



Securities Markets Act (Disclosure of Relevant Interests by Directors and Officers) Exemption Notice 2004

Pursuant to section 48(1)(a) of the Securities Markets Act 1988, 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 Markets Act (Disclosure of Relevant Interests by Directors and Officers) Exemption Notice 2004.

2 Commencement

This notice comes into force on 3 May 2004.

3 Expiry

This notice expires on the close of 30 April 2009.

4 Interpretation

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

Act means the Securities Markets Act 1988

dividend, in the definition of dividend reinvestment scheme, means,—

- (a) in relation to equity securities, a dividend within the meaning of the Companies Act 1993; or
- (b) in relation to a unit in a unit trust or an interest in a group investment fund, a distribution of the income or gains (whether in the nature of capital or income) of the trust or fund to a holder of a unit in the trust or of an interest in the fund

dividend reinvestment scheme means a scheme under which specified securities are offered by the issuer of those securities only to a person who already holds securities of the issuer that are the same kind as the securities being offered, on terms which—

- (a) entitle that person to subscribe for those securities by applying all or any specified part of any dividends declared by the issuer and payable to that person; or
- (b) require the issuer to allot those specified securities to that person as fully paid securities in consideration only for that person forgoing the right to receive all or any specified part of any dividends declared by the issuer and otherwise payable to that person

employee share scheme means a scheme established by a public issuer or a related body corporate under which a director, officer, manager, or employee of that public issuer or related body corporate may acquire securities

exempted plan means a share top-up plan, a dividend reinvestment scheme, or an employee share scheme

group investment fund means a group investment fund established under section 29 of the Trustee Companies Act 1967, section 42A of the Public Trust Office Act 1957, or section 63 of the Public Trust Act 2001

overseas listed public issuer means a public issuer—

- (a) in relation to whom no New Zealand registered exchange has primary jurisdiction for the listing requirements for the public issuer and the quotation of its securities; and
- (b) whose securities are also listed with securities exchanges that—
 - (i) are not New Zealand registered exchanges; and
 - (ii) have primary jurisdiction for the listing requirements for the public issuer and the quotation of its securities

passive fund means a listed or an unlisted passive index fund that—

- (a) is required under the terms of its trust deed or the terms of the offer of participatory securities that are, or confer, an interest in the fund to hold securities as near as practically possible to the securities' proportions in an index; and
- (b) at the date of any registered prospectus relating to participatory securities that are, or confer, an interest in the fund, is the subject of a ruling from the Inland Revenue Department to the effect that gains realised from the sale of securities by the fund in order to match the composition and weighting of the index will not be taxable under the provisions of the Income Tax Act 1994

regulations means the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations 2003

share top-up plan means a plan established by an issuer under which previously allotted shares of the issuer are offered, whether by the issuer or another person, only to some or all existing holders of the same class of shares, and those shares are sold in consideration for a direction made to the issuer to apply amounts that are payable to each existing holder from dividends declared by the issuer to the purchase of the shares

specified debt security means a debt security that is unlisted, unquoted, and for which there is no established market, and includes an interest in a bank account or a term deposit

unit trust means—

- (a) a unit trust as defined in section 2(1) of the Unit Trusts Act 1960; or
 - (b) a managed investment scheme (within the meaning of section 9 of the Corporations Act 2001 of the Commonwealth of Australia) that is registered with the Australian Securities and Investments Commission under section 601EB of that Act; or
 - (c) a unit trust established under the laws of Australia; or
 - (d) a unit trust scheme or open-ended investment company that has been authorised by the United Kingdom Financial Services Authority under the Financial Services and Markets Act 2000 of the United Kingdom.
- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.
- (3) Any term or expression that is defined in the Securities Act 1978 and used, but not defined, in this notice or the Act has the same meaning as in the Securities Act 1978.

5 Exemption from section 19T of Act for specified debt securities

Every director and officer of a public issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a specified debt security of that public issuer or a related body corporate.

6 Exemption from section 19T of Act for life insurance policies, superannuation schemes, and passive funds

Every director and officer of a public issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a security of that public issuer or a related body corporate if that security—

- (a) is a life insurance policy; or
- (b) is an interest in a superannuation scheme; or
- (c) is an interest in a passive fund.

