



Securities Act (NZX–NZAX Market) Exemption Notice 2005

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 (NZX–NZAX Market) Exemption Notice 2005.
- 2 Commencement**
This notice comes into force on 1 June 2005.
- 3 Expiry**
This notice expires on the close of 1 June 2010.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

business day means a day on which the NZAX Market is open for the trading of securities

FASTER means the system controlled by NZX referred to in the Securities Transfer (Approval of FASTER System) Order 2001

Financial Reporting Act means the Financial Reporting Act 1993

financial statements has the meaning given to it by section 8 of the Financial Reporting Act

issuer’s Internet website, in relation to an NZAX issuer, means the Internet website (if any) maintained by the issuer, other than the issuer’s NZAX information portal

issuer’s NZAX information portal, in relation to an NZAX issuer, means the Internet webpage for the NZAX issuer that is located on the NZAX Internet website and indexed on that website by the NZAX issuer’s name

NZAX Internet website means the Internet website for the NZAX Market contained within NZX’s Internet website

NZAX issuer means a company that has entered into a listing agreement with NZX for listing on the NZAX Market

NZAX listing rules means NZX’s listing rules that apply to NZAX issuers and the NZAX Market and that are listing rules for the purposes of section 36H of the Securities Markets Act

NZAX Market means the securities market operated by NZX under that name

NZX means New Zealand Exchange Limited

offer announcement means an announcement made by an NZAX issuer to NZX for approval and release to the market and—

- (a) that is in a form approved by NZX; and
- (b) that contains the following information:
 - (i) a statement to the effect that the NZAX issuer intends to make an offer of securities to the public; and
 - (ii) the date at which the NZAX issuer intends to open the offer; and
 - (iii) the maximum number of securities offered; and
 - (iv) a statement that a registered prospectus in respect of the securities, the financial statements, and

annual reports referred to in clauses 22 and 23 of the Schedule and other information in respect of the offer of securities, the NZAX issuer, and the securities offered is available on the issuer’s Internet website (if any), the issuer’s NZAX information portal, or on request, free of charge, from the NZAX issuer; and

- (v) the Internet addresses of the NZAX Internet website, the issuer’s NZAX information portal, and the issuer’s Internet website (if any); and
- (vi) the following statement:

“WARNING—RESTRICTED DISCLOSURE

The law requires that persons considering whether to invest in securities must receive an investment statement in respect of those securities before subscribing for those securities.

However the issuer of these securities is exempted from this requirement in respect of this offer of securities by virtue of the Securities Act (NZX–NZAX Market) Exemption Notice 2005 on the condition that this exemption is drawn to the attention of prospective investors.

A copy of the registered prospectus relating to the securities, financial statements of the issuer and other information about the securities offered and the issuer of the securities is available at the issuer’s NZAX information portal on the NZAX website [*insert address*], [the issuer’s own Internet website [*insert address*]]* or on request from the issuer, free of charge.

*Delete if issuer has no issuer’s Internet website.

It is strongly recommended that you obtain a copy of the registered prospectus and seek independent professional advice before investing in these securities.”

Regulations means the Securities Regulations 1983

Securities Markets Act means the Securities Markets Act 1988.

- (2) Any term or expression that is defined in the Act, the Securities Markets Act, or the Regulations and used, but not defined, in this notice has the meaning given to it by the Act, the Securities Markets Act, or the Regulations.

5 Exemptions

- (1) Every NZAX issuer, every holder of securities previously allotted by an NZAX issuer, and every person acting on their behalf is exempted from section 37A(1)(a) of the Act in respect of equity securities of the NZAX issuer.
- (2) Every NZAX issuer, every holder of securities previously allotted by an NZAX issuer, and every person acting on their behalf is exempted from section 37A(1)(c) of the Act in respect of equity securities of the NZAX issuer.
- (3) Every NZAX issuer, every holder of securities previously allotted by an NZAX issuer, and every person acting on their behalf is exempted from section 34(2)(a) of the Act and regulation 3(1) of the Regulations in respect of equity securities of the NZAX issuer.
- (4) Every NZAX issuer, every holder of securities previously allotted by an NZAX issuer, and every person acting on their behalf is exempted from regulation 23 of the Regulations in respect of equity securities of the NZAX issuer.

