



### 3 Expiry

This notice expires on the close of 10 March 2003.

### 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 Exchange is open for the trading of securities

**Exchange** means the New Zealand Stock Exchange

**key transaction** has the same meaning as in the listing rules of the Exchange

**NCM issuer** means—

- (a) for the purposes of clauses 6 to 8, a company that has applied for listing on the Exchange as an NCM issuer and in respect of which the Exchange has delivered an acknowledgment to the Registrar to the effect that all its requirements (other than those relating to the number of holders of securities) for quoting the securities of the company have been met; or
- (b) for the purposes of clauses 9 to 13, a company that is designated by the Exchange as an NCM issuer

**NCM issuer's internet webpage**, in relation to an NCM issuer, means the internet webpage for the NCM issuer that is located on the Exchange's internet site for the new capital market and indexed on the site by the NCM issuer's name

**NCM rules** means the listing rules of the Exchange that apply to NCM issuers

**offer announcement** means an announcement made by an NCM issuer to the Exchange for approval and release to the market and—

- (a) that is in a form approved by the Exchange; and
- (b) the purposes of which include—
  - (i) the provision to prudent but non-expert persons of certain key information that is likely to assist those persons to decide whether or not to subscribe for equity securities of the NCM issuer; and
  - (ii) the bringing to the attention of such persons the fact that other important information about the

- securities is available to those persons in other documents, including the NCM issuer's internet webpage; and
- (c) that contains the following information:
- (i) a statement to the effect that the NCM issuer intends to make an offer of equity securities to the public; and
  - (ii) the date at which the NCM issuer intends to open the offer; and
  - (iii) any information material to the offer of securities that is not disclosed on the NCM issuer's internet webpage (or, if there is no such information, a statement to that effect); and
  - (iv) a statement identifying each document on the NCM issuer's internet webpage that contains information material to the offer of securities; and
  - (v) the internet addresses of the Exchange's internet site for the new capital market and the NCM issuer's internet webpage; and
  - (vi) the following statement:
    - “Prospective investors are cautioned that—
    - “(a) an investment in an NCM issuer is a speculative investment and may involve a high degree of risk. Such investments are designed for persons who can bear the loss of their entire investment; and
    - “(b) as the company is an NCM issuer, it is exempted from the prospectus and investment statement requirements of the Securities Act 1978 in respect of this offer of securities by virtue of the Securities Act (New Zealand Stock Exchange—New Capital Market) Exemption Notice (No 2) 2000.”

**Regulations** means the Securities Regulations 1983.

- (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 Application

This notice does not apply to a security offered to the public by an NCM issuer if,—

- (a) at the time of allotment of the security, an order has been made under section 38B of the Act prohibiting distribution of an advertisement relating to that offer and that order has not been revoked; or
- (b) at the time of allotment of the security, any offer announcement relating to the security, or any document referred to in such an announcement, is known by the NCM issuer or any director of the NCM issuer, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the offer announcement or document became so false or misleading as a result of a change of circumstances occurring after the date of the offer announcement); or
- (c) immediately after the allotment of all securities to which that offer relates, the total amount of capital raised by the NCM issuer since its incorporation would exceed \$10 million.

### *Exemptions relating to first offers of equity securities to the public*

## 6 Exemption from clauses 9, 10(1)(c), 11(3)(d), (f), and (g) of First Schedule of Regulations

Every NCM issuer and every person acting on its behalf are exempted from clauses 9, 10(1)(c), and 11(3)(d), (f), and (g) of the First Schedule of the Regulations in respect of the first offer to the public of equity securities of the NCM issuer.

## 7 Conditions relating to investment statement and prospectus

The exemption in clause 6 is subject to the condition that the investment statement and the registered prospectus relating to the offer each contain,—

- (a) on its cover (if it is in physical form) or the first page of it that can be seen (if it is in electronic form), the following statement:

“Prospective investors are cautioned that an investment in an NCM issuer is a speculative investment and may involve a high degree of risk. Such investments are designed for persons who can bear the loss of their entire investment.”; and

- (b) a statement to the effect that the notice of meeting relating to a meeting of shareholders called to consider a resolution approving the NCM issuer’s entry into a key transaction will contain all information material to the key transaction (including prospective financial information) and any offer of securities related to the key transaction.

## **8 Exemption from regulation 23 of Regulations**

- (1) Every NCM issuer and every person acting on its behalf are exempted from regulation 23 of the Regulations in respect of the first offer to the public of equity securities of the NCM issuer.
- (2) The exemption is subject to the condition that the Exchange has approved any statements in the registered prospectus or advertisement, as the case may be, that refer to quoting the equity securities on the Exchange.