7 Exemption from section 19T of Act for passive fund issuers

Every director and officer of a passive fund issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in an unlisted security of that passive fund issuer or a related body corporate if that director or officer is required to disclose that relevant interest under section 19T of the Act solely by reason of being a director or officer of that passive fund issuer.

8 Exemption from section 19T of Act for unlisted unit trusts and unlisted group investment funds

Every director and officer of a public issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a security of a related body corporate of that public issuer if that security—

- (a) is a unit in an unlisted unit trust; or
- (b) is an interest in an unlisted group investment fund.

9 Exemption from section 19T of Act for directors and officers who have already disclosed

- (1) Every director and officer of a public issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a security of that public issuer if that director or officer has made a valid disclosure in relation to that relevant interest under Rule 10.9.3 or 10.9.4 of the NZX Listing Rules.
- (2) Every director and officer of a public issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a security of that public issuer or a related body corporate if that director or officer has made a valid disclosure in relation to that relevant interest under the listing rules of a stock exchange in Australia or the United Kingdom and that disclosure has been validly disclosed under Rule 5.1.6(c) of the NZX Listing Rules.

10 Conditions to exemptions in clause 9

- (1) The exemptions in clause 9 are subject to the conditions that—
 - (a) the relevant public issuer must keep an interests register in New Zealand in accordance with sections 19Z and 19ZA of the Act; and
 - (b) a relevant interest disclosed in accordance with clause 9 must be noted in the interests register as if it was disclosed under section 19T of the Act.
- (2) A person is treated as a director or officer for the purposes of clause 9 and subclause (1) for 6 months after that person ceases to be a director or officer.

11 Exemption from section 19T of Act for directors and officers of co-operative companies

- (1) Every director and officer of a co-operative company is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a non-listed security of that company if—
 - (a) that non-listed security is held by a person (including a partnership, trustee of a trust, or company) on behalf of, or as trustee for, the director or officer; and
 - (b) that person is a transacting shareholder of the co-operative company; and
 - (c) the relevant interest in the non-listed security was acquired by the director or officer in the ordinary course of business.
- (2) For the avoidance of doubt and for the purposes of subclause (1), a director or officer is not acting outside the ordinary course of business merely because the director or officer acquires or disposes of non-listed securities in the company in connection with the director or officer acquiring or disposing of a business or business assets.

12 Exemption from section 19T of Act for overseas listed public issuers

- (1) Every director and officer of an overseas listed public issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a security of that overseas listed public issuer.

- (2) Every director and officer of an overseas listed public issuer is exempted from section 19T of the Act in respect of any relevant interest that director or officer has, or acquires or disposes of, in a security of a related body corporate of that overseas listed public issuer unless—
- (a) that director or officer is also a director or officer of the related body corporate; and
 - (b) the related body corporate is a public issuer, but not an overseas listed public issuer.

13 Exemption from section 19T(2) of Act for share top-up plans, dividend reinvestment schemes, and employee share schemes

Every director and officer of a public issuer is exempted from section 19T(2) of the Act in respect of any relevant interest that director or officer acquires or disposes of in a security of that public issuer or a related body corporate if that security is provided under an exempted plan.

14 Conditions to exemption in clause 13

- (1) Subject to subclause (3), the exemption in clause 13 is subject to the conditions that a director or officer who relies on that exemption must disclose the acquisition or disposal of the relevant interest—
- (a) in accordance with section 19U(1) of the Act; and
 - (b) within 30 days of the acquisition or the disposal of the relevant interest in a security by the director or officer; and
 - (c) in a form approved by New Zealand Exchange Limited that—
 - (i) contains all of the information required by regulations 7 to 11 of the regulations; and
 - (ii) may contain the relevant information required for the disclosure of relevant interests by more than 1 director or officer in the 1 form; and
 - (iii) may aggregate multiple acquisitions or multiple disposals in the manner permitted by regulation 12 of the regulations, but as if regulation 12(1)(c) read “took place within the 30 day disclosure

- period in clause 14(1)(b) of the Securities Markets Act (Disclosure of Relevant Interests by Directors and Officers) Exemption Notice 2004”; and
- (iv) is delivered or given in accordance with regulation 16 of the regulations.
- (2) A person is treated as a director or officer for the purposes of clause 13 and subclause (1) for 6 months after that person ceases to be a director or officer.
- (3) The conditions in subclause (1) may be satisfied on behalf of a director or officer by the relevant public issuer or by any other person and the exemption in clause 13 applies to the relevant director or officer accordingly as if those conditions were satisfied by that director or officer.