6 Conditions that apply only to exemption in clause 5(1)

- (1) In the case of the first offer to the public of equity securities, the exemption in clause 5(1) is subject to the condition that the securities must not be allotted to a subscriber for the equity securities unless the subscriber received, before subscribing, a copy of the registered prospectus relating to the offer.
- (2) In the case of the second or subsequent offers to the public of equity securities (whether or not the first offer was made on the NZAX Market), the exemption in clause 5(1) is subject to the condition that either,—
 - (a) all of the following apply:
 - (i) an offer announcement relating to the offer of the securities has been released by the NZAX issuer to NZX for disclosure to the market and approved by NZX for release to the market; and
 - (ii) the offer announcement is published on the issuer's NZAX information portal and the issuer's Internet website (if any); and
 - (iii) the offer of securities is accepted by an order placed on the NZAX Market and settled through FASTER; or

- (b) the securities must not be allotted to a subscriber for the equity securities unless the subscriber received, before subscribing, a copy of the registered prospectus relating to the offer.

7 Conditions that apply to exemptions in both clause 5(1) and clause (3)

- (1) The exemptions in clause 5(1) and (3) are subject to the condition that—
 - (a) the registered prospectus relating to the offer contains either—
 - (i) all the information, statements, and other matters required by the Schedule to this notice; or
 - (ii) in a case in which subclause (2) applies, all the information, statements, and other matters required by clauses 1 to 4, 5(1)(a), 5(5), 7 to 21 (other than clauses 11, 12, and 13(3)), 22(1), 24, 25, 27, and 28 of the Schedule; and
 - (b) all information, statements, and other matters specified under an italicised question set out in the Schedule that are required to be contained in a registered prospectus must be set out together in the registered prospectus under that question.
- (2) This subclause applies if the offer is an offer of equity securities only to persons—
 - (a) who already hold equity securities or convertible securities (as defined in regulation 4(4) of the Regulations) of the NZAX issuer; or
 - (b) in whose favour an offer of this type is renounced.
- (3) However, despite subclauses (1) and (2),—
 - (a) in the case of an offer of previously allotted securities to which section 6(2) or (3) of the Act applies, subject to this paragraph, nothing in the Schedule requires the registered prospectus to contain information about a holder of previously allotted securities as an issuer of equity securities if the prospectus contains—
 - (i) a statement to the effect that the holder of previously allotted securities offered under the prospectus is an issuer of equity securities and has obligations as an issuer under the Act, the Regulations, and this notice; and

- (ii) any information about the holder of previously allotted securities as offeror that, but for this paragraph would be required in the registered prospectus under clause 27 of the Schedule; and
- (b) in the case of any offer to which an exemption in clause 5(1) or (3) applies, if a matter specified in the Schedule is not applicable to the securities to which the registered prospectus relates, the registered prospectus is not required to refer to that matter and, in particular, is not required to state that the matter is not applicable.

8 Condition that applies to exemption in clause 5(4)

The exemption in clause 5(4) is subject to the condition that NZX has approved any statements in the registered prospectus and advertisement that refer to quoting the securities on the NZAX Market.

9 Conditions that apply to all exemptions

- (1) The exemptions in clause 5 are subject to the condition that all information released during the offer period by an NZAX issuer to NZX for disclosure to the market, and that has been approved by NZX for release to the market, is—
 - (a) placed immediately on the issuer’s NZAX information portal and the issuer’s Internet website (if any); and
 - (b) available at all times during the offer period through the issuer’s NZAX information portal and the issuer’s Internet website (if any).
- (2) Subclause (1) does not apply for any period when the NZAX Internet website, the issuer’s NZAX information portal, the issuer’s Internet website, or any of these are unavailable due to maintenance or to circumstances that could not reasonably be foreseen or avoided by NZX or the NZAX issuer, as the case may be.
- (3) The exemptions in clause 5 are subject to the additional condition that every prospectus delivered to the Registrar for registration in accordance with this notice must have endorsed on or attached to the prospectus, or be accompanied by,—
 - (a) in the case of a contract the details of which are required by clause 26 of the Schedule,—

- (i) a copy of the contract and, if it is wholly or partly in a foreign language, a correct English translation; or
 - (ii) if the contract is unwritten, a memorandum that states the full particulars of the contract; and
- (b) in each case of the auditor’s report required by clause 22 of the Schedule and any auditor’s report prepared in accordance with clause 29 of the Schedule,—
 - (i) the signed report; and
 - (ii) a statement, dated not earlier than 7 days before the specified date and signed by the auditor (either in the auditor’s name or that of the auditor’s firm), that the auditor consents to the report appearing in the registered prospectus in the form in which it appears.
- (4) However, subclause (3)(a) does not apply if a copy of the contract, translation, or memorandum, as the case may be, has already been registered by, or filed with, the Registrar.
- (5) The exemptions in clause 5 are subject to the additional condition that an NZAX issuer must not allot equity securities more than the earlier of either—
 - (a) 6 months after the specified date; or
 - (b) 9 months after the date of the most recent financial statements or interim financial statements referred to in the registered prospectus in accordance with clause 22 of the Schedule.

