



Securities Act (Noel Leeming Limited) Exemption 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).

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Notice

- 1 **Title**
This notice is the Securities Act (Noel Leeming Limited) Exemption Notice 2004.

- 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 31 December 2004.

- 4 **Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

intended offer statement means a statement referred to in clause 5

Noel Leeming means Noel Leeming Limited (a company incorporated in New Zealand to acquire, directly or indirectly, the retail businesses)

Regulations means the Securities Regulations 1983

retail businesses means the Noel Leeming, Bond & Bond, Noel Leeming Furniture, and Big Byte retail businesses, currently operated directly or indirectly by Pacific Retail Limited (including through related bodies corporate)

specified securities means the equity securities that Noel Leeming intends issuing on or about the time of the acquisition of the retail businesses.

- (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 from section 33(1) of Act

Noel Leeming and every person acting on its behalf are exempted from section 33(1) of the Act in respect of any statement made by or on behalf of Noel Leeming to the effect that Noel Leeming intends to make an offer of specified securities to the public (the **intended offer statement**).

6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that the intended offer statement—

- (a) states that—
- (i) Noel Leeming is considering making an offer of securities to the public; and
 - (ii) no money is currently being sought and that no applications for securities will be accepted or money received unless the subscriber has received an investment statement relating to the specified securities; and
- (b) if Noel Leeming wishes, states that Noel Leeming is seeking preliminary indications of interest and, in this case, also states—
- (i) how indications of interest may be made; and

- (ii) that no indication of interest will involve an obligation or commitment of any kind; and
- (c) contains no other information, except any or all of the following:
 - (i) the full name of Noel Leeming, and a brief description of it, and the nature of its proposed business (including the brands and retail businesses that it intends to, directly or indirectly, own or manage):
 - (ii) a description of the specified securities, including a brief description of any rights or privileges to be attached:
 - (iii) the rate or rates of interest (if any) that may be earned by holding the specified securities:
 - (iv) the total number of specified securities:
 - (v) a statement of the intended use of the subscriptions:
 - (vi) the terms of the intended offer:
 - (vii) a description of the class of persons to whom it is intended the offer will be made:
 - (viii) the date at which Noel Leeming expects that the offer will be made; and
- (d) is dated and is not distributed to any person later than 6 months after its date.

7 Exemption from regulation 17(2) of Regulations

Noel Leeming and every person acting on its behalf are exempted from regulation 17(2) of the Regulations in respect of the intended offer statement to the extent that regulation 17(2) requires a certificate for the purposes of regulation 17(1) to be in the form set out in the Fourth Schedule of the Regulations.

8 Condition of exemption in clause 7

The exemption in clause 7 is subject to the condition that the certificate for the purposes of regulation 17(1) of the Regulations is in the form set out in the Schedule.

9 Exemption from regulation 23 of Regulations

Noel Leeming and every person acting on its behalf are exempted from regulation 23 of the Regulations in respect of the intended offer statement.

10 Condition of exemption in clause 9

The exemption in clause 9 is subject to the condition that the intended offer statement contains no statement referring to listing or intended listing of the specified securities on a market operated by New Zealand Exchange Limited other than a statement that has been approved by New Zealand Exchange Limited.

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Schedule
Certificate in respect of advertisements

I (*or We*) certify that—

(a) I (*or We*) have—

**(i)* read:

**(ii)* seen:

**(iii)* listened to—

the advertisement described in the Schedule to this certificate; and

(b) the advertisement complies with the Securities Act 1978 and the Securities Regulations 1983, as modified by the Securities Act (Noel Leeming Limited) Exemption Notice 2004; and

(c) the advertisement does not contain any matter that is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities.

.....
Signature of Director
(*or authorised signatory*)

.....
Date

.....
Signature of Director
(*or authorised signatory*)

.....
Date

Schedule

Description of advertisement

(The description must be sufficient to enable the advertisement to be identified.)

**Delete if inapplicable.*

Dated at Wellington this 28th day of June 2004.

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

[L.S.]

J. Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 December 2004, exempts Noel Leeming Limited and every person acting on its behalf in respect of any pre-prospectus statement that it intends making an offer of shares to the public. The exemption is from section 33(1) of the Securities Act 1978 and regulations 17(2) and 23 of the Securities Regulations 1983 and is subject to conditions.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- section 5(2CA) of the Securities Act 1978 permits issuers to make pre-prospectus statements about an intended offer in order to gauge potential investor interest in the offer. In this case, inclusion of information about the nature of Noel Leeming Limited's business (and the retail businesses and brands that it intends to own or manage) will provide prospective investors with more relevant information about the offer:
- a regulation 17 certificate must still be completed by Noel Leeming Limited; the exemption simply permits this to be drafted in a slightly different format to that contained in the Fourth Schedule of the Regulations. The amended format

recognises that a registered prospectus and investment statement are not yet available:

- strict compliance with regulation 23 would not allow statements to be made referring to listing or intended listing. The exemption from this regulation is appropriate as it enables pre-prospectus statements to refer to listing or intended listing of the shares on a market operated by New Zealand Exchange Limited if the statement has been approved by New Zealand Exchange Limited:
- the Commission has previously granted exemptions allowing limited pre-offer publicity on similar terms and in similar circumstances. Any pre-prospectus statement made must clearly explain that no money is currently being sought and that no application for securities will be accepted, or money received, unless the subscriber has received an investment statement.

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

Date of notification in *Gazette*: 1 July 2004.

This notice is administered by the Securities Commission.