Dated at Wellington this 29th day of April 2004.

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, which comes into force on 3 May 2004 and expires on 30 April 2009, exempts certain directors and officers from section 19T of the Securities Markets Act 1988, which requires a director or officer of a public issuer who has, or acquires or disposes of, a relevant interest in a security of that public issuer or a related body corporate to disclose that fact in a specified manner.

Under this notice, no director or officer of a public issuer who has, or acquires or disposes of, a relevant interest in a security of that public issuer or a related body corporate has to disclose that fact in accordance with section 19T of the Securities Markets Act 1988 if that relevant interest is in a debt security that is unlisted, unquoted, and for which there is no established market or in a security that—

- is a life insurance policy; or
- is an interest in a superannuation scheme; or
- is an interest in a passive fund; or
- is provided under a share top-up plan; or
- is provided under a dividend reinvestment scheme; or
- is provided under an employee share scheme.

The exemptions in relation to share top-up plans, dividend reinvestment schemes, and employee share schemes are subject to certain conditions.

An exemption is also granted for a director or officer of a public issuer who has, or acquired or disposed of, a relevant interest in a security of a related body corporate of that public issuer if that security is a unit in an unlisted unit trust or an interest in an unlisted group investment fund.

Similar exemptions are granted, in certain circumstances, for directors and officers—

- of passive fund issuers; and
- who have already disclosed their relevant interests under the NZX Listing Rules; and
- of co-operative companies; and
- of overseas listed public issuers.

The Securities Commission considers that it is appropriate to grant an exemption from section 19T of the Act in respect of relevant interests that are held, acquired, or disposed of in, or in relation to,—

- debt securities that are unlisted, unquoted, and for which there is no established market; and
- life insurance and superannuation scheme products; and
- passive index funds; and
- unlisted investment products of passive fund issuers and related bodies corporate (if the directors or officers holding those relevant interests would otherwise have a disclosure obligation in respect of that passive fund issuer or related body corporate only because they are directors or officers of that passive fund issuer); and

- unlisted unit trusts and unlisted group investment funds offered by a related body corporate of an issuer.

In the Commission's view, the granting of these exemptions is appropriate because the risk of insider trading in these securities is minimal and without an exemption directors and officers holding the interests would be subject to disclosure obligations that would raise significant privacy and practical compliance issues for the directors and officers concerned. Compliance with the disclosure regime in these circumstances would also not provide information that furthers the market information or anti-insider trading purposes of the disclosure regime.

The Securities Commission considers that it is appropriate to grant an exemption from section 19T of the Act, subject to certain conditions, in respect of holdings, acquisitions, or disposals of relevant interests that have already been validly disclosed under Rule 10.9.3, 10.9.4, or 5.1.6(c) of the NZX Listing Rules because the Commission is of the view that requiring the disclosures to be made again would result in unnecessary duplication.

The Securities Commission considers that it is appropriate to grant an exemption from section 19T of the Act in respect of relevant interests in non-listed securities of a co-operative company held and acquired in the manner specified in this notice because it is of the view that the practical effect of the statutory exemption afforded by section 19X of the Securities Markets Act 1988 should extend to directors and officers of co-operative companies whose relevant interests in non-listed securities of co-operative companies are held indirectly through a vehicle like a partnership, company, or trust.

The Securities Commission considers that it is appropriate to grant an exemption from section 19T of the Act in respect of a director or officer of an issuer that would be an overseas listed issuer as defined in the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Exemption Notice 2004 but for the fact that the issuer maintains a primary listing on more than 1 overseas registered exchange because this enables the policy of the exemption contained in regulation 22 to extend to such directors and officers. This is consistent with the policy of those regulations.

The Securities Commission considers that it is appropriate to grant an exemption from section 19T(2) of the Act, subject to certain conditions, in respect of relevant interests acquired under share top-

up plans, dividend reinvestment schemes, and employee share schemes because the timing of those acquisitions and disposals is not affected by contemporaneous market information.

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

Date of notification in *Gazette*: 30 April 2004.

This notice is administered by the Securities Commission.