10 Transitional provision

- (1) This clause applies to equity securities offered under the Securities Act (NZX–NZAX Market) Exemption Notice 2003 in a prospectus registered on or prior to 31 May 2005.
 - (2) An offer and allotment of a security to which this clause applies may be made in accordance with the Securities Act (NZX–NZAX Market) Exemption Notice 2003 as in force immediately before that notice expired as if that notice had not expired.
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Schedule

Matters required in registered prospectus

1 Information on cover of registered prospectus

- (1) A statement in the following form (to be set out on the front cover of the registered prospectus):

WARNING—RESTRICTED DISCLOSURE

This registered prospectus has been prepared in accordance with the Securities Act (NZX–NZAX Market) Exemption Notice 2005. It may not contain as much information as would ordinarily appear in a registered prospectus prepared in accordance with the requirements of Schedule 1 of the Securities Regulations 1983.

It is strongly recommended that you seek independent professional advice before investing in these securities.

Copies of this registered prospectus, financial statements of the issuer, and other information about the securities offered and the issuer of the securities are available from the issuer's NZAX information portal on the NZAX website [*insert address*], [the issuer's Internet website [*insert address*]]* or free of charge from the issuer on request.

*Delete if issuer has no issuer's Internet website.

- (2) If the registered prospectus is the first offer to the public of equity securities of the issuer and the issuer has elected in accordance with clause 13(3) not to include a prospective statement of cash flows of the issuing group, a statement in the following form must be included after the first paragraph of the statement required by subclause (1):

In particular, the issuer believes that it is unable to prepare meaningful projections of future returns and has elected not to provide projections of future returns. Investors should rely on their own judgement or on independent advice as to the likely level of returns.

2 Information at front of registered prospectus

A statement in the following form (to be set out at the front of the registered prospectus):

IMPORTANT INFORMATION

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

Choosing an investment

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

	Page
What sort of investment is this?	
Who is involved in providing it for me?	
How much do I pay?	
What are the charges?	
What are the directors' and promoters' interests?	
What returns will I get?	
What are my risks?	
Can the investment be altered?	
How do I cash in my investment?	
Who do I contact with enquiries about my investment?	
Is there anyone to whom I can complain if I have problems with the investment?	
What other information can I obtain about this investment?	
Other material information?	

Choosing an investment adviser

You have the right to request from any investment adviser a written disclosure statement stating his or her experience and qualifications to give advice. That document will tell you—

- whether the adviser gives advice only about particular types of investments; and
- whether the advice is limited to the investments offered by 1 or more particular financial organisations; and
- whether the adviser will receive a commission or other benefit from advising you.

You are strongly encouraged to request that statement. An investment adviser commits an offence if he or she does not provide you with a written disclosure statement within 5 working days of your request. You must make the request at the time the advice is given or within 1 month of receiving the advice.

In addition,—

- if an investment adviser has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- if an investment adviser receives any money or assets on your behalf, he or she must tell you in writing the methods employed for this purpose.

Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes.

What sort of investment is this?

3 Description of securities

- (1) A brief description of the securities being offered.
- (2) The maximum number or amount of the securities being offered.

4 Activities

A brief description of the principal activities carried on by the issuer and an indication of how long the issuer has been carrying on those activities.

Who is involved in providing it for me?

5 Names and addresses

- (1) The following information:
 - (a) the name and address of the issuer; and
 - (b) the statute or other authority by or under which the issuer was incorporated; and
 - (c) the date of incorporation; and
 - (d) the date of registration in New Zealand (if that date is different from the date of incorporation); and
 - (e) the registered number (if any); and

- (f) the place (if any) in New Zealand where a public file relating to the incorporation or registration of the issuer is kept.
- (2) The name, address, and technical or professional qualifications (if any) of every director of the issuer.
- (3) In respect of every director of the issuer who is an employee of the issuer, or of any subsidiary of the issuer, the position held by him or her.
- (4) If any director has been adjudged bankrupt during the 5 years before the specified date, a statement to that effect including the name, and any alternative or former name or names, of the director concerned.
- (5) The names and addresses of any promoters.
- (6) The names of the issuer's secretary (if any), auditors, and securities registrar, and of any bankers, sharebrokers, or solicitors who have been involved in the preparation of the registered prospectus.
- (7) The names, addresses, and qualifications of any experts named in the registered prospectus.
- (8) If the offer of securities is underwritten, the name and address of the underwriter.
- (9) In relation to an offer of previously allotted securities to which section 6(2) or 6(3) of the Act applies,—
 - (a) the name of the offeror of the previously allotted securities; and
 - (b) the address of the offeror's registered office (or, if it does not have a registered office, its address) in New Zealand; and
 - (c) the net amount of the consideration received or to be received by the issuer in respect of the original allotment of the securities.

