement, together with an Australian prospectus, to extend the offer to New Zealand. Accordingly, there is no apparent competitive disadvantage for other New Zealand issuers if New Zealand issuers listed on the Australian Stock Exchange can use this exemption.

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

Date of notification in *Gazette*: 28 October 2004.

This notice is administered by the Securities Commission.

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