



## Securities Act (Employee Share Purchase Schemes) Exemption Notice 2002

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

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**Schedule**  
**Specified unlisted companies and specified trustees**

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### Notice

- Title**

This notice is the Securities Act (Employee Share Purchase Schemes) Exemption Notice 2002.
- Commencement**

This notice comes into force on 1 October 2002.
- 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

**eligible person** means, in relation to a listed company or specified unlisted company,—

- (a) an employee of that company or of any of its subsidiaries; or
- (b) a director of that company or of any of its subsidiaries; or
- (c) a person who provides personal services (other than as an employee) principally to that company or to any of its subsidiaries

**employee share purchase scheme** means a scheme established by a listed company or specified unlisted company under which eligible persons may acquire equity securities of which that company is the issuer

**First Schedule** means the First Schedule of the Regulations

**FRS-24** means the financial reporting standard known as Financial Reporting Standard No 24 that—

- (a) has been approved under section 24 of the Financial Reporting Act 1993; and
- (b) came into force on 1 July 1997

**interested**, in relation to a transaction, means a person who—

- (a) is a party to, or will or may derive a material financial benefit from, the transaction; or
- (b) has a material financial interest in a person referred to in paragraph (a); or
- (c) is a trustee of a person referred to in paragraph (a); or
- (d) is otherwise directly or indirectly materially interested in the transaction

**listed company** means a company that is a party to a listing agreement with the New Zealand Stock Exchange and the shares in which are quoted, or have been accepted for quoting, by the New Zealand Stock Exchange

**Regulations** means the Securities Regulations 1983

**specified unlisted company** means a company that is named in the first column of the Schedule.

- (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.

*Listed companies and trustees*

**5 Exemption for listed companies and trustees of listed companies' employee share purchase schemes**

- (1) This clause applies to—
- (a) a listed company;
  - (b) a trustee of that company's employee share purchase scheme;
  - (c) a person acting on behalf of a person referred to in paragraph (a) or paragraph (b).
- (2) The persons to whom this clause applies are exempted from the following provisions in respect of equity securities allotted under the listed company's employee share purchase scheme:
- (a) section 37A(1)(c) and (2) of the Act; and
  - (b) clauses 4 to 20, 22 to 38, and 40 to 42 of the First Schedule.

**6 Condition that equity securities allotted only to eligible persons**

The exemption in clause 5 is subject to the condition that the equity securities are allotted only to a person who is an eligible person at the time of allotment.

**7 Condition that registered prospectus contain or be accompanied by financial statements**

The exemption in clause 5 from section 37A(1)(c) of the Act is subject to the further condition that it is a term of the offer of the equity securities that every copy of the registered prospectus sent to a person under section 54B of the Act will contain or be accompanied by the most recent audited consolidated financial statements of the issuing group that comply with the Financial Reporting Act 1993.

*Specified unlisted companies and specified trustees*

**8 Exemption for specified unlisted companies and specified trustees**

- (1) This clause applies to—

- (a) a specified unlisted company;
  - (b) a trustee of that company's employee share purchase scheme that is named in the second column of the Schedule;
  - (c) a person acting on behalf of a person referred to in paragraph (a) or paragraph (b).
- (2) The persons to whom this clause applies are exempted from the following provisions in respect of equity securities allotted under the specified unlisted company's employee share purchase scheme:
- (a) section 37A(1)(c) and (2) of the Act; and
  - (b) clauses 4 to 20, 22 to 38, and 40 to 42 of the First Schedule.

## **9 Condition that equity securities allotted only to eligible persons**

The exemption in clause 8 is subject to the condition that the equity securities are allotted only to a person who is an eligible person at the time of allotment.

## **10 Condition that information sent to security holders**

- (1) The exemption in clause 8 from section 37A(1)(c) of the Act is subject to the further condition that it is a term of the offer of the equity securities that every copy of the registered prospectus sent to a person under section 54B of the Act will contain or be accompanied by—
- (a) the most recent audited consolidated financial statements of the issuing group that comply with the Financial Reporting Act 1993; and
  - (b) if the equity securities are offered more than 9 months after the date of those financial statements, a copy of the interim financial statements for the most recently completed financial half-year of the issuing group that comply with FRS-24.
- (2) The exemption in clause 8 from section 37A(1)(c) of the Act is subject to the further condition that it is a term of the offer of the equity securities that every security holder will be sent, after the end of each financial half-year of the issuing group for which interim financial statements are required under sub-clause (1)(b),—

- (a) a statement describing any circumstances that—
  - (i) have arisen during the period between the date of the audited financial statements referred to in subclause (1)(a) and the date of the most recent interim financial statements (the **reporting period**); and
  - (ii) materially affect the holders or their securities; and
- (b) a statement containing the following information if the company (or any person acting on its behalf) is or becomes, during the reporting period, interested in a transaction relating to the equity securities:
  - (i) the names of the parties to the transaction and the date of the transaction; and
  - (ii) a brief description of the material terms of the transaction; and
  - (iii) the nature of the interest in the transaction.

#### **11 Condition that statements be contained in investment statement and registered prospectus**

The exemption in clause 8 is subject to the further condition that the investment statement and registered prospectus contain prominent statements that—

- (a) the equity securities are not quoted by the New Zealand Stock Exchange and subscribers may not be able to readily ascertain a market price for, or deal in, the securities; and
- (b) describe the arrangements (if any) entered into by the company, or otherwise available, to facilitate dealing in the securities.

cl 4(1)

### **Schedule**

#### **Specified unlisted companies and specified trustees**

##### **Specified unlisted company**

New Zealand Wool Services International Limited

##### **Specified trustee**

The Trustees of the New Zealand Wool Services International Limited Employee Share Purchase Scheme

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.

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### Explanatory note

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

This notice comes into force on 1 October 2002 and expires on 30 September 2007.

This notice exempts companies and trustees (subject to conditions) in respect of equity securities issued by those companies that are offered under employee share purchase schemes. The exemptions are from section 37A(1)(c) and (2) of the Securities Act 1978 and from clauses 4 to 20, 22 to 38, and 40 to 42 of the First Schedule of the Securities Regulations 1983.

This notice replaces the Securities Act (Employee Share Purchase Schemes) Exemption Notice (No 2) 1997. The main changes are to—

- extend the notice to cover offers and allotments to directors; and
- require the offeree to be an employee, director, or provider of personal services only at the time the allotment is made and not at the time the offer is made (so that the notice covers offers to prospective employees, etc); and
- provide a class exemption for trustees of listed companies' employee share purchase schemes, rather than requiring them to be individually exempted. Trustees of unlisted companies' employee share purchase schemes are still individually exempted.

In addition, certain drafting changes have been made to reflect current drafting practice.

The Securities Act (Employee Share Purchase Schemes ) Exemption Notice (No 2) 1997, which was due to expire on 1 October 2002, has

been extended for a further 6 months to allow issuers a smoother transition to this notice.

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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.

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