6 Subsidiaries and shareholders

- (1) In respect of each subsidiary, the amount of whose total tangible assets exceeds 5% of the amount of the total tangible assets of the issuing group,—
 - (a) the subsidiary's name; and
 - (b) the proportion of its issued capital held by members of the issuing group.

- (2) The names of the persons who are the registered holders of the 10 largest holdings of equity securities of the issuer at a date not earlier than 30 days before the specified date, and the amounts of their respective holdings.
- (3) A statement as to whether or not the persons specified in accordance with subclause (2) undertake any liability in respect of the securities being offered.

How much do I pay?

7 Moneys payable by subscribers

- (1) The following information relating to the money payable by a subscriber to the issuer or any associated person in respect of the securities:
 - (a) a description of the sums payable; and whether or not the subscriber is required to make such payments:
 - (b) the person to whom, and place at which, payments are to be or may be made:
 - (c) if the subscriber is required to make payments on specified dates or at a specified frequency, the payment dates or frequency and the consequences of failing to make the payments.
- (2) If the money, or the minimum or maximum sum of money, referred to in subclause (1) can, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount identified with reference to the security), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (3) If the money, or the minimum or maximum sum of money, referred to in subclause (1) cannot, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount identified with reference to the security), a statement describing any procedure for calculating the amounts of that money during the period the registered prospectus is current.

8 Cooling-off period

If there is a cooling-off period in respect of the securities, a statement of the terms on which a subscriber may cancel the securities.

*What are the charges?***9 Types of charges**

- (1) A statement as to which of the following types of charges are or may be payable to the issuer or a promoter, or an associated person of the issuer or promoter by a subscriber (whether directly or indirectly, including by deduction):
 - (a) entry charges:
 - (b) administration or management charges:
 - (c) expenses or overhead charges:
 - (d) charges or expenses relating to goods or services that the subscriber is required to obtain:
 - (e) early termination charges:
 - (f) switching or sale charges (including the difference between any buying and selling prices for the securities):
 - (g) alteration charges:
 - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by the issuer to a promoter or administration manager or investment manager or an associated person of the issuer or the promoter, being charges that will or may affect the amount of the returns to subscribers.
- (3) A brief description of any practices of the issuer or any associated person in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of the issuer or any other person to alter any of the charges applicable to the securities.

10 Amount of charges

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 9(1) can, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 9(1) cannot, at the specified date, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to

ascertain the amount at the time of, and following, the subscription.

What are the directors' and promoters' interests?

11 Directors' interests

(1) A statement—

- (a) of the amount of remuneration and all other principal terms of any contract of service (other than a contract terminable, without payment of compensation, by the issuer or any of its subsidiaries on notice of 2 years or less) under which a director of the issuer is entitled to remuneration from the issuer or any of its subsidiaries (other than by way of directors' fees); and
- (b) of, where a director is entitled to remuneration from the issuer or any of its subsidiaries other than by way of a contract of service or by way of directors' fees, the nature of the relationship between the director and the issuer and the services rendered by the director to the issuer; and
- (c) of the retirement benefits of directors or compensation payable to directors for loss of office contained in the constitution of the issuer or any of its subsidiaries or in any contract or deed entered into by the issuer or any of its subsidiaries other than provisions that relate only to superannuation benefits that are payable to directors who are full-time employees of the issuer or subsidiary under a scheme open to other full-time employees of the issuer or subsidiary.

(2) Where any material transaction has been entered into at any time in the 5 years before the specified date, or is to be entered into on or after the specified date—

- (a) between the issuer or any of its subsidiaries and any director or proposed director of the issuer or of any body corporate related to the issuer; or
- (b) between the issuer or any of its subsidiaries and any immediate relative of any director or proposed director of the issuer or of any body corporate related to the issuer; or
- (c) between the issuer or any of its subsidiaries and any company more than half of whose share capital was or

will be held directly or indirectly, at the date of the transaction, by—

- (i) any director or proposed director of the issuer or of any body corporate related to the issuer; or
- (ii) any immediate relative of any director or proposed director of the issuer or of any body corporate related to the issuer—

the following information:

- (d) a description of the property acquired, or to be acquired, under the transaction; and
- (e) the cost of the property acquired, or to be acquired, under the transaction to the person by whom it has been or is to be acquired; and
- (f) a brief description of the other terms of the acquisition of the property; and
- (g) the cost of the property to the person disposing of the property under the transaction; and
- (h) the date on which the person disposing of the property under the transaction acquired the property.