### *Exemptions relating to subsequent offers of equity securities to the public*

## **9 Exemption from prospectus and investment statement requirements**

Every NCM issuer and every person acting on its behalf are exempted from sections 37(1) and 37A(1)(a) of the Act in respect of equity securities of the NCM issuer allotted pursuant to an offer to the public of equity securities of the NCM issuer that is not the first offer of equity securities to the public by that issuer.

## **10 Conditions relating to offer announcement and notices of meeting**

The exemption in clause 9 is subject to the conditions that—

- (a) an offer announcement relating to the offer of equity securities—

- (i) has been released by the NCM issuer to the Exchange for disclosure to the market; and
  - (ii) has been approved by the Exchange for release to the market; and
  - (iii) is published on the NCM issuer's internet webpage in accordance with clause 14(b); and
- (b) it is a term of the offer that the NCM issuer will, upon receiving a request from any person, without fee, send, or cause to be sent, to that person, a copy of the offer announcement; and
- (c) where the offer, or any transaction that the NCM issuer intends to finance in part or in full from the proceeds of the offer, requires shareholder approval under the NCM rules or any relevant legislation, the notice of meeting sent to shareholders contains all information material to the offer.

#### **11 Conditions relating to key transaction offers**

The exemption in clause 9 is subject to the further condition that, if the NCM issuer intends to use any of the proceeds of the offer of equity securities to finance a key transaction, no allotment of any such security is made unless the subscriber received a copy of the offer announcement before subscribing for the security.

#### **12 Conditions relating to deed of liability**

If clause 11 does not apply, the exemption in clause 9 is subject to the further conditions that—

- (a) every person who—
  - (i) is a director of the NCM issuer at the time that the offer announcement or any other advertisement relating to the offer of equity securities is published or distributed; or
  - (ii) has authorised himself or herself to be named and is named in the offer announcement or any other advertisement relating to the offer as a director of the NCM issuer or as having agreed to become a director either immediately or after an interval of time; or
  - (iii) is a promoter of the securities—

- has executed a deed, in a form approved by the Securities Commission, in favour of each subscriber for securities under the offer, warranting that no statement contained in the offer announcement or any other advertisement relating to the offer is untrue and providing for liability to every such subscriber for loss or damage sustained by the subscriber by reason of any untrue statement contained in the offer announcement or other advertisement; and
- (b) it is a term of the offer that no person referred to in paragraph (a) will seek, obtain, or rely on any waiver or indemnity in relation to a subscriber's rights under the deed referred to in that paragraph.

### **13 Exemption from regulation 23 of Regulations**

- (1) Every NCM issuer and every person acting on its behalf are exempted from regulation 23 of the Regulations in respect of any offer to the public of equity securities of the NCM issuer.
- (2) The exemption is subject to the condition that the Exchange has approved any statements in the registered prospectus or advertisement, as the case may be, that refer to quoting the equity securities on the Exchange.

#### *Further conditions*

### **14 Conditions relating to Exchange**

The exemptions in clauses 6 and 9 are also subject to the conditions that—

- (a) to the extent that they apply in respect of equity securities of an NCM issuer offered to the public after 31 March in any calendar year commencing after 31 December 2000, the Exchange has provided the Securities Commission with a written report on the operation of the Exchange's new capital market during the preceding calendar year; and
- (b) all information released during the offer period by an NCM issuer to the Exchange for disclosure to the market, and which has been approved by the Exchange for release to the market, is—
- (i) placed immediately on the NCM issuer's internet webpage; and

- (ii) available at all times during the offer period through the Exchange's internet site, except when the site or the NCM issuer's internet webpage are unavailable due to maintenance or to circumstances that are unforeseen by the Exchange or that the Exchange cannot reasonably avoid.

**15 Notice revoked**

- (1) The Securities Act (New Zealand Stock Exchange—New Capital Market) Exemption Notice 2000 (SR 2000/25) is revoked.
- (2) Despite subclause (1), the Securities Act (New Zealand Stock Exchange—New Capital Market) Exemption Notice 2000 continues to have effect as if it had not been revoked for the purpose of completing the offer and allotment of securities under any offer of securities to the public for subscription that commenced before the date on which this notice comes into force.

Dated at Wellington this 14th day of June 2000.

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

[L.S.]

E. H. Abernethy,  
Chairman.

---

### **Explanatory note**

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

This notice comes into force on the day after the date of its notification in the *Gazette*, and expires on the close of 10 March 2003.

The notice exempts certain companies known as NCM issuers, subject to conditions, from certain requirements of the Securities Act 1978 and Securities Regulations 1983.

---

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

Date of notification in *Gazette*: 15 June 2000.

This notice is administered in the Securities Commission.

---