



Securities Act (Overseas Listed Issuers) 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 (Overseas Listed Issuers) 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 Application**
 (1) Nothing in this notice applies in relation to offers or allotments of securities or in relation to securities to which either of the following notices applies:
 - (a) the Securities Act (Australian Issuers) Exemption Notice 2002:

- (b) the Securities Act (Overseas Companies) Exemption Notice 2002.
- (2) Nothing in this notice applies in respect of any quoted security that—
 - (a) will or may be converted into, or exchanged for, another security if the issuer of that other security will not be the issuer of the quoted security; or
 - (b) confers a present or future right to subscribe for another security if the issuer of that other security will not be the issuer of the quoted security.

5 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

lodged means lodged under the law of a specified country

overseas issuer means a company incorporated under the law of any specified country

overseas prospectus, in relation to an overseas issuer, means a document—

- (a) that contains an offer of quoted securities; and
- (b) that is identical to a document that is lodged or registered under the law of a specified country, if required to be lodged or registered under the law of the specified country, and that is signed by such persons (if any) that are required by that law to sign that document; and
- (c) by means of which it is lawful under the law of that specified country to make an offer of those quoted securities to the public in that specified country; and
- (d) that contains no statement referring to a listing or intended listing on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange

quoted securities, in relation to an overseas issuer, means securities of which that overseas issuer is the original allotter—

- (a) that are quoted, or that have been approved for quotation, on the principal official list of a recognised exchange; or
- (b) in respect of which application has been made to a recognised exchange for quotation on that exchange's

principal official list and, at the time of the offer, the overseas issuer has complied with all the requirements of the recognised exchange relating to the application with which it is required to comply at that time

recognised exchange means a stock exchange or stock market referred to in Schedule 1

registered means registered under the law of a specified country

Regulations means the Securities Regulations 1983

specified country means a country, state, territory, province, or place referred to in Schedule 2.

- (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.

6 Exemption

- (1) Every overseas issuer and every person acting on its behalf are exempted, in respect of any quoted securities of which it is the issuer, from—
- (a) sections 33(2) and (3), 37, and 37A(2) of the Act; and
 - (b) section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and
 - (c) sections 51 to 54 of the Act.
- (2) Subclause (1)(b) applies in respect of an overseas prospectus only, and not in respect of any investment statement or other advertisement.
- (3) Every overseas issuer and every person acting on its behalf are exempted from section 38(a) of the Act to the extent that that provision requires an overseas prospectus to refer to an investment statement.

7 Overseas prospectus

The exemptions granted by clause 6(1)(a) and (b) are subject to the conditions that—

- (a) there is an overseas prospectus relating to the quoted securities at the time that offers of the quoted securities are made or are open for acceptance in New Zealand; and

- (b) it is a term of each offer of the quoted securities made in New Zealand that the overseas issuer must, within 5 working days of receiving a request of an offeree for a copy of the overseas prospectus relating to the quoted securities and without fee, send, or cause to be sent, to that offeree—
 - (i) a copy of the overseas prospectus; and
 - (ii) copies of any documents that, under the law of the specified country concerned, must accompany any copy of the overseas prospectus sent to any person to whom an offer of the quoted securities is made in that specified country.

8 Documents to be received by Registrar of Companies

The exemptions granted by clause 6(1)(a) and (b) are subject to the further condition that a copy of each of the following documents has been received by the Registrar of Companies:

- (a) the overseas prospectus relating to the quoted securities concerned;
- (b) the certificate of incorporation of the overseas issuer;
- (c) the memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the overseas issuer;
- (d) any trust deed relating to the quoted securities;
- (e) any certificate or other document evidencing lodgement or registration of the overseas prospectus;
- (f) a copy of any material contract that has been lodged or registered with the overseas prospectus or,—
 - (i) if any of those material contracts are not in writing, a copy of any memorandum that has been lodged or registered and that contains particulars of the contract; or
 - (ii) if an exemption, order, or declaration has been granted by a competent authority in respect of the quoted securities, a copy of that exemption, order, or declaration.