12 Promoters' interests

Where any material transaction has been entered into at any time in the 5 years before the specified date, or is to be entered into on or after the specified date,—

- (a) between the issuer or any of its subsidiaries and any promoter of the issuer, or of any subsidiary of the issuer; or
- (b) between the issuer or any of its subsidiaries and (where a promoter of the issuer is a body)—
 - (i) any body corporate related to that promoter; or
 - (ii) any director or proposed director of that promoter or of any body corporate related to that promoter; or
- (c) between the issuer or any of its subsidiaries and any immediate relative of—
 - (i) any promoter of the issuer or of any subsidiary of the issuer; or
 - (ii) where a promoter of the issuer is a body whether corporate or unincorporate, any director or proposed director of that promoter or of any body corporate related to that promoter; or

- (d) between the issuer or any of its subsidiaries and any company more than half of whose share capital was or will be held directly or indirectly, at the date of the transaction, by—
 - (i) any promoter of the issuer or of any subsidiary of the issuer; or
 - (ii) where a promoter of the issuer is a body whether corporate or unincorporate, any director or proposed director of that promoter or of any body corporate related to that promoter—

the following information:

- (e) a description of the property acquired, or to be acquired, under the transaction; and
- (f) the cost of the property acquired, or to be acquired, under the transaction to the person by whom it has been or is to be acquired; and
- (g) a brief description of the other terms of the acquisition of the property; and
- (h) the cost of the property to the person disposing of the property under the transaction; and
- (i) the date on which the person disposing of the property under the transaction acquired the property.

What returns will I get?

13 Returns

- (1) The following information about the returns to subscribers from the securities:
 - (a) a brief description of the nature of the returns:
 - (b) a brief description of the key factors that determine the returns:
 - (c) a statement as to whether or not an amount of returns, quantifiable as at the date of the investment statement and enforceable by subscribers, has been promised and, if so, the amount or a description of how that amount can be calculated:
 - (d) a statement as to which of the following (if any) will or is likely to affect the returns (in addition to any of the charges referred to in clause 9):
 - (i) taxes or duties:
 - (ii) reserves or retentions.

- (2) Where the purpose of the offer of securities is expressed as being to provide finance for a particular capital project,—
 - (a) a brief description of the project; and
 - (b) an indication of the expected financial benefits of the project.
- (3) Where the offer of securities is the first offer to the public of equity securities of the issuer, a brief description of the plans that the directors of the issuer, and the directors of any other member of the issuing group, have in respect of the issuing group during the year commencing on the specified date, including the sources of finance that will be required for those plans; and either—
 - (a) a prospective statement of cash flows of the issuing group that the directors of the issuer expect to occur in the year commencing on the specified date; or
 - (b) where the directors of the issuer believe they are unable to provide a meaningful prospective statement of cash flows, a statement to that effect and a statement of the directors' reasons for forming that view.
- (4) In relation to the prospective statement of cash flows required by subclause (3)(a)—
 - (a) the statement must—
 - (i) show the likely receipt and proposed use of the proceeds of the offer of securities; and
 - (ii) state the principal assumptions on which it is based; but
 - (b) nothing in this subclause limits the information to be included in the statement.
- (5) The dates on which, or frequency with which, the returns from the securities will be due and paid or, if there are no such dates or frequency or the dates or frequency are unknown, a statement to that effect.
- (6) If payment of all or any of the returns from the securities will or may be withheld until a particular date or for a particular period, a statement to that effect and a brief description of the circumstances that may produce this result.
- (7) The name of the person legally liable to pay the returns.

14 Guarantee of securities

If there is a guarantor of the securities, the following information:

- (a) the name of the guarantor;
- (b) the nature and amount of the guarantee;
- (c) whether or not the guarantee is subject to conditions and, if so, the principal conditions;
- (d) whether or not the guarantee is secured by a mortgage or other charge and, if so, the nature and amount of the charge;
- (e) if the guarantor and the issuer are associated persons, a statement to that effect and the nature of the relationship.

What are my risks?

15 Risks

- (1) A brief description of the principal risks of—
 - (a) the money paid by a subscriber not being recovered in full by the subscriber;
 - (b) a subscriber not receiving the returns referred to in clause 13;
 - (c) a subscriber being required to pay more money in respect of a security than that disclosed in clause 7 or clause 16.
- (2) A statement as to the trading prospects of the issuing group, together with any material information that may be relevant to those prospects, including a description of all special trade factors and risks that—
 - (a) are not mentioned elsewhere in the registered prospectus; and
 - (b) are not likely to be known or anticipated by the general public; and
 - (c) could materially affect the prospects of the issuing group.
- (3) If it is reasonably foreseeable that, on termination of any security at any time, a subscriber will have received, in total, less than the amount paid to the issuer or an associated person for the security, a statement to this effect and a brief description of the circumstances that may produce this result.

16 Consequences of insolvency

- (1) A statement as to whether or not subscribers will or may be liable to pay money to any person as a result of the insolvency of the issuer and, if so, a brief description of the liability.
- (2) A brief description of any claims on the assets of the issuer that will or may rank ahead of claims of subscribers in the event of the issuer being put into liquidation.
- (3) A brief description of any claims on the assets of the issuer that will or may rank equally with the claims of subscribers in the event of the issuer or scheme being put into liquidation.

17 NZAX listing

A statement in the following form:

The securities offered in this prospectus are listed, or intended to be listed, on the NZX's NZAX market. The NZAX market differs from the NZSX market, also operated by NZX, in the following key respects:

- there are reduced criteria for listing on NZAX—there is no requirement for 25% of the securities of an NZAX issuer to be widely held and no minimum value requirement for NZAX listings as apply to NZSX listings. Whilst an NZSX issuer must have 500 shareholders, an NZAX issuer needs only 50 shareholders
- an NZAX issuer requires an NZX sponsor in order to list on the NZAX market, whereas NZSX companies require an organising participant
- greater flexibility is accorded by the NZAX Listing Rules to NZAX issuers seeking to raise capital, buy back securities, and undertake major transactions. The NZAX Listing Rules provide NZAX issuers with an option to undertake these activities, without seeking shareholder consent, by making an announcement to the market, which discloses fully the transaction prior to that transaction becoming final
- the materiality threshold for related party transactions in the NZAX Listing Rules is higher than the threshold in the NZSX Listing Rules. This means that an NZAX issuer may enter into (proportionally) more substantial transactions with related parties before being required to seek shareholder approval for those transactions

- the corporate governance standards for NZAX issuers do not contain all the matters provided for in the corporate governance standards for NZSX issuers.

Can the investment be altered?

18 Alteration of securities

- (1) A brief description of any right of a subscriber, the issuer, or any other person to—
 - (a) alter the amount of moneys payable by a subscriber, including a brief description of any continuing obligation of the subscriber to pay that amount; or
 - (b) otherwise alter the terms of any security.
- (2) If any charges are payable by a subscriber on any such alteration, a reference to the information given under clause 9(1)(g).

How do I cash in my investment?

19 Early termination

- (1) A brief description of any right of the issuer, a subscriber, or any other person to terminate, cancel, surrender, or otherwise make or obtain payment of the returns from the securities, other than as described in clause 13.
- (2) If any charges are payable by a subscriber on any such payment, a reference to the information given under clause 9(1)(e) or (f).

Who do I contact with enquiries about my investment?

20 Enquiries about securities

The names or descriptions of officers, employees, or agents of the issuer to whom enquiries about the securities can be made, and the addresses and business telephone numbers of those people.

Is there anyone to whom I can complain if I have problems with the investment?

21 Complaints about securities

- (1) The names or descriptions of officers, employees, or agents of the issuer to whom complaints about the securities can be made, and the addresses and business telephone numbers of those people.

- (2) A statement that a complaint about the securities or the NZAX issuer may be made directly to NZX, and a contact address and business telephone number for making a complaint to NZX.
- (3) A statement as to whether complaints about the securities can be made to an ombudsman and, if so, the address and business telephone number of the ombudsman.

What other information can I obtain about this investment?

22 Financial statements

- (1) Where the issuer has commenced business and either acquired an asset or incurred a debt,—
 - (a) a reference,—
 - (i) in the case of an issuer who was an issuer for the purposes of the Financial Reporting Act at the time of its most recent accounting period, to its most recent financial statements registered under that Act; or
 - (ii) in the case of an issuer who was not an issuer for the purposes of the Financial Reporting Act at the end of its most recent accounting period but who prepared financial statements that complied with the requirements of the Financial Reporting Act, to those financial statements; or
 - (iii) if subparagraph (i) or (ii) does not apply, to financial statements prepared in accordance with the requirements of the Financial Reporting Act, as if the issuer were an issuer for the purposes of that Act, for a period ending not more than 4 months before the specified date; and
 - (b) a statement to the effect that copies of the financial statements referred to in paragraph (a) together with an audit report in respect of those financial statements that complies with the requirements of section 16 of the Financial Reporting Act, are available—
 - (i) free of charge on request from the issuer;
 - (ii) on the issuer's NZAX information portal and the issuer's Internet website (if any).
- (2) If the directors of the issuer consider it necessary or desirable, after having regard to clause 9(5) of this notice,—