9 Investment statements

- (1) The exemptions granted by clause 6(1)(a) and (b) are subject to the further condition that any investment statement that relates to the quoted securities concerned—

- (a) includes, to the extent appropriate, statements to the following effect:
- (i) that allotments of the quoted securities must be made in the manner specified in the overseas prospectus and in the manner prescribed by the law of the specified country concerned; and
 - (ii) that investors should satisfy themselves as to the tax implications of investing in the quoted securities; and
 - (iii) that investing in the securities of overseas issuers carries with it a currency exchange risk; and
 - (iv) that the financial reporting requirements applying in New Zealand and those applying to the overseas issuer may be different and the financial statements of the overseas issuer may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
 - (v) that the overseas issuer may not be subject in all respects to New Zealand law; and
 - (vi) that, although a copy of the overseas prospectus and other documents have been received by the Registrar of Companies, the overseas prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and
 - (vii) the general nature and effect of any exemption, order, or declaration that may have been granted by a competent authority in respect of the offer or allotment of the quoted securities; and
 - (viii) that it is not a condition of this notice that the overseas issuer be listed on the New Zealand Stock Exchange and that, if the overseas issuer is not listed on the New Zealand Stock Exchange, New Zealand resident investors may not have access to information concerning the overseas issuer in the same way as they would have in relation to an issuer listed on the New Zealand Stock Exchange; and

- (b) includes information or statements to the following effect, under the heading “Agreement as to Jurisdiction”:
 - (i) that, in respect of a dispute concerning the contract for the quoted securities, the overseas issuer—
 - (A) agrees to submit to the non-exclusive jurisdiction of the New Zealand courts; and
 - (B) has instructed the New Zealand agent for service referred to in subparagraph (iii) to accept service on the issuer’s behalf; and
 - (C) agrees that this statement is an agreement with each investor for the purposes of section 389(1)(e) of the Companies Act 1993; and
 - (ii) that, despite the statements referred to in subparagraph (i), the contract in respect of the quoted securities may not always be enforceable in New Zealand courts; and
 - (iii) includes the name and address of a person in New Zealand who has been appointed by the overseas issuer to accept service in New Zealand of any document on its behalf; and
 - (c) contains no statement referring to a listing or intended listing on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
 - (d) refers to the overseas prospectus wherever the Act or Regulations requires an investment statement to refer to a registered prospectus.
- (2) The conditions in subclause (1) are not breached if there are differences between the information required to be in the investment statement under that subclause and the information presented in that investment statement, but the differences are immaterial.

10 Offers to be made in specified country at same time

The exemptions granted by clause 6(1)(a) and (b) are subject to the further condition that at the same time as offers of the quoted securities are made or are open for acceptance in New Zealand offers of the quoted securities are also made or are

also open for acceptance in the specified country concerned in accordance with the law of that specified country.

cl 5(1)

**Schedule 1
Recognised exchanges**

London Stock Exchange

Nasdaq National Market

New York Stock Exchange

Schedule 2

Specified countries

cl 5(1)

England
Wales
Scotland
Northern Ireland
United States of America
A State of the United States of America

Dated at Wellington this 27th day of September 2002.

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

[L.S.]

L. A. J. Kavanagh,
Member.

Explanatory note

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

This notice, which replaces the Securities Act (Overseas Listed Issuers) Exemption Notice 1997 (SR 1997/265), comes into force on 1 October 2002 and expires on 30 September 2007.

The notice exempts, subject to conditions, companies incorporated under the law of the United Kingdom or the United States of America from the prospectus requirements and various other requirements of the Securities Act 1978 and Securities Regulations 1983 in respect of any securities quoted on the London Stock Exchange or the Nasdaq National Market or the New York Stock Exchange.

The provisions of the previous notice have been carried forward with the following changes:

- because of changes in technology, documents are now required to be received by the Registrar of Companies rather than deposited:

- a condition requiring an agent for service in New Zealand has been included:
 - the investment statements must contain certain information relating to agreement as to jurisdiction:
 - the condition requiring a certificate to be signed by the issuer's solicitor or legal adviser has been removed:
 - a clause has been added to excuse immaterial differences between the information required to be in the investment statement and the information actually included in the statement.
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Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 September 2002.
This notice is administered in the Securities Commission.