- (a) a reference to interim financial statements that comply with the Financial Reporting Act (except that they need not be audited) for the issuing group at any stated date that is not more than 9 months after the date of the financial statements referred to in subclause (1)(a); and
 - (b) a statement that those interim financial statements are available—
 - (i) free of charge on request from the issuer; or
 - (ii) on the issuer’s NZAX information portal and the issuer’s Internet website (if any).
- (3) Where the issuer has commenced business, and either acquired an asset or incurred a debt, a statement to the effect that there are available, free of charge on request from the issuer or on the issuer’s NZAX information portal and the issuer’s Internet website (if any), either of the following sets of documents:
- (a) all the annual reports completed by the issuer in the 5 consecutive years before the date of the financial statements referred to in subclause (1)(a); or
 - (b) all the financial statements prepared by the issuer in accordance with the requirements of the Financial Reporting Act for the 5 consecutive accounting periods before the date of the financial statements referred to in subclause (1)(a).
- (4) Details of the times and places in New Zealand where the following documents or copies of the following documents (and, if they are wholly or partly in a foreign language, a correct translation of the documents in English) on payment of any fee, may be inspected by a person who so requests:
- (a) the constitution of the issuer;
 - (b) the financial statements referred to in subclause (1);
 - (c) any material contract disclosed under clause 26.

23 Acquisition of business or subsidiary

- (1) Where a member of the issuing group has acquired a business, or a member of the issuing group became a subsidiary of the issuer, at any time in the 2 years before the specified date, the following information:
- (a) the name of the business or subsidiary; and
 - (b) a brief description of the activities of that business, or of the business carried on by that subsidiary, in the course

of the period that began 5 years before the specified date and ended on the date on which the business was acquired, or the member became a subsidiary, as the case may be; and

- (c) if the registered prospectus does not refer to financial statements in accordance with clause 22(1), the information referred to in subclause (2)(b) and (d) or (e).
- (2) Where a member of the issuing group has acquired a business or become a subsidiary of the issuer, at any time in the period between the date of the financial statements referred to in accordance with clause 22(1) of this schedule and the specified date, or where the registered prospectus contains a statement to the effect that a member of the issuing group intends to acquire a business or equity securities that will result in a body corporate becoming a subsidiary of the issuer, the following information:
- (a) the name of the member; and
 - (b) the amount of the consideration paid or payable, or proposed to be paid, by the member of the issuing group for the business, subsidiary, or body corporate; and
 - (c) a brief description of that business, or of the business carried on by that subsidiary or body corporate, in the course of the 5 years before the specified date; and
 - (d) if the business, subsidiary, or body corporate in question has prepared financial statements in accordance with the Financial Reporting Act, a statement that includes copies of those financial statements, or copies of the annual reports prepared in accordance with the requirements of the Companies Act 1993, for the 5 most recent accounting periods of the business, subsidiary, or body corporate (or a lesser number, if the business, subsidiary, or body corporate has been in existence for a shorter time) are available—
 - (i) free of charge on request from the issuer;
 - (ii) on the issuer’s NZAX information portal and the issuer’s Internet website (if any); and
 - (e) if the business, subsidiary, or body corporate has not prepared financial statements in accordance with the Financial Reporting Act, a statement to the effect that there are available, free of charge on request from the

issuer or on the issuer's NZAX information portal and the issuer's Internet website (if any),—

- (i) pro forma financial statements that have been prepared for the business, subsidiary, or body corporate for 1 accounting period ending not more than 4 months before the specified date, on as similar a basis as possible to those that would have been prepared had the business, subsidiary, or body corporate been a reporting entity for the purposes of the Financial Reporting Act; and
 - (ii) a statement of the basis of preparation of the pro forma financial statements referred to in subparagraph (i), the key assumptions used in preparing those statements, and the source of the information on which those statements were based.
- (3) Notwithstanding any other provision of this clause, this clause does not apply in respect of a business, subsidiary, or body corporate if the consideration paid or payable, or proposed to be paid, for the acquisition of the business, subsidiary, or body corporate is not more than one-fifth of the amount of the total tangible assets shown in the statement of financial position referred to in accordance with clause 22(1).

24 Annual and half-yearly information

A statement of the type of information that is required to be, or otherwise will be, given annually and half-yearly to subscribers by the issuer.

25 On request information

A statement—

- (a) describing the type of information that is required to be, or otherwise will be, available on request from the issuer; and
- (b) explaining how such a request should be made; and
- (c) whether any charge may be made for the information and the amount of the charge.

*Other important information***26 Material contracts**

In relation to every material contract entered into by any member of the issuing group at any time in the 2 years before the specified date (not being a contract entered into in the ordinary course of business of that member),—

- (a) its date; and
- (b) the names of the parties to it; and
- (c) its general nature.

27 Other material matters

Particulars of any material matters relating to the offer of securities (other than matters elsewhere set out in the registered prospectus or in the financial statements referred to in the registered prospectus under clause 22 or clause 23 and contracts entered into in the ordinary course of business of a member of the issuing group).

28 Directors' statement

A statement by the directors of the issuer as to whether, after due enquiry by them in relation to the period between the date of the latest statement of financial position referred to in accordance with clause 22(1) and the specified date, there have, in their opinion, arisen any circumstances that materially adversely affect—

- (a) the trading or profitability of the issuing group; or
- (b) the value of its assets; or
- (c) the ability of the issuing group to pay its liabilities due within the next 12 months.

29 Prospective financial information

If the registered prospectus contains prospective financial information, a copy of a report by a qualified auditor, signed by the auditor (either in his or her own name or that of the auditor's firm), stating—

- (a) the work done by the auditor; and
- (b) the scope and limitations of the audit; and
- (c) the existence of any relationship (other than that of auditor) that the auditor has with, or any interests that

- the auditor has in, the issuer or any of its subsidiaries;
and
- (d) that in the opinion of the auditor, the prospective financial information, so far as the accounting policies and calculations are concerned, has been properly compiled on the basis of the assumptions made or adopted by the issuer set out at [*insert pages*] in the registered prospectus and are presented on a basis consistent with the accounting policies normally adopted by the issuer.

Dated at Wellington this 27th day of May 2005.

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

[L.S.]

C. A. N. Beyer,
Member.

Statement of reasons

This notice comes into force on 1 June 2005 and will expire on 1 June 2010. It replaces the Securities Act (NZX–NZAX Market) Exemption Notice 2003 (the **2003 notice**). The 2003 notice exempted an issuer listed on the NZAX Market (a securities market to be operated by New Zealand Exchange Ltd), subject to conditions, from sections 34(2)(a) and 37A(1)(a) and (c) of the Securities Act 1978, and regulations 3(1) and 23 of the Securities Regulations 1983. The effect of the 2003 notice was to exempt NZAX issuers from the requirement to provide an investment statement to prospective investors before they subscribe for the securities, and to require instead NZAX issuers to register a prospectus with an alternative schedule of contents.

This notice carries forward the effect of the 2003 notice, with a number of minor changes, provision for transitional arrangements, and the following principal changes—

- it extends the effect of the exemptions, subject to conditions, so as to enable offers of previously allotted securities to be made in the same manner as an offer of new securities by an NZAX issuer:

- it extends the effect of the exemptions, subject to conditions, so as to enable a short-form prospectus to be used for offers of equity securities that are to be made to existing holders of equity securities or convertible securities of an NZAX issuer, or persons in whose favour an offer of this type is renounced.

The Commission considers it appropriate to carry forward the provisions of the 2003 notice and to make the changes contained in this notice because—

- the carrying forward of the provisions in the 2003 notice will enable NZAX issuers proposing to offer securities to the public to continue to take advantage of the exemptions. The exemptions enable NZAX issuers to offer securities in a cost-effective way while ensuring that appropriate disclosure continues to be provided to prospective investors:
- the amendment relating to previously allotted securities is consistent with other exemptions granted by the Commission and requires the NZAX issuer to advise prospective investors that the offeror of the previously allotted securities remains legally responsible as an issuer. Information relating to the offerors of previously allotted securities is unlikely to be useful to potential investors in considering whether or not to subscribe for the securities:
- the amendment relating to offers of equity securities or convertible securities to existing holders enables NZAX issuers to make rights offers in a cost-effective way using a shortened form of the integrated offer document required for new and subsequent offers of securities by an NZAX issuer. The amendment recognises that existing holders in an NZAX issuer do not require full disclosure when compared to an offer made to the public in general and in this regard is consistent with the policy of the securities laws for non-NZAX issuers as reflected in regulation 4 of the Securities Regulations 1983:
- practical difficulties encountered during the use of the 2003 notice have necessitated minor amendments so as to maintain consistency with the requirements of the Securities Act 1978 and the Securities Regulations 1983:

- the transitional provisions ensure that offers commenced under the 2003 notice can be completed under the terms of those exemptions.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 31 May 2005.

This notice is administered by the Securities Commission.
